

Commercial Drivers' License Medical Certification In Washington



Draft—11/13/18

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Executive Summary

In an effort to help address the commercial vehicle driver shortage, the Legislature directed the Joint Transportation Committee (JTC) to evaluate options for revising and administering state Commercial Drivers' License (CDL) medical certification standards. The proviso focuses the evaluation on:

- Federally allowed exceptions to CDL medical certification requirements
- Process for implementing federally allowed waivers of specific CDL medical certification requirements

CHANGING WASHINGTON'S MEDICAL CERTIFICATION LAW UNLIKELY TO EASE SHORTAGE

The American Trucking Association (ATA) estimates a shortage of 36,500 truck drivers nationally, with 174,000 possible by 2026. Revising medical certification requirements is unlikely to effect that number much:

- Federally authorized medical certification exceptions don't apply to long-haul truckers. According the ATA "...the bulk of the driver shortage is for over-the-road (i.e. non-local) drivers operating heavy-duty tractor-trailers (i.e. Class 8 tractors)."¹ Authorizing exceptions that don't apply to long-haul truckers will not increase their number.
- The waiver population is small. Federally allowed waivers are decided on a case-by-case basis. Even if changing the process doubled the number of waivers (unlikely) it would still be small, with little probable impact on the truck driver shortage.

A range of driver qualification requirements, one of which is medical certification, is one underlying cause of the truck driver shortage. Changing medical certification will have a limited effect on this factor. It will have no effect on two other, arguably larger, underlying causes: 1) competition within the industry; and 2) Demographic shifts, e.g. fewer millennials becoming truckers².

MEDICAL CERTIFICATION REQUIREMENTS APPLY TO ALL CDL DRIVERS

All Washington CDL drivers must meet Federal Motor Carrier Safety Administration (FMCSA) physical standards designed to help ensure drivers are physically capable of handling large trucks for long periods of time.

¹ Costello, *Truck Driver Shortage Analysis 2017*, (American Trucking Association)

² *Analysis of Truck Driver Age Demographics Across Two Decades*; American Transportation Research Institute (2014).

Drivers who don't meet those standards may still qualify to operate a commercial vehicle in one of two ways.

- Exceptions. Drivers in specified categories, such as government employees, are excepted from medical certification requirements.
- Waivers. A driver failing a specific medical certification standard may obtain a waiver for their condition if a medical professional certifies the driver can safely operate a commercial vehicle "Based upon sound medical judgment with appropriate performance standards ensuring no adverse effect on safety" *cite*.

CDL EXCEPTIONS

Federal law excepts 9 classifications of drivers from medical certification requirements. For reasons explained in the main report, only 3 of those exceptions would affect Washington CDL drivers:

- **Governmental drivers**. Employees of federal, state, or local governments.
- **Bee-keepers**. Bee-keepers transporting hives;
- **Custom Harvesters**: Commercial Vehicle Drivers employed solely to harvest and transport other's crops from the field to market.

The JTC researched the approach of all 50 states on CDL exceptions and waivers, contacting each state to confirm its findings. 32 states responded. Of those 32:

- 59% of responding states (19 states) recognize some or all of the federal exceptions.
- 41% of responding states (13 states) do not recognize any exceptions.

The JTC followed up with 8 states that allowed exceptions looking for enforcement or safety issues. None of those states identified enforcement or safety issues specific to drivers with excepted CDLs. A more detailed discussion of JTC finding is on page ____.

CDL WAIVERS

Federal law allows Washington State to grant waivers from specific medical certification requirements if a medical professional certifies the driver can operate a commercial vehicle "Based upon sound medical judgment with appropriate performance standards ensuring no adverse effect on safety".

DOL, along with most other states, relies upon the certifying medical professional to determine if a waiver is advisable. The study proviso directed the JTC to research other state's approaches. We identified 9 states that utilize in-agency medical review to evaluate waiver requests.

The JTC followed up with those states and found states with internal medical review also used that process to evaluate driver fitness for the general population. No state has internal medical review processes for CDL medical certification waiver alone. More details on board administration in other states are in the main report at page ____.

Options

WHAT ARE THE NUMBERS?

One of the primary questions asked when evaluating options is: “how many people will this affect?” To address the stated goal of helping “reduce the current shortage of licensed commercial motor vehicle drivers” we thought about how to identify persons who 1) would like to become CDL drivers; 2) are unable to satisfy medical certification standards; but 3) would qualify for an exception or a waiver. The goal proved elusive.

- FMCSA data can identify how many applicants took the medical certification exam and failed; but this would not tell us:
 - How many would seek employment in an excepted class;
 - How many could possibly qualify for a waiver.
 - How many never applied because they knew they did not meet the medical certification requirements.
- We can estimate that the number would be small because of the limited scope of available exceptions. Even that small number would not necessarily mean more drivers:
 - Drivers currently employed in excepted categories (primarily government drivers) would no longer require medical certification, but it does not follow there would be more of them.
 - Exceptions could create an incentive for current CDL holders to move to excepted employment. Again, this would not necessarily mean more drivers.
- Finally, none of the exceptions apply to long haul truckers (except some bee-keepers). Adopting exceptions would have little effect on the trucker shortage.

The options below could increase the number of CDL drivers. We cannot say how many, but we can say it would not be many.

1. Medical Certification Exception Options:

- a. Introduce a bill directing DOL to not require medical certification for excepted in-state and interstate licenses for all federally authorized exceptions.
- b. Introduce a bill directing DOL to issue excepted in-state and interstate licenses for some or all of the categories where it would have a practical effect:
 - i. Federal, state, and local drivers;
 - ii. Bee-keepers transporting hives;
 - iii. Custom harvesters.

- c. Limit options a and b to in-state CDL drivers.
- d. Take no action

2. Medical Certification Waiver Options:

The potential effect of any change in waiver evaluation procedures was reduced by a recent change in federal waiver rules. Under the new rule, CDL holders with insulin-treated diabetes mellitus (ITDM) who meet specific federal medical standards no longer need a waiver. This group represents just over half (51%) of DOL's current waivers. With the new federal rule, the number of waiver requests, and thus the number of persons effected by changes in the waiver process, should decline.

The Legislature may wish to consider the following options:

- a. Introduce legislation establishing a DOL medical review board to review waiver requests;
- b. Direct further study on establishing a review board with jurisdiction over driver fitness for the general population and for CDL waivers.
- c. Take no action.

