

## CHAPTER 95

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**HEALTH AND ENVIRONMENT**


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**HOUSE BILL 15-1191**

BY REPRESENTATIVE(S) Pettersen, Fields, Ginal, Kraft-Tharp, Primavera, Ransom, Roupe, Ryden, Williams, Young;  
also SENATOR(S) Grantham, Aguilar, Crowder, Heath, Kefalas, Merrifield, Newell, Todd.

**AN ACT****CONCERNING THE ADDITION OF DENTISTS TO THE "PHYSICIAN DESIGNATION DISCLOSURE ACT".**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, **amend** 25-38-101 as follows:

**25-38-101. Short title.** This article shall be known and may be cited as the "Physician AND DENTIST Designation Disclosure Act".

**SECTION 2.** In Colorado Revised Statutes, 25-38-102, **amend** (1) (a), (1) (b), (1) (c), (1) (f), and (1) (g) as follows:

**25-38-102. Legislative declaration.** (1) The general assembly hereby finds, determines, and declares that:

(a) Health care entities have instituted or are instituting quantitative and qualitative designations of physicians AND DENTISTS;

(b) Physician AND DENTIST designations are disclosed and represented to consumers and others as part of marketing, sales, and other efforts, and such designations may be used by consumers in selecting the physicians AND DENTISTS from whom they receive care;

(c) Designations are based on claims data, practice criteria or guidelines, and other criteria, not all of which are made known to consumers or to the physicians AND DENTISTS designated;

(f) For the protection of consumers, ~~and~~ physicians, AND DENTISTS and to avoid

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

improper profiling of physicians AND DENTISTS, health care entities must ensure that they are using designations that are fair and accurate and must accord physicians AND DENTISTS the right to challenge and correct erroneous designations, data, and methodologies;

(g) Full disclosure of the data and methodologies by which physicians AND DENTISTS are designated will encourage, to the fullest extent possible, the accuracy, fairness, and usefulness of such designations. Disclosures will help keep patients from being exposed to inaccurate, misleading, and incorrect information about the nature and quality of the care of physicians AND DENTISTS. The disclosure required by this article will encourage the use of guidelines and criteria from well-recognized professional societies and groups using evidence-based and consensus practice recommendations. Disclosure will allow health care consumers and physicians AND DENTISTS an opportunity to better understand the criteria, basis, and methods by which physicians AND DENTISTS are evaluated, and disclosure will foster competition among health care entities to improve the way in which designations are used. Accordingly, the general assembly finds that requiring full disclosure of designation data and methodologies and setting certain minimum standards for making such designations will help improve the quality and efficiency of health care delivered in Colorado.

**SECTION 3.** In Colorado Revised Statutes, 25-38-103, **amend** (4) introductory portion and (4) (b); and **add** (3.5) as follows:

**25-38-103. Definitions.** As used in this article, unless the context otherwise requires:

(3.5) "DENTIST" MEANS A DENTIST LICENSED UNDER THE "DENTAL PRACTICE ACT", ARTICLE 35 OF TITLE 12, C.R.S.

(4) "Designation" means an award, assignment, characterization, or representation of the cost efficiency, quality, or other assessment or measurement of the care or clinical performance of any physician OR DENTIST that is disclosed or intended for disclosure to the public or persons actually or potentially covered by a health plan, by use of a grade, star, tier, rating, profile, or any other form of designation. "Designation" does not include:

(b) Information for programs designed to assist health plan members with estimating a physician's OR DENTIST'S routine fees or costs.

**SECTION 4.** In Colorado Revised Statutes, 25-38-104, **amend** (1) introductory portion, (1) (d), (1) (e), (1) (f) (I), (1) (f) (II) (C), and (2) (a) as follows:

**25-38-104. Minimum requirements for designations - disclaimer required.**

(1) Any designation of a physician OR DENTIST shall include, at a minimum, the following:

(d) If claims data are used in the designation process, accurate claims data appropriately attributed to the physician OR DENTIST. When reasonably available, the health care entity shall use aggregated data to supplement its own claims data.

(e) The physician's OR DENTIST'S responsibility for health care decisions and the financial consequences of those decisions, which shall be fairly and accurately attributed to the physician OR DENTIST;

(f) If practice guidelines or performance measures are used in the designation process:

(I) Practice guidelines or performance measures that are promulgated or endorsed by nationally recognized health care organizations that establish or promote guidelines and performance measures emphasizing quality of health care, such as the national quality forum or the AQA alliance, or their successors, or other such national physician OR DENTIST specialty organizations, or the Colorado clinical guidelines collaborative or its successor;

(II) Practice guidelines or performance measures that are:

(C) Pertinent to the area of practice, location, and characteristics of the patient population of the physician OR DENTIST being designated.

