

# STATE OF NEW YORK

4937

2019-2020 Regular Sessions

## IN SENATE

March 29, 2019

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

AN ACT to amend the insurance law and the public health law, in relation to establishing a health care disparities data collection system

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

1 Section 1. Subsections (d) and (e) of section 210 of the insurance  
2 law, subsection (d) as amended by chapter 455 of the laws of 2018 and  
3 subsection (e) as added by chapter 579 of the laws of 1998, are amended  
4 to read as follows:

5 (d) Beginning no later than September first of the year following the  
6 effective date of the rules and regulations establishing the health care  
7 disparities data collection system, pursuant to title three-A of article  
8 two of the public health law, and on September first of the preceding  
9 year if practicable, in addition to the information required in  
10 subsections (a), (b) and (c) of this section, the superintendent shall  
11 include in such guide and selection of the data applicable to each  
12 insurer or entity from the health care disparities data collection  
13 system. Such data shall include data collected or compiled in regard to  
14 health care quality and health outcomes pursuant to section two thousand  
15 nine hundred ninety-five-c of the public health law or other data that  
16 is generally recognized as authoritative and reliable.

17 (e) Health insurers and entities certified pursuant to article forty-  
18 four of the public health law shall provide annually to the superinten-  
19 dent and the commissioner of health, and the commissioner of health  
20 shall provide to the superintendent, all of the information necessary  
21 for the superintendent to produce the annual consumer guide, including  
22 the mental health and substance use disorder parity report, provided  
23 that this requirement shall not apply to information provided for in  
24 subsection (d) of this section if the superintendent already possesses  
25 such information as part of the data collection system provided for in

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

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title three-A of article two of the public health law. In compiling the guide, the superintendent shall make every effort to ensure that the information is presented in a clear, understandable fashion which facilitates comparisons among individual insurers and entities, and in a format which lends itself to the widest possible distribution to consumers. The superintendent shall either include the information from the annual consumer guide in the consumer shopping guide required by subsection (a) of section four thousand three hundred twenty-three of this chapter or combine the two guides as long as consumers in the individual market are provided with the information required by subsection (a) of section four thousand three hundred twenty-three of this chapter.

~~(e)~~ (f) The superintendent shall contract with a national organization for the purposes of drafting and designing the guide, including the preparation of relevant explanatory material. Such organization shall have actual experience in preparing a similar guide for at least one other state. The superintendent, in consultation with the commissioner of health, may also contract with one or more national organizations to assist such commissioner in the collection of data and the analysis and auditing of the clinical measurers. Such organizations shall consult periodically with associations representing health insurers and health maintenance organizations as well as with consumer representatives in New York in preparing the consumer guide. In regard to information added to the consumer guide or guides pursuant to subsection (d) of this section, the data selected as well as the format shall be determined by the superintendent in consultation with the commissioner of health, with consideration given to the views expressed by stakeholders in the review and comment process held pursuant to subdivision eleven of section two hundred forty-seven of the public health law.

§ 2. Subsection (a) of section 4323 of the insurance law, as amended by chapter 1 of the laws of 1999, is amended to read as follows:

(a) All health maintenance organizations issued a certificate of authority under article forty-four of the public health law or licensed under this article shall prepare, in conjunction with the superintendent, and shall participate in and share the cost of the publication and dissemination of a consumer's shopping guide for standardized individual health plans issued pursuant to sections four thousand three hundred twenty-one and four thousand three hundred twenty-two of this article and a separate consumer shopping guide for standardized qualifying individual health insurance contracts and standardized qualifying group health insurance contracts issued pursuant to section four thousand three hundred twenty-six of this article. The consumer's shopping guides shall be published annually and shall include the names, addresses and telephone numbers of all health maintenance organizations offering such coverage as well as a description of the plan design and premiums in such a manner that facilitates consumer comparison. Such consumer guides shall also contain, in a manner that facilitates consumer comparison, a selection of the data applicable to each such health maintenance organization from the health care disparities data collection system established under title three-A of article two of the public health law. The data selected as well as the format shall be determined by the superintendent in consultation with the commissioner of health, with consideration given to the views expressed by stakeholders in the review and comment process held pursuant to subdivision eleven of section two hundred forty-seven of the public health law.

§ 3. Subdivision 1 of section 206 of the public health law is amended by adding a new paragraph (w) to read as follows:

1 (w) establish, administer and enforce the health care disparities data  
2 collection system established under title three-A of this article.

3 § 4. Article 2 of the public health law is amended by adding a new  
4 title 3-A to read as follows:

5 TITLE III-A

6 HEALTH CARE DISPARITIES DATA COLLECTION SYSTEM

7 Section 245. Legislative intent.

8 246. Definitions.