Full Report

In an effort to help address the commercial vehicle driver shortage, the Legislature directed the Joint Transportation Committee (JTC) to evaluate options for revising and administering state Commercial Drivers' License (CDL) medical certification standards. Specifically evaluating:

- Federally allowed exceptions to CDL medical certification requirements
- Process for implementing federally allowed waivers of specific CDL medical certification requirements

This evaluation requires balancing the need for more drivers with the duty to provide highway safety. Further, any options must comply with requirements of the primary regulator of commercial vehicle traffic, the Federal Motor Carrier Safety Administration (FMCSA)

Background

THE TRUCKER SHORTAGE

The American Trucking Association (ATA) estimates a shortage of 36,500 truck drivers nationally, with 174,000 possible by 2026. Revising medical certification requirements is unlikely to effect that number much:

- Federally authorized medical certification exceptions don't apply to long-haul truckers. According the ATA "...the bulk of the driver shortage is for over-the-road (i.e. non-local) drivers operating heavy-duty tractor-trailers (i.e. Class 8 tractors)."³ Authorizing exceptions that don't apply to long-haul truckers will not increase their number.
- The waiver population is small. Federally allowed waivers are decided on a case-by-case basis. Even if changing the process doubled the number of waivers (unlikely) it would still be small, with little probable impact on the truck driver shortage.

A 2014 white paper of the American Transportation Research Institute identified the following underlying factors of the truck driver shortage:

- Competition within the industry. Trucking deregulation ushered in a dramatic increase in motor carriers, from 20,000 in the 1980s to over 500,000 today.

³ Costello, *Truck Driver Shortage Analysis 2017*, (American Trucking Association)

Increased competition has driven freight costs down. Dwindling profit margins keep wages relatively flat, reducing the supply of drivers. Trucking companies compete aggressively for that supply, causing turnover rates over 90%.

- Driver Qualifications. Obtaining and maintaining a CDL requires compliance with a host of federal and state laws.
 - Drivers must comply with requirements for:
 - Training and testing
 - Medical certification
 - Insurance
 - Port access cards
 - Transportation security credentials
 - Endorsements, such as hazmat.
 - Motor carriers must maintain and monitor driver records on:
 - Pre-employment screening
 - Driving history
 - Drug tests
 - FMCSA compliance

- Demographics. “A variety of reports and anecdotal information confirm that the average age of truck drivers is older than the average age in many other sectors of the U.S. workforce. There is also evidence that post-Baby Boomer generations, particularly those now in their twenties and early thirties (i.e. “Millennials”) are not entering the industry in sufficient numbers. Thus, as older generations (e.g. Baby Boomers) enter retirement, an even larger driver shortage may begin to emerge.”⁴

The medical certification requirement is one of many factors underlying the driver shortage. Modifying those standards as allowed by FMCSA regulations may enlarge the pool of short-haul drivers, but other perhaps more significant factors remain.

CDL REQUIREMENTS

Commercial vehicles often operate in commerce between states. Accordingly, the FMCSA has primary jurisdiction over commercial vehicle regulation, including CDL standards.

⁴ *Analysis of Truck Driver Age Demographics Across Two Decades*; American Transportation Research Institute (2014).

Although Federal law is the primary arbiter of commercial vehicle regulation, individual states may adopt specified deviations for in-state (intrastate⁵) trucking. Subject, of course, to federal review and approval. For example:

- A driver must be 21 or over to obtain a between-state CDL;
- A state may authorize in-state CDLs for qualifying drivers age 18 or older. Most states, including Washington, have done so.

Medical Certification Requirements

All CDL drivers, and some other drivers identified below, must meet the physical standards established in FMCSA regulation 49 CFR 391.41(b). In the past, some drivers have submitted false certification. To ensure authentic certification, the FMCSA created the national medical registry in 2012. The registry is populated by FMCSA certified medical professionals trained to evaluate commercial driver fitness. After completing the evaluation, the medical professional enters the results in the FMCSA federal medical registry. That result can be accessed by law enforcement to evaluate compliance on the road and by licensing agencies to evaluate CDL eligibility.

Exemptions, exceptions, and waivers

While the words exemption, exception, and waiver can operate as synonyms, they represent 3 distinct classifications when applied to medical certification requirements:

- **Exemption:** If a category of drivers is exempt, they are not required to have a CDL nor to maintain medical certification. Exemptions include:
 - Specified farm uses (for more detail on farm exemptions see appendix A)
 - Police and fire drivers trained and certified under approved training
 - Non-commercial recreational vehicles – includes rental of moving trucks
 - Military drivers.
- **Exception:** A commercial vehicle driver may be excepted from medical certification if driving solely in an excepted class. These exceptions are discussed below.
- **Waiver:** A driver subject to medical certification suffering from an otherwise disqualifying physical limitation, may obtain an individual waiver allowing them to operate a commercial vehicle despite the disqualifying condition.

⁵ Statutes, rules, and other materials use the terms “interstate” and “intrastate” to describe different classes of trucking. Because those terms are so similar, they often cause confusion, both in discussion and on paper. For that reason this paper uses the terms “in-state” for intrastate and “between-state” for interstate.

Whether a driver requires medical certification depends on: 1) Truck size; and 2) whether the driver drives in-state only or also drives between-states.

- Trucks under 10,000 lbs. Gross Vehicle Weight (GVW). Drivers of commercial vehicles under 10,000 lbs. GVW do not need medical certification unless transporting hazardous materials.
- Trucks between 10,001 and 26,000 lbs. GVW. Drivers of commercial vehicles in this class do not require a CDL, but may or may not require medical certification depending on origin and destination of the cargo:
 - In-state – medical certification not required
 - Between-states – medical certification required.
- Trucks over 26,000 lbs. GVW. Both medical certification and a CDL are required for both in-state and between-state commerce. Note: a CDL, and hence medical certification, is also required for commercial vans carrying 16 or more passengers including the driver.

Drivers of commercial vehicles transporting hazardous materials must maintain medical certification regardless of truck size.

