STATE OF NEW YORK

420--B

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IN ASSEMBLY

(Prefiled)

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Introduced by M. of A. BRAUNSTEIN, MOSLEY, JAFFEE, M. G. MILLER, ARROYO, GOTTFRIED, ZEBROWSKI, COOK, MONTESANO, FINCH, SEAWRIGHT, FRIEND, GALEF, HEVESI, WEPRIN, ABINANTI, L. ROSENTHAL, GRIFFIN -- Multi-Sponsored by -- M. of A. McDONOUGH, NOLAN, PALMESANO, PEOPLES-STOKES, SCHIMMINGER, SIMON -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading -- again amended on third reading, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the public health law and the civil rights law, in relation to prohibiting the making and/or broadcasting of visual images of individuals undergoing medical treatment without prior written consent

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

Section 1. The public health law is amended by adding a new section 2806-c to read as follows:

§ 2806-c. Restrictions on broadcasting of patients. 1. Every patient in a health care facility in this state shall have the right to have privacy in treatment and in caring for personal needs, including the broadcasting of the recognizable image or speech of such patient involved in a health care procedure within the confines of such facility, with the exception of broadcasting such image or speech for the purposes of advancing the health care treatment of the individual, a quality assurance program, the education or training of health care personnel, or necessary security purposes.

2. Such privacy in treatment shall include the obtaining by the health care facility of express written consent on a separate document used solely for such purpose from an individual receiving treatment in such

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

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facility prior to broadcasting the recognizable image or speech of such patient involved in such treatment. In the case of broadcasting the recognizable image or speech for education or training of health care personnel, the patient shall have the right to know of and shall have the right to refuse the broadcasting for that purpose. A person legally authorized to make health care decisions for the patient or otherwise authorized to consent may grant such consent or exercise such refusal if the patient cannot reasonably do so due to such patient's incapacity.

3. For the purposes of this section:

(a) "health care facility" shall mean a residential health care facility, general hospital, free-standing ambulatory care facility, diagnostic and/or treatment center and clinic authorized under this article, or within an ambulance with all doors closed operated by an ambulance service as defined by subdivision two of section three thousand one of this chapter or by a voluntary ambulance service as defined by subdivision three of section three thousand one of this chapter;

(b) "quality assurance" shall mean any evaluation of services provided in or by a health care facility for purposes of improvement in safety, quality or outcomes;

(c) "education or training of health care personnel" shall mean a program of education or training of health care personnel or students being educated or trained to be health care personnel, that the health care facility has authorized;

(d) "broadcasting" of an image or speech shall mean transmission by broadcast, cable, closed circuit, internet or other television or visual medium, social media, or other system by which it can be viewed in violation of the privacy rights and expectations of a patient. Provided however, that broadcasting shall not include incidental transmission of the image or speech of an individual being treated, transported or otherwise cared for or attended to by an ambulance service as defined in subdivision two of section three thousand one of this chapter or by a voluntary ambulance service as defined in subdivision three of section three thousand one of this chapter, at an ambulance response scene, public area or during delivery or admission to a health care facility, that is captured by news media, bystanders or others who do not have the written consent of such ambulance service or voluntary ambulance service.

(e) Nothing in this section shall apply where such recognizable image or speech is broadcast or conveyed as part of the news gathering process among professional journalists, newscasters or other individuals or entities, including those defined in subdivision (a) of section seventy-nine-h of the civil rights law, and their agents and legal advisers, but not broadcast to the public.

4. No health care facility, as defined in paragraph (a) of subdivision three of this section, shall incur any liability under this section for the broadcasting by a third party of the recognizable image or speech of a patient involved in a health care procedure in the facility when such image or speech was obtained by the third party without the knowledge or consent of the facility or its staff.

5. Nothing in this section shall diminish or impair any right or remedy otherwise applicable to any patient.

§ 2. Section 50-c of the civil rights law, as amended by chapter 643 of the laws of 1999, is amended to read as follows:

§ 50-c. Private right of action. 1. If the identity of the victim of an offense defined in subdivision one of section fifty-b of this article is disclosed in violation of such section, any person injured by such

disclosure may bring an action to recover damages suffered by reason of such wrongful disclosure. In any action brought under this section, the court may award reasonable attorney's fees to a prevailing plaintiff.

2. If the privacy of an individual as defined in section twenty-eight hundred six-c of the public health law regarding the right to have privacy in treatment and in caring for personal needs, including the broadcasting of the recognizable image or speech of a patient involved in a health care procedure in such a facility has been violated, such individual or his or her estate representative may bring an action to recover damages suffered by reason of such violation. In any action brought under this section, the court may award reasonable attorney's fees to a prevailing plaintiff. The cause of action created herein shall survive the death of such individual and shall only apply to violations occurring on and after the effective date of this subdivision.

3. Nothing in this section shall diminish or impair any right or remedy otherwise applicable to any patient.

§ 3. This act shall take effect immediately.