

## Memo

To: MOC Work Group  
From: Megan Renfrew, MHCC  
Date: 7/24/2018  
Re: Out-of-State Legislation on MOC affecting hospitals and/or insurers, Regulations, and Related Topics

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In the July 10, 2018 work group meeting I was asked to conduct further research into the statutes in the five states that have statutory provisions related to the consideration of maintenance of certification by hospitals and/or insurers. I was also asked to research the implementation of these provisions of law.

The effective dates for these statutes vary between November 1, 2016 and July 1, 2018. Because of the short period of time that these statutes have been in effect, the opportunities to derive lessons learned from the experiences in these states is limited.

At the highest level, there seem to be two approaches to legislation on this issue.

1. Bills that change the title of the state code related to professional regulations of physicians but that prohibit differentiation between physicians based on MOC for “reimbursement” or “employment” or privileges. This approach may be limited in impact due to the scope of authority of the Medical Boards (subject to interpretation at the state level). (GA, OK, SC).
2. Bills that amend the titles of the state code related to insurance and hospitals to prevent differentiation between physicians based on MOC, potentially improving the enforceability of the statutory provision. These bills also allowed organized medical staffs to vote to change the default rule to allow use of MOC in privileging and employment decisions and contained an exception for facilities that needed to consider MOC as a requirement of accreditation (TN & TX).

This document contains the following items:

1. Tables that allow comparison between the policy approaches (pages 2-4);
2. Summaries of the impact of the statutory language and outstanding questions to the state Medical boards (pages 5-7); and
3. Text of the statutory provisions (pages 7-19)

## Comparison Tables

	<b>Georgia</b>	<b>Oklahoma</b>	<b>South Carolina</b>
<b>Code Citation</b>	GA Code § 43-34-46 (2017)	Okla. Stat. Ann. tit. 59, §492(G)	S.C. Code Ann. § 40-47-38 (Supp 2018) <i>Note: not yet in code, but this is anticipated citation</i>
<b>Bill or Chapter number</b>	Ga. L. 2017, p. 415, § 1/HB 165	Laws 2016, c. 40, § 1	Act #0211 of 2018 (H4116)
<b>Effective Date</b>	July 1, 2017	Nov. 1, 2016	May 18, 2018
<b>Impact</b>	<b>Licensure</b>	MOC cannot be considered	Nothing in the physician licensure Act requires MOC as a condition of licensure
	<b>Hospitals / Facilities</b>	MOC cannot be considered for employment in “state Medical facilities”	Nothing in the physician licensure Act requires MOC as a condition of employment of admitting privileges in a hospital.
	<b>Health Insurers</b>	MOC cannot be considered for reimbursement from third parties	Nothing in the physician licensure Act requires MOC as a condition of reimbursement
	<b>Malpractice Insurers</b>	MOC cannot be considered for malpractice insurance coverage	N/A
<b>Location in Code structure</b>	TITLE 43. PROFESSIONS AND BUSINESSES CHAPTER 34. PHYSICIANS, ACUPUNCTURE, PHYSICIAN ASSISTANTS, CANCER AND GLAUCOMA TREATMENT, RESPIRATORY CARE, CLINICAL PERFUSIONISTS, AND ORTHOTICS AND PROSTHETICS PRACTICE ARTICLE 2. MEDICAL PRACTICE	TITLE 59 PROFESSIONS AND OCCUPATIONS Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act	TITLE 40 PROFESSIONS AND OCCUPATIONS CHAPTER 47 PHYSICIANS AND MISCELLANEOUS HEALTH CARE PROFESSIONALS ARTICLE 1 GENERAL PROVISIONS

		<b>Tennessee</b>				
<b>Code Citation</b>		T.C.A. § 33-2-422.	T.C.A. § 56-7-1006.	T.C.A. § 68-2-422.	T.C.A. § 63-6-246.	T.C.A. § 63-9-123
<b>Bill or Chapter number</b>		Acts 2018, Chap. 694 § 1 (2018)	Acts 2018, Chap. 694 § 2 (2018)	Acts 2018, Chap. 694 § 3 (2018)	Acts 2017, ch. 438, § 1.	Acts 2017, ch. 438, § 2.
<b>Effective Date</b>		July 1, 2018	July 1, 2018	July 1, 2018	May 10, 2017	May 10, 2017
<b>Impact</b>	<b>Licensure</b>	N/A	N/A	N/A	MOC cannot be considered	MOC cannot be considered
	<b>Hospitals / Facilities</b>	Mental Hospitals may only differentiate based on MOC if the medical staff voted to allow it and board approved. An exception is allowed for accreditation requirements.	N/A	Hospitals may only differentiate based on MOC if the medical staff voted to allow it and board approved. An exception is allowed for accreditation requirements.	N/A	N/A
	<b>Health Insurers</b>	N/A	Prohibits denial of reimbursement, prohibition of joining a network, and discrimination in reimbursement level based on MOC	N/A	N/A	N/A
	<b>Malpractice Insurers</b>	N/A	N/A	N/A	N/A	N/A
<b>Location in Code structure</b>		Title 33 Mental Health and Substance Abuse and Intellectual and Developmental Disabilities Chapter 2 Services and Facilities Part 4 Mental Health, Alcohol and Drug Abuse Prevention and/or Treatment, Intellectual and Developmental Disabilities, and Personal Support Services Licensure Law	Title 56 Insurance Chapter 7 Policies and Policyholders Part 10 Health and Accident Insurance	Title 68 Health, Safety and Environmental Protection Health Chapter 11 Health Facilities and Resources Part 2 Regulation of Health and Related Facilities	Title 63 Professions Of The Healing Arts Chapter 6 Medicine and Surgery Part 2 General Provisions	Title 63 Professions Of The Healing Arts Chapter 9 Osteopathic Physicians

