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# What's New on Telehealth Legal Landscape

*Kentucky Telehealth Summit 2019*

May 2019

**FOLEY**  
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# Coverage and Reimbursement

# Medicare Telehealth Coverage - The Perfect Storm



**DISTANT SITE  
PROVIDER**



**ORIGINATING  
SITE**



**COVERED  
SERVICES  
(CCPT CODE)**



**GEOGRAPHIC  
LOCATIONS**

**PROPER TECHNOLOGY PLATFORM**

# **MEDICARE TELEHEALTH REIMBURSEMENT**



**GEOGRAPHIC  
LOCATIONS**

# Telehealth Medicare Coverage/Payment

- Geographic Location

- Originating site (where the patient is) must be in either:
  - a rural Health Professional Shortage Area (HPSA) in a rural census tract; or
  - a county outside of a Metropolitan Statistical Area (MSA)
- Entities participating in a federal telehealth demonstration project qualify regardless of location
- U.S. Health Resources and Services Administration (HRSA) makes geographic designations
- Location analyzer
  - <https://data.hrsa.gov/tools/medicare/telehealth>

# MEDICARE TELEHEALTH REIMBURSEMENT



**GEOGRAPHIC  
LOCATIONS**



**ORIGINATING  
SITE**

# Telehealth Medicare - Originating Site (patient location)

- Physician/practitioner office
- Hospitals
- Critical Access Hospitals
- Rural Health Clinics
- Federally Qualified Health Centers
- Hospital-based or CAH-based Renal Dialysis Centers (including satellites)
- Skilled Nursing Facilities
- Community Mental Health Centers

## NEW FOR 2019

- Renal Dialysis Facilities (Jan. 2019)\*
- Homes of beneficiaries with ESRD receiving home dialysis (Jan. 2019)\*
- Mobile Stroke Unit (Jan. 1, 2019)\*
- Beneficiaries home when receiving SUD and related mental health services (July 1, 2019)\*

**\*Geographic limitations do not apply**



# MEDICARE TELEHEALTH REIMBURSEMENT



**GEOGRAPHIC  
LOCATIONS**



**ORIGINATING  
SITE**



**DISTANT SITE  
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# Medicare Distant Site Practitioner

- Physicians
- Nurse practitioners
- Physician assistants
- Nurse-midwives
- Clinical nurse specialists
- Certified registered nurse anesthetists
- Clinical psychologists
- Clinical social workers
- Registered dietitians or nutrition professionals

*\*Check for conflicts under state law, e.g., Medicaid*

**\*No location requirement for the distant site practitioner**

# MEDICARE TELEHEALTH REIMBURSEMENT



**GEOGRAPHIC  
LOCATIONS**



**ORIGINATING  
SITE**



**DISTANT SITE  
PROVIDER**

**PROPER TECHNOLOGY PLATFORM**

# Telehealth Medicare Coverage/Payment (continued)

## ■ Technology

- Must be “synchronous.” Communication must be live interactive audio and video connection that allows for “real time” communication
- No coverage for “asynchronous” or “store and forward” technology outside of federal demonstration program
- No coverage for remote patient monitoring

# **MEDICARE TELEHEALTH REIMBURSEMENT**

## THE PERFECT STORM



**DISTANT SITE  
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**ORIGINATING  
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**COVERED  
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**GEOGRAPHIC  
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**PROPER TECHNOLOGY PLATFORM**



# Telehealth Medicare Coverage/Payment (continued)

- Covered Services

- Published each year by November 1 in final Physician Fee Schedule

- <https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes.html>

- Additional codes may be requested and added

- Category 1 requests. Granted if similar to the types of telehealth services already covered
- Category 2 requests. Granted if not similar to the currently approved telehealth services; code is accurate and use of telehealth provides a demonstrated benefit – evidence required

# Telehealth Medicare Coverage/Payment (continued)

## Resources:

- ***Medicare Telehealth Fact Sheet***
- <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/TelehealthSrvcsfctsht.pdf>
- ***Physician Fee Schedule Look up – Great Tool!!***
- <https://www.cms.gov/apps/physician-fee-schedule/overview.aspx>

