

STATE OF NEW YORK

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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

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

37 11. "Permitted purpose" means:

38 (a) disclosure to appropriate health care providers or their personnel
39 for the purpose of the clinical diagnosis, care or treatment of the
40 principal individual or contact individual who is the subject of the
41 information, where an emergency exists and the individual is in immedi-
42 ate need of medical attention and an attempt to secure consent would
43 result in delay of treatment which would increase the risk to the indi-
44 vidual's life or health;

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

48 (c) the investigation, prosecution or defense of a civil or legal
49 action for a violation of this title; provided that if the use is initi-
50 ated by a party other than the principal individual or contact individ-
51 ual who is the subject of the contact tracing information, the informa-
52 tion must be highly material and relevant for the purpose.

53 § 2181. COVID-19 contact tracing; confidentiality. 1. (a) All contact
54 tracing information shall be kept confidential by any contact tracer and
55 contact tracing entity, and may not be disclosed except as necessary to
56 carry out contact tracing or a permitted purpose.

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

6 2. (a) An individual may waive the confidentiality provided for by
7 this section, only by a written, informed and voluntary waiver, in plain
8 language and in a language understandable to the individual making the
9 waiver, and not part of any other document. The waiver shall state the
10 scope and limit of the waiver. If an individual lacks the capacity to
11 make a waiver, an individual authorized to consent to health care for
12 the individual, or the individual's legal representative, may make the
13 waiver. However, a waiver of confidentiality is not required to be
14 written if it is solely for the purpose of arranging or providing
15 support for the individual who is the subject of the contact tracing
16 information.

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

21 3. A disclosure of contact tracing information authorized under this
22 section shall be limited in scope as to the identity of any individual,
23 the information to be disclosed, and the party to which disclosure may
24 be made, and as necessary to achieve the purpose of the disclosure under
25 this section, and shall not authorize re-disclosure except as explicitly
26 authorized by the terms of the waiver under this section. However, this
27 section does not bar disclosure of contact tracing information pertain-
28 ing to and identifying a principal individual or contact individual by
29 the individual who is identified.

30 4. (a) This section does not bar otherwise-lawful disclosure,
31 possession or use of contact tracing information, including aggregate
32 contact tracing information, that is de-identified. Disclosure,
33 possession or use under this subdivision shall only be for a public
34 health or public health research purpose.

35 (b) A person or entity may only possess or use de-identified contact
36 tracing information if the person or entity maintains technical safe-
37 guards and policies and procedures that prevent re-identification,
38 whether intentional or unintentional, of any individual, as may be
39 required by the commissioner (or the New York city commissioner of
40 health and mental hygiene in the case of contact tracing information
41 collected by or under authority of the New York city department of
42 health and mental hygiene or the New York city health and hospitals
43 corporation). The commissioner (or the New York city commissioner as
44 the case may be) shall require safeguards, policies and procedures under
45 this paragraph as the commissioner deems practicable.

46 (c) Disclosure, possession and use of de-identified contact tracing
47 information under this subdivision shall be only pursuant to approval by
48 the commissioner (or the New York city commissioner of health and mental
49 hygiene in the case of contact tracing information collected by or under
50 authority of the New York city department of health and mental hygiene
51 or the New York city health and hospitals corporation) specifying the
52 purpose, nature and scope of the disclosure, possession and use and
53 measures to ensure that it will comply with this section and the terms
54 of the approval.

55 5. No law enforcement agent or entity or immigration authority shall
56 be a contact tracer or contact tracing entity or engage in contact trac-

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

4 6. No contact tracer or contact tracing entity may provide contact
5 tracing information to a law enforcement agent or entity or immigration
6 authority. Without consent under subdivision two of this section,
7 contact tracing information and any evidence derived therefrom shall not
8 be subject to or provided in response to any legal process or be admis-
9 sible for any purpose in any judicial or administrative action or
10 proceeding. However, this subdivision does not restrict providing infor-
11 mation, relating to a specified principal individual or contact individ-
12 ual, where and only to the extent necessary for a permitted purpose.

13 7. (a) The commissioner (or the New York city commissioner of health
14 and mental hygiene in the case of contact tracing information collected
15 by or under authority of the New York city department of health and
16 mental hygiene or the New York city health and hospitals corporation)
17 shall make regulations to require that contact tracing information
18 possessed, used or under the control of a contact tracer or contact
19 tracing entity shall be subject to technical safeguards and policies and
20 procedures for storage, transmission, use and protection of the informa-
21 tion. The regulations shall prevent possession, use or disclosure of
22 the contact tracing information not permitted by this title, and shall
23 be at least as or more protective than the safeguards, policies and
24 procedures the commissioner (or the New York city commissioner as the
25 case may be) provides for other confidential information.

26 (b) This paragraph applies where contact tracing information is
27 possessed or controlled by a contact tracer or contact tracing entity
28 that is a non-governmental individual or entity employed by or under
29 contract with a governmental entity, or an agent thereof. Within thirty
30 days of collecting or receiving the contact tracing information, the
31 non-governmental individual or entity shall (i) remove information from
32 its possession or control and deliver it to the appropriate governmental
33 contact tracing entity, retaining no copy of it; (ii) expunge the infor-
34 mation from its possession or control; or (iii) de-identify the informa-
35 tion. However, the expungement or de-identification of particular
36 contact tracing information may be postponed for up to fifteen days
37 while the contact tracer or contact tracing entity is actively engaged
38 in contact tracing using that information, provided that the principal
39 individual or contact individual to whom it pertains gives voluntary
40 informed consent. The disclosure, possession and use of the de-identi-
41 fied contact tracing information shall be subject to subdivision four of
42 this section.

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

45 § 2. This act shall take effect immediately.