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November 1, 2017

The Honorable David J. Shulkin, MD
Secretary
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Dear Secretary Shulkin:

On behalf of the physician and medical student members of the American Medical Association (AMA), I appreciate the opportunity to provide comments on the Department of Veterans Affairs' (VA) proposed rule concerning the Authority of Health Care Providers to Practice Telehealth. The AMA is strongly committed to helping the VA ensure the comprehensive delivery of, and timely access to, quality primary and specialty health care for our nation's veterans and expanding veterans' access to health care services via telemedicine.

The AMA applauds the VA launch of the Anywhere to Anywhere VA Health Care initiative that will expand nationwide VA Telehealth, VA Video Connect, and Veteran Appointment Request programs. Through the proposed rule, we support the VA proposal to authorize physicians and other health care professionals who are employed directly by the VA and have at least one valid state license to provide telehealth services without regard to the location of the patient or the health professional. We support such a system, as it is designed to address the significant and unique need to expand access to health care services for veterans being treated within the VA system while also ensuring that important patient protections remain in place, including the direct oversight, accountability, training, and quality control of VA-employed physicians and other health care professionals. Also, under such a system, VA-employed physicians and other VA-employed health care professionals are able to rely on the VA telehealth infrastructure (including hardware and software) pioneered by the VA to ensure that access to telemedicine services do not fail VA patients at critical junctures in their care. We commend the VA for clarifying in the proposed rule that this applies to VA-employed physicians within the scope of their VA employment—an essential qualifier for all of the foregoing reasons.

Importantly, the proposed rule explicitly provides that the VA will not authorize any contracted physician or other health care professional who is not directly employed by the VA to provide health care services via telemedicine unless the contracted physician or other health care professional is licensed in accordance with the state laws where the VA patient is located. We support this language in the proposed rule. This is an important distinction—contracted physicians and other health care professionals are not subject to the same accountability, oversight, training, and quality control as those employed directly by the VA.

The Honorable David J. Shulkin, MD

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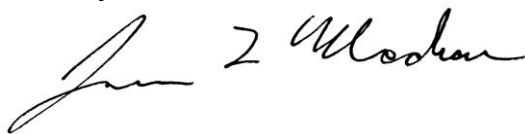
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To be clear, the AMA does not oppose the VA contracting with non-VA-employed physicians or other health care professionals to provide health care services to VA patients via telemedicine outside a VA facility; in fact we support it. However, just as it is in the case of a contracted physician providing health care services to a VA patient in person, a contracted physician providing health care services via telemedicine must also be licensed in the state where the VA patient is being treated. This structure of accountability provides protections for VA patients receiving health care services outside a VA facility, whether in person or via telemedicine, by ensuring that the appropriate licensing boards have authority over the contracted physician or other health care professional in the state where the patient is located. Without such protections, should VA patients be subject to services that fall short of the standard of care, they would have limited recourse or opportunity to seek redress and relief under their own state's medical practice and patient safety laws and regulations.

To facilitate the growing need to increase access to health care services for individuals in underserved or rural areas, including VA patients, the AMA has long advocated that state licensing boards and the Federation of State Medical Boards (FSMB) streamline and simplify the medical licensure process so that a physician already licensed in one state can more easily obtain a license in multiple states. The FSMB Interstate Medical Licensure Compact (Compact) is making this possible. The Compact is currently enacted in 22 states and is under active consideration in a growing number of other states. It reduces the administrative and cost barriers previously faced by physicians providing in-person care in multiple states. The Compact is also an important mechanism that will allow physicians to contract with the VA to provide health care services via telemedicine while ensuring that the state where a VA patient receives care via telemedicine is able to provide oversight and ensure accountability with state medical practice laws and standards of care. The AMA continues to strongly advocate that all states join the Compact.

We are aware that there are stakeholder organizations that wish to subvert the current state licensing structure by supporting legislation or regulatory changes that would redesignate the originating location for telehealth services to be the physician's location instead of the patient's location for VA contracted employees (and outside of the VA system to the broader healthcare environment). We disagree. Such a change would dismantle accountability mechanisms needed to ensure patient protection because: (1) state licensing boards where the patient is located would lack authority over practitioners licensed in another state, and (2) state boards where the practitioner is licensed would have no authority to conduct investigations in a differing state where the patient is located. We strongly believe that, to be successful, enhancing access to care through telemedicine must be done in a manner that ensures patient safety and accountability, and that can be accomplished without subverting the current state licensing structure. The AMA is committed to advancing patient access to care through new innovations, including telemedicine, and commends you for your commitment to expand access to VA patients through the Anywhere to Anywhere VA Health Care initiative. We look forward to working closely with the VA to that goal.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Madara". The signature is fluid and cursive, with a large initial "J" and "M".

James L. Madara, MD