



# Ohio Legislative Service Commission

---

## Bill Analysis

Nick Thomas

### **S.B. 49**

130th General Assembly  
(As Introduced)

**Sens.** Patton, Seitz, Gardner

---

## **BILL SUMMARY**

- Requires that a physician designation program operated by a health care insurer or a third-party administrator use the most current patient charter for physician performance measurement, reporting, and tiering programs developed by the Consumer-Purchaser Disclosure Project or a version of the charter that was in effect during the previous 12 months.
- Requires an insurer that operates such a program to annually certify to the Superintendent of Insurance the insurer's use of the patient charter in the operation of the insurer's physician designation program.
- Designates multiple violations of the bill's requirements as an unfair and deceptive practice in the business of insurance.
- Requires the Superintendent to establish a process for approving independent ratings examiners.
- Specifies that the inclusion of certain provisions in a contract between a health care insurer that operates a designation program and a health services provider are unenforceable.
- Authorizes the Department of Job and Family Services to operate a system for making physician designations for purposes of the Medicaid program.
- Requires the Department to operate such a system in accordance with either the most current patient charter developed by the Consumer-Purchaser Disclosure Project or a version of the charter that was in effect during the previous 12 months.

---

## CONTENT AND OPERATION

### Overview

An insurer designation program provides physicians that meet certain standards of quality care and cost-effectiveness with a special designation. Some of these programs incentivize physicians with greater reimbursement rates for services provided, as well as access to certain service-related resources. For utilizing the services of a designated physician, enrollees, or employers are often offered reduced cost-sharing rates by health care insurers.

The bill requires health care insurers to use a single set of criteria by which to make these physician designations. The bill also makes other provisions related to the operation of these programs.

### Designation programs – general requirements and provisions

The bill requires that a physician designation program operated by a health care insurer or a third-party administrator use the most current patient charter for physician performance measurement, reporting, and tiering programs developed by the Consumer-Purchaser Disclosure Project or a substantially similar document developed by a successor organization. Alternatively, insurers can use a version of the charter that was in effect during the immediately preceding 12 months.<sup>1</sup> The bill requires health care insurers that operate such a program to annually submit to the Superintendent of Insurance, in accordance with the Superintendent's schedule, a certificate from an independent ratings examiner attesting to the insurer's compliance with this requirement during the previous 12-month period. Such an independent ratings examiner must be approved by the Superintendent under the bill (see "**Responsibilities of the Superintendent of Insurance**," below). The bill requires the health care insurer to pay all fees associated with the issuance of the certificate.<sup>2</sup> Medicaid managed care organizations are exempt from both the standards for physician designation and the annual filing requirement if the Department of Job and Family Services has extended to the organization the Department's physician designation system.<sup>3</sup>

If, on the bill's effective date, a health care insurer has been operating a physician designation system for at least three months, the insurer must submit its certificate of

---

<sup>1</sup> R.C. 3959.18, 3964.01(C), and 3964.02.

<sup>2</sup> R.C. 3964.03.

<sup>3</sup> R.C. 3964.05(A)(2).



compliance within six months after the bill's effective date. Thereafter the insurer is required to submit its certificate annually in accordance with the Superintendent's schedule.<sup>4</sup>

The bill designates multiple violations of the standards for physician designation or the annual filing requirement as an unfair and deceptive practice in the business of insurance. Continuing law unchanged by the bill enables the Superintendent to conduct a hearing to determine if an unfair or deceptive practice has occurred. If, subsequent to the hearing, the Superintendent determines that an insurer has engaged in an unfair or deceptive practice, then the Superintendent is required to issue a cease and desist order. Additionally, the Superintendent may suspend the violator's license, require the termination of the employment of the person responsible for the violation, or issue a fine or other possible sanctions.<sup>5</sup>

The bill specifies that the following provisions in a contract between a health care insurer that operates a designation program and a health services provider are unenforceable:

- A limitation of the rights that a physician has under Ohio Physician Designation Law enacted by the bill or under the patient charter under which the insurer is operating;
- A requirement that a physician or health care insurer act in a manner that is otherwise contrary to Ohio Physician Designation Law or the applicable patient charter.<sup>6</sup>

### **Private right of action**

The bill specifies that nothing contained in the Ohio Physician Designation Law is to be construed to deprive any person of any private right of action otherwise available under law.<sup>7</sup>

### **Trade secrets**

The bill specifies that neither the Ohio Trade Secrets Act nor any other provision of Ohio law related to trade secrets excuses a health care insurer that is operating a

---

<sup>4</sup> Section 2.

