

## Statewide Planning and Research Cooperative System (SPARCS)

Effective date: 9/3/14

Pursuant to the authority vested in the Public Health and Health Planning Council and subject to approval by the Commissioner of Health by Section 2816 of the Public Health Law, Section 400.18 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed and a new Section 400.18 is added to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

A new title of Section 400.18 is added and a new Section 400.18 is added to read as follows:

10 NYCRR § 400.18 Statewide Planning and Research Cooperative System (SPARCS).

(a) Definitions. For the purposes of this section, these terms shall have the following meanings:

(1) Health care facilities shall mean facilities licensed under Article 28 of the Public Health Law.

(2) Identifying data elements shall mean those SPARCS and Patient Review Instrument (PRI) data elements that, if disclosed without any restrictions on use or re-disclosure would constitute an unwarranted invasion of personal privacy. A list of identifying data elements shall be specified by the Commissioner and will be made available publicly.

(3) Inpatient hospitalization data shall mean SPARCS data submitted by hospitals for patients receiving inpatient services at a general hospital that is licensed under Article 28 of the Public Health Law and that provides inpatient medical services.

(4) Outpatient data shall mean emergency department data, ambulatory surgery data, and outpatient services data.

(i) Emergency department data shall mean SPARCS data submitted by a facility licensed to provide emergency department services under Article 28 of the Public Health Law.

(ii) Ambulatory surgery data shall mean SPARCS data submitted by a facility licensed to provide ambulatory surgery services under Article 28 of the Public Health Law.

(iii) Outpatient services data shall mean all data submitted by licensed Article 28 facilities excluding inpatient hospitalization data, emergency department data, and ambulatory surgery data.

(5) Patient Review Instrument (PRI) data shall mean the data submitted on PRI forms by residential health care facilities, pursuant to section 86-2.30 of this Title.

(6) SPARCS Administrator shall mean a person in the SPARCS program designated by the Commissioner to act as administrator for all SPARCS activities.

(7) SPARCS data shall mean the data collected by the Commissioner under section 2816 of the Public Health Law and this section, including inpatient hospitalization data and outpatient data.

(8) SPARCS program shall mean the program in the New York State Department of Health (NYSDOH) that collects and maintains SPARCS data and discloses SPARCS and Patient Review Instrument (PRI) data.

(b) Reporting SPARCS data.

(1) Health care facilities shall report data as follows:

(i) Health care facilities shall submit, or cause to have submitted, SPARCS data in an electronic, computer-readable format through NYSDOH's secure electronic network according to the requirements of section 400.10 of this Part and the specifications

provided by the Commissioner.

(ii) All SPARCS data must be supported by documentation in the patient's medical and billing records.

(iii) Health care facilities must submit on a monthly basis to the SPARCS program, or cause to have submitted on a monthly basis to the SPARCS program, data for all inpatient discharges and outpatient visits. Health care facilities must submit, or cause to have submitted, at least 95 percent of data for all inpatient discharges and outpatient visits within sixty (60) days from the end of the month of a patient's discharge or visit. Health care facilities must submit, or cause to have submitted, 100 percent of data for all inpatient discharges and outpatient visits within one hundred eighty (180) days from the end of the month of a patient's discharge or visit.

(iv) The SPARCS program may conduct an audit evaluating the quality of submitted SPARCS data and issue an audit report to a health care facility listing any inadequacies or inconsistencies in the data. Any health care facility so audited must submit corrected data to the SPARCS program within 90 days of the receipt of the audit report.

(2) Content of the SPARCS data.

(i) Health care facilities shall submit, or cause to have submitted, uniform bill data elements as required by the Commissioner. The data elements required by the Commissioner shall be based on those approved by the National Uniform Billing Committee (NUBC) or required under national electronic data interchange (EDI) standards for health care transactions and shall be published on the NYSDOH website.

(ii) Health care facilities shall submit, or cause to have submitted, additional data elements as required by the Commissioner. Such additional data elements shall be from medical records or demographic information maintained by the health care facilities.

(iii) The list of specific SPARCS data elements and their definitions shall be maintained by the Commissioner, will be made available publicly, and may be modified by the Commissioner.

(c) Maintenance of SPARCS data.

The Commissioner shall be responsible for protecting the privacy and security of the health care information reported to the SPARCS program.

(d) Requests for SPARCS and PRI data.

(1) SPARCS and PRI data may be used for medical or scientific research or statistical or epidemiological purposes approved by the Commissioner.

(2) The Commissioner may determine that additional purposes are proper uses of SPARCS and PRI data.

(3) In determining the purpose of a request for SPARCS and PRI data, the SPARCS program shall not be limited to information contained in the data request form and may request supplemental information from the applicant.

(4) The Commissioner shall charge a reasonable fee to all persons and organizations receiving SPARCS and PRI data based upon costs incurred and recurring for data processing, platform/data center and software. The Commissioner may discount the base fee or waive the fee upon request to the SPARCS program. The fee may be waived in the following circumstances:

(i) Use by a health care facility of the data it submitted to the SPARCS program.

