

3398

2015-2016 Regular Sessions

I N S E N A T E

February 6, 2015

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

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) "PERMANENTLY CEASE TO DO BUSINESS IN THIS STATE" SHALL MEAN ANY
14 CASE WHERE A HEALTH CARE PROVIDER, HEALTH CARE FACILITY OR HEALTH CARE
15 PRACTITIONER WHO HAS ENGAGED IN AN ON-GOING PRACTICE OR BUSINESS WITHIN
16 THIS STATE, PERMANENTLY CEASES TO ENGAGE IN SUCH BUSINESS, PROVIDED
17 HOWEVER, THAT THIS TERM SHALL NOT INCLUDE A HEALTH CARE PRACTITIONER
18 WHOSE PRACTICE IS MERGED, CONSOLIDATED, COMBINED, OR ACQUIRED BY ANOTHER
19 HEALTH CARE PROVIDER, HEALTH CARE FACILITY OR HEALTH CARE PRACTITIONER
20 AND HE OR SHE CONTINUES TO PROVIDE SERVICES INCLUDING MEDICAL CARE,
21 DIAGNOSIS OR TREATMENT TO PATIENTS ON A MORE THAN HALF-TIME BASIS AS AN
22 EMPLOYEE, CONTRACTOR, OR OWNER OF THE MERGED, CONSOLIDATED, COMBINED, OR
23 ACQUIRING HEALTH CARE PROVIDER OR HEALTH CARE FACILITY.
24 (B) "FAILURE TO PROVIDE ACCESS TO MEDICAL INFORMATION OR MEDICAL
25 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.

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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, AND SECTION SEVENTEEN OF THIS TITLE, THAT IS PLAN-
5 NING TO PERMANENTLY CEASE TO DO BUSINESS IN THE STATE AND FAILS TO ACT
6 IN ACCORDANCE TO THE REQUIREMENTS PRESCRIBED BY THE COMMISSIONER FOR
7 TRANSFER OF PATIENT INFORMATION AS SUCH TERM IS DEFINED IN SUCH SECTION
8 EIGHTEEN OF THIS TITLE OR PATIENT MEDICAL RECORDS AS DESCRIBED IN
9 SECTION SEVENTEEN OF THIS TITLE.

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

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

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

22 (F) "ACTIVELY PRACTICE" SHALL MEAN A HEALTH CARE PRACTITIONER OR
23 HEALTH CARE PROVIDER THAT WORKS MORE THAN HALF-TIME.

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

39 3. WITHIN TEN DAYS OF BEING NOTIFIED BY A HEALTH CARE PROVIDER,
40 HEALTH CARE FACILITY OR HEALTH CARE PRACTITIONER OF THE HEALTH CARE
41 PROVIDER'S, HEALTH CARE FACILITY'S OR HEALTH CARE PRACTITIONER'S DETER-
42 MINATION TO PERMANENTLY CEASE TO DO BUSINESS OR ACTIVELY PRACTICE IN
43 THIS STATE, THE COMMISSIONER SHALL PRESCRIBE THE REQUIREMENTS FOR TRANS-
44 FER OF PATIENT INFORMATION AND PATIENT MEDICAL RECORDS, PROVIDED THAT
45 SUCH REQUIREMENTS SHALL INCLUDE (A) A MAXIMUM PERIOD OF TIME, NOT TO
46 EXCEED SIXTY DAYS FROM THE DATE THAT THE HEALTH CARE PROVIDER, HEALTH
47 CARE FACILITY OR HEALTH CARE PRACTITIONER PERMANENTLY CEASES TO DO BUSI-
48 NESS OR ACTIVELY PRACTICE IN THIS STATE, FOR THE COMPLETION OF THE
49 TRANSFER, AND (B) A PLAN FOR NOTIFYING PATIENTS THAT THE HEALTH CARE
50 PROVIDER, HEALTH CARE FACILITY OR HEALTH CARE PRACTITIONER IS PERMANENT-
51 LY CEASING TO DO BUSINESS OR ACTIVELY PRACTICE IN THIS STATE AND INFORM-
52 ING SUCH PATIENTS OF THEIR RIGHT TO REQUEST THEIR PATIENT INFORMATION OR
53 PATIENT MEDICAL RECORDS BE SENT TO THE HEALTH CARE PROVIDER, HEALTH CARE
54 FACILITY OR HEALTH CARE PRACTITIONER OF HIS OR HER CHOICE OR RETURNED TO
55 THEMSELVES. IF THE DETERMINATION TO PERMANENTLY CEASE TO DO BUSINESS IN
56 THIS STATE OR ACTIVELY PRACTICE IN THIS STATE WAS MADE AS A RESULT OF

1 ILLNESS, INJURY OR DEATH THE COMMISSIONER SHALL WORK WITH THE HEALTH
2 CARE PROVIDER, HEALTH CARE FACILITY OR HEALTH CARE PRACTITIONER, OR
3 WHERE APPROPRIATE THE HEALTH CARE PROVIDER'S, HEALTH CARE FACILITY'S OR
4 HEALTH CARE PRACTITIONER'S REPRESENTATIVE, TO FACILITATE NOTICE TO
5 PATIENTS OF THE HEALTH CARE PROVIDER, HEALTH CARE FACILITY OR HEALTH
6 CARE PRACTITIONER OF HIS OR HER DECISION TO PERMANENTLY CEASE TO DO
7 BUSINESS OR ACTIVELY PRACTICE IN THIS STATE AND THE TRANSFER OF PATIENT
8 MEDICAL RECORDS TO THE PATIENT OR THE HEALTH CARE PROVIDER, HEALTH CARE
9 FACILITY, OR HEALTH CARE PRACTITIONER REQUESTED BY SUCH PATIENT. THE
10 COMMISSIONER SHALL ENSURE THAT PATIENT MEDICAL RECORDS ARE TRANSFERRED
11 IN A TIMELY MANNER AND SHALL NOT EXCEED ONE HUNDRED SIXTY DAYS AFTER
12 BEING NOTIFIED OF THE DECISION TO CEASE TO DO BUSINESS IN THIS STATE.