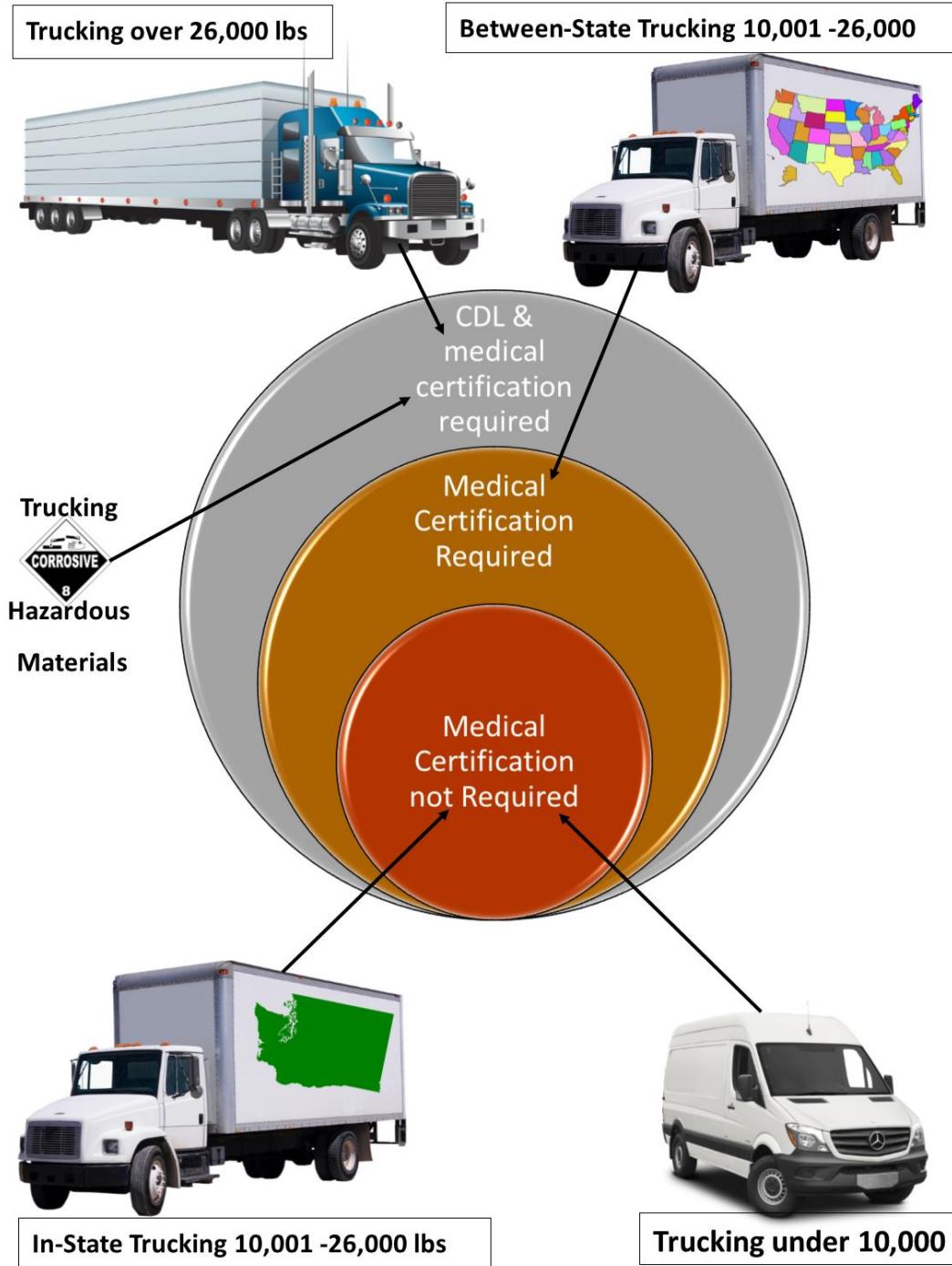
Classifying Commerce

Classifying commerce as in-state or between-state depends on the origin and destination of the cargo, not the driver or vehicle. Take, for example, an airport shuttle driving from Tacoma to SeaTac. Neither the shuttle nor the driver leave the state. However the trip is classified as between-state (interstate) commerce because the cargo (e.g. airline passengers) is bound for another state.

Chart 1 shows the different categories of medical certification.

Chart 1 – Medical Certification Required?

Largest circle = all commercial vehicles



If medical certification is required the driver must meet specific standards for:

- Hand and finger mobility
- Arm, foot and leg mobility
- Diabetes
- Cardiac health
- Respiratory health
- Blood pressure
- Rheumatism, arthritis, muscular or vascular disease
- Epilepsy
- Mental health
- Vision
- Hearing
- Substance abuse
- Alcohol abuse

49 CFR 391.41. Drivers not meeting those standards may still qualify to operate a commercial vehicle in one of two ways.

- Exceptions. Drivers in specified categories, such as government employees, are excepted from medical certification requirements.
- Waivers. A driver failing a specific medical certification standard may still qualify for a CDL by obtaining a waiver. A waiver for a particular condition requires a medical professional to certify the driver can safely operate a commercial vehicle “Based upon sound medical judgment with appropriate performance standards ensuring no adverse effect on safety” *cite*.

Driving under the influence = no CDL

Although substance abuse and alcoholism are technically on the list of medical certification conditions that drivers in excepted categories are excepted from under 49 CFR 390.3, Any driver found to be under the influence of a controlled substance or alcohol is disqualified from operating a CMV for at least 1 year. 49 CFR 383.51

For more background on the history of medical certification of commercial vehicle traffic, see Appendix B.

Study Direction and Methodology

Under current law, Washington’s Department of Licensing (DOL) grants waivers to qualifying CDL applicants but does not recognize CDL exceptions. Thus, all Washington CDL holders must maintain medical certification, even if driving in an excepted category. The Legislature directed the JTC to study “possible approaches for developing a method to set state standards” for

- Exceptions to CDL medical certification requirements;
- Medical waivers for in-state CDL drivers.

Specifically, the study directed the JTC to examine the laws and practices of other states. For the full text of the study proviso, see appendix C.

METHODOLOGY

Although the proviso included funds for a consultant, the JTC determined it could avoid the expenditure by using current staff. The staff’s methodology was:

1. Research and document federal and state regulation of CDL medical certification exceptions and waivers.
2. Research administration of CDL medical certification exceptions and waivers in all 50 states.
3. Contact each state to confirm initial staff findings of that state’s regulatory scheme. Staff contacted the CDL administrator of each state laying out the conclusions regarding that State’s administration and asking for confirmation or correction. 32 States responded.
4. Using the confirmed data of the 32 responding states, collect and categorize the data as it compares to Washington’s approach.
5. Select a subgroup of states utilizing categories of exception and inquire further into their experiences administering exceptions.
6. Follow-up with each responding state that utilizes separate medical professional review of waiver requests, usually performed by an appointed board, inquiring as to their administrative methodology.

Study Findings

The study findings are divided between exceptions and waivers.

EXCEPTIONS

Federal law excepts 9 classifications of drivers from medical certification requirements.

- School bus drivers
- Federal, state or local government drivers
- Occasional non-compensated transportation of personal property (i.e. U-Haul)
- Transportation of human corpses or sick and injured persons
- Fire trucks and rescue vehicles in emergency operations
- Non-compensated transportation of between 9 and 15 passengers
- Propane fuel or pipeline emergency vehicle responding to emergency
- Custom harvesting (define)
- Bee-keepers transporting hives

49 CFR 390.3(f); 49 CFR 391.2. While unable to find any documentation of why the exceptions exist, it can be noted that the categories generally exclude long-haul trucking.

Exceptions in Washington

A Washington commercial vehicle driver may or may not qualify for federally authorized exceptions. This is, in part, because two different enforcement agencies regulate commercial vehicles: The Washington State Patrol (WSP) and DOL.

