

TeleBehavioral Health 501 Training Series

Behavioral Health Institute (BHI)
Harborview Medical Center
Website: <https://bhinstitute.uw.edu>
Email: bhinstitute@uw.edu

Northwest Regional
Telehealth Resource Center (NRTRC)
Website: <https://nrtrc.org>
Email: info@nrtrc.org

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HARBORVIEW
MEDICAL CENTER

Behavioral Health Institute (BHI)

Training, Workforce and Policy Innovation Center

The Behavioral Health Institute is a Center of Excellence where innovation, research and clinical practice come together to improve mental health and addiction treatment.

The BHI brings the expertise of Harborview Medical Center/UW Medicine and other university partners together to address the challenges facing Washington's behavioral health system through:

- Clinical Innovation
- Research and Evaluation
- Workforce Development and Training
- Expanded Digital and Telehealth Services and Training

The BHI serves as a regional resource for the advancement of behavioral health outcomes and policy, and to support sustainable system change.



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Northwest Regional Telehealth Resource Center (NRTRC)

Telehealth Technical Assistance Center



The NRTRC delivers telehealth technical assistance and shares expertise through individual consults, trainings, webinars, conference presentations, and the web.

Their mission is to advance telehealth programs' development, implementation, and integration in rural and medically underserved communities.

The NRTRC aims to assist healthcare providers, organizations, and networks in implementing cost-effective telehealth programs to increase access and equity in rural and medically underserved areas and populations.

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Speaker Disclosures

None of the series speakers have any relevant conflicts of interest to disclose.

Planner disclosures

The following series planners and team have no relevant conflicts of interest to disclose:

Brad Felker MD

Cara Towle MSN RN

Topher Jerome

Melody McKee SUDP MS

Nicki Perisho RN

Jaleen Johnson



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Please be aware that policy changes may take place after the original date of this presentation.

Any information provided in today's talk is not to be regarded as legal advice. Today's talk is purely for informational purposes.

Please consult with legal counsel, billing & coding experts, and compliance professionals, as well as current legislative and regulatory sources, for accurate and up-to-date information.



We gratefully acknowledge the support from



US TELEHEALTH POLICY: Mental/Behavioral Health

FEBRUARY 16, 2024



Center for Connected
Health Policy

THE NATIONAL
TELEHEALTH POLICY
RESOURCE CENTER



Mei Wa Kwong, JD,
Executive Director, CCHP

CENTER FOR CONNECTED HEALTH POLICY (CCHP)

is a non-profit, non-partisan organization that seeks to advance state and national telehealth policy to promote improvements in health systems and greater health equity.

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- Always consult with legal counsel.
- CCHP has no relevant financial interest, arrangement, or affiliation with any organizations related to commercial products or services discussed in this program.



ABOUT CCHP

- Established in 2009 as a program under the Public Health Institute
- Became federally designated national telehealth policy resource center in 2012 through a grant from HRSA
- Work with a variety of funders and partners on the state and federal levels
- Administrator National Consortium of Telehealth Resource Centers
- Convener for California Telehealth Policy Coalition



TODAY'S WEBINAR

- Provide an overview of the status of telehealth policy & impact on mental/behavioral health
- Talk about the current status of certain policies
- Items to monitor & what might happen this year
- This webinar is not one to answer very specific billing questions. If you have a specific billing question, please contact your TRC or CCHP directly



