

The Legal Landscape of Telehealth



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Legal Considerations of Telehealth

- Licensing
- Reimbursement
- New Georgia laws
- Privacy and confidentiality
- Fraud and abuse



Licensure

Who is authorized in the state of Georgia?

Georgia Licensed Physicians

Physician Assistants

Advanced Practice Registered Nurses

The Interstate Medical Licensure Compact (ILMC) offers an expedited licensing process for physicians that are interested in practicing medicine in the state of Georgia yet are licensed within another state.

Physicians outside of the state may obtain a “Telemedicine License”





Telemedicine License

The board shall be authorized to issue telemedicine licenses to physicians who are licensed in other states but not licensed in this state to engage in the practice of medicine through telemedicine.

The physician shall:

- Hold a full and unrestricted license to practice medicine in another state
- Not have had any disciplinary or other action taken against him or her by any other state or jurisdiction
- Meet such other requirements established by the board pursuant to subsection (c) of this Code section as deemed necessary by the board to ensure patient safety



Telemedicine License Cont'd

- The board shall adopt rules as to the eligibility for and the issuance of a telemedicine license. Such rules shall include limiting licensees to the practice of telemedicine. A person issued a telemedicine license pursuant to this Code section shall not be authorized to engage in the practice of medicine while physically present in this state with respect to a patient also physically present in this state; provided, however, that this subsection shall not apply to consultation provided in response to an emergency.
- A person issued a telemedicine license shall immediately notify the board of any restrictions placed on his or her license or revocation of his or her license by a licensing board or entity in another state.
- A person issued a telemedicine license shall be required to comply with all applicable requirements of the laws of this state relating to the maintenance of patient records and the confidentiality of patient information, regardless of where such physician may be located and regardless of where or how the records of any patient located in this state are maintained.



Reimbursement Strategies



Telehealth

Prior to COVID, Medicare provided limited reimbursement for telehealth.

- Medicare only reimbursed telehealth services when provided at specific originating sites in rural areas and for stroke services in non-rural areas
- Reimbursable practitioners included physicians and certain advanced practice practitioners
- Reimbursable services were limited

<https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/TelehealthSrvcsfctsht.pdf>



Telehealth

- The government drastically expanded the ability of hospitals and physicians to bill for telehealth as part of its COVID-19 waivers
- This included the addition of hundreds of HCPCS codes that Medicare previously had not reimbursed when provided via telehealth. In hospitals, these new HCPCS codes included initial hospital and observation care; the ability to bill every day for subsequent hospital care; vent management; cardiac rehab; critical care; and ED visits. A full list is available here: <https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes>
- CMS also expanded the ability to provide supervision via telemedicine for incident to care, infusion, and radiology among others
- CMS waived requirements regarding provision of telemedicine in rural originating sites, permitting any location to be an originating site
- Similarly, physicians could provide telemedicine out of their home rather than specified distant sites
- The telehealth waivers expanded the practitioners who could be reimbursed for telehealth to include physical therapists, occupational therapists, speech language pathologists, and others



Telehealth

- Congress is exploring some permanent expansions of telehealth, but it will not be inclusive of all current waivers
- Some telemedicine HCPCS codes will survive for a temporary time after the public health emergency (PHE) ends, either 151 days after or at the end of 2023. Other HCPCS codes will cease being reimbursed immediately upon the expiration of the PHE. CMS's files specify the fate of each code.
- Other waivers such as the waiver of the rural location requirement and the ability to provide supervision via telemedicine will end at the end of the PHE unless Congress acts



Medicare Policies Post PHE

Payments Valid through December 31, 2023

- Hearing/auditory Testing for codes 92550 through 92601
- Speech Therapy for codes 92508 -92524
- ESRD limited types of patient visits
- Physical Therapy and Occupational Therapy
- Orthotic and Prosthetic Training
- Self Management Education
- Hospital and Nursing Home Discharge Day,
- Emergency Department Visit and Critical Care
- Pediatric Critical Care
- Intensive Cardiac Rehabilitation with and without Exercise



