

Federal and State Telehealth Policy Updates

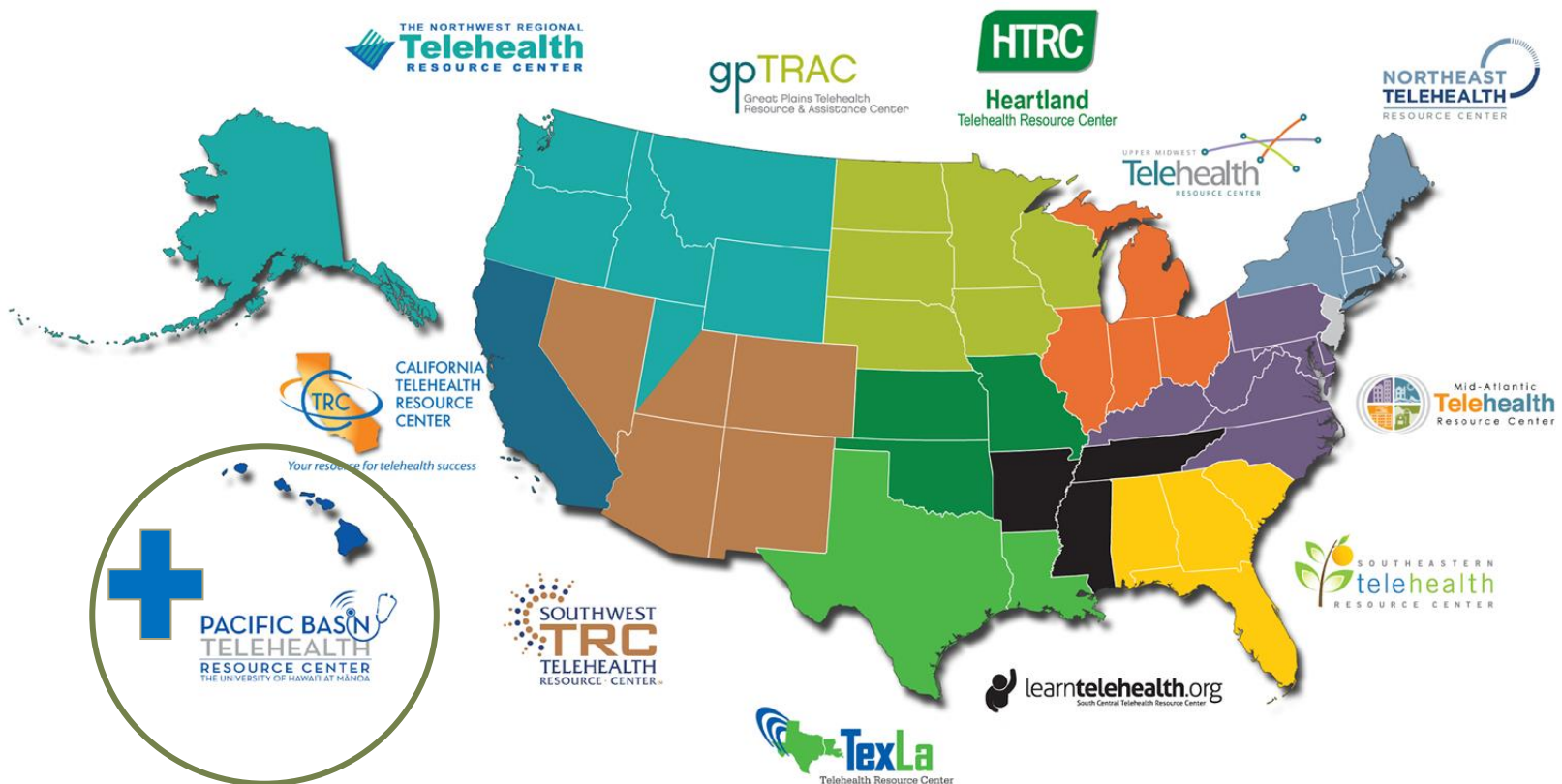
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October 30, 2023

TelehealthResourceCenters.org



2 National Resource Centers



NRTRC	gpTRAC	NETRC
CTRC	HTRC	UMTRC
SWTRC	SCTRC	MATRC
PBTRC	TexLa	SETRC

12 Regional Resource Centers

PBTRC Services:

