

# How to Effectively and Legally Implement Telehealth in Your Organization

HCCA Compliance Institute

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## Speakers



**Katea M. Ravega, JD**  
Partner, Indianapolis Health Law  
Group Chair  
Quarles & Brady  
(317) 399-2849  
Katea.Ravega@quarles.com



**Joseph F. Zielinski, JD, CHC, CHRC**  
Of Counsel  
Dinsmore & Shohl  
(317) 860-5314  
Joseph.Zielinski@dinsmore.com



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A Little Humor  
Before We  
Begin



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Where are we  
going?

[Part One](#)  
Program Fundamentals

[Part Two](#)  
Payment Issues

[Part Three](#)  
Lessons From Enforcement

[Part Four](#)  
Perspectives on Operation



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# Part One

Program Fundamentals

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## Telehealth & Terminology

- Inclusive of different health care professions
  - Tele- X becoming the norm
  - Telemedicine, telenursing, telenutrition, telepharmacy
  - "Telehealth" – inclusive BUT SEE state regulatory definitions
  - Sometimes also condition-focused – telestroke care
- Modalities – interrelated with services
  - Live video or other real-time virtual visits
  - Asynchronous services - store and forward
  - Remote patient monitoring

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## Examples of Different Service Models

- Facility-Based
- Provider-Provider
- Specialist-Generalist
- Direct-to-Consumer

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## Applicable Requirements

- Will vary depending on facts (e.g., provider type or facility, services provided, technology, payors, geographic locations)
- Healthcare Regulatory + data privacy and security, AKS, Stark law, and other potentially relevant federal requirements, such as TCPA
- Sources of payor requirements (e.g., Medicare, Medicaid, commercial coverage, and state insurance)

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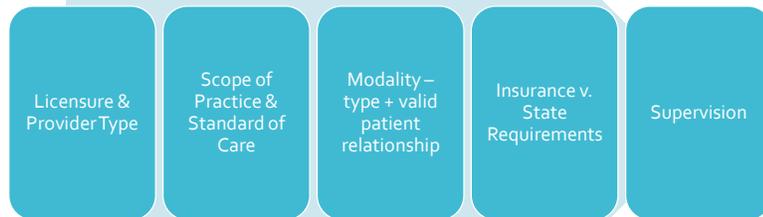
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## Common Regulatory Themes



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- **Q:** What are the state licensure compacts?
- **A:** Licensure compacts help reduce or simplify licensure processes for the participating states and license type.
  - Doctors
  - Nurses
  - Physical Therapists
  - Psychologists

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## Additional Program Details

- Prior in person visit requirements
  - May or may not be needed in order to establish valid patient relationship
  - Prescribing or not
- Consent
- Recordkeeping
- In-person presenter
- Encounter disclosures
- Insurance coverage
- Practice or prescribing limits
- Patient verification

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## Pandemic Waivers (Still Here)

- HIPAA
- DEA
- Medicare
- PREP Act
- State waivers vary greatly
  - Licensure
  - Scope of practice

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# Part Two

Payment Issues

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## Basic Pre- COVID Medicare and Telehealth

- Reimbursement limited to specific:
  - Modes of Communication
  - Geographic Regions – rural focus
    - HRSA Medicare Telehealth Payment Eligibility Analyzer  
<https://data.hrsa.gov/tools/medicare/telehealth> (originating site)
    - Be aware of changes in geographic restrictions – stroke and substance abuse treatment examples

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## Current Medicare and Telehealth

- Increased use during pandemic
- Attempts to make some of the waiver changes permanent
- Various levels of success
- Watch this space!

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## Medicaid and Telehealth

- **Purpose:** Medicaid describes telemedicine as seeking to improve a patient's health by permitting two-way, real time interactive communication between the patient at the originating site and the physician or practitioner at the distant site.

**\*\*\*Note that the federal Medicaid statute does not recognize telemedicine as a distinct service\*\*\***

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## Medicaid

- Medicaid guidelines require all providers to practice within the scope of their State Practice Act and allow states to add binding scope of practice or other restrictions.
  - Examples include:
    - Providers must comply with applicable licensure requirements.
    - Some states require patient consent for telehealth services.
    - Statewideness – refers to a requirement that a program must be operational statewide. Allows states to implement a managed care delivery system in specific areas of the state rather than the whole state

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## Medicaid and Telehealth

- The compliance program should account for the scope of variety, including different aspects of Medicaid coverage, such as:
  - i. What types of services are covered when provided via telemedicine;
  - ii. Where in the state it can be covered – geography and also provider types or facilities;
  - iii. How the service must be provided in order to be covered;
  - iv. What types of telemedicine practitioners or providers may be reimbursed, as long as such practitioners or providers are “recognized” and qualified according to the state Medicaid requirements; and
  - v. How much to reimburse for telemedicine services, as long as such payments do not exceed Federal Upper Limits.

