



2020 NRTRC TAO VIRTUAL CONFERENCE



Northwest Regional Telehealth Resource Center and the Telehealth Alliance of Oregon **Welcome You**

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VIRTUAL SESSION INSTRUCTIONS

- Audio and video are muted for all participants
- Use the Q&A feature to ask questions 
- Moderator will read questions to the speaker
- Presentation slides are posted at <https://nrtrc.org/sessions>. Recordings will be posted after the conference.



Telehealth 101 Workshop



- Moderator: Deb LaMarche
- Presenters:
 - Cindy Roleff, Telehealth Program Development Manager, Alaska Native Tribal Health Consortium
 - Cara Towle, Associate Director, Psychiatry Consultation & Telepsychiatry, University of Washington
 - Cathy Britain, Executive Director, Telehealth Alliance of Oregon
 - Deb LaMarche, Program Director & Principal Investigator, Northwest Regional Telehealth Resource Center
 - Jennifer Erickson, Acting Assistant Professor, University of Washington
 - Tammy Arndt, Director, Northwest Telehealth

Telehealth Legal & Regulatory Considerations

NRTRC TAO Virtual Conference

April 15, 2020

Disclosure

The majority of information in this presentation is sourced from the Center for Connected Health Policy www.cchpca.org

This presentation should not be regarded as legal advice. It is for informational purposes only.

I am not an attorney. Any errors are mine.

Consult with legal counsel when addressing legal and regulatory considerations.

A word about COVID-19

The federal government and states have declared a public health emergency due to the coronavirus pandemic.

During this public health emergency, many federal and state regulations have been relaxed, either through a temporary rule change and/or by a statement that specific existing rules will not be enforced.

Be aware that:

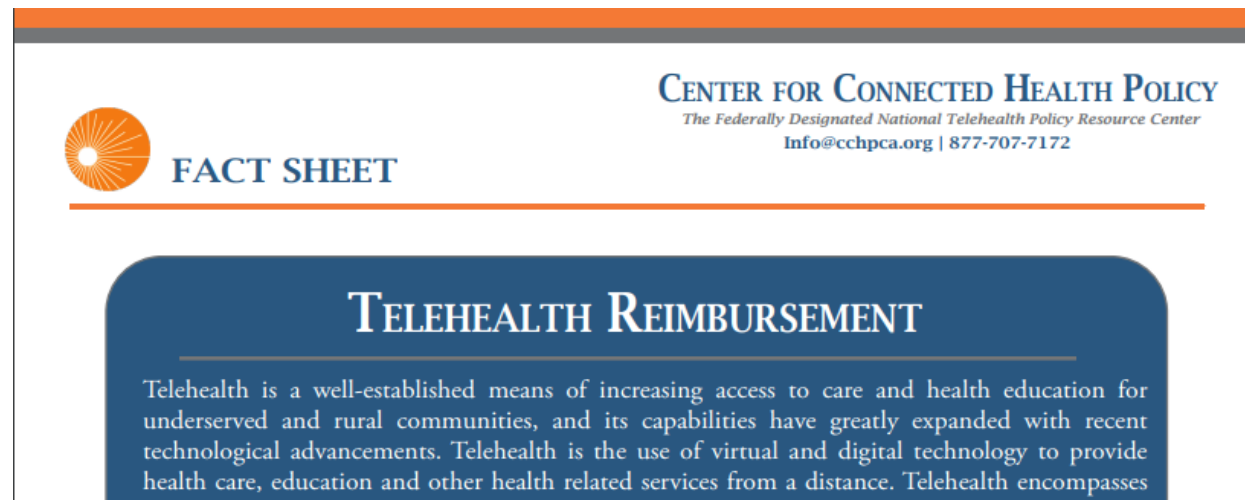
- Temporary state changes may differ from one state to the next, and may or may not be the same as federal changes.*
- All changes end with the end of the public health emergency.*
- Federal and state emergency end dates may be different.*

This presentation covers pre-COVID-19 rules and regulations with some information and links on changes due to COVID-19.



www.cchpca.org

- Monitors federal and state policy
- Biannual Report: State Telehealth Laws & Reimbursement Policies
- Fact Sheets
- More...





