

Protecting  
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# Medical License Portability and Evolving Telemedicine Standards

## Protecting Patients and Expanding Access

**FTC Examining Health Care Competition Workshop**

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# 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
    - *10<sup>th</sup> 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

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