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

16 5. IF THE COMMISSIONER SHALL DETERMINE THAT THE FAILURE OF ANY HEALTH
17 CARE PROVIDER, HEALTH CARE FACILITY, OR HEALTH CARE PRACTITIONER TO
18 ADHERE TO THE TERMS OF THE PLAN THAT HAS BEEN APPROVED BY THE COMMIS-
19 SIONER FOR THE TRANSFER OF PATIENT INFORMATION OR PATIENT MEDICAL
20 RECORDS AND SUCH FAILURE SHALL HAVE CAUSED OR MAY CAUSE A THREAT TO THE
21 HEALTH OF AN INDIVIDUAL PATIENT WHO IS THE SUBJECT OF SUCH INFORMATION
22 OR MEDICAL RECORDS BECAUSE MORE THAN SIX MONTHS HAS ELAPSED SINCE A
23 PRIOR LABORATORY TEST, THE RESULTS OF WHICH ARE CONTAINED IN THE
24 PATIENT'S INFORMATION OR MEDICAL RECORDS, THE COMMISSIONER MAY ORDER NEW
25 LABORATORY TESTS TO BE PERFORMED BY A PRACTITIONER CHOSEN OR APPROVED BY
26 THE COMMISSIONER. IN ORDER TO EXPEDITE SUCH LABORATORY TESTS, THE
27 COMMISSIONER MAY ORDER PAYMENT FOR SUCH LABORATORY TESTS FROM ANY
28 ACCOUNT UNDER THE CONTROL OF THE DEPARTMENT, AND SHALL ASSESS ANY SUCH
29 HEALTH CARE PROVIDER, HEALTH CARE FACILITY, OR HEALTH CARE PRACTITIONER
30 WHO FAILED TO RELEASE THE PATIENT'S INFORMATION OR PATIENT'S MEDICAL
31 RECORDS IN ACCORDANCE WITH THE PLAN APPROVED BY THE COMMISSIONER FOR THE
32 EXPENSES ASSOCIATED WITH THE COST OF SUCH LABORATORY TESTS. FOR
33 PURPOSES OF THIS SUBDIVISION, THE TERM "LABORATORY TESTS" SHALL INCLUDE,
34 BUT NOT BE LIMITED TO, TESTS AND EXAMINATIONS ADMINISTERED IN CLINICAL
35 LABORATORIES OR BLOOD BANKS AS THOSE TERMS ARE DEFINED IN SECTION FIVE
36 HUNDRED SEVENTY-ONE OF THIS CHAPTER.

37 6. IF THE COMMISSIONER SHALL DETERMINE THAT A HEALTH CARE PROVIDER,
38 HEALTH CARE FACILITY OR HEALTH CARE PRACTITIONER HAS WILLFULLY, AND
39 WITHOUT GOOD CAUSE, FAILED TO ADHERE TO THE TERMS OF THE PLAN THAT HAS
40 BEEN APPROVED BY THE COMMISSIONER FOR THE TRANSFER OF PATIENT INFORMA-
41 TION OR PATIENT MEDICAL RECORDS, THE COMMISSIONER MAY ASSESS A PENALTY
42 NOT TO EXCEED FIVE HUNDRED DOLLARS FOR EACH OF THE FIRST TWENTY FAILURES
43 AND TWO HUNDRED FIFTY DOLLARS FOR EACH ADDITIONAL FAILURE THEREAFTER BUT
44 ANY HEALTH CARE PROVIDER, HEALTH CARE FACILITY OR HEALTH CARE PRACTI-
45 TIONER SHALL NOT BE ASSESSED A PENALTY UNDER THIS SUBDIVISION OF MORE
46 THAN THIRTY THOUSAND DOLLARS. AN AGGRIEVED HEALTH CARE PROVIDER, HEALTH
47 CARE FACILITY OR HEALTH CARE PRACTITIONER MAY APPEAL SUCH ASSESSMENT TO
48 THE MEDICAL RECORD ACCESS REVIEW COMMITTEES DESIGNATED BY THE COMMIS-
49 SIONER PURSUANT TO SUBDIVISION FOUR OF SECTION EIGHTEEN OF THIS TITLE,
50 SUCH SECTION AS ADDED BY CHAPTER FOUR HUNDRED NINETY-SEVEN OF THE LAWS
51 OF NINETEEN HUNDRED EIGHTY-SIX.

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

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

3 9. NOTHING IN THIS SECTION SHALL AFFECT OR EXTEND THE PERIOD OF TIME
4 THAT A HEALTH CARE PROVIDER, HEALTH CARE FACILITY OR HEALTH CARE PRACTI-
5 TIONER IS REQUIRED TO RETAIN A PATIENT'S MEDICAL INFORMATION AND MEDICAL
6 RECORDS.

7 S 3. This act shall take effect immediately.