

THE LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

Overview of OFR Model Law and Implementation

2024 National Forum on Overdose Fatality Review
March 6, 2024

Stephanie Noblit, Esq., MLS (ASCP)^{CM}
Legislative Analysis and Public Policy Association (LAPPA)

About LAPPA



501(c)(3) nonprofit organization whose mission is to conduct legal and legislative research and analysis and draft legislation on effective law and policy in the areas of public safety and health, substance use disorders, and the criminal justice system.

ONDCP's Model Acts Program Grant recipient for 2019-21, 2021-23, and 2023-25.

This project was supported by Grant No. 2017-AR-BX-Koo3 awarded by the Bureau of Justice Assistance.

www.legislativeanalysis.org

What does LAPPA do?

- Model Acts grant
 - ❖ [Model laws](#) (17 published)
 - ❖ [50-state Summary of Laws](#) (18 published)
 - ❖ [Fact sheets](#) (41 published)
 - ❖ [Case Law Monitor](#) (six per year)
 - ❖ [News Bites](#) (six per year)
 - ❖ [Knowledge Labs](#) (six in 2023-2H)
 - ❖ Technical assistance (TA)
- COSSUP grant subaward
 - ❖ [Information sharing scenarios](#) (COSSUP website)
 - ❖ OFR research
 - ❖ TA



Model Laws



Innovative Initiatives

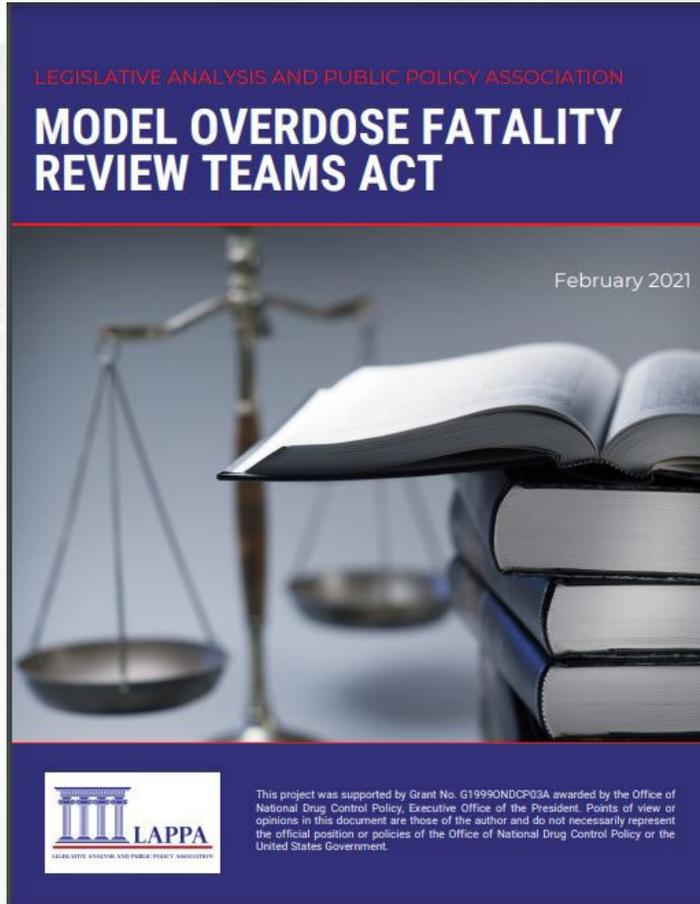


Legal & Legislative Research

Benefits of OFR Jurisdiction-wide Laws

- Helps enhance the legitimacy of OFRs
- Promote uniformity and consistency among OFRs within a state or territory
- May (should) include provisions:
 - Directly authorizing OFRs to obtain many types of disclosure-protected information about the decedent
 - Expressly exempting OFR meetings and records from jurisdiction’s “open meetings” and “open records” laws
 - Expressly exempting documents discussed at OFR meetings and internal OFR notes from subpoena, discovery, and use in civil/criminal proceedings

The Model Overdose Fatality Review Teams Act



MODEL OVERDOSE FATALITY REVIEW TEAMS ACT
TABLE OF CONTENTS

SECTION I. SHORT TITLE.....	3
SECTION II. LEGISLATIVE FINDINGS.....	3
SECTION III. PURPOSE.....	4
SECTION IV. DEFINITIONS.....	5
SECTION V. ESTABLISHMENT OF OVERDOSE FATALITY REVIEW TEAMS.....	7
SECTION VI. COMPOSITION OF OVERDOSE FATALITY REVIEW TEAMS.....	8
SECTION VII. DUTIES AND RESPONSIBILITIES OF OVERDOSE FATALITY REVIEW TEAMS.....	12
SECTION VIII. ACCESS TO INFORMATION.....	16
SECTION IX. CONFIDENTIALITY.....	20
SECTION X. FINANCIAL CONSIDERATIONS.....	22
SECTION XI. SEVERABILITY.....	23
SECTION XII. RULES AND REGULATIONS.....	23
SECTION XIII. EFFECTIVE DATE.....	23

- Introduced in February 2021
- Creates a framework for establishing county-level, multidisciplinary OFRs in individual states.

