STATE OF NEW YORK

152

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sens. GIANARIS, KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to establishing a penalty and cause of action for the intentional destruction, mutilation or significant alteration of certain medical records; and requires disclosure of metadata, audit trail, and log-in information associated with electronic medical records in certain actions

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

Section 1. Section 3126 of the civil practice law and rules, as amended by chapter 98 of the laws of 1993, is amended to read as follows:

§ 3126. Penalties for refusal to comply with order or to disclose. **(a)** If any party, or a person who at the time a deposition is taken or an examination or inspection is made is an officer, director, member, employee or agent of a party or otherwise under a party's control, refuses to obey an order for disclosure or wilfully fails to disclose information which the court finds ought to have been disclosed pursuant to this article, the court may make such orders with regard to the failure or refusal as are just, among them:

1. an order that the issues to which the information is relevant shall be deemed resolved for purposes of the action in accordance with the claims of the party obtaining the order; or

2. an order prohibiting the disobedient party from supporting or opposing designated claims or defenses, from producing in evidence designated things or items of testimony, or from introducing any evidence of the physical, mental or blood condition sought to be determined, or from using certain witnesses; or

3. an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action

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

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or any part thereof, or rendering a judgment by default against the disobedient party.

(b) If any party to a medical malpractice action, or a person who is or was an officer, director, member, employee or agent of a party or otherwise under the party's control, intentionally destroys, mutilates or significantly alters any medical record, including any metadata, audit trail or log-in information associated with any electronic records, the party or person shall be subject to a civil penalty of not less than one thousand dollars for each such act, as well as compensatory and punitive damages.

(c) Any person who has been injured because of the intentional destruction, mutilation or significant alteration of a medical record, including any metadata, audit trail or log-in information associated with any electronic records, shall have a private right of action against the person or entity responsible therefor to recover damages where such destruction, mutilation or significant alteration prevented or significantly impeded the ability of the person so injured to prove his or her claim.

(d) The provisions of this section are in addition to, but shall not supersede, any other rights or remedies available in law or equity.

§ 2. Section 3101 of the civil practice law and rules is amended by adding a new subdivision (j) to read as follows:

(j) In addition to any other matter which may be subject to disclosure, a healthcare provider must produce any metadata, audit trail, and log-in information associated with any electronic medical records of the person whose care or treatment is the subject of the action.

§ 3. This act shall take effect immediately and shall apply to any intentional destruction, mutilation or significant alteration of a medical record occurring on or after such date.