Current State Laws & Reimbursement Policies


<https://www.cchpca.org/telehealth-policy/current-state-laws-and-reimbursement-policies>

Current State Laws & Reimbursement Policies

Search by Filter Search by Keyword

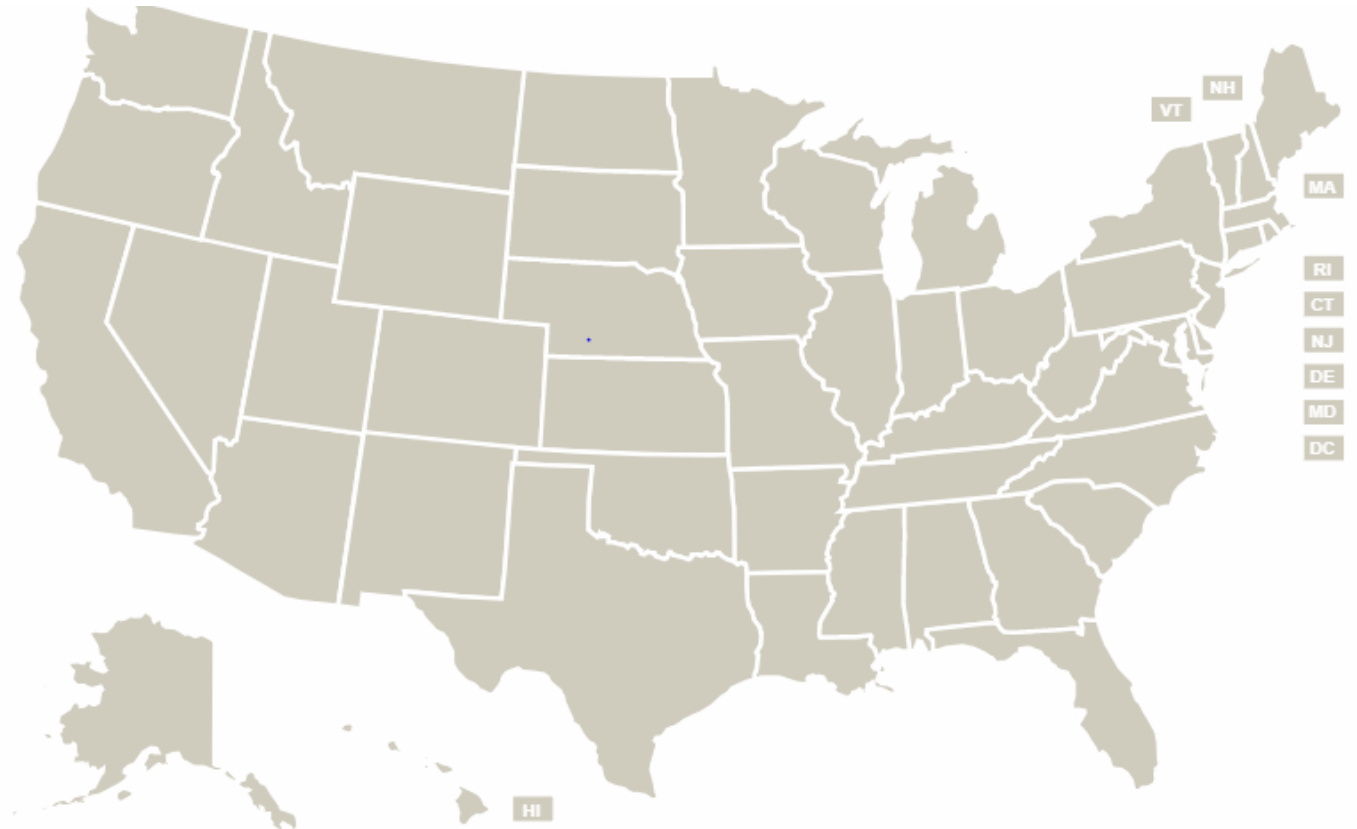
All 50 States & D.C. 

