



# Ohio Legislative Service Commission

## Bill Analysis

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### **S.B. 121**

129th General Assembly  
(As Introduced)

**Sens.** Patton, Oelslager, Lehner, Gillmor

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## **BILL SUMMARY**

- Requires health care insurers that operate a physician designation system to operate that system in accordance with the patient charter.
- Authorizes the Department of Job and Family Services to operate a physician designation system for the Medicaid program and requires that any such program be operated in accordance with the patient charter.

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## **CONTENT AND OPERATION**

### **Physician designation systems used by health care insurers**

#### **Standards for physician designation systems**

The bill requires any health care insurer that operates a system for making physician designations to operate the system in accordance with the patient charter that is developed by the Consumer-Purchaser Disclosure Project, or in accordance with any substantially similar document developed by a successor organization. Specifically, those health care insurers must operate their respective physician designation systems in accordance with criteria identified in either (1) the version of the patient charter that is most current at the time the system is being operated or (2) another version of the patient charter that was in effect at any time during the 12-month period immediately preceding the time at which the system is being operated.<sup>1</sup> The bill specifies that no Ohio law pertaining to trade secrets excuses a health care insurer from complying with

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

any disclosures of information that are required by the patient charter under which the health care insurer is operating its physician designation system.<sup>2</sup>

### **Certificate of compliance**

Under the bill, a health care insurer that operates a physician designation system must submit annually to the Superintendent of Insurance a certificate of compliance from an independent ratings examiner. If a health care insurer is operating a physician designation system on the bill's effective date and has been doing so for at least three months, the first certificate of compliance is due not later than six months after the bill's effective date. After that time, the health care insurer must annually submit certificates in accordance with the schedule established by the Superintendent. Any health care insurer that is not operating a physician designation system on the bill's effective date, or that has not done so for at least three months prior to that date, must submit the certificate in accordance with the Superintendent's schedule.<sup>3</sup>

In the certificate of compliance, the independent ratings examiner must attest to the examiner's determination that, during the past 12 months, the insurer has been operating its physician designation system in accordance with the patient charter as required by law. The bill requires that the health care insurer pay all charges assessed by the independent ratings examiners for the issuance of the certificate.<sup>4</sup>

The independent ratings examiner that issues the certificate must be one approved by the Superintendent under a process established by the Superintendent. In establishing the approval process, the bill requires that the Superintendent approve only independent rating examiners that are members of at least one nationally recognized, independent, health care quality standard-setting organization. The bill requires also that the Superintendent approve all entities determined to be eligible by the Consumer-Purchaser Disclosure Project or its successor to monitor compliance with the patient charter.<sup>5</sup>

### **Penalty for noncompliance**

A series of violations of the standards for operating a physician designation system or of the annual filing requirement that, taken together, constitutes a pattern or practice of violating those provisions is an unfair and deceptive act or practice in the

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<sup>2</sup> R.C. 3964.08.

<sup>3</sup> R.C. 3964.03 and Section 2 of the bill.

<sup>4</sup> R.C. 3964.03.

<sup>5</sup> R.C. 3964.03 and 3964.04.

business of insurance. The Superintendent may penalize such an act or practice under continuing law by suspending or revoking the person's license to engage in the business of insurance; by ordering that the insurer not employ the person or permit the person to serve as a director, consultant, or in any other capacity for such time as the Superintendent determines would serve the public interest; or by ordering that the person return any payments received by the person as a result of the violation. The court may additionally impose a civil fine for the violation under continuing law.<sup>6</sup>

### **Private right of action**

The bill specifically states that it should not be construed to deprive any person of any private right of action otherwise available under the law.<sup>7</sup>

### **Unenforceable physician-insurer contract provisions**

Under the bill, any agreement between a physician and health care insurer that limits the rights a physician has under the bill or under a patient charter pursuant to which the health care insurer operates a physician designation system is unenforceable. Also unenforceable is any agreement between a physician and a health care insurer that requires the physician or health care insurer to act in a manner that is otherwise contrary to the bill's provisions or the applicable patient charter.<sup>8</sup>

### **Applicability to third-party administrators**

The bill's provisions relating to health care insurers apply also to a person who adjusts or settles claims on Ohio residents in connection with life, dental, health, or disability insurance or self-insurance programs under the Third-Party Administrator Law (R.C. Chapter 3959).<sup>9</sup>

### **Rules for implementation**

The Superintendent of Insurance, under the bill, can adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) as the Superintendent considers necessary to carry out the bill's purposes with respect to health care insurers.<sup>10</sup>

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<sup>6</sup> R.C. 3964.05 and R.C. 3901.22, not in the bill.

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

<sup>8</sup> R.C. 3964.07.

<sup>9</sup> R.C. 3959.18.

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

## Physician designation systems for the Medicaid program

The bill authorizes the Department of Job and Family Services to operate a system for making physician designations for the Medicaid program. Like health care insurers, the Department is required to operate any such physician designation system in accordance with criteria identified in either (1) the version of the patient charter that is most current at the time the system is being operated or (2) another version of the patient charter that was in effect at any time during the 12-month period immediately preceding the time at which the system is being operated. The bill specifically provides that the Department of Insurance has no authority over the Department of Job and Family Services in its operation of a physician designation system. Instead, compliance must be determined by a nationally recognized, independent, health care quality standard-setting organization that is selected by the Department of Job and Family Services.

If the Department operates a physician designation system, as permitted under the bill, it must extend the system to managed care organizations when contracting with those organizations to provide health care services to medical assistance recipients who are required or permitted to obtain health care services through managed care organizations as part of the care management system.<sup>11</sup>

### Definitions

As used in the bill:

**"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 law. "Health care insurer" includes all of the following:

(1) A sickness and accident insurance company authorized to do the business of insurance in Ohio;

(2) A health insuring corporation that holds a certificate of authority issued under Ohio law;

(3) An entity that offers a multiple employer welfare arrangement under the Multiple Employer Welfare Arrangement Law (R.C. Chapter 1739.);

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<sup>11</sup> R.C. 5111.0212 and 3964.05(A)(2).

(4) 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.

**"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 to characterize or represent an assessment or measurement of a physician's cost efficiency, quality of care, or clinical performance. With regard to health care insurers, "physician designation" means any such rating used by the health care insurer to characterize or represent the insurer's assessment or measurement of the physician. "Physician designation" does not include either of the following:

(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, or by Medicaid recipients with respect to a physician designation system operated for the Medicaid program;

(2) Information for a program established by a health care insurer or for the Medicaid program to assist individuals with estimating a physician's routine fees for providing services.<sup>12</sup>

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## HISTORY

ACTION	DATE
Introduced	03-16-11

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