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.
(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.

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.
(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.

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
(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.

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

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

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

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

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

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 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.
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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.