All Categories 

All Topics 

APPLY

Data Last Updated Feb 21, 2019



 Policy Exists/Explicitly Allowed  No Policy Exists or Not Explicitly Allowed

Legislation and Regulation Tracking

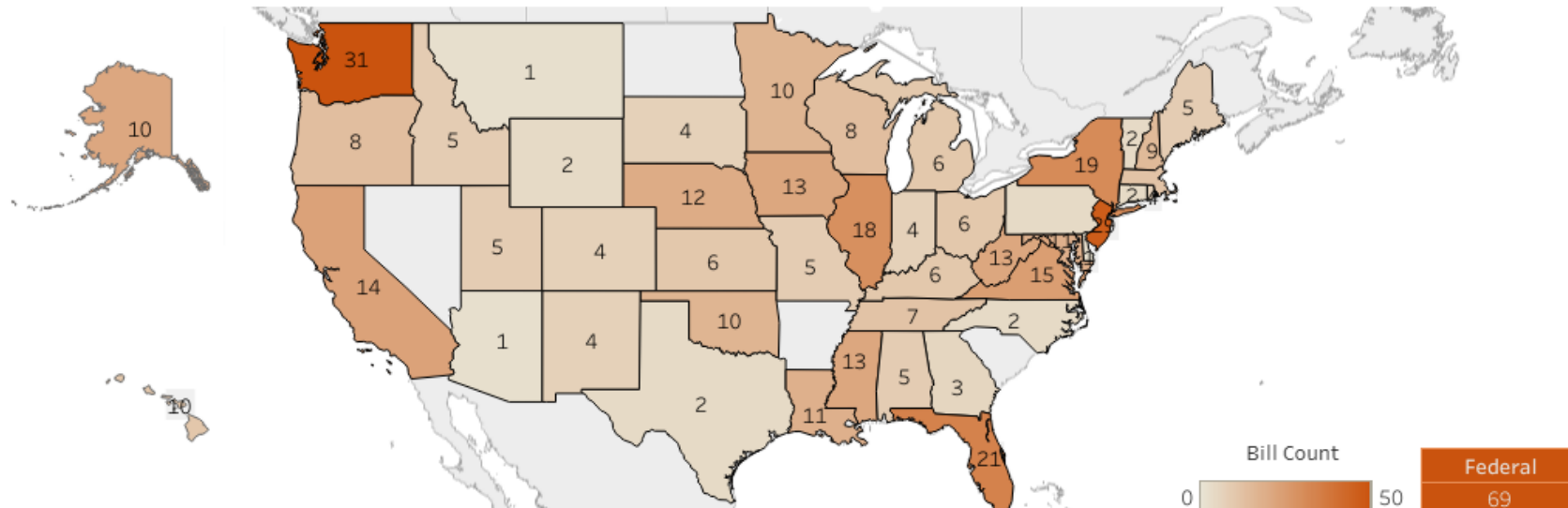
<https://www.cchpca.org/telehealth-policy/legislation-and-regulation-tracking#>

CCHP monitors both state and federal telehealth legislation to provide the clearest picture of telehealth policy across the nation.

Utilize the interactive 50 state legislation and regulatory tracking tool, located below, to browse telehealth legislation and regulation across the nation for the current legislative session.

[View All Bills](#) [View California Bills](#) [All Bills Drill Down](#) [CA Bills Drill Down](#)

Select state to filter by Legislature



COVID-19

Telehealth policy changes occurring within the COVID-19 environment have been rapidly developing on almost a daily basis. CCHP is committed to keeping you updated on these important changes both federally and on the state level. Watch our latest COVID-19 [policy update videos](#).

[ABOUT](#)[TELEHEALTH POLICY](#)[RESOURCES](#)[CONTACT](#)A wide-angle photograph of the U.S. Capitol building at night, illuminated by warm lights. The building is reflected in the water of the reflecting pool in the foreground. Lush green trees line the walkway between the pool and the building.

COVID-19 TELEHEALTH COVERAGE POLICIES

TELEHEALTH COVERAGE POLICIES IN THE TIME OF COVID-19

Legal & Regulatory issues

- ✓ State laws and state licensure boards regulations
- ✓ Licensing requirements
- ✓ Credentialing & privileging
- ✓ Informed consent
- ✓ Online prescribing
- ✓ Malpractice liability
- ✓ HIPAA Security & privacy

State Professional Regulation and Laws

- States and state licensure boards have laws and regulations governing the practice of telehealth, such as:
 - The definition(s) of telehealth.
 - Telehealth parity laws and Medicaid reimbursement
 - Consent requirements
 - Online prescribing requirements
 - Regulations for the use of telehealth under specific circumstances, i.e. teledentistry
- State regulations during COVID-19, in general
 - As states have declared public health emergencies, most states are temporarily relaxing some regulations. Each state is implementing in their own way, with their own start and end dates of the emergency.
 - <https://www.cchpca.org/resources/covid-19-related-state-actions>

Cross State Licensure

<https://www.cchpca.org/telehealth-policy/cross-state-licensing>

Professionally licensed providers must be licensed in the state where the patient is located during the encounter.

- May be different from the state where the provider's practice is based and required to be licensed.
- The originating site (where the patient is located) is considered the "place of service".
- The VA is an exception. VA health care providers may provide telehealth services to VA beneficiaries, irrespective of the state where the provider or beneficiary is located.

