STATE OF NEW YORK

837

2023-2024 Regular Sessions

IN SENATE

January 6, 2023

Introduced by Sen. RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the public health law, in relation to protecting the confidentiality of vaccine information; and to repeal provisions of the public health law relating thereto

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

Section 1. Subdivision 11-a of section 2168 of the public health law, as added by a chapter of the laws of 2022, amending the public health law relating to protecting the confidentiality of vaccine information, as proposed in legislative bills numbers S. 6541-A and A. 7326-A, is amended 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 **maintained by the department, or in the case of the citywide immunization registry, the city of New York under the provisions of this section** 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, except that either such commissioner may disclose identifiable registrant information to the federal Centers for Disease Control and Prevention, or its successor agency, when the commissioner has determined that the disclosure is in the best interests of the registrant or will contribute to the protection of public health[~~,~~] **and** that the objective of the disclosure cannot be served by disclosure limited to de-identified information, [~~**and**~~] **or** the federal health officials have committed in writing not to redisclose to or share registrant information with any other federal agency, including but not limited to the department of homeland security, immigration and customs enforcement, customs and border protection, or any successor agency, or any law enforcement agency; provided that either such commissioner may forgo the

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

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written commitment if requiring written commitment would result in the actual withholding of federal funds.

§ 2. Paragraph (d) of subdivision 4 of section 2168 of the public health law, as amended by a chapter of the laws of 2022, amending the public health law relating to protecting the confidentiality of vaccine information, as proposed in legislative bills numbers S. 6541-A and A. 7326-A, is amended to read as follows:

(d) [~~(i) Identifiable registrant information is not (1) subject to discovery, subpoena, warrant, or other means of legal compulsion for release to any person or (2) admissible in any civil, administrative, criminal, or family court proceeding, except for the purposes of investigations and prosecutions of allegations of computer tampering or billing fraud related to vaccination records, fraudulent statements related to an individual's vaccination status, an act of violence or attempted violence occurring at the site of a vaccination provider's or vaccine navigator's business, or medical malpractice. Disclosure for these purposes shall be subject to in camera review and approval by the court and, if the use is initiated by a party other than the individual whose registry information is sought, the information must be highly material and relevant for the purpose.~~

~~(ii) Nothing in this section shall be construed to limit commissioners of local social services districts or the commissioner of the office of children and family services from accessing identifiable registrant information under paragraph (d) of subdivision eight of this section.~~] 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.

§ 3. Paragraphs (f), (g) and (i) of subdivision 1, subparagraph (iii) of paragraph (c), subparagraphs (ii) and (iv) of paragraph (d) and paragraph (e) of subdivision 2 and subdivision 3 of section 2169 of the public health law, as added by a chapter of the laws of 2022, amending the public health law relating to protecting the confidentiality of vaccine information, as proposed in legislative bills numbers S. 6541-A and A. 7326-A, are amended to read as follows:

(f) The term "personal information" shall mean information obtained from or about an individual, in connection with their registering for [~~or receiving~~] a vaccination, 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~~] when such information is held by the vaccine navigator, to identify an individual, household, or a personal device.

(g) The term "service attendant to the delivery of immunization" shall mean [~~scheduling and billing for~~] facilitating an immunization appointment, sending reminders about immunization, arranging transportation to or from a vaccine provider, or reporting to the department, the New York City department of health and mental hygiene, or other local health agency on whose behalf such vaccine navigator is performing such services.

(i) 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, provided the department, a local public health agency, or a person that administers vaccines **or their designees** are not vaccine navigators [~~if they only store vaccine recipient personal information in medical records protected under the federal Health Insurance Portability and Accountability Act of 1996, its implementing regulations, or section eighteen of this chapter~~].

(iii) 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 **unless provided in response pursuant to warrants, court-ordered subpoenas, administrative subpoenas, or grand jury subpoenas**.

(ii) A [~~person~~] **vaccine navigator** may only possess or use de-identified information pertaining to services attendant to the delivery of immunization if the [~~person~~] **vaccine navigator** 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 information collected by or under authority of the New York city department of health and mental hygiene. 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.

