

THE PRACTICE OF MEDICINE IN WISCONSIN 2016: THE INTERSTATE MEDICAL LICENSURE COMPACT AND A PROPOSED TELEMEDICINE RULE

Wisconsin became the twelfth state to enact the Interstate Medical Licensure Compact ("Compact") into law, which, once implemented, will allow eligible physicians the option of applying for a medical license through an expedited process in Wisconsin and other states participating in the Compact. With physician shortages increasing, the Compact is intended to expand access to health care services across various patient populations, particularly in areas that are rural and medically underserved. By adopting the Compact, Wisconsin joins Alabama, Idaho, Illinois, Iowa, Minnesota, Montana, Nevada, South Dakota, Utah, West Virginia and Wyoming ("Member States"). Several other states have introduced legislation to adopt the Compact. The Compact was adopted in Wisconsin in 2015 and is available [here](#). While licensure under the Compact won't be available until after the Interstate Medical Licensure Compact Commission ("Interstate Commission") creates rules (see below), the option could become available for physicians who wish to practice in Wisconsin, perhaps as soon as the end of 2016.

OVERVIEW OF THE COMPACT

The Compact is a voluntary, alternative licensure process administered by the Interstate Commission that is intended to facilitate and streamline the process for physicians seeking licensure in Member States. A physician licensed through the Compact process would receive the same full and unrestricted license to practice in a Member State as a physician who chooses to be licensed through the traditional in-state licensure process. Below is a summary of the key provisions of the Compact.

Physician Eligibility Requirements

A physician seeking an expedited license through the Compact must meet the Compact's eligibility requirements. This includes first holding a valid, full and unrestricted medical license issued by a Member State among other requirements that may be more stringent than the criteria for a traditional medical license from Member States. For example, a physician is ineligible for a license through the Compact if his or her medical license has been subject to discipline for any reason other than the non-payment of licensing fees, which will likely be different than the traditional licensure process.

Designation of a Principal License State

The physician must designate a Member State in which he/she has a full, unrestricted medical license as the state of principal license for purposes of registration for an expedited license through the Compact. A state of principal license is one of the following:

1. The state of primary residence for the physician;
2. The state where at least 25 percent of the physician's practice of medicine occurs;
3. The location of the physician's employer; or
4. If no state qualifies under above criteria, the state designated as the state of residence for purpose of federal income tax.

Application Process

The state of principal license has the responsibility of evaluating whether an applicant is eligible for a Compact license after receiving a physician's application for an expedited license in a Member State. Certain Compact eligibility qualifications, including verification of medical education, graduate medical education and results of any medical or licensing examination are not subject to additional primary source verification if already verified by the state of principal license. As part of the eligibility evaluation, Member State licensure boards are required to perform a criminal background check of an applicant that includes the results from fingerprint or other biometric data checks. Wisconsin's Medical Examining Board ("MEB") is otherwise prohibited under Wisconsin law from requiring fingerprinting of an applicant for a medical license through the state's traditional medical license process.

The state of principal license will issue a letter to the Interstate Commission that either verifies or denies that the applicant is eligible for an expedited license. The physician also must complete the registration process and pay applicable Compact fees before a Member State can issue an expedited license.

Fees

The fees for an expedited license through the Compact have yet to be established by the Commission. In addition to Compact fees, each Member State may establish fees associated with participation in the Compact by charging physicians licensed through the Compact fees and assessments that are in addition to the fees the Member State otherwise charges the traditionally licensed physicians.

Practice of Medicine Occurs Where the Patient Is Located

The Compact expressly states that the practice of medicine occurs where the patient is located at the time of the physician-patient encounter. That position is important because it is therefore the location of the patient that determines the state with jurisdiction over the physician - the state where the physician needs to be licensed - at the time of care.

Application of State Law

When a physician is issued an expedited license, the physician is authorized to practice medicine according to the medical practice act and all applicable laws and regulations of that Member State and each of the Member States where the physician is licensed to practice. As noted above, since the location of the patient determines the state of jurisdiction over the physician, the location of the patient, and not the physician, will determine which state's laws apply.

Disciplinary Action

Any actual disciplinary actions taken by any Member State's board against a physician licensed through the Compact are considered unprofessional conduct, and the physician may also be subject to discipline by other Member State boards. In some cases, the Compact automatically triggers action in all Member States. For example, if a license granted to a physician by the medical board in the state of principal license is revoked, surrendered or relinquished in lieu of discipline, or suspended, all licenses issued to the physician by all Member State boards are automatically placed without further action necessary by any other Member State board, on the same status.

Compact Database for Sharing Information

A database will be implemented by the Interstate Commission to share information between Member States about all physicians licensed or who have applied for licensure through the Compact. For instance, a Member State board is required by the Compact to report information regarding disciplinary or investigatory action as determined as necessary and proper by rule of the Interstate Commission.

While Wisconsin enacted the Compact and it is technically effective, the Commission continues to work on establishing the administrative process for expedited licenses before the Member States can issue licenses using the expedited process. The Commission recently released an agenda for upcoming meetings to continue to work on implementation issues for the Compact. The agenda is available [here](#).

PROPOSED WISCONSIN TELEMEDICINE RULES

In addition to its work related to the Compact, the MEB is considering a proposed telemedicine rule ("Proposed Rule"). Currently, Wisconsin regulations do not specifically address the practice of medicine using telemedicine technologies.

The Proposed Rule would create a new Med Chapter 24 of the Wisconsin Administrative Code to be administered by the MEB and is currently drafted to define telemedicine, address how a valid physician-patient relationship can be established in a telemedicine setting and establish technology requirements related to telemedicine. Under the Proposed Rule, a physician using telemedicine would be held to the same standards of care and professional ethics as a physician using traditional in-person encounters with patients.

On January 20, 2016, the MEB held a public hearing to gather comments about the Proposed Rule. Several key stakeholders raised concerns about the Proposed Rule, questioning whether separate rules for telemedicine are necessary. The MEB also met on February 17, 2016 to consider the significant number of comments received at the public hearing and decided to have a stand-alone committee review the comments and discuss any needed changes to current law and the Proposed Rule. The earliest a new rule, if one is enacted, could go into effect would be in 2017. The most recent draft of the Proposed Rule posted on the MEB website is available [here](#).

CONCLUSION

The Compact and Proposed Rule could affect the practice of medicine in Wisconsin in significant ways. While much of the work of the Interstate Commission is yet to be done for the issuance of Compact licenses, and the MEB is working through the Proposed Rule at least through the end of 2016, 2017 could offer some new options for the practice of medicine in Wisconsin. While both the Compact and the Proposed Rule may pose certain new compliance challenges to be addressed, they also may present potential opportunities for the Wisconsin health care industry to expand access to physician services in the state.

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