



## State Medical Board Delegates Promote New Model Policy on Telemedicine

On April 26, the Federation of State Medical Boards (“FSMB”) adopted a model telemedicine policy, offering a framework for regulators and health care professionals to consider as utilization of telehealth technologies between providers and patients continues to grow. The nonbinding policy statement will likely spur action by state legislatures and medical boards eager to establish or revise standards for this emerging sector of health care.

During FSMB’s annual meeting in late April, delegates representing medical licensing boards from across the United States approved the Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine (“model policy”).<sup>1</sup> The Model Policy outlines a “direct-to-consumer” approach to telemedicine and sets forth requirements for the establishment of a physician–patient relationship and protocols for continuity of care. Prior to this new roadmap, an FSMB policy statement on internet use in medical practice<sup>2</sup> served as a guide on a range of topics, including digital health and electronic prescribing, but otherwise there was little consensus among regulators to promote common standards for telehealth. In recent years, state medical boards adopted varying regulations and guidance affecting telehealth in the

delivery of medical care. According to the American Telemedicine Association (“ATA”), despite having guidelines from industry and strong public support for telemedicine, some medical boards “developed medical practice standards that effectively hinder the use of such services within the state.”<sup>3</sup> Recognizing the need to update existing policy guidelines to comport with current and accommodate future developments in telehealth, the state medical board delegates responded by proposing a more deliberate and uniform approach to telemedicine embodied in the new model policy.

Given the FSMB’s stated goal of offering this model policy to help “remove regulatory barriers to widespread appropriate adoption of telemedicine technologies for delivering care while ensuring the public health and safety,” it appears the new model policy sets the stage for state regulators to consistently consider and apply the use of telemedicine technologies within their states and across borders.<sup>4</sup> Thoughtful and consistent regulatory oversight is increasingly important for the telehealth industry, which some analysts have predicted will approach growth rates of 600 percent over the next few years.<sup>5</sup>

At its core, the model policy aims to “provide flexibility in the use of technology by physicians—ranging from telephone and email interactions to videoconferencing—as long as they adhere to widely recognized standards of patient care.”<sup>6</sup> The framework comprises several key components:

## **Defining “Telemedicine” for a Specific Use Case**

The model policy proposes a specific description for “telemedicine”: “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 healthcare provider.”<sup>7</sup> This language reflects the model of direct-to-consumer telehealth, rather than specialty consults between two or more physicians. In fact, the document specifically states that “this policy does not apply to the use of telemedicine when solely providing consulting services to another physician who maintains the physician–patient relationship with the patient, the subject of the consult.”<sup>8</sup>

## **Confirming the Importance of Physician–patient Relationship Consistent with Traditional Constructs**

As with traditional constructs around the physician–patient relationship, the new policy (i) confirms that a relationship can be established solely in connection with a telemedicine encounter when a physician agrees to undertake diagnosis and treatment of a patient and the patient agrees to be so treated, and (ii) identifies certain steps that telehealth providers are encouraged to use for appropriate development of the physician–patient relationship, including verification of patient location, disclosure of physician’s identity and credentials, and gathering any necessary consents.

## **Equating Standard of Care for Direct-to-Consumer Telehealth to That of Traditional In-Person Standards**

Rather than establishing a different standard of care for a telehealth encounter (the direction some state regulations have taken over the last few years), the model policy clearly mandates that diagnosis or treatment using telemedicine should be held to the same standards of appropriate practice as those

in traditional (“in-person”) settings. As such, consistent with traditional norms for the diagnosis and treatment of patients, a health care provider should conduct a medical evaluation of a patient, including collecting relevant clinical history, and determine whether, in each case, a diagnosis or treatment is possible or recommended based on the presentation of the patient and the facts and circumstances presented.

## **Making Available Provisions for Continuity of Care and Referral for Emergency Services**

Here again, consistent with traditional notions of a physician–patient relationship, the model policy highlights the need for telehealth providers to make appropriate provisions for patients to obtain, as needed, follow-up care or information following a telemedicine encounter. In particular, the new policy allows for the continuation of care through a variety of technologies, including telephone calls, if the physician–patient relationship was properly established and the standard of care is met. Further, as some patients’ needs may require treatment by an emergency department or acute care facility, the model policy requires telehealth providers to establish an emergency plan for directing referrals in emergency situations.

With the establishment of this FSMB model policy, state medical boards may reexamine current regulations and guidance relevant to telemedicine for potential modifications or updates. Further, the policy statement encourages providers utilizing telehealth to review their practices and confirm they are appropriately establishing the physician–patient relationship, informing patients on the details of delivering care via telehealth, and making arrangements for continuity of care. In evaluating whether they are meeting the standard of care, providers may also find it useful to consult industry guidelines developed to identify appropriate practices for the delivery of care using telemedicine technologies. Relevant guidelines and practice standards of the ATA and others may be helpful resources.<sup>9</sup>

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## Endnotes

- 1 Fed'n State Med. Bds., Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine (2014), *available at* [http://www.fsmb.org/pdf/FSMB\\_Telemedicine\\_Policy.pdf](http://www.fsmb.org/pdf/FSMB_Telemedicine_Policy.pdf).
- 2 Fed'n State Med. Bds., Model Guidelines for the Appropriate Use of the Internet in Medical Practice (2002), *available at* [http://www.fsmb.org/pdf/2002\\_grpol\\_Use\\_of\\_Internet.pdf](http://www.fsmb.org/pdf/2002_grpol_Use_of_Internet.pdf).
- 3 Press Release, Am. Telemedicine Ass'n, “ATA Submits Comments on FSMB’s Proposed Regulations for Telemedicine” (Apr. 22, 2014). The ATA submitted comments mostly in support of the FSMB’s model policy. See Am. Telemedicine Ass’n, Proposed Changes to the Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine (Apr. 21, 2014), *available at* <http://www.americantelemed.org/docs/default-source/policy/click-here.pdf?sfvrsn=0>.
- 4 Model Policy, *supra* note 1, at 1.
- 5 Ken Terry, “Telehealth to Grow Six-Fold by 2017,” *Information Week* (Jan. 23, 2013, 3:54 PM), <http://www.informationweek.com/mobile/telehealth-to-grow-six-fold-by-2017/d/d-id/1108328?>
- 6 Press Release, Fed’n State Med. Bds., “State Medical Boards Adopt Policy Guidelines for Safe Practice of Telemedicine” (Apr. 26, 2014), [http://www.fsmb.org/pdf/FSMB\\_NR\\_Telemedicine\\_Policy042614.pdf](http://www.fsmb.org/pdf/FSMB_NR_Telemedicine_Policy042614.pdf).
- 7 Model Policy, *supra* note 1, at 1.
- 8 *Id.* at 1 n.2.
- 9 See Am. Telemedicine Ass’n, Standards & Guidelines, <http://www.americantelemed.org/resources/standards/ata-standards-guidelines>.

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