Telemedicine Interstate Licensing Policy

March 4, 2021

State Medical Licensure During the Public Health Emergency (PHE)

46 states, Guam, and Puerto Rico have relaxed telemedicine licensing requirements during the PHE.

- Providers must be in good standing and often obtain consent
- Includes WA border states and all states in "Four state Telehealth Agreement" (WA,OR, CO,NV)

Some states have enacted the following limitations:

- Providers must submit a waiver or register as an out of state physician
- Providers can only see patients with a pre-existing relationship
- Licensing relaxations only apply to bordering states

Arizona currently considering a bill to permanently remove licensing requirements for telemedicine.

Source

Pros and Cons of Individual State Licensing for Telemedicine (status quo)

- Revenue from application and renewal fees
- In-state physicians maintain control over in-state policies
- Malpractice reporting and hearings kept to local site
- State medical licensing boards oversee and enforce state licensing regulations that are anticompetitive

- Unintended barrier to specialty care
- Labor Intensive/High administrative costs
- Increased fragmentation and difficulty in care coordination

Theoretical Alternatives

- Expansion of Medical Licensing Compact
  - Would require federal incentives for states to join
- Changing definition of originating site from patient location to provider location
  - Congress could regulate as interstate commerce and provide framework for consumer protection
- Increased adoption of Telemedicine specific Medical Licenses

Protecting Access to Post-COVID-19 Telehealth Act of 2021 (S.368 & H.R. 366)

Includes:

- Eliminate most geographic and originating site restrictions on the use of telehealth in Medicare and establishing the patient's home as an eligible distant site.
- Authorize the Centers for Medicare and Medicaid Service to continue reimbursement for telehealth for 90 days beyond the end of the public health emergency.
- Make permanent the disaster waiver authority, enabling Health and Human Service to expand telehealth in Medicare during all future emergencies and disasters.
- Require a study on the use of telehealth during COVID, including its costs, uptake rates, measurable health outcomes, and racial and geographic disparities.

- Avoids coverage parity and interstate licensing issues.
- Supported by the American Hospital Association.

Senate Act read twice and referred to Finance Committee

House Bill referred to Energy & Commerce, Ways & Means

Equal Access to Care Act

- Act permits a licensed health care provider to provide health care services to individuals in one or more States in which the provider is not licensed **during the Covid-19 public health emergency.**

- Introduced in House and Senate (H.R. 688 & S.155) and referred to:
  - House Committee on Energy and Commerce
  - Senate Committee on Health, Education, Labor, and Pensions

- No further action at this time. But House Committee on Energy and Commerce held hearing March 2 “The Future of Telehealth”

House Cmte Energy & Commerce Hearing: Witness Statements

Stanford

- Supports state medical license waivers for telemedicine
- Barrier to providing specialty care to patients nationwide

Harvard

- Proposes allowing physicians licensed in any state to provide care for Medicare patients and make all regulatory waivers for that population permanent as well (remove location restrictions, informed consent, mandatory training etc.)
- Generally against telemedicine specific regulations- fears could lead to further fragmentation

House Cmte Energy & Commerce Hearing: Witness Statements

Purchaser Business Group on Health (Non-Profit)

- Supports removing state licensing requirements for telehealth
- Limiting competition to providers in states could drive up costs without improving quality
- Support Interstate compacts, changing site of service, and national medical license

American Medical Association

- Does not support removing changing site of service, believes it raises too many enforcement issues
- AMA does support Interstate Medical Licensure Compact

House Cmte Energy and Commerce Hearing: Other

Chairman's opening remarks shared concerns with telemedicine:

- Overutilization of "low-value care" and increased risk of fraud
- Digital divide could be further fragmenting care

- Presentations were physician-centric
- Stanford
  - Section 1834(m) geographic, originating site and provider type restrictions for Medicaid patients creates "donut hole" for Medicare Fee for Service, allows health care centers to provide TM to everyone except Medicare FFS patients
  - Establishing relationship in person requirements adds no clinical value and even increases risks for some patients
  - Have not seen an increase in overall healthcare utilization. Physicians time is the rate limiting factor
- AMA stated concerns of fraud and overutilization are misplaced