(ii) Use by a health care facility that is licensed under Article 28 of the Public Health Law for the purpose of rate determinations or rate appeals and for health care-related research.

(iii) Use by a Federal, New York State, county or local government agency for health care-related purposes.

(5) The SPARCS program shall follow applicable federal and state laws when determining whether SPARCS and PRI data contain identifying data elements may be shared and whether a disclosure of SPARCS and PRI data constitutes an unwarranted invasion of personal privacy.

(6) All entities seeking SPARCS and PRI data must submit a request to the SPARCS program using standard data request forms specified by the SPARCS program. Data users shall take all necessary precautions to prevent unwarranted invasions of personal privacy resulting from any data analysis or release. Data users may not release any information that could be used, alone or in combination with other reasonably available information, to identify an individual who is a subject of the information. Data users bear full responsibility for breaches or unauthorized disclosures of personal information resulting from use of SPARCS or PRI data. Applications for SPARCS or PRI data must provide an explicit plan for preventing breaches or unauthorized disclosures of personal information of any individual who is a subject of the information.

(7) Each data request form must include an executed data use agreement in a form prescribed by the SPARCS program. Data use agreements are required of: a representative of the requesting organization; a representative of each other organization associated with the project; and all individuals who will have access to any data including identifying data elements.

(8) The SPARCS program shall publish and make publicly available the name of the project director, the organization, and the title of approved projects.

(9) The SPARCS Administrator shall review and make recommendations on requests for SPARCS and PRI data containing identifying data elements to a data release committee

established by the Commissioner. The data release committee shall have at least three members, including at least one member not otherwise affiliated with NYSDOH. The members of the data release committee shall be posted on the NYSDOH website.

Requests will be granted only upon formal, written approval for access by a majority of the members of the data release committee. The Commissioner has the final authority over the approval, or disapproval, of all requests. Requests for identifying data elements shall be approved only if:

- (i) The purpose of the request is consistent with the purposes for which SPARCS and PRI data may be used;
- (ii) The applicant is qualified to undertake the project; and
- (iii) The applicant requires such identifying data elements for the intended project and is able to ensure that patient privacy will be protected.

(10) The SPARCS Administrator may recommend approval of a request in which future SPARCS data is to be supplied on a periodic basis under the following conditions:

- (i) SPARCS data may be requested for a predetermined time not to exceed three years beyond the current year provided that the organization and uses of the data remain as indicated in the data request form submitted to the SPARCS program.
- (ii) During the period of retention of SPARCS or PRI data, no additional individuals may access SPARCS or PRI data without an executed data use agreement on file with the SPARCS program.

(11) The Commissioner may rescind for cause, at any time, approval of a data request.

(e) Penalties.

(1) Any person or entity that violates the provisions of this section or any data use agreement may be liable pursuant to the provisions of the Public Health Law, including, but not limited to, sections 12 and 12-d of the Public Health Law.

(2) Any person or entity that violates the provisions of this section or any data use agreement may be denied access to SPARCS or PRI data.

Appendix C-2 is repealed.

Appendix C-3 is repealed.

Appendix C-4 is repealed.

Appendix C-5 is repealed.

Section 755.10 is repealed.

Section 405.27 is repealed.

Section 400.14(b) is amended to read as follows:

(b) All requests for [deniable individual or aggregate] PRI data shall be processed pursuant to section 400.18 [(e)] of this Part.

Section 407.5(g) is amended to read as follows:

(g) Information policy and other reporting requirements.

PCHs/CAHs shall comply with the provision of section [405.27] 86-1.2, 86-1.3 and 400.18 of this Title regarding information policy and other reporting requirements.

### **Summary of Regulatory Impact Statement:**

There are five objectives for the revision of 10 NYCRR Section 400.18: 1) deleting obsolete language; 2) realigning the regulation to reflect current practices; 3) adding new provisions, including provisions for the mandated outpatient services data collection; 4) adding provisions to assure data completeness and quality; and 5) improving access to data. The first two objectives are the main reasons for the extensive and substantial changes to the regulations. The third objective is necessitated by the 2006 revision to PHL Section 2816 requiring a new type of data to be collected. The fourth and fifth objectives support Statewide initiatives to promote access to data (consistent with all applicable privacy laws and regulations) including the Governor's Open Data Portal, an initiative that supports and promotes greater data transparency and health department data promotion efforts such as the new health open data site -- Health Data NY.

### **Statutory Authority:**

The Statewide Planning and Research Cooperative System (SPARCS) has been in existence for thirty-five years as a nationally recognized health information dataset. From its start in 1979, the authority to collect data from health facilities was established in Section 405.30 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulations of the State of New York. This Section, repealed in 1988 and replaced with the current Section 400.18, specifies the procedures for the collection and disclosure of SPARCS and Patient Review Instrument (PRI) data.

In 1985, Section 97-x of the State Finance Law was established to fund SPARCS with fees collected from hospitals. In 2001, SPARCS was established in Section 2816 of the Public Health Law (PHL). At the same time, the stipulation was added that emergency

department data was to be collected from general hospitals. Section 97-x of the State Finance Law was also amended to refer to PHL Section 2816.