- Technical Assistance & Program Development
- Education, Training & Awareness of Telehealth
- Equipment Recommendations
- Program Evaluation
- Policy & Program Development
- Communication Outreach & Sustainability



National and Regional Telehealth Resource Centers



www.TelehealthResourceCenters.org



Digital Equity: “Super” Determinant of Health

Digital Equity for ALL (Access, Literacy, Livelihood)

- Critical Role in Health Care Outcomes
- Impacts all Social Determinants of Health, Education, Access to Health Care
- ALL = Including vulnerable populations - maternal, people experiencing houseless, disabilities, LGBTQ, Veterans, others

Select Project Focus Areas



Maternal Telehealth



Disabilities and Telehealth



Pacific Island Veterans Care



ALICE & Houseless Care



2023

TELEHEALTH VIRTUAL VISIT REIMBURSEMENT GUIDE

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Presentation Outline

- ◆ Review Definition & Terms
- ◆ Provide Federal & State Telehealth Policy Updates
- ◆ Highlight Needs for Policy Development



Review Definitions & Terms

Telehealth/ Telemedicine, Digital Health,
Virtual Care, etc.

Defining Telehealth Terms

- **Telehealth:** Use of technology for the delivery of clinical healthcare, education, public health information remotely
- **Telemedicine:** Subset of Telehealth, specific to clinical services
- **Other Related Terms:**
 - Virtual Health, eHealth, Connected Care: Interchangeable with telehealth
 - Digital Health: (Broader Term) Encompasses various digital technologies, devices, algorithms and platforms etc. (AI, wearables, health apps, etc)



Nuances of Reimbursement Terminology

Precise Reimbursement Terminology

- Defines if and how services are reimbursed
- Establishes common language for billing and reimbursement
- Defines Documentation and reporting Requirements
- Ideally help to track effectiveness and cost-efficiency of specific services

Example of Reimbursement Terminology:

Telehealth

- Interactive audio & video is meant to replace an in-person visit.

Communication Technology Based

- **Virtual Check-In:** a brief, 5-10 min, communication with patient, not related visit 7 days before or 24 hours after. (audio only acceptable for some)
- **e-Visits:** communicate via online patient portal
- **eConsults:** provider-to-provider, interprofessional consultation.
- **Telephone E/M:** evaluation/ assessment management not related to an E/M service previous 7 days or 24 hours after. (audio only acceptable for some)

Telehealth Modalities:

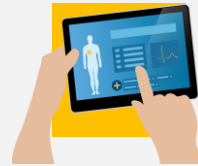
Various Ways Services Are Delivered



Real-Time: Live consultation, synchronous services provided by interactive video teleconferencing



Store and Forward: Asynchronous transmission of images test results other data for later review and consultation



Remote Patient Monitoring: Continuous collection and transmission of patient physiological/ biometric health data for remote tracking and intervention (i.e. Chronic Disease)



