

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 408

By: Crain

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6 AS INTRODUCED

7 An Act relating to health care; creating the
8 Physician Designation Disclosure Act; providing short
9 title; defining terms; stating minimum requirements
10 of certain designations; requiring certain
11 disclaimer; providing for certain violation;
12 requiring explanation of certain designation upon
13 request; providing requirements of disclosed
14 information; requiring disclosure of additional
15 information within certain time frame upon additional
16 request; providing for written notice to physicians
17 on designation decisions; stating contents of notice;
18 providing procedures for appeal; prohibiting certain
19 use of designation until appeals are final; providing
20 method of modification; prohibiting limitation of the
21 act; allowing for enforcement by civil action;
22 stating effect of violation; providing for
23 codification; and providing an effective date.
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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1-725.1 of Title 63, unless
21 there is created a duplication in numbering, reads as follows:

22 This act shall be known and may be cited as the "Physician
23 Designation Disclosure Act".
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1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-725.2 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 As used in the Physician Designation Disclosure Act:

5 1. "Carrier" means any entity that provides health coverage in
6 this state, including a franchise insurance plan, a fraternal
7 benefit society, a health maintenance organization, a nonprofit
8 hospital and health service corporation, a sickness and accident
9 insurance company, and any other entity providing a plan of health
10 insurance or health benefits subject to the insurance laws of this
11 state;

12 2. "Commissioner" means the Commissioner of the Insurance
13 Department;

14 3. "Consumer" includes members of the public, health care
15 consumers and potential health care consumers, purchasers of health
16 insurance plans, or patients;

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

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- 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; and

7. "Physician" means any physician licensed pursuant to the State Board of Medical Licensure and Supervision.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-725.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any designation of a physician shall include, at a minimum, the following:

1. A quality of care component that may be satisfied by incorporating a practice guideline or performance measure pursuant to paragraph 6 of this subsection, and a clear representation of the weight given to quality of care in comparison with other designation factors;

1 2. Statistical analyses that are accurate, valid, and reliable
2 and, where reasonably possible, that appropriately adjust for
3 patient population, case mix, severity of patient condition,
4 comorbidity, outlier events, or other known statistical anomalies;

5 3. A period of assessment of data, pertinent to the
6 designation, that shall be updated by the health care entity at
7 appropriate intervals;

8 4. If claims data are used in the designation process, accurate
9 claims data appropriately attributed to the physician. When
10 reasonably available, the health care entity shall use aggregated
11 data to supplement its own claims data;

12 5. The physician's responsibility for health care decisions and
13 the financial consequences of those decisions, which shall be fairly
14 and accurately attributed to the physician;

15 6. If practice guidelines or performance measures are used in
16 the designation process:

- 17 a. practice guidelines or performance measures that are
18 promulgated or endorsed by nationally recognized
19 health care organizations that establish or promote
20 guidelines and performance measures emphasizing
21 quality of health care, such as the national quality
22 forum or the AQA alliance, or their successors, or
23 other such national physician specialty organizations,
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1 or the Oklahoma clinical guidelines collaborative or
2 its successor,

3 b. practice guidelines or performance measures that are:

4 (1) evidence-based, whenever possible,

5 (2) consensus-based, whenever possible, and

6 (3) pertinent to the area of practice, location, and
7 characteristics of the patient population of the
8 physician being designated.

9 B. 1. Any disclosure of a designation to a physician or
10 consumer shall be accompanied by a conspicuous disclaimer written in
11 bold-faced type. The disclaimer shall state that designations are
12 intended only as a guide to choosing a physician, that designations
13 should not be the sole factor in selecting a physician, that
14 designations have a risk of error, and that consumers should discuss
15 designations with a physician before choosing him or her.

16 2. Failure to include the disclaimer makes the use of the
17 designation a violation of this act.

