

# STATE OF NEW YORK

4983--B

2023-2024 Regular Sessions

## IN ASSEMBLY

February 27, 2023

Introduced by M. of A. L. ROSENTHAL, CUNNINGHAM -- read once and referred to the Committee on Science and Technology -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to providing for the protection of health information

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

1 Section 1. The general business law is amended by adding a new article  
2 42 to read as follows:

### ARTICLE 42

#### NEW YORK HEALTH INFORMATION PRIVACY ACT

##### Section 1100. Definitions.

6 1101. Requirements for communications to individuals.

7 1102. Lawfulness of processing regulated health information.

8 1103. Individual rights.

9 1104. Security.

10 1105. Service providers.

11 1106. Exemptions.

12 1107. Enforcement.

13 § 1100. Definitions. As used in this article, the following terms  
14 shall have the following meanings:

15 1. "Deidentified information" means information that cannot reasonably  
16 be used to infer information about, or otherwise be linked to a partic-  
17 ular individual, household, or device, provided that the regulated enti-  
18 ty or service provider that processes the information:

19 (a) Implements reasonable technical safeguards to ensure that the  
20 information cannot be associated with an individual, household, or  
21 device;

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

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1 (b) Publicly commits to process the information only as deidentified  
2 information and not attempt to reidentify the information, except that  
3 the regulated entity or service provider may attempt to reidentify the  
4 information solely for the purpose of determining whether its deiden-  
5 tification processes satisfy the requirements of this section; and

6 (c) Contractually obligates any recipient of the deidentified informa-  
7 tion to comply with all requirements of this section.

8 2. "Regulated health information" means any information that is  
9 reasonably linkable to an individual, or a device, and is collected or  
10 processed in connection with the physical or mental health of an indi-  
11 vidual. Location or payment information that relates to an individual's  
12 physical or mental health or any inference drawn or derived about an  
13 individual's physical or mental health that is reasonably linkable to an  
14 individual, or a device, shall be considered, without limitation, regu-  
15 lated health information. Regulated health information shall not include  
16 deidentified information.

17 3. "Process" or "processing" means an operation or set of operations  
18 performed on regulated health information, including but not limited to  
19 the collection, use, access, sharing, sale, monetization, analysis,  
20 retention, creation, generation, derivation, recording, organization,  
21 structuring, storage, disclosure, transmission, disposal, licensing,  
22 destruction, deletion, modification, or deidentification of regulated  
23 health information.

24 4. "Regulated entity" means any entity that (a) controls the process-  
25 ing of regulated health information of an individual who is a New York  
26 resident, (b) controls the processing of regulated health information of  
27 an individual who is physically present in New York while that individ-  
28 ual is in New York, or (c) is located in New York and controls the proc-  
29 essing of regulated health information of an individual. A regulated  
30 entity may also be a service provider depending upon the context in  
31 which regulated health information is processed.

32 5. "Sell" means to share regulated health information for monetary or  
33 other valuable consideration. Selling does not include the sharing of  
34 regulated health information for monetary or other valuable consider-  
35 ation to a third party as an asset that is part of a merger, acquisi-  
36 tion, bankruptcy, or other transaction in which the third party assumes  
37 control of all or part of the regulated entity's assets.

38 6. "Service provider" means any person or entity that processes regu-  
39 lated health information on behalf of a regulated entity. A service  
40 provider may also be a regulated entity depending upon the context in  
41 which regulated health information is processed.

42 7. "Third party" means a person or entity other than the individual,  
43 regulated entity, or service provider involved in a transaction or  
44 occurrence that involves regulated health information. A third party may  
45 also be a regulated entity or service provider depending upon the  
46 context in which regulated health information is processed.

47 § 1101. Requirements for communications to individuals. All notices,  
48 disclosures, forms, and other communications to individuals provided  
49 pursuant to this article shall comply with the following:

50 1. In general, all communications shall use plain, straightforward  
51 language, avoiding technical or legal jargon, and must be provided  
52 through an interface regularly used in conjunction with the regulated  
53 entity's product or service.

