

By: Buckingham, et al.

S.B. No. 1148

A BILL TO BE ENTITLED

AN ACT

relating to maintenance of certification by a physician or an applicant for a license to practice medicine in this state; authorizing a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle F, Title 8, Insurance Code, is amended by adding Chapter 1461 to read as follows:

CHAPTER 1461. DISCRIMINATION AGAINST PHYSICIAN BASED ON  
MAINTENANCE OF CERTIFICATION

Sec. 1461.001. DEFINITIONS. In this chapter:

(1) "Enrollee" means an individual who is eligible to receive health care services under a managed care plan.

(2) "Maintenance of certification" has the meaning assigned by Section 151.002, Occupations Code.

(3) "Managed care plan" means a health benefit plan under which medical care services are provided to enrollees through contracts with physicians and that requires enrollees to use participating physicians or that provides a different level of coverage for enrollees who use participating physicians. The term includes a health benefit plan issued by:

- (A) a health maintenance organization;
- (B) a preferred provider benefit plan issuer; or
- (C) any other entity that issues a health benefit plan, including an insurance company.

1           (4) "Participating physician" means a physician who  
2 has directly or indirectly contracted with a health benefit plan  
3 issuer to provide services to enrollees.

4           (5) "Physician" means a person licensed to practice  
5 medicine in this state.

6           Sec. 1461.002. APPLICABILITY. (a) This chapter applies to  
7 a physician regardless of whether the physician is a participating  
8 physician.

9           (b) This chapter applies to a person to whom a managed care  
10 plan issuer contracts to:

- 11           (1) process or pay claims;  
12           (2) obtain the services of physicians to provide  
13 medical care services to enrollees; or  
14           (3) issue verifications or preauthorizations.

15           Sec. 1461.003. DISCRIMINATION BASED ON MAINTENANCE OF  
16 CERTIFICATION. (a) Except as provided by Subsection (b), a  
17 managed care plan issuer may not differentiate between physicians  
18 based on a physician's maintenance of certification in regard to:

- 19           (1) paying the physician;  
20           (2) reimbursing the physician; or  
21           (3) directly or indirectly contracting with the  
22 physician to provide services to enrollees.

23           (b) A managed care plan issuer may differentiate between  
24 physicians based on a physician's maintenance of certification  
25 only:

- 26           (1) if the entity that administers the physician's  
27 maintenance of certification is certified under Chapter 170,

Occupations Code; and

(2) after the issuer considers the physician's:

(A) training;

(B) experience;

(C) competence; and

(D) judgment.

(c) A managed care plan issuer may not differentiate between physicians based on the entity that administers a physician's maintenance of certification.

SECTION 2. Section 151.002(a), Occupations Code, is amended by adding Subdivision (6-b) to read as follows:

(6-b) "Maintenance of certification" means the satisfactory completion of periodic recertification requirements that are required for a physician to maintain certification after initial certification from:

(A) a medical specialty member board of the American Board of Medical Specialties;

(B) a medical specialty member board of the American Osteopathic Association Bureau of Osteopathic Specialists;

(C) the American Board of Oral and Maxillofacial Surgery; or

(D) any other certifying board that is recognized by the Texas Medical Board.

SECTION 3. Subchapter A, Chapter 151, Occupations Code, is amended by adding Section 151.006 to read as follows:

Sec. 151.006. CERTIFICATION OF MEDICAL SPECIALTY.

1 (a) Notwithstanding any law other than Subsection (b), a physician  
2 is considered a board-certified medical specialist in this state if  
3 the physician receives initial certification, regardless of the  
4 physician's maintenance of certification, from:

5 (1) a medical specialty member board of the American  
6 Board of Medical Specialties;

7 (2) a medical specialty member board of the American  
8 Osteopathic Association Bureau of Osteopathic Specialists;

9 (3) the American Board of Oral and Maxillofacial  
10 Surgery; or

11 (4) any other certifying board that is recognized by  
12 the Texas Medical Board.

13 (b) Subsection (a) does not apply to a physician:

14 (1) who holds a medical license that is currently  
15 restricted or suspended for cause or has been canceled for cause or  
16 revoked by any state, a province of Canada, or a uniformed service  
17 of the United States;

18 (2) who is under an investigation or against whom a  
19 proceeding is instituted that may result in a restriction,  
20 cancellation, suspension, or revocation of the physician's medical  
21 license in any state, a province of Canada, or a uniformed service  
22 of the United States; or

23 (3) who has a prosecution that is pending against the  
24 physician in any state, federal, or Canadian court for any offense  
25 that under the laws of this state is a misdemeanor involving moral  
26 turpitude or a felony.

27 SECTION 4. Subchapter B, Chapter 151, Occupations Code, is

amended by adding Section 151.0515 to read as follows:

Sec. 151.0515. DISCRIMINATION BASED ON MAINTENANCE OF CERTIFICATION. (a) Except as provided by Subsection (b), the following entities may not differentiate between physicians based on a physician's maintenance of certification:

(1) a health facility that is licensed under Subtitle B, Title 4, Health and Safety Code, if the facility has an organized medical staff or a process for credentialing physicians;

(2) a hospital that is owned or operated by this state;

(3) an institution or program that is owned, operated, or licensed by this state, including an institution or program that directly or indirectly receives state financial assistance, if the institution or program has an organized medical staff or a process for credentialing physicians on its staff; or

(4) an institution or program that is owned, operated, or licensed by a political subdivision of this state, if the institution or program has an organized medical staff or a process for credentialing physicians on its staff.

