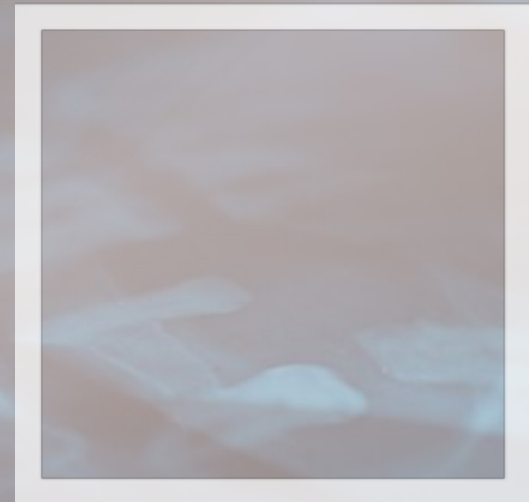
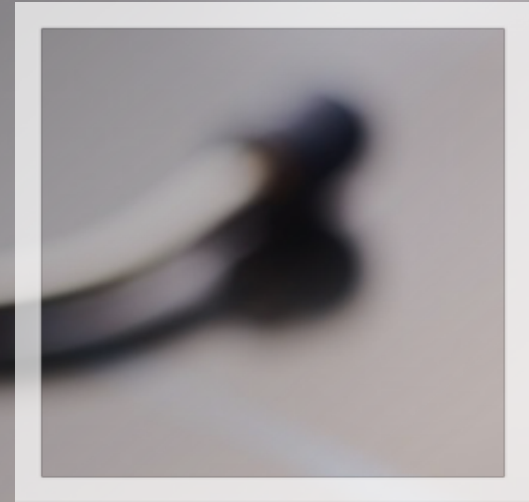


# Telehealth: Licensing, Practice, and COVID-19 Policy

September 23, 2022



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# AGENDA

- Telehealth & Licensure
- Telehealth Practice Standards
- COVID-19 Waivers
- Post COVID-19 Policy
- Q & A



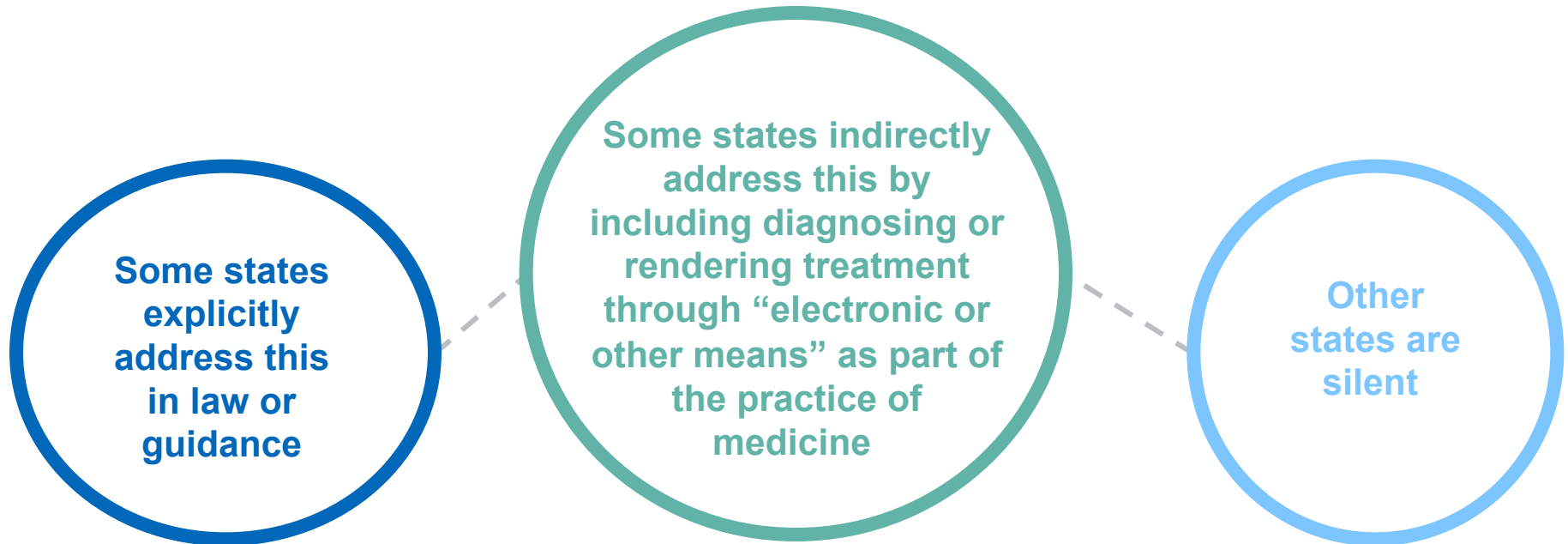
Source: South Central Telehealth Resource Center