54 2. All communications shall be reasonably accessible to individuals  
55 with disabilities, including by:

56 (a) utilizing digital accessibility tools;

1 (b) for notices, complying with generally recognized industry stand-  
2 ards, including, but not limited to, the Web Content Accessibility  
3 Guidelines, version 2.1 of June 5, 2018, from the World Web Consortium,  
4 incorporated herein by reference; and

5 (c) for other communications, providing information about how an indi-  
6 vidual with a disability may access the communication in an alternative  
7 format.

8 3. All communications shall be available in the languages in which the  
9 regulated entity provides information via its website and services. Any  
10 direct communication to an individual shall be provided in the language  
11 in which the individual ordinarily interacts with the regulated entity  
12 or its service provider.

13 4. A regulated entity shall make any notice for processing pursuant to  
14 a permissible purpose, pursuant to subparagraph (ii) of paragraph (b) of  
15 subdivision one of section eleven hundred two of this article, or form  
16 for processing pursuant to authorization, pursuant to subparagraph (i)  
17 of paragraph (b) of subdivision one of section eleven hundred two of  
18 this article, publicly available on its website. If an authorization  
19 form is customized for each individual, the regulated entity may instead  
20 publicly post a sample authorization form on its website.

21 § 1102. Lawfulness of processing regulated health information. 1. In  
22 general, it shall be unlawful for a regulated entity to:

23 (a) sell an individual's regulated health information to a third  
24 party; or

25 (b) otherwise process an individual's regulated health information  
26 unless:

27 (i) The individual has provided valid authorization for such process-  
28 ing; or

29 (ii) Processing of an individual's regulated health information is  
30 strictly necessary for the purpose of:

31 (A) providing a product or service requested by such individual;

32 (B) conducting the regulated entity's internal business operations,  
33 which exclude any activities related to marketing, advertising, research  
34 and development, or providing products or services to third parties;

35 (C) protecting against malicious, fraudulent, or illegal activity;

36 (D) detecting, responding to, or preventing security incidents or  
37 threats;

38 (E) protecting the vital interests of an individual or the public  
39 interest in the area of public health;

40 (F) investigating, establishing, exercising, preparing for, or defend-  
41 ing legal claims; or

42 (G) complying with the regulated entity's legal obligations.

43 2. A regulated entity that processes regulated health information  
44 pursuant to valid authorization as required by subparagraph (i) of para-  
45 graph (b) of subdivision one of this section shall comply with the  
46 following:

47 (a) A request for authorization to process an individual's regulated  
48 health information shall:

49 (i) be made separately from any other transaction or part of a trans-  
50 action;

51 (ii) be made at least twenty-four hours after an individual creates an  
52 account or first uses the requested product or service;

53 (iii) be made in the absence of any mechanism that has the purpose or  
54 substantial effect of obscuring, subverting, or impairing an individ-  
55 ual's decision-making regarding authorization for processing;

1 (iv) if requesting authorization for multiple categories of processing  
2 activities, allow the individual to provide/withhold authorization sepa-  
3 rately for each category of processing activity; and

4 (v) not include any request for authorization for a processing activ-  
5 ity for which an individual has withheld or revoked authorization within  
6 the past calendar year.

7 (b) A valid authorization shall include:

8 (i) the types of regulated health information to be processed;

9 (ii) the nature of the processing activity;

10 (iii) the specific purposes for such processing;

11 (iv) the names where readily available, or categories of service  
12 providers and third parties to which the regulated entity may disclose  
13 the individual's regulated health information and the purposes for such  
14 disclosure, including the circumstances under which the regulated entity  
15 may disclose regulated health information to law enforcement;

16 (v) any monetary or other valuable consideration the regulated entity  
17 may receive in connection with processing the individual's regulated  
18 health information, where applicable;

19 (vi) that failing to provide authorization will not affect the indi-  
20 vidual's experience of using the regulated entity's products or  
21 services;

22 (vii) the expiration date of the authorization, which may be up to one  
23 year from the date authorization was provided;

24 (viii) the mechanism by which the individual may revoke authorization  
25 prior to expiration;

26 (ix) the mechanism by which the individual may request access to and  
27 deletion of their regulated health information;

28 (x) any other information material to an individual's decision-making  
29 regarding authorization for processing; and

30 (xi) the signature, which may be electronic, of the individual who is  
31 the subject of the regulated health information, or a parent or guardian  
32 authorized by law to take actions of legal consequence on behalf of the  
33 individual who is the subject of the regulated health information, and  
34 the date.

