

Anticompetitive Efforts to Restrict Telehealth Services on the Internet Federal Trade Commission Workshop

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Center for Telemedicine Law
Washington, DC

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Federal Commitment to Telemedicine Congressional Projects 2003

- Oregon Community Health Information Network
- University of South Alabama
- Oklahoma State Department of Health
- Coalition for Ultrasound Education and Training
- University of Pittsburgh School of Nursing, Nurse Anesthesia Program
- Primary Care Association of Hawaii
- Logan Collage of Chiropractic, Chesterfield, MO
- Pennsylvania's State System of Higher Education, Clarion University and Primary Care Council
- Molokai General Hospital
- Green Memorial Hospital, Xenia, OH
- Pennsylvania School of Optometry
- Pennsylvania Association of Home Health Agencies
- University of Virginia
- Fairview Ridges Hospital
- Deaconess Billings Clinics, MT
- Rocky Mountain Technology Foundation, MT
- University of Vermont College of Medicine/ Fletcher Allen Health Care
- Telehealth Resource Center, University of Teas Medical Branch, Galveston, TX
- St. Vincent Hospital, Billings, MT
- Central Michigan University in Mt. Pleasant
- Alaska Telemedicine Advisory Council
- Memorial Medical Center, Springfield, IL
- University of Montana
- New Mexico - Hawaii Telehealth Outreach
- Penn State Cancer Institute
- North Idaho Rural Telehealth Program
- Institute for Urban Family Health, New York, NY
- North Dakota State University College of Pharmacy
- Susquehanna Health Systems, Williamsport, PA
- Idaho State University Telehealth Integrated Care Center
- Northeast Ohio Health Outreach Network, Massillon, OH
- University of Nevada
- University of Pittsburgh Medical Center
- University of South Dakota School of Medicine
- Western North Carolina Health Care Regional Center
- West Virginia University, Mountaineer Doctor Television Program

Federal Commitment to Telemedicine Agency Support

- Office for the Advancement of Telehealth
- Rural Utilities Services/USDA
- Office of Rural Health Policy
- National Telecommunications and Infrastructure Administration
- Office of Rural Mental Health Research
- Indian Health Service
- National Library of Medicine
- National Cancer Institute
- Centers for Medicare and Medicaid Services
- Agency for Healthcare Research and Policy
- National Institutes of Standards and Technology
- National Science Foundation
- DoD
- Veterans Affairs
- Commerce Department
- NASA

Characteristics of Licensure Rules

- State Based
- Developed Prior to Current Technology
- Uniform Requirements
 - Medical Licensure
 - Nursing Licensure

Federation of State Medical Boards

Model Act to Regulate the Practice of Medicine Across State Lines

The Board shall issue a special purpose license to practice medicine across state lines upon application for the same from a person holding a full and unrestricted license to practice medicine in any and all states of the United States or its territories in which such individual is licensed, provided there has not been previous disciplinary or other action against the applicant by any state or jurisdiction.