9 247. Establishment of health care disparities data collection  
10 system.

11 248. Dissemination of health care disparities data to the  
12 public.

13 249. Enforcement.

14 § 245. Legislative intent. The legislature finds and declares that  
15 substantial disparities exist as to health care outcomes based on race,  
16 ethnicity, sex, primary language, disability status, and sexual orien-  
17 tation in this state and in the nation. The intent of this title is to  
18 establish a uniform data health care disparities data collection system  
19 in this state which will enable health care consumers to be fully  
20 informed as to the record of health plans and health care institutions  
21 in addressing disparities based on these factors in order to make  
22 informed health care choices and for state policymakers to address  
23 disparities. The data collection system established under this title  
24 shall incorporate the disparities data collected under the patient  
25 protection and affordable care act, existing state and federal laws and  
26 regulations, and the additional requirements established under this  
27 title. It is further the intent of this title that the department assem-  
28 ble health disparities data from all state and federal agencies that  
29 presently collect such data or that will be required to collect it in  
30 the future and compile this data in a format that is easily accessible  
31 and available to the public at no charge.

32 § 246. Definitions. The following words and phrases, as used in this  
33 title, shall have the following meanings: 1. "Article twenty-eight  
34 facility" means any entity regulated under article twenty-eight of this  
35 chapter, including a hospital, nursing home, or residential health care  
36 facility.

37 2. "Data provider" means an article twenty-eight facility defined  
38 pursuant to subdivision one of this section or a health insurer defined  
39 pursuant to subdivision four of this section.

40 3. "Health care disparities data collection system" or "data  
41 collection system" means the collection of information in the form  
42 established in this title.

43 4. "Health insurer" means a health maintenance organization issued a  
44 certificate of authority under article forty-four of this chapter, an  
45 entity licensed under article forty-three or forty-four of the insurance  
46 law, or a person, firm or corporation providing health insurance poli-  
47 cies under article thirty-two of the insurance law. Such term shall  
48 include a public insurance program.

49 5. "Patient protection and affordable care act" or "affordable care  
50 act" means public law 111-148 and public law 111-152, as such laws may  
51 from time to time be amended.

52 6. "Public insurance program" includes an approved organization pursu-  
53 ant to title one-A of article twenty-five of this chapter and a partic-  
54 ipant in the program created by section four thousand three hundred  
55 twenty-six of the insurance law. Such term shall also include medical

1 assistance for needy persons pursuant to title eleven of article five of  
2 the social services law.

3 7. "Race and ethnicity" means all racial categories compiled by the  
4 United States census, provided that the "Asian" racial category shall be  
5 broken down further into the subcategories designated by the census,  
6 including "Asian Indian," "Chinese," "Filipino," "Japanese," "Korean,"  
7 "Vietnamese," and "other Asian."

8 8. "Retention rate" means the percentage of those enrolled in a public  
9 insurance program that are asked to renew or recertify and do renew or  
10 recertify as of two months after the expiration of their previous health  
11 insurance coverage.

12 9. "Take up rate" means the percentage of those eligible for a public  
13 insurance program that enroll in the program.

14 § 247. Establishment of health care disparities data collection  
15 system. 1. The department shall establish by rulemaking a health care  
16 disparities data collection system. Once established, the data included  
17 in such system shall be made available to the public under the terms  
18 established in this title.

19 2. All data providers shall be required to furnish the data mandated  
20 to be submitted under subdivision three of this section and any other  
21 data which the department shall prescribe, and otherwise participate in  
22 the health care disparities collection system established under this  
23 title.

24 3. The data collection system shall include at least the following  
25 data sets disaggregated by race and ethnicity, sex, primary language,  
26 disability status, and sexual orientation:

27 a. in the case of health insurers, the number of subscribers, covered  
28 persons (including spouses and children in the case of family coverage),  
29 and applicants;

30 b. in the case of article twenty-eight facilities, the number of  
31 patients and data concerning health care quality and health outcomes  
32 collected and/or disseminated pursuant to section two thousand nine  
33 hundred ninety-five-b of this chapter, and/or any other data in regard  
34 to health care quality and health outcomes selected by the department  
35 that is generally recognized as authoritative and reliable;

36 c. in the case of public insurance programs, take up rates and  
37 retention rates;

38 d. data collected or compiled pursuant to section two thousand nine  
39 hundred ninety-five-c of this chapter;

40 e. any data in addition to the data referred to in paragraphs b, c and  
41 d of this subdivision in regard to health care quality and outcomes  
42 which is required to be disclosed or furnished to any state agency by  
43 any provision of law, that is already disaggregated by race and/or  
44 ethnicity, sex, primary language, disability status, and/or sexual  
45 orientation, or for which it is practicable to disaggregate such data by  
46 such factors;

47 f. any data that is required to be reported in regard to applicants,  
48 recipients or participants under title one of the patient protection and  
49 affordable care act (42 U.S.C. 300k) and its implementing regulations,  
50 as such regulations may from time to time be amended; and

51 g. any other data or data methodology that the department determines  
52 would meet the goals of this title, including data produced or collected  
53 by the federal government.

