§ 2995-a. Physician profiles. 1. The department shall collect the following information and create individual profiles on licensees subject to the authority of the office of professional medical conduct, in a format that shall be available for dissemination to the public:

(a) a statement of any criminal convictions (as defined by section 1.20 of the criminal procedure law) within the most recent ten years, under the laws of New York state or any other jurisdiction, for offenses specified by regulations of the department;

(b) a statement of any action (other than an action that remains confidential) taken against the licensee pursuant to section two hundred thirty of this chapter or any similar action taken by any other state or licensing entity, within the most recent ten years;

(c) a statement of any current limitation of the licensee to a specified area, type, scope or condition of practice;

(d) a statement of any loss or involuntary restriction of hospital privileges or a failure to renew professional privileges at hospitals within the last ten years, for reasons related to the quality of patient care delivered or to be delivered by the physician where procedural due process has been afforded, exhausted, or waived, or the resignation from or removal of medical staff membership or restriction of privileges at a hospital taken in lieu of a pending disciplinary case related to the quality of patient care delivered or to be delivered by the physician (notwithstanding paragraph (a) of subdivision three of section twenty-eight hundred three-e of this chapter, as added by chapter eight hundred sixty-six of the laws of nineteen hundred eighty);

(e) (i) a statement indicating the number of medical malpractice court judgments and arbitration awards within the most recent ten years in which a payment is awarded to a complaining party (notwithstanding subsection (f) of section three hundred fifteen of the insurance law); and

(ii) a statement indicating all malpractice settlements within the most recent ten years in which payment is awarded to a complaining party (notwithstanding subsection (f) of section three hundred fifteen of the insurance law),

(A) if the total number of settlements exceeds two; or

(B) if the commissioner determines any such settlement could be relevant to patient decisionmaking concerning health care quality. The

statement shall include the following: "Settlement payments will appear in this profile only if the total number of settlements made within the past ten years exceeds two, or if the commissioner of health determines a settlement to be relevant to patient decisionmaking. Settlement of a claim may occur for a variety of reasons, which do not necessarily reflect negatively on the professional competence or conduct of the physician. A payment in settlement of a medical malpractice action or claim does not necessarily mean that a medical malpractice has occurred." The commissioner may supplement such statement as may be appropriate.

(iii) judgments, awards and settlements shall be reported in graduated categories indicating the level of significance, date and place of the judgment, award or settlement. Information concerning medical malpractice judgments, awards and settlements shall be put in context by comparing an individual licensee's medical malpractice settlements to the experience of other physicians in New York state within the same board specialty. Pending malpractice claims shall not be disclosed to the public under this section. Nothing herein shall be construed to prevent the board from investigating or disciplining a licensee on the basis of medical malpractice claims that are pending;

(f) name of medical schools attended and date of graduations;

(g) graduate medical education;

(h) current specialty board certification and date of certification;

(i) dates admitted to practice in New York state;

(j) names of hospitals where the licensee has practice privileges;

(k) appointments to medical school faculties and indication as to whether a licensee has had a responsibility for graduate medical education within the most recent ten years;

(l) information regarding publications in peer reviewed medical literature within the most recent ten years;

(m) information regarding professional or community service activities or awards;

(n) (i) the location of the licensee's primary practice setting identified as such; and

(ii) the names of any licensed physicians with whom the licensee shares a group practice, as defined in subdivision five of section two hundred thirty-eight of this chapter;

(o) the identification of any translating services that may be available at the licensee's primary practice location;

(p) whether the licensee participates in the medicaid or medicare program or any other state or federally financed health insurance program; and

(q) health care plans with which the licensee has contracts, employment, or other affiliation; provided that the reporting of such information shall not be the responsibility of the physician, but shall be included and updated by the department utilizing provider network participation information, or other reliable sources of information submitted by health care plans.

