

CHAPTER 430

AN ACT regarding drug overdoses and supplementing Title 26 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.26:3A2-20.3 Definitions.

1. As used in this act:

“Confidential case report” means a report created by a local overdose fatality review team summarizing the data collected and analyzed regarding a confirmed fatal drug overdose.

“De-identifiable data” means data or information not containing personally identifiable information.

“Health care provider” means a physician, advanced practice nurse, or physician assistant acting within the scope of a valid license or certification issued pursuant to Title 45 of the Revised Statutes.

“Local team” means a local overdose fatality review team.

“Mental health provider” means a psychiatrist, a psychologist, an advanced practice nurse practitioner with a specialty in psychiatric mental health, a clinical social worker, a professional counselor, or a marriage and family therapist who is licensed to provide mental health services pursuant to Title 45 of the Revised Statutes.

“Overdose” means “drug overdose” as that term is defined in section 3 of P.L.2013, c.46 (C.24:6J-3).

“Personally identifiable information” means any information about an individual that can be used to distinguish or trace an individual’s identity, including, but not limited to, an individual’s name, address, social security number, date and place of birth, mother’s maiden name, biometric records, and medical, educational, financial, and employment information.

“Public health purpose” means a purpose of protecting and improving the health of people and their communities. “Public health purpose” includes, but is not limited to, implementing educational programs, recommending policies, administering services, conducting research, and promoting healthcare equity, in an effort to protect the health of entire populations.

“Substance use disorder” shall have the same meaning prescribed by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, and any subsequent editions, and shall include the symptoms of withdrawal from a substance use disorder.

“Substance use disorder treatment provider” means any individual or entity licensed, registered, or certified pursuant to the laws of this State to treat substance use disorders or who holds a current and valid waiver under the federal Drug Addiction Treatment Act of 2000 (Pub. L. 106-310) from the federal Substance Abuse and Mental Health Services Administration to treat individuals with substance use disorder using medications approved for that indication by the United States Food and Drug Administration.

C.26:3A2-20.4 Local overdose fatality review team established, county health department; membership requirements.

2. a. (1) A county health department may establish a local overdose fatality review team to conduct a comprehensive review of confirmed overdose fatalities, or a sample thereof using an approach authorized by the Department of Health in consultation with the Office of the Chief State Medical Examiner, in order to better understand the individual and population circumstances and the resources and characteristics of potential overdose victims for the purposes of preventing future overdose deaths and related harms in a locality.

(2) A local drug overdose fatality review team may be established to serve one or more counties. The Office of the Chief State Medical Examiner may direct a local overdose fatality review team to establish a municipal subcommittee to focus on a municipality with a population of 100,000 persons or more; or

a municipality with a high overdose rate as determined on annual basis by the Department of Health and the Office of the Chief State Medical Examiner.

(3) A local overdose fatality review team shall be under the direction of the county health department and shall be subject to the regulation of the Department of Health. A local team shall work cooperatively with the Local Advisory Committee on Alcohol Use Disorder and Substance Use Disorder, established pursuant to section 4 of P.L.1983, c.531 (C.26:2B-33), if one exists within the local team's jurisdiction. A local team shall cooperate with and provide any information as may be requested by the Office of the Chief State Medical Examiner or the Department of Health for public health purposes.

b. A local overdose fatality review team shall consist of individuals with experience and knowledge regarding health, social services, law enforcement, education, emergency medicine, mental health, juvenile delinquency, and substance use disorders.

(1) At a minimum, each local overdose fatality review team shall include:

(a) the county health officer, or a designee;

(b) the regional or county medical examiner, or a designee;

(c) a member of the Local Advisory Committee on Alcohol Use Disorder and Substance Use Disorder, established pursuant to section 4 of P.L.1983, c.531 (C.26:2B-33), if one exists within the local team's jurisdiction;

(d) a State, county, or municipal law enforcement officer or county prosecutor;

(e) a substance use disorder health care professional; and

(f) the county or municipal director of behavioral health services, or a designee.

