



Covid-19 PHE Termination **Impacts on Telehealth**

May 16, 2023

Zoom Tips



Muted on Entry

You are muted on entry. If you wish to comment or ask a question, you can unmute yourself.

Use Your Video

Please turn on the video for a more collaborative and engaging experience.

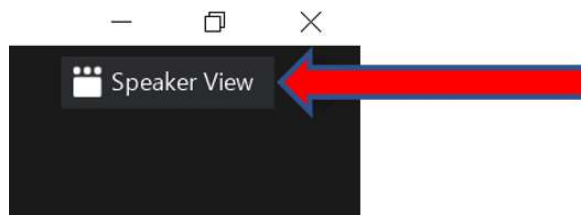
Open the Chat

Please open the chat and use it liberally; we want to hear from you!

Send questions and feedback to **"Everyone"**

Video Recording

The presenter will indicate if the meeting is being recorded and where to find the recording after the presentation is complete.



Speaker View vs Gallery View

At the top right of your screen you can change the video panel to just show the main speaker, or to gallery view to see the speaker and other participants, depending on your preference.



Before We Get Started

Today's session is purely for informational purposes.

CTRC does not provide legal advice. CTRC has no relevant financial interest, arrangement, or affiliation with any organizations related to commercial products or services mentioned in this session.

The California Telehealth Resource Center (CTRC) and all resources and activities produced or supported by the CTRC are made possible by grant number U1UTH42520-01-01 from the Office for the Advancement of Telehealth, Health Resources and Services Administration, DHHS. This information or content and conclusions are those of the CTRC and should not be construed as the official position or policy of, nor should any endorsements be inferred by HRSA, HHS or the U.S. Government.

Meet Your Moderator and Presenter



Becca Brookes, MPH

Improvement Advisor

OCHIN



Sylvia Trujillo, MPP, JD

**Sr Director of Policy and
Advocacy**

OCHIN

COVID-19 PHE Sunset May 11, 2023

When the PHE concluded, many waivers and broad flexibilities provided to health care providers as a result of the PHE were either modified, extended temporarily, or terminated



Federal Flexibilities



California Flexibilities

Our focus today: telehealth

When Medicare, state Medicaid Programs, state regulators and the federal Drug Enforcement Agency use the **term telehealth** for purposes of regulation and payment, these entities define it consistent with applicable state and federal laws which align with the **AMA CPT Editorial Panel** definition:

Synchronous telemedicine service is defined as a real-time interaction between a physician or other qualified health care professional and a patient who is located away at a distant site from the physician or other qualified health care professional.

The totality of the communication of information exchanged between the physician or other qualified health care professional and the patient during the course of the synchronous telemedicine service must be of an amount and nature that is sufficient to meet the key components and/or requirements of the same service when rendered via a face-to-face interaction.

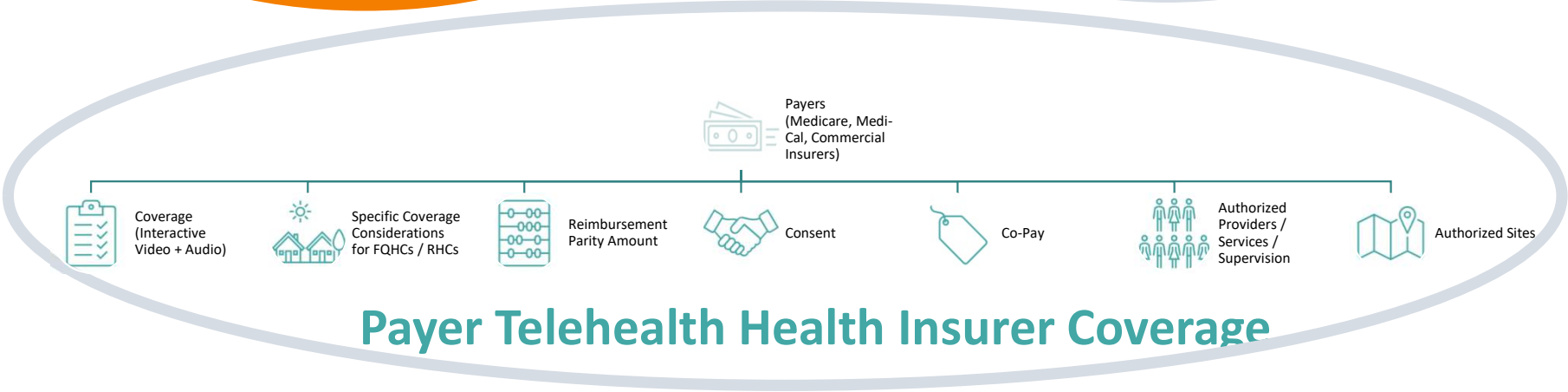
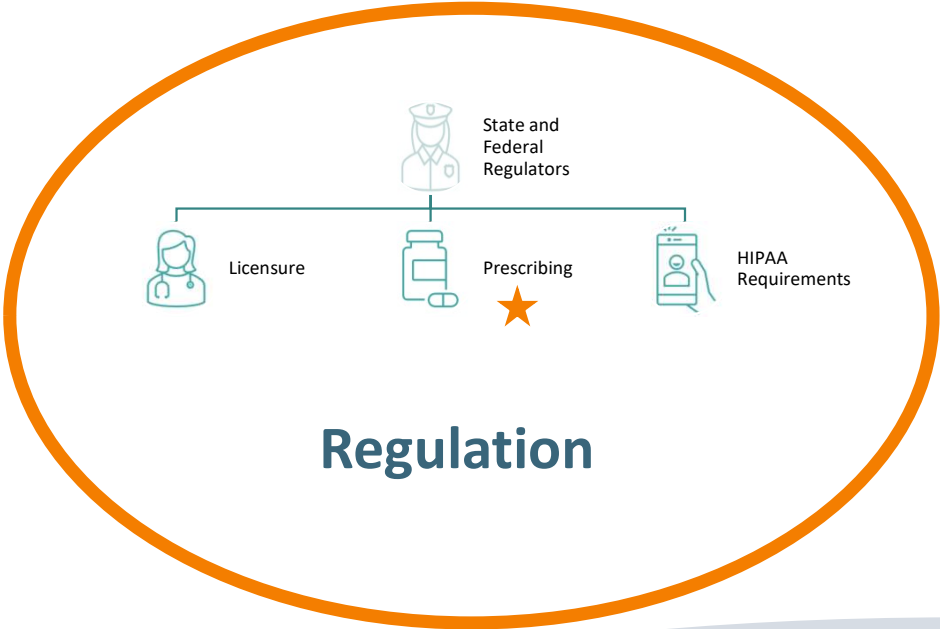
- **Telehealth modifier 95: “synchronous telemedicine service rendered via real-time Interactive audio and video telecommunications system”**
- **Telehealth modifier 93: “synchronous telemedicine service rendered via telephone or other real-time interactive audio-only telecommunications system” Appendix T**