On April 12, 2006, Section 2816(2)(a)(iv) was added to authorize the collection of outpatient services data from all licensed Article 28 general hospitals and diagnostic and treatment centers (D&TCs) operating in New York State. With the 2006 revision to Section 2816, the Commissioner of the New York State Department of Health (NYSDOH) is authorized to promulgate regulations to implement the collection of outpatient services data.

**Legislative Objectives:**

These regulations support open government initiatives and transparency while continuing to assure confidentiality and security. The Data Protection Review Board, originally established to review data requests, assure appropriate privacy standards are met and authorize data sharing will be replaced by a NYSDOH administered process that includes a data review committee consisting of at least three members, including at least one member not otherwise affiliated with NYSDOH. This will facilitate timely access to requested data and at the same time assure data privacy and confidentiality consistent with all applicable State and Federal laws and regulations. These laws were not in place at the time SPARCS and the DPRB process were first initiated.

These regulations will support sharing of data collected by the Department on public websites such as the “Open New York” initiative and the Health Data NY initiative, subject to stringent privacy protections outlined in regulation and consistent with HIPAA standards, and will streamline and promote timely access to data by external researchers.

The proposed regulations are required to assure compliance with laws that mandate collection of outpatient services visit data in order to support the accuracy and

completeness of Medicaid claims data. Collection of this information is necessary to comply with federal requirements for disproportionate share hospital (DSH) payments (\$3.2 billion program, see, 42 USC § 1396r-4) and provide benchmarking capabilities for the State's ambulatory care reimbursement system (enhanced ambulatory patient groups or EAPGs) and benchmarking of outpatient pricing methodologies. The outpatient services data will assist in updating procedure weights, assist in creating procedure base rates, and potentially recalculating provider-specific payments for blend in the outpatient setting.

In addition these regulations support timeliness and completeness and assure that the data collected support open government initiatives and transparency while continuing to assure confidentiality and security. The regulations reflect a move to assign responsibility for review and approval of data requests, including assuring that appropriate privacy standards are met, to the Department and the Commissioner rather than an external body. This change is recommended to promote, streamline and facilitate timely access to requested data in a manner that ensures data privacy and confidentiality consistent with all applicable State and Federal laws and regulations (laws such as HIPAA that were not in place at the time SPARCS was first initiated).

### **Needs and Benefits:**

There are five objectives for revising the regulation:

- 1) Deleting obsolete language (out of date lists of data elements collected by SPARCS);
- 2) Realigning regulation to reflect current practices. In 1996, HIPAA established national standards for health data reporting. SPARCS' current input data format, ANSI X12-837, is a HIPAA-compliant data set, which is a subset of data elements as found in the national reporting standard;

3) Adding new provisions, including provisions for the mandated outpatient services data collection;

4) Adding new language to promote data completeness and accuracy. The revised Section 400.18 seeks to increase the quality and timeliness of the SPARCS data and will allow audits of SPARCS data to be conducted to determine the accuracy of the data submitted.

If an audit is conducted, an audit report will be generated outlining any deficiencies.

Health care facilities will have 90 days to replace any data found to be incorrect; and

5) Refining language to facilitate sharing of data consistent with HIPAA privacy protections in a manner that promotes transparency and use of Department data to further the health and well-being of all New Yorkers.

**Costs:**

For the past thirty five years, for SPARCS purposes, regulated entities have been Article 28 hospitals and D&TCs licensed to perform ambulatory surgery. The success of SPARCS has been due to the close alignment of the claim format that facilities must employ in their financial environment and SPARCS reporting requirements.

The Legislature mandated, in PHL 2816(2)(a)(iv) the collection of outpatient services. As an existing "type of data" that facilities have already been reporting through their financial/billing systems, it is expected that the associated costs will be minimal.

**Local Government Mandates:**

Article 28 facilities operated by local governments will be required to submit SPARCS data in the same manner as other Article 28 facilities.

**Paperwork:**

Paperwork associated with the data-reporting requirement is expected to be minimal.

**Duplication:**

The regulation will not duplicate, overlap, or conflict with federal or state statutes or regulations. Other state systems collecting health care facility data are payer or disease-specific. SPARCS data differ in that the data are collected from all payers and for all diseases and procedures.

**Alternatives:**

Refinements made to assure consistency with HIPAA are required. The collection of outpatient services data is mandated by law. There are no timely alternatives for the collection of these data.

**Federal Standards:**

This regulation does not exceed any minimum standards of the federal government for the same or similar subject areas.

**Compliance Schedule:**

Article 28, Section 2816(2) (a) (iv) became effective in April 2006. SPARCS began to collect outpatient services data for the discharge/visit year 2011.

There are other sections of Title 10 repealed or amended to conform to the revision of Section 400.18:

Section 755.10 will be repealed. The content of this section has been incorporated into the proposed Section 400.18.

Section 405.27 will be repealed. The content of this section has been incorporated into the proposed Section 400.18 and Section 86-1.2, and Section 86-1.3.