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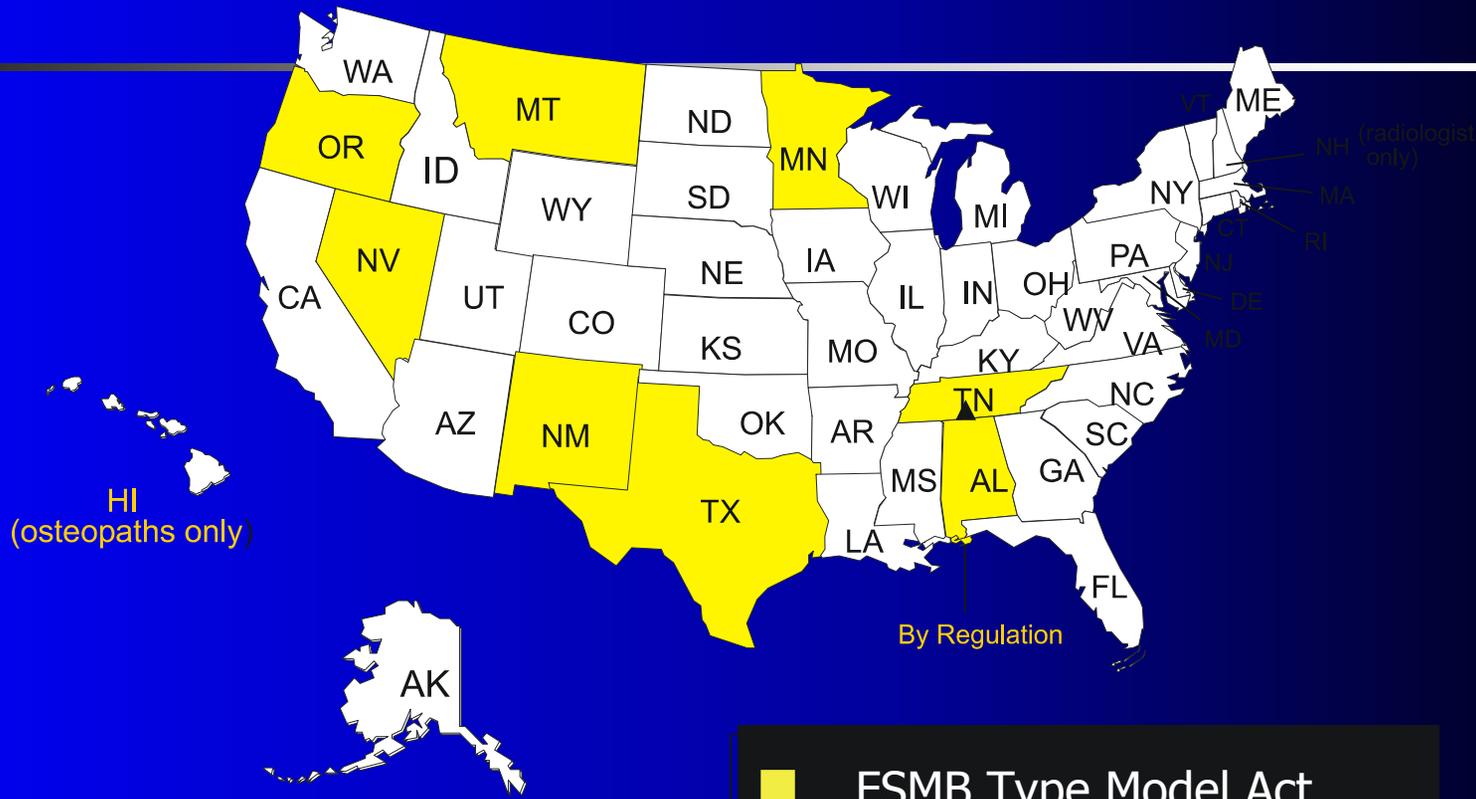
Characteristics of Licensure Rules

CTL - 1997 Task Force

- Telemedicine has the potential to improve access to medical expertise
- Standards to practice medicine are largely uniform
- States have taken actions to restrict access to consultations and telemedicine
- Incentives should be created to encourage interstate cooperation



States Adopting FSMB Type Model Act



Examples of Restrictive State Requirements

- Oregon
- Texas
- Massachusetts
- Ohio
- Nevada

Oregon Statute

SECTION 4. (1) Upon application, the Board of Medical Examiners may issue to an out-of-state physician a license for the practice of medicine across state lines if the physician holds a full, unrestricted license to practice medicine in any other state of the United States, has not been the recipient of a professional sanction by any other state of the United States, and otherwise meets the standards for Oregon licensure under this chapter.

Oregon Rules for Practicing Across State Lines

- (1) A physician granted a license to practice medicine across state lines is subject to all the provisions of the Medical Practice Act (ORS Chapter 677), and to all the administrative rules of the Board of Medical Examiners.
- (2) A physician granted a license to practice medicine across state lines has the same duties and responsibilities and is subject to the same penalties and sanctions as any other physician licensed under ORS Chapter 677, including but not limited to the following:
 - (a) The physician shall establish a physician-patient relationship;
 - (b) The physician shall examine the patient in person prior to diagnosing, treating, correcting or prescribing;
 - (c) The physician shall make a judgment based on some type of objective criteria upon which to diagnose, treat, correct or prescribe;
 - (d) The physician shall engage in all necessary practices that are in the best interest of the patient; and
 - (e) The physician shall refrain from writing prescriptions for medication resulting only from a sale or consultation over the Internet.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.135, ORS 677.137, ORS 677.139 & ORS 677.141

