SENATE BILL No. 118

By Committee on Federal and State Affairs

1-30

AN ACT concerning the department of health and environment; relating to the duties of the secretary; providing for the study and investigation of maternal deaths in the state of Kansas; continuing in existence exceptions to the disclosure of public records under the open records act related to maternal death investigations; amending K.S.A. 65-177 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 65-177 is hereby amended to read as follows: 65-177. (a) As used in K.S.A. 65-177 through 65-179, and amendments thereto:

(1) "Data," as used in K.S.A. 65-177 through 65-179, and amendments thereto, includes all facts, information, records of interviews, written reports, statements, notes or memoranda secured in connection with an authorized medical research study.

(2) "Maternal death" means 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.

(3) "Performance indicator" means the statistical or quantitative value that expresses the result of a performance objective.

(4) "Performance measure" means a narrative statement that describes a specific maternal and child health need or requirement that, when successfully addressed, will lead to or will assist in leading to a specific health outcome within a community or jurisdiction and generally within a specified time frame.

(5) "Performance objective" means a statement of intention:

(A) That clearly describes what is to be achieved, when it is to be achieved, the extent of the achievement and the target populations; and

(B) with which actual achievement and results can be measured and compared.

(b) (1) The secretary of health and environment shall 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.

(2) (A) The secretary may apply to the district court for the issuance of, and the district 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 pursuant to the subpoena shall be confidential and privileged information and not subject to disclosure.

(B) The provisions of this paragraph providing for confidentiality of records shall expire on July 1, 2023, unless the legislature acts to reenact such provisions. The legislature shall review the provisions of this paragraph pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2028.

(c) The secretary of health and environment shall:

(1) Identify maternal death cases;
(2) review medical records and other relevant data;
(3) contact family members and other affected or involved persons to collect additional relevant data;
(4) consult with relevant experts to evaluate the records and data collected;
(5) utilize a specialized review form that includes sections recognizing the impact of generational and historical trauma, societal factors, cultural beliefs, rural-urban geographic healthcare access, discrimination and other factors related to disparate outcomes;
(6) make determinations regarding the preventability of maternal deaths;
(7) develop recommendations and actionable strategies to prevent maternal deaths; and
(8) disseminate findings and recommendations to the legislature, healthcare providers, healthcare facilities and the general public;
(9) work with healthcare providers and healthcare facilities to promote the continuity of maternal healthcare for women during and after pregnancy;
(10) help healthcare providers and healthcare facilities develop and implement performance measures that are based on the performance measures prioritized by the secretary in accordance with the maternal and child health services block grant, 42 U.S.C. § 701 et seq.;
(11) strengthen the ability of local health officers to generate and compile maternal healthcare performance indicators; and
(12) establish an external community review committee that shall review cases of individuals from populations experiencing racial, ethnic or geographic rural disparities independently and make recommendations as to actionable strategies to prevent future deaths, subject to the following requirements:
(A) Include a numerical majority of stakeholders representative of populations experiencing disparities in maternal morbidity and mortality, including ethnic, racial and geographic disparities;
(B) include individuals representing law enforcement agencies, tribal health councils, medical subspecialties, cultural, geographic, or religious experts, as well as topical experts;
(C) have access to publicly available disaggregated raw data, including maternal interviews and clinical notes;
(D) require each committee member to sign a confidentiality agreement prior to reviewing case data. If a member of the committee breaches the confidentiality agreement, such member shall be promptly removed from the committee; and
(E) Prior to case review by the committee, designated individuals who have authorization to access such confidential maternal death records shall:
   (i) De-identify the case data;
   (ii) interpret the case data and provide a description to the committee, including analysis regarding whether the death was preventable, caused by pathological changes in the body or sociocultural process played a part in the maternal death; and
   (iii) provide summaries of interviews conducted with family members of the deceased to the committee and follow up with such family members prior to committee review.
(d) (1) Healthcare providers licensed pursuant to chapters 65 and 74 of the Kansas Statutes Annotated, and amendments thereto, medical care facilities licensed pursuant to article 4 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, maternity centers licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and pharmacies licensed pursuant to article 16 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, shall provide reasonable access to all relevant medical records associated with a maternal death case under review by the secretary.
(2) A healthcare provider, medical care facility, maternity center or pharmacy providing access to medical records pursuant to this section shall not be held liable for civil damages or be subject to criminal or disciplinary administrative action for good faith efforts to provide such records.
(e) (1) Information, records, reports, statements, notes, memoranda or other data collected pursuant to this section shall be privileged and confidential and shall not be admissible as evidence in any action of any kind in any court or before another tribunal, board, agency or person. Such information, records, reports, statements, notes, memoranda or other data shall not be exhibited nor their contents disclosed in any way, in whole or
in part, by any officer or representative of the department of health and
environment or any other person, except as may be necessary for the
purpose of furthering the investigation of the case to which they relate. No
person participating in such investigation shall disclose, in any manner, the
information so obtained.