Cross State Licensure

<https://www.cchpca.org/telehealth-policy/cross-state-licensing>

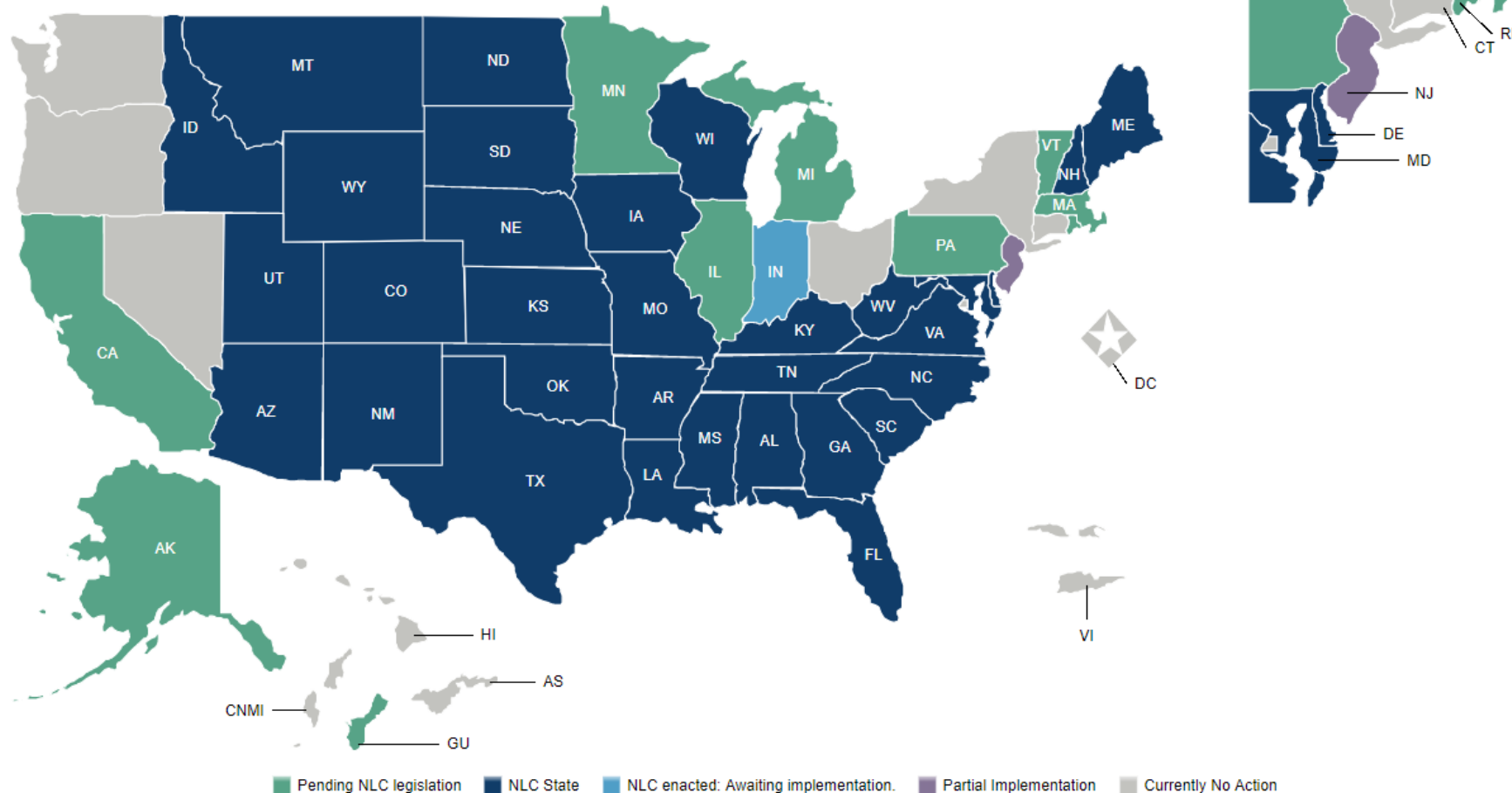
Interstate compacts

- Nurse Licensure Compact (NLC)
- Interstate Medical Licensure Compact (IMLC)
- Psychology Interjurisdictional Compact (PSYPACT)
- Physical Therapy Licensure Compact
- Recognition of EMS Personnel Licensure Interstate CompAct (REPLICA)
- Audiology & Speech-Language Pathology Interstate Compact

Nurse Licensure Compact

<https://www.nursecompact.com/index.htm>

The NLC allows for nurses to have one multistate license with the ability to practice in all compact states.



