VIEWPOINT

Increasing Telehealth Access Through Licensure Exceptions

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At the start of the COVID-19 pandemic, temporary regulatory changes were implemented by almost all states to allow physicians to provide telehealth across state lines. Unfortunately, few of these flexibilities survived the end of the public health emergency.[1] Physicians and patients are frustrated because these changes have cut off many patients from their physicians,[2] which is particularly difficult for patients with rare illnesses, such as cancer, who may lack local physicians who can treat their condition.[3]

The question is what changes can be made to facilitate reasonable use of telehealth across state lines? Currently, the policy debate is at an impasse. Many physicians and telehealth advocates have called for a single federal license or full reciprocity in which a single state license can be used anywhere in the nation. The American Medical Association (AMA)[3] and individual state boards object, arguing that licensure should remain within the purview of the state to allow flexibility in scope of care, support states' investigative and disciplinary authorities, and facilitate actions against the license. Instead, they have supported the Interstate Medical Licensure Compact, a process for making it easier for physicians to get a full license in multiple states, or the use of special telehealth licenses or registrations.

Although conceptually helpful, these reforms do not solve many barriers licensure creates for interstate telehealth. They can be administratively and financially burdensome, requiring physicians to complete applications and pay both initial and ongoing registration fees. Physicians must also proactively pursue licensure or registration before a patient presents in a clinic. This procedure does not help specialists who draw patients from across the country and have no advance notice that patients from another state will consult them and need care after they go home. Not surprisingly, there has been relatively limited uptake. For example, of the approximately 1 million physicians in the US, only 13 000 have used the compact pathway.[4]

Lost in this debate is another strategy: expanding the use of licensure exceptions. This Viewpoint explains how exceptions can be used to connect patients via telehealth with a physician in another state, why this is a more practical and effective strategy, and finally what needs to happen for this to be a feasible solution.

Licensure Exceptions

Every state requires physicians to be properly licensed to provide medical care to people within the state. In most cases, this requirement means holding a full medical license from the applicable state licensing board. However, many states have incorporated exceptions to this requirement in their physician licensure laws and regulations (Table). These exceptions can be applied to telehealth services, including video visits, as well as telephone calls or answering emails.

These exceptions fall into 4 major types. The first is for follow-up care after a relationship has been established. For example, Arizona allows a physician licensed in another state to provide telehealth to a patient in Arizona "[t]o provide after-care specifically related to a medical procedure that was delivered to a person in another state." The Federation of State Medical Boards (FSMB) also advocates that a license is not needed when the patient "is temporarily located outside the jurisdiction of a physician with which the patient has an established relationship."

The second is in preparation for a visit. For example, Idaho allows a physician licensed in another state to "provide health care services in preparation for a scheduled in-person visit," which would allow a specialist to conduct an initial consultation or even run screening tests before asking the patient to travel to their practice.

The third is for peer-to-peer consultation or care incident to a care plan. Conceptually, the idea is that a local physician may work with a distant physician to get a second opinion or to help guide the patient's care. For example, the AMA has advocated for an exception for "[a]n informal consultation or second opinion, at the request of a physician licensed to practice medicine in this state."

The fourth is for care related to a clinical trial.

Advantages of the Licensure Exceptions

Focusing on exceptions has many advantages. To use exceptions, a physician does not need to complete paperwork or pay fees. Rather all he or she needs to do is understand the limitations of exceptions. For example, in most cases one cannot initiate a patient-physician relationship via an exception. From a patient perspective, such exceptions would allow most patients to use telehealth when they need it. A college student who is away for college can still consult their psychiatrist in their home state. A patient traveling for work can still keep in touch with their specialist. A patient who lives across the state border can still maintain a relationship with their primary care physician, who might be physically a few miles away across a state border. And patients who need specialized care at a distant hospital can initiate care and undergo the appropriate tests before their first in-person visit.

A second advantage of exceptions is that there is consensus that they are necessary. The AMA,[3] the FSMB,[5] and the Uniform Law Commission[6] have all recognized and proposed exceptions (Table). For example, the FSMB believes there is a need for exceptions that "permit the practice of medicine across state lines without the need for licensure in the jurisdictions where the patient is located. These exceptions to licensure are only permissible for established medical problems or ongoing workups and care plans, or in cases of

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Table. Examples of Exceptions to Physician Licensure That May Facilitate Interstate Telehealth

	Follow-up care for established patient relationships	Screening for complex specialty conditions	Peer-to-peer consultation or care incident to existing care plan	Care in the context of clinical trials
American Medical Association	X		X	
Uniform Law Commission	X	X	X	
Federation of State Medical Boards	X	X	X	X
Alabama (AL Code §34-24-702)[a]	X	X	X	
Alaska (AK Sec 08.02.130)	X	X		
Arizona (AZ Sec 36-3606)[a]	X		X	
Arkansas (AR Code §17-95-206)			X	X
Idaho (ID Sec 54-5713)	X	X	X	
Illinois (IL 225 ILCS 60/1-60/5)	X		X	
Kentucky (KY Sec 211.336)			X	
Maryland (MD Code §14.302)[b]	X		X	
Michigan (MI Sec 333.16171)[b]	X	X	X	
Minnesota (MN Sec 147.032)[a]	X	X	X	
New Hampshire (NH Sec 329:21)[b]	X		X	
Oregon (OR Sec 847-025-0020)	X		X	
Virginia (VA §54.1-2901)	X		X	
Utah (UT Code Sec 58-67-305[7])[c]	X	X	X	

[a] Services must be limited to fewer than 10 encounters per calendar year.

[b] Limited to physicians licensed in "adjoining" or "neighboring" states.

[c] Services permitted as long as they are conducted without any charges beyond the cost of covering medical malpractice insurance.

prospective patient screening for complex referrals." Possibly more important, numerous states have already implemented some exceptions and, therefore, there is ample precedent they are politically feasible.

A third advantage is that limited exceptions for telehealth still allow state boards to dictate scope of care and support states' disciplinary authority.

Current Limits of Exceptions

Although exceptions can extend the use of telehealth, their utility is currently limited. Many exceptions are limited in scope and use vague language. Several states, for example, limit follow-up care exceptions to care that is "infrequent," "irregular," or "short term." Some states, such as Michigan and Maryland, limit use of the follow-up care exception to physicians located in adjacent states. New Hampshire and Arizona limit some exceptions to primary care or "regular or family physicians," excluding specialists. Arkansas, the one state with an exception that could cover clinical trials, limits it by requiring that the care offered cannot be available in Arkansas.

Because of these vagaries, there is a high compliance burden for physicians. This compliance burden is only magnified for physicians who draw patients from across the country. For example, specialists would need to know that they could use telehealth only to screen Alaskan patients for life-threatening conditions, whereas they could screen Michigan patients under exceptional circumstances. And because "exceptional circumstances" is a vague term, a specialist would likely have to seek guidance to clarify the scope of the Michigan exception.

These are surmountable barriers. A set of well-crafted exceptions to physician licensure requirements designed to support interstate telehealth, adopted consistently across the states or at the federal level, would address the current problems. There are several groups that have attempted to articulate uniform language exceptions to physician licensure, including the Uniform Law Commission. To do so will require coordination between states. Patient groups and physicians should advocate with their states to adopt consistent exceptions to licensure requirements that are consistent across states.

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