

**HCCA**  
HEALTH CARE COMPLIANCE ASSOCIATION

## Telehealth Legal and Regulatory Issues in Colorado and Beyond

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@Lacktman  
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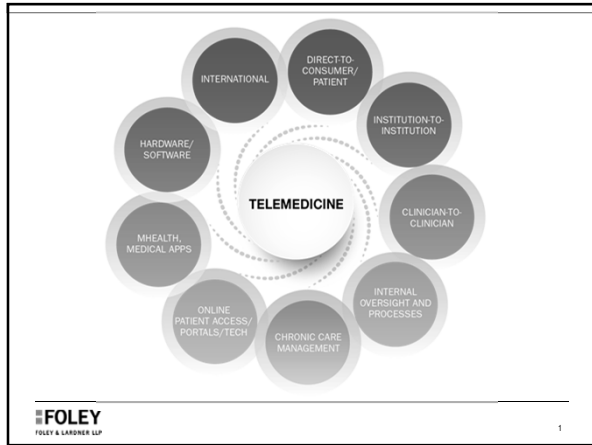
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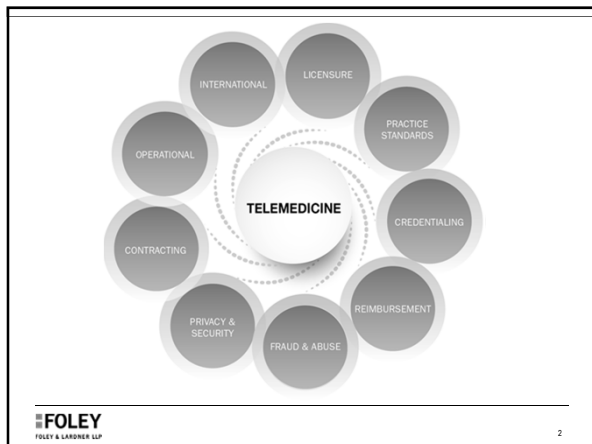
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Licensing

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Licensing

- **Physician offering care via telemedicine is subject to licensure rules of:**
  - The state in which the patient is physically located at the time of the consult;
  - The state where the physician is located/licensed.
- **Colorado law requires licensure if the patient is located in Colorado at the time of the consult.**
  - "Providers who evaluate, treat or prescribe through telehealth technologies are practicing medicine. The practice of medicine occurs where the patient is located at the time telehealth technologies are used. Therefore, a provider must be licensed to practice medicine in the state of Colorado in order to evaluate or treat patients located in Colorado utilizing telehealth technologies or otherwise."

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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)
FSMB Compact	Allows reciprocity in participating Compact states.

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### Colorado Consultation Exception

- **Colorado licensure not required for a doctor located and licensed in another state or foreign country who is in actual consultation with a Colorado-licensed doctor.**
  - CO Stat. 12-36-106(3.2) ("Nothing in this section shall be construed to prohibit patient consultation between a practicing physician licensed in Colorado and a practicing physician licensed in another state or jurisdiction.")
  
- **Compare with other states outside Colorado**

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### Telemedicine Practice Standards

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### Colorado Telehealth Practice Standards

- **Doctor-Patient Relationship**
  - Provider-patient relationships may be established via telehealth so long as the relationship is established in conformance with generally accepted standards of practice.
  - Telehealth includes synchronous and asynchronous communications.
- **Telehealth Evaluation**
  - An appropriate medical evaluation and review of relevant clinical history, commensurate with the presentation of the patient to establish diagnoses and identify underlying conditions and/or contra-indications to the treatment recommended/provided, should be performed prior to providing treatment, including issuing prescriptions, electronically or otherwise.
  - Treatment, including issuing a prescription based solely on an online questionnaire, does not constitute an acceptable standard of care.

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### Colorado Telehealth Practice Standards

- **Prescribing via Telehealth**
  - Remote prescribing is allowed, but may not recommend medical marijuana.
  - Remote prescribing of controlled substances is not prohibited, but still subject to standards of care and other state law.
- Same **standard of care** as in-person treatment.
- Telehealth **informed consent** required under law and Board policy.
- Give patient credentials, contact info, and instructions for follow-up or emergency.