Section 400.14(b) will be amended to conform to the revised Section 400.18.

Section 407.5(g) will be amended to add citations to Section 86-1.2 and Section 86-1.3 in place of the repealed Section 405.27.

**Contact Person**

Katherine Ceroalo  
New York State Department of Health  
Bureau of House Counsel, Regulatory Affairs Unit  
Corning Tower Building, Rm. 2438  
Empire State Plaza  
Albany, New York 12237  
(518) 473-7488  
(518) 473-2019 (FAX)  
[REGSQNA@health.state.ny.us](mailto:REGSQNA@health.state.ny.us)

## **Regulatory Impact Statement:**

### **Statutory Authority:**

The Statewide Planning and Research Cooperative System (SPARCS) has been in existence for thirty-five years as a nationally recognized health information dataset. From its start in 1979, the authority to collect the data from health facilities was established in Section 405.30 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulations of the State of New York. This Section, repealed in 1988 and replaced with the current Section 400.18, specifies the procedures for the collection and disclosure of SPARCS and Patient Review Instrument (PRI) data.

In 1985, Section 97-x of the State Finance Law was established to fund SPARCS with fees collected from hospitals. In 2001, SPARCS was established in Section 2816 of the Public Health Law (PHL). At the same time, the stipulation was added that emergency department data was to be collected from general hospitals. Section 97-x of the State Finance Law was also amended to refer to PHL Section 2816.

Although the 400.18 regulations were modified in 2005 for emergency department data collection, additional changes were put on hold due to the changes taking place with national standards for health data reporting under the Health Insurance Portability and Accountability Act (HIPAA). HIPAA was enacted subsequent to initial creation of SPARCS and assures that data collected under SPARCS is subject to the multiple protections required under HIPAA.

Taking effect on April 14, 2003, the Privacy Rule enacted with HIPAA regulates the use and disclosure of Protected Health Information (PHI) held by "covered entities" (generally, health care clearinghouses, employer sponsored health plans, health insurers, and medical service providers that engage in certain transactions.) By regulation, the

Department of Health and Human Services extended the HIPAA privacy rule to independent contractors of covered entities who fit within the definition of "business associates". PHI is any information held by a covered entity which concerns health status, provision of health care, or payment for health care that can be linked to an individual. This is interpreted rather broadly and includes any part of an individual's medical record or payment history. The act allowed health insurance subscribers to appeal any violations of this act to the Department of Health and Human Services Office for Civil Rights. Other pertinent sections of HIPAA include the Security Rule, enacted February 20, 2003 which provides administrative safeguards, physical safeguards and technical safeguards for the use and handling of health insurance related information. These measures were enacted to provide security for the insured, the health insurance company, any organization providing the insurance to an employee, and the family or dependents of the insured. Two other rules, the Enforcement Rule and the Unique Identifiers Rule, were passed in February 2006 and May 2006, respectively. The Enforcement Rule established final penalties for any and all HIPAA violations. The Unique Identifiers Rule covered electronic transactions made by insurance companies and forced each entity to be assigned with a National Provider Identified number, or NPI.

On April 12, 2006, Section 2816(2)(a)(iv) was added to authorize the collection of outpatient services data from all licensed Article 28 general hospitals and diagnostic and treatment centers (D&TCs) operating in New York State. With the 2006 revision to Section 2816, the Commissioner of the New York State Department of Health (NYSDOH) is authorized to promulgate regulations to implement the collection of outpatient services data.

Subdivision 6 of section 2816, added by section 38 of Part H of Chapter 59 of the Laws of 2011, gives the New York State Department of Health clear legal authority to publish

the data elements health care facilities are required to submit on the NYSDOH website without specifying the data elements in regulation.

**Legislative Objectives:**

These regulations support open government initiatives and transparency while continuing to assure confidentiality and security. The Data Protection Review Board, originally established to review data requests, assure appropriate privacy standards are met and authorize data sharing will be replaced by a NYSDOH administered process that includes a data review committee consisting of at least three members, including at least one member not otherwise affiliated with NYSDOH. This will facilitate timely access to requested data (data requests can be processed on an ongoing basis rather than being held for presentation at a quarterly DPRB meeting) and at the same time data privacy and confidentiality consistent with all applicable State and Federal laws and regulations will be assured. These laws were not in place at the time SPARCS and the DPRB process were first initiated.

These regulations will support sharing of data collected by the Department on public websites such as the “Open New York” initiative and the Health Data NY initiative, subject to stringent privacy protections outlined in regulation and consistent with HIPAA standards, and will streamline and promote timely access to data by external researchers. The Legislature has concluded that the SPARCS program has worked well as a tool for planning, research, public information, and health care improvement. Subparagraph (2)(a)(iv) of Section 2816 expands the scope of data collection from health care providers already required to report utilization data to the Department to include outpatient data.

There are two primary purposes of the collection of the additional data. The first is to aid in the development and refinement of new methodologies for calculating Medicaid

reimbursement. The second is to obtain information on outpatient services, an area of health care that has not been available to the Department to assess access to care for New York State residents.

