

As Introduced

**127th General Assembly
Regular Session
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H. B. No. 622

Representatives Patton, Schindel

Cosponsor: Representative Nero

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To enact sections 3964.01, 3964.02, 3964.05 to 1
3964.07, 3964.10 to 3764.12, 3964.15 to 3964.17, 2
3964.21 to 3964.24, and 5111.0210 of the Revised 3
Code to establish standards for the use of 4
physician designation systems by health care 5
insurers. 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3964.01, 3964.02, 3964.05, 3964.06, 7
3964.07, 3964.10, 3964.11, 3764.12, 3964.15, 3964.16, 3964.17, 8
3964.21, 3964.22, 3964.23, 3964.24, and 5111.0210 of the Revised 9
Code be enacted to read as follows: 10

Sec. 3964.01. As used in this chapter: 11

(A) "Health care insurer" means an entity that offers a 12
policy, contract, or plan for covering the cost of health care 13
services for individuals who are beneficiaries of or enrolled in 14
the policy, contract, or plan, including all of the following: 15

(1) A sickness and accident insurance company authorized to 16
do the business of insurance in this state; 17

(2) A health insuring corporation that holds a certificate of 18
authority under Chapter 1751. of the Revised Code; 19

(3) An entity that offers a multiple employer welfare arrangement, as defined in section 1739.01 of the Revised Code; 20
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(4) The state, a political subdivision, or any other government entity that offers a public employee health benefit plan. 22
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(B) "Physician" means an individual authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery. 25
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(C) "Physician designation" means a grade, star, tier, or any other rating used by a health care insurer to characterize or represent the insurer's assessment or measurement of a physician's cost efficiency, quality of care, or clinical performance. 28
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"Physician designation" does not include either of the following: 32

(1) Information derived solely from satisfaction surveys or other comments provided by individuals who are beneficiaries of or enrolled in a policy, contract, or plan offered by a health care insurer; 33
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(2) Information for a program established by a health care insurer to assist individuals with estimating a physician's routine fees for providing services. 37
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Sec. 3964.02. If a health care insurer operates a system for making physician designations, all of the following apply with respect to each physician designation that is made: 40
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(A) The health care insurer shall include a quality-of-care component in making the physician designation. Inclusion of the quality-of-care component may be satisfied by incorporating one or more practice guidelines or performance measures pursuant to division (F) of this section. The resulting designation shall include a clear description of the weight given to the quality-of-care component in comparison to other factors used in 43
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making the designation. 50

(B) The health care insurer shall include statistical 51
analyses in making the physician designation. The insurer shall 52
use statistical analyses that are accurate, valid, and reliable. 53
Where reasonably possible, the insurer shall use statistical 54
analyses that have been appropriately adjusted to reflect known 55
statistical anomalies, including factors pertaining to patient 56
population, case mix, severity of condition, comorbidities, and 57
outlier events. 58

(C) The health care insurer shall make a physician 59
designation only after completing a period of assessment of the 60
data to be used in making the designation. The insurer shall 61
update the data at appropriate intervals. 62

(D) If data from claims for payment are used in making the 63
physician designation, the health care insurer shall use accurate 64
claims data and attribute the data appropriately to the physician. 65
If reasonably available, aggregated claims data shall be used to 66
supplement the insurer's claims data. 67

(E) The health care insurer shall make the physician 68
designation in a manner that recognizes the physician's 69
responsibility for making health care decisions and the financial 70
consequences of those decisions. The financial consequences of the 71
physician's health care decisions shall be attributed to the 72
physician in a manner that is accurate and fair to the physician. 73

(F) If practice guidelines or performance measures are used 74
in making the physician designation, the health care insurer shall 75
use guidelines or measures that are evidence-based, whenever 76
possible; consensus-based, whenever possible; and pertinent to the 77
physician's area of practice, location, and patient population 78
characteristics. To the maximum extent possible, the insurer shall 79
use practice guidelines or performance measures that have been 80

established by nationally recognized health care organizations, 81
including the national quality forum, the AOA alliance, or a 82
successor organization. 83

Sec. 3964.05. Except as provided in section 3964.06 of the 84
Revised Code, a health care insurer may disclose any or all of its 85
physician designations to any member of the public, including a 86
physician, a patient or potential patient, or an individual who is 87
or may become a beneficiary of or enrolled in a health care 88
policy, contract, or plan offered by the insurer. 89

Sec. 3964.06. (A) When a health care insurer makes a 90
physician designation, including a change in a designation, the 91
insurer shall notify the physician before disclosing the 92
designation to the public. The notice shall be provided in writing 93
and shall inform the physician of both of the following: 94

(1) The process for obtaining information under sections 95
3964.10 and 3964.11 of the Revised Code regarding the method and 96
data used in making the designation; 97

(2) The opportunity to request an appeal of the designation 98
pursuant to section 3964.15 of the Revised Code. 99

(B) After providing the written notice required under 100
division (A) of this section, the health care insurer shall not 101
disclose the physician designation until the latter of the 102
following: 103

(1) Forty-five days after providing the notice; 104

(2) Fifteen days after fulfilling any request for information 105
under section 3964.10 of the Revised Code; 106

(3) Fifteen days after fulfilling any request for information 107
under section 3964.11 of the Revised Code; 108

(4) The date the designation is in compliance with a final 109

decision made pursuant to any appeal requested under section 110
3964.15 of the Revised Code. 111

Sec. 3964.07. (A) When a health care insurer discloses a 112
physician designation under section 3964.05 of the Revised Code, 113
the insurer shall include with the disclosure a statement 114
specifying all of the following: 115

(1) That physician designations are intended to be used only 116
as a guide in selecting a physician; 117

(2) That physician designations should not be the sole factor 118
used in selecting a physician; 119