# No longer *“not a Medicare issue”*

- Expansion of originating site
- Medicare advantage expansion
- Reimbursable “non-telehealth” digital health
  - Unrestricted by SSA §1834(m)
  - “Technology – based” services
  - Remote patient monitoring



# “Technology – based” services

- *Per CMS: Innately not face-to-face =not “telehealth”*

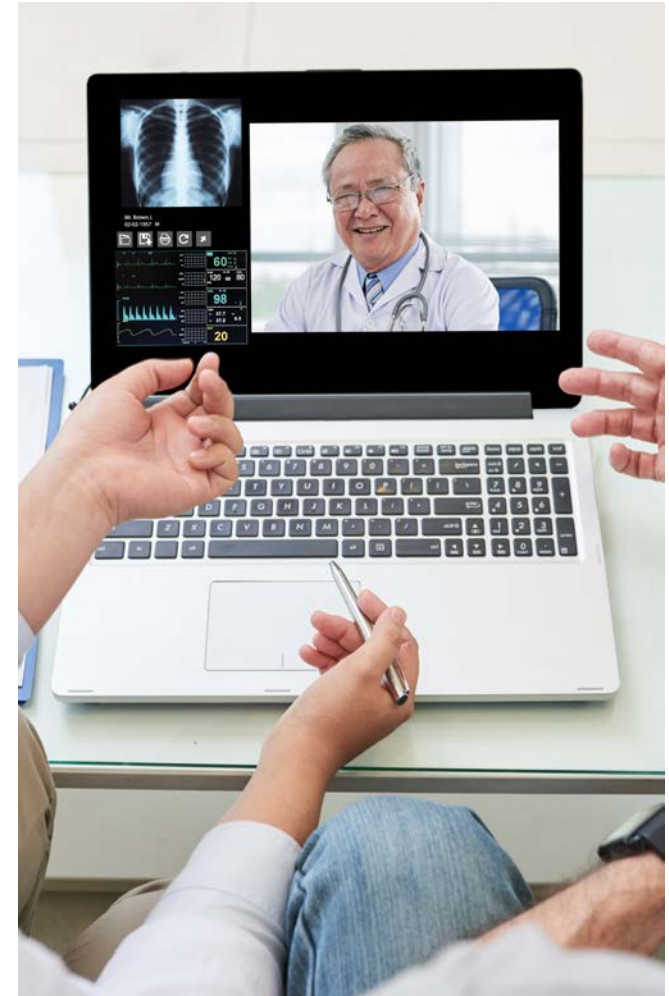


- Virtual Check-In (HCPCS G2012)
  - Established patients
  - No E/M in prior 7 days or subsequent 24 hours/“soonest available”
  - 5-10 minutes of discussion
- Remote Evaluation of Pre-Recorded Data (HCPCS G2010)
  - Established patient recorded images or videos
  - Interpretation and follow-up in 24 hours
  - No E/M in prior 7 days or subsequent 24 hours/ “soonest available”



# “Technology – based” services

- Interprofessional Consultations
  - 6 codes
    - 4 recently unbundled (99446, 99447, 99448, 99449)
    - 2 new (99451, 99452)
  - 5 for **consultative physician**; 1 for **treating or requesting physician or QHP**
  - Telephone, internet, EHR assessment/management
  - Verbal and/or written reports required
  - Certain limitations on frequency



# "Technology – based" services

- Physician Fee Schedule Data

HCPCS CODE ▲▼	MODIFIER ▲▼	PROC STAT ▲▼	MAC LOCALITY ▲▼	NON- FACILITY PRICE ▲▼	FACILITY PRICE ▲▼	NON- FACILITY LIMITING CHARGE ▲▼	FACILITY LIMITING CHARGE ▲▼	CONV FACT ▲▼	NA FLAG FOR TRANS NON- FAC PE RVU ▲▼	NA FLG FOR FULLY IMP NON- FAC PE RVU ▲▼	NA FLAG FOR TRANS FACILITY PE RVU ▲▼	N F F F IM F P R ▲
99451		A	1510200	\$35.90	\$35.90	\$39.22	\$39.22	36.0391				
99452		A	1510200	\$35.90	\$35.90	\$39.22	\$39.22	36.0391				
G2010		A	1510200	\$11.86	\$9.00	\$12.95	\$9.83	36.0391				
G2012		A	1510200	\$14.04	\$12.77	\$15.34	\$13.95	36.0391				

