



Federation of State Medical Boards (FSMB) Comments on Federal Trade Commission (FTC) Workshop, *Examining Health Care Competition*

The Federation of State Medical Boards (FSMB) is pleased to offer comments in response to the Federal Trade Commission (FTC) Workshop, *Examining Health Care Competition*, held on March 20-21, 2014 in Washington, D.C. The FSMB would like to offer its sincere appreciation to the FTC and its staff for organizing the event, and inviting Lisa A. Robin, Chief Advocacy Officer, to present on the FSMB's active engagement in resource and policy development to help facilitate multi-state practice, support medical license portability, and promote the safe and accountable use of telemedicine.

About the FSMB

Founded in 1912, the Federation of State Medical Boards (FSMB) is the national non-profit organization representing the 70 medical boards of the United States and its territories. The FSMB leads by promoting excellence in medical practice, licensure, and regulation as the national resource and voice on behalf of state medical and osteopathic boards in their protection of the public.

The Role of the FSMB in Support of Medical License Portability and Telemedicine

For nearly two decades, the Federation of State Medical Boards (FSMB) has played an active role in establishing policies to promote access to quality of care by expanding the availability of telemedicine. The FSMB has developed and continues to expand utilization of efficient licensure tools, processes and policies (i.e. an online uniform license application, centralized primary source credentials verification, and medical licensing examination) whereby state medical boards can significantly streamline the licensure process and maintain jurisdiction over physicians practicing in their state.

At every stage of the discussion on license portability, the FSMB has emphasized that patient safety must be the highest priority, along with the need to preserve the constitutionally sound principle of state-based medical regulation. States have a compelling interest in the practice of medicine within their boundaries. As part of their constitutionally derived power to protect public health and safety, state governments are empowered to establish standards for licensing practitioners and regulating the practice of the professions.

For more than 100 years, the FSMB has demonstrated its ability to assist state medical boards in adapting to each new wave of medical innovation - while steadfastly fulfilling their role of public protection. A variety of factors - ranging from changing demographics, the need for better and faster access to medical care, the passage of the *Affordable Care Act*, and the rise and use of telemedicine - have created circumstances in which it is important for organizations like the FSMB to explore new approaches to the issue of medical license portability.

Recognizing new approaches to providing quality care (beyond telemedicine to include other delivery models), the FSMB has mobilized perhaps the fastest moving initiative in our history as an organization – a recently launched effort to create a new pathway to expedite the licensing of qualified physicians seeking to practice medicine in multiple jurisdictions. The FSMB believes that this initiative will offer states an effective solution to the question of how best to balance patient safety and quality care with the needs of an expanding and evolving health care marketplace.

Development of an Interstate Medical Licensure Compact

At the 2013 Federation of State Medical Boards' Annual Business Meeting of the House of Delegates, *Resolution 13-5: Development of an Interstate Compact to Expedite Medical Licensure and Facilitate Multi-State Practice*, was unanimously adopted by the House of Delegates. The resolution, offered by the Wyoming Board of Medicine, directed the FSMB to convene representatives from state medical boards and special experts as needed to aggressively study the development of an interstate compact model to facilitate license portability. By adopting *Resolution 13-5*, state medical boards recognized the need to enhance a system of licensing that ensures physicians seeking to practice in multiple jurisdictions can do so efficiently and without unneeded burdens.

Since the founding of the United States, the U.S. Constitution's Compact Clause has allowed for states to collectively work together to address an issue of shared interest, thereby negating the need for federal intervention. A compact exists simultaneously as a contract between contracting states and a standalone statute within state law. A compact is enforceable by state law (statute) and contract law. Formation of a compact requires only two states; however, many compacts are drafted with provisions that require a specific number of signatories before becoming effective. Upon becoming a party to a compact, a state can delegate the rulemaking authority to a Compact Commission that is responsible for administering the compact. The Commission is comprised of appointed representatives, duly appointed from each compact state. This governance structure is an expedient and proven model, and will provide the forum for the exchange of best practices, and focus state efforts and resources in furtherance of the objectives of the compact.