State		Texas				
<b>Code Citation</b>		Tex. Ins. Code § 1461.001 et seq.	Tex. Occ. Code § 151.002(a)	Tex. Occ. Code § 151.0515	Tex. Occ. Code § 155.003(d) &(d-1)	Tex. Occ. Code § 155.001(f)
<b>Bill or Chapter number</b>		Acts 2017, 85th Leg., R.S., Ch. 1121 (S.B. 1148), Sec. 1	Acts 2017, 85th Leg., R.S., Ch. 1121 (S.B. 1148), Sec. 2	Acts 2017, 85th Leg., R.S., Ch. 1121 (S.B. 1148), Sec. 3	Acts 2017, 85th Leg., R.S., Ch. 1121 (S.B. 1148), Sec. 4	Acts 2017, 85th Leg., R.S., Ch. 1121 (S.B. 1148), Sec. 5
<b>Effective Date</b>		January 1, 2018.				
<b>Impact</b>	<b>Licensure</b>	N/A	N/A	N/A	The Texas Medical Board may not require MOC from applicants for licensure or for initial or renewal of a registration permit	
	<b>Hospitals / Facilities</b>	N/A	Hospitals, mental hospitals, and other institutions and programs with organized medical staffs may not differentiate between physicians unless the entities designation under law, certification or accreditation of that facility requires specific MOC for staff privileges or credentialing the facility and the differentiation is limited physicians subject to those requirements. The organized medical staff may vote to differentiate between physicians based on MOC		N/A	N/A
	<b>Health Insurers</b>	Managed care plans cannot differentiate between physicians based on MOC for payment, reimbursement or direct or indirect contracting to provide services to enrollees. There is an exception allowed for facilities that differentiate based on MOC because designation under law, certification or accreditation of that facility requires specific MOC for staff privileges or credentialing the facility.	N/A	N/A	N/A	N/A
	<b>Malpractice Insurers</b>	N/A	N/A	N/A	N/A	N/A
<b>Location in Code structure</b>	INSURANCE CODE TITLE 8. HEALTH INSURANCE AND OTHER HEALTH COVERAGES SUBTITLE F. PHYSICIANS AND HEALTH CARE PROVIDERS CHAPTER 1461. DISCRIMINATION AGAINST PHYSICIAN BASED ON MAINTENANCE OF CERTIFICATION	OCCUPATIONS CODE TITLE 3. HEALTH PROFESSIONS SUBTITLE B. PHYSICIANS CHAPTER 151. GENERAL PROVISIONS SUBCHAPTER A. GENERAL PROVISIONS	OCCUPATIONS CODE TITLE 3. HEALTH PROFESSIONS SUBTITLE B. PHYSICIANS CHAPTER 151. GENERAL PROVISIONS SUBCHAPTER B. APPLICATION AND CONSTRUCTION OF SUBTITLE	OCCUPATIONS CODE TITLE 3. HEALTH PROFESSIONS SUBTITLE B. PHYSICIANS CHAPTER 155. LICENSE TO PRACTICE MEDICINE SUBCHAPTER A. LICENSE REQUIREMENTS	OCCUPATIONS CODE TITLE 3. HEALTH PROFESSIONS SUBTITLE B. PHYSICIANS CHAPTER 156. REGISTRATION OF PHYSICIANS SUBCHAPTER A. RENEWAL AND REGISTRATION	

## Summary of Law and outstanding Questions

### Georgia

Effective July 1, 2017, Georgia law, prevents the use of physician maintenance of certification as a condition of licensure by the State Board, a prerequisite for employment in “state Medical facilities”, reimbursement from third parties, or malpractice insurance coverage. This new section is located in the title of the Georgia Code that covers profession and business regulation, in the Chapter related to physician licensing.

I emailed the following questions to the executive director of the Medical Board, but have not heard back at this point in time.

