

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

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

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

31 (a) All health maintenance organizations issued a certificate of
32 authority under article forty-four of the public health law or licensed
33 under this article shall prepare, in conjunction with the superinten-
34 dent, and shall participate in and share the cost of the publication and
35 dissemination of a consumer's shopping guide for standardized individual
36 health plans issued pursuant to sections four thousand three hundred
37 twenty-one and four thousand three hundred twenty-two of this article
38 and a separate consumer shopping guide for standardized qualifying indi-
39 vidual health insurance contracts and standardized qualifying group
40 health insurance contracts issued pursuant to section four thousand
41 three hundred twenty-six of this article. The consumer's shopping guides
42 shall be published annually and shall include the names, addresses and
43 telephone numbers of all health maintenance organizations offering such
44 coverage as well as a description of the plan design and premiums in
45 such a manner that facilitates consumer comparison. Such consumer guides
46 shall also contain, in a manner that facilitates consumer comparison, a
47 selection of the data applicable to each such health maintenance organ-
48 ization from the health care disparities data collection system estab-
49 lished under title three-A of article two of the public health law. The
50 data selected as well as the format shall be determined by the super-
51 intendent in consultation with the commissioner of health, with consid-
52 eration given to the views expressed by stakeholders in the review and
53 comment process held pursuant to subdivision eleven of section two
54 hundred forty-seven of the public health law.

55 § 3. Subdivision 1 of section 206 of the public health law is amended
56 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.