# Remote Patient Monitoring

- New Codes Effective January 1, 2019
  - Education/Equipment Set – Up (CPT 99453)
  - Device Supply (CPT 99454)
  - Collection and interpretation of data (CPT 99457)
- More User Friendly than 99091
  - 99457 – calendar month
  - Accounts for equipment related costs
  - No face to face exam
  - 20 minutes
  - Clinical staff allowed



# Remote Patient Monitoring

- Certain detailed requirements
  - Minimum of 16 days
  - Consent
  - Co-pay applies
- \*\*Recent TC allows for incident to billing\*\*
  - is “general supervision” next????
- Questions still outstanding:
  - Who can bill for set-up?
  - What education is required?
  - What device and how must data be recorded?





# Remote Patient Monitoring

HCPCS CODE	MODIFIER	PROC STAT	MAC LOCALITY	NON- FACILITY PRICE	FACILITY PRICE	NON- FACILITY LIMITING CHARGE	FACILITY LIMITING CHARGE	CONV FACT	NA FLAG FOR TRANS NON- FAC PE RVU	NA FLG FOR FULLY IMP NON- FAC PE RVU	NA FLAG FOR TRANS FACILITY PE RVU	NA FLG FOR FULLY IMP NON- FAC PE RVU
99453		A	1510200	\$17.10	\$17.10	\$18.69	NA	36.0391			NA	
99454		A	1510200	\$56.43	\$56.43	\$61.65	NA	36.0391			NA	
99457		A	1510200	\$47.90	\$31.09	\$52.33	\$33.97	36.0391				

# On the Horizon

- Mental Health Telemedicine Expansion Act
  - Would amend 1834(m)
  - New codes
  - No geographic limitations
  - Home could be originating site
  - In-person assessment?
- Proposed Coverage for Ambulatory Blood Pressure Monitoring



# Medicare Compliance

- Mandatory Claims Submission rules
  - Potential penalties include fines and program exclusion
- Proper claims submission requires proper enrollment
- Cross jurisdictional telehealth models add layer of compliance considerations



# Medicaid Basics

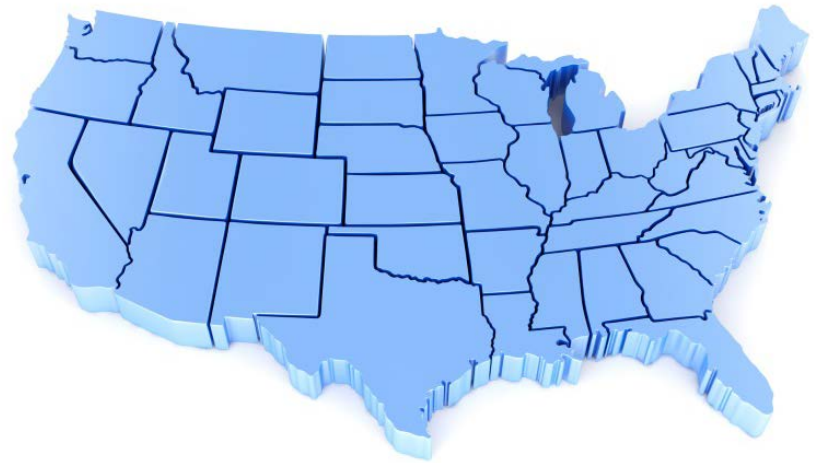
- Not tied to the Medicare requirements
- May be more expansive
- State specific requirements such as registrations
- Telehealth is not uniformly defined
- [www.cchpca.org](http://www.cchpca.org) (Great and FREE resource)





# Commercial Insurance

- Commercial Payor Rules
  - What are the restrictions?
    - Location
    - Service
    - Provider
- Most states have parity laws
  - Note: **Coverage Parity** is not the same as **Payment Parity**
  - Each parity law must be reviewed closely to determine if a business model is lucrative or a loss leader
- RPM often specifically covered otherwise it would not be covered by parity statute





