

SENATE BILL No. 118

By Committee on Federal and State Affairs

1-30

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

7
8 *Be it enacted by the Legislature of the State of Kansas:*

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

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

16 (2) "Maternal death" means the death of any woman from any cause
17 while pregnant or within one calendar year of the end of any pregnancy,
18 regardless of the duration of the pregnancy or the site of the end of the
19 pregnancy.

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

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

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

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

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

32 (b) (1) The secretary of health and environment shall have access to
33 all law enforcement investigative information regarding a maternal death
34 in Kansas, any autopsy records and coroner's investigative records relating
35 to the death, any medical records of the mother and any records of the
36 Kansas department for children and families or any other state social

1 service agency that has provided services to the mother.

2 (2) (A) The secretary may apply to the district court for the issuance
3 of, and the district court may issue, a subpoena to compel the production
4 of any books, records or papers relevant to the cause of any maternal death
5 being investigated by the secretary. Any books, records or papers received
6 by the secretary pursuant to the subpoena shall be confidential and
7 privileged information and not subject to disclosure.

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

13 (c) The secretary of health and environment shall:

14 (1) Identify maternal death cases;

15 (2) review medical records and other relevant data;

16 (3) contact family members and other affected or involved persons to
17 collect additional relevant data;

18 (4) consult with relevant experts to evaluate the records and data
19 collected;

20 (5) *utilize a specialized review form that includes sections*
21 *recognizing the impact of generational and historical trauma, societal*
22 *factors, cultural beliefs, rural-urban geographic healthcare access,*
23 *discrimination and other factors related to disparate outcomes;*

24 (6) make determinations regarding the preventability of maternal
25 deaths;

26 ~~(6)~~(7) develop recommendations and actionable strategies to prevent
27 maternal deaths; ~~and~~

28 ~~(7)~~(8) disseminate findings and recommendations to the legislature,
29 healthcare providers, healthcare facilities and the general public;

30 (9) *work with healthcare providers and healthcare facilities to*
31 *promote the continuity of maternal healthcare for women during and after*
32 *pregnancy;*

33 (10) *help healthcare providers and healthcare facilities develop and*
34 *implement performance measures that are based on the performance*
35 *measures prioritized by the secretary in accordance with the maternal and*
36 *child health services block grant, 42 U.S.C. § 701 et seq.;*

37 (11) *strengthen the ability of local health officers to generate and*
38 *compile maternal healthcare performance indicators; and*

39 (12) *establish an external community review committee that shall*
40 *review cases of individuals from populations experiencing racial, ethnic or*
41 *geographic rural disparities independently and make recommendations as*
42 *to actionable strategies to prevent future deaths, subject to the following*
43 *requirements:*

1 (A) Include a numerical majority of stakeholders representative of
2 populations experiencing disparities in maternal morbidity and mortality,
3 including ethnic, racial and geographic disparities;

4 (B) include individuals representing law enforcement agencies, tribal
5 health councils, medical subspecialties, cultural, geographic, or religious
6 experts, as well as topical experts;

7 (C) have access to publicly available disaggregated raw data,
8 including maternal interviews and clinical notes;

9 (D) require each committee member to sign a confidentiality
10 agreement prior to reviewing case data. If a member of the committee
11 breaches the confidentiality agreement, such member shall be promptly
12 removed from the committee; and

13 (E) Prior to case review by the committee, designated individuals
14 who have authorization to access such confidential maternal death
15 records shall:

16 (i) De-identify the case data;

17 (ii) interpret the case data and provide a description to the
18 committee, including analysis regarding whether the death was
19 preventable, caused by pathological changes in the body or sociocultural
20 process played a part in the maternal death; and

21 (iii) provide summaries of interviews conducted with family members
22 of the deceased to the committee and follow up with such family members
23 prior to committee review.

24 (d) (1) Healthcare providers licensed pursuant to chapters 65 and 74
25 of the Kansas Statutes Annotated, and amendments thereto, medical care
26 facilities licensed pursuant to article 4 of chapter 65 of the Kansas Statues
27 Annotated, and amendments thereto, maternity centers licensed pursuant
28 to article 5 of chapter 65 of the Kansas Statutes Annotated, and
29 amendments thereto, and pharmacies licensed pursuant to article 16 of
30 chapter 65 of the Kansas Statutes Annotated, and amendments thereto,
31 shall provide reasonable access to all relevant medical records associated
32 with a maternal death case under review by the secretary.

33 (2) A healthcare provider, medical care facility, maternity center or
34 pharmacy providing access to medical records pursuant to this section
35 shall not be held liable for civil damages or be subject to criminal or
36 disciplinary administrative action for good faith efforts to provide such
37 records.

38 (e) (1) Information, records, reports, statements, notes, memoranda or
39 other data collected pursuant to this section shall be privileged and
40 confidential and shall not be admissible as evidence in any action of any
41 kind in any court or before another tribunal, board, agency or person. Such
42 information, records, reports, statements, notes, memoranda or other data
43 shall not be exhibited nor their contents disclosed in any way, in whole or

1 in part, by any officer or representative of the department of health and
2 environment or any other person, except as may be necessary for the
3 purpose of furthering the investigation of the case to which they relate. No
4 person participating in such investigation shall disclose, in any manner, the
5 information so obtained.

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

11 (f) (1) All proceedings and activities of the secretary or
12 representatives of the secretary under this section, opinions of the secretary
13 or representatives of the secretary formed as a result of such proceedings
14 and activities and records obtained, created or maintained pursuant to this
15 section, including records of interviews, written reports and statements
16 procured by the secretary or any other person, agency or organization
17 acting jointly or under contract with the department of health and
18 environment in connection with the requirements of this section, shall be
19 confidential and not subject to the provisions of the open records act or the
20 open meetings act or subject to subpoena, discovery or introduction into
21 evidence in any civil or criminal proceeding. Nothing in this section shall
22 be construed to limit or otherwise restrict the right to discover or use in
23 any civil or criminal proceeding any document or record that is available
24 and entirely independent of proceedings and activities of the secretary or
25 representatives of the secretary under this section.

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

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

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

43 (h) The secretary of health and environment shall receive data

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

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

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

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