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Introduced by Sens. KRUEGER, COMRIE, HINCHEY, HOYLMAN-SIGAL -- read twice and ordered printed, and when printed to be committed to the Committee on Internet and Technology -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the general business law, in relation to providing for the protection of health information

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new article 42 to read as follows:

ARTICLE 42

NEW YORK HEALTH INFORMATION PRIVACY ACT

Section 1100. Definitions.

1101. Requirements for communications to individuals.

1102. Lawfulness of processing regulated health information.

1103. Individual rights.

1104. Security.

1105. Service providers.

1106. Exemptions.

1107. Enforcement.

§ 1100. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Deidentified information" means information that cannot reasonably be used to infer information about, or otherwise be linked to a particular individual, household, or device, provided that the regulated entity or service provider that processes the information:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 (a) Implements reasonable technical safeguards to ensure that the
2 information cannot be associated with an individual, household, or
3 device;

4 (b) Publicly commits to process the information only as deidentified
5 information and not attempt to reidentify the information, except that
6 the regulated entity or service provider may attempt to reidentify the
7 information solely for the purpose of determining whether its deiden-
8 tification processes satisfy the requirements of this section; and

9 (c) Contractually obligates any recipient of the deidentified informa-
10 tion to comply with all requirements of this section.

11 2. "Regulated health information" means any information that relates
12 to an individual or a device that is reasonably linkable to an individ-
13 ual or individuals in connection with physical or mental health. For the
14 avoidance of doubt, location or payment information that relates to an
15 individual's physical or mental health or any inference drawn or derived
16 data about an individual or a device that is reasonably linkable to an
17 individual or individuals that relates to physical or mental health is
18 regulated health information. Regulated health information does not
19 include deidentified information.

20 3. "Process" or "processing" means an operation or set of operations
21 performed on regulated health information, including but not limited to
22 the collection, use, access, sharing, sale, monetization, analysis,
23 retention, creation, generation, derivation, recording, organization,
24 structuring, storage, disclosure, transmission, disposal, licensing,
25 destruction, deletion, modification, or deidentification of regulated
26 health information.

27 4. "Regulated entity" means any entity that (a) controls the process-
28 ing of regulated health information of an individual who is a New York
29 resident, (b) controls the processing of regulated health information of
30 an individual who is physically present in New York while that individ-
31 ual is in New York, or (c) is located in New York and controls the proc-
32 essing of regulated health information of an individual. A regulated
33 entity may also be a service provider depending upon the context in
34 which regulated health information is processed.

35 5. "Sell" means to share regulated health information for monetary or
36 other valuable consideration. Selling does not include the sharing of
37 regulated health information for monetary or other valuable consider-
38 ation to a third party as an asset that is part of a merger, acquisi-
39 tion, bankruptcy, or other transaction in which the third party assumes
40 control of all or part of the regulated entity's assets.

41 6. "Service provider" means any person or entity that processes regu-
42 lated health information on behalf of a regulated entity. A service
43 provider may also be a regulated entity depending upon the context in
44 which regulated health information is processed.

45 7. "Third party" means a person or entity other than the individual,
46 regulated entity, or service provider involved in a transaction or
47 occurrence that involves regulated health information. A third party may
48 also be a regulated entity or service provider depending upon the
49 context in which regulated health information is processed.

50 § 1101. Requirements for communications to individuals. All notices,
51 disclosures, forms, and other communications to individuals provided
52 pursuant to this article shall comply with the following:

53 1. In general, all communications shall use plain, straightforward
54 language, avoiding technical or legal jargon, and must be provided
55 through an interface regularly used in conjunction with the regulated
56 entity's product or service.

1 2. All communications shall be reasonably accessible to individuals
2 with disabilities, including by:

3 (a) utilizing digital accessibility tools;

4 (b) for notices, complying with generally recognized industry stand-
5 ards, including, but not limited to, the Web Content Accessibility
6 Guidelines, version 2.1 of June 5, 2018, from the World Web Consortium,
7 incorporated herein by reference; and

8 (c) for other communications, providing information about how an indi-
9 vidual with a disability may access the communication in an alternative
10 format.

