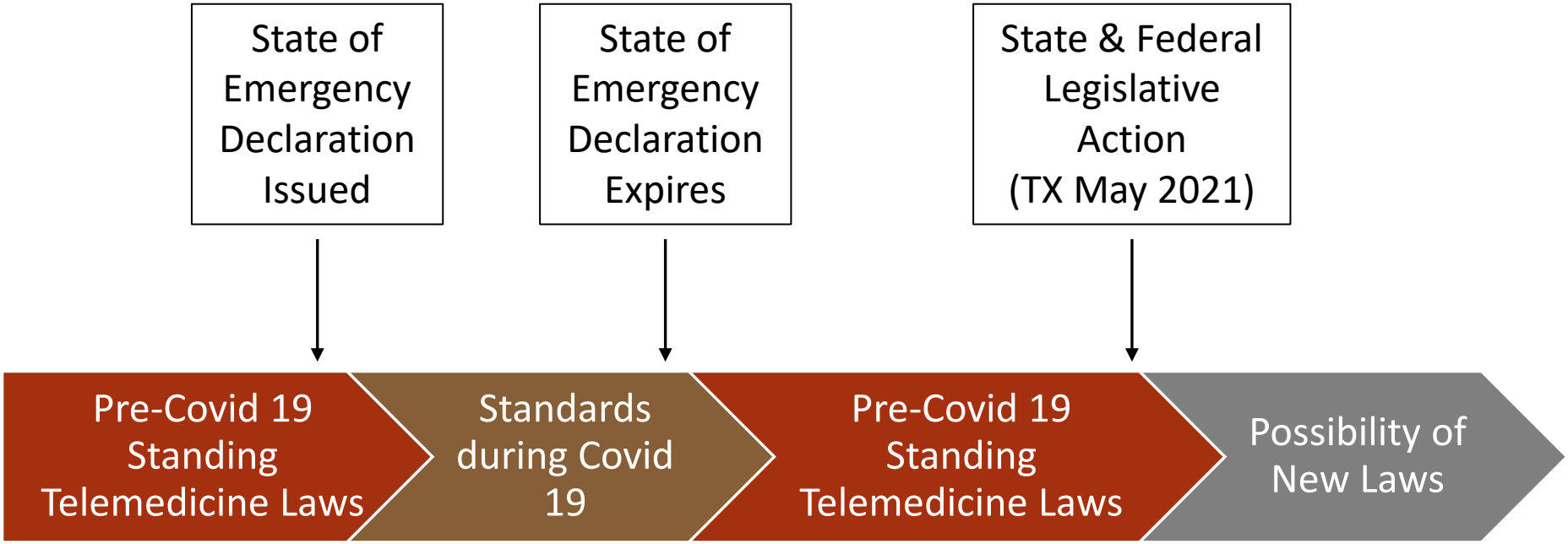
# *Understanding the Covid 19 Legal Impact*

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# What can I do going forward?

Standard of care

Credentialing

Licensing

Payment

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# One thing remains the same:


**What do I do to transition?** That said, you need process for patient set up, care, and referral in place for telemedicine.

# Licensing & Credentialing

The care occurs where the patient is located & the rules of that state apply to any care received.

A license is almost always required:

- Physician Compact (https://www.imlcc.org/)
- Nursing Compact (https://www.nursecompact.com/index.htm)
- Consulting Exceptions

Credentialing is also a consideration:

- Expedited processes for Joint Commission (Medical Staff Rule 13) and CMS (http://ctel.org/wp-content/uploads/2011/07/CMS-Credentialing-Privileging-Memo.pdf)