We are **not** addressing policies concerning other virtual modalities that have different CPT code descriptors, statutory and regulatory definitions, and programmatic requirements:

~~Remote Patient Monitoring~~

~~eConsults~~


~~Store and Forward~~





Do you prescribe federally regulated controlled substances?

Federal Regulator
Drug Enforcement Agency

A top-down view of a medical examination table. A doctor's hands are visible, one holding a stethoscope and the other adjusting a blood pressure cuff on a patient's arm. A clipboard with a "REPORT SCHEDULE" form and a pen is on the left. A blood pressure gauge is on the right. The background is a light, neutral color.

Pre-COVID-19

Prescribing Restrictions on Controlled Substance via Telehealth

A prescription for a
controlled substance
issued **must generally
be predicated on an
in-person medical
evaluation** before
telemedicine used

Examples of Controlled Substances

Controlled medications are classified into one of five schedules based on medical use and potential for abuse or dependency. Examples of common controlled medications include:

Schedule I

- Substances in this schedule have no currently accepted medical use in the US, a lack of accepted safety for use under medical supervision, and a high potential for abuse

Schedule II

- Adderall
- Oxycodone
- Ritalin
- Vicodin

Schedule III

- Anabolic Steroids
- Buprenorphine

Schedule IV

- Ambien
- Tramadol
- Valium
- Xanax

Schedule V

- Lomotil
- Lyrica

DEA Telehealth and Controlled Substances

Key Reminders



If an in-person relationship is established first, telehealth can be used subsequently as long as an interactive video/audio two-way communication occurs. An exception to the two-way audio-only restriction is buprenorphine which can be used to prescribe via audio-only to initiate for Opioid Use Disorder.



Some states establish more restrictive requirements, but no state can establish less restrictive requirements. California's state laws are not more restrictive.

COVID-19 PHE Federal DEA Flexibilities

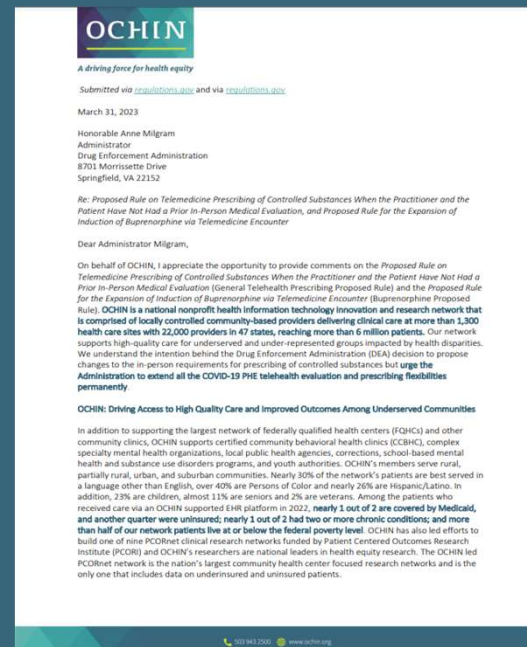
Interactive Video/Audio

Telehealth may be used to establish relationship and initiate prescribing of **medically necessary Schedule II – V Controlled Substances**

Audio Only Telehealth may be used to establish relationship and initiate prescribing of medically necessary **Buprenorphine for Opioid Use Disorder**

DEA **proposed** restrictions on using telehealth to initiate prescribing of Schedule II – V Controlled Substances when COVID-19 PHE terminated

OCHIN and 30,000+ organizations including California Medical Association outlined negative impact on patient health outcomes of **not** fully extending flexibilities ...