Interstate compacts have proven to be effective in addressing a wide variety of circumstances and issues that have multi-state impact – allowing states to cooperatively address mutual concerns without resorting to federal intervention. As such, a proposed interstate medical licensure compact was determined to be a viable option to support state medical boards in significantly streamlining medical regulatory processes, and facilitating multi-state medical practice.

Following the 2013 Annual Meeting, the FSMB worked in conjunction with the Council of State Governments (CSG) in preparation for the first *Interstate Medical Licensure Compact Planning Meeting*, which was hosted at the FSMB Texas Office on June 12-14, 2013. At the same time, the FSMB confirmed that its U.S. Department of Health and Human Services Health Resources and Services Administration (HRSA) license portability grant funds (awarded in September 2012) could be purposed for the compact development initiative.

Representing a diverse collection of states, in terms of population, size, and geographic region, attendees outlined principles and critical elements that would need to be addressed in an initial framework for the compact model. In developing the initial framework for an interstate medical licensure compact, attendees discussed the compact development process and timeline, as well as expectations for how a compact could be utilized by state medical boards to expedite licensing for qualified physicians seeking to practice in multiple jurisdictions.

Shortly thereafter, the Interstate Compact Taskforce was established with broader representation from state medical boards, and charged with refining and coming to consensus on the guiding principles and content for the initial framework of a model interstate medical licensure compact. The Taskforce met in Crystal City, VA on September 10-11, 2013. Following its discussion, the Taskforce agreed to the following key foundational blocks in shaping the broad outlines of an interstate medical licensure compact:

- **Maintain State Authority and Control**: The interstate medical licensure compact concept retains state-based licensure and state control of the licensing process – but it should at the same time streamline significantly the process of license application and renewal for eligible physicians. An interstate medical licensure compact will not entail a “national” license. State boards will not give up their authority in this new system, and participation in an interstate medical licensure compact will not compromise their ability to generate fees.

- **Establish High Standards for Physician Eligibility**: A proposed framework should adhere to the highest standards of eligibility for physicians who practice within it, in order to ensure patient safety and protection. Not all physicians will qualify to participate in a compact – only those who meet rigorous requirements.

- **Ensure a Well-Coordinated and Fairly-Applied System of Oversight and Discipline**: An effective interstate medical licensure compact must include a cooperative system of information-sharing and rapid adjudication of disciplinary issues between states. The proposed framework should demonstrate to state boards and the public constituents they represent that the oversight of physician activity remains well-coordinated, strong, and effective.

The Interstate Compact Taskforce further agreed to eight consensus principles to establish parameters for state participation in a compact, and define key concepts for physicians and state medical boards, as follows:

- 1) Participation in an interstate compact for medical licensure will be strictly voluntary for both physicians and state boards of medicine.
- 2) Generally, participation in an interstate compact creates another pathway for licensure, but does not otherwise change a state’s existing Medical Practice Act.
- 3) The practice of medicine occurs where the patient is located at the time of the physician-patient encounter and, therefore, requires the physician to be under the jurisdiction of the state medical board where the patient is located.
- 4) An interstate compact for medical licensure will establish a mechanism whereby any physician practicing in the state will be known by, and under the jurisdiction of, the state medical board where the practice of medicine occurs.
- 5) Regulatory authority will remain with the participating state medical boards, and will not be delegated to any entity that administers the compact.
- 6) A physician practicing under an interstate compact is bound to comply with the statutes, rules and regulations of each compact state wherein he/she chooses to practice.
- 7) State boards participating in an interstate compact are required to share complaint/investigative information with each other.
- 8) The license to practice medicine may be revoked by any or all of the compact states.