Hist.: BME 10-2000, f. & cert. ef. 7-27-00

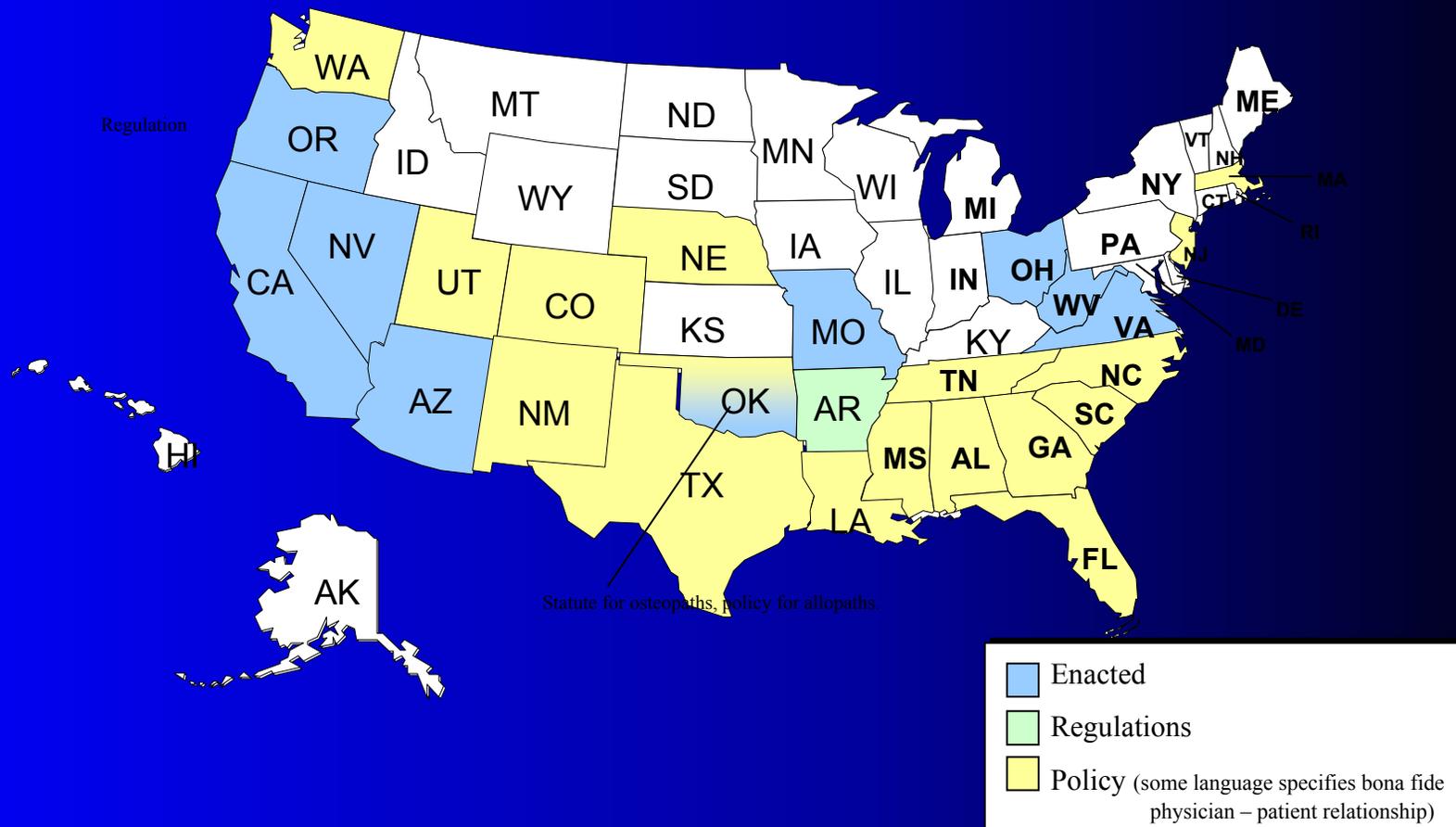
Texas Statute

- Federation Type Special Purpose License
- Exemptions – episodic consultation by a medical specialist located in another jurisdiction who provides such consultation services on request to a person licensed in this state who practices in the same medical specialty

Ohio Regulation

The Ohio Board adopted a rule prohibiting physicians from prescribing, dispensing, or otherwise causing to be provided any dangerous drugs without a physical examination.

State Laws Explicitly Requiring Physical Examination Before Prescribing



Nevada Medical Practice Act

- Authorizes a special purpose license to a physician who is licensed in another state to permit the use of equipment that transfers information concerning the medical condition of a patient in this state across state lines electronically, telephonically or by fiber optics if the physician (i) holds a full and unrestricted license to practice medicine in that state; (ii) has not had any disciplinary taken against him by any state or other jurisdiction; and (iii) meets other requirements as established by law.

