STATE OF NEW YORK

7326

2021-2022 Regular Sessions

IN ASSEMBLY

May 5, 2021

Introduced by M. of A. GOTTFRIED, BRABENEC, CYMBROWITZ, DICKENS, ENGLEBRIGHT, GALLAGHER, HEVESI, McDONALD, MONTESANO, OTIS, PAULIN, SIMON, TAYLOR, THIELE, ZINERMAN -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to protecting the confidentiality of vaccine information

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

Section 1. Paragraph (d) of subdivision 4 of section 2168 of the public health law, as amended by section 7 of part A chapter 58 of the laws of 2009, is amended to read as follows:

(d) [~~A person, institution or agency to whom such immunization information is furnished or to whom, access to records or information has been given, shall not divulge any part thereof so as to disclose the identity of such person to whom such information or record relates, except insofar as such disclosure is necessary for the best interests of the person or other persons, consistent with the purposes of this section~~] **Registry information is not (i) subject to discovery, subpoena, warrant, or other means of legal compulsion for release to any person or entity or (ii) admissible in any civil, administrative, criminal, or family court proceeding**.

§ 2. Subdivision 11 of section 2168 of the public health law, as amended by chapter 154 of the laws of 2013, is amended to read as follows:

11. The commissioner, or in the city of New York, the commissioner of the department of health and mental hygiene, may provide registrant specific immunization and lead test records to other state or city registries and registries maintained by the Indian Health Service and tribal nations recognized by the state or the United States pursuant to a written agreement requiring that the other registry conform to national standards for maintaining the integrity of the data and will

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

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[~~not~~] only be used for purposes [~~inconsistent~~] consistent with the provisions of this section and provided that every effort shall be made to limit disclosure of personal identifying information to the minimum amount necessary to accomplish the provisions of this section.

§ 3. Section 2168 of the public health law is amended by adding a new subdivision 11-a to read as follows:

11-a. The commissioner, or in the city of New York, the commissioner of the department of health and mental hygiene, may only share registry information with the federal Centers for Disease Control and Prevention, or successor agency, for public health purposes in summary, statistical, aggregate, or other form such that no individual person can be identified.

§ 4. The public health law is amended by adding a new section 2169 to read as follows:

§ 2169. Vaccine confidentiality. 1. As used in this section, unless context requires otherwise:

(a) The term "individual" shall mean a natural person whom a vaccine navigator or vaccine provider knows or has reason to know is located in New York state.

(b) The term "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, United States Department of Homeland Security, or United States Customs and Border Protection, or agent, contractor, or employee thereof, or any successor legislation or entity.

(c) The term "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.

(d) The term "personal information" shall mean information that directly or indirectly identifies, relates to, describes, is capable of being associated with, or could reasonably be linked to a particular individual, household, or personal device. Information is reasonably linkable to an individual, household, or personal device if it can be used on its own or in combination with other reasonably available information, regardless of whether such other information is held by the vaccine navigator or vaccine provider, to identify an individual, household, or a personal device.

(e) The term "process" shall mean any action or set of actions performed on or with personal information, including but not limited to collection, access, use, retention, sharing, monetizing, analysis, creation, generation, derivation, decision-making, recording, alteration, organization, structuring, storage, disclosure, transmission, sale, licensing, disposal, destruction, de-identifying, or other handling of personal information.

(f) The term "vaccine navigator" shall mean any person that collects personal information from an individual in order to register that individual for immunization or to help that individual register for immunization.

(g) The term "vaccine provider" shall mean any person authorized by law to administer an immunization.

2. (a) Absent freely given, specific, informed, and unambiguous opt-in consent from the individual seeking immunization, or if the individual lacks the capacity to make health care decisions, an individual authorized to consent to health care for the individual or the individual's legal representative, a vaccine navigator shall not process personal information beyond what is adequate, relevant, and necessary to schedule an immunization appointment, send any appropriate reminders about existing immunization appointments or necessary booster immunization appointments, or arrange transportation to a vaccine provider.

