

## **New York Legislature Approves Health Information Privacy Act (awaiting Governor approval)**

### ***Quick Tips and Need to Know***

- NY legislators approved the Health Information Privacy Act on January 22, 2025, which will require entities to obtain written consent or otherwise possess a strictly necessary need to process regulated health information ("NY HIPA").
- NY HIPA is on Governor Kathy Hochul's desk awaiting her signature for official adoption.
- NY HIPA will regulate personally identifiable consumer data related to health care.
- NY HIPA will NOT regulate PHI.
- Patients will gain new rights to access regulated health information and to request modifications of such regulated health information.

### **Current State of Affairs**

On January 22, 2025, NY legislators approved the Health Information Privacy Act which will further protect patient health information by requiring written consent or a designated necessary purpose to process an individual's health information. The new regulation, colloquially referred to as NY HIPA, is awaiting Governor Kathy Hochul's signature for official adoption. If signed by the governor, NY HIPA will alter the way entities use, process, and store private patient information.

The legislation will be applicable to "Regulated entities" which are defined as "any entity that (a) controls the processing of regulated health information of an individual who is a New York resident, (b) controls the processing of regulated health information of an individual who is physically present in New York while that individual is in New York, or (c) is located in New York and controls the processing of regulated health information. A regulated entity may also be a service provider depending upon the context in which regulated health information is processed." [N.Y. Legislative Assembly. A. 2141. Reg. Sess. 2025-2026 \(2025\). New York Health Information Privacy Act.](#)

### **Exemptions**

Notably, NY legislators have established exemptions to the applicability of NY HIPA; which provides that, NY HIPA shall not apply to:

- (1) information processed by government agencies (including local, state, and federal governments and municipal corporations),
- (2) PHI collected by entities covered under HIPAA and their business associates,
- (3) covered entities governed by HIPAA who maintain patient information in the same manner as protected health information, and

- (4) information collected as part of a clinical trial that is subject to Federal Policy for the Protection of Human Subjects. [§1126, N.Y. Legislative Assembly. A. 2141.](#)

### **Failure to Comply**

Failure to comply with NY HIPA shall give the NY attorney general the right to bring action or special proceedings against the non-compliant entity; such actions may result in enjoinder of activities deemed violative of NY HIPA, restitution demands for money or property obtained directly or indirectly by violation of NY HIPA, and other measures approved by a court of law. [§1127, N.Y. Legislative Assembly. A. 2141.](#)

### **WHAT WILL BE ALLOWED UNDER THE NEW RULE WHEN IT GOES INTO EFFECT?**

The new rule can be broken down into 3 key components: (i) Communications, (ii) Data, and (iii) Process.

#### **I. Communications.**

NY HIPA will require regulated entities to issue patient communications in plain, straightforward language, avoiding technical or legal jargon, via interfaces regularly used by individuals in connection with the regulated entity's product or service, using digital accessibility tools for patients with disabilities, and providing information about alternative formats to access the communications for patients with disabilities.

#### **II. Data.**

NY HIPA will regulate any patient information collected by a regulated entity in connection to an individual's physical or mental health that may be reasonably linked to an individual or a device. The new regulation will also govern location or payment information that relates to an individual's physical or mental health and "any inference drawn or derived about an individual's physical or mental health" that may be reasonably linked to an individual, or a device." [§1120\(2\), N.Y. Legislative Assembly. A. 2141.](#)

#### **III. Process.**

- a. **Prohibitions.** NY HIPA will generally prohibit regulated entities from selling an individual's regulated health information to a third party and/ or processing an individual's regulated health information in any way unless the Regulated entity has obtained valid authorization or the processing of regulated health information is strictly necessary to achieve a permissible purpose, as outlined by the new rule.

- b. **Use of Data.** Regulated entities may process an individual's health information only if the individual has provided authorization to process the information OR the processing of such information is strictly necessary for the permissible purposes aforementioned.
- c. **Technical and physical safeguards.** Regulated entities will be required to maintain written binding agreements with any service providers which the regulated entity employs to deliver its services. Such agreements must specifically outline how data shall be processed, the nature and purpose of processing, and the duration of such processing. Regulated entities will also be required to maintain reasonable administrative, technical, and physical safeguards to protect regulated health information from unauthorized access.

**IMPACT ON YOU - IS THIS RULE IN EFFECT?**

No. NY HIPA is currently awaiting official approval by Governor Kathy Hochul. For the time being, regulated entities should continue to adhere to HIPAA standards where applicable.

For more information on how the new regulation may affect your business or how to best prepare for compliance, please contact Matthew Shatzkes, [Matthew@bochner.law](mailto:Matthew@bochner.law), Jonathan Rogoff, [Jonathan@bochner.law](mailto:Jonathan@bochner.law), or Chase Howard, [C.howard@bochner.law](mailto:C.howard@bochner.law).