S T A T E  O F  N E W  Y O R K

7041

2009-2010 Regular Sessions

I N  A S S E M B L Y

March 19, 2009

Introduced by M. of A. BALL -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to prohibiting the disclosure and transmission of patient information outside of the United States

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 18 of the public health law is amended by adding a new subdivision 6-a to read as follows:

6-A. DISCLOSURE OUTSIDE OF THE UNITED STATES. (A) EVERY PERSON AND ENTITY EMPLOYED BY A HEALTH CARE PROVIDER FOR THE PURPOSE OF TRANSCRIBING PATIENT INFORMATION, SHALL PROVIDE SUCH HEALTH CARE PROVIDER WITH A LISTING OF ANY AND ALL CONTRACTORS AND SUBCONTRACTORS USED FOR SUCH PURPOSE AND ALSO DISCLOSE TO THE HEALTH CARE PROVIDER EACH INSTANCE WHEN PATIENT INFORMATION IS TRANSMITTED OR DISCLOSED OUTSIDE OF THE UNITED STATES. EACH HEALTH CARE PROVIDER SHALL PLACE A NOTATION, OF ALL SUCH INFORMATION RECEIVED BY SUCH PROVIDER, ON THE FILE OR RECORD OF PATIENT INFORMATION WHICH IS TRANSCRIBED BY A CONTRACTOR OR SUBCONTRACTOR, OR TRANSMITTED OR DISCLOSED OUTSIDE OF THE UNITED STATES.

(B) NO HEALTH CARE PROVIDER, OR ANY PERSON OR ENTITY RECEIVING PATIENT INFORMATION FROM A HEALTH CARE PROVIDER, SHALL TRANSMIT OR DISCLOSE ANY PATIENT INFORMATION TO ANY PERSON OR LOCATION OUTSIDE OF THE UNITED STATES, UNLESS:

(I) THE HEALTH CARE PROVIDER, OR OTHER PERSON OR ENTITY RECEIVING PATIENT INFORMATION, DISCLOSES TO A QUALIFIED PERSON FOR SUCH PATIENT INFORMATION UPON ENROLLMENT, REENROLLMENT, OR ADMISSION OF THE SUBJECT, THAT THE SUBJECT'S PATIENT INFORMATION MAY BE TRANSMITTED OUTSIDE OF THE UNITED STATES;

(II) THE HEALTH CARE PROVIDER, OR OTHER PERSON OR ENTITY RECEIVING PATIENT INFORMATION, OBTAINS THE WRITTEN CONSENT OF THE QUALIFIED PERSON FOR THE PATIENT INFORMATION TO ALLOW THE TRANSMISSION OR DISCLOSURE OF SUCH INFORMATION OUTSIDE OF THE UNITED STATES;

(III) THE CONSENT THERETO HAS BEEN GRANTED OR RENEWED BY THE QUALIFIED PERSON NOT LESS FREQUENTLY THAN ANNUALLY;

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

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(IV) THE QUALIFIED PERSON HAS NOT REVOKED SUCH CONSENT, WHICH HE OR SHE MAY DO AT ANY TIME; AND

(V) THE OBLIGATIONS OF THIS PARAGRAPH ARE PERFORMED BY THE HEALTH CARE PROVIDER, PERSON OR ENTITY WHICH ACTUALLY DISCLOSES OR TRANSMITS, OR INTENDS TO DISCLOSE OR TRANSMIT PATIENT INFORMATION OUTSIDE OF THE UNITED STATES.

EVERY HEALTH CARE PROVIDER, AND PERSON OR ENTITY RECEIVING PATIENT INFORMATION SHALL DISCLOSE TO THE QUALIFIED PERSON FOR PATIENT INFORMATION WHETHER THE INFORMATION HAS BEEN OR WILL BE TRANSMITTED OR DISCLOSED OUTSIDE OF THE UNITED STATES.