Interstate Medical Licensure Compact

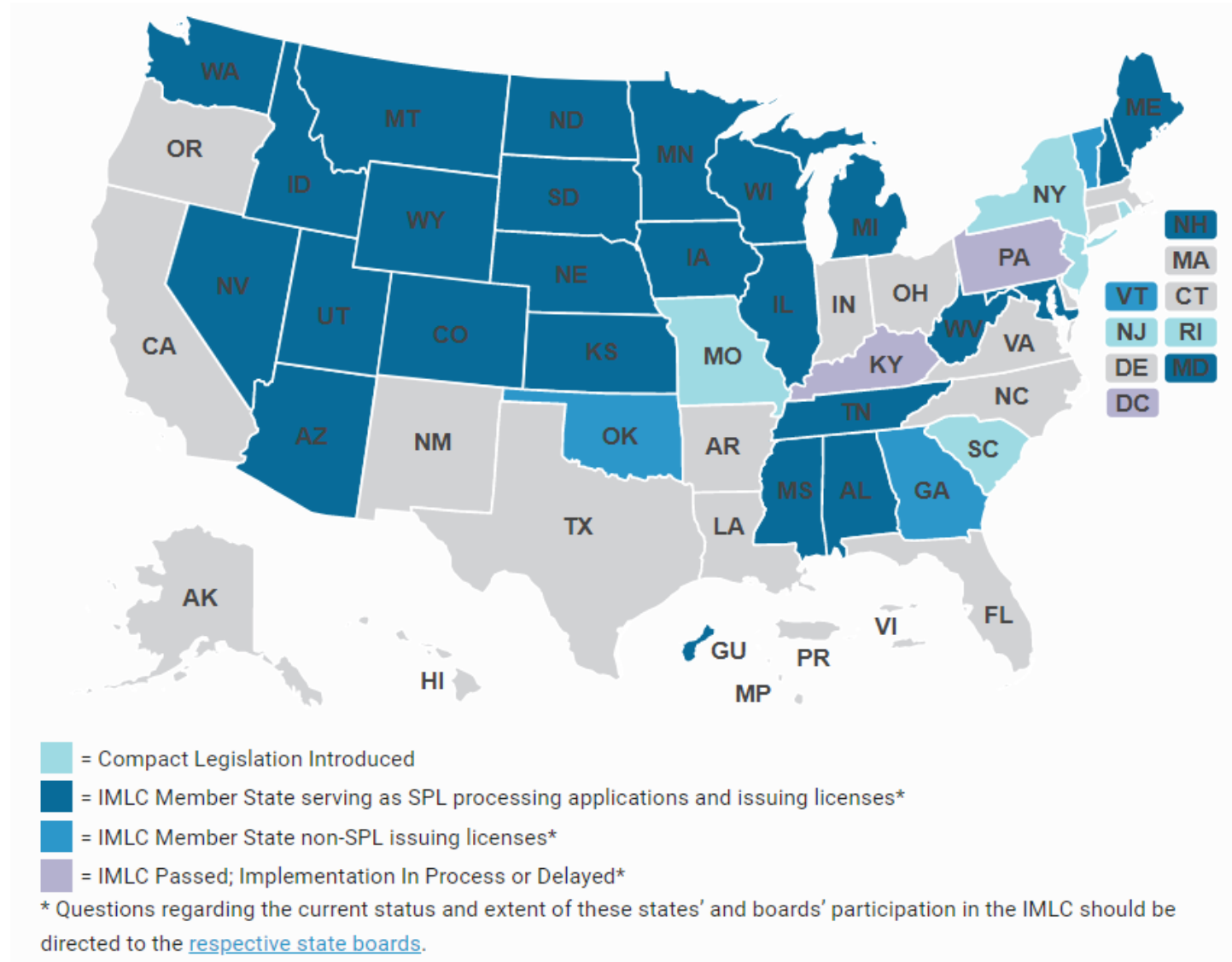
<https://imlcc.org/>

A voluntary expedited pathway to licensure for qualified physicians who wish to practice in multiple states.

- Expedited by leveraging the physician's existing information previously submitted in their state of principal license.
- Once qualified, the physician may select any number of compact states for which they desire to practice.
- Participating physicians pay a \$700 fee to IMLC plus the licensure fee for each state in which they choose to practice.