Medicare Policies Post PHE

Through PHE Plus 151 Days

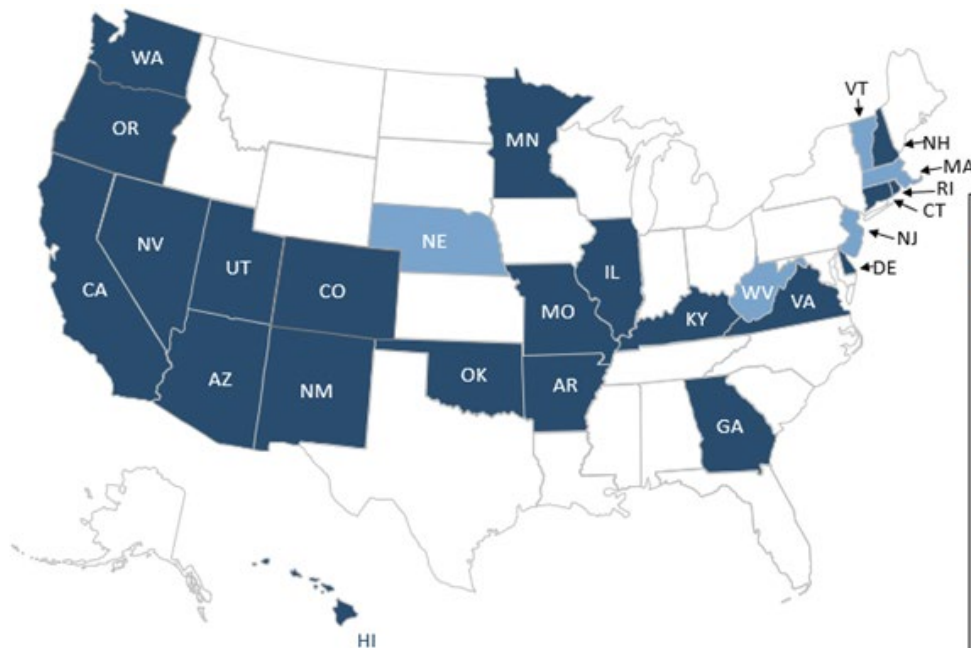
- G9685 Acute nursing facility care
- G0410 Grp psych partial hosp 45-50
- 99477 Init day hosp neonate care
- 99475 Ped crit care age 2-5 init
- 99471 Ped critical care initial
- Hospital Observation 99234-236
- Initial Hospital Care 99221-99223
- Nursing Facility Care Initial 99304-99306
- Physician Phone Visits 99441-99443



Telehealth Mental Health Services

- Medicare will no longer restrict telehealth restrictions for TeleMental health to only rural sites. The originating site may be a physician office, a hospital or other medical care settings to include the patient's home
- After the PHE: a TeleMental Visit patient must have an in-person visit with the practitioner within 6 months and each 12 months thereafter

Payment Parity



Key

- Implemented Payment Parity**
- Payment Parity in Place, with caveats:**
 - *Massachusetts*: Payment parity for mental health services, only
 - *Nebraska*: Payment parity for certain mental health and substance use disorder services, only
 - *New Jersey*: Through December 31, 2023
 - *Vermont*: Through January 1, 2026
 - *West Virginia*: Payment parity for established patients and patients in acute care facilities, only

<https://www.manatt.com/insights/newsletters/covid-19-update/executive-summary-tracking-telehealth-changes-stat>



Georgia Parity Laws: Insurer Payment

- Each insurer proposing to issue a health benefit policy shall provide coverage for the cost of health care services provided through telehealth or telemedicine as directed through regulations promulgated by the department.
- An insurer shall not exclude a service for coverage solely because the service is provided through telemedicine services and is not provided through in-person consultation or contact between a health care provider and a patient for services appropriately provided through telemedicine services.
- **An insurer shall reimburse the treating provider or the consulting provider for the diagnosis, consultation, or treatment of the insured delivered through telemedicine services on the same basis and at least at the rate that the insurer is responsible for coverage for the provision of the same service through in-person consultation or contact;** provided, however, that nothing in this subsection shall require a health care provider or telemedicine company to accept more reimbursement than they are willing to charge. Payment for telemedicine interactions shall include reasonable compensation to the originating or distant site for the transmission cost incurred during the delivery of health care services.