FEDERAL & STATE



Federal Policy

- MEDICARE/CMS
- PRESCRIBING OF CONTROLLED SUBSTANCES (DEA)
- HIPAA/PRIVACY/DATA
- LICENSURE

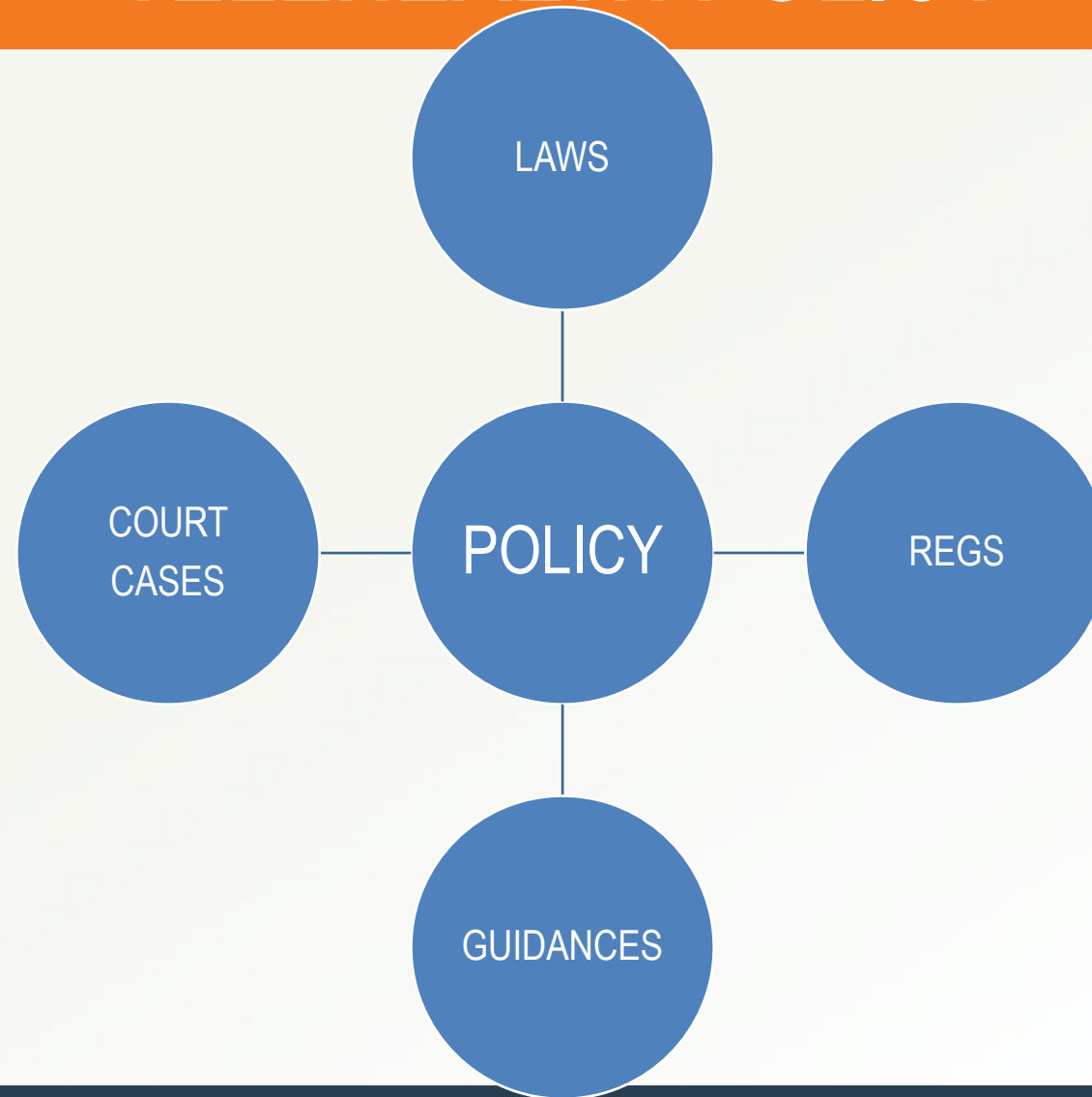


State Policy

- MEDICAID
- PRIVATE PAYER
- PRESCRIBING
- LICENSURE



TELEHEALTH POLICY



FEDERAL:

CMS & Medicare

(Reimbursement & Coverage)



MEDICARE TELEHEALTH POLICY EVOLUTION

Pre-Covid
Fairly Limited

During Pandemic
Series of Waivers

Post-Pandemic
Majority of waivers
remain until end of
2024



MEDICARE TELEHEALTH POLICY IN 2024

WAIVER DURING COVID-19	REMAINS UNTIL THE END OF 2024
Waiver of geographic requirement	✓
All eligible providers in Medicare & FQHCs/RHCs to be eligible providers	✓
Site limitation waived (allowing places such as the home)	✓
Allow some services to be provided via audio-only	✓
Expanded list of eligible services to be provided via telehealth	Varies, but mostly remains intact



MEDICARE TELEHEALTH POLICY IN 2024

WAIVER DURING COVID-19	REMAINS UNTIL THE END OF 2024
Allowing provider to use business address rather than putting home address	✓
Waiving frequency limit on telehealth visits in SNFs	✓
Allowing for direct supervision to be done via telehealth	Some remain intact such as supervision of residents when the service is furnished virtually.

- [CCHP 2024 Physician Fee Schedule Fact Sheet](#)
- [2024 Physician Fee Schedule Final](#)
- [Consolidated Appropriations Act 2023](#)
- [CMS Telehealth Fact Sheet \(Dated 12/2023\)](#)



FOR MENTAL/BEHAVIORAL HEALTH

- Delay of instituting certain permanent policies that while adopted have not been implemented
 - Coverage of mental/behavioral services w/o the geographic requirement being met if certain conditions are met
 - Use of audio-only to provide mental/behavioral services if certain conditions met
- FQHCs/RHCs allowed to provide mental/behavioral health services via live video/audio-only if certain conditions met



FEDERAL: Prescribing & Controlled Substances



CONTROLLED SUBSTANCE PRESCRIBING VIA TELEHEALTH

Limited Exceptions in Ryan Haight Act

One exception is when PHE declared, COVID activated exception

DEA Issues Proposed Post-PHE Regs

Temporary extension to 11/2023

Late 2023, DEA extended the exception through to the end of 2024

[DEA Full Text of Extension to end of 2024.](#)