1. What does the term "state medical facilities" mean under Georgia law? Does this apply only to state owned and operated facilities, or does it also apply to privately owned facilities in the state? Does it only apply to hospitals, or does it apply to other types of facilities?
2. Has the placement of this language in the title of the Code related to professional regulation (as opposed to the Health title or the Insurance title) caused any issues? Maryland has a similar separation in our code structure, so this would be useful context.
3. How is the implementation of this provision going? Are there any lessons learned or concerns that you can share?

### Oklahoma

Effective Nov 1, 2016, Oklahoma’s Allopathic Medical and Surgical Licensure and Supervision Act was amended to add provision that prevents that Act from being constructed to require a physician to secure Maintenance of Certification as “a condition of licensure, reimbursement, employment or admitting privileges at a hospital in this state.” Maintenance of Certification is defined in the statute as “a continuing education program measuring core competencies in the practice of medicine and surgery and approved by a nationally-recognized accrediting organization”.

Note that the Oklahoma Medical Board does not have authority over hospitals or insurers, limiting enforceability of this language. Oklahoma also does not require board certification for licensure.

Under Oklahoma regulations, ABMS is named as a credentialing entity and the board has authority to name other entities. The board approved an application form ABPS for all member board except emergency doctors (due to the lack of a requirement of a residency in emergency medicine). The Oklahoma Medical Board denied an application from NBPAS, finding it was not equivalent to ABMS.

### South Carolina

Effective May 18, 2018, South Carolina’s Code title regulating professions was amended to prevent any provision of that title from being construed to require Maintenance of Certification as a condition of licensure, reimbursement, employment, or admitting privileges at a hospital or FQHC in the state. The term “Maintenance of Certification” is defined as a “continuing education program that measures core competencies in the practice of medicine and surgery and is approved by a nationally-recognized accrediting organization.”

Because this bill just became effective in May, the South Carolina Medical Board has no insight in implementation or lessons learned.

## Tennessee

Effective July 1, 2018, Tennessee's code was amended in the following manner:

1. **Hospitals:** The provision related to Health facilities under the general Health title of the Code permits differentiation of physicians based on MOC in facilities controlled under the title only if the organized medical staff voted to allow the consideration and the facilities governing board approved it. This amendment included an exception for facilities whose accreditation required consideration of MOC. (T.C.A. § 68-11-242).
2. **Mental Health Facilitates:** In the provision of the code related to facilities and services for Mental health and intellectual and developmental disabilities to permit differentiation of physicians based on MOC in facilities controlled under the title only if the organized medical staff voted to allow the consideration and the facilities governing board approved it. This amendment included an exception for facilities whose accreditation required consideration of MOC. (T.C.A. § 33-2-422).
3. **Health Insurers:** Tennessee prohibits denial of reimbursement or prohibition from joining a network based on MOC or discrimination in reimbursement levels by a health insurer. These rules also apply to Federation of State Licensure Board Maintenance of Licensure requirements if that is tied to maintenance of certification.(T.C.A. §56-7-1006)

"Maintenance of certification" is defined as "any process requiring periodic recertification examinations or other activities to maintain specialty medical board certification".

**Licensure:** In May of 2017, Tennessee's code was amended to prevent the state's Health Professionals Board from denying licensure based on MOC. This applies both to M.D.s and D.O.s. (T.C.A. § 63-6-246; T.C.A. § 63-9-123). The legislation also created a task force to study issues created by the MOC process for physicians in the state.

## Texas

Effective January 1, 2018 Texas's code was amended in the following manner:

1. **Licensure & registration:** The Texas Medical Board may not require MOC from applicants for licensure or for initial or renewal of a registration permit.(Tex. Occ. Code § 156.001(f))  
*Note: registration permits are issued with licensure and must be renewed every 2 years in TX.*
2. **Managed care:** Under code, Managed care plans cannot differentiate between physicians based on MOC for payment, reimbursement or direct or indirect contracting to provide services to enrollees. There is an exception allowed for facilities that differentiate based on MOC because designation under law, certification or accreditation of that facility requires specific MOC for staff privileges or credentialing the facility. (Tex. Occ. Code § 1461.001 et seq.)
1. **Health Facilities:** Hospitals, mental hospitals, and other institutions and programs with organized medical staffs may not differentiate between physicians unless the entities designation under law, certification or accreditation of that facility requires specific MOC for staff privileges or credentialing the facility and the differentiation is limited physicians subject to those requirements. The organized medical staff may vote to differentiate between physicians based on MOC. (Tex. Occ. Code § 151.0515)

In the definitions section in the title of the code related to regulation of the profession, "maintenance of certification" was defined as "satisfactory completion of periodic recertification requirements that are

required for a physician to maintain certification after initial certification from" ABMS, AOA, ABOMS, or any other board recognized by the Texas Medical Board. (Tex. Occ. Code § 151.002(a))

## **Statutory Text**

### **Georgia**

#### **§ 43-34-46. Maintenance of certification programs**

(a) As used in this Code section, the term:

(1) "Maintenance of certification" means a continuous professional development program through which physicians certified by one or more of the medical specialty boards of the American Board of Medical Specialties or American Osteopathic Association maintain specialty certification.

