

US TELEHEALTH POLICY

FEBRUARY 6, 2024



**Center for Connected
Health Policy**

THE NATIONAL
TELEHEALTH POLICY
RESOURCE CENTER



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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.

DISCLAIMERS

- **Any information provided in today's talk is not to be regarded as legal advice. Today's talk is purely for informational purposes.**
- **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 federal and state telehealth policy landscape**
- **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

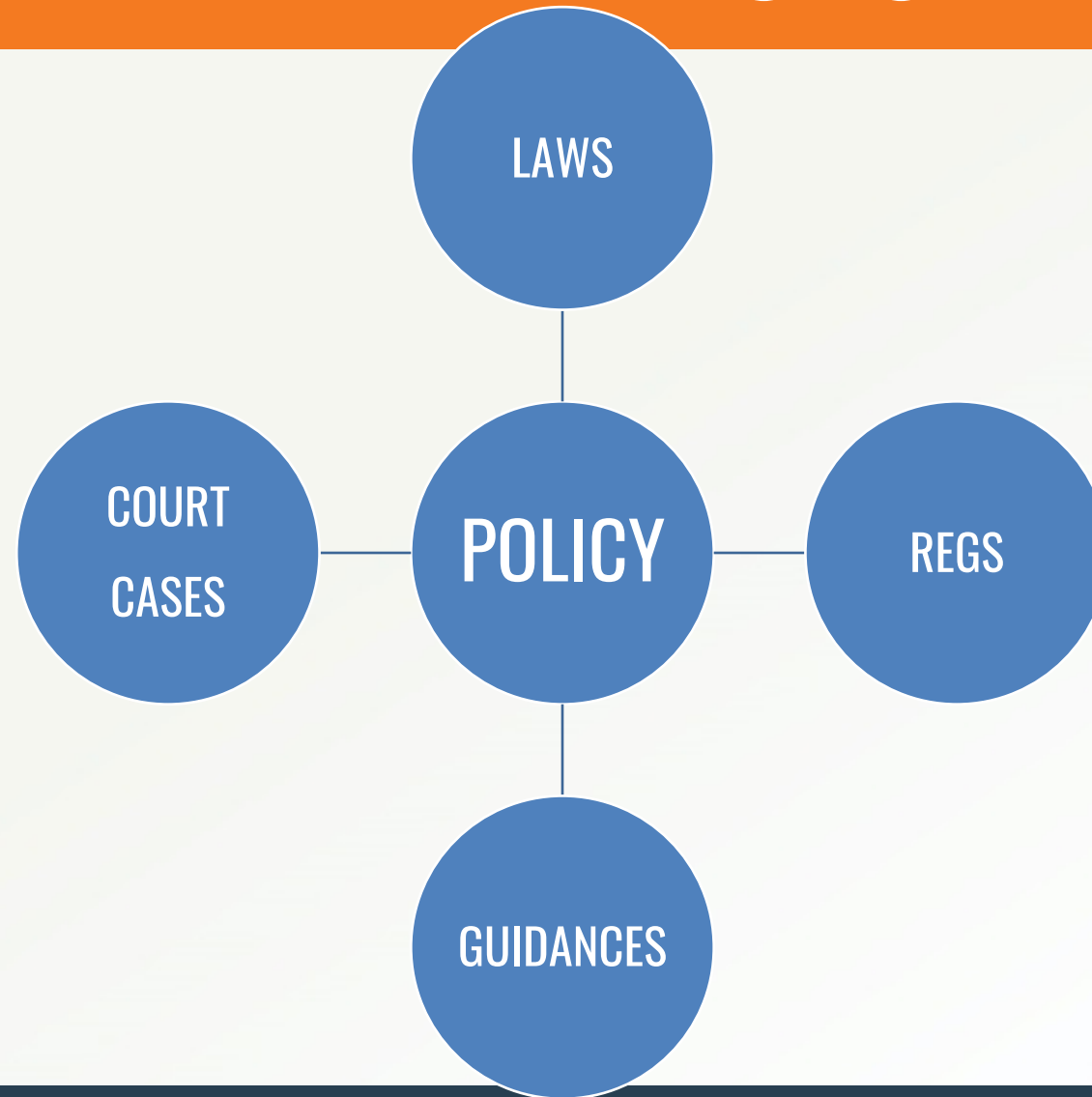
- MEDICARE/CMS
- PRESCRIBING OF CONTROLLED SUBSTANCES (DEA)
- HIPAA/PRIVACY/DATA
- LICENSURE

