HOD ACTION: Council on Medical Education Report 6 adopted and the remainder of the report filed.

REPORT OF THE COUNCIL ON MEDICAL EDUCATION

CME Report 6-A-10

Subject: Telemedicine and Medical Licensure

Presented by: Susan Rudd Bailey, MD, Chair

Referred to: Reference Committee C
(Floyd A. Buras, Jr., MD, Chair

Policy D-275.967, "Telemedicine and Medical Licensure" (AMA Policy Database), directs our American Medical Association (AMA) to:

> Work with the Federation of State Medical Boards (FSMB) to study how guidelines regulating medical licenses are affected by telemedicine and medical technological innovations that allow for physicians to practice outside their states of licensure.

"Telemedicine" was defined by the FSMB House of Delegates (HOD) in May 2009 to be "the practice of medicine using electronic communication, information technology or other means between a physician in one location and a patient in another location with or without an intervening health care provider."

Because the medical licensure system in the United States is state-based, the practice of telemedicine across state lines has created challenges for physicians who want or are asked to be involved in the care of patients in states in which they are not already licensed. The practice of medicine is defined in AMA Policy H-35.971, "Diagnosis of Disease and Diagnostic Interpretation of Tests Constitutes Practice of Medicine to be Performed by or Under the Supervision of Licensed Physicians," as "the diagnosis of disease and diagnostic interpretation of a study or studies for a specific patient." The FSMB considers this practice of medicine to occur in the location of the patient in order that the full resources of the state are available for the protection of the patient.

The FSMB appointed an Ad Hoc Committee on Telemedicine to study the licensure issue; this committee created "A Model Act to Regulate the Practice of Medicine Across State Lines," which was accepted by the FSMB HOD in 1996. This report recommended that states create a special license for physicians who regularly or frequently engage in the practice of medicine across state lines. This license would be limited to telemedicine and would not allow the physician holding a full and unrestricted license to engage in in-person practice. It would require that a physician who holds a full and unrestricted license in one state be given every consideration for expedient issuance of this special license in other states.

The report also recommended that this special license would not be necessary if the physician's practice across state lines occurs less than once a month, involves less than ten patients on an annual basis, or comprises less than one percent of the physician's diagnostic or therapeutic practice. The model act further recommended that physician-physician consultations that are on an informal basis and do not usually result in compensation to the consulting physician should be exempt from the need for a license in the patient's state. There is also an exemption in the event of an emergency.

Currently nine states have adopted the FSMB's recommendations and created either a special license or telemedicine license category. These include Alabama, Minnesota, Montana, Nevada, New Mexico, Ohio, Oregon, Tennessee, and Texas. However, with the exception of Minnesota, the fees and requirements for these special licenses are virtually the same as for full licensure in the state. There are some restrictions on these licenses, for example in Alabama the special license is limited to states that have reciprocal legislation permitting Alabama physicians to practice across their state lines. Other states limit special licenses to physicians already licensed in states that require at least the same specified minimum amount of continuing medical education to renew their license.

The majority of the states require that a physician hold a full and unrestricted license in that state in order to practice medicine with patients located in the state. There are a few states that are silent on the issue which has been interpreted by the licensing boards to mean that a physician must hold a full and unrestricted license in the state.

AMA Policy H-480-969, "The Promotion of Quality Telemedicine," states, in part:

> It is the policy of the AMA that medical boards of states and territories should require a full and unrestricted license in that state for the practice of telemedicine, unless there are other appropriate state-based licensing methods, with no differentiation by specialty, for physicians who wish to practice telemedicine in that state or territory.

It has been proposed in the past that a national licensure system would eliminate the problem of physicians who wish to practice telemedicine across state lines. The FSMB recognizes that the current state-based system of medical licensure retains a flexibility and sensitivity to local concerns that would be lost in a national system. AMA Policy H-480.999, "State Authority and Flexibility in Medical Licensure for Telemedicine," which was reaffirmed by the HOD in June 2009, states:

> Our AMA will continue its opposition to a single national federalized system of medical licensure.

Currently each state-based licensing jurisdiction has statutes and rules that determine the requirements to practice medicine in that state. The FSMB Special Committee on Uniform Standards and Procedures report "Maintaining State-based Medical Licensure and Discipline: A Blueprint for Uniform and Effective Regulation of the Medical Profession," adopted by the FSMB HOD in May 1998, recognized that there are variations in licensure requirements among state licensing boards and recommended that there be uniform standards that would improve consistency and provide for the effective regulation of the medical profession. Because of variations in the licensure requirements and discipline terminology and processes in the states, the Committee recommended there be minimum requirements in all states in order to ensure the safety of the public. States vary, for example, in the requirements for licensure regarding residents, the educational credential and postgraduate training required of applicants, the necessity of criminal background checks, and continuing medical education requirements for relicensure. It is because of this variation between states that some state-licensing boards are not willing to enter into reciprocal licensing agreements with other states or to issue special telemedicine licenses to physicians that are licensed in another state.

