

1                                   **PROHIBITION ON AGE BASED TESTING FOR**  
2   **PHYSICIANS**

3   2020 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Keven J. Stratton**

6                                   Senate Sponsor: \_\_\_\_\_

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8   **LONG TITLE**

9   **General Description:**

10                   This bill prohibits age-based testing of physicians for licensure, reimbursement,  
11   employment, or admitting privileges.

12   **Highlighted Provisions:**

13                   This bill:

14                   ▶ prohibits age-based testing of physicians by the Division of Occupational and  
15   Professional Licensing, a health care facility, and a managed care organization.

16   **Money Appropriated in this Bill:**

17                   None

18   **Other Special Clauses:**

19                   None

20   **Utah Code Sections Affected:**

21   **AMENDS:**

22                   **26-21-31**, as last amended by Laws of Utah 2019, Chapter 445

23                   **31A-22-618**, as last amended by Laws of Utah 2019, Chapter 136

24                   **31A-45-305**, as last amended by Laws of Utah 2019, Chapter 445

25                   **58-67-302**, as last amended by Laws of Utah 2019, Chapter 445

26                   **58-67-302.5**, as last amended by Laws of Utah 2019, Chapter 445

27                   **58-68-302**, as last amended by Laws of Utah 2019, Chapter 445



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

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

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

32 A health care facility may not require for purposes of employment, privileges, or  
33 reimbursement, that a physician, as defined in Section **58-67-102**, take a cognitive test when  
34 the physician reaches a specified age~~[, unless the test reflects the standards described in~~  
35 ~~Subsections **58-67-302**(5)(b)(i) through (x)].~~

36 Section 2. Section **31A-22-618** is amended to read:

37 **31A-22-618. Nondiscrimination among health care professionals -- Prohibition on**  
38 **age-based testing for physicians.**

39 (1) Except as provided under Section **31A-45-303** and Subsection (2), and except as to  
40 insurers licensed under Chapter 8, Health Maintenance Organizations and Limited Health  
41 Plans, no insurer may unfairly discriminate against any licensed class of health care providers  
42 by structuring contract exclusions which exclude payment of benefits for the treatment of any  
43 illness, injury, or condition by any licensed class of health care providers when the treatment is  
44 within the scope of the licensee's practice and the illness, injury, or condition falls within the  
45 coverage of the contract. Upon the written request of an insured alleging an insurer has  
46 violated this section, the commissioner shall hold a hearing to determine if the violation exists.  
47 The commissioner may consolidate two or more related alleged violations into a single hearing.

48 (2) Coverage for licensed providers for behavioral analysis may be limited by an  
49 insurer in accordance with Section **58-61-714**. Nothing in this section prohibits an insurer  
50 from electing to provide coverage for other licensed professionals whose scope of practice  
51 includes behavior analysis.

52 (3) An insurer may not require for purposes of reimbursement that a physician, as  
53 defined in Section **58-67-102**, take a cognitive test when the physician reaches a specified age.

54 Section 3. Section **31A-45-305** is amended to read:

55 **31A-45-305. Prohibition on certain age-based physician testing.**

56 A managed care organization or other third party may not require for purposes of  
57 reimbursement that a physician, as defined in Section **58-67-102**, take a cognitive test when the  
58 physician reaches a specified age~~[, unless the test reflects the standards described in~~

59 Subsections ~~58-67-302(5)(b)(i) through (x)~~].

60 Section 4. Section **58-67-302** is amended to read:

61 **58-67-302. Qualifications for licensure.**

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

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

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

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

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

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

72 (c) be of good moral character;

