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

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2015-2016 Regular Sessions

I N S E N A T E

January 26, 2015

Introduced by Sen. SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law and the mental hygiene law, in relation to patient health information and medical records

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

Section 1. Section 17 of the public health law, as amended by chapter 165 of the laws of 1991, the first undesignated paragraph as amended by chapter 576 of the laws of 1998, is amended to read as follows:

S 17. Release of [medical] HEALTH records TO A DESIGNATED HEALTH CARE PROVIDER. 1. Upon the written request of any 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, [an examining, consulting or treating physician or hospital must] A HEALTH CARE PROVIDER WHO HAS PROVIDED PROFESSIONAL HEALTH CARE SERVICES PERTAINING TO A PATIENT SHALL release and deliver, exclusive of NON-CLINICAL personal notes of the [said physician or hospital] HEALTH CARE PROVIDER, copies of all [x-rays, medical] REQUESTED HEALTH records [and test records including all laboratory tests] regarding that patient to any other designated [physician or hospital provided, however, that] HEALTH CARE PROVIDER. HOWEVER, such records concerning the treatment of an infant patient for venereal disease or the performance of an abortion operation upon such infant patient shall not be released or in any manner be made available to the parent or guardian of such infant, and provided, further, that original mammograms, rather than copies thereof, shall be released and delivered. WHERE A HEALTH CARE PROVIDER MAINTAINS A HEALTH RECORD IN ELECTRONIC FORM, IT MAY PROVIDE THE RECORD UNDER THIS SECTION IN A REASONABLY USABLE ELECTRONIC FORM, AND SHALL PROVIDE IT IN SUCH FORM IF REQUESTED BY THE PERSON MAKING THE REQUEST.

[Either the physician or hospital] 2. A HEALTH CARE PROVIDER incurring the expense of providing copies of [x-rays, medical] HEALTH records [and

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

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test records including all laboratory tests] pursuant to the provisions of this section may impose a reasonable charge to be paid by the person requesting the release and deliverance of such records as reimbursement [for such] NOT TO EXCEED THE HEALTH CARE PROVIDER'S ACTUAL expenses, provided, however, that the [physician or hospital] HEALTH CARE PROVIDER may not impose a charge for copying an original mammogram when the original has been released or delivered to any competent patient, parent or guardian of an infant, a guardian appointed pursuant to article eighty-one of the mental hygiene law, or a conservator of a conservatee and provided, further, that any charge for delivering an original mammogram pursuant to this section shall not exceed the documented ACTUAL costs associated therewith[. However, the reasonable charge], WHICH for paper copies shall not exceed seventy-five cents per page. A release of records under this section shall not be denied solely because of inability to pay. NO CHARGE MAY BE IMPOSED UNDER THIS SECTION FOR PROVIDING, RELEASING OR DELIVERING HEALTH RECORDS OR COPIES OF HEALTH RECORDS WHERE REQUESTED FOR THE PURPOSE OF SUPPORTING A CLAIM OR APPEAL FOR ANY GOVERNMENT BENEFIT OR PROGRAM.

3. WHERE A HEALTH CARE PROVIDER PROVIDES HEALTH CARE PROFESSIONAL SERVICES AS AN EMPLOYEE OF OR UNDER CONTRACT WITH ANOTHER HEALTH CARE PROVIDER, COMPLIANCE WITH THIS SECTION SHALL BE THE RESPONSIBILITY OF THE HEALTH CARE PROVIDER THAT EMPLOYS OR CONTRACTS FOR THE SERVICES OF THE OTHER HEALTH CARE PROVIDER, UNLESS THE TERMS OF THE EMPLOYMENT OR CONTRACT EXPLICITLY PROVIDE OTHERWISE. IF A HEALTH CARE PROVIDER RECEIVES A REQUEST UNDER THIS SECTION AND COMPLIANCE IS THE RESPONSIBILITY OF A DIFFERENT HEALTH CARE PROVIDER UNDER THIS SUBDIVISION, THE HEALTH CARE PROVIDER RECEIVING THE REQUEST SHALL IMMEDIATELY INFORM THE REQUESTING PARTY TO WHICH HEALTH CARE PROVIDER THE REQUEST SHOULD BE DIRECTED.