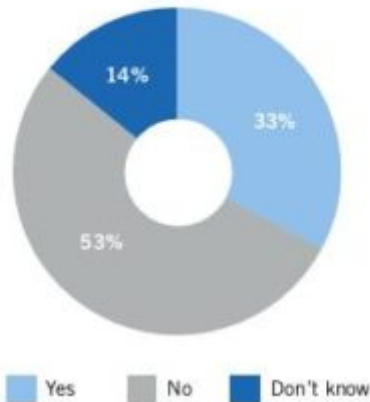
# Institutional Considerations

# Service Limitations

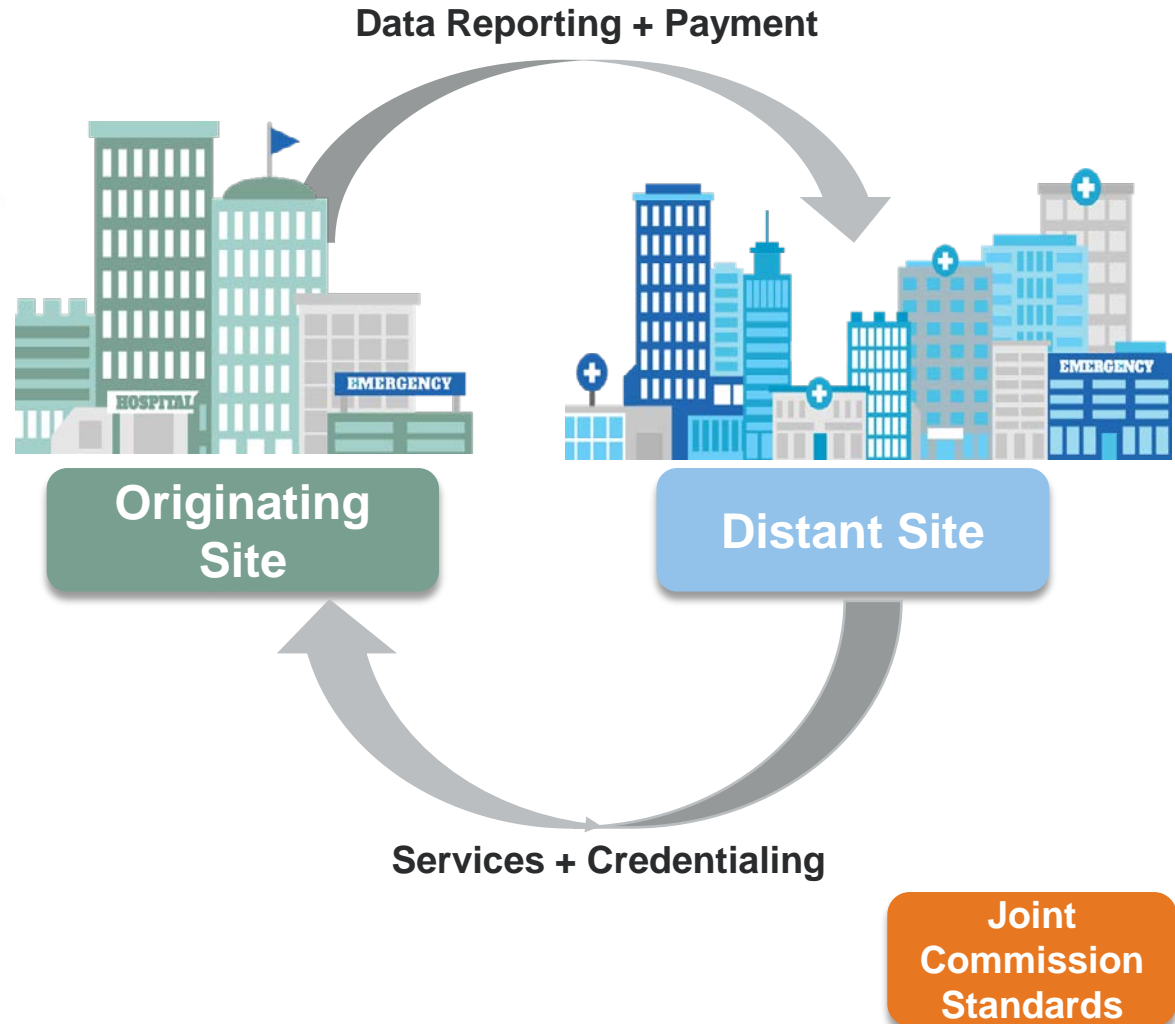
- Initial hospital services and nursing facility services must be **in-person**
- Subsequent services are limited
  - Hospital: One telehealth visit per three day period
  - SNF: One telehealth visit per thirty day period
- Medicare Claims Processing Manual, Ch. 12 Section 190
- <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c12.pdf>