54 4. Unless the context clearly indicates otherwise, for the purposes of  
55 paragraph f of subdivision three of this section, the terms "applicant,"  
56 "recipient" or "participant" shall have the same meaning as such terms

1 are given in the affordable care act and its implementing regulations,  
2 as such act and regulations shall from time to time be amended.

3 5. The department shall require data providers to update at least  
4 annually any data that is furnished under subdivision three of this  
5 section. Notwithstanding the preceding sentence, for any data collected  
6 pursuant to any other provision of law which requires updating more  
7 frequently than annually, the frequency provided for in such provision  
8 shall apply.

9 6. Any state agency, including any health benefit exchange or  
10 exchanges created in the state under the affordable care act which  
11 obtains or possesses data which is subject to this title shall be  
12 required to furnish such data to the department upon request, in the  
13 format and manner requested by the department. Such agency or entity  
14 shall also be required to cooperate with the department in the estab-  
15 lishment and maintenance of the data collection system.

16 7. a. The department is authorized to enter into any agreement with  
17 the federal department of health and human services or any other entity  
18 that is necessary to obtain the data obtained by the federal department  
19 of health and human services from any federally conducted or supported  
20 health care or public health program, activity or survey pursuant to  
21 title XXXI of the affordable care act (42 U.S.C. 300k) and its imple-  
22 menting regulations for inclusion in the data collection system.

23 b. The commissioner is authorized to contract with one or more enti-  
24 ties to operate any part of the health care disparities data collection  
25 system, and to accept grants and enter into contracts as may be neces-  
26 sary to provide funding for such data collection system.

27 8. The department shall prescribe forms or questionnaires for the  
28 collection of data from data providers that are necessary for the data  
29 collection system, along with appropriate instructions for persons  
30 completing the form or questionnaire. Notwithstanding the preceding  
31 sentence, the department shall be authorized to use means other than  
32 such form or questionnaire if data needed for the data collection system  
33 is otherwise reasonably obtainable by other means, including from the  
34 department of health and human services pursuant to the affordable care  
35 act. In order to reduce the costs or administrative burdens on data  
36 providers, patients, applicants, or other persons, the department may  
37 alternatively include questions eliciting the data mandated by this  
38 title on a questionnaire or form developed for purposes other than spec-  
39 ified in this title.

40 9. Unless required by any other provision of law, it shall be volun-  
41 tary for any patient, applicant or any other person receiving or seeking  
42 services from a data provider to provide information in regard to their  
43 race, ethnicity, sex, primary language, disability status, or sexual  
44 orientation, and no patient, applicant or any other such person shall be  
45 denied services or in any way discriminated against in the receipt of  
46 services for failure to answer any such question. The department shall  
47 include a statement explaining that the information requested is volun-  
48 tary in all questionnaires or forms provided for in subdivision eight of  
49 this section.

50 10. In administering this title, the department shall seek to avoid  
51 duplicative requirements on data providers, state agencies, and state  
52 entities, so long as the methodology selected meets the goals of this  
53 title.

54 11. Stakeholders selected by the commissioner, including health care  
55 consumer organizations, organizations that represent racial and ethnic  
56 minorities, women, those whose first language is not English, people



1 with disabilities, and gay and lesbian data providers, as well as the  
2 superintendent of financial services, shall be provided with the oppor-  
3 tunity to review and comment on the methodology used to comply with this  
4 title, including collection methods, analysis, formatting, and methods  
5 and means for release and dissemination. Such opportunity to review and  
6 comment shall include, but not be limited to, whether the data is  
7 formatted in a manner so as to enable consumers to make informed choices  
8 of health insurers and article twenty-eight facilities and the usability  
9 of the website under section two hundred forty-eight of this title. The  
10 opportunity for review and comment shall include at least one meeting of  
11 such stakeholders prior to the development of the regulations promulgat-  
12 ed pursuant to this title, and at least one meeting annually thereafter  
13 so that modifications to the data collection system may be considered by  
14 the department. The department shall report the results of such review  
15 and comment process to the superintendent of financial services.