4. For the purposes of this section the [term "laboratory tests" shall include] FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "HEALTH RECORD" INCLUDES ANY PATIENT INFORMATION AS DEFINED IN SECTION EIGHTEEN OF THIS TITLE, X-RAYS AND OTHER IMAGES, AND RECORDS OF LABORATORY TESTS INCLUDING 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.

(B) "HEALTH CARE PROVIDER" AND "HEALTH CARE PRACTITIONER" HAVE THE SAME MEANINGS AS DEFINED IN SECTION EIGHTEEN OF THIS TITLE.

(C) "PROFESSIONAL HEALTH CARE SERVICES" MEANS THE SERVICES OF A HEALTH CARE PROVIDER EXAMINING, ASSESSING, TREATING OR CONSULTING IN RELATION TO A PATIENT OR PATIENT'S CONDITION, WITHIN THE SCOPE OF PRACTICE OF A HEALTH CARE PRACTITIONER.

S 2. Paragraphs (c), (d) and (e) of subdivision 1 of section 18 of the public health law, paragraphs (c) and (d) as added by chapter 497 of the laws of 1986, paragraph (e) as amended by chapter 2 of the laws of 1990, and the closing paragraph of paragraph (e) as amended by chapter 576 of the laws of 1998, are amended and a new paragraph (j) is added to read as follows:

(c) "Health care facility" or "facility" means a hospital as defined in article twenty-eight of this chapter, a home care services agency as defined in article thirty-six of this chapter, a hospice as defined in article forty of this chapter, a health maintenance organization as defined in article forty-four of this chapter, [and] a shared health facility as defined in article forty-seven of this chapter; OR AN ENTITY THAT PROVIDES THE HEALTH CARE PROFESSIONAL SERVICES OF A HEALTH CARE

PROVIDER BY EMPLOYING OR CONTRACTING FOR THE HEALTH CARE PROFESSIONAL SERVICES OF A HEALTH CARE PROVIDER.

(d) "Health care practitioner" or "practitioner" means a person licensed under article one hundred thirty-one (MEDICINE), one hundred thirty-one-B (PHYSICIAN ASSISTANTS), ONE HUNDRED THIRTY-ONE-C (SPECIALIST ASSISTANT), one hundred thirty-two (CHIROPRACTIC), one hundred thirty-three (DENTISTRY AND DENTAL HYGIENE), ONE HUNDRED THIRTY-FOUR (LICENSED PERFUSIONISTS), one hundred thirty-six (PHYSICAL THERAPY AND PHYSICAL THERAPY ASSISTANTS), ONE HUNDRED THIRTY-SEVEN (PHARMACY), one hundred thirty-nine (NURSING), ONE HUNDRED FORTY (PROFESSIONAL MIDWIFERY PRACTICE), one hundred forty-one (PODIATRY), one hundred forty-three (OPTOMETRY), one hundred forty-four (OPHTHALMIC DISPENSING), one hundred fifty-three (PSYCHOLOGY), one hundred fifty-four (SOCIAL WORK), ONE HUNDRED FIFTY-FIVE (MASSAGE THERAPY), one hundred fifty-six [or] (OCCUPATIONAL THERAPY, ONE HUNDRED FIFTY-SEVEN (DIETETICS AND NUTRITION), one hundred fifty-nine (SPEECH-LANGUAGE PATHOLOGISTS OR AUDIOLOGISTS), ONE HUNDRED SIXTY (ACUPUNCTURE), ONE HUNDRED SIXTY-TWO (ATHLETIC TRAINERS), ONE HUNDRED SIXTY-THREE (MENTAL HEALTH PRACTITIONERS), ONE HUNDRED SIXTY-FOUR (RESPIRATORY THERAPISTS AND RESPIRATORY THERAPY TECHNICIANS), ONE HUNDRED SIXTY-FIVE (CLINICAL LABORATORY TECHNOLOGY PRACTICE), ONE HUNDRED SIXTY-SIX (MEDICAL PHYSICS PRACTICE), OR ONE HUNDRED SIXTY-SEVEN (APPLIED BEHAVIOR ANALYSIS) of the education law [or a person certified under section twenty-five hundred sixty of this chapter].

