STATE OF NEW YORK

6044--B

2023-2024 Regular Sessions

IN SENATE

March 27, 2023

Introduced by Sens. BAILEY, COMRIE, FERNANDEZ -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the administrative code of the city of New York, in relation to establishing fetal and infant mortality review boards

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The public health law is amended by adding a new section 2509-b to read as follows:

§ 2509-b. Fetal and infant mortality review board. 1. For the purposes of this section, unless the context requires otherwise:

(a) "Board" means a fetal and infant mortality review board established by this section, referred to in this section as the "state board", or a board operating under this section established by the city of New York, with or without an agreement with the commissioner, referred to in this section as the "city board".

(b) "Fetal and infant death" means pregnancy loss that ends in miscarriage or stillbirth, or infant deaths within one year of birth.

(c) "Severe fetal and infant morbidity" or "morbidity" means unanticipated outcomes of pregnancy, labor, or delivery that result in significant short- or long-term consequences to a child's health.

(d) "City commissioner" means the commissioner of the New York city department of health and mental hygiene.

2. (a) There is hereby established in the department the fetal and infant mortality review board for the purpose of reviewing fetal and

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD10339-04-4

infant deaths and fetal and infant morbidity and developing and disseminating findings, recommendations, and best practices to contribute to the prevention of fetal and infant mortality and morbidity. The board shall assess the cause of death, factors leading to death and preventability for each fetal and infant death reviewed and, in the discretion of the board, cases of severe fetal and infant morbidity, and shall develop and disseminate strategies for reducing the risk of fetal and infant mortality and morbidity, including risk resulting from racial, economic, or other disparities. The commissioner may delegate the authority to conduct fetal and infant mortality reviews.

(b) The commissioner may enter into an agreement with the city of New York providing:

(i) that the functions of the state board relating to fetal and infant deaths and severe fetal and infant morbidity occurring within the city of New York shall be conducted by the city board;

(ii) the city board shall provide to the state board the results of its reviews, relevant information in the possession of the city board, and the recommendations of the city board; and

(iii) the department and the state board shall provide information and assistance to the city board for the performance of its functions.

(c) Nothing in this section shall prevent the city of New York from establishing, without an agreement with the commissioner, a board relating to fetal and infant deaths and severe fetal and infant morbidity occurring within the city of New York.

3. (a) The members of the state board shall be comprised of multidisciplinary experts in the field of fetal and infant mortality, fetal, neonatal and infant health and public health, maternal health, obstetrics and gynecology, and shall include health care professionals or other experts who serve and are representative of the racial, ethnic, and socioeconomic diversity of the state and, to the extent possible, the medically underserved areas of the state or areas of the state with disproportionately high occurrences of fetal and infant mortality or morbidity.

(b) The state board shall be composed of nine members, appointed as follows: three members shall be appointed by the governor; two members shall be appointed by the speaker of the assembly; two members shall be appointed by the temporary president of the senate; one member shall be appointed by the minority leader of the senate; and one member shall be appointed by the minority leader of the assembly.

(c) The terms of the state board members shall be three years. The commissioner may choose to reappoint state board members to additional three-year terms.

(d) A majority of the appointed membership of the state board, but no less than five, shall constitute a quorum.

(e) When any member of the state board fails to attend three consecutive regular meetings, unless good cause is shown for such absence, that membership may be deemed vacant for purposes of the appointment of a successor.

(f) Meetings of the state board shall be held at least twice a year but may be held more frequently as deemed necessary, subject to request of the department.

(g) Members of the state and city boards shall be indemnified under section seventeen of the public officers law or section fifty-k of the general municipal law, as the case may be.

(h) Members of the state board shall not be compensated for their participation on the board but shall receive reimbursement for their ordinary and necessary expenses of participation.

(i) Membership on a board shall not disqualify any person from holding any public office or employment.