# Telehealth and Licensure

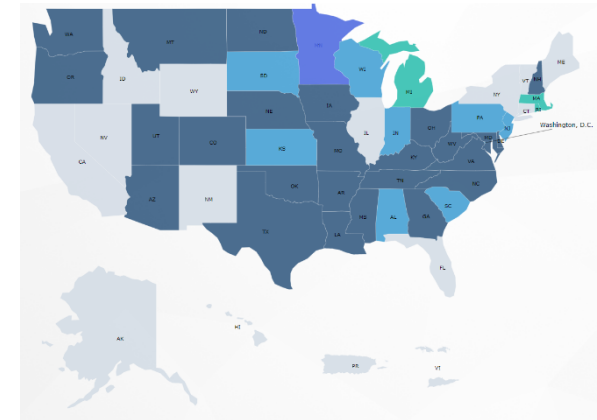
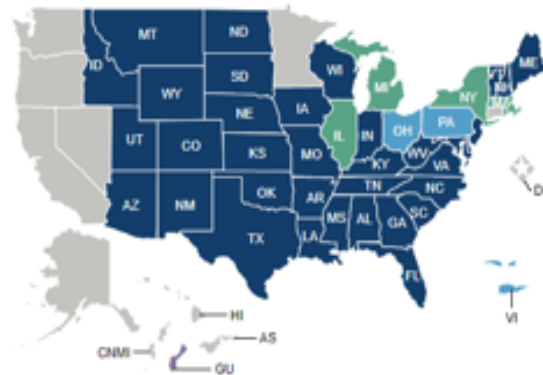
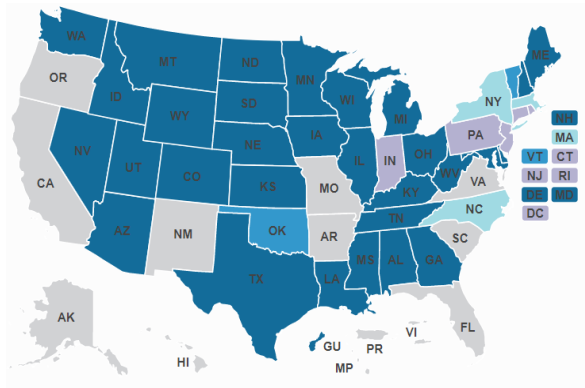
# Licensing

- Regarding medical practice rules, it is generally accepted that the law that governs the consult is the state where the patient is located at the time of the consult. This is the locus of care.
- State law expressly or implicitly requires licensure if the patient is located in the state at the time of the consult.





# Growth of Interstate Licensing Compacts



# Notable License Exceptions

## 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)

# Peer to Peer Consultation Exception

|    | Must be free | Frequency limits | No established connections or contract/arrangement | No primary diagnosis | Limits or Restrictions on Pathology | Limits or Restrictions on Radiology | Informal/Curbside/No Written Opinion | No in-state office or meeting place | Expressly Doc to Doc Only | Other |
|----|--------------|------------------|--|----------------------|-------------------------------------|-------------------------------------|--------------------------------------|-------------------------------------|---------------------------|-------|
| CT |              | X                | X  | X                    | X                                   | X                                   |                                      |                                     | X                         | X     |
| DE |              | X                |  |                      |                                     |                                     |                                      |                                     | X                         |       |
| FL |              |                  |  |                      |                                     |                                     |                                      |                                     | X                         |       |
| ME |              |                  |  |                      |                                     | X                                   |                                      |                                     |                           | X     |
| MA |              |                  |  |                      |                                     |                                     |                                      |                                     |                           | X     |
| NH |              | X                |  | X                    |                                     | X                                   |                                      |                                     | X                         |       |
| RI |              | X                |  |                      | X                                   | X                                   |                                      |                                     | X                         | X     |

Interpretive summary only; not legal advice; state laws are constantly evolving and state laws must be analyzed and applied to a specific clinical application.