16 § 248. Dissemination of health care disparities data to the public. 1.  
17 As early as practicable after the receipt by the department of any data  
18 which is a component of the data collection system and in no case longer  
19 than ninety days after receipt, the department shall post such data on a  
20 website maintained by the department which is easily accessible to the  
21 public and downloadable using a spreadsheet program used by substantial  
22 numbers of the general public that permits manipulation of the data  
23 after downloading. The department shall ensure that the data is  
24 displayed in a clear format which is easily understandable, and which  
25 facilitates consumer comparison in such a manner so as to enable consum-  
26 ers to make informed choices of health insurers or article twenty-eight  
27 facilities. The website shall also include easily understandable  
28 instructions on how to access the data, and a glossary of the terms  
29 used. The data shall be made available to the public on the website at  
30 no charge.

31 2. a. The department shall compile the data collected under this title  
32 and post it on the website on a statewide basis and also in a form that  
33 is disaggregated by group factors. In addition, such data collected  
34 shall be further disaggregated on a county and an industry basis,  
35 provided that for any city with a population of one million residents or  
36 more, such data shall also be further disaggregated on a citywide basis.  
37 The department shall consider the feasibility of including other methods  
38 of presenting the data other than that as mandated in this title that  
39 might promote the goals of this title of helping consumers make informed  
40 health care choices and state policymakers in addressing disparities.

41 b. For the purposes of paragraph a of this subdivision:

42 i. to "compile the data collected" means to calculate the total number  
43 of patients, subscribers, applicants or other persons receiving or  
44 applying for services, as applicable, and the percentage of the total  
45 for each data element;

46 ii. to disaggregate by "group factors" means by race and ethnicity,  
47 sex, primary language, disability status, and sexual orientation; and

48 iii. to disaggregate by "industry" means to disaggregate the data into  
49 at least the following categories: general hospitals, nursing homes and  
50 residential care facilities in the case of article twenty-eight facili-  
51 ties, and commercial insurers, health maintenance organizations, and  
52 public insurance programs in the case of health insurers. In the case of  
53 public insurance programs, the data shall also be broken down further,  
54 into the following categories: all approved organizations pursuant to  
55 title one-A of article twenty-five of this chapter, all participants in  
56 the program created by section four thousand three hundred twenty-six of

1 the insurance law, and all data in regard to providing medical assist-  
2 ance for needy persons pursuant to title eleven of article five of the  
3 social services law.

4 3. Notwithstanding any other provision of state or federal law, the  
5 department shall restrict dissemination of any data subject to this  
6 title if such dissemination would reveal any data as to any individual  
7 consumer, including but not limited to his or her race and/or ethnicity,  
8 primary language, disability status, or sexual orientation.

9 4. For all data compiled by the department pursuant to section two  
10 hundred forty-seven of this title or disseminated pursuant to this  
11 section, data in regard to the Asian racial category shall be compiled  
12 and disseminated as to all Asians, and also for the subcategories of  
13 Asians provided for in subdivision seven of section two hundred forty-  
14 six of this title. Hispanics shall be listed both under their race, and  
15 separate data shall be compiled and disseminated for Hispanics of all  
16 racess.

17 § 249. Enforcement. In addition to the penalties otherwise provided  
18 under this chapter, any violation of this title by an authorized insur-  
19 er, representative of the insurer, or any other person or entity  
20 licensed, certified, registered, or authorized pursuant to the insurance  
21 law, the superintendent of financial services shall be authorized to  
22 seek the remedies provided in section one hundred nine of the insurance  
23 law. Nothing in this title shall in any way contravene or limit the  
24 rights or remedies that are otherwise available to a state agency or a  
25 consumer under any other provision of law.

26 § 5. This act shall take effect three months after the effective date  
27 of regulations implementing Title XXXI of the patient protection and  
28 affordable care act (42 U.S.C. 300k) or July 1, 2019, whichever is  
29 later; provided, however that effective immediately, the addition,  
30 amendment and/or repeal of any rule or regulation necessary for the  
31 implementation of this act on its effective date are authorized and  
32 directed to be made and completed on or before such effective date, and  
33 provided further, that any state agency may gather information or take  
34 any other action necessary for the implementation of this act on its  
35 effective date; provided, further, however, that the commissioner of  
36 health shall notify the legislative bill drafting commission upon the  
37 occurrence of the issuance of the regulations implementing Title XXXI of  
38 the patient protection and affordable care act in order that the commis-  
39 sion may maintain an accurate and timely effective data base of the  
40 official text of the laws of the state of New York in furtherance of  
41 effectuating the provisions of section 44 of the legislative law and  
42 section 70-b of the public officers law.