



Telehealth Crash Course: Do States Like Telehealth?

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Boards Under Increased Anti-Trust Scrutiny



Recent Supreme Court Case *N.C. State Bd. of Dental Examiners vs. FTC*

Because a “**controlling number**” of the NC Board’s decision makers are “**active market participants in the occupation the Board regulates,**” Board treated as a private actor and must show active supervision by the State

State review must provide assurance that Board actions promotes state policy rather than the party’s individual interests

State review/supervision varies by state

Boards Under Increased Anti-Trust Scrutiny



Consequences of Supreme Court Decision – some states considering:

- Better state supervision over existing board
- Changing makeup of board membership (e.g., not controlled by active market participants)
- Requiring formal state endorsement of certain decisions with potentially important implications on competition

Alabama

- Medical board scrapped current telemedicine regulations

Texas

- Current case involving Teladoc which sued the state arguing new rule adopted in April (requiring face-to-face visit prior to physician prescriptions) violated federal anti-trust laws
- U.S. District Court injunction blocks rule

Many states making no changes

Telehealth Licensure



State licensure rules run counter to the practice of telehealth, which transcends geographical boundaries

Health care practitioners who provide services via telehealth modalities generally are subject to the licensure rules of the state in which the patient is physically located



Licenses Available to Telehealth Providers



Regular License

- Some states require telehealth providers to obtain the relevant professional license required by the state **and** to meet other related state-specific requirements such as payment of licensure fees and passage of professional examinations
 - E.g., Alaska, Connecticut, Florida, Illinois, Massachusetts

Special Telemedicine License

- Some states issue special licenses / certificates related to the provision of telehealth services, allowing out-of-state providers holding such licenses to render services provided certain conditions are met, such as not opening an office in the state
 - Alabama, Louisiana, Minnesota, Montana, Nevada, New Mexico, Ohio, Tennessee, Texas, Wyoming

License for Non-Physician Practitioners

- Full licensure generally required to provide telehealth services unless an exception applies
- Nurse Licensure Compact
 - Not applicable to APRNs
- Other compacts under development

Telehealth Licensing Exceptions



Endorsement

- Allows out-of-state licensed physicians to obtain in-state licenses based on their out-of-state credentials
- A state board accepts the license granted by another state with similar standards, e.g., Arizona (ARIZ. REV. STAT. § 32-1426), Florida (FLA. STAT. § 458.313), and Ohio (OHIO. REV. CODE ANN. § 4731-6-16)

Registration

- Allows out-of-state licensed physicians to register with in-state medical licensing boards, rather than obtaining an additional in-state license

Reciprocity

- Specific agreements between state licensing boards to mutually recognize out-of-state licenses for the purpose of in-state practice
- Usually exists between states that have similar medical licensing laws or that have agreed to harmonize their laws

“Bordering States” Exception

- Permits, under certain circumstances, the in-state practice of medicine by out-of-state physicians who are licensed by bordering states

Consultation

- Allows a physician who is not licensed in the state to practice medicine “in consultation” with a referring physician who is licensed in the state
- Available in many states but scope varies widely state to state
- Unclear whether applicable to routine, ongoing consultations with telemedicine providers

FSMB Interstate Medical Licensure Compact



Federation of **STATE** **MEDICAL** **BOARDS**

- Designed to facilitate physician licensure portability and the practice of interstate telemedicine services
- Would create an additional licensure pathway through which physicians could obtain expedited licensure in Compact-participating states
- Intended to complement existing licensing and regulatory authority of state medical boards
- Conceptually similar to the Nurse Licensure Compact (<https://www.ncsbn.org/nlc.htm>)
- To date, 11 states have enacted legislation to join Compact:
 - AL, ID, IL, IA, MN, MT, NV, SD, UT, WV, WY
- Legislation pending in MI, WI
- FSMB awarded a \$225K grant from HRSA

Scope of Practice – Online Prescribing



States have
different
approaches
to
regulating
online
prescribing

- Requiring an in-person evaluation or physical examination before prescribing online
 - Some states explicitly require in-person exams (e.g., AR, NE)
 - Other states are not so explicit (i.e., can a physical exam be provided by other means?) (e.g., NJ, OR, SC)
- Permitting physicians to prescribe via telehealth modalities only if there is a preexisting patient relationship even if physician is licensed in the state where patient is physically located
- Prohibiting prescribing based solely on information from an online questionnaire
- Regulating online prescribing through pharmacy laws
- Liberalizing prescribing laws (e.g., GA, VA)

FSMB Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine



Adopted by FSMB in April 2014



Replaced FSMB's 2002 Model Guidelines for the Appropriate Use of the Internet in Medical Practice



Provides that in some situations, telemedicine technologies can be used in lieu of in-person care, but also provides guidance on key relevant practice issues (e.g., continuity of care, maintaining a patient's medical record, necessary disclosures)



On establishing the physician-patient relationship:

Fully verifying and authenticating location;

To extent possible, identifying requesting patient;

Disclosing and validating provider's identify, credentials, etc.;

Obtaining appropriate consents from requesting patients after disclosures regarding delivery models, treatment methods / limitations, etc.

State Medicaid Coverage for Telehealth



Per the Center for Connected Health Policy:

47 states and DC Medicaid programs cover telehealth

Almost all Medicaid programs cover services provided by live video

16 states (including Colorado, Maine, and South Carolina) provide Medicaid coverage for remote patient monitoring

- Many restrictions exist

29 states reimburse a transmission and/or facility fee.

Only 9 states (including Illinois, New Mexico, and Virginia) currently reimburse for store-and-forward services

- California: store-and-forward services covered when related to teledermatology, teleophthalmology and teledentistry

Telehealth Legislation



Hundreds of telehealth-related bills have been introduced so far this year.
Trends include:

Defining
“telehealth” or
“telemedicine”

Expanding covered
providers

Allowing physical
exams to occur by
telehealth

Coverage parity

Pilot programs

Questions?



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