Georgia Parity Requirements

- No insurer shall impose any annual or lifetime dollar maximum on coverage for telemedicine services other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the policy, or impose upon any person receiving benefits, any copayment, coinsurance, or deductible amounts, or any policy year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits or services, that is not equally imposed upon all terms and services covered under the health benefit policy.
- No insurer shall require its insureds to use telemedicine services in lieu of in-person consultation or contact.
- On and after January 1, 2020, every health benefit policy that is issued, amended, or renewed shall include payment for services that are covered under such health benefit policy and are appropriately provided through telehealth



Other Georgia Laws



New Georgia Laws

Effective July 1, 2022

- *Mental Health Parity Act*: Creates and maintains the Behavioral Health Care Workforce Data Base for the purposes of collecting and analyzing minimum data set surveys for behavioral health care professionals. The minimum data set established by the board shall include, but shall not be limited to an applicant's practice status and practice settings to include telehealth services as well as other outlined requirements
- *Georgia Rare Disease Advisory Council*: Establishes the Georgia Rare Disease Advisory Council. The advisory council shall conduct activities to benefit rare disease patients in Georgia such as expanding telehealth services.



New Georgia Laws

Effective July 1, 2022

- Georgia Behavioral Health and Peach Officer Co-Responder Act: When a law enforcement agency that has entered into a co-responder partnership with a community service board responds to an emergency call involving an individual with a behavioral health crisis and a co-responder team is dispatched, a community service board team member shall be available to accompany the officer team member in person or via virtual means or shall be available for consultation via telephone or telehealth during such emergency call.



TeleMental Health

TeleMental Health - means the mode of delivering services via technology-assisted media, such as but not limited to, a telephone, video, internet, a smartphone, tablet, PC desktop system or other electronic means using appropriate encryption technology for electronic health information. TeleMental Health facilitates client self-management and support for clients and includes synchronous interactions and asynchronous store and forward transfers.

Georgia Rule and Regulation 135-11-.01



TeleMental Health

Who:

Licensed Professional Counselor

Social Worker

Marriage and Family Therapist

How:

Asynchronous Store and Forward

Synchronous Interaction



TeleMental Health

- Training for Licensee is Required –Minimum of 6 Continuing Education hours, unless the hours have been taken in the last 5 years
- Supervision –Supervisor must have 9 hours of Continuing Education to include informed consent of the supervisee
- Informed Consent by the client (verbal and written)
- Client Assessment of Applicable and Acceptable form of Treatment
- Code of Ethics
- Scope of Practice



Telepsychology

- Licensed in Georgia
- Competency
- Standards of Care
- Informed Consent
- Confidentiality
- Security and Disposal of Data
- Testing and Assessment
- Georgia Rule and regulation §510-5-.07



Privacy and Security



HIPAA Privacy Rule and Telehealth

OCR is exercising its enforcement discretion and will not impose penalties for noncompliance during the PHE related to Telehealth. The Telehealth Notification will remain in effect until the Secretary of HHS declares that the COVID-19 PHE no longer exists, or upon the expiration date of the declared PHE, whichever occurs first.

The Office of Civil Rights requires the following:

- Covered entities apply reasonable safeguards to protect the privacy of protected health information (PHI) from impermissible uses or disclosures, including when providing telehealth services.
- OCR expects covered health care providers to provide telehealth services in private settings to the extent feasible. If telehealth services cannot be provided in a private setting (e.g., where a provider shares an office with a colleague or a family member), covered health care providers still must implement reasonable safeguards, such as using lowered voices and not using speakerphone, to limit incidental uses or disclosures of PHI.
- If the individual is not known to the covered entity, the entity must verify the identity of the individual either orally or in writing (which may include using electronic methods).