11 3. All communications shall be available in the languages in which the
12 regulated entity provides information via its website and services. Any
13 direct communication to an individual shall be provided in the language
14 in which the individual ordinarily interacts with the regulated entity
15 or its service provider.

16 4. A regulated entity shall make any notice for processing pursuant to
17 a permissible purpose, pursuant to subparagraph (ii) of paragraph (b) of
18 subdivision one of section eleven hundred two of this article, or form
19 for processing pursuant to authorization, pursuant to subparagraph (i)
20 of paragraph (b) of subdivision one of section eleven hundred two of
21 this article, publicly available on its website. If an authorization
22 form is customized for each individual, the regulated entity may instead
23 publicly post a sample authorization form on its website.

24 § 1102. Lawfulness of processing regulated health information. 1. In
25 general, it shall be unlawful for a regulated entity to:

26 (a) sell an individual's regulated health information to a third
27 party; or

28 (b) otherwise process an individual's regulated health information
29 unless:

30 (i) The individual has provided valid authorization for such process-
31 ing; or

32 (ii) Processing of an individual's regulated health information is
33 strictly necessary for the purpose of:

34 (A) providing a product or service requested by such individual;

35 (B) conducting the regulated entity's internal business operations,
36 which exclude any activities related to marketing, advertising, research
37 and development, or providing products or services to third parties;

38 (C) protecting against malicious, fraudulent, or illegal activity;

39 (D) detecting, responding to, or preventing security incidents or
40 threats;

41 (E) protecting the vital interests of an individual or the public
42 interest in the area of public health;

43 (F) investigating, establishing, exercising, preparing for, or defend-
44 ing legal claims; or

45 (G) complying with the regulated entity's legal obligations.

46 2. A regulated entity that processes regulated health information
47 pursuant to valid authorization as required by subparagraph (i) of para-
48 graph (b) of subdivision one of this section shall comply with the
49 following:

50 (a) A request for authorization to process an individual's regulated
51 health information shall:

52 (i) be made separately from any other transaction or part of a trans-
53 action;

54 (ii) be made at least twenty-four hours after an individual creates an
55 account or first uses the requested product or service;

1 (iii) be made in the absence of any mechanism that has the purpose or
2 substantial effect of obscuring, subverting, or impairing an individ-
3 ual's decision-making regarding authorization for processing;

4 (iv) if requesting authorization for multiple categories of processing
5 activities, allow the individual to provide/withhold authorization sepa-
6 rately for each category of processing activity; and

7 (v) not include any request for authorization for a processing activ-
8 ity for which an individual has withheld or revoked authorization within
9 the past calendar year.

10 (b) A valid authorization shall include:

11 (i) the types of regulated health information to be processed;

12 (ii) the nature of the processing activity;

13 (iii) the specific purposes for such processing;

14 (iv) the names where readily available, or categories of service
15 providers and third parties to which the regulated entity may disclose
16 the individual's regulated health information and the purposes for such
17 disclosure, including the circumstances under which the regulated entity
18 may disclose regulated health information to law enforcement;

19 (v) any monetary or other valuable consideration the regulated entity
20 may receive in connection with processing the individual's regulated
21 health information, where applicable;

22 (vi) that failing to provide authorization will not affect the indi-
23 vidual's experience of using the regulated entity's products or
24 services;

25 (vii) the expiration date of the authorization, which may be up to one
26 year from the date authorization was provided;

27 (viii) the mechanism by which the individual may revoke authorization
28 prior to expiration;

29 (ix) the mechanism by which the individual may request access to and
30 deletion of their regulated health information;

31 (x) any other information material to an individual's decision-making
32 regarding authorization for processing; and

33 (xi) the signature, which may be electronic, of the individual who is
34 the subject of the regulated health information, or a parent or guardian
35 authorized by law to take actions of legal consequence on behalf of the
36 individual who is the subject of the regulated health information, and
37 the date.