1-a. Each physician licensed and registered to practice in this state shall within thirty days of the transmittal of an initial profile survey and upon entering or updating his or her profile information:

(a) register and maintain an account with the department's health provider network and any successor electronic system established to facilitate communications between the department and licensed health care providers; or

(b) provide an e-mail address to the department which shall be used by the department to communicate with the physician. Licensees shall provide notice to the department of changed e-mail addresses within thirty days of the change. Licensee e-mail addresses shall be confidential and shall not be published as part of the licensee's profile. The e-mail addresses may be used for department purposes only.

2. Nothing in this section shall limit the department's authority to collect, require reporting of, publish or otherwise disseminate information about licensees.

3. Each physician who is self-insured for professional medical malpractice shall periodically report to the department on forms and in the time and manner required by the commissioner the information specified in paragraph (e) of subdivision one of this section, except that the physician shall report the dollar amount (to the extent of the physician's information and belief) for each judgment, award and settlement and not a level of significance or context.

4. Each physician shall periodically report to the department on forms and in the time and manner required by the commissioner any other information as is required by the department for the development of profiles under this section which is not otherwise reasonably obtainable. In addition to such periodic reports and providing the same information, each physician shall update his or her profile information within the six months prior to the submission of the re-registration application, as a condition of registration renewal under article one hundred thirty-one of the education law. Except for optional information provided, physicians shall notify the department of any change in the profile information within thirty days of such change.

5. The department shall provide each licensee with a copy of his or her profile prior to dissemination to the public. In the manner and time required by the commissioner, a licensee shall be provided the opportunity to correct factual inaccuracies that appear in the profile. The physician shall be permitted to file a concise statement concerning information contained in the profile, which shall be disseminated therewith.

6. A physician may elect to have his or her profile omit certain information provided pursuant to paragraphs (l), (m) and (n) of subdivision one of this section. In collecting information for such profiles and disseminating the same, the department shall inform physicians that they may choose not to provide such information required pursuant to paragraphs (l), (m) and (n) of subdivision one of this section.

7. A physician who knowingly provides materially inaccurate information under this section shall be guilty of professional misconduct pursuant to section sixty-five hundred thirty of the education law.

7-a. For purposes of this section, a physician may authorize a designee to register, transmit, enter or update information on his or her behalf, provided that:

(a) the designee so authorized is employed by the physician or the same professional practice or is under contract with such practice;

(b) the physician takes reasonable steps to ensure that such designee is sufficiently competent in the profile requirements; and

(c) the physician remains responsible for ensuring the accuracy of the information provided and for any failure to provide accurate information.

The commissioner shall establish in regulation reasonable parameters with regard to a physician's ability to authorize designees pursuant to this section, which shall include processes necessary to allow the department to: (i) grant access to the profile in a reasonably prompt manner to designees authorized by physicians; (ii) require that physicians notify the department upon terminating the authorization of any designee; and (iii) establish a mechanism to prevent such terminated designees from accessing the profile in a reasonably prompt manner following such notification.

8. The department shall establish a toll-free telephone number through which it shall answer inquiries about and accept orders for hard copy physician profiles established pursuant to this section and accept consumer complaints about suspected professional misconduct. The department may charge a nominal fee for producing and mailing a hard copy physician profile.

9. The department shall, in addition to hard copy physician profiles, provide for electronic access to and copying of physician profiles developed pursuant to this section through the system commonly known as the Internet. The department shall update a physician's online profile within thirty days of receipt of a completed physician profile survey or any change in profile information.

10. The commissioner shall require that:

(a) Practitioner organizations that are representative of the target group for profiling, and health care consumer organizations, be provided the opportunity to review and comment on the profiling methodology, including collection methods, analysis, formatting, and methods and

means for release and dissemination.

(b) Comparisons of practitioner profiles shall be organized according to practitioner areas of practice.

11. The commissioner shall evaluate the utility and practicability of including in the profile a comparison of malpractice data by geographic area. However, the implementation of the profile shall not be delayed pending such evaluation.

