SENATE COMMITTEE OF REFERENCE REPORT

_____ February 14, 2008
Chairman of Committee Date

Committee on Health and Human Services.

After consideration on the merits, the Committee recommends the following:

SB08-138 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

Amend printed bill, strike everything below the enacting clause and substitute the following:

"**SECTION 1.** Title 25, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 38
Physician Designation and Disclosure

25-38-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "PHYSICIAN DESIGNATION DISCLOSURE ACT".

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;

(b) PHYSICIAN 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 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 DESIGNATED;

(d) HEALTH CARE ENTITIES DIFFER IN THE EXTENT TO WHICH THEY PROVIDE ACCESS TO SOME OR ALL OF THE DATA, CRITERIA, AND METHODOLOGIES;

(e) REGULATORY AGENCIES IN OTHER STATES HAVE TAKEN ACTION AGAINST HEALTH CARE ENTITIES TO REQUIRE DISCLOSURE OF DESIGNATION INFORMATION AND TO SET CERTAIN CRITERIA BY WHICH DESIGNATIONS MAY BE USED;

(f) FOR THE PROTECTION OF CONSUMERS AND PHYSICIANS AND TO AVOID IMPROPER PROFILING OF PHYSICIANS, HEALTH CARE ENTITIES MUST ENSURE THAT THEY ARE USING DESIGNATIONS THAT ARE FAIR AND ACCURATE AND MUST ACCORD PHYSICIANS THE RIGHT TO CHALLENGE AND CORRECT ERRONEOUS DESIGNATIONS, DATA, AND METHODOLOGIES; AND

(g) FULL DISCLOSURE OF THE DATA AND METHODOLOGIES BY WHICH PHYSICIANS 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. 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 AN OPPORTUNITY TO BETTER UNDERSTAND THE CRITERIA, BASIS, AND METHODS BY WHICH PHYSICIANS 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.

25-38-103. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "CARRIER" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 10-16-102.

(2) "COMMISSIONER" MEANS THE COMMISSIONER OF INSURANCE.

(3) "CONSUMER" INCLUDES MEMBERS OF THE PUBLIC, HEALTH CARE CONSUMERS AND POTENTIAL HEALTH CARE CONSUMERS, PURCHASERS OF HEALTH INSURANCE PLANS, OR PATIENTS.

(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 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:

(a) INFORMATION THAT IS DERIVED SOLELY FROM HEALTH PLAN MEMBER FEEDBACK SUCH AS SATISFACTION RATINGS; OR

(b) INFORMATION FOR PROGRAMS DESIGNED TO ASSIST HEALTH PLAN MEMBERS WITH ESTIMATING A PHYSICIAN'S ROUTINE FEES OR COSTS.

(5) "HEALTH CARE ENTITY" MEANS ANY CARRIER OR OTHER ENTITY THAT PROVIDES A PLAN OF HEALTH CARE COVERAGE TO BENEFICIARIES UNDER A PLAN.

(6) "METHODOLOGY" MEANS THE METHOD BY WHICH A DESIGNATION IS DETERMINED, INCLUDING, BUT NOT LIMITED TO, THE USE OF ALGORITHMS OR STUDIES, EVALUATION OF DATA, APPLICATION OF GUIDELINES, OR PERFORMANCE MEASURES.

(7) "PHYSICIAN" MEANS ANY PHYSICIAN LICENSED UNDER THE "COLORADO MEDICAL PRACTICE ACT", ARTICLE 36 OF TITLE 12, C.R.S.

25-38-104. Minimum requirements for designations - disclaimer required. (1) ANY DESIGNATION OF A PHYSICIAN SHALL INCLUDE, AT A MINIMUM, THE FOLLOWING:

(a) A QUALITY OF CARE COMPONENT AND A CLEAR

REPRESENTATION OF THE WEIGHT GIVEN TO QUALITY OF CARE IN COMPARISON WITH OTHER DESIGNATION FACTORS;

(b) STATISTICALLY VALID ANALYSES THAT INCLUDE APPROPRIATE RISK ADJUSTMENTS TO ACCOUNT FOR THE PATIENT POPULATION, CASE MIX, SEVERITY OF PATIENT CONDITION, COMORBIDITY, OUTLIER EVENTS, OR OTHER KNOWN STATISTICAL ANOMALIES;

(c) A PERIOD OF ASSESSMENT OF DATA, PERTINENT TO THE DESIGNATION, THAT SHALL BE UPDATED BY THE HEALTH CARE ENTITY AT APPROPRIATE INTERVALS;

(d) IF CLAIMS DATA ARE USED IN THE DESIGNATION PROCESS, ACCURATE CLAIMS DATA APPROPRIATELY ATTRIBUTED TO THE PHYSICIAN. WHEN REASONABLY AVAILABLE, THE HEALTH CARE ENTITY SHALL USE AGGREGATED DATA TO SUPPLEMENT ITS OWN CLAIMS DATA.