# Telemedicine Credentialing by Proxy

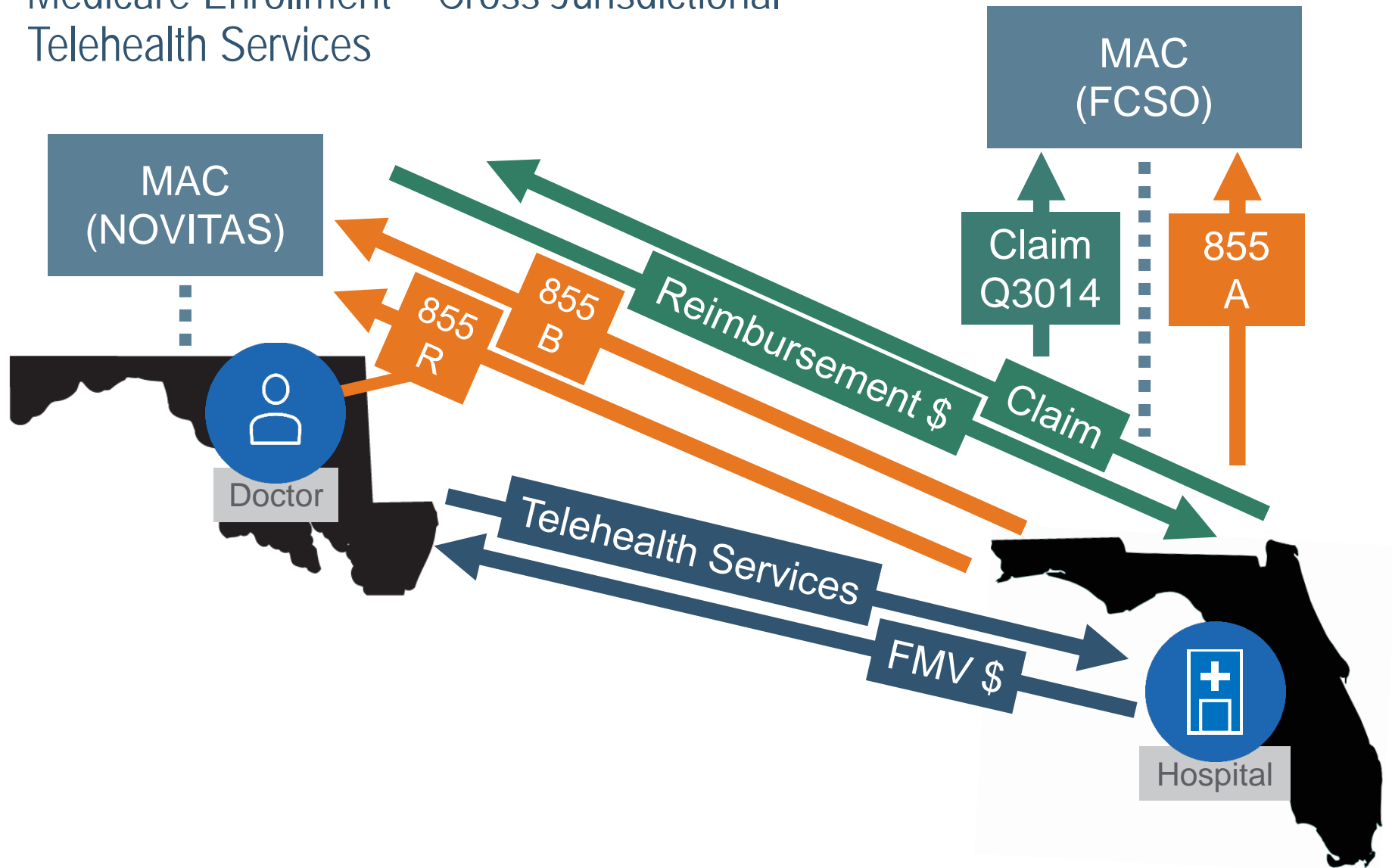
19 DOES YOUR ORGANIZATION USE  
TELEMEDICINE CREDENTIALING BY  
PROXY FOR PHYSICIAN CREDENTIALING?



