

SESSION OF 2018

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2573

As Amended by House Committee on Health
and Human Services

Brief*

HB 2573, as amended, would provide for the study and investigation of maternal deaths by the Secretary of Health and Environment (Secretary); define maternal death; provide for access to records related to maternal death and address the confidentiality of those records; and establish a July 1, 2023, expiration date for provisions addressing confidentiality of the records, unless the provisions are reenacted by the Legislature prior to their expiration. The Legislature would be required to review the confidentiality provisions prior to the expiration date established in the bill. Additionally, the bill would require reports of aggregate non-individually identifiable data to be compiled on a routine basis for distribution to further study the causes and problems associated with maternal death.

Additional bill details follow.

Definition of “Maternal Death”

“Maternal death” would mean the death of any woman from any cause while pregnant or within one calendar year of the end of any pregnancy, regardless of the duration of the pregnancy or the site of the end of the pregnancy.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Access to Records by Secretary

The Secretary would be required to have access to all law enforcement investigative information regarding a maternal death in Kansas, any autopsy records and coroner's investigative records relating to the death, any medical records of the mother, and any records of the Kansas Department for Children and Families or any other state social service agency that has provided services to the mother.

The Secretary would be authorized to apply to the district court for, and the court may issue, a subpoena to compel the production of any books, records, or papers relevant to the cause of any maternal death being investigated by the Secretary. Any books, records, or papers received by the Secretary through a subpoena would be confidential and privileged information and not subject to disclosure.

The provisions related to the confidentiality of the records received by the Secretary pursuant to a subpoena would expire on July 1, 2023, unless reenacted by the Legislature. The Legislature would be required to review these confidentiality provisions prior to the expiration date.

Duties of the Secretary

The bill would require the Secretary to identify maternal death cases; review medical records and other relevant data; contact family members and other affected or involved persons to collect additional relevant data; consult with relevant experts to evaluate the records and data collected; make determinations regarding the preventability of maternal deaths; develop recommendations and actionable strategies to prevent maternal deaths; and disseminate findings and recommendations to the Legislature, healthcare providers, healthcare facilities, and the general public.

Access to Medical Records

The bill would require the following to provide reasonable access to all relevant medical records associated with a maternal death case under review by the Secretary:

- Healthcare providers licensed pursuant to Chapters 65 and 74 of the Kansas statutes (*Note:* Examples of licensed health care providers include advanced practice registered nurse, and practical nurse, and professional nurse; dentist and dental hygienist; optometrist; pharmacist; podiatrist; individual licensed to practice medicine and surgery, osteopathic medicine and surgery, or chiropractic; physician assistant; physical therapist; mental health technician; occupational therapist and occupational therapy assistant; respiratory therapist; professional counselor and clinical professional counselor; licensed dietitian; baccalaureate social worker, master social worker, and specialist clinical social worker; marriage and family therapist and clinical marriage and family therapist; speech-language pathologist and audiologist; addiction counselor, master's addiction counselor, and clinical addiction counselor; naturopathic doctor; radiologic technologist; behavior analyst and assistant behavior analyst; licensed acupuncturist; psychologist and master's level psychologist; and individual with licensure to practice fitting and dispensing of hearing instruments);
- Medical care facilities licensed pursuant to Article 4 of Chapter 65 of the Kansas statutes (hospital, ambulatory surgical center, or recuperation center);
- Maternity centers licensed pursuant to Article 5 of Chapter 65 of the Kansas statutes; and

- Pharmacies licensed pursuant to Article 16 of Chapter 65 of the Kansas statutes.

When making good faith efforts to provide access to medical records as required under the bill, these providers would be exempt from liability for civil damages and would not be subject to criminal or disciplinary administrative action.

Information, records, reports, statements, notes, memoranda, or other data collected would be privileged and confidential and would not be admissible as evidence in any court action or before another tribunal, board, agency, or person. Exhibition of this information or disclosure of the contents in any manner by any officer or representative of the Kansas Department of Health and Environment (KDHE) or any other person would be prohibited, except when necessary to further the investigation of the related case. Anyone participating in the investigation is prohibited from disclosing the information obtained. The confidentiality provisions related to these records would expire on July 1, 2023, unless reenacted by the Legislature. The bill would require the Legislature to review the confidentiality provisions prior to their expiration.

Confidentiality of Records Resulting from KDHE Review

The following would be confidential records and not subject to the Kansas Open Records Act or Kansas Open Meetings Act, or subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding:

- Proceedings, activities, and the resulting opinions of the Secretary or the Secretary's representatives; and
- Records obtained, created, or maintained, including records of interviews, written reports, and statements procured by the Secretary or any other person, agency, or organization acting jointly or

under contract with KDHE in connection with investigating maternal death.

The bill would specify the right to discover or use in any civil or criminal proceeding any document or record that is available and entirely independent of the proceedings and activities of the Secretary or the Secretary's representatives would not be limited or otherwise restricted.

The bill would prohibit the Secretary or the Secretary's representatives from being questioned in a civil or criminal proceeding regarding the information presented in or opinions formed as a result of an investigation. The Secretary or the Secretary's representatives would be allowed to testify to information that is public or obtained independently of investigations, activities, and proceedings by the Secretary or the Secretary's representatives or any other person, agency, or organization acting jointly or under contract with KDHE in connection with investigating maternal death.

The provisions regarding the confidentiality of this information would expire on July 1, 2023, unless reenacted by the Legislature prior to their expiration.

Compilation and Distribution of Aggregate Reports

In an effort to further study the causes and problems associated with maternal death, the bill would require reports of aggregate non-individually identifiable data to be compiled on a routine basis for distribution to healthcare providers, medical care facilities, and other persons necessary to reduce the maternal death rate.

Background

The bill was introduced by the House Committee on Health and Human Services at the request of the Kansas Section of the American Congress of Obstetricians and Gynecologists (ACOG). In the House Committee hearing, an

obstetrician and gynecologist, a resident in obstetrics and gynecology, and representatives of ACOG and the Kansas Midwives Alliance testified in support of the bill. The proponents generally stated maternal deaths in the U.S. are increasing, and an estimated half of these deaths could be prevented. The proponents stated a maternal mortality review committee would provide a systematic, confidential, statewide approach to analyze the potential causes of maternal death and identify areas where change could be implemented to reverse the upward trend, while providing legal protections for the review committee members. Written testimony in support of the bill was provided by representatives of ACOG, Kansas Affiliate of the American College of Nurse-Midwives, KDHE, Kansas Medical Society, and March of Dimes.

No opponent or neutral testimony was provided.

The House Committee amended the bill to clarify the nature of the documents or records related to maternal death available for discovery or use in a civil or criminal proceeding.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, KDHE states if the bill is enacted, existing federal maternal and child health funding would be allocated for the initiative. KDHE notes program staff within KDHE would provide support for logistics related to planning and executing meetings and disseminating reports withing existing budget resources.