

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 15-0754.01 Christy Chase x2008

HOUSE BILL 15-1191

HOUSE SPONSORSHIP

Pettersen,

SENATE SPONSORSHIP

Grantham,

House Committees

Health, Insurance, & Environment

Senate Committees

Health & Human Services

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

In 2008, the general assembly enacted SB08-138, establishing the "Physician Designation Disclosure Act" to impose certain standards and requirements on health care entities that assign designations to physicians as an assessment or measurement of the care or clinical performance of physicians.

The bill adds dentists to the act, thereby imposing those same

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
March 31, 2015

SENATE
2nd Reading Unamended
March 30, 2015

HOUSE
3rd Reading Unamended
March 9, 2015

HOUSE
Amended 2nd Reading
March 6, 2015

standards and requirements when health care entities assign designations to dentists, and changes the name of the act to the "Health Care Provider Designation Disclosure Act".

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

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

4 **25-38-101. Short title.** This article shall be known and may be
5 cited as the "Physician AND DENTIST Designation Disclosure Act".

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

8 **25-38-102. Legislative declaration.** (1) The general assembly
9 hereby finds, determines, and declares that:

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

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

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

19
20 (f) For the protection of consumers, and physicians, AND DENTISTS
21 and to avoid improper profiling of physicians AND DENTISTS, health care
22 entities must ensure that they are using designations that are fair and
23 accurate and must accord physicians AND DENTISTS the right to challenge
24 and correct erroneous designations, data, and methodologies;

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

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

20 **25-38-103. Definitions.** As used in this article, unless the context
21 otherwise requires:

22 (3.5) "DENTIST" MEANS A DENTIST LICENSED UNDER THE "DENTAL
23 PRACTICE ACT", ARTICLE 35 OF TITLE 12, C.R.S.

24 (4) "Designation" means an award, assignment, characterization,
25 or representation of the cost efficiency, quality, or other assessment or
26 measurement of the care or clinical performance of any physician OR
27 DENTIST that is disclosed or intended for disclosure to the public or

1 persons actually or potentially covered by a health plan, by use of a grade,
2 star, tier, rating, profile, or any other form of designation. "Designation"
3 does not include:

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

6

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

10 **25-38-104. Minimum requirements for designations -**
11 **disclaimer required.** (1) Any designation of a physician OR DENTIST
12 shall include, at a minimum, the following:

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

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

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

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

1 guidelines collaborative or its successor;

2 (II) Practice guidelines or performance measures that are:

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

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

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

14 **25-38-105. Disclosure required upon request - information not**
15 **proprietary.** (1) Upon request by or on behalf of the designated
16 physician OR DENTIST or the commissioner, a health care entity shall
17 disclose to the requesting person a description of the methodology upon
18 which the health care entity's designation is based and all data upon which
19 the designation was based within forty-five days ~~of~~ AFTER receiving the
20 request. The description shall be sufficiently detailed to allow the
21 designated physician OR DENTIST or THE commissioner to determine the
22 effect of the methodology on the data being reviewed. The disclosure of
23 the data shall be made in a manner that is reasonably understandable and
24 allows the physician, DENTIST, or commissioner to verify the data against
25 his or her records. Where law or the health care entity's contractual
26 obligations with a bona fide third party prevents disclosure of any of the
27 data required to be disclosed by this section, the health care entity shall

1 nonetheless provide sufficient information to allow the physician OR
2 DENTIST to determine how the withheld data affected the physician's OR
3 DENTIST'S designation.

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

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

11 **25-38-106. Notice of use or change of designation required -**
12 **appeal process.** (1) At least forty-five days before using, changing, or
13 declining to award a designation in an existing program of designation,
14 a health care entity shall provide the physician OR DENTIST with written
15 notice of such THE designation decision. The written notice shall describe
16 the procedures by which the physician OR DENTIST may:

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

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

26 (II) If requested by the designated physician OR DENTIST,
27 disclosure of the methodology and data upon which the health care

1 entity's decision is based;

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

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

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

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

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

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

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

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

6 **10-3-1104. Unfair methods of competition - unfair or deceptive**
7 **acts or practices - repeal.** (1) The following are defined as unfair
8 methods of competition and unfair or deceptive acts or practices in the
9 business of insurance:

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

12 **SECTION 9. Act subject to petition - effective date -**
13 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
14 the expiration of the ninety-day period after final adjournment of the
15 general assembly (August 5, 2015, if adjournment sine die is on May 6,
16 2015); except that, if a referendum petition is filed pursuant to section 1
17 (3) of article V of the state constitution against this act or an item, section,
18 or part of this act within such period, then the act, item, section, or part
19 will not take effect unless approved by the people at the general election
20 to be held in November 2016 and, in such case, will take effect on the
21 date of the official declaration of the vote thereon by the governor.

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