



NATIONAL CONSORTIUM OF  
**TELEHEALTH**  
RESOURCE CENTERS

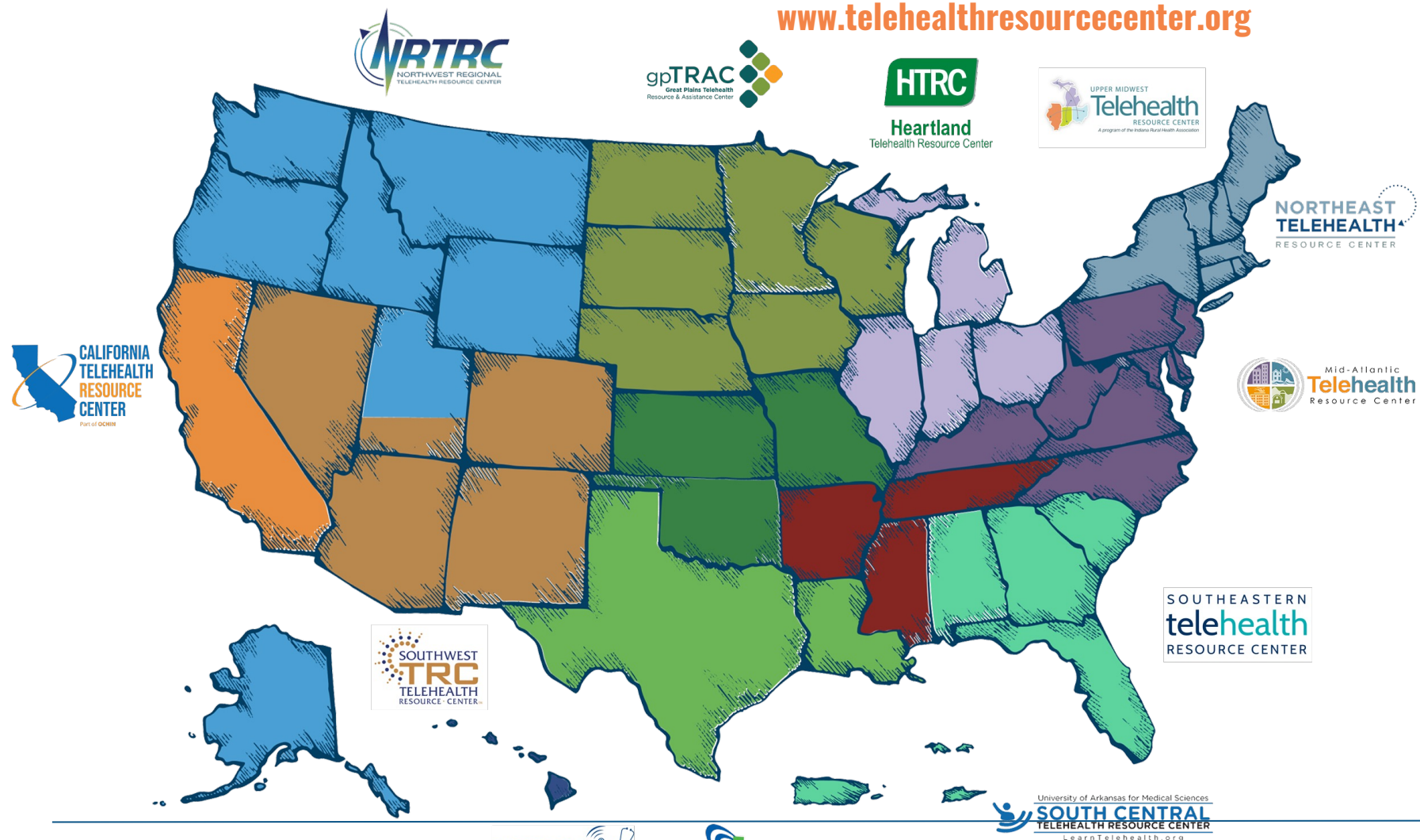
## What Will 2024 Bring for Telehealth Policy?

January 18, 2024



# HRSA Funded Telehealth Resource Centers

[www.telehealthresourcecenter.org](http://www.telehealthresourcecenter.org)



NRTRC	gpTRAC	NETRC
CTRC	HTRC	UMTRC
SWTRC	SCTRC	MATRC
PBTRC	TexLa	SETRC
12 REGIONAL RESOURCE CENTERS		

 TTAC TelehealthTechnology.org	 CCHP
2 NATIONAL RESOURCE CENTERS	



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# Webinar Tips and Notes

- Your phone &/or computer microphone has been muted.
- If we do not reach your question, please contact your regional TRC. There may be delays in response time:  
<https://telehealthresourcecenter.org/contact-us/>
- Please fill out the post-webinar survey.
- Closed Captioning is available.
- Please submit your questions using the Q&A function.
- The webinar is being **recorded**.
- Recordings will be posted to our YouTube Channel:  
<https://www.youtube.com/c/nctrc>



