

BILL ANALYSIS

C.S.S.B. 1148
By: Buckingham
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties have expressed concerns regarding the inconsistencies among recertification requirements for physicians imposed by various medical specialty entities and with the high costs associated with the recertification process. The parties contend that many hospitals and other employers condition a physician's employment on the physician's maintenance of certification, which the parties argue creates a de facto mandate on physicians. C.S.S.B. 1148 seeks to address these concerns by prohibiting certain entities from differentiating between physicians based on a physician's maintenance of certification.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 1148 amends the Occupations Code to prohibit a health facility or a mental hospital licensed under certain provisions of the Health and Safety Code that has an organized medical staff or a process for credentialing physicians, a hospital that is owned or operated by the state, or an institution or program that is owned, operated, or licensed by the state or a political subdivision of the state that has an organized medical staff or a process for credentialing physicians on its staff from differentiating between physicians based on a physician's maintenance of certification. The bill defines "maintenance of certification" as the satisfactory completion of periodic recertification requirements that are required for a physician to maintain certification after initial certification from a medical specialty member board of the American Board of Medical Specialties or of the American Osteopathic Association Bureau of Osteopathic Specialists, the American Board of Oral and Maxillofacial Surgery, or any other certifying board that is recognized by the Texas Medical Board. The bill specifies that such a facility, hospital, institution, or program may differentiate between physicians based on a physician's maintenance of certification only if the entity's designation under law or certification or accreditation by a national certifying or accrediting organization is contingent on the entity requiring a specific maintenance of certification by physicians seeking staff privileges or credentialing at the entity.

C.S.S.B. 1148 requires the Texas Medical Board, using existing funds, to study whether to recognize one or more entities to provide maintenance of certification for physicians in Texas. The bill requires the board, in conducting the study, to consult with appropriate state agencies and other entities, as determined by the board. The bill requires the results of the study to be made available through the board's website and other appropriate means, as determined by the

board. The bill authorizes the board, if the study indicates a need for the board to recognize one or more entities to provide maintenance of certification for physicians in Texas, to develop and implement a program to recognize such entities. The bill requires the program to include an assessment of eligibility criteria as specified by the bill for an entity to provide maintenance of certification. The bill requires the board to begin the study not later than January 1, 2018. The bill prohibits the board from requiring maintenance of certification by an applicant for a license to practice medicine for the applicant to be eligible for the license. The bill prohibits the board from adopting a rule requiring maintenance of certification by a person licensed to practice medicine for the license holder to be eligible for an initial or renewal registration permit.

C.S.S.B. 1148 amends the Insurance Code to prohibit a managed care plan issuer from differentiating between physicians based on a physician's maintenance of certification in regard to paying the physician, reimbursing the physician, or directly or indirectly contracting with the physician to provide services to enrollees. The bill specifies that a managed care plan issuer may differentiate between physicians based on a physician's maintenance of certification only if the designation under law or certification or accreditation by a national certifying or accrediting organization of a facility, hospital, institution, or program described by the bill's Occupations Code provisions relating to discrimination based on maintenance of certification is contingent on the entity requiring a specific maintenance of certification by physicians seeking staff privileges or credentialing at the entity. The bill establishes the applicability of these provisions.

EFFECTIVE DATE

January 1, 2018.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1148 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

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

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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.
(4) "Participating physician" means a physician who has directly or indirectly contracted with a health benefit plan issuer to provide services to enrollees.
(5) "Physician" means a person licensed to practice medicine in this state.
Sec. 1461.002. APPLICABILITY. (a) This chapter applies to a physician regardless of whether the physician is a participating physician.
(b) This chapter applies to a person to whom a managed care plan issuer contracts to:
(1) process or pay claims;
(2) obtain the services of physicians to provide medical care services to enrollees;
or
(3) issue verifications or preauthorizations.
Sec. 1461.003. DISCRIMINATION BASED ON MAINTENANCE OF CERTIFICATION. (a) Except as provided by Subsection (b), a managed care plan issuer may not differentiate between physicians based on a physician's maintenance of certification in regard to:
(1) paying the physician;
(2) reimbursing the physician; or
(3) directly or indirectly contracting with the physician to provide services to enrollees.
(b) A managed care plan issuer 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, 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.