Source: Foley & Lardner 2017 Telemedicine & Digital Health Survey (Nov 2017)



# Medicare Enrollment – Cross Jurisdictional Telehealth Services





# Proper Claims Submission

## (Distant & Originating if Part B)

- Submit to correct MAC
- Report correct Code
- Report correct POS
- Proper completion of fields (24B v. 32)

*\*Patient location governs for state licensing law compliance*

**HEALTH INSURANCE CLAIM FORM**  
APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 08/12

**24. A. DATE(S) OF SERVICE**  
From MM DD YY To MM DD YY  
**B. PLACE OF SERVICE**

**32. SERVICE FACILITY LOCATION INFORMATION**

**PHYSICIAN OR SUPPLIER INFORMATION**

**CARRIER**

**PATIENT AND INSURED INFORMATION**

NUCC Instruction Manual available at: [www.nucc.org](http://www.nucc.org) PLEASE PRINT OR TYPE OMB APPROVAL PENDING



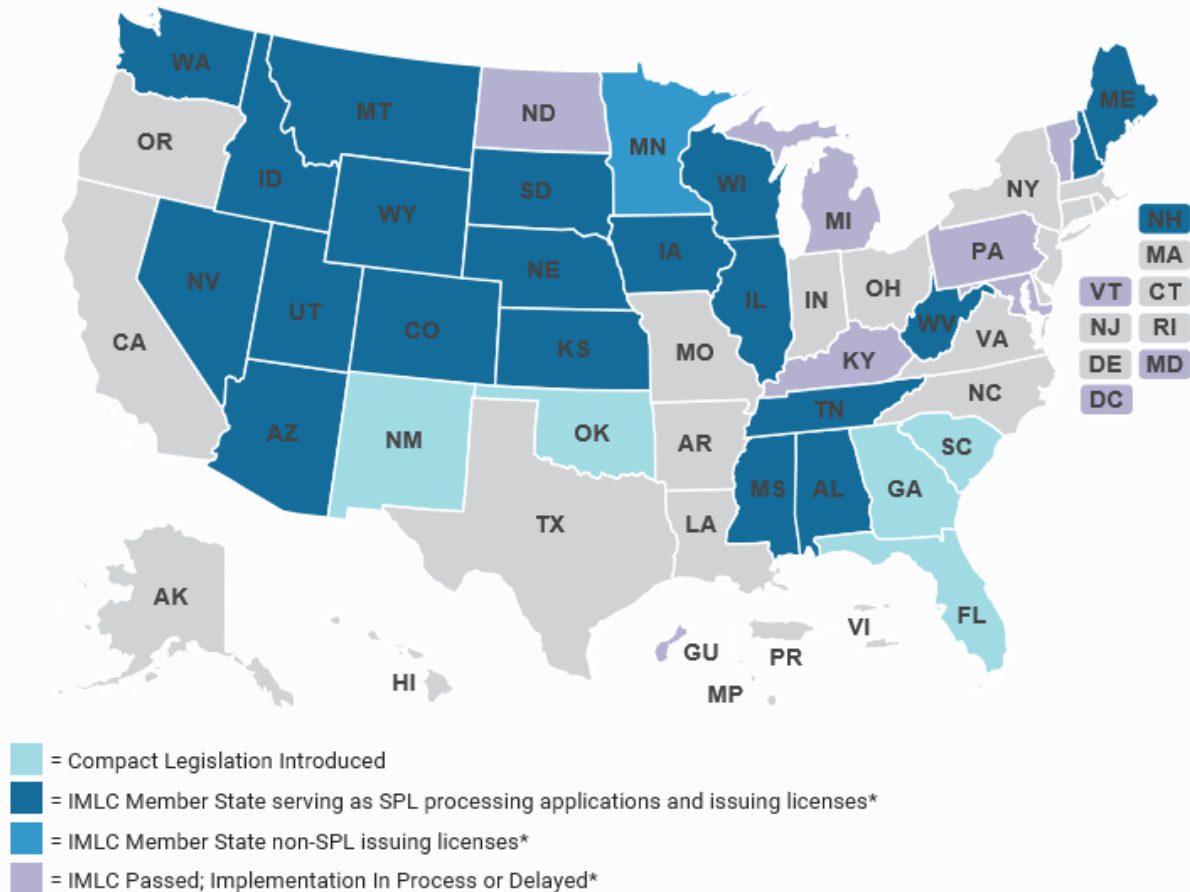


# Telehealth Licensure and Practice

# Telemedicine and Licensing

- Laws of the state where the patient is located control
- Special rules for VA
- Common exceptions: peer-to-peer consultations, border states, follow-up care

# Growth of Interstate Licensing Compacts



\* Questions regarding the current status and extent of these states' and boards' participation in the IMLC should be directed to the [respective state boards](#).

# Notable Exceptions for Telemedicine

## Consultation

Allows unlicensed physician to practice medicine in peer to peer consultation with a physician licensed in the state

## Bordering State

Allows practice of medicine by out-of-state physicians who are licensed in a bordering state.

## Special License or Registration

Abbreviated license or registration for telemedicine-only care

## Follow-up Care

Allows physician to provide follow-up care to his/her patient (e.g., post-operation)

# Telemedicine Practice Standards

- Modality Restrictions
- “Valid Prescription”
- Patient Consent
- Disclosures
- Choice of provider
- Verify patient identity
- Record-sharing
- Originating site
- Special registration