Expanding SPARCS to include the collection of outpatient services will improve the accuracy and completeness of Medicaid claims data, allow the Department to capture pertinent data to comply with federal requirements for disproportionate share hospital (DSH) payments (\$3.2 billion program, see, 42 USC § 1396r-4) and provide benchmarking capabilities for the State's ambulatory care reimbursement system (enhanced ambulatory patient groups or EAPGs) and outpatient pricing methodologies. The outpatient services data will assist in updating procedure weights, assist in creating procedure base rates, and potentially recalculating provider-specific payments for blend in the outpatient setting.

Sharing data in this manner increases government transparency and improves access to valuable data assets needed to inform future research and health policy. The addition of outpatient data (outpatient services, ambulatory surgery, and emergency department data), will also allow the Department, providers, and academics, to conduct additional disease analysis and increase the study of patient care in an area of health care that has not had data readily accessible. The legislature has recognized that the success of SPARCS over the past thirty five years has been the cooperative effort between facilities, associations, and the Department. Cooperation and collaborations will continue to be supported and transparency promoted through both the sharing of data and by making information on data elements collected and projects approved being publicly available on the Department's website.

## **Needs and Benefits:**

There are five objectives for revising the regulation:

- 1) Deleting obsolete language;
- 2) Realigning regulation to reflect current practices;
- 3) Adding new provisions, including provisions for the mandated outpatient services data collection;
- 4) Adding new language to promote data completeness and accuracy; and
- 5) Refining language to facilitate sharing of data collected in a manner that is consistent with HIPAA and assures privacy protections but that promotes transparency and use of Department data to further health and well-being.

The first two objectives are the main reasons for the extensive and substantial changes to the regulations. The third objective is necessitated by the 2006 revision to Section 2816 requiring outpatient services data to be collected. Objectives four and five are consistent with Statewide efforts to promote transparency in government. Therefore, due to the substantial changes needed, the Department will repeal Section 400.18 as it exists and promulgate a new Section 400.18.

### *Provisions Deleted:*

The following provisions in the current Section 400.18 will no longer be part of the regulation:

Appendix C-2

Appendix C-3

Appendix C-5

The appendices associated with the current Section 400.18 contain out of date lists of

data elements collected by SPARCS. To allow for program flexibility and to maintain up-to-date regulations, the revised Section 400.18 has been written to allow the list and definition of the collected data elements to be maintained by the Commissioner and made available publicly.

The changes in the SPARCS regulations align the Department's data collection with current billing practice as required by the National Uniform Billing Committee (NUBC) or as required under national Electronic Data Interchange (EDI) standards. The revised Section 400.18 requires that facilities submit data already collected and does not require facilities to collect any additional data. Data elements are from the medical record, the billing record, or demographic information maintained by facilities.

In the current 400.18, subdivision (b), uniform bill, and Subdivision (c), uniform discharge abstract, along with their associated appendices, delineate and describe the data elements found in the uniform bill (appendix C-2) and in the uniform discharge abstract (appendix C-3). In 1979, these two forms were submitted separately by hospitals and were combined into a single data set by the Department. In the mid-1990s, the two data streams were joined to form the “Universal Data Set for Institutional Providers” (UDS/IP). Appendices C-2 and C-3 are very out-of-date and should be repealed.

In 1996, HIPAA established national standards for health data reporting. SPARCS’ current input data format, ANSI X12-837, is a HIPAA-compliant data set, which is a subset of data elements as found in the national reporting standard (See 45 CFR Part 162, Subpart K). In 2005, Section 400.18 was modified to authorize the collection of emergency service data. The data elements for emergency service data were listed in appendix C-5. Over the years, these lists of data elements have become obsolete, and the SPARCS program maintains the actual lists and definitions of these data elements. The required data elements are maintained on the Department of Health's website. The current

URL is: [http://www.health.ny.gov/statistics/sparcs/sysdoc/elements\\_837/index.htm](http://www.health.ny.gov/statistics/sparcs/sysdoc/elements_837/index.htm).

The Department will repeal appendix C-5.

The current SPARCS regulations, Section 400.18(a) (2) and 400.18(a) (11) list specific identifying data elements, which, if released, would constitute an unwarranted invasion of personal privacy. However, since the last update to these regulations, HIPAA was implemented and defines a more inclusive set of data elements aimed at protecting personal privacy. As a result, the lists of data elements previously contained within Section 400.18, utilized in the disclosure of SPARCS and PRI data, have become obsolete. In revised Section 400.18, the list of the data elements allowed in the disclosure of SPARCS and PRI data, as well as those designated as identifying data elements, are consistent with HIPAA and will be maintained by the Commissioner and made publicly available. The Department will repeal 400.18(a) (2) and 400.18(a) (11), which list the identifying data elements for the SPARCS and PRI data sets respectively.

All data elements that are not specified as identifying are considered non-identifying data elements. In maintaining the list of identifying data elements, SPARCS will take into consideration any changes in federal law. In the revised Section 400.18, requests for SPARCS and PRI data containing identifying data elements will require approval by the Commissioner.