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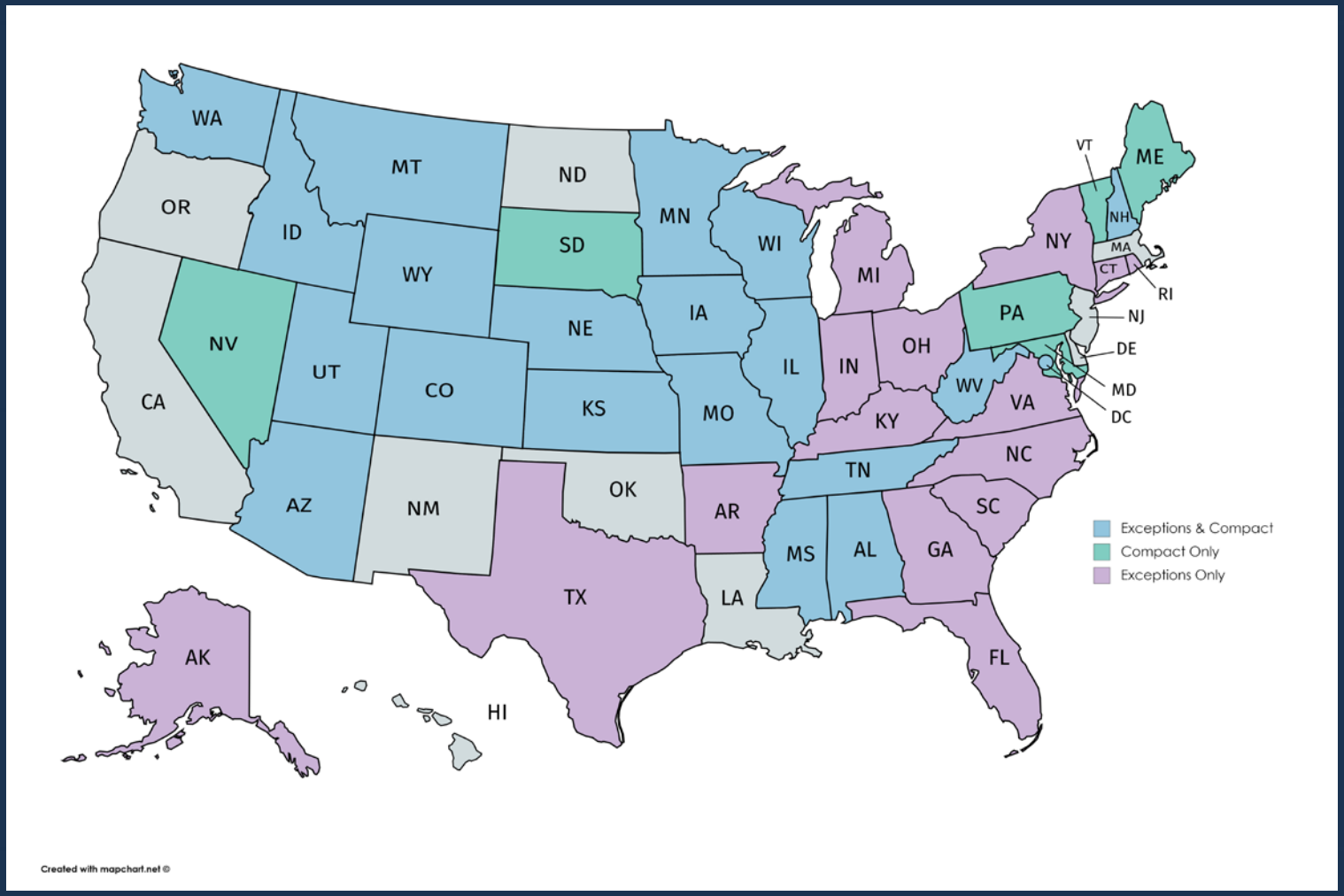
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# Why do I care?

- Patient emergency
- Board disciplinary action
- Malpractice liability
- Loss of payment

**What do I do to transition?**

Option 1: If a compact is available for your license type, consider joining.

Option 2: Determine what states you have patients located in, and obtain a license.

Option 3: Inform the patient in your initial consent materials that you cannot provide care in another state, and schedule all visits around that limitation.

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# TX laws (Occ. Code 111 & BR 174)

- Consent: Prior to care, informed consent for telemedicine is required.
- Privacy: Under Texas law, prior notification of privacy standards is required and a good faith effort must be made to get it in writing, with electronic options included. *** Federal HIPAA law requires that the practitioner ask for acknowledgment in writing, though. (https://www.hhs.gov/hipaa/for-individuals/notice-privacy-practices/index.html)
- Notice of Complaint Process: This must be provided to the patient with the other informed consent materials or on the physician's website, and it must meet the requirements of BR 178.
- Records – If the patient has primary care physician and grants consent to share the records form the telemedicine visit, a copy or report must be sent within 72 hours. (follow up direction is also required)

# TX laws (Occ. Code 111 & BR 174)

**What do I do to transition?**

Option 1: Establish a encrypted way to share documentation with your patient. Electronic health records patient portals will often have this feature, and some products like DocuSign will as well. You will likely need a BAA.

Option 2: Have the patient fill out all of the paperwork at an in person visit first & renew on at least an annual basis.

Under either option, you must create a process surrounding medical records that:

- Allows you to document all care and consents/notices.
- Allows you to provide copies when necessary, both to other physicians and patients.

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# Federal Laws - DEA

**Scheduled Drug-** a controlled substance with addictive potential. Labelled by DEA classes I-V.

**Dangerous Drug-** all other drugs that are not scheduled but that do require a prescription. Labelled with an Rx.

Federal law **PROHIBITS** the initial prescribing of a scheduled drug to a patient via telemedicine in most all scenarios. (And Texas prohibits any chronic pain treatement)

However:

Renewals are allowed via telemedicine once an in person visit has been completed (no time limit specified by law, but 12 months is a possible limit).

A physician can coordinate with another DEA certificate holder to write the necessary prescription.

