Keeping you informed from Washington, D.C.

November 14, 2024

More election outcomes, uncertainties

As results continue to be certified from last week's election, we are beginning to see how state legislatures are shaping out in terms of political balance. Overall, there was minimal change with regards to legislative control, with Republicans flipping **Michigan**'s House of Representatives and Democrats losing control of **Minnesota**'s House of Representatives, which will now be tied. Control of **Alaska's** chambers remain in flux, although it appears likely that lawmakers will persist with the unique multi-party majority coalitions that existed prior to the election. Overall, the number of "trifectas" decreased from 23 Republican-controlled, 17 Democrat-controlled, and nine divided to 22 for Republicans, 14 for Democrats, and 13 divided. For more information on the lay of the land around state capitols, click **here**.

On the Federal side, as **President-elect Donald Trump** fills out his cabinet, we will keep a close eye on his selections to health-related posts, most notably HHS. On Wednesday, Senate Republicans **selected** **John Thune (R-SD)** as their new majority leader, which could have major implications on health care, as the new leader is a known telehealth proponent, notably cosponsoring the ***CONNECT for Health Act (S. 2016)***, which would permanently remove geographic restrictions on telehealth services, expand originating sites to include the home, allow FQHCs and RHCs to provide telehealth services, expand authority for practitioners eligible to furnish telehealth services, repeal the six-month in-person visit requirements for telemental health services, and allow waiving telehealth restrictions during public health emergencies, among other aspects.

Have question about the upcoming Congress? Please do not hesitate to**reach out** for assistance!

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Pending Legislation of Interest

Artificial Intelligence
The **Eliminating Bias in Algorithmic Systems Act of 2024 (H.R. 10092)** introduced by **Rep. Summer Lee (D-PA)**, would require any federal agency using artificial intelligence (AI) algorithms to have an office of civil rights dedicated to mitigating risk posed by bias and discrimination in utilized algorithms. Each office must employ technological experts in bias, discrimination, and other risks associated with AI. The companion bill **(S. 3478)** was introduced by **Sen. Markey (D-MA)** in December 2023.

Graduate Medical Education

The **IHS Provider Expansion Act (H.R. 10078)**, introduced by **Rep. Melanie Stansbury (D-NM)**, would establish the Office of Graduate Medical Education Programs ("Office") within the Indian Health Service, funded at $4 million per fiscal year, tasked with creating "a pipeline for future health care professionals, paraprofessionals, and other health-related professionals to participate in residency and fellowship programs, oversee current residency and fellowship programs… and facilitate the establishment of additional residency programs that support recruitment and retention of health care professionals… work in consultation or coordination with academic institutions, [and] coordinate medical student and elective rotational and education track programs." The bill also creates an interagency working group to support implementation, long-term planning, and sustainability of the Office.

Regulatory News

On November 13, the **Office of Management and Budget (OMB)** completed its review of and approved the **DEA's Third Temporary Extension of COVID-19 Telemedicine Flexibilities for Prescription of Controlled Medications**, the much anticipated extension of the COVID-era waivers, which were scheduled to expire December 31, 2024, that allow practitioners to prescribe controlled substances via telemedicine. At the moment, the length of the extension is unclear, as well as any possible restrictions.

Judicial News

On November 1, the U.S.D.C. for the **District of Maine** ruled, in ***Doe and Roe v. Austin***, that TRICARE's (the military health-care program) exclusion of coverage for medically necessary gender-affirming surgery violates the 14th Amendment's equal protection guarantee.

Federal Contact

The FSMB's federal legislative staff will continue to track and monitor legislation and regulations of interest to state medical boards. If there is specific legislation you would like us to assist with, please contact **Lisa Robin**, Chief Advocacy Officer, at lrobin@fsmb.org, or by phone at (202) 463-4006.

Regulatory News

Board Structure and Function
As filed by the **Office of the Lieutenant Governor of Alaska**, the **State Medical Board** issued a **final rule** that requires applicants to disclose any disciplinary action taken against them at the hospitals and/or health care facilities at which they worked in the last five years, as well as whether the applicant has been the subject of a revoked or restricted DEA registration.

The **Nevada Board of Osteopathic Medicine** issued **final rules** that streamline licensure for PAs in behavioral health centers and removes the requirement for licensees to submit a report summarizing different types of procedures undertaken at the facility.