Washington's State Patrol (WSP) uses FMCSA enforcement standards, including medical certification exceptions. Therefore, officers apply those exceptions in the field. DOL, on the other hand, does not recognize exceptions when issuing CDLs. This results in a situation where a trucker is:

- Covered by medical certification exceptions if driving a commercial vehicle outside DOL's jurisdiction but within WSP jurisdiction⁶ (10,001 to 26,000 lbs.)
- Not covered by medical certification exceptions if driving a commercial vehicle requiring a CDL, i.e. within DOL's jurisdiction (over 26,000 lbs).

The varying application of exceptions is confusing. The career path of a driver named "Sam" is offered below as an explanatory example.

⁶For vehicles 10,001 to 26,000 lbs, medical certification requirements, and therefore medical certification exceptions, only apply to commercial traffic between-states.

Example: Medical Certification Requirements in Different Types of Driving

Under 10,001 lbs GVW



Sam gets a job driving commercial vehicles for the County. He starts out driving a 8550 lb. GVW van. He doesn't need a CDL or medical certification. Medical certification exceptions are, therefore, irrelevant to Sam.

10,001 to 26,000 lbs GVW

Sam moves up to bigger rigs with the same employer, driving a 18,000 lb GVW panel truck. He only drives in-state initially. He needs neither a CDL nor medical certification. Medical certification exceptions remain irrelevant to Sam.



Sam's employer promotes him to a new job that includes hauling interstate. He still doesn't need a CDL but he is subject to federal medical certification requirements including the exceptions. He's driving in an excepted class (government driver), so he doesn't need medical certification. **Note: If Sam did the same work for a private employer, he would need medical certification.**

Over 26,000 lbs GVW

Sam gets another promotion requiring him to drive a dump truck weighing over 26,000 lbs. GVW. Now he needs a CDL. Because state CDL laws do not adopt federal medical certification exceptions Sam must, for the first time, obtain medical certification.



Note: in this example Sam does not haul hazardous materials.

What if Washington adopts the federally available exceptions?

The study proviso requires assessment and discussion of options for CDL medical certification exceptions. Adoption of six of the nine authorized exceptions for CDLs in would not, in and of itself, change the situation of drivers in the field either because:

- Driver Doesn't need CDL: If the driver doesn't need a CDL, he or she does not need a CDL exception:
 - Situational/ Non-licensing Use - Some exceptions apply to drivers who do not drive a CDL vehicle in the normal course of their employment, but may drive large vehicles in a particular situation, such as an emergency. By definition, these drivers do not have a CDL, so they have no need of a CDL exception. These federal exceptions cover:
 - Propane or pipeline vehicle in an emergency
 - Fire and rescue vehicles in an emergency. (This does not include employees who drive these vehicles in the normal course of their employment.)
 - Non-commercial transportation of personal goods (U-Haul)
 - Vehicle Use Does Not Require CDL - If the vehicle used to ply the trade covered by a particular exception is less than 26,001 lbs., the driver does not need a CDL. As explained above, that driver already has the benefit of the exception. Adding the exception to the CDL law would have no effect. These include exceptions for:
 - Transportation of dead, sick, or injured
 - Transporting 9-15 passengers not for direct compensation
- Medical Certification Still Required Even if CDL Exception Enacted: Even if the following driver types were excepted from CDL medical certification requirements, they would still need medical certification to maintain their employment. Granting them an CDL exception would not relieve them of the need for medical certification:
 - School bus drivers (Medical certification required by SPI regulation)
 - Transporting 9-15 passengers not for hire (i.e. airport shuttle) (Medical certification required by UTC regulation)

CDL medical certification exceptions only effect a driver who: 1) drives a vehicle over 26,000 lbs as a required part of their job; who 2) Is not subject to other regulations requiring medical certification. Three of the allowed exceptions fit in this category:

- **Governmental drivers.** Employees of federal, state, or local governments. An informal survey of local governments found that most drive in-state only and some do operate vehicles weighing more than 26,000 lbs. GVW;

- **Bee-keepers.** Bee-keepers transporting hives;
- **Custom Harvesters:** Commercial Vehicle Drivers employed solely to harvest and transport other’s crops from the field to market.

This analysis is summarized in the table below:

Federally Allowed Exceptions From Medical Certification	Use Trucks over 26,000 lbs.?		Limited to specific occurrence ?		Med. Cert. required by other regulations ?		Would CDL exception except driver from otherwise applicable Med Cert requirements?	
	Yes	No	Yes	No	Yes	No	Yes	No
Federal, state, or local government drivers	✓			✓		✓	✓	
Custom harvesting operations	✓			✓		✓	✓	
Vehicle controlled & operated by bee-keeper	✓			✓		✓	✓	
Transporting corpses or sick or injured		✓						✓
Transporting 9-15 passengers without compensation		✓						✓
Personal transportation of goods	✓		✓					✓
Propane or pipeline vehicle in emergency			✓					✓
Fire and rescue vehicles in emergency	✓		✓					✓
School bus driver	✓			✓	✓			✓

Exception findings from other states

The JTC researched the approach of all 50 states on CDL exceptions and waivers, contacting each state to confirm its findings. 32 states responded. Of those 32:

- 59% of responding states (19 states) recognize some or all of the federal exceptions.
- 41% of responding states (13 states) do not recognize any exceptions.

The JTC followed up with 8 states that allowed exceptions looking for enforcement or safety issues. We found:

- Enforcement was generally not a problem, particularly for states like Washington who are moving to the on-line federal medical registry where real time CDL status is available in the field.
- Some states reported that insurance companies require their drivers to be medically certified even if driver had an excepted license, effectively undoing the exception. At least one state DOT (New Hampshire) provides a monetary incentive for drivers to maintain medical certification although qualified for the governmental exception.
- We didn't find any statistical analysis on whether excepted drivers presented a safety issue. While we did find CDL traffic accident statistics by state, we did not have a statistically valid way to determine to what extent, if any, differences in crash statistics were due to allowing excepted drivers. We did note that none of the states we followed up with identified a safety issue.
- We found Excepted CDLs ranged from 10- 25% of total CDLs. It does not follow that adopting exceptions would increase CDL holders by that amount. Any net gain of drivers in Washington would be limited to CDL holders who: 1) Seek to drive in one of the three excepted categories identified above; and 2) Are currently not driving commercial vehicles because they are not certified as meeting medical requirements.

Some stakeholder group members noted that adopting exceptions could cause a shift in driver employment by reducing requirements in excepted classes. This could create an incentive for current CDL holders to move to excepted employers such as governments.

For a state by state analysis of CDL medical certification exception administration see appendix D.