Interstate Medical Licensure Compact

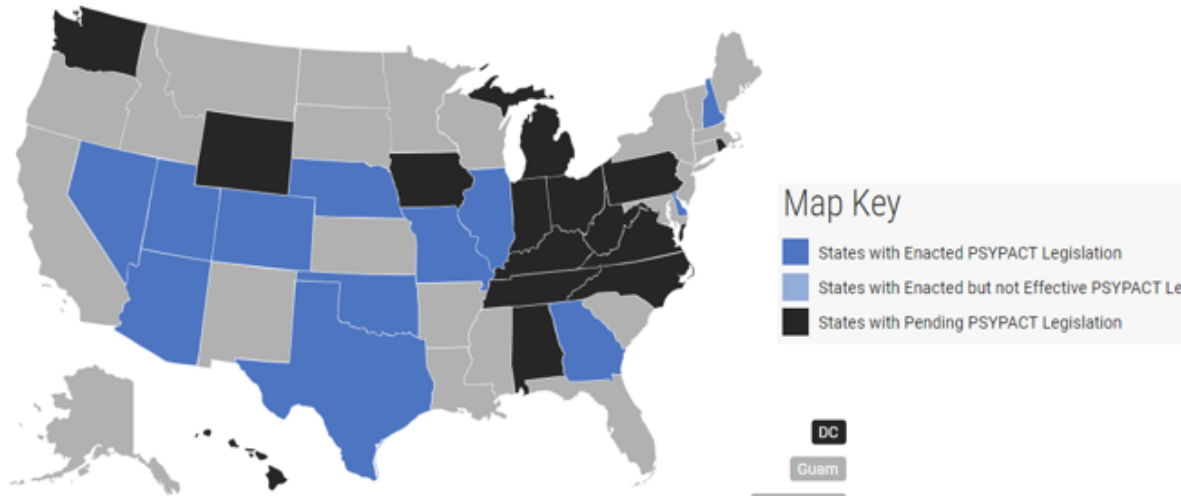
<https://imlcc.org/>



Psychology Interjurisdictional Compact (PSYPACT)

<https://www.asppb.net/mpage/legislative>

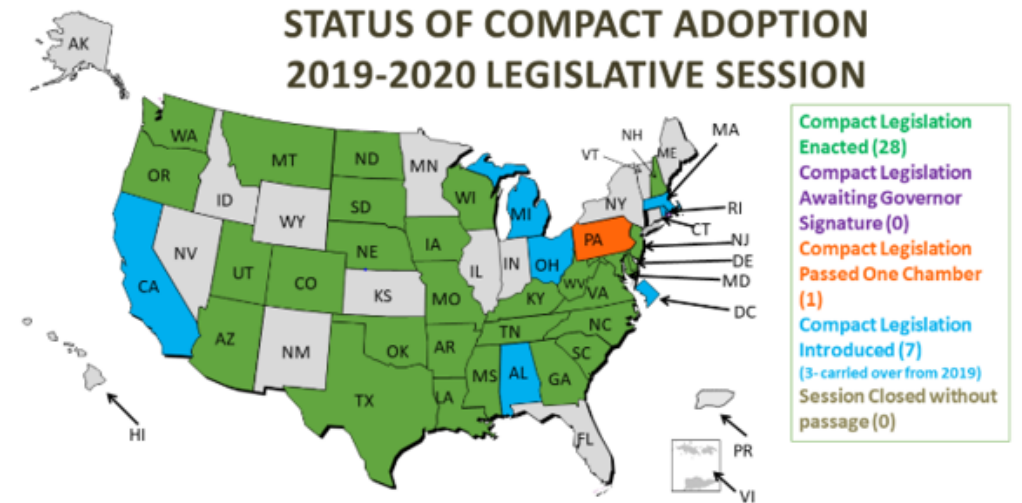
PSYPACT became operational in April 2019! Licensed psychologists will soon be able to apply for an E.Passport to provide telepsychological services across state lines.



Physical Therapy Licensure Compact

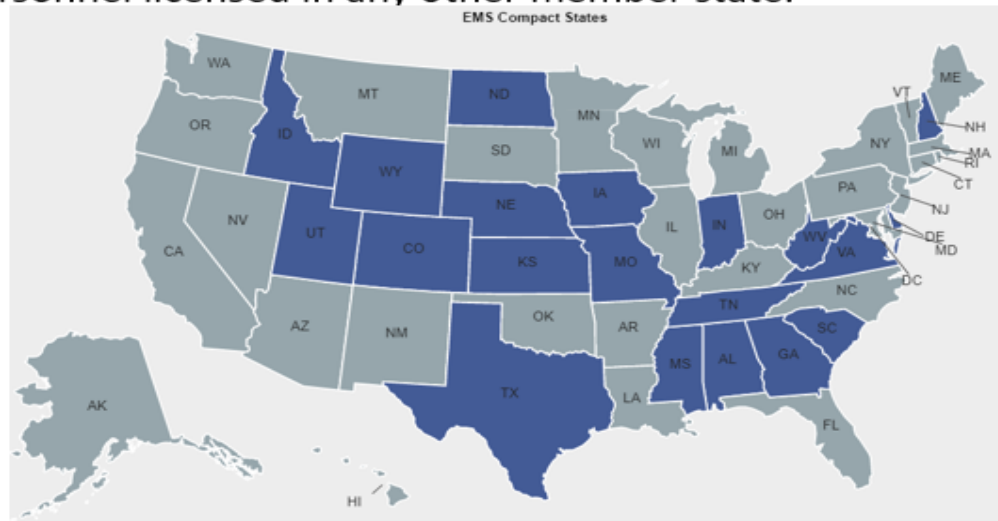
<http://www.fsbpt.org/FreeResources/PhysicalTherapyLicensurecompact.aspx>