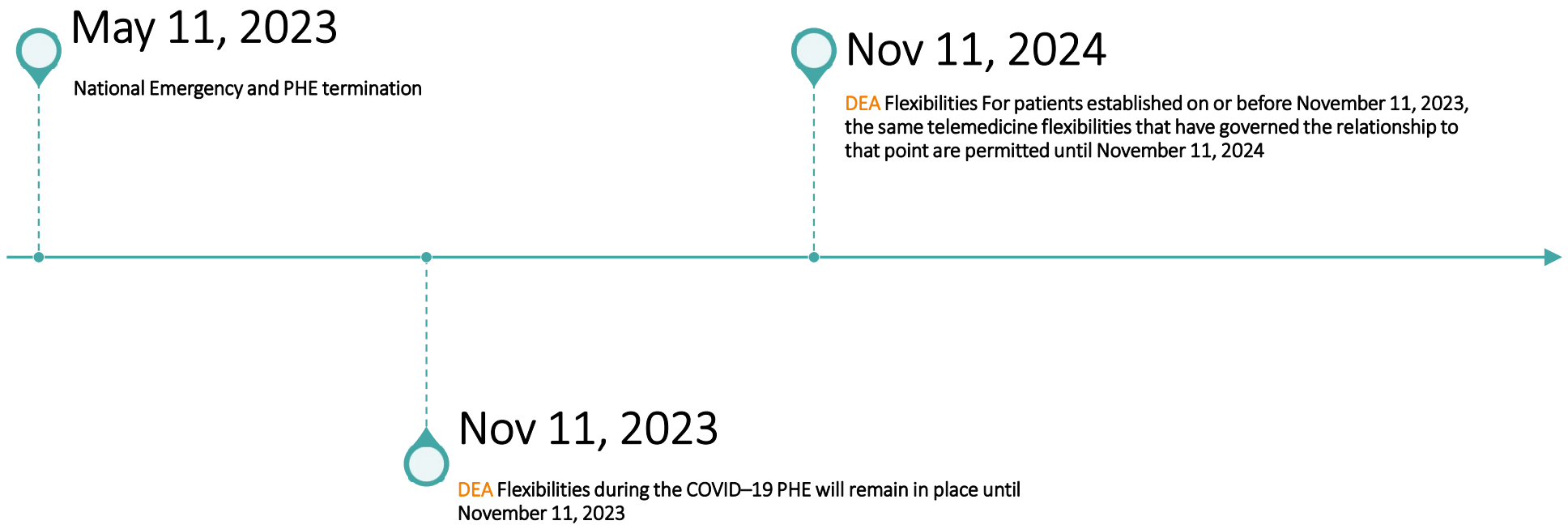


Read OCHIN's comment [here](#)



Read CMA's comment [here](#)

DEA Flexibilities





OPTION TO CONSIDER

Arrange for an in-person appointment with patients where feasible between now and November 11, 2024, for existing and new patients to “establish” the relationship in-person and telehealth can be used thereafter

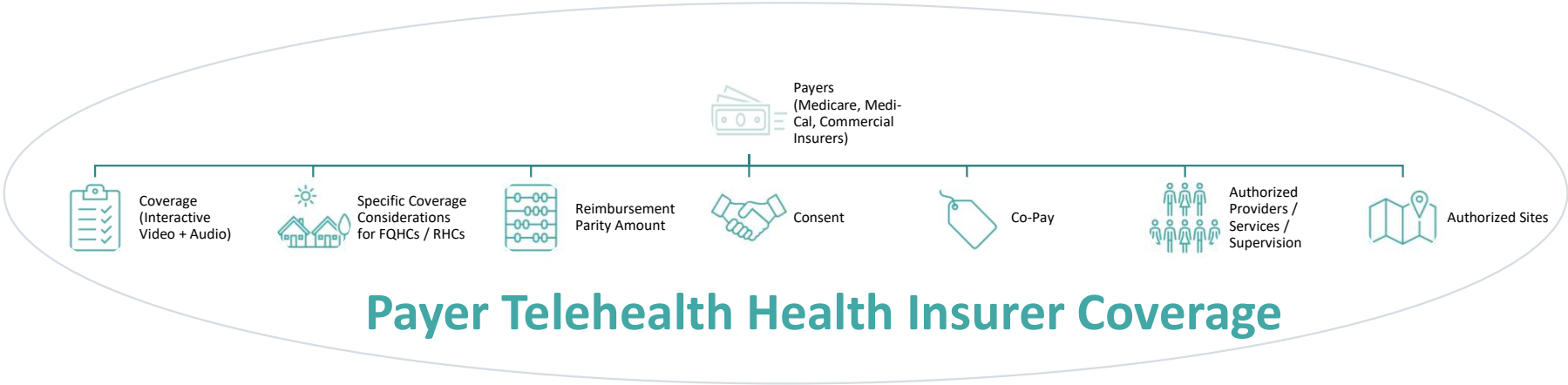
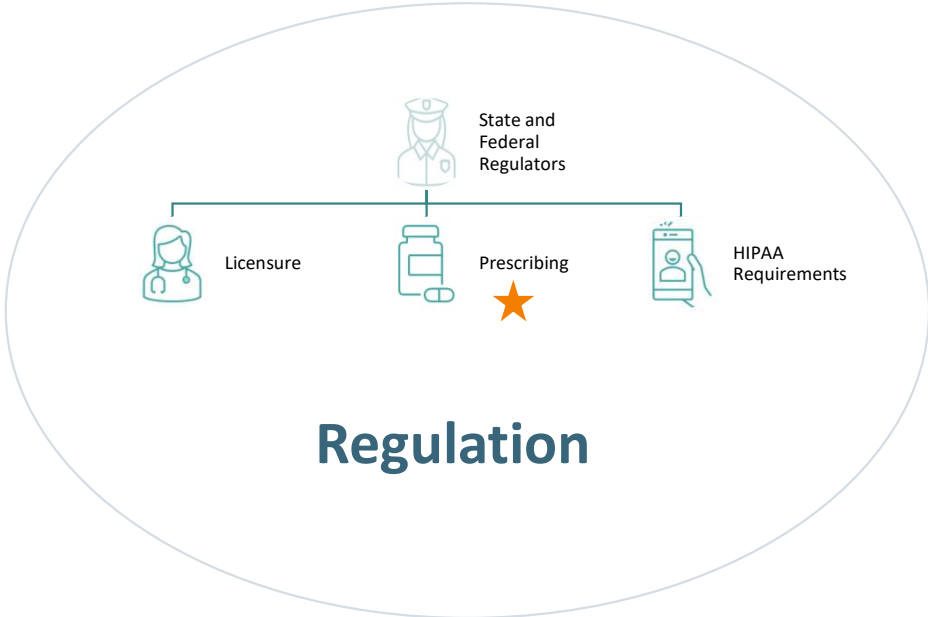
California Law on Prescribing and Telehealth

- Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.
- An appropriate prior examination does not require a synchronous interaction between the patient and the licensee and can be achieved through the use of telehealth, including, but not limited to, a self-screening tool or a questionnaire, provided that the licensee complies with the appropriate standard of care.

SOURCE: CA Business & Professions Code Sec. 2242 (a)

Questions Posed Beyond DEA Regulatory Prescribing





HIPAA Rules for Telehealth Platforms (and other digital modalities)

The HHS Office for Civil Rights (OCR) exercised enforcement discretion allowing providers to use telehealth in good faith **even if their platforms or software did not follow Health Insurance Portability and Accountability Act (HIPAA) rules.**

OCR is providing a 90-calendar day transition period for covered health care providers to come into compliance with the HIPAA Rules with respect to their provision of telehealth. The transition period will be in effect beginning on May 12, 2023 and will expire at 11:59 p.m. on August 9, 2023.



Co-Pays for all Government Health Care Programs

- OIG Policy statement notifying health care providers that they will not be subject to administrative sanctions under the federal Anti-Kickback Statute or the Civil Monetary Penalty and exclusion laws for reducing or waiving cost-sharing amounts (like copayments and deductibles) for telehealth services.
- After May 11, health care providers offering telehealth services to **Medicare beneficiaries may no longer reduce or wave any cost-sharing obligations that patients may owe for such services.**
- Providers need to operationalize payment and collection mechanisms to ensure these amounts are charged and collected.

* This also applies to **additional virtual services** such as remote patient monitoring (RPM) services furnished to Medicare beneficiaries during the PHE.



Do you participate in HRSA programs?

HRSA Service Area Telehealth Flexibilities

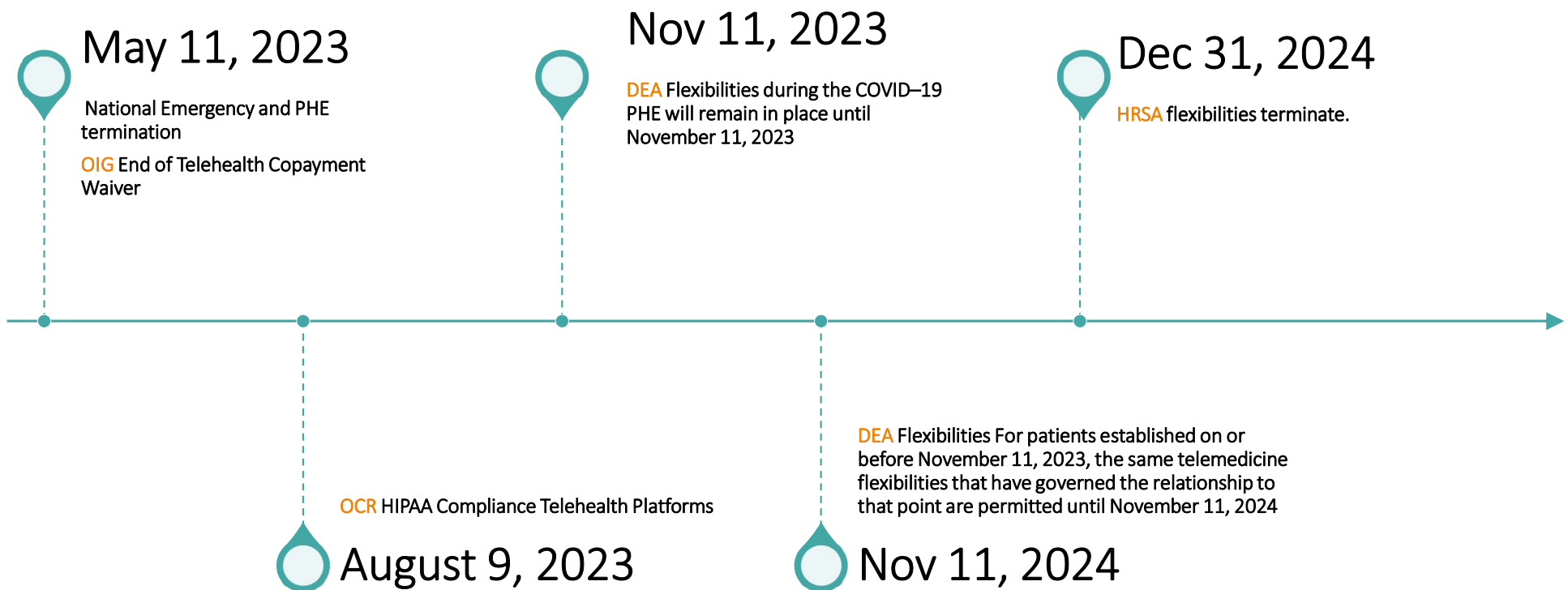
Health centers should focus services provided by telehealth on serving patients and other individuals located inside their service area or with areas adjacent to the covered entity's service area.

