

Telehealth & Multi-State Physician Licensure:

DON'T GET CAUGHT IN THE TANGLED WEB OF INCONSISTENT AND TROUBLESOME STATE PHYSICIAN LICENSURE LAWS



Telehealth's Biggest Obstacle

“The only thing consistent about Telehealth is that it's inconsistent”

- Author Unknown

- Inconsistent state licensure laws
- Inconsistent state practice of medicine regulations and rules
- Licensure must occur at the site of the patient
- One physician could be responsible for staying compliant with up to 50 different state practices of medicine
- Multi-state licensure process is long and expensive
- These obstacles have lead to the development of the Interstate Compact



Biggest Mistake in Licensure Process:

believing that obtaining a license is the largest hurdle when in fact staying compliant with each state's medical practice act & practice standards is much more difficult.

Finding State Licensure Laws & Regulations

- Medical Practice Act/State Administrative Rules
- SMB websites often list the state's medical practice act and rules – Osteopathic Boards may be separate from SMB information
- Telehealth/telemedicine legislation might not be located within the medical practice act
- *State Medical Licensure Requirements and Statistics* – published by AMA
- AMA Website - links to all SMB/State Licensure Departments
- FSMB – Uniform Application – 23 states participate

Understand Telehealth Definitions

Basic definition:

- the use of technology;
- to undertake an activity;
- constituting the practice of medicine;
- when the healthcare practitioner and patient are not in the same physical location.

However, the definition of telehealth/telemedicine varies based on the location of the patient and the governmental agencies that have authority to regulate in that jurisdiction.



Jurisdictions Share Common Themes

Medical Boards

- Resource for interpretation of state statutes and regulations that apply to physician practice and licensure
- SMB general counsel can be internal or external or housed within the State's Attorney General's Office
- SMB general counsel can provide helpful insight when structuring new or innovative joint ventures involving physician licensure in that jurisdiction
- SMB websites usually provide links to applicable state statutes and regulations



Jurisdictions Share Common Themes

Practice Standards, Conduct, and Behavior

Standards of conduct are imposed on physicians by:

- Medical Staff
- Board Certification
- Medicare
- Association Memberships, etc.
- AMA Code of Medical Ethics
- The state where licensure is sought



What constitutes
“practice of medicine?”

Watch for Telemedicine Licensure Differences:

- Additional practice requirements imposed by states on practice of medicine that reaches into the state through telehealth.
- What constitutes “practice of medicine?” Each state may be different.
- Additional licensing or practice requirements related to physician supervision of other healthcare practitioners.
- Requirements to notify patient of physician qualifications & credentials.
- Requirements on how the patient must be educated, patient choice, and/or continuity of care.

Points to Analyze:

Connected to Each
State License

Corporate Practice of Medicine (CPOM) & Fee-Splitting Statutes

- Varies by State
- CPOM Theory: corporations are unfit vehicles for the practice of medicine & corporations should not influence or interfere with physician decisions
- Approximately 30 states have some form of CPOM
- States actively enforcing CPOM: NY, CA, NC, TX
- Fee-splitting statutes prohibit physicians from sharing “pro fees” in exchange for referral of patients
- Found in state medical practice acts & AMA Code of Medical Ethics

Points to Analyze:

Connected to Each State License

Certificate of Need (CON)

- Aimed at restraining health care facility costs and allowing coordinated planning of new services & construction
- Mechanism by which state governments seek to reduce overall health and medical costs
- Many states have CON or a variation of CON except: CA, UT, ID, WY, CO, NM, ND, SD, KS, TX, IN, PA
- Individual State CON information:
<http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx>.

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Types of Licensing Models/Theories

- Consulting Exceptions, Endorsement, Limited Licensure, Reciprocity, Mutual Recognition & Interstate Compacts, Preemption, National Licensure, & Federal Licensure
- Active models:
 - Consulting Exceptions
 - Endorsement
 - Reciprocity
 - Mutual Recognition/Interstate Compact
 - Preemption



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Influence on State Telehealth Evolution

Federation of State Medical Boards (FSMB)

- Represents 70 State Medical Boards & Osteopathic Boards
- Establishes model policies commonly adopted by individual states.
- Member State Medical Boards protect the public through the regulation of medical practice including:
 - Licensure: Assure competencies and set expectations; Evaluate education, training, and examination
 - Discipline: Standards of competence and conduct; revocation and restrictions

FSMB:

Represents 70 Medical Boards & Osteopathic Boards.