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## Medicaid and Telehealth

- General Medicaid requirements of comparability, statewideness and freedom of choice do not apply with regard to telemedicine services. For the compliance program, that means:
  - **Comparability** – refers to a requirement that benefits for enrollees must be equivalent to fee-for-service benefits. Allows states to provide different benefits to people enrolled in a managed care delivery system.
  - **Freedom of choice** – refers to enrollees ability to services from any qualified provider; waiving this requirement requires enrollment in a managed care program and limits choice of providers to those in the health plan's network.
  - **Statewideness** – refers to a requirement that a program must be operational statewide. Allows states to implement a managed care delivery system in specific areas of the state rather than the whole state

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## Medicaid and Telehealth

- 50 state Medicaid programs offer some type of coverage for telehealth services (most commonly interactive live video).
- 14 (4 pending) state Medicaid programs offer coverage of asynchronous (store-and-forward) telehealth services.
- 22 state Medicaid programs offer coverage of remote patient monitoring technologies.
- 42 state Medicaid programs offer coverage without geographic restrictions (e.g., rural urban).
- 23 state Medicaid programs set forth a list of specific sites that can serve as an originating site
- 39 state Medicaid programs include some sort of informed consent requirement.

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## Medicaid and Telehealth

- Payment Options state Medicaid programs can implement include:
  - i. Reimbursement of physicians or other licensed practitioner at the distant site and a facility fee to the originating site;
  - ii. Reimbursement of additional costs such as technical support, transmission charges, or costs related to equipment;
  - iii. Add-on costs can be incorporated into the fee-for-service rates or separately reimbursed as an administrative cost by the state; and
  - iv. If they are separately billed and reimbursed, the add-on costs must be linked to a covered Medicaid service.

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## Medicaid and Telehealth

- **Q:** If a state initiates a telehealth policy or changes its reimbursement options from year to year, must the state file a State Plan Amendment?
- **A:** No. CMS has clarified states' flexibility to define their telehealth policy without filing a State Plan Amendment (SPA), stating that "States are not required to submit a (separate) SPA for coverage or reimbursement of telemedicine services, if they decide to reimburse for telemedicine services the same way/amount that they pay for face-to-face services/visits/consultations."
- **Compliance Awareness:** In practice, this means reimbursement requirements can change more often than they might if a state had to file an SPA every time.

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## Medicaid and Telehealth

- Compliance Program Risk Areas include but are not limited to:

- i. Variations in state specific requirements;
- ii. Reimbursement details & changes over time;
- iii. Differences in coverage and requirements between Medicare and Medicaid;
- iv. Differences in coverage by diagnosis, provider type, and by type of telehealth service; and
- v. Consent requirements.

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# Part Three

Telehealth Enforcement

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## Telehealth Enforcement

- \$24 Million Settlement for Telemedicine Compounding Scheme (District of New Jersey (January 2021))
- Telemedicine Pharmacy Telemarketing Scheme (Eastern District of Tennessee (January 2021))
- 2020 Nationwide Telefraud Takedown
- OIG has Seven Different Telemedicine Audits ongoing
- Principal Deputy Inspector General Grimm Memo on Telehealth

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# Part Four

Perspectives on Operation

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## Program Set Up

- Ensure compliance program meets OIG Seven Elements of Effective Compliance Program (including Compliance Officer)
- Develop & implement policies and procedures
- Regularly review claims audits (identify outliers)
- Appropriate training and education
- Process for reviewing and confirming licensure
- Create an audit plan based on risk assessment

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## Operating Post COVID-19

- If implementation or current operation depends on any waiver, what is the plan for transitioning operation to compliance post-waiver?
- Areas of consideration & special attention:
  - Claims and reimbursement
  - Data privacy & security
  - Licensure
  - Prescribing practices

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## Resources, Checklists and Best Practices

- Incorporate telehealth program into existing policies, auditing and monitoring, and training
- Customize tools for your specific program, patients, and team
- Use resources provided by reputable sources
- Work with compliance and legal to update materials, compliance program, and training regularly – rapid change!

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Questions?



**Katea M. Ravega, JD**  
Partner, Indianapolis Health Law  
Group Chair  
Quarles & Brady  
(317) 399-2849  
Katea.Ravega@quarles.com



**Joseph F. Zielinski, JD, CHC, CHRC**  
Of Counsel  
Dinsmore & Shohl  
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Joseph.Zielinski@dinsmore.com