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(5) "Physician" means an individual licensed to practice medicine in this state.
Sec. 1461.002. APPLICABILITY. (a) This chapter applies to a physician regardless of whether the physician is a participating physician.
(b) This chapter applies to a person with whom a managed care plan issuer contracts to:
(1) process or pay claims;
(2) obtain the services of physicians to provide health care services to enrollees; or
(3) issue verifications or preauthorizations.
Sec. 1461.003. DISCRIMINATION BASED ON MAINTENANCE OF CERTIFICATION. (a) Except as provided by Subsection (b), a managed care plan issuer may not differentiate between physicians based on a physician's maintenance of certification in regard to:
(1) paying the physician;
(2) reimbursing the physician; or
(3) directly or indirectly contracting with the physician to provide services to enrollees.
(b) A managed care plan issuer may differentiate between physicians based on a physician's maintenance of certification only if the designation under law or certification or accreditation by a national certifying or accrediting organization of an entity described by Section 151.0515(a), Occupations Code, is contingent on the entity requiring a specific maintenance of certification by physicians seeking staff privileges or credentialing at the entity.

SECTION 2. Section 151.002(a), Occupations Code, is amended.

SECTION 2. Same as engrossed version.

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. (a)

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

- (1) a medical specialty member board of the American Board of Medical Specialties;
- (2) a medical specialty member board of the American Osteopathic Association Bureau of Osteopathic Specialists;
- (3) the American Board of Oral and Maxillofacial Surgery; or
- (4) any other certifying board that is recognized by the Texas Medical Board.

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

- (1) who holds a medical license that is currently restricted or suspended for cause or has been canceled for cause or revoked by any state, a province of Canada, or a uniformed service of the United States;
- (2) who is under an investigation or against whom a proceeding is instituted that may result in a restriction, cancellation, suspension, or revocation of the physician's medical license in any state, a province of Canada, or a uniformed service of the United States; or
- (3) who has a prosecution that is pending against the physician in any state, federal, or Canadian court for any offense that under the laws of this state is a misdemeanor involving moral turpitude or a felony.

No equivalent provision.

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

SECTION 3. Subchapter B, Chapter 151, Occupations Code, is amended by adding Sections 151.0515 and 151.057 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

(D) judgment.

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

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

No equivalent provision.

Subtitle B, Title 4, Health and Safety Code, or a mental hospital that is licensed under Chapter 577, Health and Safety Code, if the facility or hospital 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 if the entity's designation under law or certification or accreditation by a national certifying or accrediting organization is contingent on the entity requiring a specific maintenance of certification by physicians seeking staff privileges or credentialing at the entity.

Sec. 151.057. RECOGNITION OF ENTITIES TO PROVIDE MAINTENANCE OF CERTIFICATION; STUDY. (a) The board, using existing funds, shall study whether to recognize one or more entities to provide maintenance of certification for physicians in this state. (b) In conducting the study under this section, the board shall consult with appropriate state agencies and other entities, as determined by the board.

(c) The results of the study under this section shall be made available through the board's Internet website and other appropriate means, as determined by the board.

(d) If the study under this section indicates a need for the board to recognize one or more entities to provide maintenance of certification for physicians in this state, the board may develop and implement a program to recognize such entities. The program must include an assessment of the following as eligibility criteria for an entity to provide maintenance of certification:

(1) the amount of time and expense required for a physician to complete the maintenance of certification requirement and the extent to which the time requirement has an impact on the physician's ability to participate in medical practice;

(2) the adequacy of the activities required of a physician in the area of practice improvement; and

(3) the degree to which the maintenance of certification requirements are relevant to the practice of the particular medical specialty for which the maintenance of certification is provided.

SECTION 5. Section 155.003, Occupations Code, is amended.

SECTION 4. Same as engrossed version.

SECTION 6. Section 156.001, Occupations Code, is amended.

SECTION 5. Same as engrossed version.

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

CHAPTER 170. ENTITY CERTIFICATION TO PROVIDE MAINTENANCE OF CERTIFICATION

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

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

Sec. 170.002. FEES. The board may set a reasonable application fee for a certificate

No equivalent provision.

under this chapter.

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

(b) The application must require the applicant to provide:

(1) the applicant's legal name, mailing address, telephone number, and business address;

(2) the particular practice area in which the applicant will offer maintenance of certification;

(3) the requirements the applicant will impose on a physician for maintenance of certification;

(4) an online resource for the consumer to verify the maintenance of certification of its members;

(5) that the applicant has a permanent headquarters and staff;

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

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

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

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

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

Sec. 170.006. ADVERTISING AS BOARD-CERTIFIED SPECIALIST.

A physician who holds current maintenance of certification from a certificate holder under this chapter may advertise that the physician is a board-certified specialist in the area of medical specialty in which the physician holds the initial board certification.

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

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

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

No equivalent provision.

No equivalent provision.

SECTION 6. The Texas Medical Board shall begin the study required under Section

151.057, Occupations Code, as added by
this Act, not later than January 1, 2018

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

SECTION 7. Same as engrossed version.