Enacted April 2017; similar to the IMLC



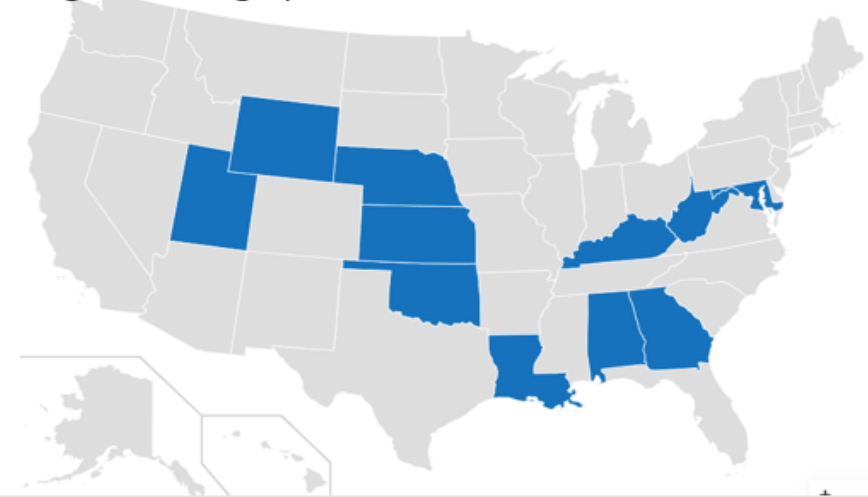
The EMS Compact <https://www.emscompact.gov/>

Authorizes state EMS offices to afford immediate legal recognition to EMS personnel licensed in any other member state.



Audiology & Speech Language Pathology Interstate Compact

New, nearing becoming operational



Licensure and COVID-19

- CMS has waived Medicaid and Medicare requirements to be licensed in the patient state with several stipulations:
 - Provider is enrolled in Medicare
 - Provider has a valid license in the state which relates to Medicare enrollment
 - Provider is providing services in a state where an emergency is occurring
 - Provider is not excluded from practicing in any state that is part of the emergency
- However state requirements still apply!
 - [States waiving In-State Licensure Requirements for Telehealth](#) compiled by the Federation of State Medical Boards
 - Check state professional licensure boards for specific guidance by profession

Credentialing & Privileging

<https://www.cchpca.org/telehealth-policy/credentialing-and-privileging>

- Insurers and certain organizations, such as hospitals or FQHCs/CHCs, require credentialing, and some organizations require privileging.
- **Credentialing** ensures an individual possesses the necessary qualifications.
- **Privileging** assesses the practitioner's competence in a specific area of care.
- Before a practitioner may provide services to patients, the practitioner must have their qualifications evaluated and verified. This includes providers of telehealth services.

Credentialing & Privileging

<https://www.cchpca.org/telehealth-policy/credentialing-and-privileging>

- CMS allows credentialing-by-proxy, whereby the health care organization receiving services may accept the distant site (telehealth provider's location) hospital's credentialing and privileging decisions.
- This is optional but can save the receiving site significant effort.
- To utilize credentialing-by-proxy, there are requirements which must be met and are summarized in the link above.

Credentialing during COVID-19

- Some insurers are expediting credentialing; some states are encouraging them to do so.

Informed Consent

<https://www.cchpca.org/telehealth-policy/informed-consent>

<https://southwesttrc.org/blog/2017/telemedicine-informed-consent-how-informed-are-you>

- While CMS has not previously required informed consent be obtained from a patient prior to a telehealth-delivered service taking place, services such as virtual check-ins and remote patient monitoring require consent.
- Many states require informed consent be obtained, either for their Medicaid program, or in statutes or rules regarding health professionals
- Requirements vary

Informed Consent

Items to include:

- Patient's rights, including right use telehealth or not, right to stop at anytime.
- Patient's responsibilities
- Expectations of the telehealth encounter
- Potential constraints and risks
- A plan in the event of tech failures during a session
- Special considerations:
 - Others in the room
 - Recording (*not recommended*)

Operational considerations:

- Separate form or included as part of organization's general consent form?
- Written or verbal, how often, where documented?

Online Prescribing

<https://www.cchpca.org/telehealth-policy/online-prescribing>

- Online prescribing refers to a provider prescribing a drug to a patient based upon an interaction that has taken place online.
 - E-Prescribing is the act of sending a prescription electronically to a pharmacy and should **not** be confused with online prescribing.
- It requires a true established patient-provider relationship.
- States maintain a large amount of control over internet prescribing.

