ASPR TRACIE Technical Assistance Request

Requestor:
Requestor Phone:
Requestor Email:
Request Receipt Date (by ASPR TRACIE): 15 January 2016
Type of TA Request: Standard

Request:

[redacted] is seeking resources related to provider licensure portability and worker compensation across jurisdictional boundaries for state medical team (SMAT) members that are employed by hospitals.

Response:

The ASPR TRACIE team conducted research for examples of licensure portability and worker compensation across jurisdictional boundaries, specific to medical teams. Unfortunately, there are not many open source resources available on this topic. The first section below includes general information/considerations as described in a 2013 publication, "Portability of Emergency Medical Service Licenses across State Borders."[1] Section II includes additional resources that may be helpful.

I. General Information/ Considerations

- Literature available regarding portability of licenses across state borders is comprehensive **except for the medical field and EMS**. Nurse compact is the closest medical model for interstate licensure portability, however, the compact is conditional. States who have adopted the compact have conditions ranging from time delays and state validation to fiscal requirements.
- Federation of State Medical Boards received a grant to streamline the state medical licensure process and reduce statutory and regulatory barriers in telemedicine from HRSA (2012). The new committee's intent was to explore mechanisms that can improve portability of state medical licenses. They are now looking at a more incremental approach to licensure portability coupled with an expedited approach for state to state licensure recognition.
    - Interstate Medical Licensure Compact is an expedited licensure process for eligible physicians that improve licensure portability and increases patient access to care. It allows for a streamlined licensing process for physicians interested in practicing medicine in multiple states.
    - Press release on January 21, 2016 announces that six new states introduce the Interstate Medical Licensure Compact Legislation. Since 2015, 26 states have enacted or introduced legislation to expand access to healthcare through expedited licensure (Virginia is not one of these states). Twelve states have enacted the

[1] Patrick, Richard W. (2013). Running Head: Portability of Emergency Medical Service Licenses across State Borders. US Department of Homeland Security. **Note: As of 2/17/16 this link is no longer available**.

Compact, including Alabama, Idaho, Illinois, Iowa, Minnesota, Montana, Nevada, South Dakota, Utah, West Virginia, Wisconsin and Wyoming.

- Two federal agencies have explicit statutory responsibility for portability of state health care licenses: National Health Service Corps 42 USC § 254 f(e) and Military 10 USC § 1094(d) and the 2012 National Defense Authorization Act 713- amending 10 USC § 1094(d).
    - Military parameters based on the Secretary of Defense authorization and in 2011 was extended to include DoD civilians and certain contractors.
    - Most government agencies with healthcare personnel lack statutory authority for licensure portability, but rightfully follow OPM hiring guidance. As such, they rely on the Constitution's supremacy clause which enables federal law to preempt state law where the two conflict.
- The US Department of Homeland Security, Office of Health Affairs (OHA) conducted a state by state assessment of categories relating to credentialing licensure and portability across state lines in 2012. Illinois is the only state identified that does not require an EMT to be a member of a company providing emergency services such as ambulance or fire in order to have a state license.
- Most states have a medical practice act that provides authority to regulate the health and medical practice within the respective state's borders. Example: Idaho Title 54 Professions, Vocations, and Businesses, Ch. 18, Physicians and Surgeons 54-1804- allows persons not holding a license in the state to engage in activities included in the practice of medicine if in the armed forces, state public health service, Veterans Affairs during official duties; person authorized to practice in another state or country while rendering care in a time of disaster or while caring for an ill or injured person at the scene of an emergency; a person rendering aid in an emergency where there is no fee for the service contemplated, charged, or received.
- Good Samaritan Laws- most states have their own specific laws with varying application to first responders. In most cases, the laws only apply to individuals who do not have a duty to act.
- Uniform Emergency Volunteer Health Practitioners Act (UEVHPA) provides uniform legislative language to facilitate organized response efforts among volunteer health practitioners. This language has not been adopted in Virginia.
- Emergency Management Assistance Compact (EMAC) is available in all 50 states, the US Virgin Islands, Puerto Rico, Guam, and District of Columbia are EMAC members.
    - **Article V- Licenses and Permits**: Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the Requesting State may prescribe by executive order or otherwise.
    - **Article VI- Liability**: Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the Requesting States for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such

forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

II. Other Resources

Boyajian-O'Neill, L., Gronewold, L., Glaros, A., Elmore, A. (2008). Physician Licensure During Disasters: A National Survey of State Medical Boards. Journal of the American Medical Association, 299(2):169-171.

This article aims to determine the policies of each state regarding physician licensure during disasters. Results from the survey include: 18 states do not permit expedited physician licensure or exemption; 32 states and the District of Columbia have statutes specifically granting licensure for volunteer physicians during a disaster. Of these 32 states, 13 of them offer an expedited licensure process and 19 states and DC offer licensure through exemption (direct reciprocity).

Buck, C. (2013). Policy Analysis of Health Professional Licensing During Disaster Response in the United States. Wright State University, CORE Scholar, Master of Public Health Program Student Publications.

Provides an analysis of post-disaster assistance (e.g., PAHPA, NDMS, Nurse Licensure Compact, etc.) and post-disaster evaluations of medical licensing.

Carfora, W. (n.d.). Standard of Care and Liability Across State Lines.

Provides information regarding professional liability of healthcare workers practicing under a standard of care that has been altered to accommodate disaster circumstances, and liability implications of medical practice by practitioners not licenses in the jurisdiction.

National Governors Association Center for Best Practices. (n.d.). Beyond EMAC: Legal Issues in Mutual Aid Agreements for Public Health Practice.

This issue brief discusses the strategies that governors should take regarding license portability, workers compensation, Good Samaritan Laws, credentialing, cost of recovery and sending resources, and cross-border movement of public health professionals in non-emergencies across state lines.

Pennsylvania Medical Society (2015). New Laws Allow Traveling Team Physicians to Treat Players without a Pennsylvania License.

This article describes a process by which sports teams across the country have successfully achieved physician license portability in 22 States. This process could be applied to disaster situations.

Rutkow, L., Gable, L., and Links, J.M. (2011). Protecting the Mental Health of First Responders: Legal and Ethical Considerations. Journal of Law, Medicine, and Ethics.

The authors discuss the ethical and legal issues associated with three key areas in first responder mental health: mental health screening; licensure portability of mental health care providers; and workers' compensation for mental health claims.

Trust for America's Health (n.d.). TFAH Liability Protections Relevant Statutes.

Provides a state-by-state description of liability protection statues.

Western New York Public Health Alliance, Inc. (2009). Cross-Border Issue Analysis: Guide to Multi-Jurisdictional Collaborations.

This document provides an assessment that can be used by local leadership o determine if sufficient resources are available in the jurisdiction to respond to an emergency. It also includes legal implications of exchanging resources among jurisdictions. It addresses the various formal and informal means to develop inter-jurisdictional agreements, the potential legal issues these agreements may generate, and the benefits and liabilities governments and their agents may reasonably expect when entering into such agreements.