

STATE OF NEW YORK

8450--B

IN SENATE

June 3, 2020

Introduced by Sens. RIVERA, BAILEY, BENJAMIN, BIAGGI, CARLUCCI, GOUNARDES, HOYLMAN, JACKSON, KRUEGER, LIU, MAY, MYRIE, PERSAUD, RAMOS, SALAZAR, SEPULVEDA, SERRANO, STAVISKY, THOMAS -- 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 -- 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:

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

3 TITLE 8

4 NOVEL CORONAVIRUS, COVID-19

5 Section 2180. Definitions.

6 2181. COVID-19 contact tracing; confidentiality.

7 2182. Regulations.

8 § 2180. Definitions. As used in this title the following terms shall
9 have the following meanings:

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

12 2. "Contact tracer" and "contact tracing entity" means an individual
13 or entity employed by or under contract with the state, a local govern-
14 ment, a state or local governmental entity, or an agent thereof, to
15 conduct contact tracing, engage in contact tracing, or receive contact
16 tracing information.

17 3. "Contact tracing information" means any information that includes
18 or can reveal the identity of any principal individual or contact indi-
19 vidual, and any COVID-19-related information or test results, received
20 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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1 4. "Contact individual" means an individual who has or may have come
2 in contact with a principal individual or who has or may have been
3 exposed to and possibly infected with COVID-19.

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

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

8 7. "Immigration authority" means any entity, officer, employee, or
9 government employee or agent thereof charged with or engaged in enforce-
10 ment of the federal Immigration and Nationality Act, including the
11 United States Immigration and Customs Enforcement or United States
12 Customs and Border Protection, or any successor legislation or entity.

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

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

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

35 § 2181. COVID-19 contact tracing; confidentiality. 1. All contact
36 tracing information shall be kept confidential by any contact tracer and
37 contact tracing entity, and may not be disclosed except as necessary to
38 carry out contact tracing.

39 2. (a) An individual may only waive the confidentiality provided for
40 by this section by a written, informed and voluntary waiver, in plain
41 language and in a language understandable to the individual making the
42 waiver, and not part of any other document. The waiver shall state the
43 scope and limit of the waiver. If an individual lacks the capacity to
44 make a waiver, an individual authorized to consent to health care for
45 the individual, or the individual's legal representative, may make the
46 waiver. However, a waiver of confidentiality is not required to be
47 written if it is solely for the purpose of arranging or providing
48 support for the individual who is the subject of the contact tracing
49 information.

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

54 3. A disclosure of contact tracing information authorized under this
55 section shall be limited in scope as to the identity of any individual,
56 the information to be disclosed, and the party to which disclosure may

1 be made, and as necessary to achieve the purpose of the disclosure under
2 this section, and shall not authorize re-disclosure except as explicitly
3 authorized by the terms of the waiver under this section. However, this
4 section does not bar disclosure of contact tracing information pertain-
5 ing to and identifying a principal individual or contact individual by
6 the individual who is identified.

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

11 (b) A person or entity may only use de-identified contact tracing
12 information if the person or entity maintains technical safeguards and
13 policies and procedures that prevent re-identification, whether inten-
14 tional or unintentional, of any individual.

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

23 5. No law enforcement agent or entity or immigration authority shall
24 be a contact tracer or contact tracing entity or engage in contact trac-
25 ing.

26 6. No contact tracer or contact tracing entity may provide contact
27 tracing information to a law enforcement agent or entity or immigration
28 authority. Without consent under subdivision two of this section,
29 contact tracing information and any evidence derived therefrom shall not
30 be subject to or provided in response to any legal process or be admis-
31 sible for any purpose in any judicial or administrative action or
32 proceeding.

33 7. A contact tracer or contact tracing entity shall cause all contact
34 tracing information it receives or collects and that is in its
35 possession or control to be expunged or de-identified within thirty days
36 of the date the contact tracer or contact tracing entity receives or
37 collects it. However, such expungement or de-identification of partic-
38 ular contact tracing information may be postponed for up to fifteen days
39 while the contact tracer or contact tracing entity is actively engaged
40 in contact tracing using that information, provided that the principal
41 individual or contact individual to whom it pertains gives voluntary
42 informed consent.

43 § 2182. Regulations. The commissioner shall make regulations imple-
44 menting this title.

45 § 2. This act shall take effect immediately.