

HB0337S02 compared with HB0337S01

~~text~~ shows text that was in HB0337S01 but was deleted in HB0337S02.

Inserted text shows text that was not in HB0337S01 but was inserted into HB0337S02.

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Senator Lyle W. Hillyard proposes the following substitute bill:

PROFESSIONAL COMPETENCY STANDARDS AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer Dailey-Provost

Senate Sponsor: Daniel Hemmert

LONG TITLE

General Description:

This bill amends certain restrictions on age-based physician testing.

Highlighted Provisions:

This bill:

- ▶ amends a restriction on certain age-based testing for physician licensing, employment, privileges, or reimbursement.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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26-21-31, as enacted by Laws of Utah 2018, Chapter 438

31A-45-305, as enacted by Laws of Utah 2018, Chapter 438

58-67-302, as last amended by Laws of Utah 2018, Chapters 318 and 438

58-67-302.5, as last amended by Laws of Utah 2018, Chapters 318 and 438

58-68-302, as last amended by Laws of Utah 2018, Chapters 318 and 438

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **26-21-31** is amended to read:

26-21-31. Prohibition on certain age-based physician testing.

A health care facility may not require for purposes of employment, privileges, or reimbursement, that a physician, as defined in Section 58-67-102, take a cognitive test when the physician reaches a specified age, unless the test reflects ~~[nationally recognized]~~ the standards ~~[adopted by the American Medical Association for testing whether an older physician remains able to provide safe and effective care for patients]~~ described in Subsections 58-67-302(5)(b)(i) through (x).

Section 2. Section **31A-45-305** is amended to read:

31A-45-305. Prohibition on certain age-based physician testing.

A managed care organization or other third party may not require for purposes of reimbursement that a physician, as defined in Section 58-67-102, take a cognitive test when the physician reaches a specified age, unless the test reflects ~~[nationally recognized]~~ the standards ~~[adopted by the American Medical Association for testing whether an older physician remains able to provide safe and effective care for patients]~~ described in Subsections 58-67-302(5)(b)(i) through (x).

Section 3. Section **58-67-302** is amended to read:

58-67-302. Qualifications for licensure.

(1) An applicant for licensure as a physician and surgeon, except as set forth in Subsection (2), shall:

(a) submit an application in a form prescribed by the division, which may include:

(i) submissions by the applicant of information maintained by practitioner data banks, as designated by division rule, with respect to the applicant;

(ii) a record of professional liability claims made against the applicant and settlements

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paid by or on behalf of the applicant; and

(iii) authorization to use a record coordination and verification service approved by the division in collaboration with the board;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) if the applicant is applying to participate in the Interstate Medical Licensure Compact under Chapter 67b, Interstate Medical Licensure Compact, consent to a criminal background check in accordance with Section 58-67-302.1 and any requirements established by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(e) provide satisfactory documentation of having successfully completed a program of professional education preparing an individual as a physician and surgeon, as evidenced by:

(i) having received an earned degree of doctor of medicine from an LCME accredited medical school or college; or

(ii) if the applicant graduated from a medical school or college located outside the United States or its territories, submitting a current certification by the Educational Commission for Foreign Medical Graduates or any successor organization approved by the division in collaboration with the board;

(f) satisfy the division and board that the applicant:

(i) has successfully completed 24 months of progressive resident training in a program approved by the ACGME, the Royal College of Physicians and Surgeons, the College of Family Physicians of Canada, or any similar body in the United States or Canada approved by the division in collaboration with the board; or

(ii) (A) has successfully completed 12 months of resident training in an ACGME approved program after receiving a degree of doctor of medicine as required under Subsection (1)(e);

(B) has been accepted in and is successfully participating in progressive resident training in an ACGME approved program within Utah, in the applicant's second or third year of postgraduate training; and

(C) has agreed to surrender to the division the applicant's license as a physician and surgeon without any proceedings under Title 63G, Chapter 4, Administrative Procedures Act, and has agreed the applicant's license as a physician and surgeon will be automatically revoked

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by the division if the applicant fails to continue in good standing in an ACGME approved progressive resident training program within the state;

(g) pass the licensing examination sequence required by division rule made in collaboration with the board;

(h) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board;

(i) meet with the board and representatives of the division, if requested, for the purpose of evaluating the applicant's qualifications for licensure;

(j) designate:

(i) a contact person for access to medical records in accordance with the federal Health Insurance Portability and Accountability Act; and

(ii) an alternate contact person for access to medical records, in the event the original contact person is unable or unwilling to serve as the contact person for access to medical records; and

(k) establish a method for notifying patients of the identity and location of the contact person and alternate contact person, if the applicant will practice in a location with no other persons licensed under this chapter.