(e) THE PHYSICIAN'S RESPONSIBILITY FOR HEALTH CARE DECISIONS AND THE FINANCIAL CONSEQUENCES OF THOSE DECISIONS, WHICH SHALL BE FAIRLY AND ACCURATELY ATTRIBUTED TO THE PHYSICIAN;

(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 SPECIALTY ORGANIZATIONS, AND THE COLORADO CLINICAL GUIDELINES COLLABORATIVE OR ITS SUCCESSOR;

(II) PRACTICE GUIDELINES OR PERFORMANCE MEASURES THAT ARE:

(A) EVIDENCE-BASED, WHENEVER POSSIBLE;

(B) CONSENSUS-BASED, WHENEVER POSSIBLE; AND

(C) PERTINENT TO THE AREA OF PRACTICE, LOCATION, AND CHARACTERISTICS OF THE PATIENT POPULATION OF THE PHYSICIAN BEING

DESIGNATED.

(2) (a) ANY DISCLOSURE OF A DESIGNATION TO A PHYSICIAN 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, THAT DESIGNATIONS SHOULD NOT BE THE SOLE FACTOR IN SELECTING A PHYSICIAN, THAT DESIGNATIONS HAVE A RISK OF ERROR, AND THAT CONSUMERS SHOULD DISCUSS DESIGNATIONS WITH THEIR PHYSICIANS BEFORE MAKING A MEDICAL DECISION.

(b) FAILURE TO INCLUDE THE DISCLAIMER MAKES THE USE OF THE DESIGNATION A VIOLATION OF THIS ARTICLE.

25-38-105. Disclosure required upon request - information not proprietary. (1) UPON REQUEST BY OR ON BEHALF OF THE DESIGNATED PHYSICIAN OR THE COMMISSIONER, A HEALTH CARE ENTITY SHALL DISCLOSE TO THE REQUESTING PERSON A DESCRIPTION OF THE METHODOLOGY UPON WHICH THE HEALTHCARE ENTITY'S DESIGNATION IS BASED AND ALL DATA UPON WHICH THE DESIGNATION WAS BASED WITHIN THIRTY DAYS OF RECEIVING THE REQUEST. THE DESCRIPTION SHALL BE SUFFICIENTLY DETAILED TO ALLOW THE DESIGNATED PHYSICIAN OR 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 OR COMMISSIONER TO VERIFY THE DATA AGAINST HIS OR HER RECORDS. WHERE LAW OR THE HEALTH CARE ENTITY'S CONTRACTUAL OBLIGATIONS PREVENT DISCLOSURE OF ANY OF THE DATA REQUIRED TO BE DISCLOSED BY THIS ARTICLE, THE HEALTH CARE ENTITY SHALL NONETHELESS PROVIDE SUFFICIENT INFORMATION TO ALLOW THE PHYSICIAN TO DETERMINE HOW THE WITHHELD DATA AFFECTED THE PHYSICIAN'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 THE COMMISSIONER, THE HEALTH CARE ENTITY SHALL PROVIDE THE COMPLETE METHODOLOGY WITHIN FIFTEEN DAYS OF SUCH FURTHER REQUEST.

(3) ANY INFORMATION USED IN MAKING THE DESIGNATION SHALL

NOT BE PROPRIETARY UNDER THE "UNIFORM TRADE SECRETS ACT", ARTICLE 74 OF TITLE 7, C.R.S., OR ANY OTHER STATUTE OR COMMON LAW.

25-38-106. Notice of use or change of designation required - appeal process. (1) 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 WITH WRITTEN NOTICE OF SUCH DESIGNATION DECISION. THE WRITTEN NOTICE SHALL PROVIDE OR ALLOW ACCESS TO THE METHODOLOGY DESCRIPTION REQUIRED IN SECTION 25-38-105 (1) AND ALL DATA UPON WHICH THE DESIGNATION WAS BASED OR DECLINED. THE NOTICE SHALL ALSO DESCRIBE THE PROCEDURE BY WHICH THE PHYSICIAN MAY REQUEST AN APPEAL OF THE DESIGNATION DECISION.