(2) "Specialty certification" means certification by a board that specializes in one particular area of medicine and typically has requirements in addition to those the Georgia Composite Medical Board requires to practice medicine.

(b) Nothing in this article shall be construed to require a physician to secure a maintenance of certification as a condition of licensure to practice medicine pursuant to this article or as a prerequisite for employment in state medical facilities, reimbursement from third parties, or malpractice insurance coverage.

**Citation:** GA Code § 43-34-46 (2017)

**Code notes:** Code 1981, § 43-34-46, enacted by Ga. L. 2017, p. 415, § 1/HB 165.

### **Oklahoma**

#### **§59-492.**

**Designation of physicians - Employment by hospitals - Practice of medicine defined - Services rendered by trained assistants - Persons practicing nonallopathic healing.**

*Note, see subsection (G) for the MOC policy.*

A. Every person shall be regarded as practicing allopathic medicine within the meaning and provisions of this act, who shall append to his or her name the letters "M.D.", "Physician" or any other title, letters or designation which represent that such person is a physician, or who shall for a fee or any form of compensation diagnose and/or treat disease, injury or deformity of persons in this state by any allopathic legend drugs, surgery, manual, or mechanical treatment unless otherwise authorized by law.

B. A hospital or related institution as such terms are defined in Section 1-701 of Title 63 of the Oklahoma Statutes, which has the principal purpose or function of providing hospital or medical care, including but not limited to any corporation, association, trust, or other organization organized and operated for such purpose, may employ one or more persons who are duly licensed to practice medicine in this state without being regarded as itself practicing medicine within the meaning and provisions of this section. The employment by the hospital or related institution of any person who is duly licensed to practice medicine in this state shall not, in and of itself, be considered as an act of unprofessional conduct by the person so employed. Nothing provided herein shall eliminate, limit, or restrict the liability for any act or failure to act of any hospital, any hospital's employees, or persons duly licensed to practice medicine.

C. The definition of the practice of medicine and surgery shall include, but is not limited to:

1. Advertising, holding out to the public, or representing in any manner that one is authorized to practice medicine and surgery in this state;

2. Any offer or attempt to prescribe, order, give, or administer any drug or medicine and surgery for the use of any other person, except as otherwise authorized by law;

3. a. any offer or attempt, except as otherwise authorized by law, to prevent, diagnose, correct, or treat in any manner or by any means, methods, devices, or instrumentalities except for manual manipulation any disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition of any person, including the management of pregnancy and parturition, except as otherwise authorized by law,
- b. except as provided in subsection D of this section, performance by a person within or outside of this state, through an ongoing regular arrangement, of diagnostic or treatment services, including but not limited to, stroke prevention and treatment, through electronic communications for any patient whose condition is being diagnosed or treated within this state by a physician duly licensed and practicing in this state. A person who performs any of the functions covered by this subparagraph submits himself or herself to the jurisdiction of the courts of this state for the purposes of any cause of action resulting from the functions performed, and
- c. nothing in the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act shall be construed to affect or give jurisdiction to the Board over any person other than medical doctors or persons holding themselves out as medical doctors;

4. Any offer or attempt to perform any surgical operation upon any person, except as otherwise authorized by law; and

5. The use of the title Doctor of Medicine, Physician, Surgeon, Physician and Surgeon, Dr., M.D. or any combination thereof in the conduct of any occupation or profession pertaining to the prevention, diagnosis, or treatment of human disease or condition unless, where appropriate, such a designation additionally contains the description of another branch of the healing arts for which one holds a valid license in this state.

D. The practice of medicine and surgery, as defined in this section, shall not include:

1. A student while engaged in training in a medical school approved by the Board or while engaged in graduate medical training under the supervision of the medical staff of a hospital or other health care facility approved by the state medical board for such training, except that a student engaged in graduate medical training shall hold a license issued by the Board for such training;

2. Any person who provides medical treatment in cases of emergency where no fee or other consideration is contemplated, charged or received;



3. A commissioned medical officer of the armed forces of the United States or medical officer of the United States Public Health Service or the Department of Veterans Affairs of the United States in the discharge of official duties and/or within federally controlled facilities; and provided that such person shall be fully licensed to practice medicine and surgery in one or more jurisdictions of the United States; provided further that such person who holds a medical license in this state shall be subject to the provisions of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act;

4. Any person licensed under any other act when properly practicing in the healing art for which that person is duly licensed;

5. The practice of those who endeavor to prevent or cure disease or suffering by spiritual means or prayer;

6. Any person administering a domestic or family remedy to a member of such person's own family;

7. Any person licensed to practice medicine and surgery in another state or territory of the United States who renders emergency medical treatment or briefly provides critical medical service at the specific lawful direction of a medical institution or federal agency that assumes full responsibility for that treatment or service and is approved by the Board;

8. Any person who is licensed to practice medicine and surgery in another state or territory of the United States whose sole purpose and activity is limited to brief actual consultation with a specific physician who is licensed to practice medicine and surgery by the Board, other than a person with a special or restricted license; or

9. The practice of any other person as licensed by appropriate agencies of this state, provided that such duties are consistent with the accepted standards of the person's profession and the person does not represent himself or herself as a Doctor of Medicine, Physician, Surgeon, Physician and Surgeon, Dr., M.D., or any combination thereof.