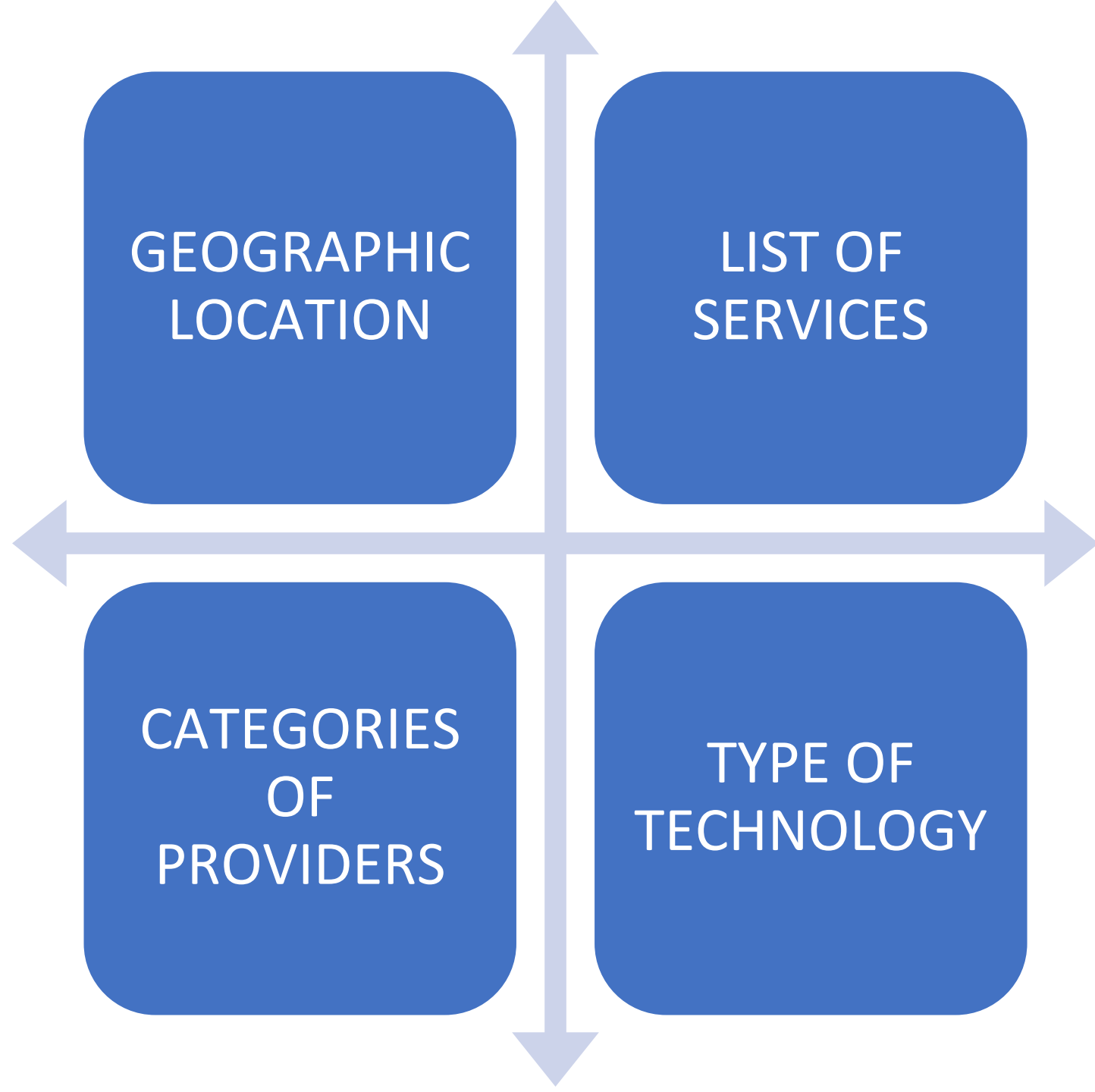
Mobile Health (mHealth): Utilizing mobile devices and apps for healthcare services and information.