38 (c) (i) A regulated entity that receives authorization for processing
39 shall provide an effective, efficient, and easy-to-use mechanism by
40 which an individual may revoke authorization at any time through an
41 interface regularly used in conjunction with the regulated entity's
42 product or service.

43 (ii) Upon an individual's revocation of authorization, the regulated
44 entity shall immediately cease all processing activities for which
45 authorization was revoked, except to the extent necessary to comply with
46 the regulated entity's legal obligations.

47 (iii) For individuals who have an online account with the regulated
48 entity, the regulated entity must provide, in a conspicuous and easily
49 accessible place within the account settings, a list of all processing
50 activities for which the individual has provided authorization and, for
51 each processing activity, allow the individual to revoke authorization
52 in the same place with one motion or action.

53 (d) Upon obtaining valid authorization from an individual, the regu-
54 lated entity shall provide that individual a copy of the authorization.
55 The authorization shall be provided in a manner that is capable of being
56 retained by the individual.

1 (e) The regulated entity shall limit its processing to what was clear-
2 ly disclosed to an individual pursuant to paragraph (b) of this subdivi-
3 sion when the regulated entity received authorization from the individ-
4 ual.

5 (f) If the regulated entity seeks to materially alter its processing
6 activities for regulated health information collected pursuant to
7 authorization, the regulated entity shall obtain a new authorization for
8 the new or altered processing activity.

9 (g) Providing a product or service requested by an individual must not
10 be made contingent on providing authorization. The regulated entity must
11 not discriminate against an individual for withholding authorization,
12 such as by charging different prices or rates for products or services,
13 including through the use of discounts or other benefits, imposing
14 penalties, or providing a different level or quality of services or
15 goods to the individual.

16 3. A regulated entity that processes regulated health information
17 pursuant to a permissible purpose pursuant to subparagraph (ii) of para-
18 graph (b) of subdivision one of this section shall comply with the
19 following:

20 (a) A regulated entity shall provide clear and conspicuous notice that
21 describes:

22 (i) the types of regulated health information to be processed;

23 (ii) the nature of the processing activity;

24 (iii) the specific purposes for such processing;

25 (iv) the names where readily available, or categories of service
26 providers and third parties to which the regulated entity may disclose
27 the individual's regulated health information and the purposes for such
28 disclosure, including the circumstances under which the regulated entity
29 may disclose regulated health information to law enforcement; and

30 (v) the mechanism by which the individual may request access to and
31 deletion of their regulated health information.

32 (b) If the regulated entity materially alters its processing activ-
33 ities for regulated health information collected pursuant to a permissi-
34 ble purpose, the regulated entity must provide a clear and conspicuous
35 notice in plain language, separate from a privacy policy, terms of
36 service, or similar document, that describes any material changes to the
37 processing activities and provide the individual with an opportunity to
38 request deletion of their regulated health information.

39 § 1103. Individual rights. 1. (a) A regulated entity shall make avail-
40 able an effective, efficient, and easy-to-use mechanism through an
41 interface regularly used in conjunction with the regulated entity's
42 product or service by which an individual may request access to their
43 regulated health information.

44 (b) Within thirty days of receiving an access request, the regulated
45 entity shall make available a copy of all regulated health information
46 about the individual that the regulated entity maintains or that service
47 providers maintain on behalf of the regulated entity.

48 2. (a) A regulated entity shall make available an effective, effi-
49 cient, and easy-to-use mechanism through an interface regularly used in
50 conjunction with the regulated entity's product or service by which an
51 individual may request the deletion of their regulated health informa-
52 tion.

53 (b) An individual's deletion or cancellation of their online account
54 shall be treated as a request to delete the individual's regulated
55 health information.

1 (c) Within thirty days of receiving a deletion request, the regulated
2 entity shall:

3 (i) Delete all regulated health information associated with the indi-
4 vidual in the regulated entity's possession or control, except to the
5 extent necessary to comply with the regulated entity's legal obli-
6 gations; and

7 (ii) Unless it proves impossible or involves disproportionate effort
8 that is documented in writing by the regulated entity, communicate such
9 request to each service provider or third party that processed the indi-
10 vidual's regulated health information in connection with a transaction
11 involving the regulated entity within one year preceding the individ-
12 ual's request.