Current section 400.18(d) specifies the method by which SPARCS identifies ambulatory surgery data in the SPARCS file. In the revised Section 400.18, the method that SPARCS uses to differentiate data types (inpatient, ambulatory surgery, emergency department, and outpatient services) will be unified and maintained by the Commissioner. This methodology will allow SPARCS greater flexibility in adapting to changes in the health care facilities' billing environment.

Current section 400.18(f) contains provisions and regulations for a Council on Hospital

Information Policy. That body was established in the original 1979 SPARCS regulations but was rarely convened and has been determined to be unnecessary.

Current section 400.18(g), Accounting and reporting, pertains to the policy and procedures for the maintenance of hospital accounts and records and the acceptable policies and instructions for submission of the Institutional Cost Reports to the Department of Health's Division of Financing and Rate Setting. As this subdivision does not apply to the operation of the SPARCS program, the 400.18(g) language has been moved to Section 86-1.3.

Current section 400.18(e)(4) established the DPRB. Consistent with efforts to streamline and make more timely the process for requesting and securing access to SPARCS data this section will be removed and replaced by a review and approval process, consisting of at least three members, including at least one member not otherwise affiliated with NYSDOH.

*Aligning Regulation to Current Practice:*

Over the past thirty five years, the collection of health information and the specifications for information technology (IT) have changed significantly. Although a leader in the collection and protection of patient information in 1979, SPARCS has adapted to a number of changes in the national billing standards. To ensure continued success, SPARCS is aligning itself with the national electronic billing standards and the HIPAA environment regarding the protection of private health information.

The revised Section 400.18 significantly reorganizes and modifies the regulation to align the current functions of the SPARCS program, the collection and maintenance of SPARCS data, and the disclosure of SPARCS and PRI data.

In the existing regulations, inpatient, emergency department, and ambulatory surgery data

are submitted on different timetables. Some of the reporting timetables differ from existing Section 400.18. The reporting timetable for inpatient discharge data had been found in Section 86-1.3(f). The reporting timetable for free-standing ambulatory surgery data, along with the list of collected data elements, is found in Section 755.10. Providers strongly prefer a single-collection timetable for all types of SPARCS data. The current practice, implemented in 2008, allows all health care facilities to report all types of SPARCS data on a single timetable. The revised Section 400.18 aligns the regulation to existing practice and places the reporting requirement for all SPARCS data within Section 400.18.

Section 400.18 continues to allow the Commissioner to specify fees to be charged to access SPARCS and PRI data. The practice of charging fees for the data has been in place since SPARCS's inception in 1979, and this regulation does not create any new fees. The fees charged support maintenance of the system. The base fee is the amount charged to the approved data requester for a year's worth of specified data (inpatient, ambulatory surgery, emergency department, and/or outpatient services data). The fee, which is very low by industry standards, is derived from the cost associated with data acquisition, data storage and programming required to create the output file. That base fee may be discounted or waived by the Commissioner when Department functions will be advanced by disclosure of such information. Additional charges may apply for a specific requester based upon the need for encryption and for the addition of approved identifiable data elements.

Health care facilities will continue to receive their own data without cost. Health care facilities may also receive the entire SPARCS data set when the reason for the request is either rate determinations or rate appeals or health-care related research. The fees for SPARCS or PRI data have been waived for New York State agencies and New York

State county and local agencies receiving SPARCS data for health care related purposes. In addition, the Commissioner may waive the fee upon written request in furtherance of the Department's powers and duties.

*New Provisions:*

New provisions are being added to improve the operations of SPARCS, to enhance data transparency and privacy protections by refining requirements surrounding release of the data, and to support the collection of outpatient services data.

Enhanced Oversight:

The revised Section 400.18 seeks to increase the quality and timeliness of the SPARCS data and will allow audits of SPARCS data to be conducted to determine the accuracy of the data submitted. If an audit is conducted, an audit report will be generated outlining any deficiencies. Health care facilities will have 90 days to replace any data found to be incorrect.

Enhanced Privacy Protections:

To protect the privacy of patients in the presentation of SPARCS and PRI data, and ensure compliance with the State Personal Privacy Protection Law, Section 400.18 currently specifies that an aggregation of individual patient data comprising fewer than six patients may not be released. The proposed revision acknowledges that this policy is not, by itself, sufficient protection against unwarranted invasions of personal privacy. 400.18 now states that identifying data elements shall mean those SPARCS and PRI data elements that, if disclosed without any restrictions on use or re-disclosure would constitute an unwarranted invasion of personal privacy.

The revision requires that the data access application specify the methods that the data users will employ to protect patients' privacy in the presentation of data analysis results. Failure to adopt privacy protection methods deemed adequate by the Department shall be cause for denial of a data access request.

Expanded Scope:

Revised Section 400.18 operationalizes the collection of outpatient services data as mandated by Section 2816 of the PHL.