35 (c) (i) A regulated entity that receives authorization for processing  
36 shall provide an effective, efficient, and easy-to-use mechanism by  
37 which an individual may revoke authorization at any time through an  
38 interface regularly used in conjunction with the regulated entity's  
39 product or service.

40 (ii) Upon an individual's revocation of authorization, the regulated  
41 entity shall immediately cease all processing activities for which  
42 authorization was revoked, except to the extent necessary to comply with  
43 the regulated entity's legal obligations.

44 (iii) For individuals who have an online account with the regulated  
45 entity, the regulated entity must provide, in a conspicuous and easily  
46 accessible place within the account settings, a list of all processing  
47 activities for which the individual has provided authorization and, for  
48 each processing activity, allow the individual to revoke authorization  
49 in the same place with one motion or action.

50 (d) Upon obtaining valid authorization from an individual, the regu-  
51 lated entity shall provide that individual a copy of the authorization.  
52 The authorization shall be provided in a manner that is capable of being  
53 retained by the individual.

54 (e) The regulated entity shall limit its processing to what was clear-  
55 ly disclosed to an individual pursuant to paragraph (b) of this subdivi-

1 sion when the regulated entity received authorization from the individ-  
2 ual.

3 (f) If the regulated entity seeks to materially alter its processing  
4 activities for regulated health information collected pursuant to  
5 authorization, the regulated entity shall obtain a new authorization for  
6 the new or altered processing activity.

7 (g) Providing a product or service requested by an individual must not  
8 be made contingent on providing authorization. The regulated entity must  
9 not discriminate against an individual for withholding authorization,  
10 such as by charging different prices or rates for products or services,  
11 including through the use of discounts or other benefits, imposing  
12 penalties, or providing a different level or quality of services or  
13 goods to the individual.

14 3. A regulated entity that processes regulated health information  
15 pursuant to a permissible purpose pursuant to subparagraph (ii) of para-  
16 graph (b) of subdivision one of this section shall comply with the  
17 following:

18 (a) A regulated entity shall provide clear and conspicuous notice that  
19 describes:

20 (i) the types of regulated health information to be processed;

21 (ii) the nature of the processing activity;

22 (iii) the specific purposes for such processing;

23 (iv) the names where readily available, or categories of service  
24 providers and third parties to which the regulated entity may disclose  
25 the individual's regulated health information and the purposes for such  
26 disclosure, including the circumstances under which the regulated entity  
27 may disclose regulated health information to law enforcement; and

28 (v) the mechanism by which the individual may request access to and  
29 deletion of their regulated health information.

30 (b) If the regulated entity materially alters its processing activ-  
31 ities for regulated health information collected pursuant to a permissi-  
32 ble purpose, the regulated entity must provide a clear and conspicuous  
33 notice in plain language, separate from a privacy policy, terms of  
34 service, or similar document, that describes any material changes to the  
35 processing activities and provide the individual with an opportunity to  
36 request deletion of their regulated health information.

37 § 1103. Individual rights. 1. (a) A regulated entity shall make avail-  
38 able an effective, efficient, and easy-to-use mechanism through an  
39 interface regularly used in conjunction with the regulated entity's  
40 product or service by which an individual may request access to their  
41 regulated health information.

42 (b) Within thirty days of receiving an access request, the regulated  
43 entity shall make available a copy of all regulated health information  
44 about the individual that the regulated entity maintains or that service  
45 providers maintain on behalf of the regulated entity.

46 2. (a) A regulated entity shall make available an effective, effi-  
47 cient, and easy-to-use mechanism through an interface regularly used in  
48 conjunction with the regulated entity's product or service by which an  
49 individual may request the deletion of their regulated health informa-  
50 tion.

51 (b) An individual's deletion or cancellation of their online account  
52 shall be treated as a request to delete the individual's regulated  
53 health information.

