

# STATE OF NEW YORK

1693

2019-2020 Regular Sessions

## IN SENATE

January 15, 2019

Introduced by Sen. KRUEGER -- 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 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 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 in 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 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:

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

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1 (a) "health care facility" shall mean a residential health care facil-  
2 ity, general hospital, free-standing ambulatory care facility, diagnos-  
3 tic and/or treatment center and clinic authorized under this article, or  
4 ambulance operated by an ambulance service as defined by subdivision two  
5 of section three thousand one of this chapter or by a voluntary ambu-  
6 lance service as defined by subdivision three of section three thousand  
7 one of this chapter;

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

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

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

29 4. Nothing in this section shall diminish or impair any right or reme-  
30 dy otherwise applicable to any patient.

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

33 § 50-c. Private right of action. 1. If the identity of the victim of  
34 an offense defined in subdivision one of section fifty-b of this article  
35 is disclosed in violation of such section, any person injured by such  
36 disclosure may bring an action to recover damages suffered by reason of  
37 such wrongful disclosure. In any action brought under this section, the  
38 court may award reasonable ~~attorney's~~ attorneys' fees to a prevailing  
39 plaintiff.

40 2. If the privacy of an individual as defined in section twenty-eight  
41 hundred six-c of the public health law regarding the right to have  
42 privacy in treatment and in caring for personal needs, including the  
43 broadcasting of the recognizable image or speech of a patient involved  
44 in a health care procedure in such a facility has been violated, such  
45 individual or his or her estate representative may bring an action to  
46 recover damages suffered by reason of such violation. In any action  
47 brought under this section, the court may award reasonable attorneys'  
48 fees to a prevailing plaintiff. The cause of action created herein shall  
49 survive the death of such individual.

50 3. Nothing in this section shall diminish or impair any right or reme-  
51 dy otherwise applicable to any patient.

52 § 3. This act shall take effect immediately.