(2) An applicant for licensure as a physician and surgeon by endorsement who is currently licensed to practice medicine in any state other than Utah, a district or territory of the United States, or Canada shall:

(a) be currently licensed with a full unrestricted license in good standing in any state, district, or territory of the United States, or Canada;

(b) have been actively engaged in the legal practice of medicine in any state, district, or territory of the United States, or Canada for not less than 6,000 hours during the five years immediately preceding the date of application for licensure in Utah;

(c) comply with the requirements for licensure under Subsections (1)(a) through (e), (1)(f)(i), and (1)(h) through (k);

(d) have passed the licensing examination sequence required in Subsection (1)(f) or another medical licensing examination sequence in another state, district or territory of the United States, or Canada that the division in collaboration with the board by rulemaking determines is equivalent to its own required examination;

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(e) not have any investigation or action pending against any health care license of the applicant, not have a health care license that was suspended or revoked in any state, district or territory of the United States, or Canada, and not have surrendered a health care license in lieu of a disciplinary action, unless:

(i) the license was subsequently reinstated as a full unrestricted license in good standing; or

(ii) the division in collaboration with the board determines to its satisfaction, after full disclosure by the applicant, that:

(A) the conduct has been corrected, monitored, and resolved; or

(B) a mitigating circumstance exists that prevents its resolution, and the division in collaboration with the board is satisfied that, but for the mitigating circumstance, the license would be reinstated;

(f) submit to a records review, a practice history review, and comprehensive assessments, if requested by the division in collaboration with the board; and

(g) produce satisfactory evidence that the applicant meets the requirements of this Subsection (2) to the satisfaction of the division in collaboration with the board.

(3) An applicant for licensure by endorsement may engage in the practice of medicine under a temporary license while the applicant's application for licensure is being processed by the division, provided:

(a) the applicant submits a complete application required for temporary licensure to the division;

(b) the applicant submits a written document to the division from:

(i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, stating that the applicant is practicing under the:

(A) invitation of the health care facility; and

(B) the general supervision of a physician practicing at the facility; or

(ii) two individuals licensed under this chapter, whose license is in good standing and who practice in the same clinical location, both stating that:

(A) the applicant is practicing under the invitation and general supervision of the individual; and

(B) the applicant will practice at the same clinical location as the individual;

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(c) the applicant submits a signed certification to the division that the applicant meets the requirements of Subsection (2);

(d) the applicant does not engage in the practice of medicine until the division has issued a temporary license;

(e) the temporary license is only issued for and may not be extended or renewed beyond the duration of one year from issuance; and

(f) the temporary license expires immediately and prior to the expiration of one year from issuance, upon notification from the division that the applicant's application for licensure by endorsement is denied.

(4) The division shall issue a temporary license under Subsection (3) within 15 business days after the applicant satisfies the requirements of Subsection (3).

(5) The division may not require the following requirements for licensure:

(a) a post-residency board certification; or

(b) a cognitive test when the physician reaches a specified age, ~~unless [the test reflects nationally recognized standards adopted by the American Medical Association for testing whether an older physician remains able to provide safe and effective care for patients.]:~~

(i) the screening is based on evidence of cognitive changes associated with aging that are relevant to physician performance;

(ii) the screening is based on principles of medical ethics;

(iii) physicians are involved in the development of standards for assessing competency;

(iv) guidelines, procedures, and methods of assessment are relevant to physician practice and to the physician's ability to perform the tasks specifically required in the physician's practice environment;

(v) the primary driver for establishing assessment results is the ethical obligation of the profession to the health of the public and patient safety;

(vi) the goal of the assessment is to optimize physician competency and performance through education, remediation, and modifications to a physician's practice environment or scope;

(vii) unless public health or patient safety is directly threatened, the screening permits a physician to retain the right to modify the physician's practice environment to allow the physician to continue to provide safe and effective care;

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(viii) guidelines, procedures, and methods of assessment are transparent to all parties, including the public, and physicians are made aware of the specific methods used, performance expectations and standards against which performance will be judged, and the possible outcomes of the screening or assessment;

(ix) education or remediation practices that result from screening or assessment procedures are:

(A) supportive of physician wellness;

(B) ongoing; and

(C) proactive; and

(x) procedures and screening mechanisms that are distinctly different from for cause assessments do not result in undue cost or burden to senior physicians providing patient care.