(2) A local overdose fatality review team may also include any of the following:

(a) the superintendent of schools, or a designee;

(b) an emergency medical services provider;

(c) a representative of a health care facility, including a hospital, health system, or federally qualified health center;

(d) a representative of a county jail, detention center, or corrections department;

(e) a representative of a county social services agency;

(f) an individual with access to the Prescription Monitoring Program established pursuant to section 25 of P.L.2007, c.244 (C.45:1-45);

(g) a representative of the local office of the Division of Child Protection and Permanency in the Department of Children and Families;

(h) a representative of a county healthcare facility;

(i) a representative of a harm reduction center, if one is located in a municipality or county over which the local team exercises jurisdiction;

(j) any individual deemed necessary for the work of the local team, as recommended by the chair and approved by a majority vote of the team members and by the Department of Health; and

(k) a representative of the office of county probation and parole services.

C.26:3A2-20.5 Duties of local overdose fatality review team.

3. a. A local overdose fatality review team established pursuant to section 2 of this act shall:

(1) establish and implement appropriate protocols and procedures that allow the local teams to operate in accordance with applicable State and federal laws;

(2) elect, in accordance with the procedures established pursuant to paragraph (1) of this subsection and on an annual basis, a chair who shall be a member of the local team;

(3) collect, analyze, interpret, and maintain local data on overdose deaths, which information shall be maintained by the local team in accordance with all appropriate and industry-standard technical, administrative, and physical controls necessary to protect the privacy and security of the information;

(4) conduct, in accordance with Department of Health regulations and guidance, a multidisciplinary review of the information collected pursuant to this section regarding a decedent of a confirmed fatal drug overdose, as selected by the office of the county medical examiner in the county in which the overdose fatality was primarily investigated and at the direction of the Office of Chief State Medical Examiner, which review shall include, but need not be limited to:

(a) consideration of the decedent's points of contact with health care systems, social services, educational institutions, child and family services, the criminal justice system, including law enforcement, and any other systems with which the decedent had contact prior to death; and

(b) identification of the specific factors and social determinants of health that put the decedent at risk for an overdose;

(5) recommend prevention and intervention strategies to improve the coordination of services and investigations among member agencies in an effort to reduce overdose deaths;

(6) produce confidential case reports based on information received, which shall be transmitted to the Department of Health in a form and manner prescribed by the department. The reports and the data used therefor shall only be accessed by the department for public health purposes, in a form and format that is secured to prevent disclosure of personally identifiable information, in accordance with applicable State and federal laws; and

(7) submit to the Department of Health an annual report, in a manner prescribed the department, containing only de-identified data associated with the jurisdiction served by the local team, which reports may be made available to the public pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) and shall include, but need not be limited to:

(a) the total number of fatal overdoses that occurred within the jurisdiction of the local team;

(b) the number of fatal overdose cases investigated by the local overdose fatality team;

(c) any recommendations for action by State agencies, local agencies, or the Legislature for preventing fatal overdoses in this State; and

(d) any assessable results of any recommendations made by the local team, including, but not limited to, changes in local, county, or State law, policy, or funding made as a result of the local team's recommendations.

b. A local overdose fatality review team shall establish policies and procedures to ensure that all records in their possession containing personally identifiable information are properly handled and retained and are securely and permanently destroyed within one year of, or within a reasonable period of time, as determined by the Department of Health, after, the conclusion of a local team's review of a decedent's case. The annual report and other public records shall be destroyed in accordance to the requirements of P.L.1953, c.410 (C.47:3-15 et seq.).

c. A local team may only request, collect, analyze, and share information for public health purposes directly related to the review of confirmed fatal drug overdoses and, except as

otherwise provided in this act, in compliance with all applicable State and federal laws or regulations.

C.26:3A2-20.6 Disclosure of relevant information.