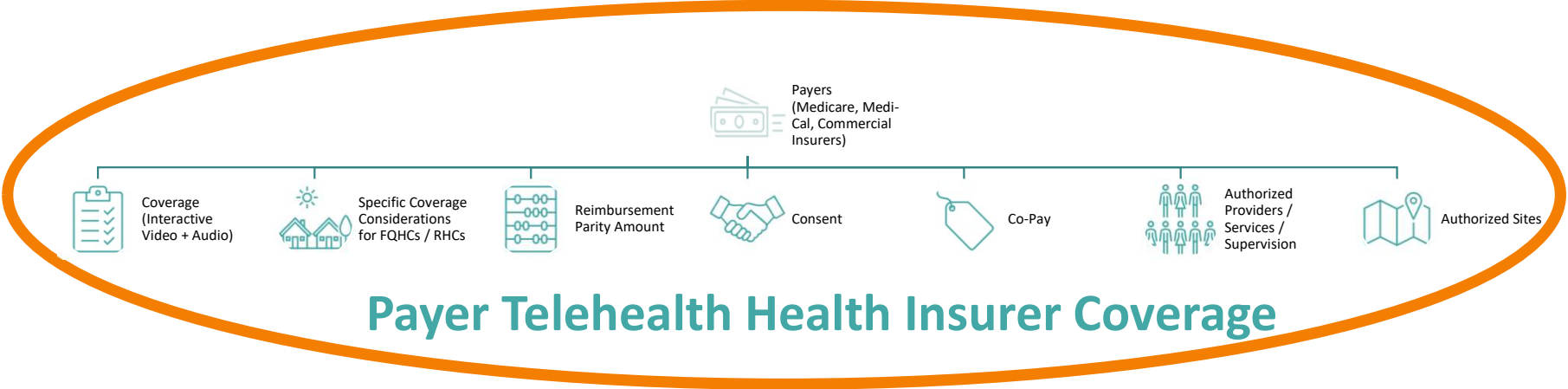
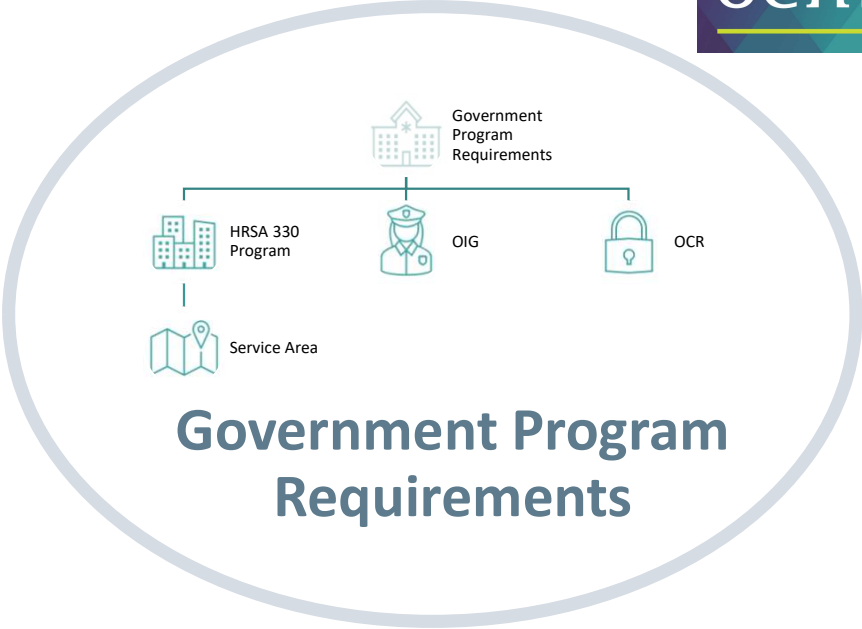
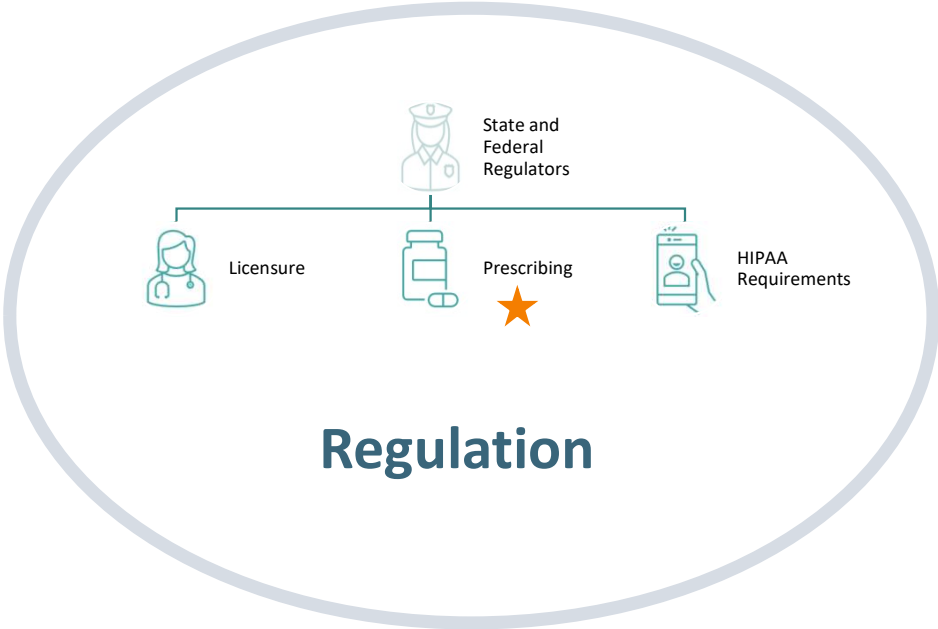
Health centers that continue to maintain services for target populations in their service area **and provide occasional in-scope services via telehealth to individuals outside these areas** would be providing services within the Health Center Program scope of project for all such activities.