States with OFR Laws Prior to Introduction of the Model Act

2013	Pennsylvania (methadone death review)	2018	Oklahoma
2013	West Virginia	2018	Virginia
2014	Maryland	2019	North Dakota
2016	Delaware	2020	Utah ¹
2017	Arizona	2020	Indiana
2018	Rhode Island	2020	New Hampshire ²

1. Initially established in 2017 via committee formation (“charter”) pursuant to implied authority under Utah’s Injury Reporting Rule.
2. Initially established in 2016 via an executive order.

States that have Enacted OFR Laws After the Introduction of the Model Act (as of January 2024)

2021	Maine	2022	New Jersey
2021	Ohio	2023	Nebraska
2022	Pennsylvania (suicide and overdose death review)	2024	Michigan
2022	Washington		

States that have Enacted OFR Laws After the Introduction of the Model Act (as of January 2024)

2021	Maine	2022	New Jersey
2021	Ohio	2023	Nebraska
2022	Pennsylvania (suicide and overdose death review)	2024	Michigan
2022	Washington		

Comparison of State Laws to Model Act

- **Drugs or Substances of Focus-** Can the OFR investigate cases involving any substance?
- **Operational Level-** Are OFRs established on the local/county level?
- **Team Members-** Is there an enumerated list of required team members? Is there also an enumerated list of suggested members?
- **Duties, Tasks, and Objectives-** Do they align with those in the Model Act?

Comparison of State Laws to Model Act

• Access to Information

- Is there an enumerated list of what records a team can request?
- Is there an enumerated list of the individuals and entities that must comply with a record request?

(a) Request for information.— Subject to subsection (d), but notwithstanding any other provision of state or local law to the contrary, on written request of the chair of a local team, and as necessary to carry out the purpose and duties of the local team, the local team shall be provided with the following information:

- (1) Information and records regarding the physical health, mental health, and treatment for substance use disorder, maintained by a health care provider, substance use disorder treatment provider, hospital, or health system for an individual whose death or near death is being reviewed by the local team; and
- (2) Information and records maintained by a state or local government agency or entity, including, but not limited to, death investigative information, medical examiner investigative information, law enforcement investigative information, emergency medical services reports, fire department records, prosecutorial records, parole and probation information and records, court records, school records, and information and records of a social services agency, including the [department of family and children’s services], if the agency or entity provided services to:
 - (A) An individual whose death or near death is being reviewed by the local team;
 - (B) The family of the decedent being investigated.

(b) Persons providing information.— The following persons, agencies, or entities shall comply with a records request by the local team made pursuant to subsection (a):

- (1) Coroner/medical examiner;
- (2) Fire department;
- (3) Health system;
- (4) Hospital;
- (5) Law enforcement agency;
- (6) Local or state governmental agency, including, but not limited to, the [department of children and family services], [department of health], [department of mental health], the state attorney’s office, the state or local public defender’s office, the [department of corrections], and the [department of probation and parole];
- (7) Mental health provider;
- (8) Health care provider;
- (9) Substance use disorder treatment provider;
- (10) School, including an elementary, secondary, or post-secondary institution;
- (11) Emergency medical services provider;
- (12) Social services provider;
- (13) Prescription drug monitoring program;
- (14) Any other person or entity who is in possession of records pertinent to the local team’s investigation of an overdose fatality.

Comparison of State Laws to Model Act

- **Confidentiality**

- Are team members required to sign a confidentiality form before participating?
- Is there a criminal liability provision for individuals who violate the confidentiality requirements of the law?
- Are OFR meetings and records exempt from jurisdiction’s “open meetings” and “open records” laws?
- Are documents discussed at OFR meetings exempt from subpoena, discovery, and use in civil/criminal proceedings?

(b) Confidentiality form.— All local team members and any non-member individuals in attendance at a meeting shall sign a confidentiality form and review the purpose and goal of the local team before they may participate in the review. The form shall set out the requirements for maintaining the confidentiality of any information disclosed during the meeting and any penalties associated with failure to maintain such confidentiality.