12. The commissioner shall develop and distribute a notice suitable for posting that informs consumers of the availability of physician profiles and the telephone numbers and Internet addresses for accessing them.

13. Further study of physician profiles. After the initial dissemination of the data identified in subdivision one of this section, the department shall conduct a further study of physician profiles as follows:

(a) Data sources. The department shall identify the types of physician data to which the public has access, including all information available from federal, state or local agencies which is useful for making determinations concerning health care quality determinations. The department shall study all physician data reporting requirements and develop recommendations to consolidate data collection and eliminate duplicate and unnecessary reporting requirements, or to supplement existing reporting requirements in order to satisfy the requirements of this section. The department shall study the feasibility of incorporating health plan reporting requirements, without imposing any extra burden on the physician, regarding network participation into this section to ensure this information is available, accurate, up-to-date and accessible to consumers.

(b) Supplemental information adjustment and security safeguards. The department shall develop a methodology for application to collected physician data that accounts for factors such as frequency, severity and geographic area which shall be used to provide context to reported data. Any such methodology shall not diminish the information reported pursuant to subdivision one of this section. In developing such

methodology, the department may consult with physicians, including representatives of appropriate specialty societies. The department may also consult with organizations representing consumers, other health care providers, and health care plans. Any such methodology shall include adequate and appropriate safeguards to ensure the security, accuracy and integrity of health information created, received, maintained, used or transmitted in connection with the statewide health information system. Such safeguards shall be sufficient to meet any minimum standards set by state and federal laws and regulations.

(c) Public review. The department shall provide organizations which are representative of consumers, physicians, including representatives of appropriate specialty societies, other health care providers and health care plans the opportunity to review and comment on its determinations and recommendations. The department shall consider such comments, and may amend its determinations and recommendations to reflect them.

(d) Report. The department shall provide a report of its determinations and recommendations under this subdivision to the governor and legislature, and make such report publicly available, on or before January first, two thousand sixteen. The department shall report annually thereafter to the legislature on the status of the physician profiles and any recommendations for additions, consolidations or other changes deemed appropriate.

14. The physician data so disseminated shall be updated at regular intervals to be determined by the department.

15. (a) All physician data disseminated shall include the following statements: "THE DATA COLLECTED BY THE DEPARTMENT IS ACCURATE TO THE BEST OF THE KNOWLEDGE OF THE DEPARTMENT, BASED ON THE INFORMATION SUPPLIED BY THE PHYSICIAN WHO IS THE SUBJECT OF THE DATA. WHILE THE DEPARTMENT UTILIZES A VARIETY OF SOURCES OF INFORMATION IN CHECKING THE ACCURACY OF THE DATA REPORTED, WE CANNOT BE SURE THAT ALL OF THE INFORMATION ON THIS WEBSITE IS RIGHT, COMPLETE, OR UP-TO-DATE, AND CANNOT BE RESPONSIBLE FOR ANY INFORMATION THAT IS WRONG OR HAS BEEN LEFT OUT. CONSUMERS ARE ENCOURAGED TO CONSULT OTHER SOURCES TO VERIFY OR OBTAIN ADDITIONAL INFORMATION ABOUT A PHYSICIAN. PENDING LEGAL ACTIONS

DO NOT IN ANY WAY INDICATE PARTIES' GUILT, LIABILITY OR CULPABILITY. CASES MAY BE DISMISSED, WITHDRAWN, OR SETTLED WITHOUT PAYMENTS TO PLAINTIFFS. ANY DISPOSITION TO A CASE MAY BE SUBJECT TO APPEAL." The commissioner shall ensure that the full text of the statements appear on each web page of the physician profile in a manner that does not require the user of the site to click on a separate link in order to view the statements.

(b) The department shall provide on the physician profiles an active link to the website maintained by the unified court system containing information on active and disposed cases in the local and state courts in the state.

16. If, after initial dissemination of the physician data required by this section, the department determines that any such data is not useful for making quality determinations, the department shall recommend to the legislature the necessary statutory changes.