E. Nothing in the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act shall prohibit:

1. The service rendered by a physician's unlicensed trained assistant, if such service is rendered under the supervision and control of a licensed physician pursuant to Board rules, provided such rules are not in conflict with the provisions of any other healing arts licensure act or rules promulgated pursuant to such act; or

2. The service of any other person duly licensed or certified by the state to practice the healing arts.

F. Nothing in the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act shall prohibit services rendered by any person not licensed by the Board and practicing any nonallopathic healing practice.

G. Nothing in the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act shall be construed as to require a physician to secure a Maintenance of Certification (MOC) as a condition of licensure, reimbursement, employment or admitting privileges at a hospital in this state. For the purposes of this subsection, "Maintenance of Certification (MOC)" shall mean a continuing education

program measuring core competencies in the practice of medicine and surgery and approved by a nationally-recognized accrediting organization.

**Citation:** <year> Okla. Stat. Ann. tit. 59, §492(G)

*Note: I accessed the statute on this state website: <http://www.oklegislature.gov/osStatuesTitle.aspx>. However, the Westlaw version is the official version, and would have the missing information for the citation.*

**Code notes:** Added by Laws 1923, c. 59, p. 104, § 12, emerg. eff. March 31, 1923. Amended by Laws 1965, c. 399, § 1, emerg. eff. July 5, 1965; Laws 1974, c. 305, § 2, emerg. eff. May 29, 1974; Laws 1987, c. 118, § 12, operative July 1, 1987; Laws 1990, c. 91, § 1, emerg. eff. April 18, 1990; Laws 1993, c. 230, § 25, eff. July 1, 1993; Laws 1994, c. 323, § 12, eff. July 1, 1994; Laws 1996, c. 147, § 1, eff. Nov. 1, 1996; Laws 1998, c. 324, § 4, emerg. eff. May 28, 1998; Laws 1999, c. 23, § 1, eff. Nov. 1, 1999; Laws 2000, c. 52, § 4, emerg. eff. April 14, 2000; Laws 2009, c. 148, § 4, eff. Nov. 1, 2009; Laws 2009, c. 261, § 2, eff. July 1, 2009; Laws 2016, c. 40, § 1, eff. Nov. 1, 2016.

## **Regulation on Use of Board Certification**

Board of Medical Licensure and Supervision

435:10-7-2. Use of Board certification

Allopathic physicians in Oklahoma who may lawfully claim to be “Board Certified” or “Certified by” or a “Diplomat” or “Fellow” are only physicians who have presented to the Oklahoma State Board of Medical Licensure and Supervision evidence of successful completion of all requirements for certification by a member Board of the organization of American Board of Medical Specialties as listed by the American Medical Association, or by any other organization whose program for the certification requested has been found by the Board to be equivalent thereto.

[Source: Amended at 11 Ok Reg 4535, eff 7-27-94 (emergency); Amended at 12 Ok Reg 1223, eff 5-11-95]

## **Regulation on Board Certification Equivalency Criteria**

Oklahoma Administrative Code 435:10-7-2

Allopathic physicians in Oklahoma who may lawfully claim to be “Board Certified” or “Certified by” or a “Diplomat” or “Fellow” are only physicians who have presented to the Oklahoma State Board of Medical Licensure and Supervision evidence of successful completion of all requirements for certification by a member Board of the organization of American Board of Medical Specialties as listed by the American Medical Association, or by any other organization whose program for the certification requested has been found by the Board to be equivalent thereto.

[Source: Amended at 11 Ok Reg. 4535, eff. 7-27-94 (emergency); Amended at 12 Ok Reg. 1223, eff. 5-11-95]

The following are points to be considered when deciding if a certifying board is equivalent to boards certified by American Board of Medical Specialists (ABMS).

1. The recognizing agency of the board in question must be a legally recognized not-for-profit independent 501-c entity that certifies members as having advanced qualifications in a particular

allopathic medical specialty through peer reviewed demonstrations of competence in the specialty being considered.

2. The board in question must provide evidence of having a post-graduate training residency or fellowship that is accredited by the American Council of Graduate Medical Education (ACGME) and must provide substantial and identifiable training in the scope of the specialty presented.