The **Oklahoma State Board of Medical Licensure and Supervision** issued a **proposed rule** regarding their Board structure, increasing the size of the Board to 11 by adding two additional lay members to the existing two.

The **Oregon Board of Naturopathic Medicine** issued final rules on a myriad of issues, including setting standards for approved attended and self-directed CME for licensees (**850-040-0230**), approved CME entities (**850-040-0215**), requiring CME prior to administering ketamine (**850-040-0250**), and setting CME requirements for inactive licensees (**850-040-0210**).

The **Pennsylvania Board of Medicine** issued **final rules** regarding licensure by endorsement, specifically adding the option of a Board interview prior to granting the license, giving the Board discretion over whether an applicant's prior disciplinary acts preclude them from the endorsement process, and creating a provisional endorsement license "while the applicant is satisfying remaining

requirements" that may be valid up to one year.

The **Texas Medical Board** issued a **proposed rule** that would repeal sections **§196.1-§196.5**, which states that a licensee can relinquish their license at any time provided the relinquishment was submitted in writing and the licensee is not under investigation by the Board. The proposed rule would also repeal language surrounding regaining licensure following relinquishment. These sections would be repealed under this proposed rule and replaced with new language at a later date.

Healthcare Professionals' Scope of Practice
The **Idaho Division of Occupational and Professional Licenses** issued a **proposed rule**, under **Executive Order 2020-01**, which would govern the practice of PAs and graduate PAs, requiring both groups to pass the PANCE exam put forth by the NCCPA. This proposed rule defines practice standards for PAs, including the creation of a collaborative practice agreement, a requirement against advertising, and the completion of continuing education requirements set by NCCPA. Eligible individuals may apply to the Board for licensure as a graduate PA for a period of six months. Once passage of the examination is verified by the Board, the graduate PA's license will be converted to a permanent license. While graduate PAs are not entitled to issue any written or oral prescriptions, they may apply for prescribing authority once their license is made permanent.

The **Virginia Board of Medicine** issued a **final rule** pursuant to **SB 133** (2024), which allows PAs employed by a hospital, state facility as defined, or a federally qualified health center designated by CMS to practice without a separate written or electronic practice agreement provided they are part of a patient care team led by a physician or podiatrist.

Opioids/Substance Use Disorder Treatment
The **Ohio Medical Board** issued several final rules regarding office-based opioid treatment (OBOT). The Final Rule (**4731-33-03**) requires physicians providing office-based opioid treatment (OBOT) to thoroughly assess the patient prior to prescribing, complete CME courses on a biennial basis, and establish a robust treatment plan that includes patient education, physician rationale for prescribing, random drug testing, and documentation regarding psychosocial intervention. PAs may also provide OBOT to patients, but they must follow the same regulations and OBOT must be within the supervising physician's normal course of practice and expertise (**4730-4-03**). PAs may also provide opioid withdrawal treatment, which must be individualized for each patient (**4730-4-02**).

The **Virginia Board of Medicine** issued a **final rule** pursuant to **HB 699** (2024) regarding initiating opioid treatment. Patients must receive counseling regarding the associated risks of opioid use, the reasons why the prescription is necessary, and any alternative treatments that may be available. Excluded from this regulation are patients who are in active treatment for cancer, receiving hospice care, residents of a long-term care facility, receiving treatment for sickle cell disease, and those who are being prescribed an opioid in the course of treatment for substance abuse or opioid dependence.

Healthcare Professionals' Scope of Practice
The **Virginia Board of Pharmacy** issued **final rules** regarding pharmacists practice, specifically allowing pharmacists who engage in bona fide pharmacist-patient relationships to administer the COVID-19 vaccine and initiate treatment for tobacco cessation therapies.

Pain Management/Prescribing Practices
The **Mississippi Board of Pharmacy** issued **final rules** that require dispensing physicians of a permitted facility to comply with the same compounding requirements of permitted pharmacies. The Board of Medical Licensure was notified of the amendment and supports the change.

