STATE OF NEW YORK

8450--C

IN SENATE

June 3, 2020

Introduced by Sens. RIVERA, BAILEY, BENJAMIN, BIAGGI, CARLUCCI, COMRIE, GIANARIS, GOUNARDES, HARCKHAM, HOYLMAN, JACKSON, KAMINSKY, KENNEDY, KRUEGER, LIU, MAY, MYRIE, PARKER, 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 -- 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; 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.

LBD16487-14-0

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. "Support" may also include support provided to other individuals for whom the individual commonly provides those resources or services.

11. "Permitted purpose" means:

(a) disclosure to appropriate health care providers or their personnel for the purpose of the clinical diagnosis, care or treatment of the principal individual or contact individual who is the subject of the information, where an emergency exists and the individual is in immediate need of medical attention and an attempt to secure consent would result in delay of treatment which would increase the risk to the individual's life or health;

(b) facilitating a legally-authorized public health-related action, in relation to a specified principal individual or contact individual, where and only to the extent necessary to protect the public health; or

(c) the investigation, prosecution or defense of a civil or legal action for a violation of this title; provided that if the use is initiated by a party other than the principal individual or contact individual who is the subject of the contact tracing information, the information must be highly material and relevant for the purpose.

§ 2181. COVID-19 contact tracing; confidentiality. 1. (a) 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 or a permitted purpose.

(b) Where a contact tracer or contact tracing entity discloses contact tracing information for a permitted purpose, the contact tracer or contact tracing entity shall make a record of the disclosure, including to whom it was made, which shall be part of the contact tracing information.

2. (a) An individual may waive the confidentiality provided for by this section, only 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, possession or use of contact tracing information, including aggregate contact tracing information, that is de-identified. Disclosure, possession or use under this subdivision shall only be for a public health or public health research purpose.

(b) A person or entity may only possess or 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, as may be required 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). The commissioner (or the New York city commissioner as the case may be) shall require safeguards, policies and procedures under this paragraph as the commissioner deems practicable.

(c) Disclosure, possession and use of de-identified contact tracing information 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, possession and use 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 trac-

ing. This subdivision does not bar an individual who is associated with a law enforcement entity or immigration authority from acting only as a principal individual or contact individual.

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. However, this subdivision does not restrict providing information, relating to a specified principal individual or contact individual, where and only to the extent necessary for a permitted purpose.

7. (a) 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) shall make regulations to require that contact tracing information possessed, used or under the control of a contact tracer or contact tracing entity shall be subject to technical safeguards and policies and procedures for storage, transmission, use and protection of the information. The regulations shall prevent possession, use or disclosure of the contact tracing information not permitted by this title, and shall be at least as or more protective than the safeguards, policies and procedures the commissioner (or the New York city commissioner as the case may be) provides for other confidential information.

(b) This paragraph applies where contact tracing information is possessed or controlled by a contact tracer or contact tracing entity that is a non-governmental individual or entity employed by or under contract with a governmental entity, or an agent thereof. Within thirty days of collecting or receiving the contact tracing information, the non-governmental individual or entity shall (i) remove information from its possession or control and deliver it to the appropriate governmental contact tracing entity, retaining no copy of it; (ii) expunge the information from its possession or control; or (iii) de-identify the information. However, the 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. The disclosure, possession and use of the de-identified contact tracing information shall be subject to subdivision four of this section.

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

§ 2. This act shall take effect immediately.