(e) (I) "Patient information" or "information" means: any information OR HEALTH RECORD concerning or relating to the examination, health assessment including, but not limited to, a health assessment for insurance and employment purposes [or], CONSULTING IN RELATION TO treatment of PROVIDING DRUGS OR DEVICES, OR PROVIDING PROFESSIONAL HEALTH CARE SERVICES PERTAINING TO an identifiable subject maintained or possessed by a health care [facility or health care practitioner who] PROVIDER WHICH has provided or is providing services [for assessment of a health condition including, but not limited to, a health assessment for insurance and employment purposes or has treated or is treating such subject, except (i)]. IT SHALL INCLUDE X-RAYS AND OTHER IMAGES, AND RECORDS OF LABORATORY TESTS INCLUDING BUT NOT 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. IT SHALL INCLUDE RECORDS OF CHARGES TO, AND PAYMENTS RECEIVED FROM, THE PATIENT OR IDENTIFIABLE SUBJECT OR ANY OTHER PARTY ON BEHALF OF THE PATIENT OR IDENTIFIABLE SUBJECT, FOR ANY SUCH SERVICES, DRUGS OR DEVICES.

(II) "PATIENT INFORMATION" OR "INFORMATION" SHALL NOT INCLUDE (A) information and clinical records subject to the provisions of section [23.05 or] 33.13 of the mental hygiene law[, (ii)]; (B) NON-CLINICAL personal notes and observations of a health care practitioner, provided that such personal notes and observations are maintained by the practitioner and not disclosed by the practitioner to any other person after January first, nineteen hundred eighty-seven[, (iii)]; (C) information maintained by a practitioner, concerning or relating to the prior examination or treatment of a subject received from another practitioner, provided however, that such information may be requested by the subject directly from such other practitioner in accordance with the provisions of this section, AND PROVIDED FURTHER THAT THIS CLAUSE DOES NOT APPLY TO ANY REFERRAL, ORDER, AUTHORIZATION, OR PRESCRIPTION RECEIVED FROM THE OTHER PRACTITIONER; and [(iv)] (D) data disclosed to a practitioner in confidence by other persons on the basis of an express condition that such data would never be disclosed to the subject or other persons,

provided that such data has never been disclosed to any other person. If at any time such personal notes and observations or such data is disclosed, it shall be considered patient information for purposes of this section. For purposes of this subdivision, "disclosure to any other person" shall not include disclosures made to practitioners as part of a consultation or referral during the treatment of the subject, to persons reviewing information or records in the ordinary course of ensuring that a provider is in compliance with applicable quality of care, licensure or accreditation standards, to an employee or official of a federal, state or local agency for the sole purpose of conducting an audit in the course of his or her official duties, to the statewide planning and research cooperative system, to other persons pursuant to a court order, to governmental agencies, insurance companies licensed pursuant to the insurance law and other third parties requiring information necessary for payments to be made to or on behalf of patients, to qualified researchers, to the [state board for professional medical conduct] DEPARTMENT OF HEALTH OR THE DEPARTMENT OF EDUCATION when such [board] requests such information in the exercise of its statutory function, to an insurance carrier insuring, or an attorney consulted by, a health care provider, or to a health maintenance organization certified pursuant to article forty-four of this chapter or licensed pursuant to the insurance law, or to the committee or a court pursuant to the provisions of this section.

(III) For purposes of this subdivision treatment of a subject shall not include diagnostic services, except mammography, performed by a practitioner at the request of another health care practitioner provided, however, that such information, and mammograms, may be requested by the subject directly from the practitioner at whose request such diagnostic services were performed, in accordance with the provisions of this section.

(J) "PROFESSIONAL HEALTH CARE SERVICES" MEANS THE SERVICES OF A HEALTH CARE PROVIDER EXAMINING, ASSESSING, TREATING OR CONSULTING IN RELATION TO AN IDENTIFIABLE SUBJECT OF AN IDENTIFIABLE SUBJECT'S CONDITION, WITHIN THE SCOPE OF PRACTICE OF A HEALTH CARE PRACTITIONER.

