

HEALTHCARE

COMPUTER CORPORATION

Ted Cruz
Director
Office of Policy Planning
Federal Trade Commission
600 Pennsylvania Avenue
Washington, D.C. 20580

14 November 2002

Dear Mr. Cruz:

We are writing to you in response to the FTC's request for comments from the telehealth community regarding "Possible Anticompetitive Efforts to Restrict Competition on the Internet." We understand that the FTC is interested in learning about state restrictions on the provision of telehealth services. This topic was one of the areas highlighted for particular attention at the hearing conducted by the FTC on October 9, 2002 in Washington, D.C.

The individuals and organizations signing this letter are actively involved in the provision of telehealth services. Our efforts have been supported by federal, state, or local funding. Telemedicine is already playing a critical role in patient care. These successes have been widely reported and are outlined in reports to Congress prepared by the Office for the Advancement of Telehealth (Telemedicine Report to Congress - May 2001) and the Department of Commerce (Telemedicine Report to Congress - 1977). However, we have become concerned in recent years by a trend at the state level to restrict access to telehealth services.

The types of state restrictions we are most concerned about fall into three categories:

- Limitations on Consultation Exceptions. In recent years, many states have adopted by statute, regulation or policy, limitations on the traditional consultation exception. These consultation exceptions were originally designed to permit a locally licensed physician to freely obtain the advice of another doctor, even if that doctor was located in a different state. Telemedicine further enhances the ability of a remote doctor to provide appropriate consultation. However, increasingly states have begun to place restrictions on the use of the consultation exception. In some cases they have tried to limit the number of consultations performed or require that these consultations only occur between physicians in the same practice areas.
- Requirements for an In-Person Physical Encounter. There has been a growing trend in a number of states to prohibit health care providers from diagnosing, treating, or prescribing medication to any patient when the treating provider has not personally conducted an in-person physical examination of the patient. This requirement undercuts the very purpose of telemedicine and is often more restrictive than a traditional

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encounter. If a physician can acquire the information needed to properly diagnose a patient via an electronic encounter, he or she should be permitted to so. If physicians in a group practice can rely on other doctors, nurse practitioners, or physician assistants to conduct patient examinations, there is no reason why they should be prohibited from relying on the support of these individuals in a telemedicine encounter.

- Failure to Implement Statutes Designed to Ease Interstate Restrictions. In 1996, the Federation of State Medical Boards adopted a Model Act to Regulate the Practice of Medicine Across State Lines. This Act was intended to provide a structure for regulating Internet and telehealth practice. Among other provisions, the Act would have provided for a method of expediting the application process for a provider holding a valid license in another state. However, the positive aspects of the Model Act have been undermined by the limited number of states adopting the Act and by implementing rules that are often inconsistent with the underlying statute.

It is very important for the FTC to understand and appreciate the opportunities presented by telemedicine. Our health system has tremendous gaps. Telemedicine can help solve this problem. In some cases, this means providing a team of world class medical specialists to the bedside of a patient too ill to travel. In other cases, it will involve providing the most basic form of medical care to a patient in a very remote location. This potential will never be fully realized if overly restrictive state requirements are not addressed.

It is hard to imagine that anyone would support a federal or state law prohibiting a patient from physically traveling to another state to obtain the advice of a specialist. It is now possible for the patient to make this trip electronically. We should find ways to adapt our federal and state regulatory structures to ensure that patients in need can avail themselves of these new ways to access our healthcare system.

We recognize that there are legitimate concerns regarding certain Internet-based health services. However, there are much less restrictive solutions to these problems, solutions that will permit patient access to telemedicine and at the same time protect the public from unscrupulous providers. We are prepared to work with the Commission on these important issues and are eager to serve as a resource as you examine the possible anticompetitive aspects of certain state policies.

Sincerely,



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