4. a. To the extent not otherwise inconsistent with State and federal laws and only upon written request of the chair of a local overdose fatality review team and as necessary to carry out the official functions of the local team and the provisions of this act, the entities listed in subsection b. of this section may provide a local team with the following information:

(1) any relevant information and records maintained by a health care provider related to an individual's physical health, mental health, and substance use disorder treatment; and

(2) any relevant information and records maintained by a State or local government agency, including criminal history records and records of probation and parole if the transmission of such records does not imperil ongoing investigations, medical examiner records, social service records, and school records and educational histories.

b. The following individuals and entities may disclose, within a reasonable period of time following a request, medical records and information requested pursuant to subsection a. of this section:

- (1) county medical examiners;
- (2) paid fire departments or volunteer fire companies;
- (3) hospitals and health systems;
- (4) law enforcement agencies;
- (5) State and local government agencies;
- (6) mental health providers;
- (7) health care practitioners;
- (8) substance use disorder treatment programs and providers;
- (9) public and private schools and institutions of higher education;
- (10) emergency medical services providers;
- (11) social services agencies and providers; and
- (12) the Prescription Monitoring Program.

c. An individual or entity subject to a request for information or records by a local overdose fatality review team pursuant to this section may charge the local team a reasonable fee for the service of duplicating any records.

d. (1) The chair of a local overdose fatality review team, or the chair's designee, may request individuals authorized under 42 C.F.R. Part 2 to provide consent for the release of confidential information protected pursuant to 42 U.S.C. s.290dd-2 and 42 C.F.R. Part 2.

(2) To the extent not otherwise inconsistent with State and federal laws, and as necessary to carry out the official functions of the local team and the provisions of this act, other individuals and entities identified by a local overdose fatality review team as having relevant data for a confidential case report may also provide a local team with relevant information in their possession that may contain personally identifiable information.

e. A local overdose fatality review team shall develop a confidentiality policy and form establishing: the requirements for maintaining the confidentiality of any information disclosed during a meeting, during review, or at any other time; the responsibilities concerning those requirements; and any penalties associated with failure to maintain such confidentiality. Such requirements shall be in accordance with all applicable State and federal laws and any best practices identified by the Department of Health. An individual shall review the confidentiality policy and form, purpose, and goals of the local team prior to participating in any review. All necessary and reasonable measures shall be taken to prevent the disclosure of a decedent's name or initials at any team meeting.

f. Information received pursuant to this act may be shared with local team members at a meeting of the local team, provided that each individual present, including staff, has signed and abides by the provisions of the confidentiality policy and form developed pursuant to subsection e. of this section. Such information may be shared with any non-member attendees who meet the criteria of subsection b. of section 2 of this act and whose attendance is approved in accordance with this act, provided that such attendees also sign and abide by the provisions of the confidentiality policy and form.

g. (1) Meetings of a local team during which confidential information is discussed shall be closed to the public, except that, upon a majority vote of the local team members present, a local team may request and permit an individual who has information relevant to the exercise of the team's duties to attend a team meeting, regardless of whether the individual meets the criteria set forth in subsection b. of section 2 of this act or is a permanent member of the local team. Notice concerning the individual's attendance shall be provided to members of the local team not later than 10 days prior to the meeting at which the individual will be present.

(2) A representative from the Department of Health, as designated by the Deputy Commissioner for Public Health Services, and a representative from the Office of the Chief State Medical Examiner may attend any meeting of a local overdose fatality review team. Notice concerning a representative's attendance shall be provided to members of the local team not later than 10 days prior to the meeting at which the representative will be present.

h. Meetings of a local overdose fatality review team shall be exempt from the "Senator Byron M. Baer Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.).

i. A member of the local overdose fatality review team may contact, interview, or obtain information by request from a family member or friend of an individual whose death is being reviewed by the local team.

j. To the extent not otherwise inconsistent with State and federal laws, an entity that provides, in good faith, information or records to a local overdose fatality review team shall not be subject to civil or criminal liability or any professional disciplinary action as a result of providing the information or records.

