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AB-2871 Overdose fatality review teams. (2023-2024)

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Assembly Bill No. 2871

CHAPTER 639

An act to add Division 10.1 (commencing with Section 11675) to the Health and Safety Code, relating to public health.

[Approved by Governor September 27, 2024. Filed with Secretary of State September 27, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2871, Maienschein. Overdose fatality review teams.

Existing law requires a county coroner to inquire into and determine the circumstances, manner, and cause of certain deaths. Existing law either requires or authorizes a county coroner, under certain circumstances, to perform, or cause to be performed, an autopsy on a decedent. Existing law requires a coroner or medical examiner who evaluates an individual who died, in the coroner's or medical examiner's expert opinion, as the result of an overdose as a contributing factor, to report the incident to the Overdose Detection Mapping Application Program, as specified.

This bill would authorize a county or regional group of counties to establish an interagency overdose fatality review team to assist local agencies in identifying and reviewing overdose fatalities, facilitate communication among the various persons and agencies involved in overdose fatalities, and integrate local overdose prevention efforts through strategic planning, data dissemination, and community collaboration. The bill would authorize the overdose fatality review team to be comprised of, among other persons, experts in the field of forensic pathology, coroners and medical examiners, county, local, state, and federal law enforcement, and public health staff, as specified. The bill would make confidential, among other things, an oral or written communication or a document shared within or produced by an overdose fatality review team related to an overdose fatality review, as specified. The bill would authorize an organization represented on an overdose fatality review team to share information in its possession concerning the decedent who is the subject of the review, information received from a person who was in contact with the decedent, or other information deemed by the organization to be pertinent to the review with other members of the team. The bill would require information gathered and recommendations made by an overdose fatality review team to be used by the county to develop education, prevention, and intervention strategies that will lead to improved coordination of treatment services and prevent future overdose deaths.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Division 10.1 (commencing with Section 11675) is added to the Health and Safety Code, to read:

DIVISION 10.1. OVERDOSE FATALITY REVIEW TEAMS

11675. (a) A county or regional group of counties may establish an interagency overdose fatality review team to assist local agencies in identifying and reviewing overdose fatalities, facilitate communication among the various persons and agencies involved in overdose fatalities, and integrate local overdose prevention efforts through strategic planning, data dissemination, and community collaboration.

(b) A county may develop standardized protocols for postmortem examinations involving an overdose to assist coroners and other persons who perform postmortem examinations in determining whether drugs contributed to a death or were the actual cause of death. The protocols may establish written reporting procedures, including the proper designation of the cause and mode of death.

11676. An overdose fatality review team may be comprised of, but not limited to, all of the following:

(a) Experts in the field of forensic pathology.

(b) Medical personnel with expertise in overdose fatalities.

(c) Coroners and medical examiners.

(d) District attorneys and city attorneys.

(e) County or local staff, including, but not limited to, all of the following:

(1) Behavioral health services staff.

(2) County counsel.

(3) Emergency medical services staff.

(4) Unhoused services staff.

(5) Medical care services staff.

(6) Medical examiner staff.

(7) Public health staff.

(f) County, local, state, and federal law enforcement personnel.

(g) Local drug trafficking experts.

(h) Public health or behavioral health experts.

(i) Drug treatment providers.

(j) Representatives of local health plans, nonprofits, religious, or other organizations who work with individuals at high risk of overdose fatalities.

(k) Local professional associations of persons described in this subdivision.

(l) Experts in the field of forensic toxicology.

11677. (a) An oral or written communication or a document shared within or produced by an overdose fatality review team related to an overdose fatality review is confidential and not subject to disclosure or discovery by a third party.

(b) An oral or written communication or a document provided by a third party to an overdose fatality review team, or between a third party and an overdose fatality review team, is confidential and not subject to disclosure or discovery by a third party.

(c) Notwithstanding subdivisions (a) and (b), recommendations of an overdose fatality review team, upon the completion of a review, may be disclosed at the discretion of a majority of the members of the overdose fatality review team.

11678. An organization represented on an overdose fatality review team may share information in its possession concerning the decedent who is the subject of the review, information received from a person who was in contact with the decedent, or other

information deemed by the organization to be pertinent to the review with other members of the team. Information shared by an organization with other members of a team is confidential.

11679. (a) Consistent with paragraph (9) of subdivision (b) of Section 56.10 of the Civil Code, a provider of health care, as defined in Section 56.05 of the Civil Code, or a covered entity, as defined in Section 160.103 of Title 45 of the Code of Federal Regulations, shall provide to the members of the county overdose fatality review team any information, including protected health information, and mental health records excluding psychotherapy notes, in its possession that is directly related to the review authorized under Section 11675 about the individual involved in the case. The provision of information under this subdivision is a disclosure required by law, which may be made only to the extent permitted under subdivision (a) of Section 164.512 of Title 45 of the Code of Federal Regulations. The information disclosed shall include substance use disorder patient records only to the extent permitted by Part 2 (commencing with Section 2.1) of Title 42 of the Code of Federal Regulations.

(b) The following additional information, only to the extent required for carrying out the reviews authorized by this division, may be disclosed:

(1) State summary criminal history information, as defined in Section 11105 of the Penal Code, criminal offender record information, as defined in Section 11075 of the Penal Code, and local summary criminal history information, as defined in Section 13300 of the Penal Code.

(2) Information provided to probation officers in the course of the performance of their duties, including, but not limited to, the duty to prepare reports pursuant to Section 1203.10 of the Penal Code, as well as the information on which these reports are based.

11680. (a) Information gathered, and recommendations made, by an overdose fatality review team shall be used by the county to develop education, prevention, and intervention strategies that will lead to improved coordination of treatment services and prevent future overdose deaths.

(b) Overdose fatality review teams may share the same information and recommendations with overdose fatality review teams in other counties and state agencies for purposes of education, prevention, and intervention strategies that will lead to improved coordination of treatment services and prevent future overdose deaths. An oral or written communication or a document provided by a county overdose fatality review team to another county overdose fatality review team or to a state agency is confidential and not subject to disclosure or discovery by a third party.

SEC. 2. The Legislature finds and declares that Section 1 of this act, which adds Division 10.1 (commencing with Section 11675) to the Health and Safety Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the privacy of persons who have died due to a drug fatality, including confidential medical information, and to encourage the provision of comprehensive information about drug fatalities to the review teams, it is necessary to limit general access to information regarding those persons.