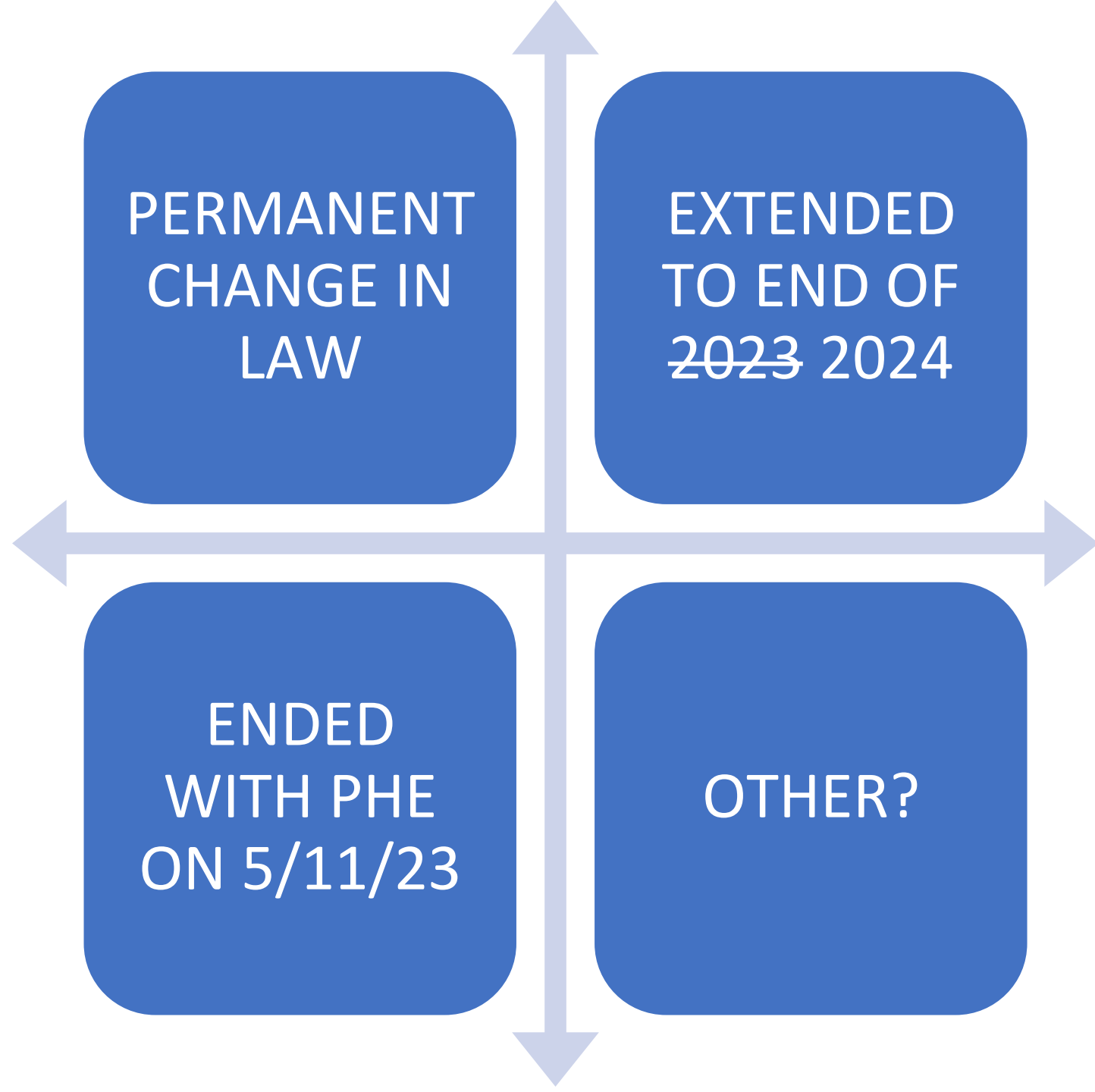
Federal Telehealth Policies

Before, During and After the PHE

Key CMS PHE Telehealth Waivers & Flexibilities



WHAT NEXT?



Key Telehealth Policy Developments

- **Legislation:** Consolidated Appropriations Act 2023 (CAA 23)
- **Regulation:** CMS Physicians Fee Schedule for CY 2024
 - Open for Comments received September 11, 2023
 - **Pending - Effective Jan 1, 2024**



Legislation



Administrative/
Regulatory

Temporary Medicare Changes Extended Through December 2024



Patient Geographic Location: Medicare patients can be seen anywhere, including their home and without any geographic restrictions (CAA Sec 4113a)



Eligible Medicare Telehealth Providers: TH services can be provided by all eligible Medicare Providers (including OT, PT, ST), (Permanent: CMS PFS'24 +Added Marriage/Family Therapists & Mental Health Counselors to permanent telehealth list per (CAA Sec 4113b)