C.26:3A2-20.7 Unspecified information kept confidential.

5. a. Information and records acquired by a local overdose fatality review team, except for information contained within the annual report submitted pursuant to paragraph (7) of subsection a. of section 3 of this act, shall be confidential and shall not be subject to subpoena, discovery, or introduction into evidence in a civil or criminal proceeding or disciplinary or other administrative action. Information and records that are otherwise available from other sources shall not be immune from subpoena, discovery, or introduction into evidence through those sources solely due to the presentation or review of the information or record to or by a local team.

b. Information and records created by a local overdose fatality review team shall be considered confidential and shall not be disclosed to the public or considered a government record pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.).

c. Substance use disorder treatment records requested by or provided to a local overdose fatality review team shall be subject to any additional limitations on the redisclosure of a medical record developed in connection with the provision of substance use disorder treatment services under State or federal law, including, but not limited to, 42 U.S.C. s.290dd-2 and 42 C.F.R. Part 2.

d. Local overdose fatality review team members, and any individual who presents or provides information to a local team, may not be questioned in any civil or criminal proceeding or disciplinary action regarding the information presented or provided, except in an action contesting the validity of the disclosure itself. This subsection shall not prevent an individual from testifying regarding information obtained independently of the local team, public information, or publicly available information.

e. The county health department shall ensure the privacy, confidentiality, and security of the information provided to a local overdose fatality review team shall be maintained as required by State and federal laws and any local ordinances.

f. An individual damaged by the negligent or knowing and willful disclosure of confidential information by a local team or its members may bring an action for damages, costs, and attorney fees consistent with State law. Additionally, the Department of Health may establish penalties for the negligent or knowing and willful disclosure of confidential information by a local team or its members.

g. Nothing in this act shall be construed to require the disclosure of any private or confidential health information in violation of State or federal privacy laws.

C.26:3A2-20.8 Pursuit of available funds for implementation.

6. a. The Department of Health, the Office of the Chief State Medical Examiner, applicable county and local health departments, applicable county medical examiner offices, and local overdose fatality review teams may pursue all sources of federal funding, matching funds, and foundation funding available to implement the provisions of this act.

b. The Department of Health, the Office of the Chief State Medical Examiner, county medical examiner offices, and local overdose fatality review teams may accept such gifts, grants, and endowments, from public or private sources, as may be made, in trust or otherwise, or any income derived according to the terms of a gift, grant, or endowment, to implement the provisions of this act.

C.26:3A2-20.9 Report to Governor, Legislature.

7. a. The Department of Health shall analyze and compile reports from each local overdose fatality review team and submit one Statewide annual overdose fatality report containing information from each local team. The report shall be submitted to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature. The report shall be considered a government record pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.). Each publication of the Statewide annual report shall be in a format that does not identify any individual or decedent and does not contain personally identifiable or personal identifying information.

b. The Office of the Chief State Medical Examiner may direct all local teams to assist with the coordination of all the relevant information necessary to review a specific decedent case.

c. The Department of Health may share data containing de-identified data at any time. The department may only share data containing personally identifiable information if the data is being shared for public health purposes, the sharing of the data is permitted by this act and other applicable laws, and the data is in a form and format that is secured to prevent the disclosure of personally identifiable information. Any publication made available to the public shall be in a format that does not identify any individual or decedent and does not contain personally identifiable information.

C.26:3A2-20.10 Compliance deadline.

8. Any local overdose fatality review team in existence on the date of enactment of this act shall conform to the requirements of, and operate in accordance with, the provisions of this act no later than 90 days after the date of enactment of this act.

9. The Department of Health may adopt any rules and regulations necessary to effectuate the provisions of this act, which rules and regulations shall be effective immediately upon filing with the Office of Administrative Law for a period not to exceed six months and which may thereafter be adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

10. This act shall take effect 90 days after the date of enactment.

Approved January 18, 2022.