The Proposed Interstate Medical Licensure Compact

- ❖ *Please note that the following model compact proposal reflects the most recent draft of the Interstate Medical Licensure Compact Drafting Team, and does not reflect any final views and opinions of the FSMB, the FSMB’s Board of Directors, or any state medical or osteopathic board or its members. The following proposal does not necessarily reflect any or all components of a forthcoming final iteration of the Interstate Medical Licensure Compact.*

The compact pathway towards multi-state licensure is an adjunct, rather than a replacement, for the traditional licensure application process. A physician's use of the compact process to obtain licensure in multiple jurisdictions will remain optional.

In order to garner support for future widespread adoption of the compact, it was necessary for the Taskforce to recommend that only qualified physicians may participate in the newly proposed licensing pathway, and that the eligibility requirements would meet or exceed current licensing requirements of all jurisdictions of the United States. Obtaining medical licensure in multiple jurisdictions by way of the interstate medical licensure compact will not be available to every physician, though the vast majority of physicians in the United States will be eligible for licensure through the compact. Physicians that are not eligible to participate in the compact may still seek medical licensure in multiple states through the traditional application processes offered by individual states.

The eligibility requirements for physician participation in the compact, as currently proposed, are:

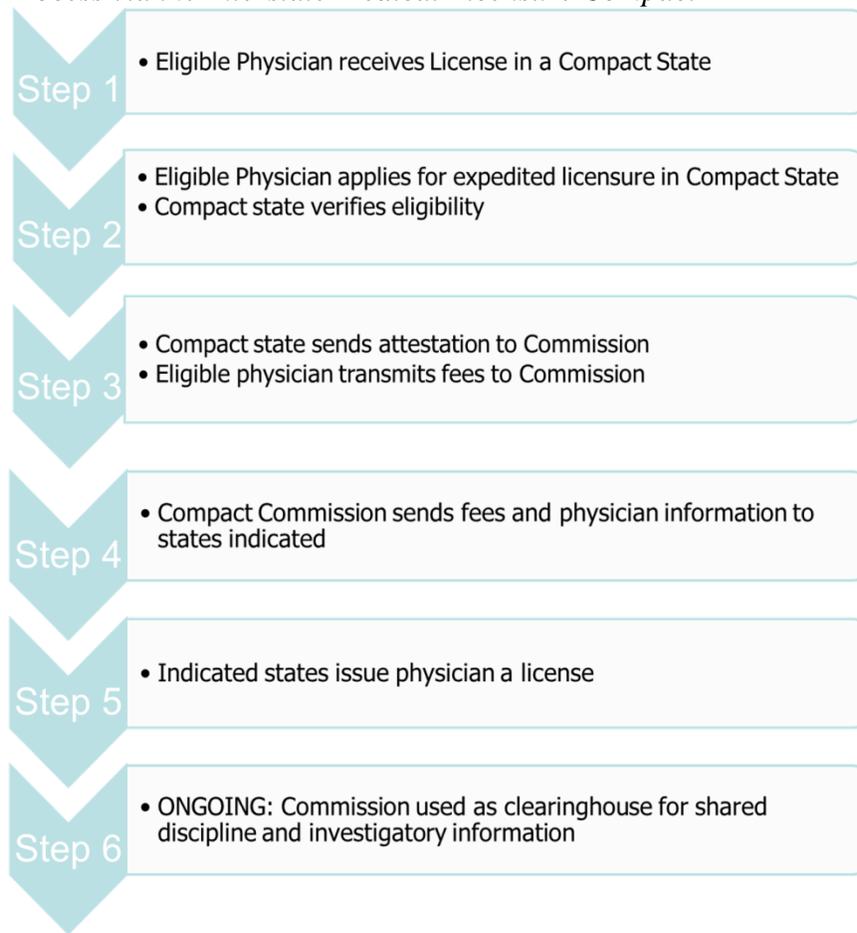
- A full and unrestricted license in a compact state
- Successful completion of a graduate medical education program
- Specialty board certification
- A clean disciplinary record and no discipline from any agency related to controlled substances
- Currently not under investigation by any agency or law enforcement

In order to begin the process, a physician must have a full and unrestricted medical license in one of the compact states. The physician will then apply through that compact state for expedited licensure in additional compact states of the physician's selection. The state medical board in which the physician holds the principal license (designated 'principal' for purposes of the compact only) will attest to the physician's eligibility and forward the information to the compact administrator or "Commission."