(b) Absent freely given, specific, informed, and unambiguous opt-in consent from the individual seeking immunization, or if the individual lacks the capacity to make health care decisions, an individual authorized to consent to health care for the individual or the individual's legal representative, a vaccine provider shall not process personal information outside of a medical record protected under the federal Health Insurance Portability and Accountability Act of 1996, its implementing regulations, or section eighteen of this chapter or a record included in the statewide immunization information system, or the citywide immunization registry in the city of New York, beyond what is adequate, relevant, and necessary to schedule an immunization appointment, send any appropriate reminders about existing immunization appointments or necessary booster immunization appointments, or arrange transportation to a vaccine provider.

(c) A vaccine navigator or vaccine provider may request freely given, specific, informed, and unambiguous opt-in consent from an individual, or if the individual lacks the capacity to make health care decisions, an individual authorized to consent to health care for the individual or the individual's legal representative, to process the individual's personal information for purposes other than scheduling an immunization appointment, sending any appropriate reminders about existing immunization appointments or necessary booster immunization appointments, or arranging transportation to a vaccine provider provided that:

(i) a vaccine navigator or vaccine provider shall not refuse to schedule an immunization appointment, send any appropriate reminders about existing immunization appointments or necessary booster immunization appointments, or arrange transportation to a vaccine provider for an individual who does not approve of the processing of the individual's personal information beyond what is necessary to schedule an immunization appointment, send any appropriate reminders about existing immunization appointments or necessary booster immunization appointments, or arrange transportation to a vaccine provider;

(ii) a vaccine navigator or vaccine provider shall not relate the price or quality of scheduling an immunization appointment, sending any appropriate reminders about existing immunization appointments or necessary booster immunization appointments, or arranging transportation to a vaccine provider to the privacy protections afforded the individual, including by providing a discount or other incentive in exchange for the opt-in consent of the individual to additional processing of the individual's personal information; and

(iii) a vaccine navigator or vaccine provider shall clearly delineate what personal information is adequate, relevant, and necessary to schedule an immunization appointment, send any appropriate reminders about existing immunization appointments or necessary booster immunization appointments, or arrange transportation to a vaccine provider by clearly

and conspicuously indicating that all other requests for personal information are optional.

(d) No vaccine navigator or vaccine provider may provide personal information or otherwise make personal information accessible, directly or indirectly, to a law enforcement agent or entity or immigration authority under any circumstances. No vaccine navigator or vaccine provider may provide personal information or otherwise make personal information accessible, directly or indirectly, to any other individual or entity, except as explicitly authorized by this title. Without consent under this subdivision, personal 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.

(e) A vaccine navigator that maintains personal information shall establish appropriate administrative, technical, and physical safeguards, policies, and procedures that ensure the security of that personal information. The safeguards, policies, and procedures must ensure that personal information is encrypted and protected at least as much as or more than other confidential information in the vaccine navigator's possession. The commissioner or, in the city of New York, the commissioner of the department of health and mental hygiene shall make regulations as reasonably necessary to require that personal information possessed, used, or under the control of a vaccine navigator shall be subject to technical safeguards, policies, and procedures for storage, transmission, use, and protection of the information. The regulations shall be at least as or more protective than the safeguards, policies, and procedures the commissioner, or in the city of New York, the commissioner of health and mental hygiene, provides for other confidential information.

(f) A vaccine provider that maintains personal information outside of a medical record protected under the federal Health Insurance Portability and Accountability Act of 1996, its implementing regulations, or section eighteen of this chapter or a record included in the statewide immunization information system or the citywide immunization registry in the city of New York, shall establish appropriate administrative, technical, and physical safeguards, policies, and procedures that ensure the security of that personal information. The safeguards, policies, and procedures must ensure that personal information is encrypted and protected at least as much as or more than other confidential information in the vaccine provider's possession. The commissioner, or in the city of New York the commissioner of health and mental hygiene, shall make regulations as reasonably necessary to require that personal information possessed, used, or under the control of a vaccine provider shall be subject to technical safeguards, policies, and procedures for storage, transmission, use, and protection of the information. The regulations shall be at least as or more protective than the safeguards, policies, and procedures the commissioner or, in the city of New York, the commissioner of health and mental hygiene provides for other confidential information.