# Federal Laws - DEA

**What do I do to transition?**

Option 1: Have all new patients complete an initial in person visit. For any patient with a scheduled drug prescription, have them return at least annually. (this does not work for chronic pain patients in Texas)

Option 2: Do not use telemedicine options for patients that require treatment with a scheduled drug.

Option 3: If you are providing specialty services, coordinate with the patient's primary care provider to supply the prescription based on your consultations.

# Federal Laws - HIPAA

**Consent:** Federal HIPAA law requires that the practitioner ask for acknowledgment of privacy notices in writing

(https://www.hhs.gov/hipaa/for-individuals/notice-privacy-practices/index.html)

**Security**: A risk assessment must be done and a plan to address privacy of health information must be in place. One of the safest routes is to have all patient communications meet encryption standards, and this includes any video connections.

(https://www.hhs.gov/hipaa/for-professionals/security/laws-regulations/index.html)

# Federal Laws - HIPAA

**What do I do to transition?**

Option 1: Transition any communication services to a version that is fully encrypted, and enter into a BAA with any such service that you are using.

Option 2: Use the federal website to complete the necessary risk assessments and see if any other options might be available to you.


What's our billing code
for playing on Facebook?
someecards.com

# Medicare--Limiting factors that must be considered

Originating Sites- where the patient is located when receiving services (generally clinical settings)

Geography- the location of the originating site (underserved area as defined by the government: any county outside of a Metropolitan Statistical Area & a rural Health Professional Shortage Area (HPSA) located in a rural census tract. This tool can help https://data.hrsa.gov/tools/shortage-area/by-address)

Practitioners- who is providing the care (doctors, pas, nurses, some behavioral health, and limited others)

Services- what is the care being delivered (generally only live video & only certain CPT codes)

# Medicaid & State Regulated Insurers

The language within SB1107 changed Sec 1455.04 of the Insurance Code to this:

"(a) A health benefit plan may not exclude from coverage a covered health care service or procedure delivered by a preferred or contracted health professional to a covered patient as a telemedicine medical service or a telehealth service [~~from coverage under the plan~~] solely because the covered health care service or procedure is not provided through an in-person [~~a face-to-face~~] consultation.

Section (b) goes on to say that plans can require a copay/deductible/coinsurance for the service.

"(c) Notwithstanding Subsection (a), a health benefit plan is not required to provide coverage for a telemedicine medical service or a telehealth service provided by only synchronous or asynchronous audio interaction, including:

(1) an audio-only telephone consultation;

(2) a text-only e-mail message; or

(3) a facsimile transmission."

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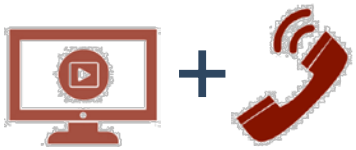
# ERISA Insurers


# VIRTUAL HEALTH NETWORK

# Concurrent & Parallel Undertakings

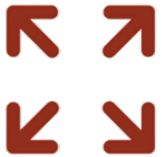


**CENTRALIZED & CONNECTED VIDEO**

- Design, develop, and deploy a common source of televideo communication connecting patients and telemedicine care providers within any of the UT medical campuses
- Respect & use existing technology systems already in place within each facility

**SHARED SCHEDULING & DOCUMENTATION**

- Design, develop, and deploy a single system to schedule telemedicine appointments, as well as access/ update relevant medical documents to improve care coordination
- Decrease duplication of effort by synchronizing, where possible, with existing schedule + documentation systems



**TELEMEDICINE EXPANSION**

- Improve patient access to providers, especially in remote areas with fewer specialists
- Facilitate and initiate institutional and collaborative initiatives

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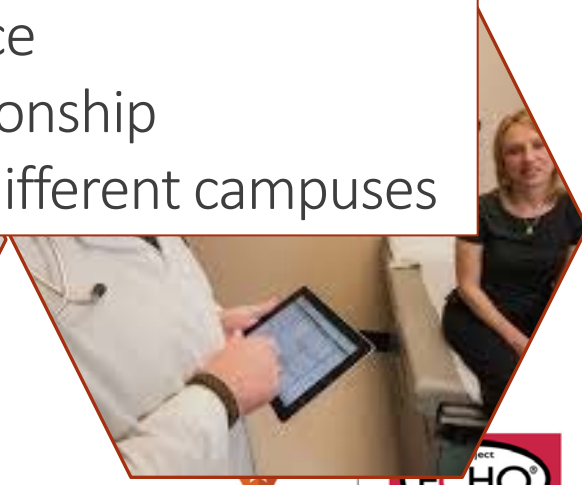
The UT-VHN creates access to medical care that

- is accessible to currently underserved populations
- is based in a high quality, academic setting
- integrates with the care team already in place
- creates a continuous physician patient relationship
- covers a broad range of specialties at eight different campuses



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# This is an overview only