OREGON NURSES ASSOCIATION
ACTION REPORT

License Jurisdiction for Interstate Practice

Submitted by the ONA Board of Directors

Recommended Action:

That the ONA House of Delegates adopts the following criteria for development of any statute or policy regarding the location of license jurisdiction for interstate practice including telehealth:

The regulatory approach that will best support current and future practice and protect the public must:

1. Support the evolution of practice and legal authority
2. Promote and support high standards for the profession
3. Promote patient access to safe and effective care
4. Promote access to nursing services in all geographic locations
5. Preserve state authority
6. Promote the least cost for regulated professionals
7. Promote cost efficiency
8. Require the least infrastructure
9. Afford the simplest regulatory structure and processes possible
10. Recognize mobility of health care consumers and providers

Rationale for Reference Proposal

State Boards of Nursing are adopting policies or attempting to enact statutory requirements that may inhibit the provision of nursing care across state lines**.** As there is no clear consistent state or federal policy regarding the location of license jurisdiction, it is imperative that the profession, through state and specialty organizations and in partnership with state Boards of Nursing, influence the development of appropriate policy for this traditional and growing practice.

While many states have enacted legislation or have established policies for licensing those who provide nursing care within their borders (Rotenberg and Greenberg, 2012), this approach lacks applicability and feasibility when care is provided across borders. It is not clear that such policies are enforceable because states likely do not know which providers are interacting with their residents. In many cases, with the advent of cell phone and internet contacts, providers may not know the location of their patients

Requiring a license in each state where a patient receiving "telehealth" services might be located, even on a brief episodic basis, creates new barriers to both established and emerging practices, and increases costs in a changing health care environment.

Any policy that endorses the need for licensure in every state in which a patient might be physically located at the time of the encounter with a nurse will inhibit nurses from sharing information with patients and adopting best practices. Such requirements would come at a time when we, as a nation, are working to create increased efficiencies in our health care delivery

system by facilitating the transfer of information from nurses to their patients, thereby increasing timely access to care.

Background:

Nurses have used technology for decades to interact with patients. Follow-up phone calls to determine the condition of a patient discharged from a hospital have been a routine practice. Poison Control Centers, which provide services to a multi-state region, have provided valuable and timely lifesaving care to patients with intentional or accidental exposures. Both of these practices have historically involved nurses talking with patients in the same state and in states different from that of the nurse. While past use of remote patient contact has primarily been by telephone, more advanced technologies are now available and others, such as robots, real-time video, and electronic mail are being developed.

The appropriate use of technology to provide care will facilitate efficiency particularly for patients in remote areas, for those with physical and transportation challenges, and for those who choose to utilize alternatives to traditional face-to-face consultations. An increasingly mobile population that communicates with health care providers with cell phones and the internet is very likely to receive health care services from a provider located in another state. For example, many retired individuals choose to live part of the year in warm climates of the Southwest United States. If their primary provider is located in Oregon and they need advice about a health care situation, their care will occur via the telephone, video technology, or e-mail. Simple follow-up calls such as those made by ED nurses are often made to cell phones, making it difficult or impossible to know in which state the patient is located. In both scenarios, holding a license in all states in which a patient might be located lacks feasibility.

While reimbursement policies for such technology-based “visits” have lagged, the use of electronic and other media for giving and receiving health care services is expected to continue growing. Standards for primary care are increasingly incorporating a variety of patient interactions, including phone and e-mail.

Providing care to a patient who is not in the same location as the provider raises questions about where the encounter is actually occurring. Some assert that because the patient is choosing the provider, he or she is “coming to the visit” by electronic means rather than being physically present with the provider. Alternatively, others believe that the “visit” takes place at the patient’s location. While this may seem a small distinction, it raises the question of license jurisdiction (Hutcherson, 2001).

Licensure requirements for nurses who provide technology-enabled care across state lines can vary. This coupled with a lack of statutory authorization in some cases can make them unclear. For example, the Oregon State Board of Nursing advises nurses that they must be licensed in Oregon to provide care via the telephone or other technologies but no statutory authorization or Board policy exists to support such advice. The Washington State Department of Health Nursing Commission reportedly gives similar advice, despite verbally acknowledging the lack of statutory or policy authority. Conversely, in California “telephone medical advice” was made part of the Business and Professions Code and requires California licenses for employees of businesses with at least five full-time equivalent staff. Massachusetts has statutory authority

requiring a state license for nurses from another state who provide telecommunication care to patients in Massachusetts.

At the federal level, in 1998 the Health Care Financing Administration developed reimbursement policies for "telehealth". These policies determined that the site of practice is the site where the provider is located. In 2011, the Centers for Medicare and Medicaid Services (CMS) issued a final rule for "Hospitals and Critical Access Hospitals Conditions of Participation: Telemedicine Credentialing and Privileging," which required licensure in the state where the patient is receiving telemedicine services. In the agency's comments, however, it defers to state laws related to licensure.

Proposed Implementation:

- Advocate for the proposed policy with the Oregon State Board of Nursing, professional associations for other health care professionals, Oregon legislative and regulatory bodies, and members of Congress and federal agencies.
- Provide to members to assist in advocating for the proposed policy in state legislatures and agencies.
- Publish information about innovative nursing practice activities that use technology and assess their impact on quality, access, and cost.

Financial Impact

Proposed implementation activities are within the scope of existing ONA activities including partnership with the Oregon State Board of Nursing, professional associations in nursing and other disciplines and in government relations activities with legislative and regulatory systems.

References

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State of Washington Administrative Code, Title 246, chapter 2460840, Section 246-840-700:

Standards of Nursing conduct or Practice, http://apps.leg.wa.gov/WAC/default.aspx?cite=246-840-700

State of Washington Nursing Practice Act, RCW 18.79.030: Licenses required – Titles: http://apps.leg.wa.gov/RCW/default.aspx?cite=18.79

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