13 (d) Any service provider or third party that receives notice of an
14 individual's deletion request shall within thirty days delete all regu-
15 lated health information associated with the individual in its
16 possession or control, except to the extent necessary to comply with its
17 legal obligations.

18 3. Any right set forth in this section may be exercised at any time by
19 the individual who is the subject of the regulated health information or
20 an agent authorized by such individual.

21 § 1104. Security. 1. In general, a regulated entity shall develop,
22 implement, and maintain reasonable administrative, technical, and phys-
23 ical safeguards to protect the security, confidentiality, and integrity
24 of regulated health information.

25 2. A regulated entity must securely dispose of an individual's regu-
26 lated health information pursuant to a publicly available retention
27 schedule within a reasonable time, and in no event later than sixty
28 days, after it is no longer necessary to maintain for the permissible
29 purpose or purposes identified in the notice or for which the individual
30 provided valid authorization.

31 § 1105. Service providers. 1. In general, any processing of regulated
32 health information by a service provider on behalf of a regulated entity
33 shall be governed by a written, binding agreement. Such agreement shall
34 clearly set forth instructions for processing regulated health informa-
35 tion, the nature and purpose of processing, the duration of processing,
36 and the rights and obligations of both parties.

37 2. An agreement pursuant to subdivision one of this section shall
38 require that the service provider:

39 (a) ensure that each person processing regulated health information is
40 subject to a duty of confidentiality with respect to such information;

41 (b) protect regulated health information in a manner consistent with
42 the requirements of this article;

43 (c) process regulated health information only when and to the extent
44 necessary to comply with its obligations to the regulated entity;

45 (d) not combine the regulated health information which the service
46 provider receives from or on behalf of the regulated entity with any
47 other personal information which the service provider receives from or
48 on behalf of another party or collects from its own relationship with
49 individuals;

50 (e) comply with any exercises of an individual's rights under section
51 eleven hundred three of this article upon the request of the regulated
52 entity and notify any service providers or third parties to which it
53 disclosed regulated health information of the request;

54 (f) delete or return all regulated health information to the regulated
55 entity at the end of the provision of services, unless retention of the
56 regulated health information is required by law;

1 (g) upon the reasonable request of the regulated entity, make avail-
2 able to the regulated entity all data in its possession necessary to
3 demonstrate the service provider's compliance with the obligations in
4 this section;

5 (h) allow, and cooperate with, reasonable assessments by the regulated
6 entity or the regulated entity's designated assessor for purposes of
7 evaluating compliance with the obligations of this article; alternative-
8 ly, the service provider may arrange for a qualified and independent
9 assessor to conduct an assessment of the processor's policies and tech-
10 nical and organizational measures in support of the obligations under
11 this article using an appropriate and accepted control standard or
12 framework and assessment procedure for such assessments. The service
13 provider shall provide a report of such assessment to the regulated
14 entity upon request;

15 (i) a reasonable time in advance before disclosing or transferring
16 regulated health information to any further service providers, notify
17 the regulated entity of such a proposed disclosure or transfer, which
18 may be in the form of a regularly updated list of further service
19 providers that may access regulated health information; and

20 (j) engage any further service provider pursuant to a written, binding
21 agreement that includes the contractual requirements provided in this
22 section, containing at minimum the same obligations that the service
23 provider has entered into with regard to regulated health information.

