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NEW YORK PUBLIC INTEREST RESEARCH GROUP (NYPIRG)
NEW YORK STATEWIDE SENIOR ACTION COUNCIL
NEW YORKERS FOR PATIENT & FAMILY EMPOWERMENT
NIAGARA HEALTH QUALITY COALITION
PEGGY LILLIS FOUNDATION
PULSE OF NEW YORK

MEMORANDUM IN OPPOSITION

**BUDGET BILL, Article VII, Part A Section 1
Proposal to repeal Public Health Law §2995-a**

Elimination of the Pro-Patient New York Physician Profile Program

Our organizations strongly oppose the repeal of Public Health Law §2995-a, called for by Governor Cuomo in his budget, a repeal that would dismantle the New York Physician Profile program. While the New York State executive Budget Briefing Book describes this as a proposal to “discontinue a physician profile website,” the legislative language would actually require the elimination of an entire medical safety reporting and public disclosure program.

This key program, established pursuant to *the Patient Health Information and Quality Review Act of 2000*, has been in place for a decade and a half. The Physician Profile program allows consumers to access, at one website,¹ key information on the credentials, discipline and malpractice records of physicians practicing in New York State.

The elimination of the Physician Profile program represents a dangerous step backwards in the effort to achieve greater transparency in healthcare. The Executive has been a vocal proponent of greater transparency in the public interest, yet the 2015 executive budget proposes to eliminate one of the few health care related programs that embody transparency. While this move to take away information helpful to the public is rationalized by a claim that elimination would save \$1.2 million,² the state is currently advancing health care awareness programs costing far more.

The Physician Profiles website is unique; no publicly sanctioned accessible database currently includes malpractice history or other discipline actions such as loss of hospital privileges. The assertion in the Executive Budget that “much of the information is duplicated on other publicly accessible websites”³ is simply not correct. Without Physician Profiles, people who are dealing with healthcare issues will be forced to rely on searching among alternative sources of information, most of them proprietary and of unknown accuracy.

¹ See New York State Physician Profile Website, available at <http://www.nydoctorprofile.com/>.

² See, <https://www.budget.ny.gov/pubs/executive/eBudget1516/fy1516littlebook/BriefingBook.pdf>, p. 110.

³ *Id.*

Physician Profiles allows patients to find out whether or not a doctor has any:

- (1) Criminal conviction;
- (2) Action taken against the doctor pursuant to PHL §233 (unless it is still confidential)
- (3) Current limitation of medical practice to a specified area, type, or scope of practice;
- (4) Any involuntary loss, restriction or failed renewal of hospital for reasons related to quality of care over the past 10 years – after procedural due process has been allowed or waived;
- (5) The number of medical malpractice judgments over the past 10 years, with an indication of the level of significance, compared with the experience of doctors in the same specialty.
- (6) Similar disclosure of medical malpractice settlements if more than two settlements occur or DOH determines that a settlement may be relevant to patient decision-making on quality.
- (7) Medical schools attended, date of graduation, specialty board certification, dates admitted to practice in New York, names of hospitals where the doctor has practice privileges;
- (8) Whether or not the doctor accepts Medicare or Medicaid, and other relevant information.⁴

We are concerned that this proposed repeal arises just as the Office of Professional Medical Conduct was reported to have been stepping up its activities as regards sanctioning physicians who were failing to obey the law. Postings in *MDNews* and an e-newsletter of the Medical Society of the State of New York (MSSNY) warned doctors that the OPMC had, as *MD News* put it, “undertaken a more aggressive approach to investigate and, in some cases, begin disciplinary action against physicians who have failed to update their New York State Physician Profile.”⁵

Instead of abandoning the Profiles program, the law should be strengthened to *require* dissemination of information about the availability of Physician Profiles directly to patients. While the current law requires DOH to “develop and distribute a notice suitable for posting that informs consumers of the availability of Physician Profiles,”⁶ it does not require the posting of this information in patient areas at hospitals, clinics or doctors’ offices or the dissemination of this notice to patients. Also, the Governor and Legislature should establish an OPMC consumer assistance office to help consumers navigate the complaint process. Finally, we urge that the Office of Professional Medical Conduct receive stronger funding to carry out its mission. This can be accomplished by returning to the principle that fee revenue from physician licensing and recertification be dedicated to supporting OPMC.

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⁴ PHL §2995-a(1), (8) and (9). Settlement disclosures include a statement that a settlement “does not necessarily mean that a medical malpractice has occurred.” A doctor with no more than two malpractice awards can challenge posting of a settlement by requesting a finding that the award is not “relevant to patient decision-making.” The physicians themselves provide the information in the Profile, and each has an opportunity to review the profile before it is posted.

⁵ See J. Barbera, “New York State Physician Profile – Practice Alert!” (Sept. 1, 2014) (available at http://www.mdnews.com/news/2014_09/new-york-state-physician-profile-%E2%80%94-practice-alert!.aspx); “MSSNY, “OPMC Taking Action v. Physicians Who Do Not Update Profile,” *Weekly Update for New York State Physicians*, Vol. 14, No. 23 (June 13, 2014) (available at http://www.mssny.org/MSSNY/Publications/MSSNY_eneWS/June_13_2014.aspx).

⁶ PHL §2995-a(12).