As Introduced

128th General Assembly Regular Session 2009-2010

S. B. No. 98

Senator Patton

A BILL

To enact sections 3964.01, 3964.02, 3964.05 to	1
3964.07, 3964.10 to 3964.12, 3964.15 to 3964.17,	2
3964.21 to 3964.24, and 5111.0210 of the Revised	3
Code to establish standards for physician	4
designations by health care insurers.	5

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

Section 1. That sections 3964.01, 3964.02, 3964.05, 3964.06,	б
3964.07, 3964.10, 3964.11, 3964.12, 3964.15, 3964.16, 3964.17,	7
3964.21, 3964.22, 3964.23, 3964.24, and 5111.0210 of the Revised	8
Code be enacted to read as follows:	9

Sec. 3964.01. As used in this chapter:	10
(A) "Health care insurer" means an entity that offers a	11
policy, contract, or plan for covering the cost of health care	12
services for individuals who are beneficiaries of or enrolled in	13
the policy, contract, or plan, to the extent that the entity and	14
the policy, contract, or plan are subject to the laws of this	15
state. "Health care entity" includes all of the following:	16

(1) A sickness and accident insurance company authorized to17do the business of insurance in this state;18

(2) A health insuring corporation that holds a certificate of 19

authority issued under Chapter 1751. of the Revised Code;	20
(3) An entity that offers a multiple employer welfare	21
arrangement, as defined in section 1739.01 of the Revised Code;	22
(4) The state, a political subdivision, or any other	23
government entity that offers a public employee health benefit	24
plan.	25
<u>(B) "Physician" means an individual authorized under Chapter</u>	26
	27
4731. of the Revised Code to practice medicine and surgery or	
osteopathic medicine and surgery.	28
<u>(C) "Physician designation" means a grade, star, tier, or any</u>	29
other rating used by a health care insurer to characterize or	30
represent the insurer's assessment or measurement of a physician's	31
cost efficiency, quality of care, or clinical performance.	32
"Physician designation" does not include either of the following:	33
(1) Information derived solely from satisfaction surveys or	34
other comments provided by individuals who are beneficiaries of or	35
enrolled in a policy, contract, or plan offered by a health care	36
insurer;	37
(2) Information for a program established by a health care	38
insurer to assist individuals with estimating a physician's	39
routine fees for providing services.	40
Toutine rees for providing services.	10
Sec. 3964.02. If a health care insurer operates a system for	41
making physician designations, all of the following apply with	42
respect to each physician designation that is made:	43
<u>respect to call physician acsignation that is made</u>	15
(A) The health care insurer shall include a quality-of-care	44
component in making the physician designation. Inclusion of the	45
guality-of-care component may be satisfied by incorporating one or	46
more practice guidelines or performance measures pursuant to	47
division (F) of this section. The resulting designation shall	48
include a clear description of the weight given to the	49

quality-of-care component in comparison to other factors used in 50 making the designation. 51 (B) The health care insurer shall use statistical analyses in 52 making the physician designation. The insurer shall use 53 statistical analyses that are accurate, valid, and reliable. Where 54 reasonably possible, the insurer shall use statistical analyses 55 that have been appropriately adjusted to reflect known statistical 56 anomalies, including factors pertaining to patient population, 57 case mix, severity of condition, comorbidities, and outlier 58 events. 59 (C) The health care insurer shall make a physician 60 designation only after completing a period of assessment of data 61 pertinent to the designation. The insurer shall update the data at 62 appropriate intervals. 63 (D) If data from claims for payment are used in making the 64 physician designation, the health care insurer shall use accurate 65 claims data and attribute the data appropriately to the physician. 66 If reasonably available, aggregated claims data shall be used to 67 supplement the insurer's claims data. 68 (E) The health care <u>insurer shall make the physician</u> 69 designation in a manner that recognizes the physician's 70 responsibility for making health care decisions and the financial 71 consequences of those decisions. The financial consequences of the 72 physician's health care decisions shall be attributed to the 73 physician in a manner that is accurate and fair to the physician. 74 (F) If practice quidelines or performance measures are used 75 in making the physician designation, the health care insurer shall 76 use guidelines or measures that are evidence-based, whenever 77 possible; consensus-based, whenever possible; and pertinent to the 78 physician's area of practice, location, and patient-population 79 characteristics. To the maximum extent possible, the insurer shall 80

