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

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2015-2016 Regular Sessions

I N A S S E M B L Y

April 27, 2015

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

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:

Section 1. Subdivision 40 of section 6530 of the education law, as added by chapter 606 of the laws of 1991, is amended to read as follows:

40. Failing to provide access by qualified persons to patient information in accordance with the standards set forth in [section] SECTIONS SEVENTEEN AND eighteen of the public health law, SUCH SECTION EIGHTEEN as added by chapter [497] FOUR HUNDRED NINETY-SEVEN of the laws of [1986] NINETEEN HUNDRED EIGHTY-SIX;

S 2. The public health law is amended by adding a new section 18-b to read as follows:

S 18-B. REQUIREMENT FOR TRANSFER OF INFORMATION. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

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

(B) "FAILURE TO PROVIDE ACCESS TO MEDICAL INFORMATION OR MEDICAL 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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HEALTH CARE FACILITY OR HEALTH CARE PRACTITIONER, AS SUCH TERMS ARE DEFINED IN SECTION EIGHTEEN OF THIS TITLE, SUCH SECTION EIGHTEEN AS ADDED BY CHAPTER FOUR HUNDRED NINETY-SEVEN OF THE LAWS OF NINETEEN HUNDRED EIGHTY-SIX, AND SECTION SEVENTEEN OF THIS TITLE, THAT IS PLANNING TO PERMANENTLY CEASE TO DO BUSINESS IN THE STATE AND FAILS TO ACT IN ACCORDANCE TO THE REQUIREMENTS PRESCRIBED BY THE COMMISSIONER FOR TRANSFER OF PATIENT INFORMATION AS SUCH TERM IS DEFINED IN SUCH SECTION EIGHTEEN OF THIS TITLE OR PATIENT MEDICAL RECORDS AS DESCRIBED IN SECTION SEVENTEEN OF THIS TITLE.

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

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

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

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

2. A HEALTH CARE PROVIDER, HEALTH CARE FACILITY OR HEALTH CARE PRACTITIONER THAT HAS IN ITS POSSESSION PATIENT INFORMATION OR PATIENT MEDICAL RECORDS AND WHICH HAS DETERMINED TO PERMANENTLY CEASE TO DO BUSINESS OR PRACTICE IN THIS STATE SHALL, AT LEAST SIXTY DAYS PRIOR TO SUCH ACTION, NOTIFY THE COMMISSIONER OF ITS INTENT TO PERMANENTLY CEASE OPERATIONS OR ACTIVELY PRACTICE IN THIS STATE, IN THE FORM AND MANNER PRESCRIBED BY THE COMMISSIONER, AND SHALL PROVIDE A COPY OF ITS PLAN, IN THE FORM AND MANNER PRESCRIBED BY THE COMMISSIONER, FOR TRANSFER OF PATIENT INFORMATION OR PATIENT MEDICAL RECORDS TO ANOTHER HEALTH CARE PROVIDER, HEALTH CARE FACILITY, HEALTH CARE PRACTITIONER, OR FURNISH A COPY TO THE PATIENT, AS REQUESTED BY THE PATIENT OR REQUIRED PURSUANT TO LAW. THE SIXTY DAY REQUIREMENT FOR NOTIFICATION TO THE COMMISSIONER SHALL BE WAIVED IF A HEALTH CARE PROVIDER, HEALTH CARE FACILITY OR HEALTH CARE PRACTITIONER DETERMINES TO PERMANENTLY CEASE TO DO BUSINESS OR ACTIVELY PRACTICE IN THIS STATE AS A RESULT OF ILLNESS, INJURY OR DEATH.

3. WITHIN TEN DAYS OF BEING NOTIFIED BY A HEALTH CARE PROVIDER, HEALTH CARE FACILITY OR HEALTH CARE PRACTITIONER OF THE HEALTH CARE PROVIDER'S, HEALTH CARE FACILITY'S OR HEALTH CARE PRACTITIONER'S DETERMINATION TO PERMANENTLY CEASE TO DO BUSINESS OR ACTIVELY PRACTICE IN THIS STATE, THE COMMISSIONER SHALL PRESCRIBE THE REQUIREMENTS FOR TRANSFER OF PATIENT INFORMATION AND PATIENT MEDICAL RECORDS, PROVIDED THAT SUCH REQUIREMENTS SHALL INCLUDE (A) A MAXIMUM PERIOD OF TIME, NOT TO EXCEED SIXTY DAYS FROM THE DATE THAT THE HEALTH CARE PROVIDER, HEALTH CARE FACILITY OR HEALTH CARE PRACTITIONER PERMANENTLY CEASES TO DO BUSINESS OR ACTIVELY PRACTICE IN THIS STATE, FOR THE COMPLETION OF THE TRANSFER, AND (B) A PLAN FOR NOTIFYING PATIENTS THAT THE HEALTH CARE PROVIDER, HEALTH CARE FACILITY OR HEALTH CARE PRACTITIONER IS PERMANENTLY CEASING TO DO BUSINESS OR ACTIVELY PRACTICE IN THIS STATE AND INFORMING SUCH PATIENTS OF THEIR RIGHT TO REQUEST THEIR PATIENT INFORMATION OR PATIENT MEDICAL RECORDS BE SENT TO THE HEALTH CARE PROVIDER, HEALTH CARE FACILITY OR HEALTH CARE PRACTITIONER OF HIS OR HER CHOICE OR RETURNED TO THEMSELVES. IF THE DETERMINATION TO PERMANENTLY CEASE TO DO BUSINESS IN THIS STATE OR ACTIVELY PRACTICE IN THIS STATE WAS MADE AS A RESULT OF

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

4. NOTHING IN THIS SECTION SHALL AUTHORIZE THE DISCLOSURE OF PATIENT INFORMATION OR PATIENT MEDICAL RECORDS THAT ARE PROHIBITED FROM DISCLOSURE PURSUANT TO LAW.

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

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

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

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

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

S 3. This act shall take effect immediately.