STATE OF NEW YORK

8450--A

IN SENATE

June 3, 2020

Introduced by Sens. RIVERA, GOUNARDES, JACKSON -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to the confidentiality of contact tracing information

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 21 of the public health law is amended by adding a new title 8 to read as follows:

TITLE 8

NOVEL CORONAVIRUS, COVID-19

Section 2180. Definitions.

2181. COVID-19 contact tracing; confidential.

2182. Regulations.

§ 2180. Definitions. As used in this title the following terms shall have the following meanings:

1. "Contact tracing" means case investigation and identification of contact individuals.

2. "Contact tracer" and "contact tracing entity" means an individual or entity employed by or under contract with the state, a local government, a state or local governmental entity, or an agent thereof, to conduct contact tracing, engaged in contact tracing, or receiving contact tracing information.

3. "Contact tracing information" means any information that includes or can reveal the identity of any principal individual or contact individual, as well as any COVID-19-related test results, received or collected for the purpose or in the course of contact tracing.

4. "Contact individual" means an individual who has or may have come in contact with a principal individual or who has or may have been exposed to and possibly infected with COVID-19.

5. "Principal individual" means an individual with a confirmed or probable diagnosis of COVID-19.

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

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6. "COVID-19" means infection with or the disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

7. "Immigration authority" means any entity, officer, employee, or government employee or agent thereof charged with enforcement of the federal Immigration and Nationality Act, including the United States Immigration and Customs Enforcement or United States Customs and Border Protection, or any successor legislation or entity.

8. "De-identified" means, in relation to contact tracing information, that the information cannot identify or be made to identify or be associated with a particular individual, directly or indirectly and is subject to technical safeguards and policies and procedures that prevent re-identification, whether intentionally or unintentionally, of any individual.

§ 2181. COVID-19 contact tracing; confidential. 1. All contact tracing information shall be kept confidential by any contact tracer and contact tracing entity, and may not be disclosed except as necessary to carry out contact tracing.

2. A person may only waive the confidentiality provided for by this section by a written, informed and voluntary waiver, in plain language and not part of any other document. The waiver shall state the scope and limit of the waiver. If a person lacks the capacity to make a waiver, a person authorized to consent to health care for the person, or the person's legal representative, may make the waiver.

3. A disclosure of contact tracing information authorized under this section shall be limited in scope as to the identity of any individual, the information to be disclosed, and the party to which disclosure may be made, and as necessary to achieve the purpose of the disclosure under this section, and shall not authorize re-disclosure except as explicitly authorized. However, this section does not bar disclosure of contact tracing information pertaining to and identifying a principal individual or contact individual by that individual.

4. (a) This section does not bar otherwise-lawful disclosure of contact tracing information, including aggregate contact tracing information, that is de-identified. Disclosure under this subdivision shall only be for a public health or public health research purpose.

(b) A person or entity may only use de-identified contact tracing information if the person or entity maintains technical safeguards and policies and procedures that prevent re-identification, whether intentionally or unintentionally, of any individual.

(c) Disclosure under this subdivision shall be only pursuant to approval by the commissioner (or the New York city commissioner of health and mental hygiene in the case of contact tracing information collected by or under authority of the New York city department of health and mental hygiene or the New York City health and hospitals corporation) specifying the purpose, nature and scope of the disclosure and measures to ensure that it will comply with this section and the terms of the approval.

5. No law enforcement agent or entity (other than an entity defined in section two of this chapter or an agent thereof) or immigration authority shall be a contact tracer or contact tracing entity or engage in contact tracing.

6. No contact tracer or contact tracing entity may provide contact tracing information to a law enforcement agent or entity (other than an entity defined in section two of this chapter or an agent thereof) or immigration authority. Without consent under subdivision two of this section, contact tracing information and any evidence derived therefrom

shall not be subject to or provided in response to any legal process or be admissible for any purpose in any judicial or administrative action or proceeding.

7. A contact tracer or contact tracing entity shall cause all contact tracing information it receives or collects and that is in its possession or control to be expunged or de-identified within thirty days of the date the contact tracer or contact tracing entity receives or collects it.

§ 2182. Regulations. The commissioner shall make regulations implementing this title.

§ 2. This act shall take effect immediately.