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 \(Dated 12/2023\)](#)



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



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](#)



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



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



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**



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

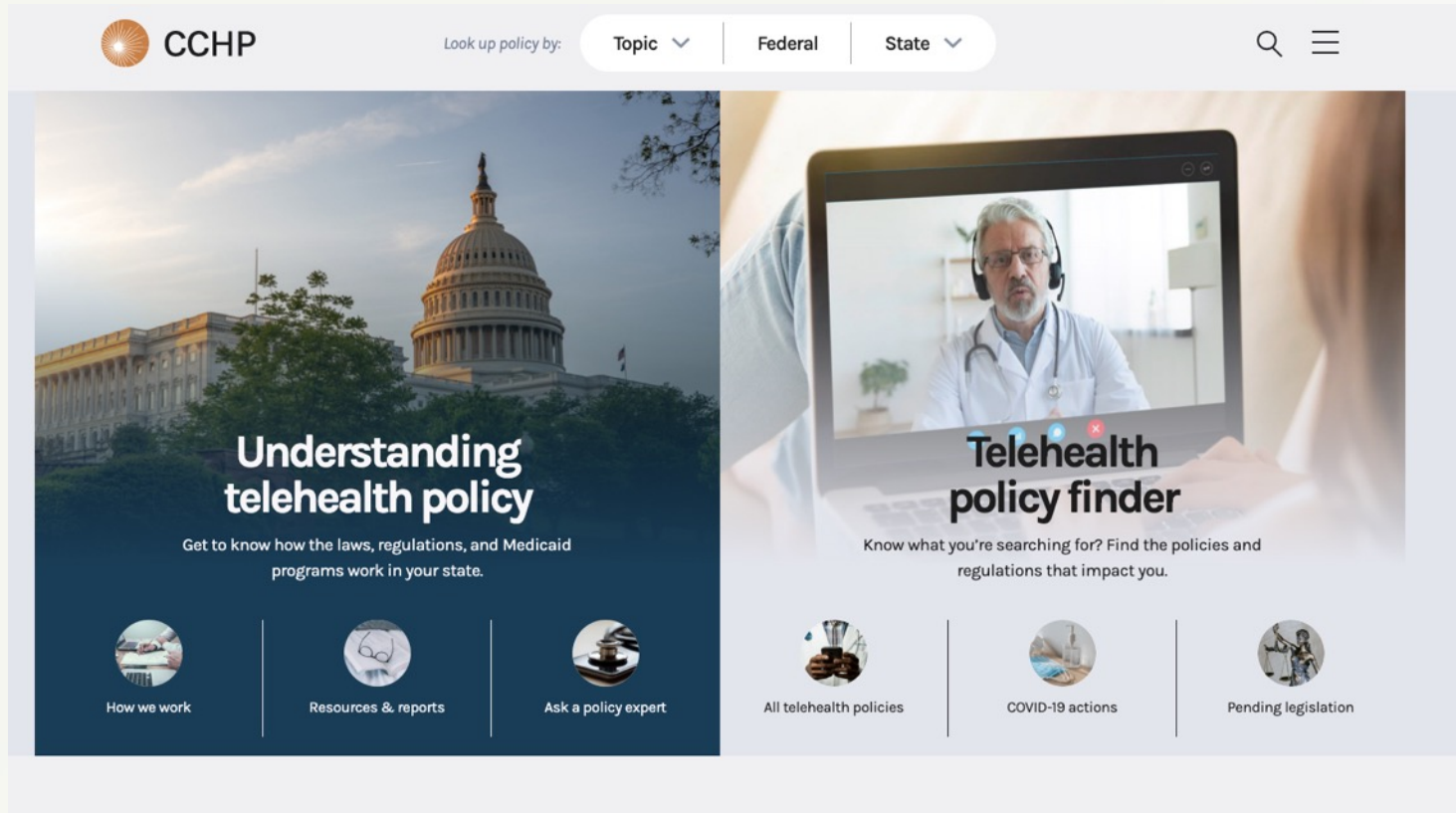


STATES

- 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**

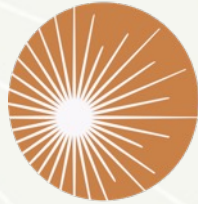


➤ CCHP Website – cchpca.org



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





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Thank You!

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