Section 4. Section **58-67-302.5** is amended to read:

58-67-302.5. Licensing of graduates of foreign medical schools.

(1) Notwithstanding any other provision of law to the contrary, an individual enrolled in a medical school outside the United States, its territories, the District of Columbia, or Canada is eligible for licensure as a physician and surgeon in this state if the individual has satisfied the following requirements:

(a) meets all the requirements of Subsection 58-67-302(1), except for Subsection 58-67-302(1)(e);

(b) has studied medicine in a medical school located outside the United States which is recognized by an organization approved by the division;

(c) has completed all of the formal requirements of the foreign medical school except internship or social service;

(d) has attained a passing score on the educational commission for foreign medical graduates examination or other qualifying examinations such as the United States Medical Licensing Exam parts I and II, which are approved by the division or a medical school approved by the division;

(e) has satisfactorily completed one calendar year of supervised clinical training under the direction of a United States medical education setting accredited by the liaison committee for graduate medical education and approved by the division;

(f) has completed the postgraduate hospital training required by Subsection

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58-67-302(1)(f)(i); and

(g) has passed the examination required by the division of all applicants for licensure.

(2) Satisfaction of the requirements of Subsection (1) is in lieu of:

(a) the completion of any foreign internship or social service requirements; and

(b) the certification required by Subsection 58-67-302(1)(e).

(3) Individuals who satisfy the requirements of Subsections (1)(a) through (g) shall be eligible for admission to graduate medical education programs within the state, including internships and residencies, which are accredited by the liaison committee for graduate medical education.

(4) A document issued by a medical school located outside the United States shall be considered the equivalent of a degree of doctor of medicine for the purpose of licensure as a physician and surgeon in this state if:

(a) the foreign medical school is recognized by an organization approved by the division;

(b) the document granted by the foreign medical school is issued after the completion of all formal requirements of the medical school except internship or social service; and

(c) the foreign medical school certifies that the person to whom the document was issued has satisfactorily completed the requirements of Subsection (1)(c).

(5) The division may not require as a requirement for licensure a cognitive test when the physician reaches a specified age, unless the test reflects ~~[nationally recognized]~~ the standards ~~[adopted by the American Medical Association for testing whether an older physician remains able to provide safe and effective care for patients]~~ described in Subsections 58-67-302(5)(b)(i) through (x).

~~[(6)]~~ (5) The provisions for licensure under this section shall be known as the "fifth pathway program."

Section 5. Section ~~58-68-302~~ is amended to read:

58-68-302. Qualifications for licensure.

(1) An applicant for licensure as an osteopathic physician and surgeon, except as set forth in Subsection (2), shall:

(a) submit an application in a form prescribed by the division, which may include:

(i) submissions by the applicant of information maintained by practitioner data banks,

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as designated by division rule, with respect to the applicant;

(ii) a record of professional liability claims made against the applicant and settlements paid by or on behalf of the applicant; and

(iii) authorization to use a record coordination and verification service approved by the division in collaboration with the board;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) be of good moral character;

(d) if the applicant is applying to participate in the Interstate Medical Licensure Compact under Chapter 67b, Interstate Medical Licensure Compact, consent to a criminal background check in accordance with Section 58-68-302.1 and any requirements established by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(e) provide satisfactory documentation of having successfully completed a program of professional education preparing an individual as an osteopathic physician and surgeon, as evidenced by:

(i) having received an earned degree of doctor of osteopathic medicine from an AOA approved medical school or college; or

(ii) submitting a current certification by the Educational Commission for Foreign Medical Graduates or any successor organization approved by the division in collaboration with the board, if the applicant is graduated from an osteopathic medical school or college located outside of the United States or its territories which at the time of the applicant's graduation, met criteria for accreditation by the AOA;

(f) satisfy the division and board that the applicant:

(i) has successfully completed 24 months of progressive resident training in an ACGME or AOA approved program after receiving a degree of doctor of osteopathic medicine required under Subsection (1)(e); or

(ii) (A) has successfully completed 12 months of resident training in an ACGME or AOA approved program after receiving a degree of doctor of osteopathic medicine as required under Subsection (1)(e);

