

Below is a proposal that remediates the CA/TX physician exclusion from the Public Service Loan Forgiveness (PSLF) program **without** impacting other health care professionals. The proposal includes a change to the general language definition for the program as well as three changes to the PSLF application and certification form.

ADDITION TO THE PSLF REGULATIONS 34 CFR SECTION 685.219(b) AND THE APPLICATION FORM:

“Employee or employed means an individual who is hired and paid by a public service organization. ‘Hired and paid by’ includes conferring of clinical privileges to a licensed health care provider/physician by a private nonprofit public service organization that is prohibited by State law from directly employing such individual.”

AMENDMENT TO THE PSLF APPLICATION FORM:

1. DEFINITIONS

The new definition listed above should be added to the definitions section.

2. BORROWER REQUEST, UNDERSTANDINGS, AND CERTIFICATION

Insert the following:

I understand that:

- To qualify for loan forgiveness, I must be employed full-time by a qualifying employer when apply for and get forgiveness. (existing language)

-For physicians who are prohibited from being employed by state law, to qualify for loan forgiveness, I must be engaged to practice medicine (in a health care practitioner occupation) full time at a private not-for-profit public service organization when I apply for and get forgiveness.

3. INSTRUCTIONS SECTION OF PSLF APPLICATION FORM

Add the following:

EMPLOYMENT ELIGIBILITY

Physicians who are engaged to practice medicine at a private not-for-profit public service organization in states that prohibit physicians from being employed by private non-profit hospitals, can be verified to meet the “full-time” requirements for eligibility by submission of a certification signed under oath by the hospital’s Chief Medical Officer or equivalent position confirming the physician’s active membership on the medical staff and time spent working at the hospital.

RATIONALE

The Public Service Loan Forgiveness (PSLF) program forgives federal student loans for certain individuals who meet its eligibility requirements, including being “employed in a public service job.” 20 U.S.C. §1087e(m)(1)(B)(i). Regulations specify that, “Employee or employed means an individual who is hired and paid by a public service organization.” 34 CFR §685.219(b).

Emergency physicians, other hospital-based physicians working full time at private nonprofit hospitals, or primary care physicians working full time at private nonprofit hospital clinics that serve predominantly Medicaid patients work at a “public service organization.” However, under California and Texas state laws known as the Corporate Practice of Medicine law (CPOM), these physicians cannot legally be employed by their hospitals, even though they work full time at the hospitals. Thus, these physicians meet the full spirit of the PSLF program but cannot qualify for loan forgiveness due to a technical legal distinction concerning “employment” of doctors that stems from state laws unique to California and Texas.

CPOM laws are more than a century old and originally are premised on recognition that licenses to practice medicine are conferred on individuals and that corporations cannot practice medicine. As the delivery of medicine diversified and became more commercialized/corporatized, CPOM evolved to shift away from concerns about profit motive to more broadly prohibit lay interference in the practice of medicine (e.g., medical decision-making, rationing care by managed care entities). While exceptions to CPOM have been created, California and Texas law remain consistent in prohibiting employment by private nonprofit hospitals of physicians.

Although doctors cannot be employed by the hospitals, they must legally be admitted into the professional medical staffs of the hospitals and granted professional privileges. Privileging and credentialing is the process whereby the physician leadership at the hospital assesses the qualifications and competency of a physician before legally permitting that physician to admit and see patients at a hospital. To be privileged, medical staffs closely examine many factors determining a physician’s qualifications and competence including (1) verification of their training and residency; (2) history of discipline by licensing bodies and other medical staffs; (3) criminal record; (4) malpractice record; (5) specialty board certifications; (6) and overall assessment of competence and professional quality. California and Texas state laws mandate that this process be conducted and that physicians be reassessed and re-credentialed/re-privileged at least every two years. The credentialing and privileging process further must be documented and subject to validation by external authorities that audit the hospital and medical staff.

In the context of PSLF eligibility, credentialing/privileging of physicians can serve as an apt proxy for “employment” of physicians at private nonprofit hospitals that cannot legally employ the physicians under CPOM laws. The suggested amendments to the PSLF regulation would permit doctors to be eligible if they can demonstrate credentialing/privileging in lieu of employment. This is a workable alternative because:

- Credentialing/privileging can be verified by hospitals and medical staffs who have written records;
- Credentialing/privileging is a high standard;
- By focusing on privileging of individuals who could not be directly employed due to state law, the amended regulation would exclude private independent contractors who could but are not employed by hospitals (e.g., nurses and other health care workers provided by staffing companies). The PSLF regulations expressly prohibit loan forgiveness for independent contractors;

- Providing medical care “full-time” (defined by the PSLF regulations as 30 hours per week) in a non-profit facility would exclude physicians who mostly work in private offices and only occasionally admit/see patients in nonprofit hospital facilities; and
- The 30-hour full-time requirement can be documented by hospitals. Hospitals keep written records now.