

MEDICAL SOCIETY
of the
STATE OF NEW YORK

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Division of Governmental Affairs

MEMORANDUM IN OPPOSITION

IN ASSEMBLY RULES COMMITTEE

A.5635-A (DENDEKKER)

PASSED SENATE

S.5575-A (THOMAS)

AN ACT to amend the general business law and the state technology law, in relation to notification of a security breach

This measure would amend the General Business Law and the State Technology Law to broaden the scope and notification requirements outlined in the state's Stop Hacks and Improve Electronic Data Security Act (SHIELD Act), to include protected health information maintained by "covered entities" as defined by the Federal Health Insurance Portability and Accountability Act (HIPAA). **Because this bill would inadvertently create confusion and additional administrative burdens for physicians while failing to provide additional protections for consumers and their health information, MSSNY opposes this measure and urges that it be defeated.**

There are already national standards around protection of medical records and other personal health information (PHI). These standards are contained within the HIPAA Privacy Rule, which is enforced by the United States Department of Health and Human Services (HHS). Upon detection of a data breach, covered entities are required to conduct a risk assessment in order to determine if any other PHI may have been compromised. These requirements serve as a guideline for covered entities to utilize upon detection of a breach.

The details of this legislation outline protocols that are similar to those outlined by HHS, but are different enough to cause confusion. Further, these new protocols do not necessarily improve upon those that are already in effect. This could likely serve to delay or obfuscate how physicians must react in the event of a data breach.

Additionally, under current law, if a covered entity is found to have violated the rules outlined within HIPAA, the New York State Attorney General is authorized to bring action upon the violating covered entities. This proposed legislation will provide an additional, duplicative avenue for the Attorney General to further pursue legal action. This would subject physicians to "double jeopardy" and would further worsen the already enormously difficult practice environment for physicians in New York State.

For all of the reasons stated above, we urge that this measure be defeated.

Respectfully submitted,

6/7/19

MAA - oppose

MSSNY DIVISION OF GOVERNMENTAL AFFAIRS