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2013-2014 Regular Sessions

I N   A S S E M B L Y

June 18, 2013

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Introduced by M. of A. PERRY -- read once and referred to the Committee on Health -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law and the public health law, in relation to the transfer of patient medical records in certain circumstances

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

1     Section 1. Subdivision 40 of section 6530 of the education law, as  
2     added by chapter 606 of the laws of 1991, is amended to read as follows:  
3     40. Failing to provide access by qualified persons to patient informa-  
4     tion in accordance with the standards set forth in [section] SECTIONS  
5     SEVENTEEN AND eighteen of the public health law, SUCH SECTION EIGHTEEN  
6     as added by chapter [497] FOUR HUNDRED NINETY-SEVEN of the laws of  
7     [1986] NINETEEN HUNDRED EIGHTY-SIX;  
8     S 2. The public health law is amended by adding a new section 18-b to  
9     read as follows:  
10    S 18-B. REQUIREMENT FOR TRANSFER OF INFORMATION. 1. DEFINITIONS. FOR  
11    THE PURPOSES OF THIS SECTION THE FOLLOWING TERMS SHALL HAVE THE FOLLOW-  
12    ING MEANINGS:  
13    (A) "CEASE TO DO BUSINESS IN THIS STATE" SHALL MEAN ANY CASE WHERE A  
14    HEALTH CARE PROVIDER WHO HAS ENGAGED IN AN ON-GOING PRACTICE OR BUSINESS  
15    WITHIN THIS STATE AS A HEALTH CARE PROVIDER, CEASES TO ENGAGE IN SUCH  
16    BUSINESS, PROVIDED HOWEVER, THAT THIS TERM SHALL NOT INCLUDE A HEALTH  
17    CARE PRACTITIONER WHOSE PRACTICE IS MERGED, CONSOLIDATED, COMBINED, OR  
18    ACQUIRED BY ANOTHER HEALTH CARE PROVIDER AND HE OR SHE CONTINUES TO  
19    PROVIDE SERVICES INCLUDING MEDICAL CARE, DIAGNOSIS OR TREATMENT TO  
20    PATIENTS AS AN EMPLOYEE, CONTRACTOR, OR OWNER OF THE MERGED, CONSOL-  
21    IDATED, COMBINED, OR ACQUIRING HEALTH CARE PROVIDER.  
22    (B) "FAILURE TO PROVIDE ACCESS TO MEDICAL INFORMATION OR MEDICAL  
23    RECORDS" SHALL MEAN ANY CIRCUMSTANCE WHERE A HEALTH CARE PROVIDER,

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

LBD01923-18-4

1 HEALTH CARE FACILITY OR HEALTH CARE PRACTITIONER, AS SUCH TERMS ARE  
2 DEFINED IN SECTION EIGHTEEN OF THIS TITLE, SUCH SECTION EIGHTEEN AS  
3 ADDED BY CHAPTER FOUR HUNDRED NINETY-SEVEN OF THE LAWS OF NINETEEN  
4 HUNDRED EIGHTY-SIX, THAT IS PLANNING TO CEASE TO DO BUSINESS IN THE  
5 STATE AND FAILS TO ACT IN ACCORDANCE TO THE REQUIREMENTS PRESCRIBED BY  
6 THE COMMISSIONER FOR TRANSFER OF PATIENT INFORMATION AS SUCH TERM IS  
7 DEFINED IN SUCH SECTION EIGHTEEN OF THIS TITLE OR PATIENT MEDICAL  
8 RECORDS AS DESCRIBED IN SECTION SEVENTEEN OF THIS TITLE.

9 (C) "HEALTH CARE PROVIDER," "HEALTH CARE FACILITY," AND "HEALTH CARE  
10 PRACTITIONER" SHALL HAVE THE SAME MEANING AS IN SECTION EIGHTEEN OF THIS  
11 TITLE, AS ADDED BY CHAPTER FOUR HUNDRED NINETY-SEVEN OF THE LAWS OF  
12 NINETEEN HUNDRED EIGHTY-SIX.

13 (D) "PATIENT INFORMATION" SHALL HAVE THE SAME MEANING AS IN SECTION  
14 EIGHTEEN OF THIS TITLE, AS ADDED BY CHAPTER FOUR HUNDRED NINETY-SEVEN OF  
15 THE LAWS OF NINETEEN HUNDRED EIGHTY-SIX.

16 (E) "PATIENT MEDICAL RECORDS" SHALL MEAN THE RECORDS THAT, UPON WRIT-  
17 TEN REQUEST BY A COMPETENT PATIENT, PARENT OR GUARDIAN OF AN INFANT, A  
18 GUARDIAN APPOINTED PURSUANT TO ARTICLE EIGHTY-ONE OF THE MENTAL HYGIENE  
19 LAW, OR CONSERVATOR OF A CONSERVATEE, ARE REQUIRED TO BE PROVIDED TO A  
20 PHYSICIAN OR HOSPITAL PURSUANT TO SECTION SEVENTEEN OF THIS TITLE.