18 SECTION 4. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1-725.4 of Title 63, unless
20 there is created a duplication in numbering, reads as follows:

21 A. Upon request by or on behalf of the designated physician or
22 the commissioner, a health care entity shall disclose to the
23 requesting person a description of the methodology upon which the
24 healthcare entity's designation is based and all data upon which the

1 designation was based within forty-five (45) days of receiving the
2 request. The description shall be sufficiently detailed to allow
3 the designated physician or commissioner to determine the effect of
4 the methodology on the data being reviewed. The disclosure of the
5 data shall be made in a manner that is reasonably understandable and
6 allows the physician or commissioner to verify the data against his
7 or her records. Where law or the health care entity's contractual
8 obligations with a bona fide third party prevents disclosure of any
9 of the data required to be disclosed by this section, the health
10 care entity shall nonetheless provide sufficient information to
11 allow the physician to determine how the withheld data affected the
12 physician's designation.

13 B. After the disclosure of the description of the methodology
14 provided for in subsection A of this section and upon further
15 request by or on behalf of the designated physician or the
16 commissioner, the health care entity shall provide the complete
17 methodology within thirty (30) days of such further request.

18 SECTION 5. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1-725.5 of Title 63, unless
20 there is created a duplication in numbering, reads as follows:

21 A. At least forty-five (45) days before using, changing, or
22 declining to award a designation in an existing program of
23 designation, a health care entity shall provide the physician with
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1 written notice of such designation decision. The written notice
2 shall describe the procedures by which the physician may:

3 1. Obtain the information pursuant to Section 4 of this act,
4 including all of the data upon which the designation was based or
5 declined; and

6 2. Request an appeal of the designation decision, including the
7 opportunity for a face-to-face meeting pursuant to subparagraph d of
8 paragraph 1 of subsection B of this section.

9 B. 1. Any health care entity providing designations of
10 physicians shall establish procedures for the designated physician
11 to appeal the designation, including a change in designation or a
12 declination to award a designation in an existing program of
13 designation. Such procedures, in addition to the written notice
14 provided for in subsection A of this section, shall provide for the
15 following:

- 16 a. a reasonable method by which the designated physician
17 shall provide notice of his or her desire to appeal,
18 b. if requested by the designated physician, disclosure
19 of the methodology and data upon which the health care
20 entity's decision is based,
21 c. the name, title, qualifications, and relationship to
22 the health care entity of the person or persons
23 responsible for the appeal of the designated
24 physician,

1 d. an opportunity to submit or have considered corrected
2 data relevant to the designation decision and to have
3 considered the applicability of the methodology used
4 in the designation decision. If requested by the
5 designated physician, such opportunity may be afforded
6 by the health care entity in a face-to-face meeting
7 with those responsible for the appeal decision at a
8 location reasonably convenient to the physician or by
9 teleconference. All data submitted to the entity by a
10 designated physician shall be presumed valid and
11 accurate.

12 However, this presumption shall not be construed to
13 permit a health care entity to unreasonably withhold
14 consideration of corrected or supplemented data
15 pursuant to subsection B of this section.

16 e. the right of the physician to be assisted by a
17 representative,

18 f. an opportunity, if so desired, to be considered as
19 part of the appeal, an explanation of the designation
20 decision which is the subject of the appeal by a
21 person or persons deemed by the health care entity as
22 responsible for the designation decision, and
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1 g. a written decision regarding the physician's appeal
2 that states the reasons for upholding, modifying, or
3 rejecting the physician's appeal;

4 2. The appeal shall be made to a person or persons with the
5 authority granted by the designating health care entity to uphold,
6 modify, or reject the designation decision or to require additional
7 action to ensure that the designation is fair, reasonable, and
8 accurate; and

9 3. The appeal process shall be complete within forty-five (45)
10 days from the date upon which the data and methodology are disclosed
11 unless otherwise agreed to by the parties to the appeal.

12 C. No change or modification of a designation that is the
13 subject of an appeal shall be implemented or used by the health care
14 entity until the appeal is final.

15 D. With respect to any designation previously disclosed
16 publicly, the health care entity shall update any changes to such
17 designation within thirty (30) days after the appeal is final.

18 SECTION 6. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1-725.6 of Title 63, unless
20 there is created a duplication in numbering, reads as follows:

21 A. No health care entity shall limit, by contract or other
22 means, the right of a physician to enforce the Physician Designation
23 Disclosure Act.

1 B. This article may be enforced in a civil action, and any
2 remedies at law and in equity shall be available.

3 C. A violation of this article by a health care entity shall
4 constitute an unfair or deceptive act as provided by law.

5 SECTION 7. This act shall become effective November 1, 2015.

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