# Asynchronous Telemedicine by the Numbers

- **12 states** have laws that *expressly* ban asynchronous telemedicine to be used to establish a valid doctor-patient relationship, instead requiring the use of either audio-video or “interactive audio with store & forward” as the modality.
- **15 states** have laws that *expressly* allow asynchronous telemedicine to be used to establish a valid doctor-patient relationship.
- **23 states** do not mandate or proscribe a specific modality, instead choosing to more broadly define telemedicine to allow for new changes in technology and innovation (e.g., the use of secure electronic communications and information technologies between a patient at an originating site and a physician at a distant site).
- **19 states** have telehealth coverage laws that *expressly* require commercial health plans to cover asynchronous telemedicine
- **Medicare covers more than 19** codes for non-face-to-face services (e.g., G2010, G2012, 99453, 99454, 99457, 99446, 99447, 99448, 94449, 99091, 99490, 99487, 99489, 99492, 99493, 99494, 99484, 99358, 99359)





# Fraud & Abuse Considerations

# Fraud & Abuse Considerations

## Federal Laws

- Anti-Kickback Statute
- Physician Self-Referral
- Civil Monetary Penalties Law

## State Laws

- Patient Brokering Acts
- Self-Referral Laws
- Fee-Splitting Laws
- Corporate Practice of Medicine

# Fraud and Abuse

- 2018 OIG Report
  - 100 Claims without both originating and distant site claims
  - 31% error rate
  - Noncompliance with the “perfect storm”
  - Fraud? Lack of education? Lack of clarity on rules?
- Recent investigations into remote services = not “Tele-Fraud” just Fraud
- Questionnaire based models – all are not alike



# General Compliance

- Proper physician-patient relationship
- Prudent marketing practices
- Legitimate medically necessary services
- Adherence to state practice standards
- Claims, coding, billing education  
(Medicare, Medicaid AND commercial)
- Fair market value compensation!!



# Thank you!

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