3. Pathways other than #1 such as apprenticeships, non recognized fellowships not supported by a core ACGME program or "experience" in the field shall not be considered as satisfying this requirement

4. There must be a psychometrically validated exam required by the board.

5. There must be periodic re-certification.

Adopted by the Board March 8, 2012

Modified by the Board June 29, 2012

### **South Carolina**

#### **Section 40-47-38.**

(A) No provision of this article may be construed to require a physician to secure a Maintenance of Certification as a condition of:

(1) licensure;

(2) reimbursement;

(3) employment; or

(4) admitting privileges at a hospital or federally qualified health center in this State.

(B) For the purposes of this article:

(1) 'Federally qualified health center' or 'FQHC' means a health center that receives a federal public health services grant under the 'Public Health Services Act,' 42 U.S.C. 254b, as amended, or another health center designated by the United States Health Resources and Services Administration as a federally qualified health center; and

(2) 'Maintenance of Certification' or 'MOC' means a continuing education program that measures core competencies in the practice of medicine and surgery and is approved by a nationally-recognized accrediting organization.

**Citation:** S.C. Code Ann. § 40-47-38 (Supp 2018) *Note: not yet in code, but this is anticipated citation*

**Code Notes:** No code notes available because the provision has not been codified yet.

### **Tennessee**

#### **Tenn. Code Ann. § 33-2-422**

33-2-422. Differentiation between licensed physicians based on maintenance of certification.

(a) For purposes of this section:

(1) "**Maintenance of certification**" means any process requiring periodic recertification examinations or other activities to maintain specialty medical board certification; and

(2) "Organized medical staff" means an organized body composed of individuals appointed by a facility's governing board that operates under bylaws approved by the governing body and is responsible for the quality of medical care provided to patients by the facility.

(b) Except as otherwise provided by this section, facilities licensed under this title may only differentiate between licensed physicians based on a physician's **maintenance of certification** in medical staff privileging and credentialing when authorized through the following process:

(1) The voting members of the facility's organized medical staff vote to adopt the differentiation; and

(2) The facility's governing body reviews and approves the action of the medical staff.

(c) An authorization described by subsection (b) may:

(1) Establish terms applicable to the facility's differentiation, including:

(A) Appropriate grandfathering provisions; and

(B) Limiting the differentiation to certain medical specialties; and

(2) Be rescinded at any time when:

(A) The voting members of the facility's organized medical staff vote to rescind the differentiating action; and

(B) The facility's governing body reviews and approves the rescinding action of the organized medical staff.

(d) Nothing in this section restricts a facility's ability to differentiate between physicians in medical staff privileging and credentialing based on a physician's **maintenance of certification** when:

(1) The facility's designation under law or certification or accreditation by a national certifying or accrediting organization is contingent on the facility requiring a specific **maintenance of certification** by physicians seeking staff privileges or credentialing at the facility; and

(2) The differentiation is limited to those physicians whose **maintenance of certification** is required for the facility's designation, certification, or accreditation as described by subdivision (d)(1).

(e) Nothing in this section requires a facility's organized medical staff or governing body to reconsider or vote to reconsider **maintenance of certification** differentiation or requirements made prior to July 1, 2018.

#### **Tenn. Code Ann. § 56-7-1006**

56-7-1006. Prohibition against denial of reimbursement to or discrimination against physician based on maintenance of certification or licensure.

(a) As used in this section:

(1) "Continuing medical education" means board of medical examiners or board of osteopathic examination required continued postgraduate medical education intended to provide medical professionals with knowledge of new developments in the professional's field;

(2) "Maintenance of certification" means any process requiring periodic recertification examinations or other activities to maintain specialty medical board certification;

(3) "Maintenance of licensure" means the proprietary framework for physician license renewal established through the Federation of State Medical Boards or its successor organization, which includes additional periodic testing or requirements other than continuing medical education; and

(4) "Specialty medical board certification" means certification by a board that specializes in one (1) particular area of medicine and typically requires additional examinations other than the requirements of the board of medical examiners or board of osteopathic examination to practice medicine.

(b) A health insurance entity, as defined in § 56-7-109, shall not deny reimbursement to or prevent a physician licensed pursuant to title 63, chapter 6 or 9 from participating in any of the insurance entity's provider networks based solely on a physician's decision not to participate in any form of maintenance of licensure or maintenance of certification, including basing a physician's network participation on any form of maintenance of licensure tied to maintenance of certification.

(c) A health insurance entity, as defined in § 56-7-109, shall not discriminate with respect to reimbursement levels based solely on a physician's decision not to participate in any form of maintenance of licensure or maintenance of certification, including basing a physician's reimbursement level on any form of maintenance of licensure tied to maintenance of certification.

**Tenn. Code Ann. § 63-6-246**

63-6-246. Maintenance of licensure or certification not required.

(a) As used in this section:

(1) "Continuing medical education" means continued postgraduate medical education required by the board of medical examiners intended to provide medical professionals with knowledge of new developments or reinforcement of previously learned information in their field;

(2) "Maintenance of certification" means any process requiring periodic recertification examinations or other activities to maintain specialty medical board certification;

(3) "Maintenance of licensure" means the proprietary framework for physician license renewal established through the Federation of State Medical Boards or its successor organization, which includes additional periodic testing or requirements other than continuing medical education; and

(4) "Specialty medical board certification" means certification by a board that specializes in one (1) particular area of medicine and typically requires additional examinations other than the board of medical examiners' requirements to practice medicine.