## **Costs**

### **Cost to Regulated Entities:**

For the past thirty five years, for SPARCS purposes, regulated entities have been Article 28 hospitals and D&TCs licensed to perform ambulatory surgery. The success of SPARCS has been due to the close alignment of the claim format that facilities must employ in their financial environment and SPARCS reporting requirements. On April 12, 2006, Section 2816(2)(a)(iv) was added to authorize the collection of outpatient services data from all licensed Article 28 general hospitals and diagnostic and treatment centers (D&TCs) operating in New York State. It is expected that costs will be minimal as this "type of claim data" is already sent to payers.

### **Cost to State and Local Governments:**

The revisions to the SPARCS regulations have only one provision that would affect state and local government owned health care facilities – mandated collection of outpatient services data. State and county owned and operated facilities would face minimal additional costs consistent with costs to the regulated parties as noted above.

**Cost to the Department of Health:**

The SPARCS Special Revenue Account, authorized under Section 97-x of the State Finance Law, is expected to be sufficient to support costs of development and maintenance of SPARCS data.

**Local Government Mandates:**

Article 28 facilities operated by local governments will be required to submit SPARCS data in the same manner as other Article 28 facilities.

**Paperwork:**

Paperwork associated with data-reporting requirements is expected to be minimal.

**Duplication:**

The regulation will not duplicate, overlap, or conflict with federal or state statutes or regulations. Other state systems collecting health care facility data are payer or disease-specific. SPARCS data differ in that the data are collected from all payers and for all diseases and procedures.

**Alternatives:**

Refinements made to assure consistency with HIPAA are required. The collection of outpatient services data is mandated by law. There are no timely alternatives for the collection of these data.

**Federal Standards:**

This regulation does not exceed any minimum standards of the federal government for the same or similar subject areas.

**Compliance Schedule:**

Article 28, Section 2816(2) (a) (iv) became effective in April 2006. SPARCS began to collect outpatient services data for the discharge/visit year 2011.

There are other sections of Title 10 repealed or amended to conform to the revision of Section 400.18:

Section 755.10 will be repealed. The content of this section has been incorporated into the proposed Section 400.18.

Section 405.27 will be repealed. The content of this section has been incorporated into the proposed Section 400.18 and Section 86-1.2, and Section 86-1.3.

Section 400.14(b) will be amended to conform to the revised Section 400.18.

Section 407.5(g) will be amended to add citations to Section 86-1.2 and Section 86-1.3 in place of the repealed Section 405.27.

**Contact Person:**

Katherine Ceroalo  
New York State Department of Health  
Bureau of House Counsel, Regulatory Affairs Unit  
Corning Tower Building, Rm. 2438  
Empire State Plaza  
Albany, New York 12237  
(518) 473-7488  
(518) 473-2019 (FAX)  
[REGSQNA@health.state.ny.us](mailto:REGSQNA@health.state.ny.us)

## **Regulatory Flexibility Analysis For Small Businesses and Local Governments**

### **Effect of Rule:**

The State Administrative Procedure Act (SAPA 202-b) defines a small business as “being resident in this State, having fewer than 100 employees, independently owned and operated.” The primary purpose of the revision of section 400.18 is to delete obsolete language; to realign regulation to reflect current practices; and to add new provisions, including rules and regulations for the mandated, outpatient services data collection. Of these modifications, the collection of the outpatient services data, mandated in the April 2006 modifications to Public Health Law Article 28 Section 2816(2) (a) (iv), may impact small businesses.

The collection of outpatient services data will impact two categories of small businesses in New York State:

- 1) Small Health Care Facilities, which will be required to submit data; and
- 2) Software vendor companies, which will need to make modifications to existing programs.

There are a number of small facilities in NYS. They will be defined in terms of: the small number of visits per year and their level of information technology (IT) support within the facility. Some smaller facilities may be impacted depending upon their current electronic billing and thus reporting capabilities. Some may need to contract with an external vendor to assist with data submission.

The second small business category affected is small software vendors (computer companies). These companies will be used as consultants/contractors to modify existing billing systems to produce the SPARCS file. This group will benefit from increased revenue generated by the request for improved systems.

**Compliance Requirements:**

As the SPARCS file is generated from the existing health care facilities' records, all facilities with electronic billing programs should incur minimal or no increased reporting costs.

**Professional Services:**

The outpatient services data collection is expected to increase opportunity for professional computer services due to the modifications of the billing programs required to create the SPARCS file. Once the outpatient services data set has been collected, there will be an increase in employment opportunities for health care researchers, policy makers, and other professionals involved in the use of the health care data.

**Compliance Costs:**

As the SPARCS file is generated from the existing health care facilities' records, all facilities with electronic billing programs should incur minimal or no increased costs associated with reporting.

Following initial costs for system enhancements annual costs to maintain compliance with the proposed rule are expected to be minimal. NYS SDOH staff is available to provide assistance to health care facilities with reporting as needed. In addition, the Health Department's Health Commerce System (HCS) provides for the secure transmission of the SPARCS file to the Department of Health at no cost to the facility.