Potential Solutions

- National Licensure
- Incentive Grants for State Cooperation
- Interstate Compacts
- FSMB Approach to In-person Exams
- Patient Right to Telehealth Services

Potential Solutions

Incentive Grants to States

- Encourage States to Harmonize Licensure Systems
- Reduce Risk for Early Adopters

Potential Solutions

National Licensure

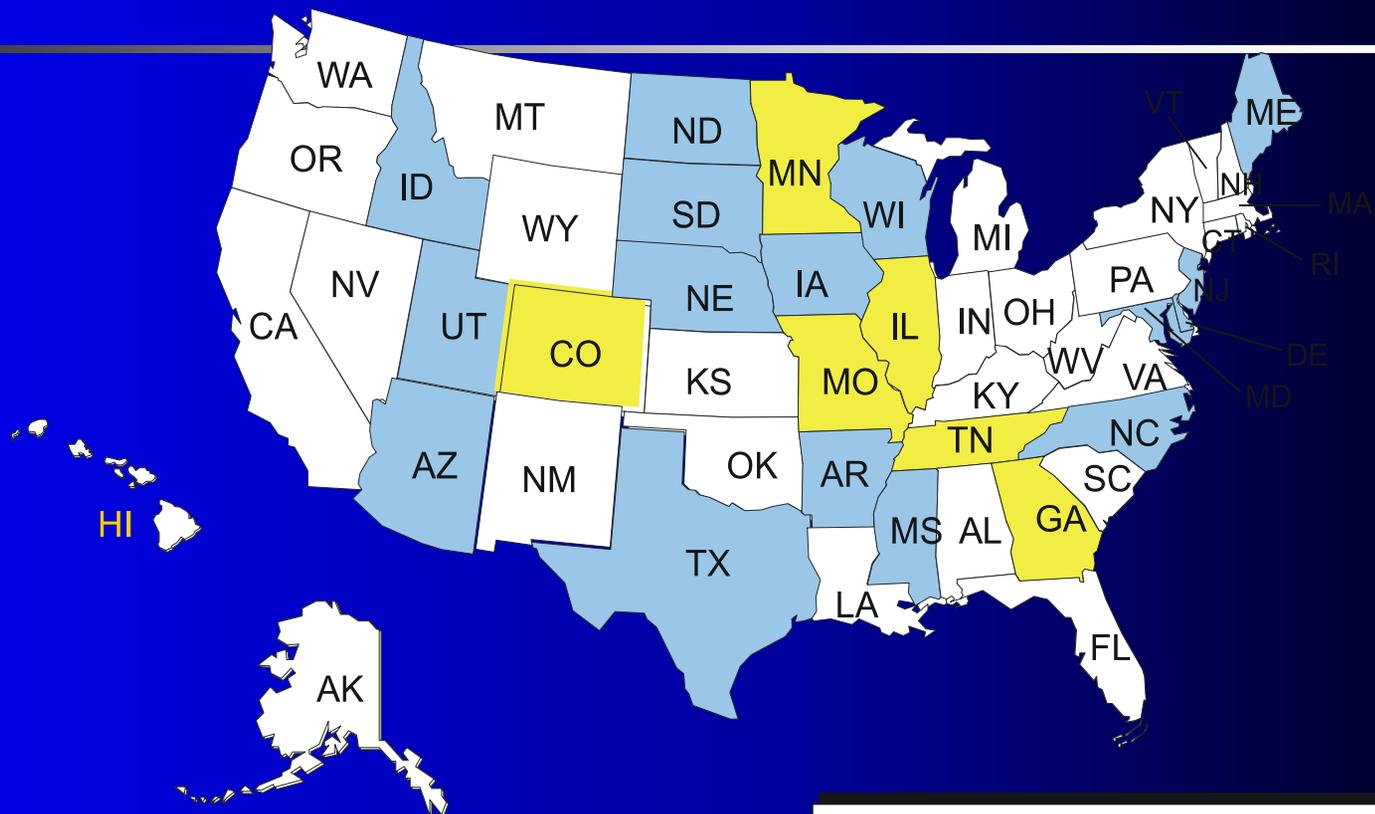
- Recognition of National Standards
- Permit Access to Medical Expertise
- Retain Discipline at Local Level

Potential Solutions

Nurse Licensure Compact

- Agreement between states authorizing practice in any party state
- Dual authority for discipline
- Interstate communication system
- Establishes compact administrator network

State Nursing Licensure Laws Regarding Practice Across State Lines



Interstate Compact Adopted
 Interstate Compact Proposed
 (proposed legislation active in all States except MO)

Potential Solutions

Examination Requirement

- Federation of State Medical Boards
- State medical boards should consider it unprofessional conduct for a physician to provide treatment and consultation recommendations, including issuing a prescription, via electronic or other means, unless the physician has **obtained** a history and physical evaluation of the patient adequate to establish diagnoses and identify underlying conditions

Potential Solution

Right To Access Telehealth

- Basic Patient Right
- In Lieu of Travel
- Notice Regarding Licensure of Health Professionals

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