21 2. A HEALTH CARE PROVIDER WHICH HAS IN ITS POSSESSION PATIENT INFORMA-  
22 TION OR PATIENT MEDICAL RECORDS AND WHICH HAS DETERMINED TO PERMANENTLY  
23 CEASE TO DO BUSINESS OR PRACTICE IN THIS STATE SHALL, AT LEAST SIXTY  
24 DAYS PRIOR TO SUCH ACTION, NOTIFY THE COMMISSIONER OF ITS INTENT TO  
25 CEASE OPERATIONS IN THIS STATE, IN THE FORM AND MANNER PRESCRIBED BY THE  
26 COMMISSIONER, AND SHALL PROVIDE A COPY OF ITS PLAN, IN THE FORM AND  
27 MANNER PRESCRIBED BY THE COMMISSIONER, FOR TRANSFER OF PATIENT INFORMA-  
28 TION OR PATIENT MEDICAL RECORDS TO ANOTHER PROVIDER, FACILITY, PRACTI-  
29 TIONER OR PATIENT, AS REQUESTED BY THE PATIENT OR REQUIRED PURSUANT TO  
30 LAW. THE SIXTY DAY REQUIREMENT FOR NOTIFICATION TO THE COMMISSIONER  
31 SHALL BE WAIVED IF A HEALTH CARE PROVIDER DETERMINES TO CEASE TO DO  
32 BUSINESS OR PRACTICE IN THIS STATE AS A RESULT OF ILLNESS, INJURY OR  
33 DEATH.

34 3. WITHIN TEN DAYS OF BEING NOTIFIED BY A HEALTH CARE PROVIDER OF THE  
35 PROVIDER'S DETERMINATION TO CEASE TO DO BUSINESS OR PRACTICE IN THIS  
36 STATE, THE COMMISSIONER SHALL PRESCRIBE THE REQUIREMENTS FOR TRANSFER OF  
37 PATIENT INFORMATION AND PATIENT MEDICAL RECORDS, PROVIDED THAT SUCH  
38 REQUIREMENTS SHALL INCLUDE (A) A MAXIMUM PERIOD OF TIME, NOT TO EXCEED  
39 SIXTY DAYS FROM THE DATE THAT THE HEALTH CARE PROVIDER, HEALTH CARE  
40 FACILITY OR HEALTH CARE PRACTITIONER CEASES TO PRACTICE TO DO BUSINESS  
41 IN THIS STATE, FOR THE COMPLETION OF THE TRANSFER, AND (B) A PLAN FOR  
42 NOTIFYING PATIENTS OF THE CLOSURE OR CESSATION OF DOING BUSINESS IN NEW  
43 YORK AND INFORMING SUCH PATIENTS OF THEIR RIGHT TO REQUEST THEIR PATIENT  
44 INFORMATION OR PATIENT MEDICAL RECORDS BE SENT TO THE HEALTH CARE  
45 PROVIDER, HEALTH CARE FACILITY OR HEALTH CARE PRACTITIONER OF HIS OR HER  
46 CHOICE OR RETURNED TO THEMSELVES. IF THE DETERMINATION TO CEASE TO DO  
47 BUSINESS OR PRACTICE IN THIS STATE WAS MADE AS A RESULT OF ILLNESS,  
48 INJURY OR DEATH THE HEALTH CARE PROVIDER SHALL HAVE AN ADDITIONAL SIXTY  
49 DAYS TO COMPLY WITH THE PROVISIONS OF THIS SECTION.

50 4. NOTHING IN THIS SECTION SHALL AUTHORIZE THE DISCLOSURE OF PATIENT  
51 INFORMATION OR PATIENT MEDICAL RECORDS THAT ARE PROHIBITED FROM DISCLO-  
52 SURE PURSUANT TO LAW.