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### Telehealth Practice Standards

- Modality of communication
- Record keeping and record-sharing
- Recording telemedicine consults
- Malpractice & Professional Insurance Considerations
- Privacy & Security
- Credentialing

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### Payment and Reimbursement Landscape

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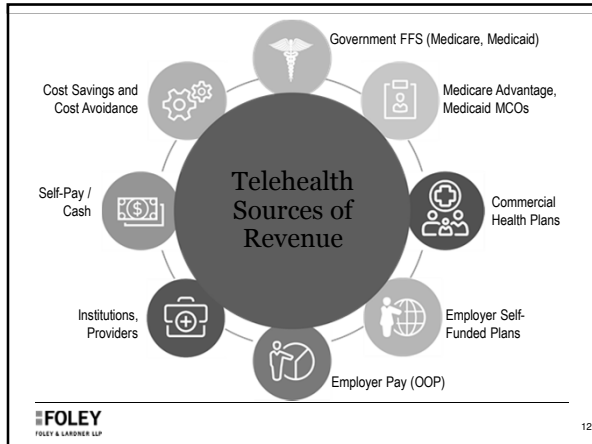
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**Colorado Telehealth Commercial Insurance Coverage Law**

- Telehealth means "a mode of delivery of health care services through telecommunications systems, including information, electronic, and communication technologies, to facilitate the assessment, diagnosis, consultation, treatment, education, care management, or self-management of a covered person's health care while the covered person is located at an originating site and the provider is located at a distant site."
- The term "includes synchronous interactions and store-and-forward transfers."
- Telehealth "does not include the delivery of health care services via telephone, facsimile machine, or electronic mail systems."

CRS § 10-16-123(4)(e)

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**Colorado Telehealth Commercial Insurance Coverage Law**

On or after January 1, 2017, a health benefit plan that is issued, amended, or renewed in this state shall not require in-person contact between a provider and a covered person for services appropriately provided through telehealth, subject to all terms and conditions of the health benefit plan. Nothing in this section requires the use of telehealth when a provider determines that delivery of care through telehealth is not appropriate or when a covered person chooses not to receive care through telehealth. A provider is not obligated to document or demonstrate that a barrier to in-person care exists to trigger coverage under a health benefit plan for services provided through telehealth.

CRS § 10-16-123(2)(a)

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### Telehealth and Medicare

1. Patient in a qualifying rural area
2. Patient at one of eight qualifying facilities (“originating site”)
3. Service provided by one of ten eligible professionals (“distant site practitioner”)
4. Technology is real-time audio-video (interactive audio and video telecommunications system that permits real-time communication between the beneficiary and the distant site provider)
5. The service is among the list of CPT/HCPCS codes covered by Medicare

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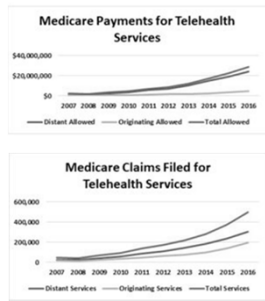
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### Telehealth and Medicare

- Charging beneficiaries out of pocket for telehealth services?
- Reassignment to originating site hospital?
- Overseas providers?
- Telehealth vs interpretive studies
- Non-face-to-face services
- CAH and EMTALA
- Conditions of Participation




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### Beyond In-Person Exams

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### Privacy, Security and E-Commerce

- HIPAA and HITECH
- State privacy laws
- Website or App Terms of Use and Privacy Policy
- E-Commerce Considerations
- FTC Considerations
- ADA accessibility and disclosures
- Example telehealth protocols
  - Authentication and authorization of users and health info
  - Prevention of unauthorized access
  - Maintenance of documentation and EHR
  - Privacy and security protocols
  - No compound authorizations

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### Fraud & Abuse

**U.S. Federal**

- Anti-Kickback Statute
- Physician Self-Referral
- Civil Monetary Penalty Law
- Payer Rules (including Medicare, Medicaid)
- FTC, FDA, DEA

**U.S. State**

- Patient Brokering Acts
- Fee-Splitting Laws
- Self-Referral Laws
- Corporate Practice of Medicine
- Insurance Laws

**International**

- Foreign Corrupt Practices Act
- US Export Control Laws
- US Anti-Terrorism Laws
- US Anti-Boycott Laws
- International Corporate Laws and Tax
- Data protection; data ownership; record sharing
- Intellectual Property

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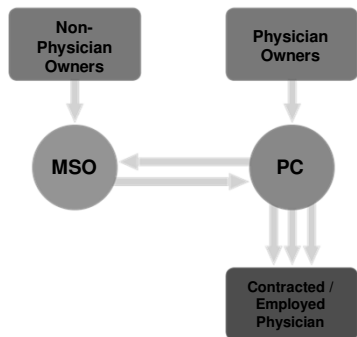
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### Investments in Multi-State Telemedicine



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### Speaker Contact



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# Thank you

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