

Licensure Portability

Position Statement and Recommendations
American Telemedicine Association
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State licensure issues have long been a subject of debate in the telehealth community and abroad. Understanding the implications of unrestricted versus restricted licensure to practice across state lines via telemedicine is a discussion involving such issues as standard of care, competition for patients, liability, patient compensation funds, and revenue sources for state medical boards. With more than 35 state medical boards having restrictive licensure language in place, it is of utmost importance that state licensure regulations and legislative policy support the provision of health care across state lines. A report to Congress on the future of telemedicine (1996) concluded that although telemedicine may increase access to specialized medical care at a reasonable cost, the technology use will not be widespread until licensure, hospital admitting privileges, liability, privacy and reimbursement obstacles are overcome.¹ In 1997 and 2001, the Office for the Advancement of Telehealth released the *Telemedicine Report to Congress* and “identified licensure as a major barrier to the development of telemedicine.”²

The nation’s healthcare system is in a deepening crisis. The obligation to provide a larger population with medical care and treatment for a longer period of time has exacerbated issues including limited access to care, health professions shortages, and the growing burden on patients traveling for care. The shortage of healthcare providers, especially in certain specialty areas and in complicated patient populations, has compounded the situation and added to the rising costs of healthcare.

Telemedicine is the use of medical information exchanged from one site to another via electronic communications to improve patients' health status. Closely associated with telemedicine is the term telehealth, which is often used to encompass a broader definition of remote healthcare that does not always involve clinical services. Videoconferencing, transmission of still images, e-health including patient portals, remote monitoring of vital signs, continuing medical education and nursing call centers are all considered part of telemedicine and telehealth (ATA, 2007).

Further advancements in telemedicine technology, reimbursement policy, and transmission modalities continue to encourage the adoption of telemedicine by health care organizations and health care consumers. With medical practice transforming itself through the use of telemedicine strategies, practitioners and patients have been able to overcome time and distance barriers in providing and seeking health care, respectively. No longer is it required that the patient and the healthcare provider be in the same room or even the same state.

¹ Blatt, H.L. Telemedicine: A Promising Dream Faces Harsh Realities. <http://gsulaw.gsu.edu/lawand/papers/su98/telemed/>. Accessed 12.12.06

² Center for Telemedicine Law (June 2003). OAT: Telemedicine Licensure Report.

Although medical and allied professional groups have begun to change and adopt telemedicine demonstrations into integrated practice patterns, the regulatory environment governing telemedicine, and in particular interstate licensure, has not adapted as quickly. Recent state regulations and laws placing additional restrictions on licensure, purportedly put in place to protect the public, have effectively inhibited the adoption of telemedicine, a solution that can reduce disparities in healthcare and decrease healthcare cost.³ Policy recommendations that address license portability, while adhering to states' standards of care and ensuring public safety, should be adopted to facilitate the use of telemedicine as a means to improve access, quality and efficiency of medical care to all Americans regardless of location.

Background

The purpose of physician and health professions licensing is to maintain a high standard of care in clinical practice and to ensure public protection against unlicensed or fraudulent practitioners. In addition to societal purposes, there are other legal and economic reasons that support licensure of health professionals. Traditionally, the regulation and granting of licensure to health professionals have been the responsibility of state medical boards. Even though each state has similar goals in mind for licensure, the medical practice licensure regulation of individual states varies enough to make it difficult for states to come to a unified licensure standard, particularly with respect to interstate licensure for the purposes of providing care via telemedicine. When the practice of medicine occurs as defined by the Medical Practice Act of an individual state in which the patient is located, then such practice is subject to regulation by the patient's state medical board.⁴

The use of telemedicine has awakened controversies and resistance to interstate practicing of medicine. With more than half of the states adopting restrictive licensure positions with respect to telemedical practice, a significant barrier now exists, inhibiting access for patients and increasing the costs of providing services for health care organizations and providers. Several national medical organizations have weighed in on the issue:

The American Medical Association adopted a position on telemedicine that states "states and their medical boards should require a full and unrestricted license in each state for physician and health professionals who wish to regularly practice telemedicine in that state."⁵ In 1996, the Federation of State Medical Boards (FSMB) adopted a Model Act to Regulate the Practice of Medicine Across State Lines that provides a framework for regulating interstate practice, specifically for the purposes of telemedicine.⁶ The model creates a restricted license to provide medical care across state lines by telemedicine. The FSMB recommended that "state medical boards offer

³ Fleisher, L.D. and Dechene, J.C. (2006). *Telemedicine and E-Health Law*. New York: Law Journal Press. 1.01

⁴ Federation of State Medical Boards of the United States. Report of the Ad Hoc Committee on Telemedicine. http://www.fsmb.org/pdf/1996_grpol_Telemedicine.pdf. Accessed 12.12.06