January 31, 2024 Final rules on the prescribing of buprenorphine by OTP, may take place via audio-video or audio-only. Limited ability to use audio-visual for methadone



FOR MENTAL/BEHAVIORAL HEALTH

- Know have until through the end of this year ability to prescribe controlled substances without meeting on of the narrow exceptions or having a prior in-person exam of the patient
- Do know that for OTPs, exceptions for prescribing of buprenorphine will be permanent policy



FEDERAL: HIPAA/PRIVACY/DATA



HIPAA



Pre-COVID Telehealth
wasn't specifically
addressed



During/Post-COVID -
Realization HIPAA
outdated



HIPAA

- During COVID, OCR issued guidance that they would “exercise discretion” on HIPAA as it related to using telehealth technology. This has since expired.
- Biden Administration issued Executive Order to look at updating HIPAA regulations
- In the meantime, several resources have been provided related to telehealth by HHS
 - [Resource for Health Care Providers on Educating Patients about Privacy and Security Risks to Protected Health Information when Using Remote Communication Technologies for Telehealth](#)
 - [Privacy and Security Tips for Patients](#)
 - [General HHS site on HIPAA & Telehealth](#)
 - [Guidance on How the HIPAA Rules Permit Covered Health Care Providers and Health Plans to Use Remote Communication Technologies for Audio-Only Telehealth](#)



PRIVACY/DATA

- Conversation now gone beyond just HIPAA and concerns about privacy, data and tracking
- In 2023 FTC and HHS warned hospitals and telehealth providers about privacy and security issues related to online tracking
 - CCHP Newsletter – [FTC & OCR Stress \(Again\) the Importance of How Health Data is Handled \(Sept. 2023\).](#)
 - HHS - [Use of Online Tracking Technologies by HIPAA Covered Entities and Business Associates](#)



FOR MENTAL/BEHAVIORAL HEALTH

- Considering the amount of services offered via online platforms to treat mental/behavioral health issues, very important to be aware of these guidances and policy concerns lawmakers have around tracking and protection of information



FEDERAL: Licensure



US District Court for New Jersey Court Case

- *MacDonald v. New Jersey State Board of Medical Examiners*
- Specific case on telemedicine and licensure that makes the argument that requiring a license of an out-of-state provider is in violation of the US Constitution
- Based arguments on:
 - Commerce Clause (Dormant Commerce Clause)
 - Privileges & Immunities Clause
 - First Amendment (Speech)
 - Fourteenth Amendment Due Process Clause



FOR MENTAL/BEHAVIORAL HEALTH

- Potential impacts across all specialties



STATE:

Medicaid & Private Payer

(Reimbursement & Coverage)



MEDICAID & PRIVATE PAYER LAWS



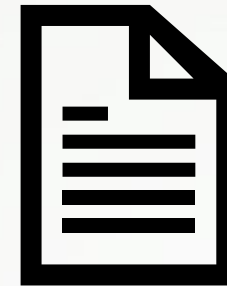
50 States & DC reimburse for Live Video



43 States have some reimbursement for audio-only



33 States reimburse for some store and forward (some may only do it for CTBS)



43 States, DC and Virgin Islands have a private payer law



37 States have some reimbursement for RPM



FOR MENTAL/BEHAVIORAL HEALTH

- One of the more widely covered specialties in Medicaid programs
- Allowance for audio-only more frequent for mental/behavioral services than others



STATE: Prescribing



PRESCRIBING POLICIES IN THE STATES

- Prescribing/establishing a patient-provider relationship
 - Can telehealth be used to establish a relationship?
 - Most states allow if live video is used
 - A few exceptions allow asynchronous
- Limitations on Prescribing
 - Abortion
 - Vision & Hearing
 - Marijuana
 - Controlled Substances



STATE: Licensure



LICENSURE

- Compacts
 - Compacts are structured differently
- Registries
- Limited Exceptions
 - Prior established relationship
 - Infrequent interactions
 - Contiguous state exception



FOR MENTAL/BEHAVIORAL HEALTH

- Rise of compacts
 - PSYPACT
 - Counselors Compact
 - Social Worker Compact



What to Look Out For in 2024



FEDERAL

- Decisions on temporary Medicare policies & prescribing of controlled substances
 - Look for potentially some policies to be in larger bills
- HIPAA Update due this year
- AI Continues to be a significant point of discussion
 - [Executive Order on AI](#)
 - [NIST Draft Guidance on Privacy Protection Technique for AI](#)
- Broadband – Affordable Connectivity Program – proposal to continue funding it, but it will need to make it through the budget process

