

ARTICLES

TELEMEDICINE AND OCCUPATIONAL LICENSING

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Telemedicine offers patients the ability to obtain medical care from distant physicians, including nationally recognized experts in a particular specialty. Before the pandemic, nearly thirty states joined an interstate compact that cross-licenses physicians in signatory states. Once the pandemic struck, numerous states allowed out-of-state physicians to treat their residents for the duration of the pandemic, and some have revised their laws going forward. But there are a large number of people from Maine to Alaska who cannot take advantage of telemedicine. The principal obstacle to more widespread use of telemedicine is the state monopoly on physician licensing. The Supreme Court of the United States upheld the constitutionality of state physician licensing regimens in 1889, a time when Congress lacked the authority to regulate what then was a necessarily local, one-on-one practice of medicine. Yet, times have changed. Modern communications facilities permit physicians to engage in the practice of medicine at a distance. The Supreme Court's contemporary Commerce Clause decisions permit Congress to authorize the use of telemedicine as a means of addressing the nation's current short-term, pandemic-driven need to provide patients easier ways to visit doctors, as well as longer-term interests such as improving medical care in underserved communities. Congress should consider ways to make greater use of telemedicine in the immediate future.

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