[~~(iv) This section does not prevent disclosure of personal information sought for the purposes of investigations and prosecutions of allegations of computer tampering or billing fraud related to vaccination records, fraudulent statements related to an individual's vaccination status, an act of violence or attempted violence occurring at the site of a vaccination provider's or vaccine navigator's business, or medical malpractice, professional discipline, or defense of any claim brought against a vaccine navigator or provider. Disclosure for these purposes shall be subject to in camera review and approval by the court and, if the use is initiated by a party other than the individual whose registry information is sought, the information must be highly material and relevant for the purpose.~~]

(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 be appropriate to the volume and nature of the personal information maintained and the size, revenue, and sophistication of the vaccine navigator and 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~~] **may** 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 must take into account the different sizes, revenues and sophistications of different vaccine navigators, as well as the volume and nature of the personal information they maintain.

3. Vaccine providers. A vaccine provider shall not delay or condition the provision of any service attendant to the delivery of immunization by inviting or requiring an individual seeking vaccination to complete an application for a customer discount card or account or share personal information that will be stored 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 for purposes other than services attendant to the delivery of immunization, or by engaging in any other activity unrelated to the provision of such a service that the commissioner designates by regulation.

§ 4. Subdivisions 13, 14, 15, 16, 17, 18 and 20 of section 2180 of the public health law, as added by a chapter of the laws of 2022, amending the public health law relating to protecting the confidentiality of vaccine information, as proposed in legislative bills numbers S. 6541-A and A. 7326-A, are REPEALED and subdivision 19 is renumbered subdivision 13.

§ 5. Section 2183 of the public health law, as added by a chapter of the laws of 2022, amending the public health law relating to protecting the confidentiality of vaccine information, as proposed in legislative bills numbers S. 6541-A and A. 7326-A, is amended 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. **Notwithstanding this section, anyone requiring an immunization passport shall accept a valid COVID-19 Vaccination Record Card allocated to COVID-19 vaccine providers by the Centers for Disease Control and Prevention for that purpose. The provisions of this section shall apply to valid COVID-19 Vaccination Record Cards allocated to COVID-19 vaccine providers by the Centers for Disease Control and Prevention.**

2. [~~Any covered entity that requires the use of an immunity passport shall delete any personal information derived from the immunity passport about the individual to whom the immunity passport pertains within twenty-four hours of receiving it, except that where a covered entity has an ongoing relationship with an individual, the covered entity may store the fact that the individual has received a COVID-19 vaccine, as well as a copy of the individual's immunity passport, provided that:~~

~~(a) the covered entity first obtains the individual's informed, affirmative, and voluntary consent to store such information, and~~

~~(b) the covered entity stores any copy of an individual's immunity passport and any personal information derived from the immunity passport as if they were subject to the confidentiality requirements of title I of the Americans with Disabilities Act 42 U.S.C. 12112(d) and its implementing regulations, 29 CFR 1630.14.~~

~~3. An immunity passport provider shall not use or disclose personal information derived from an immunity passport 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 collect, access, receive, capture, store, maintain, use, or disclose personal information pertaining to where or when an individual uses an immunity passport.~~

~~4. (a) Except as provided in this subdivision, no covered entity or immunity passport provider may:~~

~~(i) provide personal information derived from an immunity passport or otherwise make such personal information accessible, directly or indirectly, to a law enforcement agent or entity or immigration authority;~~

~~(ii) provide such personal information or otherwise make such personal information accessible, directly or indirectly, to any other individual or entity except as explicitly authorized by this section.~~

~~(b) Except as provided in this subdivision, personal information derived from an immunity passport, 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.~~

~~(c) Personal information derived from an immunity passport, and any evidence derived therefrom, may be disclosed for the purposes of investigations and prosecutions of allegations of computer tampering or fraudulent statements related to an individual's vaccination status. Disclosure for these purposes shall be subject to in camera review and approval by the court and, if the use is initiated by a party other than the individual whose personal information is sought, the information must be highly material and relevant for the purpose.~~

~~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 obtain reasonable accommodations to enable them to access the services of a covered entity, in a manner that does not impose an undue hardship on the covered entity or present a direct threat that cannot be addressed by a reasonable accommodation.~~

~~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.~~] **3.** 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.~~] **4.** Nothing in this section shall be construed to affect the practices of a health care provider, as defined in section eighteen of this chapter, a hospital or nursing home as defined in article twenty-eight of this chapter, a health practitioner as defined in section twenty-one hundred sixty-four of this chapter, a facility, as defined in section 33.13 of the mental hygiene law, or a correctional health service governed by the department of corrections and community supervision, the rules of the board of correction in the city of New York, or a county board of correction, with respect to records concerning their patients' vaccinations.

§ 6. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2022, amending the public health law relating to protecting the confidentiality of vaccine information, as proposed in legislative bills numbers S. 6541-A and A. 7326-A, takes effect.