(3) That physician designations have a risk of error; 120

(4) That individuals should discuss physician designations 121
with a physician before a selection is made. 122

(B) The statement required by this section shall accompany 123
the disclosure of the physician designation in a conspicuous 124
manner, be provided in writing, and be printed in boldface type. 125

Sec. 3964.10. (A) A request for a description of the method 126
used by a health care insurer to make a physician designation and 127
an identification of all data used in making the designation may 128
be submitted to the insurer by any of the following: 129

(1) The physician who is the subject of the designation; 130

(2) A representative of the physician who is the subject of 131
the designation; 132

(3) The superintendent of insurance. 133

(B) Not later than forty-five days after receiving a request 134
under this section, the health care insurer shall provide the 135
requested information. In providing the information, the insurer 136
is subject to all of the following: 137

(1) The description of the method used in making the physician designation shall be sufficiently detailed to allow the person who submitted the request to determine the effect of the method on the data used in making the designation. As applicable, the description shall include an explanation of the use of algorithms or studies, the assessment of data, and the application of practice guidelines or performance measures. 138
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(2) The identification of data used in making the physician designation shall be made in a manner that is reasonably understandable and allows the person who submitted the request to verify the data against the person's records. 145
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(3) If the health care insurer has contractual obligations with another person that provides for the confidentiality of portions of the method or data used in making the physician designation, the insurer may withhold the confidential information but shall provide sufficient information to allow the person who submitted the request to determine how the withheld information affected the designation. 149
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Sec. 3964.11. After receiving information pursuant to a request submitted under section 3964.10 of the Revised Code, the recipient may submit a request to the health care insurer for information that discloses the complete method used by the insurer to make the physician designation. 156
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Not later than thirty days after receiving a request under this section, the health care insurer shall provide the requested information. 161
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Sec. 3964.12. Neither sections 1333.61 to 1333.69 of the Revised Code nor any other provision of the Revised Code pertaining to trade secrets excuse a health care insurer from complying with sections 3964.10 and 3964.11 of the Revised Code. 164
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Sec. 3964.15. A health care insurer that operates a system 168
for making physician designations shall afford a physician who is 169
subject to the physician designation system an opportunity to 170
appeal the insurer's decision regarding the physician's 171
designation, including a decision by the insurer to change a 172
previous designation or to make no designation. In appealing the 173
decision, the physician may be assisted by a representative. 174

Sec. 3964.16. A health care insurer shall establish 175
procedures for the conduct of appeals under section 3964.15 of the 176
Revised Code. At a minimum, the procedures established by the 177
insurer shall include all of the following: 178

(A) A reasonable method for providing notice to the insurer 179
that an appeal is being sought by the physician or the physician's 180
representative; 181

(B) Consideration of any information obtained by the 182
physician or the physician's representative pursuant to section 183
3964.10 or 3964.11 of the Revised Code; 184

(C) With respect to the data and method used to make the 185
physician designation, an opportunity for the physician or the 186
physician's representative to submit corrected data for 187
consideration and to have the appropriateness of the method 188
evaluated; 189

(D) Disclosure of the name, title, qualifications, and 190
relationship to the health care insurer of the person or persons 191
designated by the insurer to be responsible for conducting the 192
appeal proceedings and making the final decision; 193

(E) If requested by the physician or the physician's 194
representative, an opportunity to meet with the person or persons 195
responsible for conducting the appeal proceedings and making the 196
final decision, either by meeting in person at a location 197

reasonably convenient to the physician or the physician's 198
representative or by teleconference. 199

(F) If requested by the physician or the physician's 200
representative, consideration of an explanation of the designation 201
decision by the person or persons identified by the health care 202
insurer as being responsible for the designation decision; 203

(G) Completion of the appeals process not later than 204
forty-five days after the physician or physician's representative 205
provides notice that an appeal is being sought, unless another 206
time is agreed to by the physician or the physician's 207
representative; 208

(H) Issuance of a written final decision that states the 209
reasons for upholding, modifying, or rejecting the appeal. 210

Sec. 3964.17. If a physician designation subject to an appeal 211
under section 3964.15 of the Revised Code was disclosed to the 212
public before the appeal was made and the final decision regarding 213
the appeal is in favor of the physician, the health care insurer 214
shall modify its designation of the physician in accordance with 215
the final decision. The health care insurer shall make the 216
necessary changes to the designation not later than thirty days 217
after the final decision regarding the appeal is made. 218

Sec. 3964.21. A health care insurer shall not fail to comply 219
with sections 3964.02 to 3964.17 of the Revised Code. 220

Sec. 3964.22. In the case of a health care insurer that is 221
regulated by the department of insurance, a series of violations 222
of section 3964.21 of the Revised Code that, taken together, 223
constitutes a pattern or practice of violating that section shall 224
be considered an unfair and deceptive act or practice in the 225
business of insurance under sections 3901.19 to 3901.26 of the 226

<u>Revised Code.</u>	227
<u>Sec. 3964.23. A physician who is adversely affected by a</u>	228
<u>violation of section 3964.21 of the Revised Code has a cause of</u>	229
<u>action against the health care insurer and may seek a declaratory</u>	230
<u>judgment, an injunction, or other appropriate relief.</u>	231
<u>Sec. 3964.24. Any provision of a contractual arrangement</u>	232
<u>between a health care insurer and physician that limits any of the</u>	233
<u>physician's rights granted by this chapter or that is otherwise</u>	234
<u>contrary to the provisions of this chapter is unenforceable.</u>	235
<u>Sec. 5111.0210. Chapter 3964. of the Revised Code applies to</u>	236
<u>the medicaid program in the same manner that the chapter applies</u>	237
<u>to a health care insurer, as defined in section 3964.01 of the</u>	238
<u>Revised Code.</u>	239