(C) EXCEPT WITH REGARD TO HEALTH CARE BEING PROVIDED TO A SUBJECT OUTSIDE OF THE UNITED STATES AND SUBJECT TO THE PROVISIONS OF PARAGRAPH (B) OF THIS SUBDIVISION, EVERY HEALTH CARE PROVIDER, OR PERSON OR ENTITY RECEIVING PATIENT INFORMATION, WHICH TRANSMITS PATIENT INFORMATION OUTSIDE OF THE UNITED STATES SHALL UTILIZE A FORM FOR THE WRITTEN CONSENT OF A QUALIFIED PERSON WHICH:

(I) IS A SEPARATE DOCUMENT WHICH IS NOT PART OF OR ATTACHED TO ANY OTHER DOCUMENT;

(II) IS DATED AND SIGNED BY THE QUALIFIED PERSON FOR THE PATIENT INFORMATION; AND

(III) CLEARLY AND CONSPICUOUSLY DISCLOSES:

(A) THAT BY SIGNING THE QUALIFIED PERSON IS CONSENTING TO THE TRANSMISSION AND DISCLOSURE OF THE PATIENT INFORMATION OUTSIDE OF THE UNITED STATES,

(B) THAT SUCH CONSENT MUST BE RENEWED ON AN ANNUAL BASIS,

(C) THAT THE QUALIFIED PERSON MAY WITHDRAW HIS OR HER CONSENT AT ANY TIME, AND

(D) THE PROCEDURE FOR THE REVOCATION OF CONSENT.

(D) NO HEALTH CARE PROVIDER, OR ANY PERSON OR ENTITY RECEIVING PATIENT INFORMATION SHALL DISCRIMINATE AGAINST ANY SUBJECT, OR DENY ANY SUBJECT WITH REGARD TO THE PROVISION OF HEALTH CARE OR THE COVERAGE THEREOF ON THE BASIS OF THE DENIAL OF CONSENT FOR TRANSMISSION OF PATIENT INFORMATION OUTSIDE OF THE UNITED STATES.

(E) ALL PATIENT INFORMATION OF ANY SUBJECT WHO IS A RESIDENT OF THE STATE AND SUCH INFORMATION RELATES TO HEALTH CARE PROVIDED IN THIS STATE SHALL REMAIN SUBJECT TO THE PROVISIONS OF THIS SECTION AND ALL OTHER PROVISIONS OF STATE LAW RELATING TO CONFIDENTIALITY REGARDLESS OF WHETHER SUCH INFORMATION IS TRANSMITTED OR DISCLOSED OUTSIDE OF THIS STATE. ANY PERSON, REGARDLESS OF WHERE THEY ARE SITUATE, WHO VIOLATES ANY SUCH PROVISION OF LAW OR THIS SECTION SHALL BE SUBJECT TO THE JURISDICTION OF THE COURTS OF THIS STATE FOR THE PURPOSES OF SUCH VIOLATION.

(F) ANY PERSON OR ENTITY WHO RECEIVES PATIENT INFORMATION FROM A HEALTH CARE PROVIDER PURSUANT TO THIS SECTION, WHEN SUCH PERSON OR ENTITY IS NOT OTHERWISE SUBJECT TO THE PROVISIONS OF THIS SECTION, SHALL:

(I) MAINTAIN THE CONFIDENTIALITY OF THE PATIENT INFORMATION AND SHALL NOT DISCLOSE IT TO ANY OTHER PARTY EXCEPT AS PROVIDED BY THE LAWS OF THIS STATE;

(II) BE LIABLE IN A CIVIL CAUSE OF ACTION IN THE COURTS OF THIS STATE, BROUGHT BY A QUALIFIED PERSON OR SUBJECT WHO IS A RESIDENT OF THIS STATE, FOR THE UNAUTHORIZED DISCLOSURE OF PATIENT INFORMATION; AND

(III) CONSENT TO THE JURISDICTION OF THE COURTS OF THIS STATE.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.