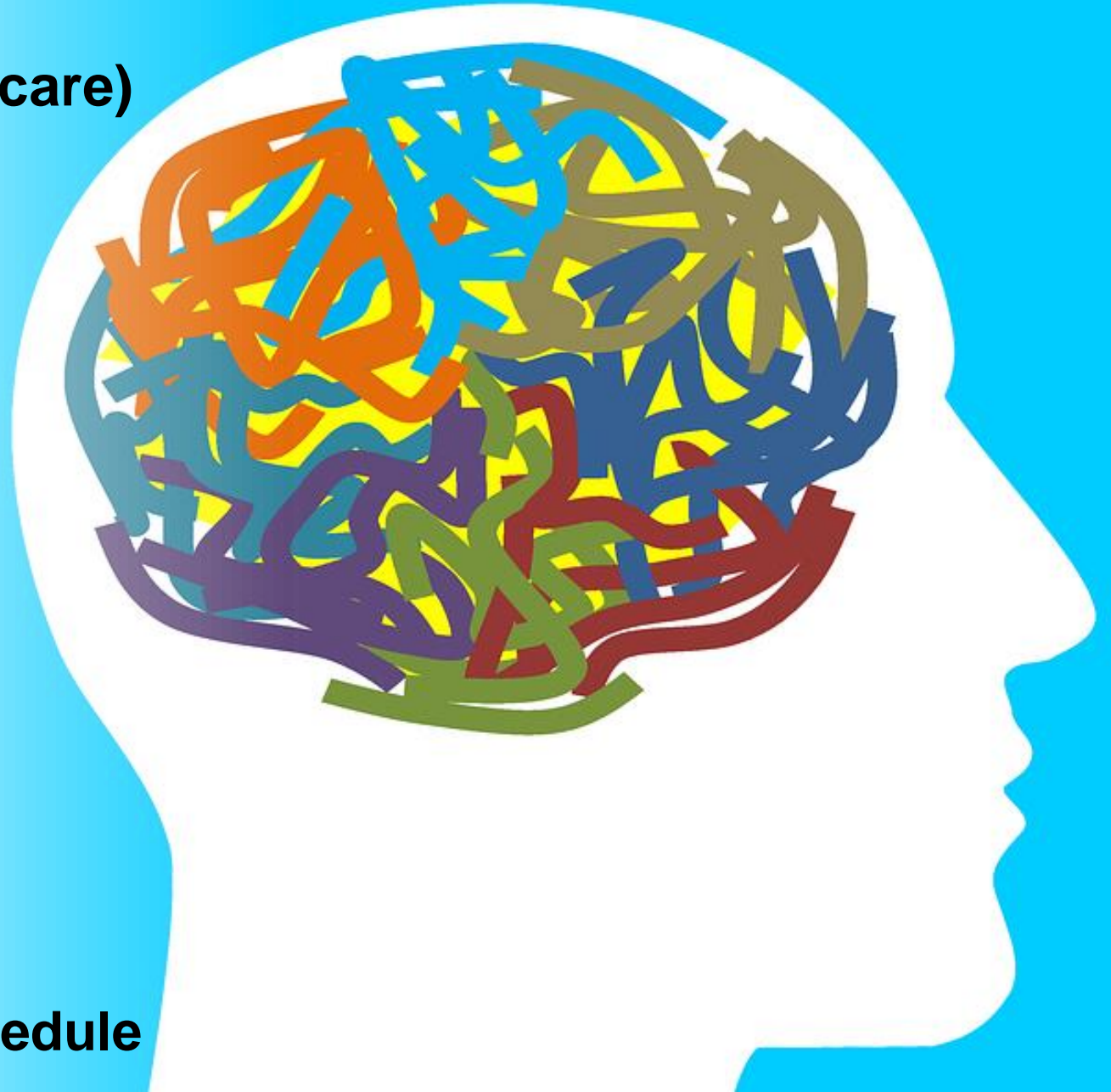
Audio Only Services: Some audio only telehealth services (E/M), (Permanent: Audio Only for Behavioral Mental Health, (CAA Sec 4113e)

Permanent New Federal Telehealth Laws

For Medicare - Behavioral Mental Health Services

Permanent Changes in Law: **Tele-Behavioral Mental Health (Medicare)**

- Medicare patients can receive telehealth services, for mental / behavioral in their homes with no geographic restrictions.
- Audio Only Allowed
- FQHCs and RHCs and serve as distant site providers for BMH Services.
- BMH telehealth services will require an in-person visit within 6 months of initial assessment and every 12 months following.



**Drug Enforcement Agency (DEA):
Prescribing controlled substances via telehealth**

Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (Ryan Haight Act)

Current Federal Law: (7) Exceptions that allow the use of telehealth to prescribe a controlled substance without an in-person evaluation.

These exceptions are:

1. Treatment in a DEA-registered hospital or clinic
2. Treatment in physical presence of a DEA registered practitioner
3. Treatment by Indian Health Services or Tribal practitioners
4. Treatment by a practitioner who is on a special registry (not created yet)
5. **During a public health emergency**
6. Treatment by a VA practitioner during a medical emergency
7. Other circumstances specified by HHS & DEA

See 21 C.F.R. § 1300.04(i)(1)-(7)

DEA & SAMHSA Issued a Temporary Rule (& Extension) to Allow Telehealth Prescription of Controlled Substances without in-Person Exam:

- Scheduled to End PHE (May 11, 2023)
- Extended to November 2023
- 38,000 comments + 2 day public listening sessions on proposed rule change
- **New extension to December 31, 2024**
 - Authorizes RX of schedule II-V controlled medication, including III-V narcotic controlled medication for maintenance of SUD, Opioid Use Disorder
 - Must comply with DEA guidance documents, DEA regulations, and applicable Federal and **State law.**



Hawaii State Law: §329-41 Prohibited acts B-penalties (a) (8):

If regulation related to controlled substances is stricter, that law prevails...