(2)(a) Any disclosure of a designation to a physician, DENTIST, or consumer shall be accompanied by a conspicuous disclaimer written in bold-faced type. The disclaimer shall state that designations are intended only as a guide to choosing a physician OR DENTIST, that designations should not be the sole factor in selecting a physician OR DENTIST, that designations have a risk of error, and that consumers should discuss designations with a physician OR DENTIST before choosing him or her.

**SECTION 5.** In Colorado Revised Statutes, 25-38-105, **amend** (1) and (2) as follows:

**25-38-105. Disclosure required upon request - information not proprietary.**

(1) Upon request by or on behalf of the designated physician OR DENTIST or the commissioner, a health care entity shall disclose to the requesting person a description of the methodology upon which the health care entity's designation is based and all data upon which the designation was based within forty-five days ~~of~~ AFTER receiving the request. The description shall be sufficiently detailed to allow the designated physician OR DENTIST or THE commissioner to determine the effect of the methodology on the data being reviewed. The disclosure of the data shall be made in a manner that is reasonably understandable and allows the physician, DENTIST, or commissioner to verify the data against his or her records. Where law or the health care entity's contractual obligations with a bona fide third party prevents disclosure of any of the data required to be disclosed by this section, the health care entity shall nonetheless provide sufficient information to allow the physician OR DENTIST to determine how the withheld data affected the physician's OR DENTIST'S designation.

(2) After the disclosure of the description of the methodology provided for in subsection (1) of this section and upon further request by or on behalf of the designated physician OR DENTIST or the commissioner, the health care entity shall provide the complete methodology within thirty days ~~of~~ AFTER such further request.

**SECTION 6.** In Colorado Revised Statutes, 25-38-106, **amend** (1) introductory portion and (2) (a) as follows:

**25-38-106. Notice of use or change of designation required - appeal process.**

(1) At least forty-five days before using, changing, or declining to award a designation in an existing program of designation, a health care entity shall provide the physician OR DENTIST with written notice of ~~such~~ THE designation decision. The written notice shall describe the procedures by which the physician OR DENTIST may:

(2) (a) Any health care entity providing designations of physicians OR DENTISTS shall establish procedures for the designated physician OR DENTIST to appeal the designation, including a change in designation or a declination to award a designation in an existing program of designation. ~~Such~~ THE procedures, in addition to the written notice provided for in subsection (1) of this section, shall provide for the following:

(I) A reasonable method by which the designated physician OR DENTIST shall provide notice of his or her desire to appeal;

(II) If requested by the designated physician OR DENTIST, disclosure of the methodology and data upon which the health care entity's decision is based;

(III) The name, title, qualifications, and relationship to the health care entity of the person or persons responsible for the appeal of the designated physician OR DENTIST;

(IV) An opportunity to submit or have considered corrected data relevant to the designation decision and to have considered the applicability of the methodology used in the designation decision. If requested by the designated physician ~~such~~ OR DENTIST, THE opportunity may be afforded by the health care entity in a face-to-face meeting with those responsible for the appeal decision at a location reasonably convenient to the physician OR DENTIST or by teleconference. All data submitted to the entity by a designated physician ~~shall be~~ OR DENTIST IS presumed valid and accurate. However, this presumption ~~shall not be construed to~~ DOES NOT permit a health care entity to unreasonably withhold consideration of corrected or supplemented data pursuant to this subparagraph (IV).

(V) The right of the physician OR DENTIST to be assisted by a representative;

(VI) An opportunity, if so desired, to be considered as part of the appeal, an explanation of the designation decision ~~which~~ THAT is the subject of the appeal by a person or persons deemed by the health care entity as responsible for the designation decision;

(VII) A written decision regarding the physician's OR DENTIST'S appeal that states the reasons for upholding, modifying, or rejecting the physician's OR DENTIST'S appeal.

**SECTION 7.** In Colorado Revised Statutes, 25-38-107, **amend** (1) as follows:

**25-38-107. Enforcement.** (1) ~~No~~ A health care entity shall NOT limit, by contract or other means, the right of a physician OR DENTIST to enforce this article.

**SECTION 8.** In Colorado Revised Statutes, 10-3-1104, **amend** (1) (ff) as follows:

**10-3-1104. Unfair methods of competition - unfair or deceptive acts or practices - repeal.** (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(ff) Violation of the "Physician AND DENTIST Designation Disclosure Act", article 38 of title 25, C.R.S.;

**SECTION 9. Act subject to petition - effective date - applicability.** (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to dentist designations on or after the applicable effective date of this act.

Approved: April 10, 2015