use practice guidelines or performance measures that have been	81
established by nationally recognized health care organizations,	82
including the national quality forum or its successor, or the AQA	83
alliance or its successor.	84
Sec. 3964.05. Except as provided in section 3964.06 of the	85
Revised Code, a health care insurer may disclose any or all of its	86
physician designations to any of the following:	87
(A) A physician;	88
(B) A patient or potential patient;	89
(C) An individual who is or may become a beneficiary of or	90
enrolled in a health care policy, contract, or plan offered by the	91
<u>insurer;</u>	92
(D) Any other individual.	93
Sec. 3964.06. (A) When a health care insurer makes a	94
physician designation, including a change in a designation, the	95
insurer shall notify the physician before disclosing the	96
designation to the public. The notice shall be provided in writing	97
and shall inform the physician of both of the following:	98
(1) The process by which the physician may request	99
information under sections 3964.10 and 3964.11 of the Revised Code	100
regarding the method and data used in making the designation;	101
	102
(2) The opportunity to request an appeal of the designation	103
pursuant to section 3964.15 of the Revised Code.	104
(B) After providing the written notice required under	105
division (A) of this section, the health care insurer shall not	106
disclose the physician designation until the latest occurring of	107
the following:	108
(1) Forty-five days after providing the notice;	109

(2) Fifteen days after fulfilling any request for information	110
under section 3964.10 of the Revised Code;	111
(3) Fifteen days after fulfilling any request for information	112
under section 3964.11 of the Revised Code;	113
(4) The date that the designation is in compliance with a	114
final decision made pursuant to an appeal requested under section	115
3964.15 of the Revised Code.	116
Sec. 3964.07. (A) When a health care insurer discloses a	117
physician designation under section 3964.05 of the Revised Code,	118
the insurer shall include with the disclosure a statement	119
specifying all of the following:	120
(1) That physician designations are intended to be used only	121
<u>as a guide in selecting a physician;</u>	122
(2) That physician designations should not be the sole factor	123
used in selecting a physician;	124
(3) That physician designations have a risk of error;	125
(4) That individuals should discuss physician designations	126
with a physician before a selection is made.	127
(B) The statement required by this section shall accompany	128
the disclosure of the physician designation in a conspicuous	129
manner, shall be provided in writing, and shall be printed in	130
boldface type.	131
Sec. 3964.10. (A) Any of the following may submit a request	132
to a health care insurer asking that the insurer provide a	133
description of the method used by the insurer in making a	134
physician designation and, for a particular designation, a	135
description of all data used in making the designation:	136
(1) The physician who is the subject of the designation;	137

(2) A representative of the physician who is the subject of	138
the designation;	139
(3) The superintendent of insurance.	140
(B) Not later than forty-five days after receiving a request	141
under this section, the health care insurer shall provide the	142
requested information to the person who submitted the request. In	143
providing the information, the insurer is subject to all of the	144
<u>following:</u>	145
(1) The description of the method used in making the	146
physician designation shall be sufficiently detailed to allow the	147
person who submitted the request to determine the effect of the	148
method on the data used in making the designation. As applicable,	149
the description shall include an explanation of the use of	150
algorithms or studies, the assessment of data, and the application	151
of practice guidelines or performance measures.	152
(2) The description of the data used in making the physician	153
designation shall be made in a manner that is reasonably	154
understandable and allows the person who submitted the request to	155
verify the data against the person's records.	156
(3) If the health care insurer has a contract with another	157
person that prevents the insurer from disclosing all or part of	158
the data used in making the physician designation, the insurer may	159
withhold the data but shall provide sufficient information to	160
allow the person who submitted the request to determine how the	161
withheld data affected the designation.	162
Sec. 3964.11. After receiving a description of a health care	163
insurer's method used in making a physician designation pursuant	164
to a request submitted under section 3964.10 of the Revised Code,	165
the recipient may submit a request to the insurer asking that the	166
insurer provide the complete method used by the insurer in making	167