54 (c) Within thirty days of receiving a deletion request, the regulated  
55 entity shall:

1 (i) Delete all regulated health information associated with the indi-  
2 vidual in the regulated entity's possession or control, except to the  
3 extent necessary to comply with the regulated entity's legal obli-  
4 gations; and

5 (ii) Unless it proves impossible or involves disproportionate effort  
6 that is documented in writing by the regulated entity, communicate such  
7 request to each service provider or third party that processed the indi-  
8 vidual's regulated health information in connection with a transaction  
9 involving the regulated entity occurring within one year preceding the  
10 individual's request.

11 (d) Any service provider or third party that receives notice of an  
12 individual's deletion request shall within thirty days delete all regu-  
13 lated health information associated with the individual in its  
14 possession or control, except to the extent necessary to comply with its  
15 legal obligations.

16 3. Any right set forth in this section may be exercised at any time by  
17 the individual who is the subject of the regulated health information or  
18 an agent authorized by such individual.

19 § 1104. Security. 1. In general, a regulated entity shall develop,  
20 implement, and maintain reasonable administrative, technical, and phys-  
21 ical safeguards to protect the security, confidentiality, and integrity  
22 of regulated health information.

23 2. A regulated entity must securely dispose of an individual's regu-  
24 lated health information pursuant to a publicly available retention  
25 schedule within a reasonable time, and in no event later than sixty  
26 days, after it is no longer necessary to maintain for the permissible  
27 purpose or purposes identified in the notice or for which the individual  
28 provided valid authorization.

29 § 1105. Service providers. 1. In general, any processing of regulated  
30 health information by a service provider on behalf of a regulated entity  
31 shall be governed by a written, binding agreement. Such agreement shall  
32 clearly set forth instructions for processing regulated health informa-  
33 tion, the nature and purpose of processing, the duration of processing,  
34 and the rights and obligations of both parties.

35 2. An agreement pursuant to subdivision one of this section shall  
36 require that the service provider:

37 (a) ensure that each person processing regulated health information is  
38 subject to a duty of confidentiality with respect to such information;

39 (b) protect regulated health information in a manner consistent with  
40 the requirements of this article;

41 (c) process regulated health information only when and to the extent  
42 necessary to comply with its obligations to the regulated entity;

43 (d) not combine the regulated health information which the service  
44 provider receives from or on behalf of the regulated entity with any  
45 other personal information which the service provider receives from or  
46 on behalf of another party or collects from its own relationship with  
47 individuals;

48 (e) comply with any exercises of an individual's rights under section  
49 eleven hundred three of this article upon the request of the regulated  
50 entity and notify any service providers or third parties to which it  
51 disclosed regulated health information of the request;

52 (f) delete or return all regulated health information to the regulated  
53 entity at the end of the provision of services, unless retention of the  
54 regulated health information is required by law;

55 (g) upon the reasonable request of the regulated entity, make avail-  
56 able to the regulated entity all data in its possession necessary to

1 demonstrate the service provider's compliance with the obligations in  
2 this section;

3 (h) allow, and cooperate with, reasonable assessments by the regulated  
4 entity or the regulated entity's designated assessor for purposes of  
5 evaluating compliance with the obligations of this article; alternative-  
6 ly, the service provider may arrange for a qualified and independent  
7 assessor to conduct an assessment of the processor's policies and tech-  
8 nical and organizational measures in support of the obligations under  
9 this article using an appropriate and accepted control standard or  
10 framework and assessment procedure for such assessments. The service  
11 provider shall provide a report of such assessment to the regulated  
12 entity upon request;

13 (i) a reasonable time in advance before disclosing or transferring  
14 regulated health information to any further service providers, notify  
15 the regulated entity of such a proposed disclosure or transfer, which  
16 may be in the form of a regularly updated list of further service  
17 providers that may access regulated health information; and

18 (j) engage any further service provider pursuant to a written, binding  
19 agreement that includes the contractual requirements provided in this  
20 section, containing at minimum the same obligations that the service  
21 provider has entered into with regard to regulated health information.