# US TELEHEALTH POLICY

**JANUARY 19, 2024**  
**NATIONAL CONSORTIUM OF TELEHEALTH**  
**RESOURCE CENTERS**



**Center for Connected  
Health Policy**

THE NATIONAL  
TELEHEALTH POLICY  
RESOURCE CENTER



Mei Wa Kwong, JD,  
*Executive Director, CCHP*

## 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



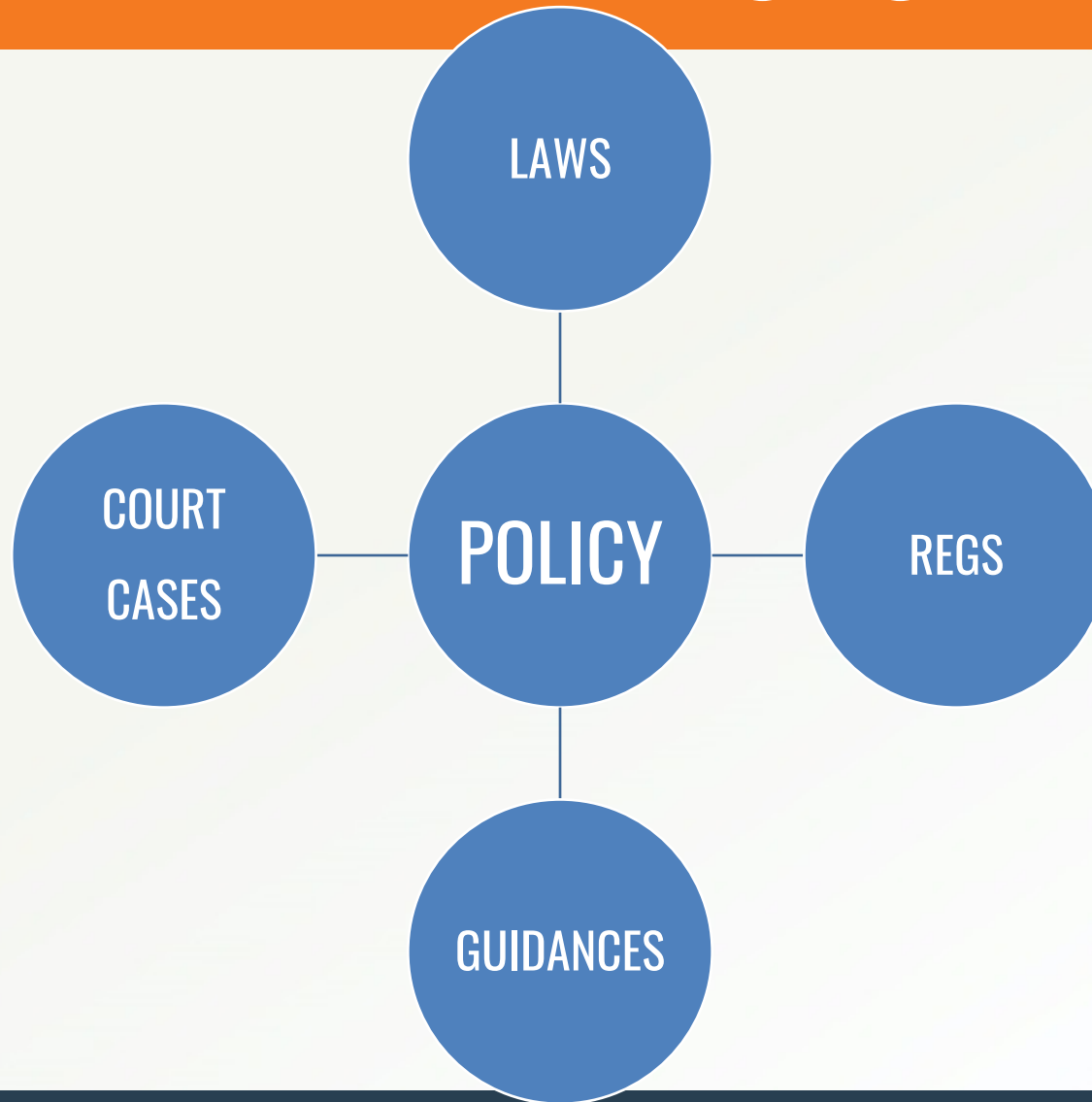
## State Policy

- MEDICAID
- PRIVATE PAYER
- PRESCRIBING
- LICENSURE





# TELEHEALTH POLICY



# **FEDERAL:**

## **CMS & Medicare**

### ***(Reimbursement & Coverage)***

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# 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**

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# 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.](#)



# **FEDERAL: HIPAA/PRIVACY/DATA**

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# 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**

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# 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)*

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# 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**

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# **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**

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# LICENSURE

- **Compacts**
  - **Compacts are structured differently**
- **Registries**
- **Limited Exceptions**
  - **Prior established relationship**
  - **Infrequent interactions**
  - **Contiguous state exception**