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the physician designation.	168
Not later than thirty days after receiving a request under	169
this section, the health care insurer shall provide the requested	170
information to the person who submitted the request.	171
Sec. 3964.12. Neither sections 1333.61 to 1333.69 of the	172
Revised Code nor any other provision of the Revised Code	173
pertaining to trade secrets excuses a health care insurer from	174
complying with sections 3964.10 and 3964.11 of the Revised Code.	175
Sec. 3964.15. A health care insurer that operates a system	176
for making physician designations shall afford a physician who is	177
subject to the physician designation system an opportunity to	178
appeal the insurer's decision regarding the physician's	179
designation, including a decision by the insurer to change a	180
previous designation or to make no designation. In appealing the	181
decision, the physician may be assisted by a representative.	182
Sec. 3964.16. A health care insurer shall establish	183
procedures for the conduct of appeals under section 3964.15 of the	184
Revised Code. At a minimum, the procedures established by the	185
insurer shall include all of the following:	186
(A) A reasonable method for a physician or a physician's	187
representative to provide notice to the insurer that an appeal is	188
being sought;	189
(B) Consideration of any information obtained by the	190
physician or the physician's representative pursuant to section	191
3964.10 or 3964.11 of the Revised Code;	192
(C) If requested by the physician or the physician's	193
representative, consideration of an explanation of the decision	194
regarding the physician designation, with the explanation supplied	195

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by the person or persons identified by the health care insurer as	196
being responsible for making the designation decision;	197
(D) With respect to the data and method used by the insurer	198
to make the physician designation decision, an opportunity for the	199
physician or the physician's representative to submit to the	200
insurer corrected data for the insurer's consideration and to have	201
the appropriateness of the method evaluated by the insurer;	202
(E) Disclosure of the name, title, qualifications, and	203
relationship to the health care insurer of the person or persons	204
designated by the insurer as responsible for conducting the appeal	205
proceedings and making the final decision;	206
(F) If requested by the physician or the physician's	207
representative, an opportunity to meet with the person or persons	208
responsible for conducting the appeal proceedings and making the	209
final decision, either by meeting in person at a location	210
reasonably convenient to the physician or the physician's	211
representative or by teleconference.	212
(G) Completion of the appeals process not later than	213
forty-five days after the physician or physician's representative	214
provides notice that an appeal is being sought, unless another	215
time is agreed to by the physician or the physician's	216
representative;	217
(H) Issuance of a written final decision that states the	218
reasons for upholding, modifying, or rejecting the physician	219
designation decision subject to the appeal.	220
	0.01
Sec. 3964.17. If the final decision regarding an appeal under	221
section 3964.15 of the Revised Code is in favor of the physician,	222
the health care insurer shall modify its designation of the	223
physician in accordance with the final decision. In modifying the	224

designation, the insurer is subject to both of the following: 225

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appeal was made, the insurer shall make the necessary changes to 226 the designation not later than thirty days after the final 226 decision regarding the appeal is made. 230 (B) If the designation was not disclosed to the public before 231 the appeal was made, the insurer shall make the necessary changes 232 to the designation before the designation is disclosed to the 233 public. 234 sec. 3964.21. A health care insurer shall not fail to comply 235 with sections 3964.02 to 3964.17 of the Revised Code. 236 sec. 3964.22. In the case of a health care insurer that is 237 regulated by the department of insurance, a series of violations 236 of section 3964.21 of the Revised Code that, taken together, 236 constitutes a pattern or practice of violating that section shall 246 business of insurance under sections 3901.19 to 3901.26 of the 242 Revised Code. 243 sec. 3964.23. A physician who is adversely affected by a 244 violation of section 3964.21 of the Revised Code has a cause of 245 action against the health care insurer and may seek a declaratory 246 iudgment, an injunction, or other appropriate relief. 2		
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	action against the health care insurer and may seek a declaratory	246
Sec. 3964.24. Any provision of a contractual arrangement 248	judgment, an injunction, or other appropriate relief.	247
Sec. 3964.24. Any provision of a contractual arrangement 248		
	Sec. 3964.24. Any provision of a contractual arrangement	248

between a health care insurer and physician that limits any of the249physician's rights granted by this chapter or that is otherwise250contrary to the provisions of this chapter is unenforceable.251

Sec. 5111.0210. Chapter 3964. of the Revised Code applies to 252

<u>the</u>	medicaid	progra	<u>m in t</u>	<u>the s</u>	ame ma	nner	that	the	chapter	ap	plies	253
<u>to a</u>	<u>a health (</u>	<u>care in</u>	surer	<u>, as</u>	define	<u>d in</u>	secti	on 3	3964.01	of	the	254
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