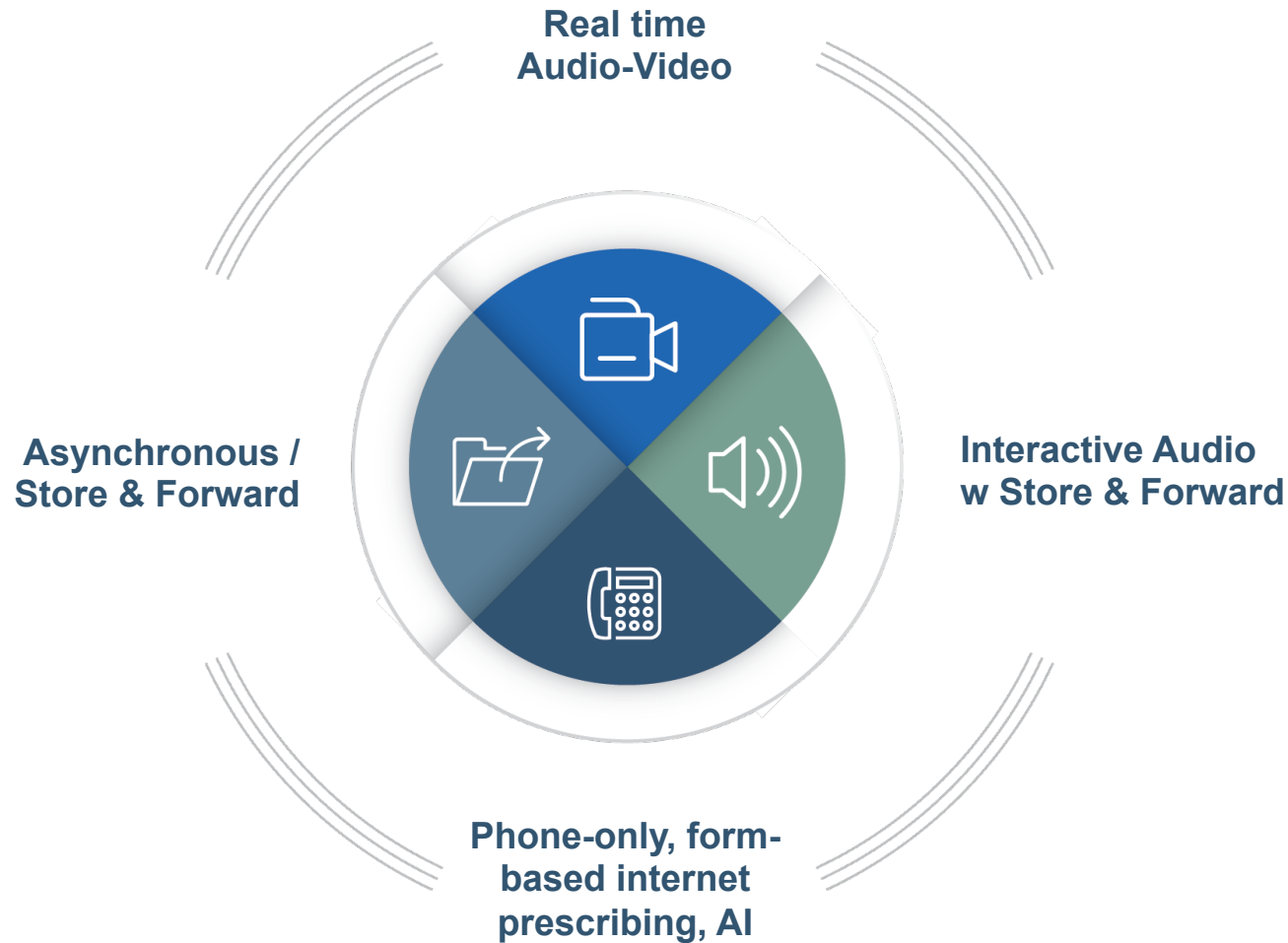


# Telehealth Practice Standards

# Telemedicine State Practice Standards

- 1 New Patient vs. Established
- 2 Verify Patient Identity
- 3 Originating Site Restrictions
- 4 Patient-Site Telepresenter
- 5 Modality of Communication Technology
- 6 Remote Prescribing
- 7 Record-Keeping and Record-Sharing
- 8 Informed Consent
- 9 Patient Choice of Provider
- 10 Disclosures