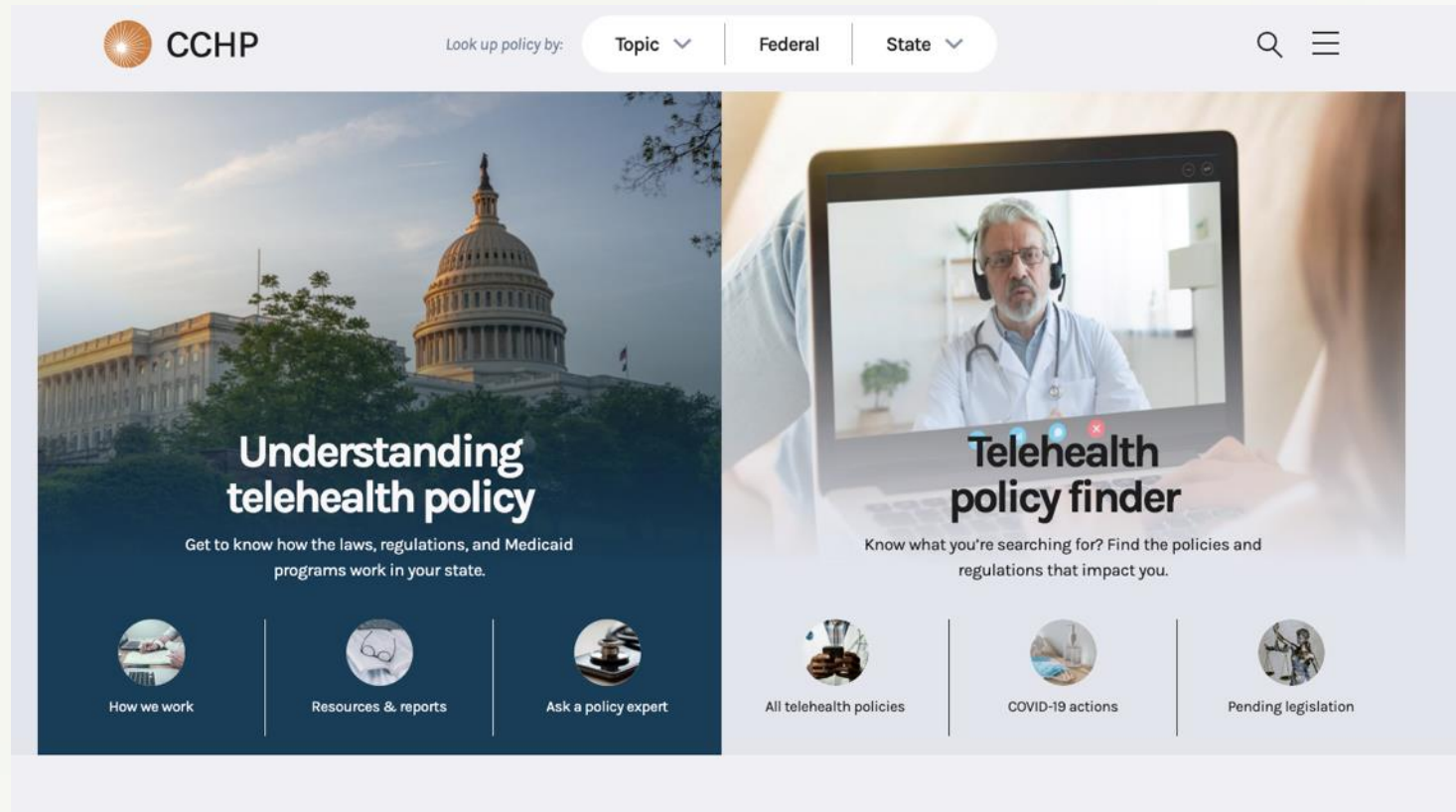


STATES

- Most states have settled on their policies
 - Increasing interest in data collection, efficacy
 - Some have also temporary extensions
 - Areas of further policy development/discussion
 - Expanding Medicaid
 - Licensure
 - Prescribing
- **State Budget Shortfalls**



➤ CCHP Website – cchpca.org



➤ Subscribe to the CCHP newsletter at cchpca.org/contact/subscribe





**Center for Connected
Health Policy**

THE NATIONAL
TELEHEALTH POLICY
RESOURCE CENTER

Thank You!

www.cchpca.org

info@cchpca.org

Additional Free Resources for Washington State Behavioral Health Providers

EDUCATIONAL SERIES:

- UW Traumatic Brain Injury – Behavioral Health ECHO
- UW Psychiatry & Addictions Case Conference ECHO
- UW TelePain series

PROVIDER CONSULTATION LINES

- UW Pain & Opioid Provider Consultation Hotline
- Psychiatry Consultation Line
- Partnership Access Line (pediatric psychiatry)
- Perinatal Psychiatry Consultation Line