4. (a) The commissioner may request and shall receive upon request from any department, division, board, bureau, commission, local health departments or other agency of the state or political subdivision thereof or any public authority, such information, including but not limited to death records, medical records, autopsy reports, toxicology reports, hospital discharge records, birth records and any other information that will help the department under this section to properly carry out its functions, powers and duties. The commissioner, or the city commissioner for the fetal and infant deaths or fetal and infant morbidity occurring within the vital statistics registration district of the city of New York, may request and shall receive upon request from any department, division, board, commission or other agency under the authority of the city of New York as well as hospitals established pursuant to article twenty-eight of this chapter, birthing facilities, medical examiners, coroners and coroner physicians and any other facility providing services associated with fetal and infant mortality or fetal and infant morbidity, such information, including, but not limited to, death records, medical records, autopsy reports, toxicology reports, hospital discharge records, birth records and any other information that will help the department under this section to properly carry out its functions, powers and duties.

(b) The commissioner and the city commissioner shall receive and may solicit voluntary information, including oral or written statements, relating to any fetal and infant death and case of severe fetal and infant morbidity, from any family member or other interested party relating to any case that may come before the board. Oral statements received under this paragraph shall be transcribed or summarized in writing. The commissioner and the city commissioner shall transmit that information to the board considering the case.

(c) Before transmitting any information to the board, the commissioner or the city commissioner shall remove all personal identifying information of the fetus or infant, individuals experiencing pregnancy loss or parents of infant, health care practitioner or practitioners, or anyone else individually named in such information, as well as the hospital or facility that treated the fetus or infant, and any other information such as geographic location that may inadvertently identify the fetus or infant, practitioner, or facility.

(d) Information received or transmitted under this section is not admissible in any civil, administrative, criminal, or family court proceeding that seeks to punish or prosecute the pregnant or birthing person and shall not be used as a basis of a report to the statewide central register of child abuse and maltreatment.

5. Each board:

(a) shall collect and perform case reviews of fetal and infant deaths;

(b) shall make and report findings and recommendations to the commissioner, and in the case of the city board to the commissioner and the city commissioner regarding the cause of death, factors leading to death, and preventability of each fetal or infant death case, and each case of severe fetal or infant morbidity reviewed by the board, by reviewing relevant information for each case in the state or the city of New York, as the case may be, and consulting with experts as needed to

evaluate the information for each death; provided that no information which, alone or in combination, would permit an individual who experienced a pregnancy loss or infant death to be identified may be requested or shared with consulting experts, and that information reviewed or findings made by the board shall not be admissible in any civil, administrative, criminal, or family court proceeding and shall not be used as a basis of a report to the statewide central register of child abuse and maltreatment;

(c) shall develop and deliver to the commissioner, and in the case of the city board to the commissioner and the city commissioner for areas of focus, recommendations on:

(i) issues of severe fetal and infant morbidity;

(ii) addressing social determinants of fetal and infant health, including racial, economic or other historical and contemporary injustices which lead to disparities in fetal and infant outcomes;

(iii) policies, best practices, and strategies to reduce fetal and infant mortality and morbidity;

(iv) methods of improving services and resources; and

(v) methods of implementing continuous quality improvement in fetal and infant mortality and morbidity;

(d) shall issue an annual public report on its findings and recommendations and may also issue public reports more frequently;

(e) shall identify and address systemic community conditions contributing to fetal and infant deaths;

(f) shall implement a surveillance system to monitor incidence, etiologies, and contributing factors and which can describe effects of health care system change;

(g) shall identify system wide challenges to improving fetal and infant health care;

(h) may, in addition to the findings and recommendations made under this subdivision, and consistent with all applicable confidentiality protections, bring any particular matter to the attention of the commissioner or the city commissioner, and in the case of the city board to the commissioner and the city commissioner; and

(i) may request and shall receive the assistance of the commissioner in the instance of the state board and the city commissioner in the instance of the city board in carrying out its functions.