Telehealth guidance will continue to be in effect until HRSA issues superseding policy guidance, which may include final scope of project and telehealth policy, or until December 31, 2024, whichever comes first.

updated on March 6, 2023

DEA + OIG + + OCR+ HRSA + Medicare Flexibilities





Government Health Programs and Commercial Health Insurers

Varied Coverage Policies and Requirements Governing Telehealth



Medicare



Medi-Cal



Commercial



Do you provide telehealth services to patients covered under Medicare?

Medicare

“Virtual Communications”

Virtual Communication

Payment for virtual communication services (G0071) no longer includes online digital evaluation and management services and these services *can only be used to establish patients.*

Consent

Consent for services will require **direct supervision** (as general supervision no longer authorized)

Medicare

Behavioral / Mental Health Services

Permanent Policy Changes

Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) can serve **as a distant site provider** for behavioral/mental telehealth services. [Link](#)

Medicare patients can receive telehealth services for behavioral/mental health care **in their home**.

There are no geographic restrictions **for originating site** for behavioral/mental telehealth services.

Behavioral/mental telehealth services can be delivered using **audio-only communication** platforms.

Medicare

Range of Telehealth Policies

Temporary Policies through December 31, 2023

Payment Parity

During the pandemic the Centers for Medicare & Medicaid Services (CMS) initiated higher reimbursement for telehealth services at non-facilities, such as a patient's home. In other words, Medicare has been paying for telehealth services as if they were provided in-person, meaning the telehealth visits are being paid by Medicare at the same rate as regular, in-person visits. These higher reimbursement rates are scheduled to end this year. After that, rates could return to lower pre-pandemic levels unless lawmakers choose to extend the policy.

Virtual Direct Supervision

CMS temporarily changed the direct supervision rules to allow the supervising professional to be remote and use real-time, interactive audio-video technology. That change did not require the professional's real-time presence at, or live observation of, the service via interactive audio-video technology throughout the performance of the procedure.

In the 2023 physician fee schedule, CMS declined to extend this temporary policy beyond the end of the calendar year in which the PHE ends. Therefore, virtual direct supervision will expire at the end of this year unless CMS revises its policy in future rulemaking.

Medicare

Range of Telehealth Policies

Temporary Policies through December 31, 2024

FQHC and RHC: continue to serve as a **distant site provider** for **telehealth services**.