The physician will be responsible to transmit all applicable fees to the Commission. The Commission will distribute fees, and physician specific information will be distributed to the applicable state medical boards by the Commission. The receiving state medical boards will then issue the physician a license to practice in that state with all the rights and privileges of a full and unrestricted license.

It is expected that this process will be expeditious, given that a technical infrastructure will be in place for the Commission to support the rapid transfer and maintenance of licensing information. Complaint and disciplinary information will be shared between compact states, greatly improving the ability of states to protect against the unsafe practice of medicine. It is also important for states that the compact be virtually budget neutral in order for state medical boards to maintain their regulatory and oversight function. State medical boards are experiencing very limited resources and the costs associated with the intake and investigation and adjudication of complaints is significant. The compact process will reduce administrative costs that slow the ability of physicians to become licensed in multiple states, and which hamper the ability of state medical boards to act in the public interest. Ultimately, the compact offers a solution to questions of medical license portability by facilitating a streamlined licensing process for physicians seeking to practice in multiple jurisdictions while ensuring the availability of safe and effective medical care across the nation.

Diagram of Licensure Process via the Interstate Medical Licensure Compact



Draft Model Compact Legislation

On November 12-13, 2013, the Interstate Compact Drafting Team met at the FSMB Washington, D.C. Office to draft proposed legislative language for a model interstate medical licensure compact, based on the Interstate Compact Taskforce’s recommendations.

In February 2014, with the feedback received from state medical boards, provider groups, telehealth organizations, and other interested stakeholders, the Compact Drafting Team began to revise the draft language. The bulk of the comments addressed the need to clarify or further define certain terms related to the physician eligibility factors, sharing of disciplinary information, or implementation of expedited licensure through a compact.

The Compact Drafting Team continues to meet on a regular basis to incorporate recommended changes to the draft. A revised draft is expected to be distributed in May 2014 for another period of review and comment. Additionally, as part of the drafting and revision process, the FSMB continues to engage in outreach efforts to further solicit input on the draft compact.

Revised versions of the draft legislation, based on feedback from state boards and various stakeholders, will be distributed for comment throughout the Spring and Summer 2014. It is anticipated that interested states may begin to consider participation in the interstate medical licensure compact in Late 2014 / Early 2015.

Growing Public Support from Federal Policymakers for the Interstate Medical Licensure Compact

On January 9, 2014, a bi-partisan group of sixteen (16) U.S. Senators publicly commended state medical boards and the FSMB for their recent efforts to streamline the licensing process for physicians who wish to practice in multiple states – thus helping facilitate the use of telemedicine and increasing access to care throughout the United States. In the letter, the Senators noted that the proposed compact system retains important patient-protection advantages of the current state-based medical licensing process. “*We agree that allowing states to share information while allowing each state to retain jurisdiction over physicians who choose to practice in the state is in the best interest of both physicians and patients,*” the letter said. The Senators noted that the new expedited licensure system would help ensure telemedicine is practiced in a “*safe and accountable manner.*”

On February 26, 2014, Maureen K. Ohlhausen, Commissioner, Federal Trade Commission, before the Connecticut Bar Association Antitrust & Trade Regulation and Consumer Law Sections in Hartford, Connecticut, offered the following statement:

“In what I view as a positive development, a bipartisan group of sixteen U.S. Senators recently commended state medical boards and the Federation of State Medical Boards (FSMB) for their efforts to streamline the licensing process for physicians who wish to practice in multiple states. More specifically, the Senators applauded the boards’ development of the Interstate Medical Licensure Compact (Compact), which would provide a new licensing option under which qualified physicians seeking to practice in multiple states would be eligible for expedited licensure in all states participating in the Compact, which would be voluntary, for both states and physicians. This Compact, while still in development, would appear to greatly facilitate the use of telemedicine while still allowing states to regulate medicine within their borders.”