- **Hawaii Controlled Substances Act (“CSA”) §329-41 Prohibited acts B-penalties (a) (8):** "It is unlawful for any person: Who is a practitioner to facilitate the issuance or distribution of a written prescription or to issue an oral prescription for a controlled substance when **not physically in the State.**"
- **Hawaii Controlled Substances Act (“CSA”) § 329-1; 329-41(b)]** "It shall be unlawful for any person subject to part III of this chapter except a pharmacist, to administer, prescribe, or dispense any controlled substance without a bona fide **physician-patient relationship.**"





State of Hawai'i Telehealth Policies

Before, During and After the PHE



Telehealth Law - Act 226 (16)

- Applies to Medicaid & Private Insurers
- Parity for Services & Payment
- Malpractice Coverage
- Lifts restrictions on originating site including patient home or work
- Definition: store/forward, remote monitoring, live consultation & mhealth

“Hawai`i’s 2016 telehealth law was one of the most progressive in the country, adopting many flexibilities that are now more commonplace in other states after the coronavirus pandemic.”

FAQ Re: Hawai`i Telehealth Laws

- **Physician-Patient Relationship can be established via Telehealth (vs. only In Person)**
- **Broad Definition**
- **Provider must have a Hawai`i State License, to care for a patient in Hawai`i**

- §453-1.3: Practice of telehealth-a provider can establish a relationship via telehealth if the physician has a license within the state.
- §269.1: To encompass the following modalities: store and forward technologies, remote monitoring, live consultation, and mobile health; and which shall include but not be limited to real-time video conferencing-based communication, secure interactive and non-interactive web-based communication, and secure asynchronous information exchange to transmit patient medical information.

Telehealth Policy Needs in Hawai'i:

Based on feedback received from telehealth stakeholders, the following are some priority telehealth policy needs

Telehealth & Medical Licensure

Scenarios:

- University Student moves to Hawai`i for school, can he continue care with his mental health professional in California by telehealth?
- My patient moved to Hawai`i from Maine, can I continue to provide her telehealth services?
- My patient is on vacation in Florida can I continue to see her via telehealth from Hawaii?

Medical Licensure is typically required for the State where the patient is physically located - making continuity difficult (vacation, treatment, moving)

Telehealth & Medical Licensure

Existing (or to be soon) Options:

- Interstate Medical Compact - will improve process for getting medical licensure.
- Patient is under the supervision of an in-state provider (with out of state provider consulting)

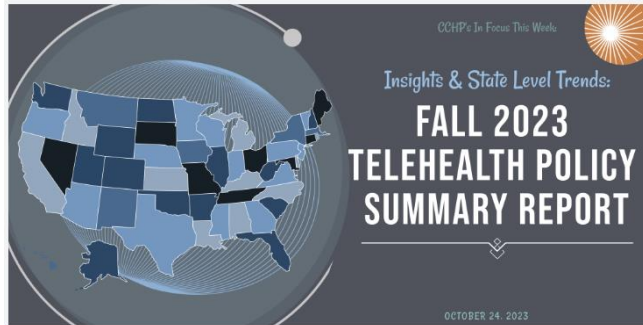
Interstate Compact, Hawai`i S.B.674:

- The interstate compact bill was signed June '23
- Hawaii joins 41 States & Guam
- Streamline Medical Licensing process & maintains the Medical Board approval process
- Assist with health care provider shortage
- Access to providers via Telehealth

Telehealth & Medical Licensure

Other Options

- 26 States have Special License or Telehealth Registration
- Special License Considerations: Idaho Example



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Idaho Statute:

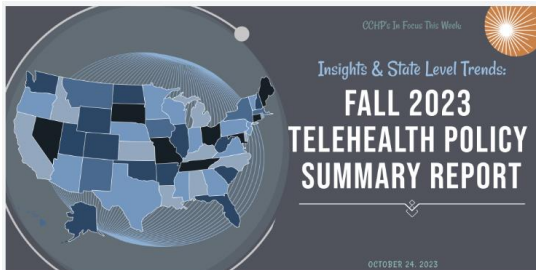
- License not required for virtual care
- Provider needs to be licensed
- Good standing US state/territory
- Has an established patient-provider relationship with patient who is in Idaho temporarily for business, work, education, vacation or other reasons.
- Allowed to provide short term follow up care by telehealth (e.g., patient moving to the state, need time to transition to a new provider.)