# Telemedicine & Evolving Modalities



# Analyzing Telemedicine Modalities and State Law

|    | Modality to establish physician-patient relationship                            | Modality <u>after</u> creating valid physician-patient relationship             | Modality for prescribing <u>non-controlled</u> substances                       | Additional Considerations for Valid Asynchronous/Store and Forward   |   |  |
|----|---|---|---|--|---|--|
|    |   |   |   | Does the state have an internet prescribing prohibition (i.e., prohibit prescribing based on the sole use of an online questionnaire)? | If a state has an internet prescribing prohibition, does the prohibition only extend to <u>static</u> questionnaires? | Does the state have an express limitation on the use of text/chat/instant messaging? |
| CT | <u>AV</u> : SILENT<br><u>IA</u> : SILENT<br><u>S&amp;F</u> : SILENT             | <u>AV</u> : <b>YES</b><br><u>IA</u> : <b>YES</b><br><u>S&amp;F</u> : <b>YES</b> | <u>AV</u> : SILENT<br><u>IA</u> : SILENT<br><u>S&amp;F</u> : SILENT             | <b>YES</b><br>(Pharmacy statutory prohibition, but refers only to controlled substances)   | <b>NO</b>   | <b>YES</b>   |
| ME | <u>AV</u> : <b>YES</b><br><u>IA</u> : <b>YES</b><br><u>S&amp;F</u> : <b>YES</b> | <u>AV</u> : <b>YES</b><br><u>IA</u> : <b>YES</b><br><u>S&amp;F</u> : <b>YES</b> | <u>AV</u> : <b>YES</b><br><u>IA</u> : <b>YES</b><br><u>S&amp;F</u> : <b>YES</b> | <b>YES</b><br>(Board of Medicine prohibition)  | <b>YES</b>  | <b>YES</b>   |
| MA | <u>AV</u> : SILENT<br><u>IA</u> : SILENT<br><u>S&amp;F</u> : SILENT             | <u>AV</u> : <b>YES</b><br><u>IA</u> : <b>YES</b><br><u>S&amp;F</u> : <b>YES</b> | <u>AV</u> : <b>YES</b><br><u>IA</u> : <b>YES</b><br><u>S&amp;F</u> : <b>YES</b> | <b>YES</b><br>(Board of Medicine prohibition)  | <b>LIKELY YES</b><br>(Valid telehealth defined to include "online adaptive interviews")                               | <b>NO</b>  |
| NH | <u>AV</u> : <b>YES</b><br><u>IA</u> : <b>NO</b><br><u>S&amp;F</u> : <b>NO</b>   | <u>AV</u> : <b>YES</b><br><u>IA</u> : <b>YES</b><br><u>S&amp;F</u> : SILENT     | <u>AV</u> : <b>YES</b><br><u>IA</u> : <b>NO</b><br><u>S&amp;F</u> : <b>NO</b>   | <b>YES</b><br>(Pharmacy statutory prohibition, but refers only to controlled substances)   | <b>NO</b>   | <b>NO</b>  |
| RI | <u>AV</u> : SILENT<br><u>IA</u> : SILENT<br><u>S&amp;F</u> : SILENT             | <u>AV</u> : <b>YES</b><br><u>IA</u> : <b>YES</b><br><u>S&amp;F</u> : <b>YES</b> | <u>AV</u> : SILENT<br><u>IA</u> : SILENT<br><u>S&amp;F</u> : SILENT             | <b>YES</b><br>(Board of Medicine prohibition)  | <b>NO</b>   | <b>NO</b>  |
| VT | <u>AV</u> : <b>YES</b><br><u>IA</u> : SILENT<br><u>S&amp;F</u> : SILENT         | <u>AV</u> : <b>YES</b><br><u>IA</u> : SILENT*<br><u>S&amp;F</u> : <b>YES*</b>   | <u>AV</u> : <b>YES</b><br><u>IA</u> : SILENT*<br><u>S&amp;F</u> : <b>YES*</b>   | <b>YES</b><br>(Board of Medicine prohibition)  | <b>NO</b>   | <b>YES</b>   |

A person is shown from the chest up, holding a tablet computer. The person's face is partially visible on the left, looking towards the tablet. The tablet screen is lit up and shows some text, but it is mostly obscured by a semi-transparent blue overlay that covers the entire middle section of the image. The background is a plain, light-colored wall.