New Model Policy for Telemedicine Standard of Care

Simultaneous with the development of the interstate medical licensure compact (addressing the needs for a streamlined licensure processes that will enhance the growth and use of telemedicine), Jon V. Thomas, MD, MBA, FSMB Chair (April 2013-2014), appointed the State Medical Boards’ Appropriate Regulation of Telemedicine (SMART) Workgroup in May 2013 to guide the development of model guidelines for use by state medical boards in evaluating the appropriateness of care as related to the use of telemedicine between a physician in one location and a patient in another, with or without an intervening health care provider.

The SMART Workgroup, which included state medical board representatives and experts in telemedicine, reviewed the *FSMB Model Guidelines for the Appropriate Use of the Internet in Medical Practice (HOD 2002)* and other existing FSMB and state medical board policies on telemedicine, as well as a literature review and an environmental scan, to identify recent advances in telemedicine technologies, practical applications of such technologies and policies from other organizations.

The SMART Workgroup met in Washington, D.C. in August 2013 and by web conference in developing the *Model Policy on the Appropriate Use of Telemedicine Technologies in the Practice of Medicine*. A draft of the model policy was distributed to member medical boards and other stakeholders for comment in November 2013. Comments received were compiled and evaluated by the SMART Workgroup in December 2013 and January 2014.

In April 2014, at the Annual Meeting of the FSMB House of Delegates, representatives of state medical licensing boards unanimously adopted the *Model Policy on the Appropriate Use of Telemedicine Technologies*

in the Practice of Medicine, providing much-needed guidance and a basic roadmap that state medical boards can use in regulating the use of telemedicine technologies in the practice of medicine. The policy will also serve to educate licensees as to the appropriate standards of care in the delivery of medical services using telemedicine technologies.

Among its key provisions, the model policy states that the same standards of care that have historically protected patients during in-person medical encounters must apply to medical care delivered electronically. Care providers using telemedicine must establish a credible “patient-physician relationship,” ensuring that patients are properly evaluated and treated and that providers adhere to well-established principles guiding privacy and security of personal health information, informed consent, safe prescribing and other key areas of medical practice.

The guidelines are designed to provide flexibility in the use of technology by physicians – ranging from telephone and email interactions to videoconferencing – as long as they adhere to widely recognized standards of patient care. The guidelines are advisory, meaning that state medical boards are free to adopt it as is, modify it, or retain their own current policies regarding telemedicine.

Conclusion

The FSMB is in the process of developing the most widely acceptable and feasible option for reducing barriers to efficient multi-state licensure, while ensuring patient protection via the proposed interstate medical licensure compact. The proposed compact represents the most significant change in the process of state medical licensing in decades. The compact strikes the right balance between expanding access to care while ensuring that access is extended in a prudent way – protecting patients, first and foremost, in the process.

The proposed interstate medical licensure compact is not to be confused with other existing health care and medical compacts. The interstate medical licensure compact model is completely unique – it is not a new bureaucratic layer, but rather, a new alternative licensing pathway that will expedite the licensing process for qualified physicians and remove the requirement for a physician to apply state-by-state for licensure. It creates an interoperable system between state medical boards – linking them in a new way for licensing and information sharing.

The proposed interstate medical licensure compact provides for the key component of regulation at the point of care – a fundamental principle of medical regulation that must remain in place – while dramatically streamlining the licensing process for qualified physicians who wish to practice in multiple states. It accomplishes the major goals that telemedicine advocates promote: faster licensure, reduced barriers, and a system that can be applied nationwide, creating an enhanced environment for multi-state practice.

The FSMB appreciates the opportunity to provide comments on the FTC Workshop, *Examining Health Care Competition*, and would be pleased to keep the FTC apprised of our ongoing initiatives.

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