**Economic and Technological Feasibility:**

It should be technologically feasible for small businesses to comply with the proposed regulations. Most facilities should not need to hire additional professional or administrative staff to comply with these regulations, as the computer program to create the SPARCS file should be very similar to other electronic billing systems. All facilities must use the Health Commerce System to submit the data in a secure environment, and facilities must maintain internet connectivity.

**Minimizing Adverse Impact:**

A significant impact of this regulatory change is the collection of the outpatient services data for health care facilities that have never submitted data to the Department of Health.

Adverse impact can be minimized through the availability of training. There was a focused effort on training prior to the commencement of data collection. SPARCS provided training for SPARCS coordinators to assist them in reporting the data.

SPARCS will defer collection of data from dental clinics to sometime in the future because dental clinics use a different electronic claim form than the Institutional format of the ANSI X12-837 that SPARCS currently requires. Furthermore, smaller facilities that are self-funded or grant-funded will be excluded from the requirement to submit SPARCS data.

**Small Business and Local Government Participation:**

SPARCS is dedicated to maintaining a cooperative system. To do this, SPARCS holds regional meetings to elicit comments directly from health care facilities, and SPARCS attends meetings with health care associations New York Health Information

Management Association (NYHIMA), Community Health Care Association of New York State (CHCANYS), and Healthcare Association of New York State (HANYYS)). In addition, SPARCS is dedicated to continuing training and providing educational material for the purpose of submitting and correcting SPARCS data.

Data submission is a requirement for Article 28 health care facilities, but there are benefits also for the facilities, themselves, and for the local governments with which they are associated. A small query database containing aggregated data is available free of charge to all facilities and local government personnel that have an active account on the HCS. This access provides basic health care information for all HCS users. In addition, facilities can always download their own patient level records at any time thru the secure feature on the HCS.

## Rural Area Flexibility Analysis:

### Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010

(<http://quickfacts.census.gov>). Approximately 17% of small health care facilities are located in rural areas.

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County

Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

**Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:**

The majority of the revisions of Section 400.18, i.e., address deletion of obsolete language and update the regulation to reflect current practices, and will not adversely impact health care facilities in rural areas. The addition of the provision to collect a new data type, outpatient services data, was addressed through training initially provided during 2011 and that will be provided in the future via a web based environment. In addition, SPARCS will provide a specialized time schedule for any facility that is upgrading their system or undergoing a system transition to electronic medical records. The greatest impact in a rural area would occur if a small facility continued to maintain paper medical and billing records. A survey found most small health care facilities have

some electronic form of recordkeeping due to the requirements of most insurance companies that bills be submitted electronically which should alleviate any additional costs and support effective submission of the required outpatient data.

**Costs:**

The cost of compliance with outpatient services data collection requirement for rural-area facilities should be minimal. As the SPARCS file is generated from the existing health care facilities' records, all facilities with electronic billing programs should incur minimal or no increased reporting costs.

Facilities currently submitting data to SPARCS will have little increased capital costs except for minor changes to their existing billing systems. For new submitters that need to improve their electronic billing capabilities, they may incur custom computer additions to their existing billing programs.

**Minimizing Adverse Impact:**

There was a focused effort on training prior to the commencement of data collection. SPARCS will continue to provide training for SPARCS coordinators to assist them in reporting the data. In addition, training will be provided to the vendors who will be involved in data submission.

Hospitals have been submitting data to SPARCS for thirty five years. Most hospital outpatient departments have computer systems that are already integrated into the main hospital system or are in the process of being integrated. Thus, the computer program logic has been created, and the additional flow of information should be of minimal impact.

**Rural Area Participation:**

Regional meetings were held to inform and obtain comments from health care facilities located in all areas of the state.

Although some may view this reporting requirement as an additional burden, there are also benefits for the facilities. A facility's own data will be available free of charge for that facility. In addition, SPARCS allows access to health care information that all can use.

## **Job Impact Statement:**

### **Nature of Impact:**

Very little impact on jobs is expected. To the extent that there is an impact, the addition of the outpatient data submission requirement will positively impact jobs and employment opportunities. For those reporting health care facilities requiring a custom computer program to create the SPARCS file, either their existing billing program will need modification by internal IT staff, or an external vendor will be required to create a custom program. For those health care facilities that will switch to electronic records, there will be increased business in sales and customization of the billing programs.

### **Categories and Numbers Affected:**

The jobs created will be computer programming positions, sales positions, and technical training positions. SPARCS conducted surveys of the health care facilities impacted by this mandate, and 574 hospital-affiliated health clinics responded regarding their ability to submit data electronically. Of those, 96% reported that they submit some or all of their claims electronically.

### **Regions of Adverse Impact:**

The revised section 400.18 will have no adverse impact on jobs or employment opportunities.

### **Minimizing Adverse Impact:**

As the revised section 400.18 has no adverse impact on jobs or employment opportunities, there is no need to minimize adverse impacts.

**Self-employment Opportunities:**

In very few instances, health care facilities may rely on self-employed programmers to develop the needed programming to submit and correct SPARCS data. To date, we have had only one instance of this over SPARCS' 35-year, data-collection history.