WAIVERS

Washington State grants waivers from specific medical requirements if a medical professional certifies the driver can operate a commercial vehicle “Based upon sound medical judgment with appropriate performance standards ensuring no adverse effect on safety”. DOL has issued medical certification waivers for the following conditions:

Condition	No. of Waivers
Diabetes	535
Hearing loss	5
Seizures	21
Vision (various types)	427
Cardiovascular	15
Epilepsy	3
Limb impairment	29
Other	11
Total	1046

Recent FMCSA Rule Change.

The FMCSA amended its rules effective November 19, 2018, changing the medical certification process for certain persons with diabetes.

- Original medical certification rules excluded drivers with insulin-treated diabetes mellitus (ITDM) diabetes.
- Beginning in 1993, the FMCSA authorized drivers to obtain a waiver if his or her diabetes was controlled within specifically adopted standards. Washington State uses that same standard in evaluating diabetes waiver requests.
- FMCSA’s new rule changes the process, but not the substantive medical standards, for qualification. Instead of being disqualified and then applying for an individual waiver, medical professionals evaluating drivers with ITDM can now certify satisfaction of the specific standard as part of initial certification.

The net effect of the new rule is the same: a driver with ITDM must show he or she meets the specific standards before qualifying for a CDL. He or she just no longer needs to apply separately for a waiver. The new rule streamlines the process without changing medical certification standards.

Just over half (51%) of DOL’s current waivers are for diabetes. Following the effective date of the new federal rule, the number of waiver requests should decline.

Waiver findings from Other States

DOL, along with most other states, relies upon the certifying medical professional in evaluating waiver requests. 9 of the 32 responding states have some type of internal medical professional review of waiver requests. The JTC followed up with 7 of those those states and found:

- States with internal medical review also used that review to evaluate driver fitness for the general population. No state has internal medical review processes for CDL medical certification waiver alone.

- 8 of those states had some form of medical review board
 - Medical professionals serving on the board were either uncompensated or received a nominal compensation (i.e. \$150.00) per file reviewed.
 - Most Boards had 5 members with specific statutory direction on what medical specializations must be represented.
 - The Boards have some level of staff support. However, since the Boards are not limited to CDL medical certification waiver, the staffing levels are not analogous to what Washington would incur in establishing a board that was limited to CDL waivers.
 - All of the states looked primarily to FMCSA standards when evaluating waivers. Some, such as Utah, had developed more detailed standards consistent with their waiver authority under FMCSA rules.
 - Most of the State's allowed administrative appeal of Board decisions.

For more details on the findings from each state on waiver administration see appendix D.

Options

WHAT ARE THE NUMBERS?

One of the primary questions asked when evaluating options is: “how many people will this affect?” To address the stated goal of helping “reduce the current shortage of licensed commercial motor vehicle drivers” we thought about how to identify persons who 1) would like to become CDL drivers; 2) are unable to satisfy medical certification standards; but 3) would qualify for an exception or a waiver. The goal proved elusive.

- FMCSA data can identify how many applicants took the medical certification exam and failed; but this would not tell us:

- How many would seek employment in an excepted class;
- How many could possibly qualify for a waiver.
- How many never applied because they knew they did not meet the medical certification requirements.
- We can estimate that the number would be small because of the limited scope of available exceptions. Even that small number would not necessarily mean more drivers:
 - Drivers currently employed in excepted categories (primarily government drivers) would no longer require medical certification, but it does not follow there would be more of them.
 - Exceptions could create an incentive for current CDL holders to move to excepted employment. Again, this would not necessarily mean more drivers.
- Finally, none of the exceptions apply to long haul truckers (except some bee-keepers). Adopting exceptions would have little effect on the trucker shortage.

The options below could increase the number of CDL drivers. We cannot say how many, but we can say it would not be many.

3. Medical Certification Exception Options:

- a. Introduce legislation directing DOL to not require medical certification for excepted in-state and interstate licenses for all federal authorized exceptions.
- b. Introduce a bill directing DOL to issue excepted in-state and interstate licenses for some or all of the categories where it would have a practical effect:
 - i. Federal, state, and local drivers;
 - ii. Bee-keepers transporting hives;
 - iii. Custom harvesters.
- c. Limit options a and b to in-state CDL drivers.
- d. Take no action

4. Medical Certification Waiver Options:

- a. Introduce legislation establishing a DOL medical review board to review waiver requests;
- b. Direct further study on establishing a review board with jurisdiction over driver fitness for the general population and for CDL waivers.
- c. Take no action.

Appendix A –Farm Exemptions and Exceptions

Farm, Ranch, and Agricultural Transportation Exemption Reference Guide

Step 1 – Occasional Personal Use?

§ 390.3(f)(3) provides an exception for the occasional transportation of personal property by individuals not for compensation and not in the furtherance of a commercial enterprise. This includes individuals who occasionally use CMVs to transport horses to races, tournaments, shows or similar events, even if prize money or scholarships are offered. For more information on the transportation of horses to shows, rodeos, etc., please click [Horse Q&A](#)

If this exception applies:



The transportation is not subject to the Federal Motor Carrier Safety Regulations. However, please beware that States may have more stringent regulations of their own.

If this exemption does not apply:



Proceed to Step 2.

Step 2 – Covered Farm Vehicle?

A Covered Farm Vehicle (CFV)

1. Is a straight truck or articulated vehicle,
2. Is operated by an owner or operator of a farm or ranch, or by a family member or employee of the owner or operator,
3. Transports agricultural commodities, livestock, machinery or supplies to or from a farm or ranch,
4. Has a license plate or some other means specified by the State that identifies it as a farm vehicle,
5. Is not used in for-hire motor carrier operations (but for-hire operations do not include use of a vehicle owned and operated by a tenant farmer to transport the landlord's portion of the crops under a crop-share agreement),
6. Is not transporting hazardous materials that require placarding, and either of the following:
 - a. Has a GVW or GVWR (whichever is greater) of 26,001 or less*, in which case the CFV exemptions in § 390.39 apply anywhere in the United States.
 - b. Has a GVW or GVWR (whichever is greater) of more than 26,001 pounds* and travels within the State where it is registered or, if traveling out of the State where it is registered, stays within 150 air-miles of the owner or operator's farm or ranch.

*Please note that these limits are different than the definitions for commercial motor vehicles found in § 383.5 or in § 390.5.

If this exception applies:



The transportation is not subject to Parts 382, 383, 395, 396, and Subpart E of Part 391 of the Federal Motor Carrier Safety Regulations. However, please beware that States may have more stringent regulations of their own.

If this exemption does not apply:



Proceed to Step 3.