6. The commissioner and the city commissioner and the state and city boards shall each keep confidential any information collected or received under this section that includes personal identifying information of the fetus or infant, fetus or infant's parents, health care practitioner or practitioners, or anyone else individually named in such information, as well as the hospital or facility that treated the fetus or infant, and any other information such as geographic location that may inadvertently identify the fetus or infant, the fetus or infant's parents, practitioner, or facility, and shall use the information provided or received under this section solely for the purposes of improvement of the quality of fetal and infant health care and to prevent fetal and infant mortality and morbidity. This subdivision shall not preclude the transmitting of information to the board that is reasonably necessary to enable the board to perform an appropriate review under this section. All records received, meetings conducted, reports, except those public reports required to be issued by the board by this section, and records made and maintained and all books and papers obtained by the board shall be confidential and shall not be made open or available, including under article six of the public officers

law, and shall be limited to board members as well as those authorized by the commissioner or city commissioner. Such information shall not be discoverable or admissible as evidence in any action in any court or before any other tribunal, board, agency or person.

7. The commissioner and the city commissioner, within their respective legal authority, may use the recommendations and findings of the boards to develop guidance and other actions relating to best practices, and shall disseminate information relating to that guidance and other actions to appropriate health care providers.

§ 2. The administrative code of the city of New York is amended by adding a new section 17-166.1 to read as follows:

§ 17-166.1 Fetal and infant mortality review board. a. For the purposes of this section, unless the context requires otherwise:

(1) "Review board" means the fetal and infant mortality review board established by this section.

(2) "Fetal and infant death" means pregnancy loss that ends in miscarriage or stillbirth, or infant deaths within one year of birth.

(3) "Severe fetal and infant morbidity" or "morbidity" means unanticipated outcomes of pregnancy, labor, or delivery that result in significant short- or long-term consequences to a child's health.

b. There is hereby established in the department the fetal and infant mortality review board for the purpose of reviewing fetal and infant deaths and fetal and infant morbidity and developing and disseminating findings, recommendations, and best practices to contribute to the prevention of fetal and infant mortality and morbidity. The review board shall assess the cause of death, factors leading to death and preventability for each fetal and infant death reviewed and, in the discretion of the review board, cases of severe fetal and infant morbidity, and shall develop and disseminate strategies for reducing the risk of fetal and infant mortality and morbidity, including risk resulting from racial, economic, or other disparities. The commissioner may delegate the authority to conduct fetal and infant mortality reviews.

c. (1) The members of the review board shall be comprised of multidisciplinary experts in the field of fetal and infant mortality, fetal, neonatal and infant health and public health, maternal health, obstetrics and gynecology, and shall include health care professionals or other experts who serve and are representative of the racial, ethnic, and socioeconomic diversity of the city of New York and, to the extent possible, the medically underserved areas of the city of New York or areas of the city of New York with disproportionately high occurrences of fetal and infant mortality or morbidity.

(2) The review board shall be composed of nine members, all of whom shall be appointed by the commissioner.

(3) The terms of the review board members shall be three years. The commissioner may choose to reappoint review board members to additional three-year terms.

(4) A majority of the appointed membership of the review board, but no less than five, shall constitute a quorum.

(5) When any member of the review board fails to attend three consecutive regular meetings, unless good cause is shown for such absence, that membership may be deemed vacant for purposes of the appointment of a successor.

(6) Meetings of the review board shall be held at least twice a year but may be held more frequently as deemed necessary, subject to request of the department.

(7) Members of the review board shall be indemnified under section seventeen of the public officers law or section fifty-k of the general municipal law, as the case may be.

(8) Members of the review board shall not be compensated for their participation on the review board but shall receive reimbursement for their ordinary and necessary expenses of participation.

(9) Membership on the review board shall not disqualify any person from holding any public office or employment.

d. (1) The commissioner may request and shall receive upon request from any department, division, board, bureau, commission, local health department or other agency of the state or political subdivision thereof or any public authority, such information, including but not limited to death records, medical records, autopsy reports, toxicology reports, hospital discharge records, birth records and any other information that will help the department under this section to properly carry out its functions, powers and duties. The commissioner may request and shall receive upon request from any department, division, board, commission or other agency under the authority of the city of New York as well as hospitals established pursuant to article twenty-eight of the public health law, birthing facilities, medical examiners, coroners and coroner physicians and any other facility providing services associated with fetal and infant mortality or fetal and infant morbidity, such information, including, but not limited to, death records, medical records, autopsy reports, toxicology reports, hospital discharge records, birth records and any other information that will help the department under this section to properly carry out its functions, powers and duties.