(2) (a) ANY HEALTH CARE ENTITY PROVIDING DESIGNATIONS OF PHYSICIANS SHALL ESTABLISH PROCEDURES FOR THE DESIGNATED PHYSICIAN TO APPEAL THE DESIGNATION, INCLUDING A CHANGE IN DESIGNATION OR A DECLINATION TO AWARD A DESIGNATION IN AN EXISTING PROGRAM OF DESIGNATION. SUCH 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 SHALL PROVIDE NOTICE OF HIS OR HER DESIRE TO APPEAL;

(II) DISCLOSURE OF THE METHODOLOGY AND DATA UPON WHICH THE HEALTH CARE ENTITY'S DECISION IS BASED;

(III) THE IDENTITY, QUALIFICATIONS, AND RELATIONSHIP TO THE HEALTH CARE ENTITY OF THE PERSON OR PERSONS RESPONSIBLE FOR HEARING THE APPEAL OF THE DESIGNATED PHYSICIAN;

(IV) AN OPPORTUNITY TO SUBMIT OR HAVE CONSIDERED CORRECTED DATA RELEVANT TO THE DESIGNATION DECISION AND TO HAVE CONSIDERED THE APPROPRIATENESS OF THE METHODOLOGY USED IN THE DESIGNATION DECISION. SUCH OPPORTUNITY SHALL BE AFFORDED IN A FACE-TO-FACE MEETING WITH THOSE RESPONSIBLE FOR THE APPEAL DECISION AT A LOCATION REASONABLY CONVENIENT TO THE PHYSICIAN OR BY TELECONFERENCE.

(V) THE RIGHT OF THE PHYSICIAN 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 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 APPEAL THAT STATES THE REASONS FOR UPHOLDING, MODIFYING, OR REJECTING THE PHYSICIAN'S APPEAL.

(b) THE APPEAL SHALL BE MADE TO A PERSON OR PERSONS WITH THE AUTHORITY GRANTED BY THE DESIGNATING HEALTH CARE ENTITY TO UPHOLD, MODIFY, OR REJECT THE DESIGNATION DECISION OR TO REQUIRE ADDITIONAL ACTION TO ENSURE THAT THE DESIGNATION IS FAIR, REASONABLE, AND ACCURATE.

(c) THE APPEAL PROCESS SHALL BE COMPLETE WITHIN FORTY-FIVE DAYS FROM THE DATE UPON WHICH THE DATA AND METHODOLOGY ARE DISCLOSED UNLESS OTHERWISE AGREED TO BY THE PARTIES TO THE APPEAL.

(3) NO CHANGE OR MODIFICATION OF A DESIGNATION THAT IS THE SUBJECT OF AN APPEAL SHALL BE IMPLEMENTED OR USED BY THE HEALTH CARE ENTITY UNTIL THE APPEAL IS FINAL.

(4) THE HEALTH CARE ENTITY SHALL UPDATE THE PHYSICIAN'S DESIGNATION IN ITS PROVIDER DIRECTORY WITHIN FIFTEEN DAYS AFTER THE APPEAL IS FINAL.

25-38-107. Enforcement. (1) NO HEALTH CARE ENTITY SHALL LIMIT, BY CONTRACT OR OTHER MEANS, THE RIGHT OF A PHYSICIAN TO ENFORCE THIS ARTICLE.

(2) THIS ARTICLE MAY BE ENFORCED IN A CIVIL ACTION, AND ANY REMEDIES AT LAW AND IN EQUITY SHALL BE AVAILABLE.

(3) A VIOLATION OF THIS ARTICLE BY A HEALTH CARE ENTITY SHALL CONSTITUTE AN UNFAIR OR DECEPTIVE ACT OR PRACTICE UNDER PART 11 OF ARTICLE 3 OF TITLE 10, C.R.S.

SECTION 2. 10-3-1104 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

10-3-1104. Unfair methods of competition and unfair or deceptive acts or practices. (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 DESIGNATION DISCLOSURE ACT", ARTICLE 38 OF TITLE 25, C.R.S.

SECTION 3. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to physician designations on or after the applicable effective date of this act.".

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