Medicare patients can receive via telehealth services authorized in the [Calendar Year 2023 Medicare Physician Fee Schedule](#). (Caveat)

Patient Home: **Continued waiver of geographic restrictions for originating site**

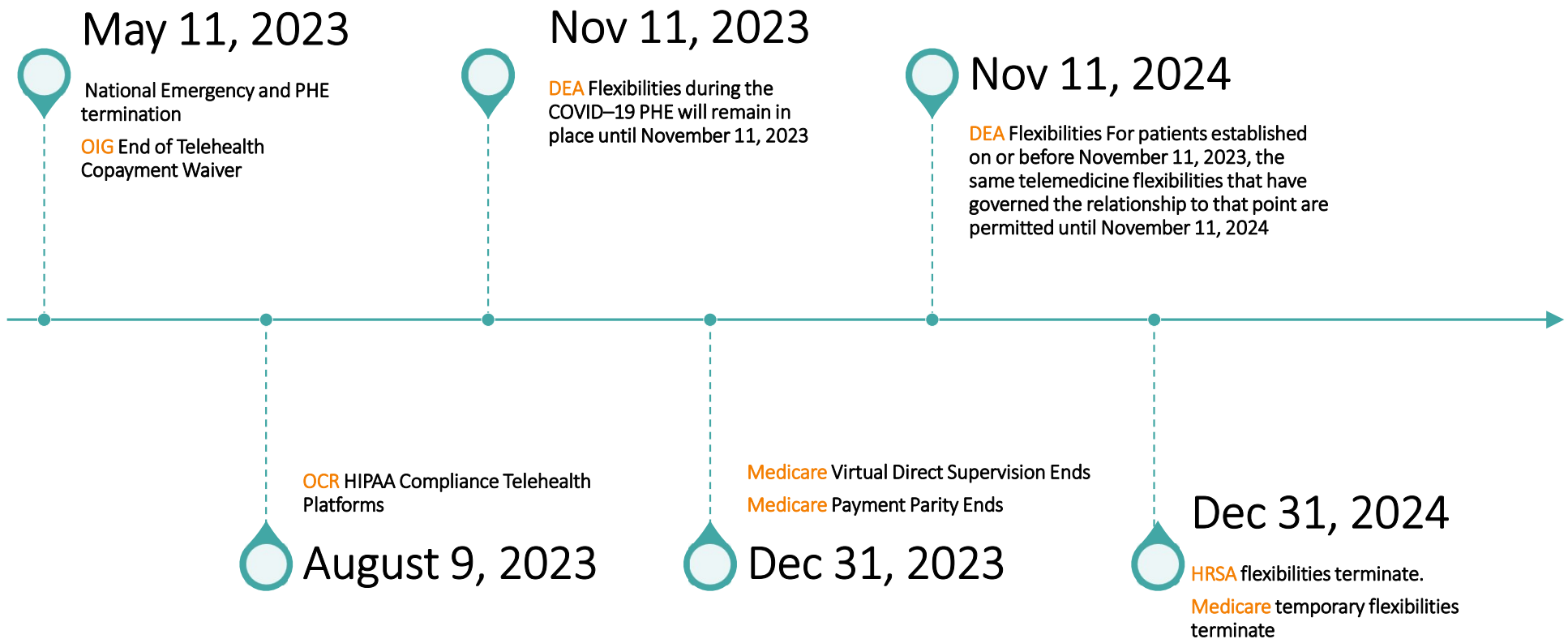
Audio-only: **Some services** can be delivered using **audio-only communication** platforms.

Behavioral and mental health 6 month in-person rule waived: an in-person visit within six months of an initial telehealth service **is not required**.

Expanded authorized provider continued: **a physical therapist, occupational therapist, speech language pathologist, or audiologist**.

Hospice recertification: **telehealth can be used for certifying hospice eligibility**.

DEA + OIG + + OCR+ HRSA + Medicare Flexibilities





Do you provide telehealth services to patients covered under Medi-Cal?

Medi-Cal Range of Telehealth Policies

Provider Requirements

A health care provider rendering Medi-Cal covered benefits and services via telehealth must be:

- Licensed in California or otherwise authorized by section 2290.5(a)(3);
- Enrolled as a Medi-Cal rendering provider or non-physician medical practitioner (NMP); and
- Affiliated with an enrolled Medi-Cal provider group.

Note: Unlicensed providers designated by DHCS may provide services through telehealth as specified in the Medi-Cal Provider Manual



Medi-Cal Range of Telehealth Policies

Telehealth Covered Services

- Telehealth services are reimbursable if the health care provider believes that the service being provided is clinically appropriate based upon evidence-based medicine or best practices or both.
- Additionally, the telehealth service must meet the procedural definition of the Current Procedural Terminology (CPT) or Healthcare Common Procedure Coding System (HCPCS) code associated with the service, as well as follow any additional guidance provided by the Department (e.g., through the DHCS Provider Manual).



Medi-Cal

Range of Telehealth Policies

Telehealth Covered Modalities

The Department reimburses for telehealth visits conducted via **audio-only telehealth** (i.e., telephone), **video telehealth*** but there are specific requirements for audio-only billing.

Telehealth Payment Parity

There is payment parity for telehealth services within the Medi-Cal program; the amount paid by the Department and Medi-Cal managed care plans for a service rendered via telehealth is the same as the amount paid for the applicable service when rendered in-person.