<sup>5</sup> R.C. 3964.05(B) and R.C. 3901.22(A) – not in the bill.

<sup>6</sup> R.C. 3964.07.

<sup>7</sup> R.C. 3964.06.



designation system from complying with any disclosure requirements of the patient charter under which the insurer is operating its system.<sup>8</sup>

## **Responsibilities of Superintendent of Insurance**

The bill requires the Superintendent to establish a process for approving independent ratings examiners that may issue certificates under the bill. In establishing such a process, the Superintendent is subject to both of the following requirements:

- The Superintendent may approve only independent rating examiners that are members of at least one nationally recognized, independent health care quality standard-setting organization;
- The Superintendent is required to approve all entities determined to be eligible to monitor compliance with the patient charter by the Consumer-Purchaser Disclosure Project or its successor.<sup>9</sup>

The bill authorizes the Superintendent to adopt rules to carry out the purposes of the Physician Designation Law.<sup>10</sup>

## **Department of Job and Family Services**

The bill authorizes the Department of Job and Family Services to operate a system for making physician designations for purposes of the Medicaid program. If such a system is operated, the Department is required to extend the system to managed care organizations when contracting with the organizations. Much like a health care insurer, the bill requires the Department to operate the system in accordance with either the most current patient charter developed by the Consumer-Purchaser Disclosure Project or a version of the charter that was in effect during the immediately preceding 12 months. Compliance with this requirement is to be determined by a nationally recognized, independent, health care quality standard-setting organization that is selected by the Department. The bill specifies that the Department of Insurance has no authority over the Department of Job and Family Services in the operation of a system for making physician designations.<sup>11</sup>

---

<sup>8</sup> R.C. 3964.08.

<sup>9</sup> R.C. 3964.04.

<sup>10</sup> R.C. 3964.09.

<sup>11</sup> R.C. 5111.0216.



## Definitions

The bill defines the following terms for the purposes of Physician Designation Law:

- "Health care insurer" means an entity that offers a policy, contract, or plan for covering the cost of health care services for individuals who are beneficiaries of or enrolled in the policy, contract, or plan, to the extent that the entity and the policy, contract, or plan are subject to Ohio laws. "Health care insurer" includes a sickness and accident insurer authorized to do the business of insurance in Ohio, a health insuring corporation that holds a certificate of authority under Ohio law, an entity that offers a multiple employer welfare arrangement, and the state, a political subdivision, or any other government entity that offers a public employee health benefit plan.
- "Medicaid managed care organization" means a managed care organization under contract with the Department of Job and Family Services to provide, or arrange for the provision of, health care services to Medicaid recipients who are required or permitted to obtain health care services through managed care organizations as part of the care management system.
- "Patient charter" means either the patient charter for physician performance measurement, reporting, and tiering programs, which is developed by the Consumer-Purchaser Disclosure Project, or a substantially similar document developed by a successor organization.
- "Physician" means an individual authorized under Ohio law to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.
- "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. "Physician designation" does not include either of the following:
  - 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;

- Information for a program established by a health care insurer to assist individuals with estimating a physician's routine fees for providing services.<sup>12</sup>

The bill defines the following terms with regard to the authorization of the Department of Job and Family Services to operate a physician designation program:

- "Patient charter" and "physician" have the same meanings as under Physician Designation Law.
- "Physician designation" means a grade, star, tier, or any other rating to characterize or represent an assessment or measurement of a physician's cost efficiency, quality of care, or clinical performance. "Physician designation" does not include either of the following:
  - Information derived solely from satisfaction surveys or other comments provided by Medicaid recipients;
  - Information established for the Medicaid program to assist Medicaid recipients with estimating a physician's routine fees for providing services.<sup>13</sup>

---

## HISTORY

ACTION	DATE
Introduced	02-25-13

s0049-i-130.docx/ks

---

<sup>12</sup> R.C. 3964.01.

<sup>13</sup> R.C. 5111.0216(A).