# What to Look Out For in 2024

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# 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

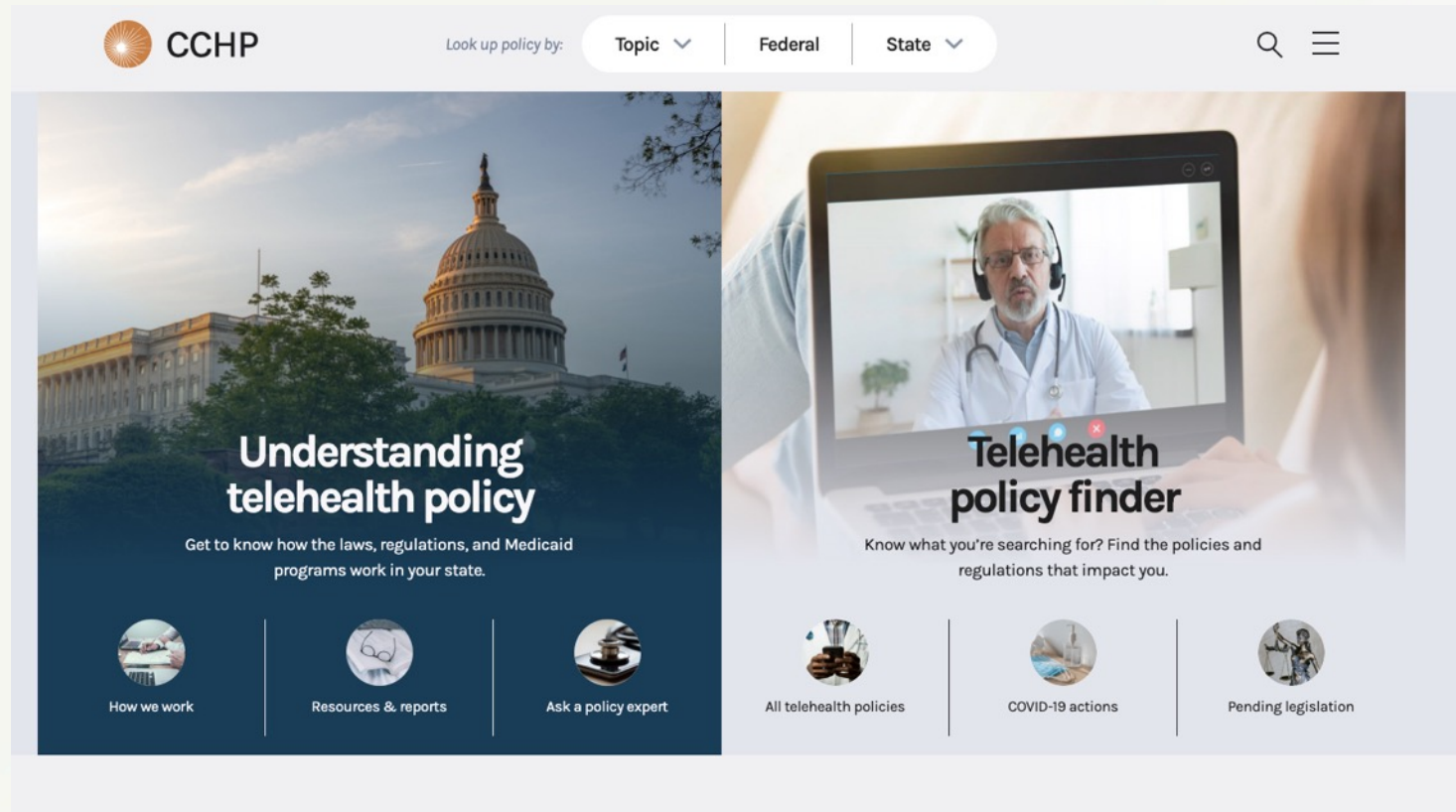


# STATES

- 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](https://cchpca.org)



## ➤ Subscribe to the CCHP newsletter at [cchpca.org/contact/subscribe](https://cchpca.org/contact/subscribe)





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Health Policy**

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TELEHEALTH POLICY  
RESOURCE CENTER

**Thank You!**

[www.cchpca.org](http://www.cchpca.org)

[info@cchpca.org](mailto:info@cchpca.org)



# Our Next Webinar

## The NCTRC Webinar Series

Occurs 3<sup>rd</sup> Thursday of every month.

**Telehealth Topic:** Can You Hear Me? Equitable Access to Telehealth for Deaf, Hard of Hearing, and Deaf-Blind Patients

**Hosting TRC:** Mid-Atlantic Telehealth Resource Center (MATRC)

**Date:** February 21, 2024\*

**Times:** 11 AM – 12 PM (PT)

**\*This webinar has been rescheduled from our usual third Thursday schedule.**



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*Your opinion of this webinar is valuable to us.*

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<https://www.surveymonkey.com/r/XK7R72F>

