

HOUSE BILL NO. 1433

Introduced by

Representatives Kasper, Becker, B. Koppelman, Rohr, Strinden, Vigesaa

Senators Clemens, Davison, Dever, J. Lee, Oehlke

1 A BILL for an Act to create and enact a new section to chapter 23-16, ~~a new section to chapter~~
2 ~~23-34, and~~ a new section to chapter 26.1-47, ~~and a new section to chapter 31-04~~ of the North
3 Dakota Century Code, relating to maintenance of certification for physicians; and to declare an
4 emergency.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** A new section to chapter 23-16 of the North Dakota Century Code is created
7 and enacted as follows:

8 **Maintenance of certification.**

9 **1. As used in this section:**

- 10 a. "Continuing medical education" means continued postgraduate medical
11 education required by the North Dakota board of medicine intended to educate
12 medical professionals about new developments in the medical field.
- 13 b. "Maintenance of certification" means a process requiring periodic recertification
14 examinations or other activities to maintain specialty medical board certification.
15 Recertification may be provided by a medical professional organization, such as
16 one or more of the medical specialty boards of the American board of medical
17 specialties, the American osteopathic association, the national board of
18 physicians and surgeons, or any other ~~alternative, regulated~~ board a
19 credentialing entity recognizes.
- 20 c. "Physician" means a physician licensed under chapter 43-17.
- 21 d. "Specialty medical board certification" means certification by a board specializing
22 in one particular area of medicine. ~~A physician is considered a board certified~~
23 medical specialist in this state if the physician receives initial certification by a
24 medical board, regardless of the physician's maintenance of certification.

1 ~~participation or status~~ and having requirements in addition to those the North
2 ~~Dakota board of medicine requires to practice medicine.~~

3 2. Except as provided in subsection 5, a physician may not be denied staff privileges or
4 employment by a facility licensed under this chapter based solely on the physician's
5 decision to not participate in maintenance of certification.

6 3. This section does not prevent a facility's credentialing committee from requiring a
7 physician meet continuing medical education requirements as set by the physician's
8 licensing board.

9 4. This section does not prohibit a facility licensed under this chapter from requiring a
10 physician to undergo remedial or corrective courses or training as may be required by
11 a quality improvement committee.

12 5. A facility licensed under this chapter may differentiate between physicians based on a
13 physician's maintenance of certification if:

14 a. The facility's designation, certification, or accreditation is contingent on the facility
15 requiring a specific maintenance of certification by physicians seeking staff
16 privileges or credentialing at the facility and the differentiation is limited to those
17 physicians whose maintenance of certification is required for the facility's
18 designation, certification, or accreditation; or

19 b. The voting physician members of the facility's organized medical staff vote to
20 authorize the differentiation and the facility's governing body approves the vote.

21 ~~(1) The authorized differentiation may be made only by the voting physician~~
22 ~~members of the facility's organized medical staff and not by the facility's~~
23 ~~governing body, administration, or any other person.~~

24 (2)(1) The facility may establish terms applicable to the facility's differentiation,
25 including appropriate grandfathering provisions, limiting the differentiation to
26 certain medical specialties, and allowing the differentiation to be rescinded
27 at any time by a vote of the voting physician members of the facility's
28 organized medical staff.

29 (2) This section may not be construed to require a new vote by the facility's
30 medical staff.

1 (3) Notwithstanding paragraph 2, this section may not be construed to abrogate
2 or supersede the ability of an organized medical staff and governing board
3 of an individual facility to determine the facility's credentialing and privileging
4 criteria with respect to board certification and maintenance of certification
5 requirements.

6 6. A facility licensed under this chapter may not consider maintenance of certification
7 participation or status as a standard of care consideration in the course of a quality
8 improvement assessment.

9 ~~SECTION 2. A new section to chapter 23-34 of the North Dakota Century Code is created~~
10 ~~and enacted as follows:~~

11 ~~Peer review - Limitations.~~

12 ~~A peer review organization may not consider maintenance of certification participation or~~
13 ~~status as a standard of care consideration in the course of a professional peer review.~~

14 **SECTION 2.** A new section to chapter 26.1-47 of the North Dakota Century Code is created
15 and enacted as follows:

16 **Maintenance of certification.**

- 17 1. As used in this section, the terms "continuing medical education", "maintenance of
18 certification", "physician", and "specialty medical board certification" have the same
19 meaning as provided under section 1 of this Act.
- 20 2. A health care insurer may not deny reimbursement to or prevent a physician from
21 being a preferred provider based solely on a physician's decision to not participate in
22 maintenance of certification, including basing a physician's network participation on
23 any form of maintenance of certification participation or status.
- 24 3. A health care insurer may not discriminate with respect to reimbursement levels based
25 solely on a physician's decision to not participate in any form of maintenance of
26 certification.

27 ~~SECTION 4. A new section to chapter 31-04 of the North Dakota Century Code is created~~
28 ~~and enacted as follows:~~

29 ~~Medical-related civil action - Maintenance of certification.~~

30 ~~In a medical-related civil action, maintenance of certification participation or status of a~~
31 ~~physician is not admissible as evidence of liability or of standard of care.~~

1 **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.