Telehealth & Medical Licensure

Other Options

Telehealth Registration Process

- Allows out-of-state providers to provide care by telehealth
- Register with the Medical Board and agree to terms, conditions, payment



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Florida Out of State Telehealth Registration

To qualify for the registry, providers must:

- Submit an application
- Maintain active license in US state/ territory
- Not be subject to any disciplinary action from another state board
- Designate a duly appointed registered agent for service of process in Florida
- Maintain liability coverage provided to patients in Florida
- Not open a Florida office or provide in person services
- Only use a Florida-licensed pharmacy to dispense drugs.

Need for Audio Only

A Start...

- HRS 346-59-1, 901 HD2 SD2
- Audio Only Real-Time Communication Technology Service for Behavioral Mental Health
- 80% Reimbursement Rate
- Patient Preference, Documented
- Through December 2025
- (Medicare - Permanent)

Feedback:

- Major potential for other applications i.e., Chronic Disease Management
- Will drive structural inequality and exacerbate health disparities for underserved communities
- Some data has been collected....



Limitations on FQHC Telehealth Provider Location

MQD Telehealth Policy Updates (Pending)

- MQD Solicited Comments
- Policy will clarify status of waivers
- Guidance on Audio Only for Behavioral Mental Health (implementing Act 107 (HB907))
- Originating and Distant Site Definitions - around US territories
- FQHC specific telehealth payment provisions and guidance - rolling back waiver that provided flexibility of place of service of provider, requires to be at a HRSA-approved location (e.g., not at home)

Feedback:

- Appreciates MQDs commitment to improving access to quality health care for our most underserved
- Requested that waivers be reinstated to allow flexibility in where FQHC providers can practice telehealth with PPS rates.
- Access from home for example - same VPN connection to FQHC EHR and Telehealth Platform - no different than provider office, patient is not in the clinic
- Telehealth helps with health care provider shortages, eliminating the flexibility is problematic and may exacerbate retention challenges due to burn out, etc.
- National Service Core is rolling back but other states have kept the flexibilities

Digital Equity for ALL (Access, Literacy, Livelihood)

As we advance Telehealth, we need to also advance DE for ALL

- Avoid reinforcing existing inequalities
- Vulnerable Populations: People with Disabilities, Maternal Health, Veterans, LBGTQ, Houselessness
- Broadband Hui Synergies
- Support Digital Equity for ALL Initiatives (L-TAPS, Telehealth Safety Networks, etc.)





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Mahalo!

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MQD State Policy Updates

Per MedQuest, after the PHE, the following policies are back into effect:

- QI-2139/FFS 21-14 Tele-Health Law
- QI-2007/FFS 20-03 Tele-Health Payment Guidance for FQHCs
- FFS 19-01 Reimbursement for Procedures Related to FFS Teledentistry Services
- QI-2306/CCS-2302/FFS 23-04 Real-time Audio Only Interaction Policy
- **Currently in draft is a new policy, consolidating QI2139, QI2007, and QI2306**



Emergency State Telehealth Policies/Waivers that Ended:

Per MedQuest, after the PHE, the following policies have Ended:

- QI-2036 Telehealth Guidance During the Public Health Emergency related to EPSDT Visits
- QI-2013 Telehealth Guidance for Public Health Emergency Telephone Services and Services Billable by Qualified Non-Physician Health Care Professionals
- QI-2120 Continued Coverage of Audio-Only Visits Through Federal Public Health Emergency (PHE)
- QI-2010 Telehealth Guidance During Public Health Emergency Related to COVID-19
- QI-2008 Federally Qualified Healthcare Center Telehealth Guidance During Public Health Emergency Period in Response to COVID-19



Virtual Direct Supervision

- Was scheduled to end Dec. 2023
- CMS PFS '24, proposes:
 - Allow interactive audio & video for direct supervision for teaching and services that is being delivered virtually (no audio only);
 - Establish policy for private practice supervision (e.g., OT, PT, etc.)