S 3. Paragraphs (d) and (e) of subdivision 2 of section 18 of the public health law, as amended by chapter 576 of the laws of 1998, are amended and a new paragraph (j) is added to read as follows:

(d) Subject to the provisions of subdivision three of this section, upon the written request of any qualified person, a health care provider shall furnish to such person, within a reasonable time, a copy of any patient information requested, and original mammograms requested, which the person is authorized to inspect pursuant to this subdivision. WHERE A HEALTH CARE PROVIDER MAINTAINS THE PATIENT INFORMATION IN ELECTRONIC FORM, IT MAY PROVIDE THE PATIENT INFORMATION UNDER THIS SECTION IN A REASONABLY USABLE ELECTRONIC FORM, AND SHALL PROVIDE IT IN SUCH FORM IF REQUESTED BY THE PERSON MAKING THE REQUEST.

(e) The provider may impose a reasonable charge for all inspections and copies, not exceeding the REASONABLE AND ACTUAL costs incurred by such provider, provided, however, that a provider may not impose a charge for copying an original mammogram when the original has been furnished to any qualified person and provided, further, that any charge for furnishing an original mammogram pursuant to this section shall not exceed the documented costs associated therewith[. However, the reasonable charge], WHICH for paper copies shall not exceed seventy-five cents per page. A qualified person shall not be denied access to patient information solely because of inability to pay. NO CHARGE MAY BE

IMPOSED UNDER THIS SECTION FOR PROVIDING, RELEASING OR DELIVERING PATIENT INFORMATION OR COPIES OF PATIENT INFORMATION WHERE REQUESTED FOR THE PURPOSE OF SUPPORTING A CLAIM OR APPEAL FOR ANY GOVERNMENT BENEFIT OR PROGRAM.

(J) WHERE A HEALTH CARE PROVIDER PROVIDES HEALTH CARE PROFESSIONAL SERVICES AS AN EMPLOYEE OF OR UNDER CONTRACT WITH ANOTHER HEALTH CARE PROVIDER, COMPLIANCE WITH THIS SECTION SHALL BE THE RESPONSIBILITY OF THE HEALTH CARE PROVIDER THAT EMPLOYS OR CONTRACTS FOR THE SERVICES OF THE OTHER HEALTH CARE PROVIDER, UNLESS THE TERMS OF THE EMPLOYMENT OR CONTRACT EXPLICITLY PROVIDE OTHERWISE. IF A HEALTH CARE PROVIDER RECEIVES A REQUEST UNDER THIS SECTION AND COMPLIANCE IS THE RESPONSIBILITY OF A DIFFERENT HEALTH CARE PROVIDER UNDER THIS SUBDIVISION, THE HEALTH CARE PROVIDER RECEIVING THE REQUEST SHALL IMMEDIATELY INFORM THE REQUESTING PARTY TO WHICH HEALTH CARE PROVIDER THE REQUEST SHOULD BE DIRECTED.

S 4. Paragraphs 1, 3 and 4 of subdivision (a) of section 33.16 of the mental hygiene law, paragraphs 1 and 4 as amended by chapter 226 of the laws of 1991, and paragraph 3 as amended by chapter 37 of the laws of 2011, are amended to read as follows:

1. "Clinical record" means any information concerning or relating to the examination or treatment of, CONSULTING IN RELATION TO TREATMENT OF, PROVIDING DRUGS OR DEVICES, OR PROVIDING PROFESSIONAL MENTAL OR BEHAVIORAL HEALTH CARE SERVICES PERTAINING TO an identifiable patient or client maintained or possessed by a facility which has treated or is treating such patient or client, except data disclosed to a practitioner in confidence by other persons on the basis of an express condition that such data would never be disclosed to the patient or client or other persons, provided that such data has never been disclosed by the practitioner or a facility to any other person. If at any time such data is disclosed, it shall be considered clinical records for the purposes of this section. For purposes of this subdivision, "disclosure to any other person" shall not include disclosures made pursuant to section 33.13 of this article, to practitioners as part of a consultation or referral during the treatment of the patient or client, to the statewide planning and research cooperative system, or to the committee or a court pursuant to the provisions of this section or to an insurance carrier insuring, or an attorney consulted by, a facility. CLINICAL RECORD SHALL INCLUDE X-RAYS AND OTHER IMAGES, AND RECORDS OF LABORATORY TESTS INCLUDING BUT NOT LIMITED TO TESTS AND EXAMINATIONS ADMINISTERED IN CLINICAL LABORATORIES OR BLOOD BANKS AS THOSE TERMS ARE DEFINED IN SECTION FIVE HUNDRED SEVENTY-ONE OF THE PUBLIC HEALTH LAW. IT SHALL INCLUDE RECORDS OF CHARGES TO, AND PAYMENTS RECEIVED FROM, THE PATIENT OR IDENTIFIABLE SUBJECT OR ANY OTHER PARTY ON BEHALF OF THE PATIENT OR IDENTIFIABLE SUBJECT, FOR ANY SUCH SERVICES, DRUGS OR DEVICES.