24 § 1106. Exemptions. Nothing in this article shall apply to:

25 1. information processed by local, state, and federal governments, and
26 municipal corporations;

27 2. protected health information that is collected by a covered entity
28 or business associate governed by the privacy, security, and breach
29 notification rules issued by the United States Department of Health and
30 Human Services, Parts 160 and 164 of Title 45 of the Code of Federal
31 Regulations, established pursuant to the Health Insurance Portability
32 and Accountability Act of 1996 (Public Law 104-191) and the Health
33 Information Technology for Economic and Clinical Health Act (Public Law
34 111-5);

35 3. any covered entity governed by the privacy, security, and breach
36 notification rules issued by the United States Department of Health and
37 Human Services, Parts 160 and 164 of Title 45 of the Code of Federal
38 Regulations, established pursuant to the Health Insurance Portability
39 and Accountability Act of 1996 (Public Law 104-191), to the extent the
40 covered entity maintains patient information in the same manner as
41 protected health information as described in subdivision two of this
42 section;

43 4. information collected as part of a clinical trial subject to the
44 Federal Policy for the Protection of Human Subjects, also known as the
45 Common Rule, pursuant to good clinical practice guidelines issued by the
46 International Council for Harmonisation or pursuant to human subject
47 protection requirements of the United States Food and Drug Adminis-
48 tration;

49 5. information processed pursuant to the federal Family Educational
50 Rights and Privacy Act (20 U.S.C. Sec. 1232g) and its implementing regu-
51 lations;

52 6. information processed pursuant to section two-d of the education
53 law; and

54 7. information processed pursuant to the federal Driver's Privacy
55 Protection Act of 1994 (18 U.S.C. Sec. 2721 et seq).

1 § 1107. Enforcement. 1. Whenever it appears to the attorney general,
2 either upon complaint or otherwise, that any person or persons, within
3 or outside the state, has engaged in or is about to engage in any of the
4 acts or practices stated to be unlawful under this article, the attorney
5 general may bring an action or special proceeding in the name and on
6 behalf of the people of the state of New York to enjoin any violation of
7 this article, to obtain restitution of any moneys or property obtained
8 directly or indirectly by any such violation, to obtain disgorgement of
9 any profits obtained directly or indirectly by any such violation, to
10 obtain civil penalties of not more than fifteen thousand dollars per
11 violation or twenty percent of revenue obtained from New York consumers
12 within the past fiscal year, whichever is greater, and to obtain any
13 such other and further relief as the court may deem proper, including
14 preliminary relief.

15 2. The remedies provided by this section shall be in addition to any
16 other lawful remedy available.

17 3. Any action or special proceeding brought by the attorney general
18 pursuant to this section must be commenced within six years of the date
19 on which the attorney general became aware of the violation.

20 4. In connection with any proposed action or special proceeding under
21 this section, the attorney general is authorized to take proof and make
22 a determination of the relevant facts, and to issue subpoenas in accord-
23 ance with the civil practice law and rules. The attorney general may
24 also require such other data and information as he or she may deem rele-
25 vant and may require written responses to questions under oath. Such
26 power of subpoena and examination shall not abate or terminate by reason
27 of any action or special proceeding brought by the attorney general
28 under this article.

29 5. This section shall apply to all acts declared to be unlawful in
30 this article, whether or not subject to any other law of this state, and
31 shall not supersede, amend or repeal any other law of this state under
32 which the attorney general is authorized to take any action or conduct
33 any inquiry.

34 6. Any individual who has been injured by a violation of this article
35 may bring an action in their own name in any court of competent juris-
36 isdiction to enjoin such unlawful act or practice and to recover their
37 actual damages or five thousand dollars per individual, whichever is
38 greater. The court shall also award reasonable attorney's fees to a
39 prevailing plaintiff. Actions pursuant to this section may be brought on
40 a class-wide basis.

41 7. The attorney general may promulgate such rules and regulations as
42 are necessary to effectuate and enforce the provisions of this section.

43 § 2. Severability. If any clause, sentence, paragraph, subdivision,
44 section or part of this act shall be adjudged by any court of competent
45 jurisdiction to be invalid, such judgment shall not affect, impair, or
46 invalidate the remainder thereof, but shall be confined in its operation
47 to the clause, sentence, paragraph, subdivision, section or part thereof
48 directly involved in the controversy in which such judgment shall have
49 been rendered. It is hereby declared to be the intent of the legislature
50 that this act would have been enacted even if such invalid provisions
51 had not been included herein.

52 § 3. This act shall take effect July 1, 2024.