Step 3 - Miscellaneous Agricultural Exceptions and Exemptions

<p>Part 383</p>	<p>Farm Waiver (CDL)</p> <p>A farm waiver for operators of a farm vehicle, is available in some States when that vehicle—</p> <ol style="list-style-type: none">1. Controlled and operated by a farmer, including operation by employees or family members,2. Used to transport either agricultural products, farm machinery, farm supplies, or both to or from a farm,3. Not used in the operations of a for-hire motor carrier, except for an exempt motor carrier as defined in §390.5 of this subchapter, and,4. Used within 241 kilometers (150 miles*) of the farmer's farm. <p>*Note that this is not air-miles.</p> <p>If this exception applies: A State may waive the requirements of Part 383, however, this waiver is limited to the driver's home State, unless there is a reciprocity agreement with adjoining States. Contact your State driver's licensing office for additional information.</p> <p>Restricted CDL for Certain Drivers in Farm-Related Service Industries</p> <p>A State may, at its discretion, waive the required knowledge and skills tests of subpart H of this part and issue restricted CDLs to employees of these designated farm-related service industries:</p> <ul style="list-style-type: none">• Agri-chemical businesses• Custom harvesters• Farm retail outlets and suppliers• Livestock feeders <p>If this exception applies: Refer to § 383.3(f) for additional information and contact your State driver's license office to determine if this type waiver is offered.</p>
<p>Part 391</p>	<p>Farm Custom Operations</p> <p>Certain exceptions from Part 391 are available to a driver who drives a commercial motor vehicle controlled and operated by a person engaged in custom-harvesting operations, if the commercial motor vehicle is used to—</p> <ol style="list-style-type: none">1. Transport farm machinery, supplies, or both, to or from a farm for custom-harvesting operations on a farm; or2. Transport custom-harvested crops to storage or market. <p>If this exception applies: Part 391 does not apply, except for § 391.15(e) and (f). (These sections discuss the disqualifications for texting while driving a CMV and using a hand-held device.)</p> <p>Apiarian Industries (Bees)</p> <p>This exception applies to drivers who operate commercial motor vehicles controlled and operated by beekeepers engaged in the seasonal transportation of bees.</p> <p>If this exception applies: Part 391 does not apply, except for § 391.15(e) and (f). (These sections discuss the disqualifications for texting while driving a CMV and using a hand-held device.)</p>

Step 3 - Miscellaneous Agricultural Exceptions and Exemptions (continued)

Part 391 Continued

Certain Farm Vehicle Drivers (does not apply to combination vehicles)

A farm vehicle driver means a person who drives only a commercial motor vehicle that is—

1. Controlled and operated by a farmer as a private motor carrier of property;
2. Being used to transport either agricultural products, or farm machinery, farm supplies, or both, to or from a farm;
3. Not being used in the operation of a for-hire motor carrier;
4. Not carrying hazardous materials of a type or quantity that requires the CMV to be placarded; and
5. Being used within 150 air-miles of the farmer's farm.

If this exception applies: Part 391 does not apply, except for § 391.15(e) and (f). (These sections discuss the disqualifications for texting while driving a CMV and using a hand-held device.)

Farm Vehicle Drivers of Articulated Commercial Motor Vehicles (combination vehicles)

A farm vehicle driver means a person who drives only a commercial motor vehicle that is—

1. Controlled and operated by a farmer as a private motor carrier of property;
2. Being used to transport either agricultural products, or farm machinery, farm supplies, or both, to or from a farm;
3. Not being used in the operation of a for-hire motor carrier;
4. Not carrying hazardous materials of a type or quantity that requires the CMV to be placarded; and
5. Being used within 150 air-miles of the farmer's farm.

If this exception applies: The following rules do not apply to a farm vehicle driver who is 18 years of age or older and who drives an articulated commercial motor vehicle—

- Section 391.11(b)(1), (b)(6) and (b)(8) (relating to general qualifications of drivers);
- Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of drivers);
- Subpart D (relating to road tests); and
- Subpart F (relating to maintenance of files and records).

Part 395

Agricultural Operations

This exception applies to drivers transporting—

1. Agricultural commodities from the source of the agricultural commodities to a location within a 150 air-mile radius from the source;
2. Farm supplies for agricultural purposes from a wholesale or retail distribution point of the farm supplies to a farm or other location where the farm supplies are intended to be used within a 150 air-mile radius from the distribution point; or
3. Farm supplies for agricultural purposes from a wholesale distribution point of the farm supplies to a retail distribution point of the farm supplies within a 150 air-mile radius from the wholesale distribution point.

If this exception applies: Part 395 is not applicable during planting and harvesting periods, as determined by each State.

Transportation of Commercial Bees

If this exception applies: The provisions requiring a 30-minute rest break, do not apply to a driver engaged in the interstate transportation of bees by commercial motor vehicle as long as the bees are on the vehicle.

Transportation of Livestock

If this exception applies: The provisions requiring a 30-minute rest break, do not apply to a driver engaged in the interstate transportation of livestock by commercial motor vehicle while livestock are on the vehicle.

Step 4 – General Rules and Exemptions

FMCSR

Once you have determined if any miscellaneous agricultural exceptions and exemptions apply, you would then review the Federal Motor Carrier Safety Regulations for any general exemptions that may pertain to the driver and/or motor carrier's operation. For example, if the driver or motor carrier was determined to be subject to Part 395, you would determine if any of the following exceptions apply:

- Short-haul operations,
- State of Alaska or Hawaii exceptions,
- ELD Exception, etc.

Appendix B – Development of CDL Medical Certification Law

CDL medical certification requirements in Washington – chronological development:

1. Medical standards for CDL established 4/22/70 –
 - a. Includes waiver authorization
 - b. 49 CFR sec 391.41

2. Commercial Motor Vehicle Safety Act of 1986 – establishes federally required commercial motor vehicle licensing standards
 - a. Links to grant program and withholding of funds for state noncompliance
 - b. Does not specifically call out medical certification, but provides broad authority to DOT to issue regulations.

3. Feds adopt exceptions in 49 CFR 390.3(f) - 1988

4. Washington adopts uniform commercial driver’s license act in 1989 (chapter 46.25)
 - a. Includes sec 9(1)(g) [RCW 46.25.070] requiring proof of med cert at time of application for CMV
 - b. “as required by 49 CFR 391.41 - .49”

5. WSP first adopts WAC 446-65-010 in 1991.
 - a. Current version incorporates parts 390 and 391 for trucks over 26,000 lbs.
 - b. Original 91 version:
 - i. did not adopt part 391 on driver qualification
 - ii. Did adopt 390.
 - c. 94 version (WSR 94-01-178) – adopts 391 qualifications for drivers “in their entirety”.

6. SHB 1597 passed in Washington in 2003:
 - a. Intent (sec. 1): “The legislature finds that Washington's commercial driver's license statutes should be harmonized with federal requirements, which require proof of a physical capacity to drive a commercial vehicle, along with a valid commercial driver's license, but do not link the two requirements. The legislature finds that allowing commercial drivers to delay getting a physical will prevent the imposition of unnecessary expense and hardship on Washington's commercial vehicle drivers.”