# COVID-19 Waivers

# Public Health Emergency

Declared Jan. 31,  
2020 (retro to  
Jan 27th)

Effective for 90  
days and can be  
renewed in  
additional 90-day  
increments

Secretary may also  
terminate the  
declaration whenever  
s/he determines that  
the PHE has ceased  
to exist

No requirement  
to give notice of  
intent to not  
renew the PHE



# Other Federal Agency Waivers



No administrative sanctions for reducing or waiving cost-sharing obligations for telehealth services



Confirmed PHE exception for telemedicine prescribing of controlled substances



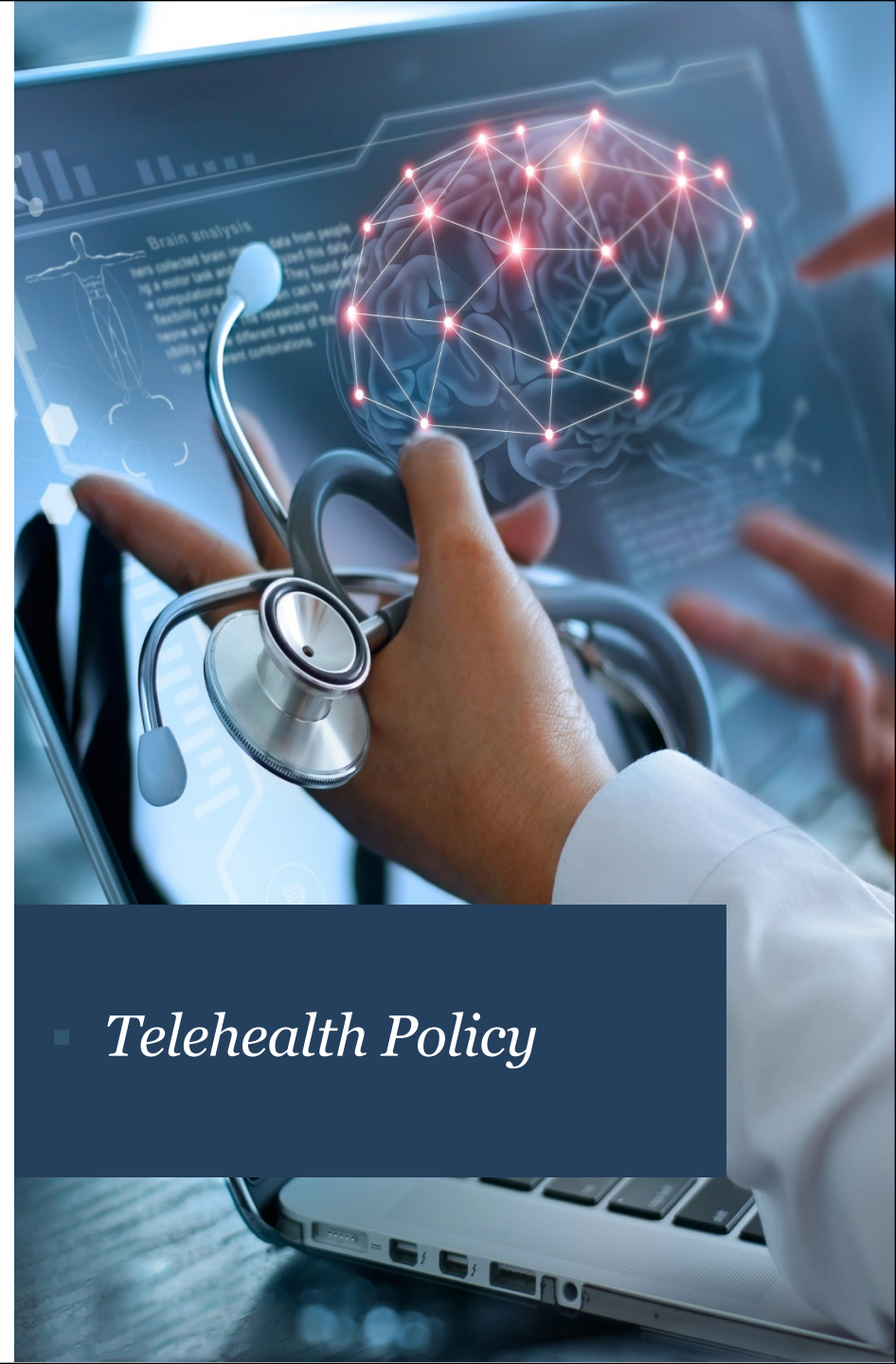
OCR will not penalize providers for using potentially non-HIPAA-compliant tools or for good faith use and disclosures of PHI



# Post-COVID Digital Health Policy

# Expansion of Telehealth

- **State Law Changes**
- **Legislative Fix – Pending Bills**



- *Telehealth Policy*

# Speaker Contact



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[www.foley.com/telemedicine](http://www.foley.com/telemedicine)

[www.healthcarelawtoday.com](http://www.healthcarelawtoday.com)

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| Fraud and Abuse • Regulatory Compliance • Destination Medicine     |
| Reimbursement and Payment • Contracting and Joint Ventures • M&A   |
| Licensure and Practice • Concierge Medicine • Privacy and Security |

# Thank you

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