Influence on State Telehealth Evolution

American Medical Association

- Code of Medical Ethics
- Definition of "Practice of Medicine"
- Definition of "physician patient relationship"
- Analysis of video, audio, and telephonic communications with patients
- Honoring patient choice
- Improving continuity of care

Patient visits via telemedicine should offer the same standard of care as in-person patient visits.



Model Policy for the Appropriate use of Telemedicine Technologies in the Practice of Medicine - (FSMB Model Policy)

- A guidance document for SMBs
- Regulating the use of telemedicine technologies in the practice of medicine
- Educating to the appropriate standard of care when delivering services directly to patients via telemedicine

FSMB Model Policy

*- Report of the State
Medical Boards'
Appropriate Regulation
of Telemedicine
(SMART) Workgroup*



Model Policy Guidelines

Patient-Physician relationship:

- Established upon agreement for diagnosis and treatment
- Can be established via telemedicine if the in-person standard of care is met - major shift from the previous belief (relationship must be established face-to-face)

Physician should always:

- Verify patients identification and location
- Disclose credentials and identity
- Obtain consent from the patient

FSMB Model Policy Guidelines



Model Policy Guidelines

Licensure:

- Physician under the jurisdiction of the SMB in the state where the patient is located
- Allows practice of medicine in the state where the patient is located where the telemedicine technologies are used

Evaluation and Treatment:

- Physician must collect relevant clinical history
- Treatment held to same standard as face-to-face

FSMB
Model Policy
Guidelines



Model Policy Guidelines

Prescribing:

- Held to the same standards as other treatments
- Sole use of online questionnaire is not acceptable

Continuity of Care:

- Patient access to follow-up care or information from the provider of telemedicine services
- Referral for emergency services
- Written protocol appropriate to services rendered

FSMB
Model Policy
Guidelines



Model Policy Guidelines

Informed Consent:

- Identification of physician and technologies (and other healthcare professionals)
- Types of transmissions permitted
- Patient agreement to the discretion of the physician to determine whether or not the condition is appropriate for a telemedicine encounter

FSMB Model Policy Guidelines

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Telehealth Physician Practice Standards

Considerations When Analyzing Practice Standards

- These standards are unique to telemedicine and do not cover all practice standards
- The practice of medicine using telehealth may require different practice standards
- SMBs control minimum standards of the profession in that state
- Allocate time to understanding SMBs objectives and goals – you don't want to be on the wrong side of an issue
- It's reasonable that SMBs will share negative info with other states and may need to report to the National Practitioner Data Bank (NPDB)
- These points may all effect a physician's ability to obtain & keep a license

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Telehealth Physician Practice Standards

Considerations When Analyzing Practice Standards

- Has or can a treating relationship be established?
- Is a prior in-person exam required?
- Is a facilitator required?
- Does the patient have to be located at a clinical site vs. home or retail site?
- What form of telecommunication modality? Phone? Video/Audio? Real-time? Store and forward?
- Are peripherals required -medical diagnosis tools – BP machine?

Telehealth Physician Practice Standards

Considerations When Analyzing Practice Standards

- Informed Consent?
- Patient choice & referrals?
- Continuity of care?
- Treating Relationship sufficient to prescribe?
- Controlled substance?
- Pharmacy Boards don't always agree with Medical Boards - make sure to check controlled substances act.
- Certain types of care (i.e. behavioral health) might have separate standards, requirements or allowances

Telehealth Physician Practice Standards

Considerations When Analyzing Practice Standards

DEA standards for telehealth & controlled substances.

Ryan Haight Act:

- A physician practicing telemedicine may prescribe controlled substances without an in-person evaluation if:
 - (1) The patient is treated by, and physically located in a hospital or clinic which has a valid DEA registration; and
 - (2) the telemedicine practitioner is treating the patient in the usual course of professional practice, in accordance with state law, and with a valid DEA registration.

Telehealth Physician Practice Standards

Example

- New Jersey, N.J Admin. Code Title 13, 13:35 – 7.1A: “. . . a practitioner shall not dispense drugs or issue prescriptions to an individual, pursuant to the requirements of this subchapter, without first having conducted an examination which shall be appropriately documented in the patient record. As part of the patient examination the practitioner shall: 1. Perform an appropriate history and physician examination; . . .”
- Questions: What constitutes a physical exam? In Person? Does “physical” require audio/video? Or does telephone exam suffice?