⁵ Blatt, H.L. Telemedicine: A Promising Dream Faces Harsh Realities. <http://gsulaw.gsu.edu/lawand/papers/su98/telemed>. Accessed 12.12.06

⁶ Blatt, H.L. Telemedicine: A Promising Dream Faces Harsh Realities. <http://gsulaw.gsu.edu/lawand/papers/su98/telemed>. Accessed 12.12.06

an expedited licensure by endorsement process to physician and health professionals meeting the following qualifications:

1. Full and unrestricted licensure (in all jurisdictions where a medical license is held);
2. Free of disciplinary history, license restrictions, or pending investigations (in all jurisdictions where a medical license is or has been held);
3. Graduation from an approved medical school or hold current Educational Commission for Foreign Medical Graduates (ECFMG) certification;
4. Passage of a licensing examination acceptable for initial licensure within three attempts per step/level and within a seven (7) year time period;
5. Completion of three (3) years of progressive postgraduate training in an accredited program; and/or,
6. Current certification from a medical specialty board recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association (AOA). Lifetime certification holders who have not passed a written specialty recertification examination must demonstrate successful completion of the Special Purpose Examination (SPEX), Comprehensive Osteopathic Medical Variable Purpose Examination (COMVEX), or applicable recertification examination.”⁷

Currently, “thirty-three states have specifically addressed medical practice across state lines”, “twenty-one states require full licensure”, and eight have “adopted variations of the 1997 Federations of State Medical Board model law that authorizes a ‘special purpose’ license for practicing across state lines.”⁸

In 1998, the National Council of State Boards of Nursing (NCSBN) endorsed a Nurse Licensure Compact (NLC) to address interstate practice of nursing care across state lines. The practice act follows a mutual recognition model. The nurse whose home state is part of the Compact would be required to have one license in his/her home state, and could practice nursing in other Compact states. To date, twenty-two states have enacted the NLC, and twenty of those states have implemented the NLC.⁹ The model allows for interstate practice by reducing the licensure requirements.

Considering the current environment, there are three areas where policy governing interstate practice needs to exist: with respect to the traditional practice; with respect to licensure in the event of a national emergency; and licensure within interstate corporate entities.

ATA’s Position

The American Telemedicine Association recognizes that public protection and safety is a priority. With the changing demands of the nation and the potential that telemedicine has in meeting the need to provide safe, cost-effective access to healthcare, both in traditional

⁷ Federation of State Medical Boards. Report of the Special Committee on License Portability. http://www.fsmb.org/pdf/2002_grpol_License_Portability.pdf. Access 12.12.06

⁸ Center for Telemedicine Law (June 2003). OAT: Telemedicine Licensure Report.

⁹ National Council of State Boards of Nursing. <https://www.ncsbn.org/158.htm>. Accessed 04.27.07.

environments and in the event of a national health emergency, ATA supports policy at the federal, state, and local levels that creates collaborative agreements between the states regarding medical licensure portability.

ATA supports a licensure process that provides adequate state supervision and licensure of physicians and other health professionals but does not cause an undue burden on the ability of qualified health professionals to provide healthcare services to anyone living in the United States.

Any such a process that is adopted should meet the following guidelines:

- Preserves licensure authority at the state level for any health professional providing patient care to individuals located within the state and includes the ability of the state to assess and collect fees for such licensure
- Preserves the right of each state to regulate medicine and protect its residents
- Clarifies that certain health care services that do not qualify as medical practice, such as teleferrals, clinician-to-clinician discussions and providing health information, are not affected by state licensure laws.
- Establishes a mutually acceptable multi-state clearinghouse process where out-of-state physicians can register with each state either directly or through a third party and where such process provides assurances of the physicians training and competence as determined by the physician's home state.
- Avoids unnecessary restraints on interstate commerce
- Ensures that all patients have access to health care expertise necessary to protect and promote their health regardless of the location of the provider
- Does not restrict the use of telemedicine as a valuable service delivery strategy that can play a critical role in overcoming time and distance barriers that often limit access to quality health care
- Does not restrict virtual travel by patients to seek medical advice outside a state, similar to situations in which patients physically travel to see a practitioner in-person in another state.
- Enables a duly licensed physician and health professional in one state to seek medical consulting medical expertise (collaborative diagnosis or second opinion) from a physician and health professional licensed in another state.
- Allows in-person encounters and virtual (telemedicine) encounters between physician and health professionals and patients who are both located within state borders to remain the purview of the state.
- Maintains the responsibility of medical care for the patient remains with the requesting physician and health professional (i.e., care never transfers to the out-of-state physician and health professional in the telemedicine model) and that the requesting physician and health professional is the attending physician and health professional.