

State Medical Board Association Adopts Telemedicine Guidelines

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SUMMARY

On April 26, 2014, the Federation of State Medical Boards (FSMB) House of Delegates adopted The Model Policy on the Appropriate Use of Telemedicine Technologies (FSMB Telemedicine Policy). FSMB is a national organization of state medical boards. According to a press release issued by FSMB, the FSMB Telemedicine Policy, “provides much needed guidance and a basic roadmap that state boards can use to ensure that patients are protected from harm in a fast-changing health care delivery environment.” The FSMB Telemedicine Policy is advisory only and individual state medical licensing boards will need to decide whether to adopt their own requirements or modify existing requirements.

Background

With the changes in technology, telemedicine is becoming more prevalent and represents an attractive treatment option for hospitals, physicians and other licensed health care providers.

According to the American Telemedicine Association (ATA), telemedicine is “the use of medical information exchanged from one site to another via electronic communications to improve a patient’s clinical health status.” Telemedicine may include services using two-way video, email, smart phones, wireless tools and other forms of telecommunications technology.

Telemedicine originally began as a means to provide health care access to individuals in rural communities where all medical specialties may not have been physically present. Today, telemedicine may include primary care or specialty care, as well as remote patient monitoring services.

The FSMB Telemedicine Policy was adopted in an attempt to create uniform standards in a rapidly changing health care delivery system. Importantly, the FSMB Telemedicine Policy is narrower than the definition by the ATA and defines telemedicine, in part, as “the practice of medicine using electronic communications, information technology or other means between a licensee in one location, and a patient in another location with or without an intervening health care provider. Generally, telemedicine is **not** an audio-only, telephone conversation, e-mail/instant messaging conversation, or fax ...” (emphasis added).

The telemedicine definition adopted by individual state medical licensing boards may become important because health insurers and Medicare and Medicaid may make reimbursement decisions based upon state standards and whether the payor believes a particular mode of communication is a valuable treatment option and eligible for reimbursement. In addition, professional liability carriers may modify their coverage or exclusions depending upon the scope of telemedicine approved within a particular state.

The FSMB Telemedicine Policy includes the following guidelines for the “appropriate use of telemedicine technologies in a medical practice:”

- a physician must be licensed or under the jurisdiction of the medical board of the state where the patient is located;
- a physician must take appropriate steps to establish a physician-patient relationship;
- there must be a documented medical evaluation before providing treatment to the patient;
- a patient must provide informed consent for the use of telemedicine technologies;
- a patient should have the ability to seek, “with relative ease,” follow-up care from the physician who provided care through telemedicine;
- a physician must have an emergency plan in place if referral to an acute care facility or emergency room is appropriate for the patient;
- a patient’s medical records should be accessible and documented for the physician and patient in accordance with all requirements for medical records;
- a physician should “meet or exceed” federal and state privacy requirements, including HIPAA;
- online services used by a physician should make specific disclosures including fee arrangements and physician contact information; and
- steps need to be taken to ensure the prescribing physician upholds patient safety in the absence of an in-person examination, including confirming the identity of the patient.

Telemedicine is here to stay. The release of the FSMB Telemedicine Policy may spur various state medical licensing boards to modify their existing telemedicine requirements or adopt their initial regulations relating to telemedicine. The FSMB Telemedicine Policy may also result in reimbursement changes by private and public health insurers and changes in professional liability coverage. Any party interested in continuing or starting to provide telemedicine services should understand the requirements, if any, in the state in which they practice and the state(s) where their patients may be located. A copy of the FSMB Telemedicine Policy is located at http://www.fsmb.org/pdf/FSMB_Telemedicine_Policy.pdf.

Saul Ewing attorneys have experience analyzing and negotiating telemedicine arrangements for clients. For more information on these matters, please contact Bruce Armon or Karlynn Bayus, or the attorney at the Firm with whom you are regularly in contact.

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