(b) An entity described by Subsection (a) may differentiate between physicians based on a physician's maintenance of certification only:

(1) if the entity that administers the physician's maintenance of certification is certified under Chapter 170; and

(2) after the entity considers the physician's:

(A) training;

(B) experience;

(C) competence; and

1                    (D) judgment.

2            (c) An entity described by Subsection (a) may not  
3 differentiate between physicians based on the entity that  
4 administers a physician's maintenance of certification.

5            (d) A state agency, including the Health and Human Services  
6 Commission and the Department of State Health Services, may not  
7 require an entity described by Subsection (a) to require  
8 maintenance of certification by a physician.

9            SECTION 5. Section 155.003, Occupations Code, is amended by  
10 amending Subsection (d) and adding Subsection (d-1) to read as  
11 follows:

12            (d) Except as provided by Subsection (d-1), in [In] addition  
13 to the other requirements prescribed by this subtitle, the board  
14 may require an applicant to comply with other requirements that the  
15 board considers appropriate.

16            (d-1) The board may not require maintenance of  
17 certification by an applicant for the applicant to be eligible for a  
18 license under this chapter.

19            SECTION 6. Section 156.001, Occupations Code, is amended by  
20 adding Subsection (f) to read as follows:

21            (f) The board may not adopt a rule requiring maintenance of  
22 certification by a license holder for the license holder to be  
23 eligible for an initial or renewal registration permit.

24            SECTION 7. Subtitle B, Title 3, Occupations Code, is  
25 amended by adding Chapter 170 to read as follows:

1     CHAPTER 170. ENTITY CERTIFICATION TO PROVIDE MAINTENANCE OF  
2                             CERTIFICATION

3             Sec. 170.001. CERTIFICATE TO PROVIDE MAINTENANCE OF  
4 CERTIFICATION. (a) The board shall establish a process to issue a  
5 certificate authorizing an entity to provide maintenance of  
6 certification for physicians.

7             (b) The board by rule shall establish the minimum number of  
8 continuing medical education hours that are required for  
9 maintenance of certification in a particular medical specialty by  
10 an entity under this chapter.

11            Sec. 170.002. FEES. The board may set a reasonable  
12 application fee for a certificate under this chapter.

13            Sec. 170.003. APPLICATION FOR CERTIFICATE. (a) The board  
14 shall prescribe the form of an application for a certificate under  
15 this chapter.

16            (b) The application must require the applicant to provide:  
17                 (1) the applicant's legal name, mailing address,  
18 telephone number, and business address;  
19                 (2) the particular practice area in which the  
20 applicant will offer maintenance of certification;  
21                 (3) the requirements the applicant will impose on a  
22 physician for maintenance of certification;  
23                 (4) an online resource for the consumer to verify the  
24 maintenance of certification of its members;  
25                 (5) that the applicant has a permanent headquarters  
26 and staff;  
27                 (6) that the applicant has written proof of a

determination by the Internal Revenue Service that the agency is tax exempt under Section 501(c), Internal Revenue Code of 1986;

(7) that the applicant has written bylaws, a code of ethics to guide the practice of its members, and a disciplinary system providing for revocation of certification based upon violations of such bylaws or ethical guidelines;

(8) that the applicant has an internal review and control process, including budgetary practices, to ensure effective use of resources;

(9) that the applicant has the ability to provide a full explanation of its recertification process upon request by the board; and

(10) the amount of any fees the applicant will charge a physician for maintenance of certification.

Sec. 170.004. ISSUANCE OF CERTIFICATE. (a) The board shall issue a certificate under this chapter to an applicant that:

(1) submits an application on the form prescribed by the board under Section 170.003;

(2) pays the required fee; and

(3) demonstrates to the satisfaction of the board that the applicant's maintenance of certification program complies with Section 170.005.

(b) The board shall within 180 days issue a certificate to an applicant that meets the requirements of this chapter.

Sec. 170.005. REQUIREMENTS FOR MAINTENANCE OF CERTIFICATION. A maintenance of certification program provided by a holder of a certificate under this chapter:



1           (1) must require a physician seeking maintenance of  
2 certification to:

3                   (A) be licensed in this state with a full and  
4 unrestricted license; and

5                   (B) complete at least the minimum number of  
6 continuing medical education hours set by board rule under Section  
7 170.001(b);

8           (2) may not deny an application by a physician seeking  
9 maintenance of certification if the physician is considered a  
10 board-certified medical specialist in this state for purposes of  
11 Section 151.006; and

12           (3) other than continuing medical education hours, may  
13 not require a physician initially certified by the entity to  
14 provide confidential patient records or complete any educational or  
15 testing requirement, including periodic testing, proprietary  
16 self-assessment, or peer evaluation.

17           Sec. 170.006. ADVERTISING AS BOARD-CERTIFIED SPECIALIST. A  
18 physician who holds current maintenance of certification from a  
19 certificate holder under this chapter may advertise that the  
20 physician is a board-certified specialist in the area of medical  
21 specialty in which the physician holds the initial board  
22 certification.

23           Sec. 170.007. CONFIDENTIALITY. (a) Except as provided by  
24 Subsection (b), information that is used, maintained, or compiled  
25 by a holder of a certificate issued under this chapter regarding an  
26 application by a physician for maintenance of certification is  
27 confidential and not subject to subpoena or discovery.

1        (b) The board may obtain records from a holder of a  
2 certificate issued under this chapter only for the purposes of  
3 verifying maintenance of certification by a physician.

4        SECTION 8. The Texas Medical Board shall adopt rules to  
5 implement Chapter 170, Occupations Code, as added by this Act, not  
6 later than September 1, 2018.

7        SECTION 9. This Act takes effect January 1, 2018.