(B) has been accepted in and is successfully participating in progressive resident training in an ACGME or AOA approved program within Utah, in the applicant's second or third year of postgraduate training; and

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(C) has agreed to surrender to the division the applicant's license as an osteopathic physician and surgeon without any proceedings under Title 63G, Chapter 4, Administrative Procedures Act, and has agreed the applicant's license as an osteopathic physician and surgeon will be automatically revoked by the division if the applicant fails to continue in good standing in an ACGME or AOA approved progressive resident training program within the state;

(g) pass the licensing examination sequence required by division rule, as made in collaboration with the board;

(h) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board, if requested by the board;

(i) meet with the board and representatives of the division, if requested for the purpose of evaluating the applicant's qualifications for licensure;

(j) designate:

(i) a contact person for access to medical records in accordance with the federal Health Insurance Portability and Accountability Act; and

(ii) an alternate contact person for access to medical records, in the event the original contact person is unable or unwilling to serve as the contact person for access to medical records; and

(k) establish a method for notifying patients of the identity and location of the contact person and alternate contact person, if the applicant will practice in a location with no other persons licensed under this chapter.

(2) An applicant for licensure as an osteopathic physician and surgeon by endorsement who is currently licensed to practice osteopathic medicine in any state other than Utah, a district or territory of the United States, or Canada shall:

(a) be currently licensed with a full unrestricted license in good standing in any state, district or territory of the United States, or Canada;

(b) have been actively engaged in the legal practice of osteopathic medicine in any state, district or territory of the United States, or Canada for not less than 6,000 hours during the five years immediately preceding the day on which the applicant applied for licensure in Utah;

(c) comply with the requirements for licensure under Subsections (1)(a) through (e), (1)(f)(i), and (1)(h) through (k);

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(d) have passed the licensing examination sequence required in Subsection (1)(g) or another medical licensing examination sequence in another state, district or territory of the United States, or Canada that the division in collaboration with the board by rulemaking determines is equivalent to its own required examination;

(e) not have any investigation or action pending against any health care license of the applicant, not have a health care license that was suspended or revoked in any state, district or territory of the United States, or Canada, and not have surrendered a health care license in lieu of a disciplinary action, unless:

(i) the license was subsequently reinstated as a full unrestricted license in good standing; or

(ii) the division in collaboration with the board determines, after full disclosure by the applicant, that:

(A) the conduct has been corrected, monitored, and resolved; or

(B) a mitigating circumstance exists that prevents its resolution, and the division in collaboration with the board is satisfied that, but for the mitigating circumstance, the license would be reinstated;

(f) submit to a records review, a practice review history, and physical and psychological assessments, if requested by the division in collaboration with the board; and

(g) produce evidence that the applicant meets the requirements of this Subsection (2) to the satisfaction of the division in collaboration with the board.

(3) An applicant for licensure by endorsement may engage in the practice of medicine under a temporary license while the applicant's application for licensure is being processed by the division, provided:

(a) the applicant submits a complete application required for temporary licensure to the division;

(b) the applicant submits a written document to the division from:

(i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, stating that the applicant is practicing under the:

(A) invitation of the health care facility; and

(B) the general supervision of a physician practicing at the health care facility; or

(ii) two individuals licensed under this chapter, whose license is in good standing and

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who practice in the same clinical location, both stating that:

(A) the applicant is practicing under the invitation and general supervision of the individual; and

(B) the applicant will practice at the same clinical location as the individual;

(c) the applicant submits a signed certification to the division that the applicant meets the requirements of Subsection (2);

(d) the applicant does not engage in the practice of medicine until the division has issued a temporary license;

(e) the temporary license is only issued for and may not be extended or renewed beyond the duration of one year from issuance; and

(f) the temporary license expires immediately and prior to the expiration of one year from issuance, upon notification from the division that the applicant's application for licensure by endorsement is denied.

(4) The division shall issue a temporary license under Subsection (3) within 15 business days after the applicant satisfies the requirements of Subsection (3).

(5) The division may not require [~~the following as a requirement for licensure: (a)~~] a post-residency board certification[~~;~~ ~~or~~].

(b) a cognitive test when the physician reaches a specified age, unless the test reflects [~~nationally recognized~~] the standards [~~adopted by the American Medical Association for testing whether an older physician remains able to provide safe and effective care for patients~~] described in Subsections 58-67-302(5)(b)(i) through (x).