HIPAA Security Rule and Telehealth

- Security Rule does not apply to Audio Only
- Security Rule does apply to Voice over Internet Protocol, mobile devices, wi-fi
- Must apply the Administrative, Physical and Technical safeguards required under the Security Rule
- Risk Assessments must be performed to include the following components:
 - Transmission Interception
 - Encryption
 - Storage in a secure manner
 - Authentication is required to access the device
 - Device or App logs off after a certain period of time



Security and Medicaid

- Per Medicaid: telehealth services must utilize an acceptable method of encryption adequate to protect the confidentiality and integrity of the transmitted information
- Transmissions must employ acceptable authentication and identification procedures by both the sender and the receiver
- All interactive video telecommunications must comply with HIPAA patient privacy regulations at the site where the member is located, the site where the consulting provider is located and in the transmission process
- All communications must be on a secure network in compliance with HIPAA encryption

Security

- Notice of privacy practices
- Consent to treatment
- Authorization to release information
- Electronic exchange of information
- Encryption
- Storage of records
- Must comply with HIPAA
- Security plan (Administrative, physical, and technical safeguards)





Fraud and Abuse



OIG Audit and Study March 15, 2022

- Study of March 1, 2020 to February 28, 2021 of Medicare Beneficiaries that accessed Telehealth Services
- 28 Million Medicare Beneficiaries used Telehealth (2/5)
- Mostly for Office Visits 13% of all office visits
- 43% for Behavioral Health Visits

Fraud and Abuse: Special Fraud Alert

TELEFRAUD SCHEME



1
Telemarketers contact beneficiaries and request health care information and health insurance numbers.



2
The purported telehealth company pays a medical provider to electronically sign orders/prescriptions in an online portal for unnecessary durable medical equipment, genetic testing, or prescription medications.

The medical provider typically does not interact with or treat the beneficiary.



3
A durable medical equipment company, laboratory, or pharmacy purchases the complete package that includes the beneficiary's information and medical provider's order/prescription, and uses the information to submit false claims for payment to Medicare, Medicaid, and other Federal health care programs.

OIG.HHS.GOV

Special Fraud Alert

Concern about kick-backs in exchange for the delivery of a service or billing for a service.

- Suspect characteristics of a telehealth fraud scheme:
- The patients for whom the practitioner orders or prescribes items or services were identified or recruited by the telemedicine company, telemarketing company, sales agent, recruiter, call center, health fair, and/or through internet, television, or social media advertising for free or low out-of-pocket cost items or services
- The practitioner does not have sufficient contact with or information from the patient to assess the medical necessity of the items or services ordered or prescribed
- The telemedicine company compensates the practitioner based on the volume of items or services ordered or prescribed, which may be characterized to the practitioner as compensation based on the number of medical records that the practitioner reviewed.
- The telemedicine company only furnishes items and services to federal health care program beneficiaries and does not accept insurance from any other payor.





Special Fraud Alert

- The telemedicine company claims to only furnish items and services to individuals who are not federal health care program beneficiaries but may in fact bill federal health care programs
- The telemedicine company only furnishes one product or a single class of products (e.g., durable medical equipment, genetic testing, diabetic supplies, or various prescription creams), potentially restricting a practitioner's treating options to a predetermined course of treatment
- The telemedicine company does not expect practitioners (or another practitioner) to follow up with patients nor does it provide practitioners with the information required to follow up (e.g., the telemedicine company does not require practitioners to discuss genetic testing results with each patient)