(b) The board shall not deny a physician licensure based on a physician's non-participation in any form of maintenance of licensure, including requiring any form of maintenance of licensure tied to maintenance of certification. The board's regular requirements, including continuing medical education, demonstrate professional competency.

(c) The board shall not require any form of specialty medical board re-certification or any maintenance of certification to practice medicine in this state.

**Tenn. Code Ann. § 63-9-123**

63-9-123. Maintenance of licensure or certification not required.

(a) As used in this section:

(1) "Continuing medical education" means continued postgraduate medical education required by the board of osteopathic medical examination intended to provide medical professionals with knowledge of new developments or reinforcement of previously learned information in their field;

(2) "Maintenance of certification" means any process requiring periodic recertification examinations or other activities to maintain specialty medical board certification;

(3) "Maintenance of licensure" means the proprietary framework for physician license renewal established through the Federation of State Medical Boards or its successor organization, which includes additional periodic testing or requirements other than continuing medical education; and

(4) "Specialty medical board certification" means certification by a board that specializes in one (1) particular area of medicine and typically requires additional examinations other than the board of osteopathic examination's requirements to practice medicine.

(b) The board shall not deny a physician licensure based on a physician's non-participation in any form of maintenance of licensure, including requiring any form of maintenance of licensure tied to maintenance of certification. The board's regular requirements, including continuing medical education, demonstrate professional competency.

(c) The board shall not require any form of specialty medical board recertification or any maintenance of certification to practice medicine in this state.

**Tenn. Code Ann. § 68-11-242**

68-11-242. Differentiation between licensed physicians based on maintenance of certification.

(a) For purposes of this section:

(1) "Maintenance of certification" means any process requiring periodic recertification examinations or other activities to maintain specialty medical board certification; and

(2) "Organized medical staff" means an organized body composed of individuals appointed by a facility's governing board that operates under bylaws approved by the governing body and is responsible for the quality of medical care provided to patients by the facility.

(b) Except as otherwise provided by this section, facilities licensed under this title may only differentiate between licensed physicians based on a physician's maintenance of certification in medical staff privileging and credentialing when authorized through the following process:

(1) The voting members of the facility's organized medical staff vote to adopt the differentiation; and

(2) The facility's governing body reviews and approves the action of the medical staff.

(c) An authorization described by subsection (b) may:

(1) Establish terms applicable to the facility's differentiation, including:

(A) Appropriate grandfathering provisions; and

(B) Limiting the differentiation to certain medical specialties; and

(2) Be rescinded at any time when:

- (A) The voting members of the facility's organized medical staff vote to rescind the differentiating action; and
- (B) The facility's governing body reviews and approves the rescinding action of the organized medical staff.
- (d) Nothing in this section restricts a facility's ability to differentiate between physicians in medical staff privileging and credentialing based on a physician's maintenance of certification when:
- (1) The facility's designation under law or certification or accreditation by a national certifying or accrediting organization is contingent on the facility requiring a specific maintenance of certification by physicians seeking staff privileges or credentialing at the facility; and
  - (2) The differentiation is limited to those physicians whose maintenance of certification is required for the facility's designation, certification, or accreditation as described by subdivision (d)(1).
- (e) Nothing in this section requires a facility's organized medical staff or governing body to reconsider or vote to reconsider maintenance of certification differentiation or requirements made prior to July 1, 2018.

**PUBLIC CHAPTER NO.438 § 3 (2017)**

SECTION 3. (a) There is appointed a task force to study the issues created by the maintenance of certification process for Tennessee physicians.

(b) The speaker of the house of representatives shall appoint three (3) members of the house of representatives to the task force. The speaker of the senate shall appoint three (3) members of the senate to the task force.

(c) Representatives from hospitals, the insurance industry, the physician community, and the American Board of Medical Specialties shall provide information to the task force upon request.

(d) Task force meetings shall be open to the public, with proper notice being provided in advance of the meetings. The public and citizens of this state shall have a reasonable opportunity to be heard.

(e) The task force shall review the overall maintenance of certification process and shall review the use of maintenance of certification by hospitals, insurance companies, and entities that license Tennessee physicians. The task force shall also strategize and make recommendations for improvement of the current process, as well as reviewing alternatives that can be created to replace maintenance of certification, including but not limited to, an expansion of continuing medical education.

(f) The staff for the health committee of the house of representatives and the commerce and labor committee of the senate is authorized to provide support to the task force if requested by the chair of the task force.

(g) The task force shall provide a report with recommendations to the health committee of the house of representatives and the commerce and labor committee of the senate by January 15, 2018, at which time it shall cease to exist.

