STATE OF NEW YORK

2626

2021-2022 Regular Sessions

IN SENATE

January 22, 2021

Introduced by Sens. SANDERS, RIVERA -- 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:

Section 1. Subsections (d) and (e) of section 210 of the insurance law, subsection (d) as amended by chapter 207 of the laws of 2019 and subsection (e) as added by chapter 579 of the laws of 1998, are amended to read as follows:

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

(e) Health insurers and entities certified pursuant to article forty-four of the public health law shall provide annually to the superintendent and the commissioner of health, and the commissioner of health shall provide to the superintendent, all of the information necessary for the superintendent to produce the annual consumer guide**, provided that this requirement shall not apply to information provided for in subsection (d) of this section if the superintendent already possesses such information as part of the data collection system provided for in title three-A of article two of the public health law**. In compiling the

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

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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:

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

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

TITLE III-A

HEALTH CARE DISPARITIES DATA COLLECTION SYSTEM

Section 245. Legislative intent.
246. Definitions.
247. Establishment of health care disparities data collection system.
248. Dissemination of health care disparities data to the public.
249. Enforcement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. The commissioner is authorized to contract with one or more entities to operate any part of the health care disparities data collection system, and to accept grants and enter into contracts as may be necessary to provide funding for such data collection system.

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

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

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

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

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

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

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

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

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

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

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

the insurance law, and all data in regard to providing medical assistance for needy persons pursuant to title eleven of article five of the social services law.

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

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

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

§ 5. This act shall take effect three months after the effective date of regulations implementing Title XXXI of the patient protection and affordable care act (42 U.S.C. 300k) or July 1, 2021, whichever is later; provided, however that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date, and provided further, that any state agency may gather information or take any other action necessary for the implementation of this act on its effective date; provided, further, however, that the commissioner of health shall notify the legislative bill drafting commission upon the occurrence of the issuance of the regulations implementing Title XXXI of the patient protection and affordable care act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.