STATE OF NEW YORK

1253

2021-2022 Regular Sessions

IN ASSEMBLY

January 7, 2021

Introduced by M. of A. GOTTFRIED -- read once and referred to the Committee on Health

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. Sections 2180, 2181 and 2182 of the public health law, as added by a chapter of the laws of 2020, amending the public health law relating to the confidentiality of contact tracing information, as proposed in legislative bills numbers S.8450-C and A.10500-C, are amended to read as follows:

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

1. "Contact tracing" means **COVID-19** case investigation and identification of [~~principal~~] **case** individuals and contact individuals.

2. **(a)** "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.

(b) A contact tracer or contact tracing entity shall not include a service provider that is a non-governmental entity that is employed by or under contract with a contact tracing entity or an agent thereof, that receives, transmits, maintains, stores, or hosts contact tracing information at the direction of a contact tracer or contact tracing entity so long as such service provider's access to the information is exclusively limited to the maintenance of the information and the contact tracer or contact tracing entity has the ability to delete and manage contact tracing information as provided by this chapter, law, rules or regulations. A service provider under this paragraph shall be referred to in this title as a "designated non-governmental entity." A

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

LBD07194-01-1

service provider that does not meet the requirements of this paragraph and would otherwise be subject to paragraph (a) of this subdivision shall be a contact tracing entity.

3. "Contact tracing information" means any information that includes or can reveal the identity of any [~~principal~~] case 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.

4. "Contact individual" means an individual who has or may have come in contact with a [~~principal~~] case individual or who has or may have been exposed to and possibly infected with COVID-19.

5. "[~~Principal~~] Case 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, 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.

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 (except a designated 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. As used in this subdivision, "designated civil offense" means a civil offense or offenses designated by the commissioner (or the commissioner of the New York city department 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).

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~~] case 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 **in relation to COVID-19**; or

(c) [~~the investigation, prosecution or defense of a civil or legal action for~~] **use or disclosure of contact tracing information to pursue a legal action in relation to** a violation of this title; provided that **disclosure shall be subject to in camera review and approval by the court, and,** if the use is initiated by a party other than the [~~principal~~] **case** 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, **or designated non-governmental entity** and may not be disclosed except as necessary to carry out contact tracing or a permitted purpose. **A designated non-governmental entity may only act in relation to contact tracing information as explicitly authorized by this title.**

(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 **and when it was made**, which shall be part of the contact tracing information.

(c) Nothing in this title prohibits otherwise lawful voluntary reporting, at the discretion of the contact tracer, reasonably and in good faith: (i) to the statewide central registry under title six of article six of the social services law, adult protective services under titles one and two of article nine-B of the social services law, or the justice center for the protection of people with special needs under article eleven of the social services law; or (ii) to a governmental or non-governmental emergency reporting system (such as a "911," domestic violence or suicide prevention system) to prevent imminent risk of injury to any person.

(d) This title does not limit disclosure to or by, or possession or use by, the case individual or contact individual who is the subject of the 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. **No contact tracer, contact tracing entity or governmental or non-governmental entity may seek or act in reliance on a waiver to distribute, sell, or otherwise disclose identifiable or de-identified data to any individual or entity. Provided however, nothing in this subdivision shall prohibit distribution or disclosure that is otherwise explicitly authorized by this section.** 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**, provided the consent is informed and voluntary**.

(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 **(or, if the individual lacks the capacity to provide informed consent, an individual authorized to consent to health care for the individual, or the individual's legal representative)** 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~~] **case** individual or contact individual by the individual who is identified.

4. (a) This section does not bar otherwise-lawful disclosure, possession or use of **de-identified** 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 **or evaluation** purpose **as determined by the commissioner (or the commissioner of the New York city department 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), and shall not authorize re-disclosure or other use**.

(b) A person or entity may only **disclose,** possess or use de-identified contact tracing information if the person or entity**, and the person or entity to which it is disclosed,** 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 tracing. This subdivision does not bar an individual who is associated with a law enforcement entity or immigration authority from acting only as a [~~principal~~] **case** individual or contact individual. **This subdivision does not prevent a law enforcement agent or entity from assisting in a**

permitted use under paragraph (b) of subdivision eleven of section twenty-one hundred eighty of this title.

6. No contact tracer [~~or~~], contact tracing entity or designated non-governmental entity may provide contact tracing information to a law enforcement agent [~~or~~], entity or immigration authority, or any individual or entity other than the contact tracing entity from which it received the information, except as explicitly authorized by this title. 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~~] case individual or contact individual, where and only to the extent necessary for a permitted purpose.

7. (a) Contact tracing entities shall establish appropriate administrative, technical and physical safeguards, policies and procedures that ensure the security of contact tracing information under the entity's jurisdiction. The safeguards, policies and procedures must ensure contact tracing information is encrypted and protected at least as much as or more than other confidential information under the entity's jurisdiction. All storage of contact tracing information shall meet the requirements of this title. 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 as reasonably necessary 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~~] to 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~~] sixty 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 or a designated non-governmental entity specified by the 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 after the initial sixty day period while the contact tracer or contact tracing entity is actively engaged in contact tracing using that information, provided that the [~~principal~~] case 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~~] **as reasonably necessary to implement** this title.

§ 2. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2020, amending the public health law relating to the confidentiality of contact tracing information, as proposed in legislative bills numbers S.8450-C and A.10500-C, takes effect.