**Texas**

**Tex. Ins. Code § 1461.001 et seq.**

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 health 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 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.

**Code Notes:** Added by Acts 2017, 85th Leg., R.S., Ch. 1121 (S.B. 1148), Sec. 1, eff. January 1, 2018.

**Tex. Occ. Code § 151.002(a)**

OCCUPATIONS CODE; TITLE 3. HEALTH PROFESSIONS; SUBTITLE B. PHYSICIANS



Section 151.002(a)

(a) In this subtitle:....

(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.

**Code Notes:** Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.021(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 1, eff. June 10, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.01, eff. September 1, 2005.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.06, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1180 (S.B. 949), Sec. 1, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 1121 (S.B. 1148), Sec. 2, eff. January 1, 2018.

**Tex. Occ. Code § 151.0515**

OCCUPATIONS CODE; TITLE 3. HEALTH PROFESSIONS; SUBTITLE B. PHYSICIANS

Sec. 151.0515. DISCRIMINATION BASED ON MAINTENANCE OF CERTIFICATION. (a) Except as otherwise provided by this section, 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, 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:
    - (A) has an organized medical staff or a process for credentialing physicians on its staff; and
    - (B) is not a medical school, as defined by Section 61.501, Education Code, or a comprehensive cancer center, as designated by the National Cancer Institute; 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 if:

- (1) 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; and
- (2) the differentiation is limited to those physicians whose maintenance of certification is required for the entity's designation, certification, or accreditation as described by Subdivision (1).
- (c) An entity described by Subsection (a) may differentiate between physicians based on a physician's maintenance of certification if the voting physician members of the entity's organized medical staff vote to authorize the differentiation.
- (d) An authorization described by Subsection (c) may:
  - (1) be made only by the voting physician members of the entity's organized medical staff and not by the entity's governing body, administration, or any other person;
  - (2) subject to Subsection (e), establish terms applicable to the entity's differentiation, including:
    - (A) appropriate grandfathering provisions; and
    - (B) limiting the differentiation to certain medical specialties; and
  - (3) be rescinded at any time by a vote of the voting physician members of the entity's organized medical staff.
- (e) Terms established under Subsection (d)(2) may not conflict with a maintenance of certification requirement applicable to the entity's designation under law or certification or accreditation by a national certifying or accrediting organization.

**Code Notes:** Added by Acts 2017, 85th Leg., R.S., Ch. 1121 (S.B. 1148), Sec. 3, eff. January 1, 2018.

**Tex. Occ. Code § 155.003(d) &(d-1)**

OCCUPATIONS CODE; TITLE 3. HEALTH PROFESSIONS; SUBTITLE B. PHYSICIANS; CHAPTER 155. LICENSE TO PRACTICE MEDICINE; SUBCHAPTER A. LICENSE REQUIREMENTS

Sec. 155.003. GENERAL ELIGIBILITY REQUIREMENTS. (a) To be eligible for a license under this chapter, an applicant must present proof satisfactory to the board that the applicant:....

(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.

**Tex. Occ. Code § 156.001(f)**

OCCUPATIONS CODE; TITLE 3. HEALTH PROFESSIONS; SUBTITLE B. PHYSICIANS; CHAPTER 156. REGISTRATION OF PHYSICIANS; SUBCHAPTER A. RENEWAL AND REGISTRATION

Sec. 156.001. REGISTRATION REQUIREMENTS AND PROCEDURES. (a) Each person licensed to practice medicine in this state must register with the board every two years. The initial registration permit shall be issued with the license. The board by rule may adopt a system under which licenses expire on various dates during the year.

(b) Except as provided by Section 156.002, the application for registration must be accompanied by a registration permit fee in an amount set by the board regardless of whether the person is practicing medicine in this state.

(c) A license holder may renew the registration permit by submitting to the board, on or before the expiration date of the registration permit, the required renewal application and registration renewal fee. Each registration permit renewal application must include:

(1) the license holder's name, mailing address, and, if one is available, address for receipt of electronic mail;

(2) the primary place at which the license holder is engaged in the practice of medicine; and

(3) other necessary information as prescribed by board rule.

(d) If the license holder is licensed to practice medicine by another state or country or by the uniformed services of the United States, the registration renewal application must include a description of any investigation the license holder knows is in progress and any sanction imposed by or disciplinary matter pending in the state, country, or service regarding the license holder.

(e) In addition to the information required by Subsection (c), a license holder shall submit to the board with the registration permit renewal application information not reported on a license application or a previous permit renewal application relating to a felony conviction, a conviction for a Class A or Class B misdemeanor, or a deferred adjudication for a felony offense or Class A or Class B misdemeanor offense for:

(1) Medicare, Medicaid or insurance fraud;

(2) the Texas Controlled Substances Act or intoxication or alcoholic beverage offenses;

(3) sexual or assaultive offenses; and

(4) tax fraud or evasion.

(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.