A Glimpse Into State Policy

Licensure:

- 50 SMBs specifically state that physician engaging in telemedicine must be licensed in the state where the patient is located

Standard of Care:

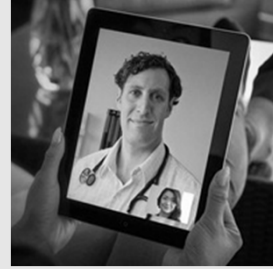
- 29 SMBs require the same standard of care be applied to telemedicine encounters as face-to-face.

Physician Patient Relationship:

- 5 states require in-person exam prior to telemedicine encounter and 2 require in-person follow-up.

Informed Consent:

- 12 states have informed consent requirements



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Interstate Compact Overview

- Participation voluntary for both physician and SMBs
- Creates another pathway for licensure, but does not otherwise change a state's existing Medical Practice Act
- Regulatory authority remains with the participating SMBs
- Practice of medicine occurs where the patient is located

12 states have enacted laws adopting the FSMB compact, which enforces an expedited license for out-of-state practice.

- (March 2016)

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Interstate Compact Overview

Physician qualifications to participate in Interstate Compact:

- Successfully passed the USMLE or COMLEX-USA
- Successful completion of GME program
- Specialty certification or a time-unlimited certificate
- No discipline on any state medical license
- No discipline related to controlled substances
- Not under investigation by any agency
- Fingerprint Background Check



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Interstate Compact Overview

How does a physician enter the interstate compact?

- Identify principal/resident state that participates in the Interstate Compact and obtain a full and unrestricted license through that state

Principal State?

- Physician's primary residence
- State where 25% of medical practice occurs
- Location of physician's employer
- State designated for federal income taxes

Every state imposes a policy that makes practicing medicine across state lines difficult – regardless of whether or not telemedicine is used.

- ATA

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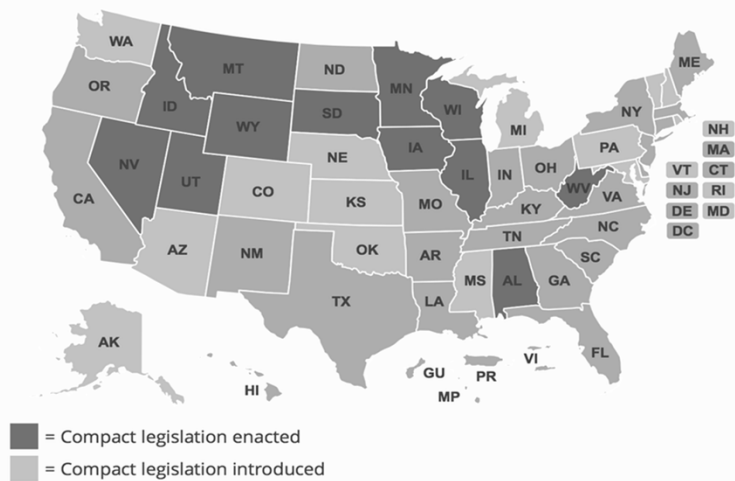
Where Are We Now?

THE CURRENT STATE OF THE INTERSTATE MEDICAL LICENSURE COMPACT



Enactments: 12

Introductions: 14



Interstate Medical Licensure Compact

The Compact is
Now Officially
Established!

- The Interstate Medical Licensure Compact is in the process of establishing its administrative process for expedited licensure. Expedited licensing is not yet available but will be soon.
- The Interstate Medical Licensure Compact Commission will meet March 31 and April 1, 2016, in St. Paul, Minn.
- As of January 1, 2016, twelve states have enacted the Compact legislation: Alabama, West Virginia, South Dakota, Utah, Wyoming, Idaho, Illinois, Iowa, Minnesota, Montana, Nevada, and Wisconsin.
- By surpassing the minimum threshold of seven state enactments, the Compact is now officially established.



Interstate Medical Licensure Compact

Expedited
Licensing is
Coming Soon!

- This year, the Commission will determine the processes, rules and technical infrastructure necessary to facilitate the expedited licensing option available to qualified physicians in Compact member states.
- Licenseportability.org has an interactive map that shows each state's enactment and introduction dates as well as the legislative bill language.



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