Online Prescribing

<https://www.cchpca.org/telehealth-policy/online-prescribing>

- Ryan Haight Online Pharmacy Consumer Protection Act of 2008 prohibits the dispensing of controlled substances via the Internet without a “valid prescription”.
 - For a prescription to be valid, it must be issued for a legitimate medical purpose in the usual course of professional practice,
 - The Act provides a definition for the “practice of telemedicine” which allows prescribing to occur without a physical encounter if certain conditions are met.
 - The Drug Enforcement Agency (DEA) is the federal agency with jurisdiction over controlled substances prescribed via telemedicine.
- HR 6 SUPPORT for Patients and Communities Act, passed by Congress in 2018 (**S**ubstance **U**se–**D**isorder **P**revention that **P**romotes **O**pioid **R**ecovery and **T**reatment)
 - Intent is to make medical treatment for opioid addiction more widely available, including via telemedicine
 - The DEA had one year to promulgate final regulations to specify limited circumstances in which controlled substances may be prescribed via telemedicine.

Online Prescribing & COVID-19

<https://www.dea diversion.usdoj.gov/coronavirus.html>

Accordingly, as of March 16, 2020, and continuing for as long as the Secretary's designation of a public health emergency remains in effect,

DEA-registered practitioners in all areas of the United States may issue prescriptions for all schedule II-V controlled substances to patients for whom they have not conducted an in-person medical evaluation, provided all of the following conditions are met:

- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice;
- The telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system; and
- The practitioner is acting in accordance with applicable Federal and State laws.

And, in specified cases, "Opioid Treatment Programs should feel free to dispense, and DATA-waived practitioners should feel free to prescribe, buprenorphine to new patients with OUD for maintenance treatment or detoxification treatment following an evaluation via telephone voice calls, without first performing an in-person or telemedicine evaluation. This may only be done, however, if the evaluating practitioner determines that an adequate evaluation of the patient can be accomplished via the use of a telephone." *DEA068 – March 31, 2020*

Malpractice

<https://www.cchpca.org/telehealth-policy/malpractice>

- Medical malpractice is the professional negligence by act or omission by a health care provider
- Claims of malpractice liability involving telehealth have been few and most existing cases have been settled out of court with the final settlements sealed.
- However, as telehealth becomes more pervasive, it is likely the number of malpractice suits will increase.
- Providers should confirm with their carriers that their current malpractice insurance covers services provided via telehealth and if the provider is practicing across state lines, that their coverage extends into that other state.

HIPAA Security & Privacy

<https://www.cchpca.org/telehealth-policy/hipaa>

- HIPAA protects personal health information (PHI)
- If a health care provider is utilizing telehealth that involves PHI, the provider must meet the same HIPAA requirements as if the service was provided in-person.
- Telehealth technology, such as software or other equipment, should use encryption, require passwords, and utilize other safeguards. The use of Business Associates Agreements (BAAs) with vendors is a key way to confirm HIPAA compliance of the technology.
- In addition, always consider the security and privacy of the physical locations of the patient and provider.

HIPAA and COVID-19

<https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

- The federal Office of Civil Rights (OCR) is responsible for enforcement of HIPAA.
- During the COVID-19 nationwide public health emergency, OCR will exercise its enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with the good faith provision of telehealth.
- States may or may not allow this same flexibility.

HIPAA and COVID-19

<https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

- Popular video chat applications that are non-public facing, such as Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, Zoom, or Skype, may be used to provide telehealth without risk that OCR might seek to impose a penalty for noncompliance with the HIPAA Rules related to the good faith provision of telehealth.
 - Providers are encouraged to notify patients that these third-party applications potentially introduce privacy risks, and providers should enable all available encryption and privacy modes when using such applications.
- Public facing video communication applications, such as Facebook Live, Twitch and TikTok, may **not** be used in the provision of telehealth by covered health care providers.

In summary

This is an overview of the primary legal and regulatory requirements which merit attention when implementing telehealth.

During the COVID-19 public health emergency, many of these requirements have been relaxed in some, often significant, ways.

Federal and state requirements, and COVID-19 changes, may be different, and may vary from state to state.

At the end of the COVID-19 emergency, these temporary changes will end. End dates may differ from state to state and at the federal level.

For those new to telehealth, it is important to be familiar with telehealth laws and regulations separate from those allowed during current circumstances.

Resources

- Center for Connected Health Policy
<https://www.cchpca.org/>
- Center for Telehealth and e-Health Law (CTeL)
<http://ctel.org/>
- American Telemedicine Association
<https://www.americantelemed.org/>
- Foley & Lardner LLC Health Care Law Today
<https://www.foley.com/en/insights/blogs/health-care-law-today>
- Legal Counsel – *use it!!*



Questions?

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