(2) The commissioner shall receive and may solicit voluntary information, including oral or written statements, relating to any fetal and infant death and case of severe fetal and infant morbidity, from any family member or other interested party relating to any case that may come before the review board. Oral statements received under this paragraph shall be transcribed or summarized in writing. The commissioner shall transmit that information to the review board considering the case.

(3) Before transmitting any information to the review board, the commissioner shall remove all personal identifying information of the fetus or infant, individuals experiencing pregnancy loss or parents of the infant, health care practitioner or practitioners, or anyone else individually named in such information, as well as the hospital or facility that treated the fetus or infant, and any other information such as geographic location that may inadvertently identify the fetus or infant, fetus or infant's family, practitioner, or facility.

(4) Information received or transmitted under this section is not admissible in any civil, administrative, criminal, or family court proceeding that seeks to punish or prosecute the pregnant or birthing person and shall not be used as a basis of a report to the Statewide Central Register of Child Abuse and Maltreatment.

e. The review board:

(1) shall collect and perform case reviews of fetal and infant deaths;

(2) shall make and report findings and recommendations to the commissioner regarding the cause of death, factors leading to death, and preventability of each fetal or infant death case, and each case of severe fetal or infant morbidity reviewed by the review board, by reviewing relevant information for each case in the city of New York and consulting with experts as needed to evaluate the information for each death provided that no information which, alone or in combination, would

permit an individual who experienced a pregnancy loss or infant death to be identified may be requested or shared with consulting experts, and that information reviewed or findings made by the board shall not be admissible in any civil, administrative, criminal, or family court proceeding and shall not be used as a basis of a report to the Statewide Central Register of Child Abuse and Maltreatment;

(3) shall develop and deliver to the commissioner recommendations on:

(A) issues of severe fetal and infant morbidity;

(B) addressing social determinants of fetal and infant health, including racial, economic or other historical and contemporary injustices which lead to disparities in fetal and infant outcomes;

(C) policies, best practices, and strategies to reduce fetal and infant mortality and morbidity;

(D) methods of improving services and resources; and

(E) methods of implementing continuous quality improvement in fetal and infant mortality and morbidity;

(4) shall issue an annual public report on its findings and recommendations and may also issue public reports more frequently;

(5) shall identify and address systemic community conditions contributing to fetal and infant deaths;

(6) shall implement a surveillance system to monitor incidence, etiologies, and contributing factors and which can describe effects of health care system change;

(7) shall identify system wide challenges to improving fetal and infant health care;

(8) may, in addition to the findings and recommendations made under this subdivision, and consistent with all applicable confidentiality protections, bring any particular matter to the attention of the commissioner; and

(9) may request and shall receive the assistance of the commissioner in carrying out its functions.

f. The commissioner and the review board shall each keep confidential any information collected or received under this section that includes personal identifying information of the fetus or infant, the fetus or infant's parents, health care practitioner or practitioners, or anyone else individually named in such information, as well as the hospital or facility that treated the fetus or infant, and any other information such as geographic location that may inadvertently identify the fetus or infant, the fetus or infant's parents, practitioner, or facility, and shall use the information provided or received under this section solely for the purposes of improvement of the quality of fetal and infant health care and to prevent fetal and infant mortality and morbidity. This subdivision shall not preclude the transmitting of information to the review board that is reasonably necessary to enable the review board to perform an appropriate review under this section. All records received, meetings conducted, reports, except those public reports required to be issued by the review board by this section, and records made and maintained and all books and papers obtained by the review board shall be confidential and shall not be made open or available, including under article six of the public officers law, and shall be limited to review board members as well as those authorized by the commissioner. Such information shall not be discoverable or admissible as evidence in any action in any court or before any other tribunal, board, agency or person.

g. The commissioner may use the recommendations and findings of the review board to develop guidance and other actions relating to best

practices, and shall disseminate information relating to that guidance and other actions to appropriate health care providers.

§ 3. This act shall take effect one year after it shall have become a law.