

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 1148  
By: Buckingham et al.  
Business & Commerce  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Under Texas law, physicians licensed to practice medicine in the state are required to meet rigorous Continued Medical Education (CME) standards, including specific training related to a physician's specialty, in order to renew their licenses.

In addition to holding a Texas medical license, there are many physicians who have also met the requirements to be recognized as a board-certified specialist by the American Board of Medical Specialties (ABMS) or the American Osteopathic Board (AOB). Until recently, these specialists were issued a lifetime certification. However, in recent years, the ABMS and the AOB have begun requiring physicians to undergo an additional recertification process, known as maintenance of certification (MOC), in order to maintain national board certifications.

When the ABMS and AOB switched from issuing lifetime certifications to time-limited certifications, it exempted physicians who were board certified prior to a certain date from having to recertify. Moreover, each specialty board under the ABMS and AOB has the authority to develop its own criteria for recertification, meaning requirements such as exam cost, time allowed between recertification periods, and the percentage of applicants who can even qualify for recertification may vary greatly from board to board.

The inconsistency in testing requirements between specialty boards, combined with the unequal regulations placed on physicians based solely on their initial board certification date, has created a disparate, arbitrary system to the detriment of the medical community.

Interested parties have also expressed serious concerns over the high costs associated with the recertification process, including testing fees and materials, time away from practice, travel, and lost revenue. Meanwhile, research has consistently shown the recertification process does not improve patient outcomes or treatments because it relies more on high-stakes testing than clinical practice.

While physicians are not required to complete MOCs as a condition of state licensure, many hospitals, employers, and public and private payers require MOC as a condition for working with a physician, thereby creating a de facto mandate on physicians.

S.B. 1148 seeks to address this mandate by stipulating a physician's initial board certification is sufficient to be considered a board-certified specialist in Texas for the purposes of licensure, employment, reimbursement, or admitting privileges at a hospital in this state. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1148 amends current law relating to maintenance of certification by a physician or an applicant for a license to practice medicine in this state and authorizes a fee.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Medical Board (TMB) is modified in SECTION 6 (Section 156.001, Occupations Code) of this bill.

Rulemaking authority is expressly granted to TMB in SECTION 7 (Section 170.001, Occupations Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle F, Title 8, Insurance Code, by adding Chapter 1461, as follows:

### **CHAPTER 1461. DISCRIMINATION AGAINST PHYSICIAN BASED ON MAINTENANCE OF CERTIFICATION**

Sec. 1461.001. DEFINITIONS. Defines "enrollee," "maintenance of certification," "managed care plan," "participating physician," and "physician."

Sec. 1461.002. APPLICABILITY. (a) Provides that this chapter applies to a physician regardless of whether the physician is a participating physician.

(b) Provides that this chapter applies to a person to whom a managed care plan issuer (issuer) contracts to process or pay claims, obtain the services of physicians to provide medical care services to enrollees, or issue verifications or preauthorizations.

Sec. 1461.003. DISCRIMINATION BASED ON MAINTENANCE OF CERTIFICATION. (a) Prohibits an issuer, except as provided by Subsection (b), from differentiating between physicians based solely on a physician's maintenance of certification (MOC) in regard to paying the physician, reimbursing the physician, or directly or indirectly contracting with the physician to provide services to enrollees.

(b) Authorizes an issuer to differentiate between physicians based on a physician's MOC only if certain conditions are met.

(c) Prohibits an issuer from differentiating between physicians based on the entity that administers a physician's MOC.

SECTION 2. Amends Section 151.002(a), Occupations Code, by adding Subdivision (6-b) to define "maintenance of certification."

SECTION 3. Amends Subchapter A, Chapter 151, Occupations Code, by adding Section 151.006, as follows:

Sec. 151.006. CERTIFICATION OF MEDICAL SPECIALTY. Provides that, notwithstanding any other law, a physician is considered a board-certified medical specialist in this state if the physician receives initial certification by a medical specialty board, regardless of the physician's MOC.

SECTION 4. Amends Subchapter B, Chapter 151, Occupations Code, by adding Section 151.0515, as follows:

Sec. 151.0515. DISCRIMINATION BASED ON MAINTENANCE OF CERTIFICATION. (a) Prohibits a hospital, institution, or program that is licensed by this state, is operated by this state or a political subdivision of this state, or directly or indirectly receives state financial assistance from, except as provided by Subsection (b), differentiating between physicians based solely on a physician's MOC.

(b) Authorizes an entity described by Subsection (a) to differentiate between physicians based on a physician's MOC only if certain conditions are met.

(c) Prohibits an entity described by Subsection (a) from differentiating between physicians based on the entity that administers a physician's MOC.

(d) Prohibits a state agency, including the Health and Human Services Commission and the Department of State Health Services, from requiring a hospital or other provider to require MOC by a physician.

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

(d) Creates an exception under Subsection (d-1).

(d-1) Prohibits the Texas Medical Board (TMB) from requiring an MOC by an applicant for the applicant to be eligible for a license under this chapter (License to Practice Medicine).

SECTION 6. Amends Section 156.001, Occupations Code, by adding Subsection (f), to prohibit TMB from adopting a rule requiring MOC by a license holder for the license holder to be eligible for an initial or renewal registration permit.

SECTION 7. Amends Subtitle B, Title 3, Occupations Code, by adding Chapter 170, as follows:

CHAPTER 170. ENTITY CERTIFICATION TO PROVIDE  
MAINTENANCE OF CERTIFICATION

Sec. 170.001. CERTIFICATE TO PROVIDE MAINTENANCE OF CERTIFICATION.

(a) Requires TMB to establish a process to issue a certificate authorizing an entity to provide MOC for physicians.

(b) Requires TMB, by rule, to establish the minimum number of continuing medical education hours that are required for MOC in a particular medical specialty by an entity.

Sec. 170.002. FEES. Authorizes TMB to set a reasonable application fee for a certificate.

Sec. 170.003. APPLICATION FOR CERTIFICATE. (a) Requires TMB to prescribe the form of an application for a certificate.

(b) Requires that the application require the applicant to provide certain information.

Sec. 170.004. ISSUANCE OF CERTIFICATE. Requires TMB to issue a certificate to an applicant who meets certain requirements.

Sec. 170.005. REQUIREMENTS FOR MAINTENANCE OF CERTIFICATION. Requires that an MOC program provided by a holder of a certificate require a physician seeking MOC to complete at least the minimum number of continuing medical education hours set by TMB rule under Section 170.001(b), and prohibits an MOC program provided by a holder of a certificate, other than continuing medical education hours, from requiring a physician initially certified by the entity to complete any educational or testing requirement, including periodic testing, proprietary self-assessment, or peer evaluation.

Sec. 170.006. PRACTICE IMPROVEMENT PROGRAM. (a) Requires a holder of a certificate to administer a practice improvement program to encourage continued improvement within the medical profession.

(b) Requires that a practice improvement program under Subsection (a) focus on recent scientific developments, improving patient safety, patient or population health outcomes, access to health care, and patient experience, and increasing value in the health care system.

Sec. 170.007. ADVERTISING AS BOARD-CERTIFIED SPECIALIST. Authorizes a physician who holds current MOC from a certificate holder to advertise that the physician is a board-certified specialist in the area of medical specialty in which the physician holds the MOC.

SECTION 8. Requires TMB to adopt rules to implement Chapter 170, Occupations Code, as added by this Act, not later than September 1, 2018.

SECTION 9. Effective date: January 1, 2018.