22 § 1106. Exemptions. Nothing in this article shall apply to:

23 1. information processed by local, state, and federal governments, and  
24 municipal corporations;

25 2. protected health information that is collected by a covered entity  
26 or business associate governed by the privacy, security, and breach  
27 notification rules issued by the United States Department of Health and  
28 Human Services, Parts 160 and 164 of Title 45 of the Code of Federal  
29 Regulations, established pursuant to the Health Insurance Portability  
30 and Accountability Act of 1996 (Public Law 104-191) and the Health  
31 Information Technology for Economic and Clinical Health Act (Public Law  
32 111-5);

33 3. any covered entity governed by the privacy, security, and breach  
34 notification rules issued by the United States Department of Health and  
35 Human Services, Parts 160 and 164 of Title 45 of the Code of Federal  
36 Regulations, established pursuant to the Health Insurance Portability  
37 and Accountability Act of 1996 (Public Law 104-191), to the extent the  
38 covered entity maintains patient information in the same manner as  
39 protected health information as described in subdivision two of this  
40 section;

41 4. information collected as part of a clinical trial subject to the  
42 Federal Policy for the Protection of Human Subjects, also known as the  
43 Common Rule, pursuant to good clinical practice guidelines issued by the  
44 International Council for Harmonisation or pursuant to human subject  
45 protection requirements of the United States Food and Drug Adminis-  
46 tration;

47 5. information processed pursuant to the federal Family Educational  
48 Rights and Privacy Act (20 U.S.C. Sec. 1232g) and its implementing regu-  
49 lations;

50 6. information processed pursuant to section two-d of the education  
51 law; and

52 7. information processed pursuant to the federal Driver's Privacy  
53 Protection Act of 1994 (18 U.S.C. Sec. 2721 et seq).

54 § 1107. Enforcement. 1. Whenever it appears to the attorney general,  
55 either upon complaint or otherwise, that any person or persons, within  
56 or outside the state, has engaged in or is about to engage in any of the

1 acts or practices stated to be unlawful under this article, the attorney  
2 general may bring an action or special proceeding in the name and on  
3 behalf of the people of the state of New York to enjoin any violation of  
4 this article, to obtain restitution of any moneys or property obtained  
5 directly or indirectly by any such violation, to obtain disgorgement of  
6 any profits obtained directly or indirectly by any such violation, to  
7 obtain civil penalties of not more than fifteen thousand dollars per  
8 violation or twenty percent of revenue obtained from New York consumers  
9 within the past fiscal year, whichever is greater, and to obtain any  
10 such other and further relief as the court may deem proper, including  
11 preliminary relief.

12 2. The remedies provided by this section shall be in addition to any  
13 other lawful remedy available.

14 3. Any action or special proceeding brought by the attorney general  
15 pursuant to this section must be commenced within six years of the date  
16 on which the attorney general became aware of the violation.

17 4. In connection with any proposed action or special proceeding under  
18 this section, the attorney general is authorized to take proof and make  
19 a determination of the relevant facts, and to issue subpoenas in accord-  
20 ance with the civil practice law and rules. The attorney general may  
21 also require such other data and information as he or she may deem rele-  
22 vant and may require written responses to questions under oath. Such  
23 power of subpoena and examination shall not abate or terminate by reason  
24 of any action or special proceeding brought by the attorney general  
25 under this article.

26 5. This section shall apply to all acts declared to be unlawful in  
27 this article, whether or not subject to any other law of this state, and  
28 shall not supersede, amend or repeal any other law of this state under  
29 which the attorney general is authorized to take any action or conduct  
30 any inquiry.

31 6. The attorney general may promulgate such rules and regulations as  
32 are necessary to effectuate and enforce the provisions of this section.

33 § 2. Severability. If any clause, sentence, paragraph, subdivision,  
34 section or part of this act shall be adjudged by any court of competent  
35 jurisdiction to be invalid, such judgment shall not affect, impair, or  
36 invalidate the remainder thereof, but shall be confined in its operation  
37 to the clause, sentence, paragraph, subdivision, section or part thereof  
38 directly involved in the controversy in which such judgment shall have  
39 been rendered. It is hereby declared to be the intent of the legislature  
40 that this act would have been enacted even if such invalid provisions  
41 had not been included herein.

42 § 3. This act shall take effect July 1, 2024.