Medical License Portability and Evolving Telemedicine Standards

Protecting Patients and Expanding Access

FTC Examining Health Care Competition Workshop

Lisa A. Robin, MLA
FSMB Chief Advocacy Officer
March 20, 2014
FSMB

- Established 1912
- Offices in Euless, TX and Washington, DC
- Membership: 70 state boards of medicine
  - M.D.s, D.O.s, P.A.s et al
- Vision and Mission:
  - Leader in medical regulation, serving as an innovative catalyst for effective policy and standards
  - Promote excellence in medical practice, licensure, and regulation as the national resource and voice on behalf of state medical boards in their protection of the public
FSMB Initiatives to Facilitate Interstate Practice and Expand Access to Care

• Balancing access, innovation and patient safety
• Interstate Medical Licensure Compact
• State Medical Boards’ Appropriate Regulation of Telemedicine (SMART) Workgroup
The Need for License Portability

- Environment of medicine is rapidly changing
  - Rise of telemedicine and technology
  - Increase in multi-state practice
  - Passage of Affordable Care Act and need for greater access to care

- In this environment, **PORTABILITY** of state medical licenses is critical and should be facilitated

- **Goal:** Enhance portability while ensuring medical quality and patient protection
Current Regulatory Environment

- Federal or State Solution?
  - States are traditional locus of medical regulation
  - Constitutional Basis for State Law
    - 10th Amendment
    - *Dent v. West Virginia* (1889)
- 57 state medical boards require physicians using telemedicine be licensed in the state in which the patient is located
- 10 states issue special purpose license
FSMB License Portability Activity

- FSMB has long been a proponent for enhanced portability of licenses
  - *Nearly two decades of action*
- Major Initiatives
  - *FSMB License Portability Project (w/HRSA)*
  - *Uniform Application (UA)*
  - *Federation Credentials Verification Service (FCVS)*
- Interstate Compact and Update of Telemedicine standards are latest steps in FSMB’s efforts
Interstate Compact Directive Resolution 13-5

- FSMB House of Delegates unanimously adopted *Resolution 13-5: Development of an Interstate Compact to Expedite Medical Licensure and Facilitate Multi-State Practice (HOD 2013)*
- Directed FSMB to convene representatives from state medical boards and subject matter experts to explore the formation of an interstate compact to enhance license portability and multi-state practice
The Compact Development Project

- Launched a feasibility study of Interstate Compact as a mechanism to achieve greater portability
  - Multi-stakeholder Task Force
- All aspects of Interstate Compacts being explored
  - What has worked for others, and why?
  - What operational/administrative models are possible?
  - What timeframe is realistic?
  - Transferability to other health professions
What is an Interstate Compact?

- State cooperation is enshrined in the U.S. Constitution
- A contract between states
- A response to a collective problem without ‘nationalization’ of the issue
- Retains state sovereignty on issues traditionally reserved to state jurisdiction
The Interstate Compact Process

Three step process:

- Advisory Stage
- Drafting Stage
- Education and Enactment
Interstate Compact Timeline to Date

- April 2013: FSMB HOD Unanimously Passes Compact Study Resolution
- May 2013: In consultation with Council of State Governments (CSG), FSMB outlines project plan/timeline
- June 2013: Hosts Interstate Compact Planning Meeting
- September 2013: Interstate Compact Taskforce Meeting
- November 2013: Legislative Drafting Team Meeting
- December 2013: Draft model legislation released for comment to state medical boards and stakeholders
- March 2014: Legislative Drafting Team revisions begin
Consensus Principles
State Authority and Control

- State participation **strictly voluntary**
- Creates another pathway for licensure, but **does not** otherwise change a state’s existing Medical Practice Act
- Compact **does not** create a “national license”
- A “commission” will be established to coordinate and administer the Compact
Consensus Principles
State Authority and Control