OIG Guidance for Practitioners

- Educate yourself and talk to your Federal health care program patients about the scope of telehealth services available to them through your office and other legitimate providers.
- Before providing telehealth to patients, verify that the furnishing of the telehealth service via a telecommunications system instead of through an in-person service is clinically appropriate for the service and the patient.
 - This verification may include checking with the patient that they have the necessary equipment to participate in telehealth visits.
- Ensure that you are assessing the medical necessity and reasonableness of every item or service that you order or prescribe for a Federal health care program beneficiary.
- Make your patients aware of the types of communications they should expect to receive from your practice.
- Inform your Federal health care program patients that if they receive phone calls or other communications offering them durable medical equipment, genetic testing, diagnostic testing, diabetic supplies, prescription medications, or other health care items or services, they should consult you or another medical provider with whom they already have a provider-patient relationship to determine what, if any, items and services are needed to diagnose or treat their medical conditions.
 - You can expect that many of your Medicare patients are receiving unsolicited phone calls offering them "free" medical items and services.
- Be aware of phishing communications, including phone calls or faxes, stating that a clinical team determined that your patients should receive certain items or services and requesting that you approve orders for various items and services.
- Report telehealth fraud to [OIG's fraud hotline](#) if you encounter it or if your Federal health care program patients inform you about it.



OIGs Enforcement Actions

Georgia APRN sentenced to 87 months and \$1.6 Million in Restitution

- Beaufiles, as a nurse practitioner, facilitated orders for more than 3,000 orthotic braces that generated more than \$3 million in fraudulent or excessive charges to Medicare. Co-conspirators captured the identities of senior citizens, identified through a telemarketing scheme, and bundled that information as “leads.”
- Beaufiles then signed her name to fake medical records in which she falsely claimed she provided examinations of those patients, and then in exchange for money she created orders for orthotic braces for patients she never met or spoke with – including a knee brace for an amputee, and a back brace for a recently deceased patient – and for other durable medical equipment. Beaufiles’ fraudulent orders were then sold to companies to generate reimbursement from Medicare.



Self-Disclosure Telemedicine Billing

Self disclosure: Sanford Health, Sanford Clinic, and Sanford Medical Center (collectively, “Sanford”), South Dakota, entered into a \$25,842 settlement agreement with OIG. OIG alleged that Sanford submitted claims to Medicare, Medicaid, TRICARE, and the Health Resources and Services Administration’s COVID-19 Uninsured Program for telemedicine services provided by a physician that did not meet applicable requirements. Specifically, OIG alleged that Sanford submitted claims for services that: (1) were scheduled for times when the physician was out of the country and without access to Sanford’s approved telemedicine platform; (2) did not involve interactive two-way video and audio as required; and (3) purported to be for multiple family members when the physician had only spoken to one family member.



Wellness Center Settles False Claims and Anti-kickback related to Telemedicine

Physician settled claims with the government for \$2.6 Million. The government alleges that between April 2016 and March 2020, Greene and Feel Well Health Center submitted false claims for services allegedly rendered by Greene in an office setting when he was not physically present in the office suite, including when he was out of the country, on vacation, or in a different office at the time.

For instances where Greene and Feel Well Health Center submitted claims for alleged telemedicine, they did not meet applicable telemedicine requirements for office location or use an interactive telecommunications system.



Operation Brace Yourself

Savannah, Georgia--\$60Million fraud

Royal Physician Network, LLC, and Envision It Perfect, LLC, both Georgia companies, pled guilty in U.S. District Court to a charge of conspiracy for conspiring to pay medical providers, such as physicians and nurse practitioners, in exchange for obtaining orders for durable medical equipment (DME) that would then be sold to DME providers and, ultimately, billed to Medicare.



Operation Rubber Stamp

\$1.5Billion in alleged government billings

Defendant telemedicine executives allegedly paid doctors and nurse practitioners to order unnecessary durable medical equipment, genetic and other diagnostic testing, and pain medications, either without any patient interaction or with only a brief telephonic conversation with patients they had never met or seen. Durable medical equipment companies, genetic testing laboratories, and pharmacies then purchased those orders in exchange for illegal kickbacks and bribes and submitted false and fraudulent claims to Medicare and other government insurers.



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QUESTIONS?



THANK YOU



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