(2) The provisions of this subsection providing for confidentiality of
records shall expire on July 1, 2023, unless the legislature acts to
reenact such provisions. The legislature shall review the provisions of this
subsection pursuant to K.S.A. 45-229, and amendments thereto, prior to
July 1, 2028.

(f) (1) All proceedings and activities of the secretary or
representatives of the secretary under this section, opinions of the secretary
or representatives of the secretary formed as a result of such proceedings
and activities and records obtained, created or maintained pursuant to this
section, 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 the department of health and
environment in connection with the requirements of this section, shall be
confidential and not subject to the provisions of the open records act or the
open meetings act or subject to subpoena, discovery or introduction into
evidence in any civil or criminal proceeding. Nothing in this section shall
be construed to limit or otherwise restrict the right to discover or use in
any civil or criminal proceeding any document or record that is available
and entirely independent of proceedings and activities of the secretary or
representatives of the secretary under this section.

(2) The secretary or representatives of the secretary shall not be
questioned in any civil or criminal proceeding regarding the information
presented in or opinions formed as a result of an investigation. Nothing in
this section shall be construed to prevent the secretary or representatives of
the secretary from testifying to information obtained independently of this
section or that is public information.

(3) The provisions of this subsection providing for confidentiality of
records shall expire on July 1, 2023, unless the legislature acts to
reenact such provisions. The legislature shall review the provisions of this
subsection pursuant to K.S.A. 45-229, and amendments thereto, prior to
July 1, 2028.

(g) Reports of aggregate non-individually identifiable data and non-
individually identifiable data that is disaggregated by race shall be
compiled on a routine basis for distribution in an effort to further study the
causes and problems associated with maternal deaths. Reports shall be
distributed to healthcare providers and medical care facilities and other
persons necessary to reduce the maternal death rate.

(h) The secretary of health and environment shall receive data
secured in connection with medical research studies conducted for the purpose of reducing morbidity or mortality from maternal, perinatal and anesthetic causes. Such studies may be conducted by the secretary of health and environment and staff or with other qualified persons, agencies or organizations. If such studies are conducted with any funding not provided by the state of Kansas, then the source of such funding shall be clearly identified in such study. Where authorization to conduct such a study is granted by the secretary of health and environment, all data voluntarily made available to the secretary of health and environment in connection with such study shall be treated as confidential and shall be used solely for purposes of medical research. Research files and opinions expressed upon the evidence found in such research shall not be admissible as evidence in any action in any court or before any other tribunal, except that statistics or tables resulting from such data shall be admissible and may be received as evidence. This section shall not affect the right of any patient or such patient's guardians, representatives or heirs to require hospitals, physicians, sanatoriums, rest homes, nursing homes or other persons or agencies to furnish such patient's hospital record to such patient's representatives upon written authorization, or the admissibility in evidence thereof.

(i) No employee of the secretary of health and environment shall interview any patient named in any such report, nor any relative of any such patient, unless otherwise provided in K.S.A. 65-2422d, and amendments thereto. Nothing in this section shall prohibit the publication by the secretary of health and environment or a duly authorized cooperating person, agency or organization, of final reports or statistical compilations derived from morbidity or mortality studies, which reports or compilations do not identify individuals, associations, corporations or institutions which were the subjects of such studies, or reveal sources of information.

Sec. 2. K.S.A. 65-177 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.