Pending Legislation of Interest

Artificial Intelligence
Texas HB 1265 - Creates a statute relating to "Artificial intelligence mental health services," provides definitions, and requires providers offering AI mental health services, defined as "counseling, therapy, or other mental health services," to first be approved, be provided by a licensed mental health professional who is "available at all times" to review the progress of treatment, be available for intervention, and intervene in situations detailed in the statute. Mental health professionals must first advise patients that they are receiving care from AI and receive signed, informed consent. Before offering care, the AI must first "demonstrate competency and safety," may not discriminate against an individual on the basis of race, ethnicity, gender, or sexual orientation; and receive affirmative approval from the Texas Health and Human Services Commission (HHSC), which must publicly post the testing results of the AI. Violations of the statute may result in disciplinary action to the mental health professional, which also has reporting responsibilities detailed in statute. The HHSC executive commissioner is empowered to promulgate rules for implementation, and the legislation would be effective September 1, 2025.

International Medical Graduates
Texas HB 994 and HB 296 – Requires the Board of Medicine to issue a **license** to an IMG that:

- Is a resident of and licensed in good standing to practice medicine in Australia, Canada, Ireland, Israel, New Zealand, Singapore, South Africa, Switzerland, or the UK; *or* passed all

parts of one the LMCC, NBOME, NMBE, FLEX, or USMLE (**TX Occ Code § 155.0511**)
- Has a degree of doctor of medicine or "substantially similar" degree*determined by the Board* to be in good standing in accordance with Board rule;
- Has completed a residency or "substantially similar" post-graduate medical training;
- Has practiced medicine for at least two years;
- Is proficient in English; and
- Has Federal work authorization.

For IMGs that are not practicing in the aforementioned countries, "The board shall adopt rules regarding the approval of foreign medical programs (FMPs)… that [are] substantially similar to the education or training provided by a medical school described in **TX Occ Code § 155.003(a)(4)**." The Board shall approve applications within 120 days unless applicants do not meet requirements, or "finds by clear and convincing evidence that the majority of the program's graduates are not likely to provide medical care that satisfies applicable board standards.

FMPs may appeal Board denials, but the Board **shall** approve FMPs "if at least five graduates of the program have been issued a license to practice medicine," and the Board must maintain a list of all approved FMPs on their website.

Further, the bill requires the Board to issue a **provisional license** to an IMG that:
- Has a degree of doctor of medicine or "substantially similar" degree*determined by the Board* to be in good standing in accordance with Board rule;
- Is licensed in good standing to practice medicine in another country;
- Has completed a residency or "substantially similar" post-graduate medical training;
- Has practiced medicine for at least two years;
- Is proficient in English;
- passed all parts of one the LMCC, NBOME, NMBE, FLEX, or USMLE;
- Has Federal work authorization; and
- Has an offer of employment by a health system, hospital, hospital-based facility, freestanding emergency facility, or urgent care clinic.

The provisional license is valid for a maximum of three years, after which, the Board **shall** issue a full license, so long as the provisional licensee has passed all examination requirements and "any other requirement under Board rule."

Lastly, the bill requires the TMB to adopt rules necessary to implement the statute by **December 1, 2025**. The bill, if enacted, would become effective **September 1, 2025**.

Reproductive Care
Virginia SB 743 – Prohibits the extradition of individuals who receive or assist with legally permitted reproductive health care, regardless of laws in the requesting state.

Legislation Affecting Board Authority

The FSMB continues to closely monitor legislative areas that could have significant implications on the practice and regulation of medicine: off-label treatment, reproductive health, and gender-affirming care. In addition to legislation highlighted in FSMB Advocacy Network News, all tracked COVID-19 adjacent legislation can be found **here**, all tracked reproductive health legislation can be found **here**, and all tracked gender-affirming care legislation can be found **here**.

State Contact

The FSMB's state legislative staff will continue to track and monitor legislation and regulations of interest to state medical boards. If there is specific legislation you would like us to assist with, please contact **John Bremer**, Director, State Legislation and Policy, at jbremer@fsmb.org, or by phone at (202) 463-4021.

Resources for Regulators

- Resources for FSMB Members
- Pathway to Medical Licensure in the U.S.

Meetings & Events

November 20-22, 2024: Administrators in Medicine Fall Workshop & CMBE Institute, Phoenix, Arizona

April 24-26, 2025: FSMB 113th Annual Meeting, Seattle, Washington

September 3-7, 2025: 16th International Conference on Medical Regulation, Dublin, Ireland

more meetings & events

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