STATE OF NEW YORK

10500--B

IN ASSEMBLY

May 22, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Gottfried, Paulin, Dinowitz, Jaffee, McDonald, Galef, Simon, Solages, Bronson, Hunter, Niou, Zebrowski, Quart, Cruz, Ashby, Lentol, Weprin, Epstein, Mosley, Abinanti, Perry, Pichardo, Blake, Englebright, Seawright, Ortiz, Reyes, L. Rosenthal, Fernandez, Simotas, Cahill) -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, 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; confidentiality.

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 principal individuals and 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, engage in contact tracing, or receive contact tracing information.

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

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

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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.

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 or engaged in 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.

9. "Law enforcement agent or entity" means any governmental entity or public servant, or agent, contractor or employee thereof, authorized to investigate, prosecute, or make an arrest for a criminal or civil offense, or engaged in any such activity, but shall not mean the department, the commissioner, a health district, a county department of health, a county health commissioner, a local board of health, a local health officer, the department of health and mental hygiene of the city of New York, or the commissioner of the department of health and mental hygiene of the city of New York.

10. "Support" means resources or services provided to an individual to enable such individual to safely quarantine or isolate, including grocery, meal or pharmacy delivery, laundry services, child or elder care, pet walking, assistance with telephone, internet, or other communication services or devices, health and mental health services, legal services, provision of appropriate living space for individuals who cannot isolate or quarantine at home, and income replacement.

§ 2181. COVID-19 contact tracing; confidentiality. 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) An individual may only waive the confidentiality provided for by this section by a written, informed and voluntary waiver, in plain language and in a language understandable to the individual making the waiver, and not part of any other document. The waiver shall state the scope and limit of the waiver. If an individual lacks the capacity to make a waiver, an individual authorized to consent to health care for the individual, or the individual's legal representative, may make the waiver. However, a waiver of confidentiality is not required to be written if it is solely for the purpose of arranging or providing support for the individual who is the subject of the contact tracing information.

(b) A waiver of confidentiality under this section shall only apply for the purpose of arranging or providing support if the individual who is the subject of the contact tracing information provides voluntary informed consent to the arranging or providing of the support.

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 by the terms of the waiver under this section. However, this section does not bar disclosure of contact tracing information pertaining to and identifying a principal individual or contact individual by the individual who is identified.

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 intentional or unintentional, 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 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 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. However, such expungement or de-identification of particular contact tracing information may be postponed for up to fifteen days while the contact tracer or contact tracing entity is actively engaged in contact tracing using that information, provided that the principal individual or contact individual to whom it pertains gives voluntary informed consent.

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

§ 2. This act shall take effect immediately.