*Medi-Cal includes asynchronous store and forward as a covered service, but requires different coding from synchronous telehealth (video telehealth and audio-only)

Medi-Cal

Range of Virtual Services Policies

Medi-Cal including Federally Qualified Health Centers & Rural Health Clinics

Audio Only Reimbursement Requirements A patient may not be “established” using an audio-only synchronous interaction unless

the visit is related to a “sensitive service”, such as health care services related to mental or behavioral health, sexual and reproductive health, sexually transmitted infections, substance use disorder, gender affirming care, and intimate partner violence, as defined in the California Civil Code, section 56.05, subdivision (n), or

if the patient requests “audio only” or

does not have access to video

Medi-Cal Range of Telehealth Policies

Consent

Requires providers to obtain consent once before the initial delivery of telehealth services. Enhances existing consent requirements to require additional information be shared regarding:

- Right to in-person services
- Voluntary nature of consent
- Availability of transportation to access in-person services when other available resources have been reasonably exhausted
- Limitations/risks of receiving services via telehealth, if applicable
- Notification of the beneficiary's right to make complaints about the offer of telehealth services in lieu of in-person care or about the quality of care delivered through telehealth





Range of Virtual Services Policies

Federally Qualified Health Centers & Rural Health Clinics

New Patient

May establish a new patient relationship through a **synchronous video interaction or asynchronous store** and forward **if all the following conditions are met:**

- The patient is physically present at an originating site that is a licensed or intermittent site of the FQHC or RHC at the time the service is performed.
- The individual who creates the patient records at the originating site is an employee or contractor of the FQHC or RHC, or other person lawfully authorized by the FQHC or RHC to create a patient record.
- The FQHC or RHC determines that the billing provider is able to meet the applicable standard of care.
- An FQHC or RHC patient who receives telehealth services shall otherwise be eligible to receive in-person services.

Established Patient

A Medi-Cal eligible recipient who meets **one or more of the following** conditions:

- The patient has a health record with the FQHC or RHC that was created or updated during a visit that occurred in the clinic **or during a synchronous telehealth visit in a patient's residence or home** with a clinic provider and a billable provider at the clinic. The patient's health record must have been created or updated within the previous three years.
- The patient is homeless, homebound or a migratory or seasonal worker (HHMS) and has an established health record that was created from a visit occurring within the last three years that was provided outside the originating site clinic, but within the FQHC's or RHC's service area. All consent for telehealth services for these patients must be documented.
- The patient is assigned to the FQHC or RHC by their managed care plan (MCP) pursuant to a written agreement between the plan and the FQHC or RHC.

Non-telehealth services: an e-consult, e-visit, or remote patient monitoring are not reimbursable telehealth services for FQHCs or RHCs.



Helpful Resources

Links for Clinic Use

- [HHS COVID-19 PHE Transition Roadmap](#)
- [Medicaid Unwinding Toolkit](#)

Medicaid Links for Patient Use

- [Medicaid & Chip HOW-TO Information](#)
- [Healthcare.gov](#) - Apply through the Government Healthcare Marketplace
- [Insure Kids Now](#) - Find coverage options for your family
- [Apply via Your State](#) - Select your state, then click the first state Medicaid link
- [Frequently Asked Questions](#) about coverage eligibility

Upcoming Opportunities



[Registration is now available!](#) Contact us at CalTRC@ochin.org to inquire about scholarship opportunities!

www.caltrc.org

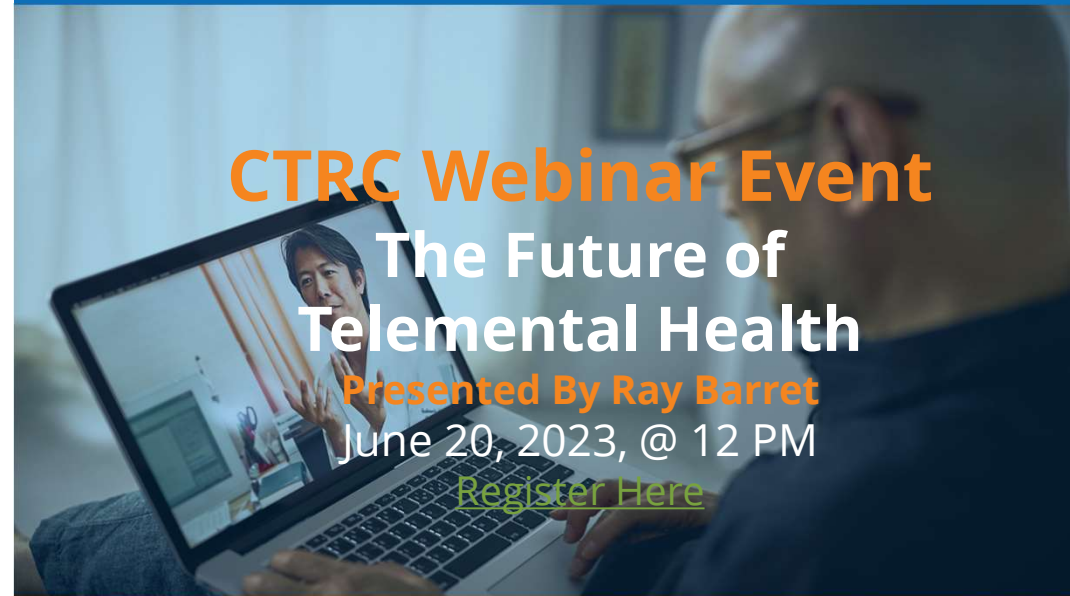


CTRC Webinar Event

The Future of Telemental Health

Presented By Ray Barret
June 20, 2023, @ 12 PM

[Register Here](#)





Thank You



www.caltrc.org

CalTRC@ochin.org