3. "Facility" means a facility as defined in section 1.03 of this chapter, a program requiring approval for operation pursuant to article thirty-two of this chapter, institutions offering training in psychotherapy, psychoanalysis and related areas chartered pursuant to section two hundred sixteen of the education law, or, notwithstanding section 1.03 of this chapter, any provider of services for persons with mental illness or developmental disabilities which is operated by, under contract with, receives funding from, or is otherwise approved to render services by, a director of community services pursuant to article forty-one of this chapter or one or both of the offices, including any such provider which is exempt from the requirement for an operating certificate under article sixteen or article thirty-one of this chapter;

OR AN ENTITY THAT PROVIDES MENTAL OR BEHAVIORAL HEALTH PROFESSIONAL SERVICES BY EMPLOYING OR CONTRACTING FOR THE PROFESSIONAL SERVICES OF A MENTAL HEALTH PRACTITIONER.

4. "Mental health practitioner" or "practitioner" means a person employed by or rendering a service at a facility maintaining the clinical record WHO IS licensed under article one hundred thirty-one of the education law (MEDICINE) who practices psychiatry or a person licensed under article one hundred thirty-nine (NURSING), one hundred fifty-three [or] (PSYCHOLOGY), one hundred fifty-four (SOCIAL WORK), ONE HUNDRED SIXTY-THREE (MENTAL HEALTH PRACTITIONERS), OR ONE HUNDRED SIXTY-SEVEN (APPLIED BEHAVIOR ANALYSIS) of the education law or any other person not prohibited by law from providing mental health or developmental disabilities services.

S 5. Paragraphs 5 and 6 of subdivision (b) of section 33.16 of the mental hygiene law, paragraph 5 as amended and paragraph 6 as renumbered by chapter 233 of the laws of 1991, and paragraph 6 as amended by chapter 165 of the laws of 1991, are amended to read as follows:

5. Subject to the provisions of this subdivision and subdivision (c) of this section, upon the written request of any qualified person, a facility shall furnish to such person, within a reasonable time, a copy of any clinical record requested which the person is authorized to inspect pursuant to this subdivision. WHERE A FACILITY MAINTAINS A CLINICAL RECORD IN ELECTRONIC FORM, IT MAY PROVIDE THE RECORD UNDER THIS SECTION IN A REASONABLY USABLE ELECTRONIC FORM, AND SHALL PROVIDE IT IN SUCH FORM IF REQUESTED BY THE QUALIFIED PERSON MAKING THE REQUEST.

6. The facility may impose a reasonable charge for all inspections and copies, not exceeding the DOCUMENTED ACTUAL costs incurred by such provider[. However, the reasonable charge] WHICH for paper copies shall not exceed seventy-five cents per page. A qualified person shall not be denied access to the clinical record solely because of inability to pay. NO CHARGE MAY BE IMPOSED UNDER THIS SECTION FOR PROVIDING, RELEASING OR DELIVERING CLINICAL RECORDS OR COPIES OF CLINICAL RECORDS WHERE REQUESTED FOR THE PURPOSE OF SUPPORTING A CLAIM OR APPEAL FOR ANY GOVERNMENT BENEFIT OR PROGRAM.

S 6. Section 33.16 of the mental hygiene law is amended by adding a new subdivision (l) to read as follows:

(L) THIS SECTION SHALL NOT BE CONSTRUED TO SUPPLANT OR DIMINISH A RIGHT OR BENEFIT THAT ANY PATIENT, QUALIFIED PERSON OR PERSON ACTING ON BEHALF OF A PATIENT UNDER SECTIONS SEVENTEEN OR EIGHTEEN OF THE PUBLIC HEALTH LAW HAS UNDER EITHER SUCH SECTIONS OF THE PUBLIC HEALTH LAW.

S 7. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.