- b. Sec. 2 deletes RCW 46.25.070 requirement to have passed med cert requirements at time of applying for license
 - c. Sec. 3 new section requiring medical examiner's certificate of physically qualified to drive CMV before driving.

- 7. Commercial driving self-certification 4 category scheme implemented in 2012

- 8. HB 1229 (ch 227 laws of 2011) adopt 4 tier self-certification system.
 - a. Defines "excepted interstate" as persons engaging in operations "excepted under 49 CFR 390.3(f) and "therefore not required to obtain a medical examiners certificate under 49 CFR 391.45" *So exceptions did already exist..*
 - b. Defines "excepted intrastate" as "engaging in transportation or operations excepted from all or parts of state drive qualification requirements... and therefore not required to obtain medical examiner's certificate."
 - c. Do these definitions mean that as of at least 2011, Washington issued excepted licenses not requiring medical certification for excepted categories?
 - i. DOL says they administered this to mean that person still had to be certified but did not have to carry examiner card

- 9. New Wn. Statute in 2018 (HB 2696 – ch 49 laws of 2018)
 - a. Sec 1: amends RCW 46.25.055 to clarify that "physically qualified" to drive CMV = medical examination and certification under 49 CFR 391.43.
 - b. Sec. 3: redefines self-certification categories as follows (46.25.010(23):
 - i. Strikes "therefore not" from excepted interstate to state that excepted interstate drivers must have med cert (so not excepted).
 - ii. Redefines excepted intrastate to be a CDL holder who wishes to maintain his license but not drive truck – can let med cert lapse but must get it back to drive.
 - c. Effective date: 4/30/19.

Appendix C – Study Proviso

1 (9)(a) \$150,000 of the highway safety account—state appropriation
2 is for the joint transportation committee to assess and recommend
3 methods for setting state medical standards in the areas listed in
4 (b) of this subsection for commercial driver's license holders and
5 applicants, when these standards are not governed by specific
6 criteria under federal law, to help reduce the current shortage of
7 licensed commercial motor vehicle drivers in the state.

8 (b) This review must consist of an assessment of possible
9 approaches for developing a method by which to set state standards
10 for:

11 (i) Medical certification requirements for excepted interstate
12 commercial driver's license holders and applicants, as this class is
13 defined under 49 C.F.R. 383.71, who are not required to obtain
14 medical certification under federal law; and

15 (ii) Medical waiver requirements for intrastate nonexcepted
16 commercial driver's license holders and applicants, which must be set
17 in a manner consistent with the requirements of 49 C.F.R. Sec.
18 350.341(h)(2).

19 (c) The review must include consideration and evaluation of the
20 relevant practices, laws, and regulations of other states. The review
21 must also ensure that recommendations made are consistent with
22 federal law and do not jeopardize federal funding, and that they
23 incorporate relevant safety considerations.

24 (d) The joint transportation committee must consult with the
25 department of licensing, the Washington state patrol, the traffic
26 safety commission, the state department of health, and stakeholders
27 who rely on the state's commercial driver's license medical
28 certification process.

29 (e) The joint transportation committee must issue a report of its
30 findings and recommendations, including an indication of statutory
31 changes needed to implement the recommendations, to the
32 transportation committees of the legislature and the governor by
33 January 14, 2019.

34 **Sec. 205.** 2017 c 313 s 205 (uncodified) is amended to read as
35 follows:

36 **FOR THE TRANSPORTATION COMMISSION**

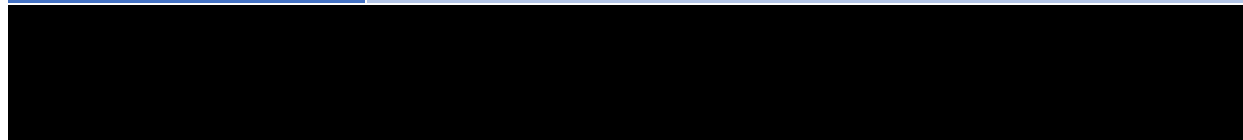
37 Motor Vehicle Account—State Appropriation ((\$2,074,000))
38 \$2,291,000

Appendix D – Results of Multi-State Research

States Granting Full⁷ Intrastate Exceptions	
State	Exceptions recognized
Alaska	All federal exceptions recognized
Florida	(1) agricultural or forestry products between place of harvest first place of storage; (2) CMVs owned by electric or telephone utilities within 200 miles of vehicle base; (3) private school busses with less than 24 passenger spaces; (4) Operating as a driver/salesman within 100 miles of your workplace if no traffic conviction in the past 3 years.
Idaho	All federal exceptions recognized. Also have list of “exempt commodities”
Illinois	All federal exceptions recognized.
Iowa	All federal exceptions?
Maine	Operating less than 100 air miles from regular place of business
Massachusetts	All federal exceptions recognized.
Michigan	self-propelled or towed implements of husbandry; public utility service vehicles under 21,000 lbs; PUD service vehicle in emergency
Missouri	All Federal exceptions recognized
Nevada	All Federal exceptions recognized
New Hampshire	Government drivers
North Dakota	Farmer w/in 150 miles of farm; covered farm vehicle; business vehicles 10,001- 26,000 lbs.
Ohio	All federal exceptions recognized
Rhode Island	All federal exceptions recognized
Texas	All federal exceptions recognized
Virginia	All federal exceptions recognized
West Virginia	Government drivers

⁷ “full exception” means excepted driver not required to obtain or maintain medical certification

Wisconsin	All federal exceptions recognized
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States Granting Limited or No Exception	
No Intrastate Exceptions	Card Exception⁸
Connecticut	Arkansas
Indiana	Minnesota
Kentucky	Nebraska
Maryland	Vermont
New Mexico	
Tennessee	
Utah	
Washington	

States Granting Intrastate Waivers		
State	Waiver Process	
	Medical Professional Review	Agency review
Alaska		✓
Arkansas		✓
California		✓
Colorado	✓	
Connecticut		✓
Florida		✓
Hawaii		✓
Indiana	✓	
Kentucky		✓
Maryland	✓	

⁸ "Exception" for these states means they must obtain and maintain medical certification, but they do not have to carry medical certification card while driving.