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

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

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

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

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

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

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

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

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

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

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

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

107 (j) designate:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

152 (i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility  
153 Licensing and Inspection Act, stating that the applicant is practicing under the:  
154 (A) invitation of the health care facility; and  
155 (B) the general supervision of a physician practicing at the facility; or  
156 (ii) two individuals licensed under this chapter, whose license is in good standing and  
157 who practice in the same clinical location, both stating that:  
158 (A) the applicant is practicing under the invitation and general supervision of the  
159 individual; and  
160 (B) the applicant will practice at the same clinical location as the individual;  
161 (c) the applicant submits a signed certification to the division that the applicant meets  
162 the requirements of Subsection (2);  
163 (d) the applicant does not engage in the practice of medicine until the division has  
164 issued a temporary license;  
165 (e) the temporary license is only issued for and may not be extended or renewed  
166 beyond the duration of one year from issuance; and  
167 (f) the temporary license expires immediately and prior to the expiration of one year  
168 from issuance, upon notification from the division that the applicant's application for licensure  
169 by endorsement is denied.  
170 (4) The division shall issue a temporary license under Subsection (3) within 15  
171 business days after the applicant satisfies the requirements of Subsection (3).  
172 (5) The division may not require the following requirements for licensure:  
173 (a) a post-residency board certification; or  
174 (b) a cognitive test when the physician reaches a specified age~~[-, unless:]~~.  
175 ~~[(i) the screening is based on evidence of cognitive changes associated with aging that~~  
176 ~~are relevant to physician performance;]~~  
177 ~~[(ii) the screening is based on principles of medical ethics;]~~  
178 ~~[(iii) physicians are involved in the development of standards for assessing~~  
179 ~~competency;]~~  
180 ~~[(iv) guidelines, procedures, and methods of assessment, which may include cognitive~~  
181 ~~screening, are relevant to physician practice and to the physician's ability to perform the tasks~~  
182 ~~specifically required in the physician's practice environment;]~~

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

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

188 ~~[(vii) a credentialing committee determines that public health or patient safety is~~  
189 ~~directly threatened, the screening permits a physician to retain the right to modify the~~  
190 ~~physician's practice environment to allow the physician to continue to provide safe and~~  
191 ~~effective care;]~~

192 ~~[(viii) guidelines, procedures, and methods of assessment are transparent to physicians~~  
193 ~~and physicians' representatives, if requested by a physician or a physician's representative, and~~  
194 ~~physicians are made aware of the specific methods used, performance expectations and~~  
195 ~~standards against which performance will be judged, and the possible outcomes of the~~  
196 ~~screening or assessment;]~~

197 ~~[(ix) education or remediation practices that result from screening or assessment~~  
198 ~~procedures are:]~~

199 ~~[(A) supportive of physician wellness;]~~

200 ~~[(B) ongoing; and]~~

201 ~~[(C) proactive; and]~~

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

204 Section 5. Section **58-67-302.5** is amended to read:

205 **58-67-302.5. Licensing of graduates of foreign medical schools.**

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

210 (a) meets all the requirements of Subsection **58-67-302(1)**, except for Subsection  
211 **58-67-302(1)(e)**;

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

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

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

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

223 (f) has completed the postgraduate hospital training required by Subsection  
224 58-67-302(1)(f)(i); and

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

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

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

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

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

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

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

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

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

242 (5) The division may not require as a requirement for licensure a cognitive test when  
243 the physician reaches a specified age[, unless the test reflects the standards described in  
244 Subsections 58-67-302(5)(b)(i) through (x)].



245 (6) The provisions for licensure under this section shall be known as the "fifth pathway  
246 program."

247 Section 6. Section **58-68-302** is amended to read:

248 **58-68-302. Qualifications for licensure.**

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

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

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

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

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

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

259 (c) be of good moral character;

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

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

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

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

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

275 (i) has successfully completed 24 months of progressive resident training in an

276 ACGME or AOA approved program after receiving a degree of doctor of osteopathic medicine  
277 required under Subsection (1)(e); or

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

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

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

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

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

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

295 (j) designate:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

343 (A) invitation of the health care facility; and

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

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

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

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

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

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

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

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

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

361 (5) The division may not require:

362 (a) a post-residency board certification[.]; or

363 (b) a cognitive test when the physician reaches a specified age[ ~~unless the test reflects~~  
364 ~~the standards described in Subsections 58-67-302(5)(b)(i) through (x)~~].