The Council on Medical Education recognizes that the use of telemedicine has many benefits for the public, including access to health care for patients in underserved areas and the ability to share expertise. Physicians who are interested in practicing telemedicine across state lines are often daunted by having to be licensed in multiple jurisdictions. However, the AMA has strong policy supporting the current state-based licensing system and the need for physicians to be licensed in the states in which the patients they treat reside. This policy base does not permit our AMA to support policies that would, in fact or in concept, support a national system of licensure.

RECOMMENDATION

The Council on Medical Education recommends that the following recommendations be adopted and that the remainder of this report be filed:

1. That our American Medical Association (AMA) REAFFIRM Policy H-480.969, "The Promotion of Quality Telemedicine." (Reaffirm HOD Policy)

2. That OUR ama RESCIND Policy D-275.967, "Telemedicine and Medical Licensure.". (Rescind HOD Policy)

Fiscal Note: Less than $500.

REFERENCE

Federation of State Medical Boards of the U.S., Report of the Ad Hoc Committee on Telemedicine, April 1996

RELATED AMA POLICIES

H-480.974 Evolving Impact of Telemedicine
Our AMA: (1) will evaluate relevant federal legislation related to telemedicine; (2) urges CMS and other concerned entities involved in telemedicine to fund demonstration projects to evaluate the effect of care delivered by physicians using telemedicine-related technology on costs, quality, and the physician-patient relationship; (3) urges medical specialty societies involved in telemedicine to develop appropriate practice parameters to address the various applications of telemedicine and to guide quality assessment and liability issues related to telemedicine; (Reaffirmed by CME/CMS Rep. A-96) (4) encourages the CPT Editorial Board to develop CPT codes or modifiers for telemedical services; (5) will work with CMS and other payers to develop and test, through these demonstration projects, appropriate reimbursement mechanisms; (6) will develop a means of providing appropriate continuing medical education credit, acceptable toward the Physician's Recognition Award, for educational consultations using telemedicine; and (7) will work with the Federation of State Medical Boards and the state and territorial licensing boards to develop licensure guidelines for telemedicine practiced across state boundaries. (CMS/CME Rep., A-94; Reaffirmation A-01)

H-480.969 The Promotion of Quality Telemedicine
(1) It is the policy of the AMA that medical boards of states and territories should require a full and unrestricted license in that state for the practice of telemedicine, unless there are other appropriate state-based licensing methods, with no differentiation by specialty, for physicians who wish to practice telemedicine in that state or territory. This license category should adhere to the following principles: (a) application to situations where there is a telemedical transmission of individual patient data from the patient's state that results in either (i) provision of a written or otherwise documented medical opinion used for diagnosis or treatment or (ii) rendering of treatment to a patient within the board's state; (b) exemption from such a licensure requirement for traditional informal physician-to-physician consultations ("curbside consultations") that are provided without expectation of compensation; (c) exemption from such a licensure requirement for telemedicine practiced across state lines in the event of an emergent or urgent circumstance, the definition of which for the purposes of telemedicine should show substantial deference to the judgment of the attending and consulting physicians as well as to the views of the patient; and (d) application requirements that are non-burdensome, issued in an expeditious manner, have fees no higher than necessary to cover the reasonable costs of administering this process, and that utilize principles of reciprocity with the licensure requirements of the state in which the physician in question practices. (2) The AMA urges the FSMB and individual states to recognize that a physician practicing certain forms of telemedicine (e.g., teleradiology) must sometimes perform necessary functions in the licensing state (e.g., interaction with patients, technologists, and other physicians) and that the interstate telemedicine approach adopted must accommodate these essential quality-related functions. (3) The AMA urges national medical specialty societies to develop and implement practice parameters for telemedicine in conformance with: Policy 410.973 (which identifies practice parameters as "educational tools"); Policy 410.987 (which identifies practice parameters as "strategies for patient management that are designed to assist physicians in clinical decision

making," and states that a practice parameter developed by a particular specialty or specialties should not preclude the performance of the procedures or treatments addressed in that practice parameter by physicians who are not formally credentialed in that specialty or specialties); and Policy 410.996 (which states that physician groups representing all appropriate specialties and practice settings should be involved in developing practice parameters, particularly those which cross lines of disciplines or specialties). (CME/CMS Rep., A-96; Amended: CME Rep. 7, A-99; Reaffirmed: CME Rep. 2, A-09)

D-480.999 State Authority and Flexibility in Medical Licensure for Telemedicine
Our AMA will continue its opposition to a single national federalized system of medical licensure. (CME Rep. 7, A-99; Reaffirmed and Modified: CME Rep. 2, A-09)

D-275.996 Creation of AMA Data Bank on Interstate Practice of Medicine
Our AMA will: (1) continue to study interstate practice of medicine issues as they relate to the quality of care available to patients; (2) explore the provision of information on physician licensure, including telemedicine, to members and others through the World Wide Web and other media; and (3) continue to make information on state legal parameters on the practice of medicine, including telemedicine, available for members and others. (BOT Rep. 6, I-99; Reaffirmed: CLRPD Rep. 1, A-09)

D-275.967 Telemedicine and Medical Licensure
Our AMA will work with the Federation of State Medical Boards to study how guidelines regulating medical licenses are affected by telemedicine and medical technological innovations that allow for physicians to practice outside their states of licensure. (Res. 317, A-08)