Massachusetts	✓	
Michigan	✓	
Minnesota		✓
Missouri		✓
Nevada		✓
New Hampshire		✓
North Dakota		✓
Ohio		✓
Rhode Island		✓
Tennessee		✓
Texas		✓
Utah	✓	
Virginia	✓	
Washington		✓
West Virginia	✓	
Wisconsin	✓	

States that do not grant intrastate waivers	
Alabama	New Mexico
Idaho	New York
Illinois	Oklahoma
Iowa	Pennsylvania
Maine	Vermont
Nebraska	

Follow-up research on Select States with Exceptions

1. Exceptions:
 - a. Florida:
 - i. August 1, 2018: Statue cited in reply, 316.302, does not appear to have any material related to exceptions from medical certification requirements except for farm exception, and I think that is an exemption, not an exception. Didn't find any of the specific exemptions as contained in the response email. Hmm...will need to call Tod Browning.
 - ii. Looks like they have exceptions for diabetes and visual acuity – not individual waivers.
 - iii. Second set:
 1. Employers do not require med cert for excepted drivers unless separate rule requires it, i.e. school bus drivers.
 2. FMCSA did not have to approve 100 miles exception since intrastate only – really?
 3. Not aware of any enforcement or administrative concerns.
 - b. Maine:
 - i. August 1, 2018: attached regulations include 100 mile provision. Rule adoption history shows changes over time, but doesn't show what they are. Need to enquire about origin of 100 mile rule.
 - ii. 8/21/18: Response to follow-up:
 1. Maine employers generally do not require medical certification for excepted drivers.
 2. Having both excepted and non-excepted drivers does not create enforcement difficulties
 3. No data on % of different licenses.
 - c. Idaho:
 - i. August 1, 2018:
 1. “we do not require a driver to maintain medical to hold a CDL” so all intrastate-only drivers are excepted?
 2. But they have exempt commodities – so exceptions depend on commodities – how did they get that past the Feds?
 - a. Exemption from CDL or exception to medical certification requirements?
 - b. Is this just a highly detailed agricultural exemption?
 3. Statutes not helpful...rules?
 - ii. 8/21/18: Response to follow-up
 1. Medical exception for excepted drivers only
 2. Hauling exempt commodities exempts you from med cert requirements
 3. Employers do not generally require med cert of excepted by statute
 4. Not aware of enforcement issues
 5. Running report on data.

- d. Illinois:
 - i. August 1, 2018; Had a call-back for info, couldn't find relevant statutes. Need to call and ask questions.
 - ii. Sept. 5 – no response to email – will c/b
 - iii. Follow-up questions:
 - 1. Unknown if employers requires medical certification – should ask insurance
 - 2. Enforcement issues are from managing 4 tier system; not specific to allowing exceptions.
 - 3. % of excepted CDL
 - a. Interstate excepted = 25% of interstate licenses (rounded down)
 - b. Intrastate excepted = 25% of interstate licenses (rounded up)
- e. Michigan:
 - i. August 1, 2018: what was listed as exceptions appear to be exemptions – except firefighter or emergency governmental provisions do appear to be exceptions from medical requirements.
 - ii. 8/21/18: Response to follow-up
 - 1. Michigan employers generally do require med cert even if driver excepted
 - 2. Having different classes does create enforcement difficulties because haven't updated driver record and have to rely on cards.
 - 3. Excepted licenses = about 10% of total licenses.
 - 4. No legislative history.
- f. New Hampshire –
 - i. 8/21/18: Response to follow-up
 - 1. Have govt driver certification – trend for govts to require medical cards. State DOT offers stipend for drivers to get Med Cert. Driven by insurance requirements.
 - 2. No enforcement problem with different classes of drivers – modernized operating system avoids that
 - 3. Here's the numbers:
 - a. 52036 total licenses
 - b. Intrastate:
 - i. 2425 are intrastate (small state)
 - ii. 63% of intrastate licenses are excepted.
 - c. Interstate:
 - i. 49611 interstate licenses
 - ii. 11% of intrastate licenses are excepted.
- g. West Virginia:
 - i. 8/1/18 – can't find rule on web site – will need to contact
 - ii. 8/21/18: Response to follow-up

1. Individual (govt) employers don't require med cert for excepted drivers. Except for school bus drivers.
 2. No enforcement issues
 3. Excepted licenses:
 - a. Interstate: 14.4%
 - b. Intrastate: 1.5%
- h. Wisconsin:
- i. 8/2/18 – said in response they recognize all federal exceptions, but rule looks like it is limited to government units, school bus drivers, apiarian industry seasonal drivers, and certain farm drivers. Need to look into that.
 - ii. They did a good job of providing relevant statutes and rules.
 - iii. Medical review board looks like it is only an appeals board, does not make initial determination.
 - iv. 8/21/18: Response to exceptions follow-up
 1. Doesn't think employers are requiring med cert
 2. Not a great enforcement difficulty
 3. Excepted interstate drivers = 10%
 4. 91% of intrastate drivers are excepted.

Follow- Up Research on States with Internal Medical Review of Waivers

	1. Also review general driver population?	2. Develop waiver medical standards?	3. Process for evaluating requests?
Indiana	Yes	Use FMCSA standards	Ensure compliance with federal stds.
Maryland	Yes	Yes – closely mirror FMCSA standards	Staff nurse gathers required documentation & forwards to Board. Board decides.
Utah	Yes	8 level classification based on FMCSA categories – CDL drivers must maintain higher level than regular	Staff assembles documents – submits to Board
West Virginia	Yes	Legislative rules mirror FMCSA standards	In-house nurse makes recommendation – review and sign-off by supervisor
Wisconsin	Yes. Relatively large staff – what % of work is CDL?	Internal medical review staff – guidelines based on state statutes	Request reviewed by medical fitness & review unit. Board is staffed by doctors – performs appeals of medically based license denials or revocations.
Virginia	Yes	Yes – closely mirror FMCSA standards	Board evaluates information submitted by driver.

	4. Appeals?	5. Composition Compensation	6. Federal compliance process?	7. Annual budget?
Indiana	No – use ALJ	5 members Statute specifies required medical/ \$25.00 per file reviewed	Administrator reviews for compliance with federal stds.	No dedicated staff; no limit on number of files
Maryland	No – no appeal of waiver denial	Included in duties of 2 MVA employees. 1 full time administrative assistant. 11 contract physicians. Meet at least 3 times/month.	Use DOT certified CDL medical examiners.	Not clear – looks like 1 dedicated administrative assistant. Doctors do not appear to be compensated.
Utah	Appeals to ALJ	5 uncompensated Board members	Board ensures compliance with FMCSA standards	Can't Isolate CDL piece due to larger mission.
West Virginia	Appeals to 5 doctor advisory board	Paid nurse position – appeal drs receive \$150 per contact	Rely on FMCSA rules	Can't Isolate CDL piece due to larger mission.
Wisconsin	Board does appeals for CDL & citizen medical revocation.	12 staff to medical review & fitness unit – not just CDL. Meets monthly.	Compliance requirements programmed into system that directs DMV staff actions & questions during the process.	Costs for board meetings minimal – costs for 12 staff significant
Virginia	No – use ALJ	7 practicing physicians on board. Not compensated. 1 staff member has board support as a duty. Board meets twice a year.	Response stated what they followed, not how they do it.	Can't Isolate CDL piece due to larger mission.