- Regulatory authority remains with the participating state medical board
- Creates a mechanism for participating boards to share disciplinary and investigative information
- License to practice in a state can be revoked by any compact state where the physician is practicing
Consensus Principles Standards for Physicians

• Compact standards for eligibility should adhere to the highest standards of state medical licensure

• Physicians are not required to participate through the compact to obtain licensure in another state

• A physician practicing under an interstate compact is bound to comply with the rules and regulations of each compact state wherein he/she chooses to practice
Physician Eligibility for Compact

- Possession of one full and unrestricted license
- Successful completion of a GME program
- Achievement of specialty certification
- No discipline on any state medical license
- No discipline related to controlled substances
- Not under investigation by any agency or law enforcement
Proposed Licensure Pathway

Step 1
- Eligible Physician receives License in a Compact State

Step 2
- Eligible Physician applies for expedited licensure in Compact State
- Compact state verifies eligibility

Step 3
- Compact state sends attestation to Commission
- Eligible physician transmits fees to Commission
Proposed Licensure Pathway

Step 4
- Compact Commission sends fees and physician information to states indicated

Step 5
- Indicated states issue physician a license

Step 6
- ONGOING: Commission used as clearinghouse for shared discipline and investigatory information
Next Steps

- Distribution of draft compact to a wider audience of stakeholders for feedback
- FSMB Board of Directors will provide a report on the feasibility of an interstate compact to facilitate multi-state practice to FSMB House of Delegates (April, 2014)
- Model legislation may be ready for formal consideration by state legislatures in late 2014 or early 2015
Evolving Telemedicine Standards

- Model Policy for the Appropriate Use of the Internet in Medical Practice (2002)
- State Medical Boards’ Appropriate Regulation of Telemedicine (SMART) Workgroup (May 2013)
  - Guide the development of model guidelines for use by medical boards in evaluating the appropriateness of care as related to the use of telemedicine
- Model Policy for the Appropriate Use of Telemedicine Technologies in Medical Practice (2014)
SMART Workgroup

- **Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine (draft)**
- **Goal**: Remove regulatory barriers to widespread adoption of telemedicine technologies for delivering care while ensuring patient safety
Model Policy

• A guidance document —
  – Regulating the use of telemedicine technologies in the practice of medicine
  – Educating licensees as to the appropriate standards of care when delivering health care services directly to patients via telemedicine
  – While written primarily for physicians, it is in large part applicable to physician assistants or other health professionals that may be regulated by the medical board
Model Policy Guidelines

- **Patient-Physician relationship established upon agreement for diagnosis and treatment**
  - Can be established via telemedicine provided the standard of care is met
  - Major shift in approach from face-to-face

- **Physician discouraged from care without**
  - Verifying patient identity and location
  - Disclosing credentials and identity
  - Obtaining consent from the patient
Model Policy Guidelines

• Licensure
  – Physician is under the jurisdiction of the medical board in the state where patient is located
  – Practice of medicine in state where patient is located at the time telemedicine technologies are used

• Evaluation and Treatment
  – Physician must collect relevant clinical history
  – Treatment held to same standards as face-to-face

• Prescribing
  – Held to same standards as other treatments
  – Sole use of online questionnaire not acceptable
Model Policy Guidelines

• Informed Consent
  – Identification of individuals and technologies
  – Types of transmissions permitted
  – Patient agreement as to the discretion of the physician to determine whether or not the condition is appropriate for a telemedicine encounter

• 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
Model Policy Guidelines

- **Medical Records**
  - Complete and accessible for both parties
    - i.e. copies of all communications, prescriptions, evaluations, informed consent

- **Privacy and Security**
  - Transmissions secure within existing technologies

- **Parity of Professional and Ethical Standards**
  - Applies to all aspects of physician's practice
Questions/Discussion/Contact Us

Lisa Robin
Chief Advocacy Officer

FEDERATION OF STATE MEDICAL BOARDS
1300 Connecticut Ave NW, Suite 500
Washington, DC 20036
Tel: 202-463-4006