(g) Nothing in this section shall limit a vaccine navigator or vaccine provider that has a pre-existing service provider-client, provider-patient, or familial relationship or a friendship with an individual from processing that individual's personal information as previously agreed to in the course of the pre-existing relationship.

§ 5. Section 2180 of the public health law is amended by adding eight new subdivisions 12, 13, 14, 15, 16, 17, 18 and 19 to read as follows:

12. "Covered entity" means a governmental entity or a place of public accommodation, resort or amusement, as defined in section two hundred ninety-two of the executive law.

13. "Governmental entity" means a department or agency of the state or a political subdivision thereof, an individual acting for or on behalf of the state or a political subdivision thereof, or any entity regulated under the social services law.

14. "Immunity passport" means a credential, whether digital, electronic, or physical, that identifies an individual as having received a COVID-19 vaccine or a COVID-19 test result.

15. "Immunity passport provider" means a legal entity that develops, maintains, distributes, or markets immunity passports in New York state.

16. "Individual" means a natural person whom the covered entity or immunity passport provider knows or has reason to know is located in New York state.

17. "Personal information" means information that directly or indirectly identifies, relates to, describes, is capable of being associated with, or could reasonably be linked to a particular individual or personal device. Information is reasonably linkable to an individual or personal device if it can be used on its own or in combination with other reasonably available information, regardless of whether such other information is held by the covered entity or immunity passport provider, to identify an individual or a personal device.

18. "Physical immunity passport" means a credential that identifies an individual as having received a COVID-19 vaccine or a COVID-19 test result that does not rely on a digital or electronic device. Physical immunity passports include, but are not limited to, pieces of paper denoting immunity status.

19. "Process" means any action or set of actions performed on or with personal information, including but not limited to collection, access, use, retention, sharing, monetizing, analysis, creation, generation, derivation, decision-making, recording, alteration, organization, structuring, storage, disclosure, transmission, sale, licensing, disposal, destruction, de-identifying, or other handling of personal information.

§ 6. The public health law is amended by adding a new section 2183 to read as follows:

§ 2183. Immunity passports. 1. Any covered entity that requires proof of COVID-19 immunization shall permit the use of physical immunity passports. No covered entity may require digital, electronic, or smartphone-based proof of immunity.

2. Any covered entity that requires the use of an immunity passport shall delete any personal information processed about the individual to whom the immunity passport pertains within twenty-four hours of processing.

3. An immunity passport provider shall not process personal information beyond what is adequate, relevant, and necessary to identify an individual as having received a COVID-19 vaccine or a COVID-19 test result and shall not process personal information pertaining to where or when an individual uses an immunity passport.

4. No covered entity or immunity passport provider may provide personal information or otherwise make personal information accessible, directly or indirectly, to a law enforcement agent or entity or immigration authority under any circumstances. No covered entity or immunity passport provider may provide personal information or otherwise make personal information accessible, directly or indirectly, to any other individual or entity, except as explicitly authorized by this section.

Personal 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.

5. The commissioner shall make regulations as reasonably necessary to ensure that individuals who are medically contraindicated from receiving the COVID-19 vaccine are nonetheless able to access covered entities, taking into account the health risks associated with each type of covered entity and the fact that the accommodation required may vary based on the type of covered entity.

6. Nothing in this section requires a covered entity to require proof of COVID-19 immunity or to independently verify the information contained in an immunity passport.

7. Nothing in this section shall be construed to limit a covered entity's obligations under the Americans with Disabilities Act, article fifteen of the executive law, the civil rights law, or any other federal, state, or local anti-discrimination law.

8. The commissioner shall make regulations as reasonably necessary to implement this section.

§ 7. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 8. This act shall take effect immediately.