(c) Discovery.— All information and records acquired by a local team are confidential and are not subject to subpoena, discovery, or introduction into evidence in a civil or criminal proceeding or disciplinary action. Information and records that are otherwise available from other sources are not immune from subpoena, discovery, or introduction into evidence through those sources solely because the information or record was presented to or reviewed by a local team.

(d) Public access.— Information and records acquired or created by a local team are not subject to [insert citation to state public inspection or open records laws] .

(h) Criminal liability.— A person who violates the confidentiality provisions of this Act is guilty of a [misdemeanor/felony] and on conviction thereof is subject to a fine not to exceed [maximum amount of fine] or imprisonment for a term not to exceed [maximum time period], or both.

Comparison of State Laws to Model Act

- **Reporting Requirement-** Is there an annual reporting requirement?
- **Funding Source-** Does the law establish an OFR teams grant program fund in the state treasury?

(c) Annual report.— Each local team shall submit an annual de-identified report containing the information in subsection (g) to:

- (1) The [county department of health] for the local jurisdiction or jurisdictions served by the local team; and
- (2) The state [department of health].

(a) Fund established.— There is established within the [state] Treasury an overdose fatality review teams grant program fund.

(b) Overdose fatality review teams grant program.—

- (1) In general.— The [state] overdose fatality review team grant program is established and shall be administered by the [state agency]. Grants provided under the program shall be used to fund the local teams established under this Act.
- (2) Guidelines and requirements.— The [state agency] may adopt guidelines and requirements to direct the distribution of funds for expenses related to local teams.
- (3) Eligible activities.— Activities eligible for funding under this Act may include, but are not limited to, the following:
 - (A) Administrative costs;
 - (B) Local team member compensation for travel and expenses associated with participation;
 - (C) Record fees; and
 - (D) Software for tracking case data and recommendations.

Federal information sharing laws/regulations

HIPAA Privacy Rule – Disclosures w/o authorization

- Six (6) permitted (but not required) disclosures
 - ❖ To the individual who is subject of the **PHI**
 - ❖ For treatment, payment, or healthcare operations
 - ❖ Where individual given opportunity to agree or object
 - ❖ Incident to an otherwise permitted use and disclosure
 - ❖ Limited data set for research, public health, or health care purposes
 - ❖ “Public interest and benefit activities” (12) 

Federal information sharing laws/regulations

HIPAA Privacy Rule – Disclosures w/o authorization

- Public interest and benefit activities (“Uses and disclosures for which an authorization or opportunity to agree or object is not required”)
 - Required by law
 - Public health activities
 - About victims of abuse, neglect, or domestic violence
 - Health oversight activities
 - Judicial and administrative proceedings
 - Certain law enforcement purposes
 - Decedent information
 - Cadaveric organ, eye or tissue donation purposes
 - Research purposes
 - Avert a serious threat to health or safety
 - Specialized government functions
 - Workers compensation compliance

Federal information sharing laws/regulations

HIPAA Privacy Rule – Disclosures w/o authorization

- Public interest and benefit activities (“Uses and disclosures for which an authorization or opportunity to agree or object is not required”)
 - **Required by law** 
 - Public health activities
 - About victims of abuse, neglect, or domestic violence
 - Health oversight activities
 - Judicial and administrative proceedings
 - Certain law enforcement purposes
 - Decedent information
 - Cadaveric organ, eye or tissue donation purposes
 - Research purposes
 - Avert a serious threat to health or safety
 - Specialized government functions
 - Workers compensation compliance

	Michigan	Nebraska	New Jersey	Pennsylvania	Washington
List of required team members	X	X	X	X	
List of optional team members	X	X	X	X	
List of what records a team can request	X	X	X	X	X
List of who must comply with a records request	X*	X	List of who may disclose records	X	X
Signed confidentiality agreement	X	X			
Criminal liability provision		X			
Annual reporting requirement	X	X	X	X	
Funding source			X		

* Only lists health care providers, substance use disorder treatment providers, hospitals, or health systems

Recently introduced OFR Bills

2023	Kansas	2023	Wisconsin
2023	New York	2024	Colorado
2023	Tennessee		

- The Colorado, Kansas, and Tennessee bills are based in whole, or in part, on the Model Act.



Overdose Fatality Review Summary of State Laws



QUESTIONS?

Stephanie Noblit, Esq., MLS (ASCP)^{CM}
Associate Senior Legislative Attorney
Legislative Analysis and Public Policy Association
snoblit@thelappa.org
434.252.3305