53 5. IF THE COMMISSIONER SHALL DETERMINE THAT THE FAILURE OF ANY HEALTH  
54 CARE PROVIDER, HEALTH CARE FACILITY, OR HEALTH CARE PRACTITIONER TO  
55 ADHERE TO THE TERMS OF THE PLAN THAT HAS BEEN APPROVED BY THE COMMIS-  
56 SIONER FOR THE TRANSFER OF PATIENT INFORMATION OR PATIENT MEDICAL

1 RECORDS AND SUCH FAILURE SHALL HAVE CAUSED OR MAY CAUSE A THREAT TO THE  
2 HEALTH OF AN INDIVIDUAL PATIENT WHO IS THE SUBJECT OF SUCH INFORMATION  
3 OR MEDICAL RECORDS BECAUSE MORE THAN SIX MONTHS HAS ELAPSED SINCE A  
4 PRIOR LABORATORY TEST, THE RESULTS OF WHICH ARE CONTAINED IN THE  
5 PATIENT'S INFORMATION OR MEDICAL RECORDS, THE COMMISSIONER MAY ORDER NEW  
6 LABORATORY TESTS TO BE PERFORMED BY A PRACTITIONER CHOSEN OR APPROVED BY  
7 THE COMMISSIONER. IN ORDER TO EXPEDITE SUCH LABORATORY TESTS, THE  
8 COMMISSIONER MAY ORDER PAYMENT FOR SUCH LABORATORY TESTS FROM ANY  
9 ACCOUNT UNDER THE CONTROL OF THE DEPARTMENT, AND SHALL ASSESS ANY SUCH  
10 HEALTH CARE PROVIDER, HEALTH CARE FACILITY, OR HEALTH CARE PRACTITIONER  
11 WHO FAILED TO RELEASE THE PATIENT'S INFORMATION OR PATIENT'S MEDICAL  
12 RECORDS IN ACCORDANCE WITH THE PLAN APPROVED BY THE COMMISSIONER FOR THE  
13 EXPENSES ASSOCIATED WITH THE COST OF SUCH LABORATORY TESTS. FOR  
14 PURPOSES OF THIS SUBDIVISION, THE TERM "LABORATORY TESTS" SHALL INCLUDE,  
15 BUT NOT BE LIMITED TO, TESTS AND EXAMINATIONS ADMINISTERED IN CLINICAL  
16 LABORATORIES OR BLOOD BANKS AS THOSE TERMS ARE DEFINED IN SECTION FIVE  
17 HUNDRED SEVENTY-ONE OF THIS CHAPTER.

18 6. IF THE COMMISSIONER SHALL DETERMINE THAT A HEALTH CARE PROVIDER,  
19 HEALTH CARE FACILITY OR HEALTH CARE PRACTITIONER HAS WILLFULLY, AND  
20 WITHOUT GOOD CAUSE, FAILED TO ADHERE TO THE TERMS OF THE PLAN THAT HAS  
21 BEEN APPROVED BY THE COMMISSIONER FOR THE TRANSFER OF PATIENT INFORMA-  
22 TION OR PATIENT MEDICAL RECORDS, THE COMMISSIONER MAY ASSESS A PENALTY  
23 NOT TO EXCEED FIVE HUNDRED DOLLARS FOR EACH OF THE FIRST TWENTY FAILURES  
24 AND TWO HUNDRED FIFTY DOLLARS FOR EACH ADDITIONAL FAILURE THEREAFTER BUT  
25 ANY PROVIDER, FACILITY OR PRACTITIONER SHALL NOT BE ASSESSED A PENALTY  
26 UNDER THIS SUBDIVISION OF MORE THAN THIRTY THOUSAND DOLLARS. AN  
27 AGGRIEVED PROVIDER, FACILITY OR PRACTITIONER MAY APPEAL SUCH ASSESSMENT  
28 TO THE MEDICAL RECORD ACCESS REVIEW COMMITTEES DESIGNATED BY THE COMMIS-  
29 SIONER PURSUANT TO SUBDIVISION FOUR OF SECTION EIGHTEEN OF THIS TITLE,  
30 SUCH SECTION AS ADDED BY CHAPTER FOUR HUNDRED NINETY-SEVEN OF THE LAWS  
31 OF NINETEEN HUNDRED EIGHTY-SIX.

32 7. THE PROVISIONS OF THIS SECTION SHALL NOT AFFECT ANY RIGHTS AFFORDED  
33 PURSUANT TO SECTION SEVENTEEN OR SECTION EIGHTEEN OF THIS TITLE, SUCH  
34 SECTION EIGHTEEN AS ADDED BY CHAPTER FOUR HUNDRED NINETY-SEVEN OF THE  
35 LAWS OF NINETEEN HUNDRED EIGHTY-SIX.

36 8. ANY ASSESSMENT MADE PURSUANT TO THIS SECTION SHALL BE IN ADDITION  
37 TO ANY OTHER ASSESSMENT OR PENALTY THAT IS AUTHORIZED BY LAW.

38 9. NOTHING IN THIS SECTION SHALL AFFECT OR EXTEND THE PERIOD OF TIME  
39 THAT A HEALTH CARE PROVIDER IS REQUIRED TO RETAIN A PATIENT'S MEDICAL  
40 INFORMATION AND MEDICAL RECORDS.

41 S 3. This act shall take effect immediately.