



# ADDRESSING DISPARITIES & EQUITABLE ACCESS IN TELEHEALTH: *LEGAL BARRIERS AND OPPORTUNITIES*

DEVELOPING A TELEMEDICINE PROGRAM  
ARIZONA TELEMEDICINE PROGRAM  
FEBRUARY 06, 2023

**Tara Sklar, JD, MPH**

Faculty Director, Health Law & Policy Program, Arizona Law

Senior Advisor for Telehealth Law & Policy, Arizona Telemedicine Program

# Disclosures

- No relevant conflicts of interests.
- This is not legal advice.

# Overview

## Telehealth policy updates at the federal level and in Arizona

Where are we with telehealth and the public health emergency?  
What did the Consolidated Appropriations Act of 2023 authorize?

## Telehealth policy updates from national associations

Center for Telehealth and eHealth Law Digital Health Summit, December 2022  
American Telehealth Association Policy Edge, December 2022

**Access: Audio-only and Licensure**

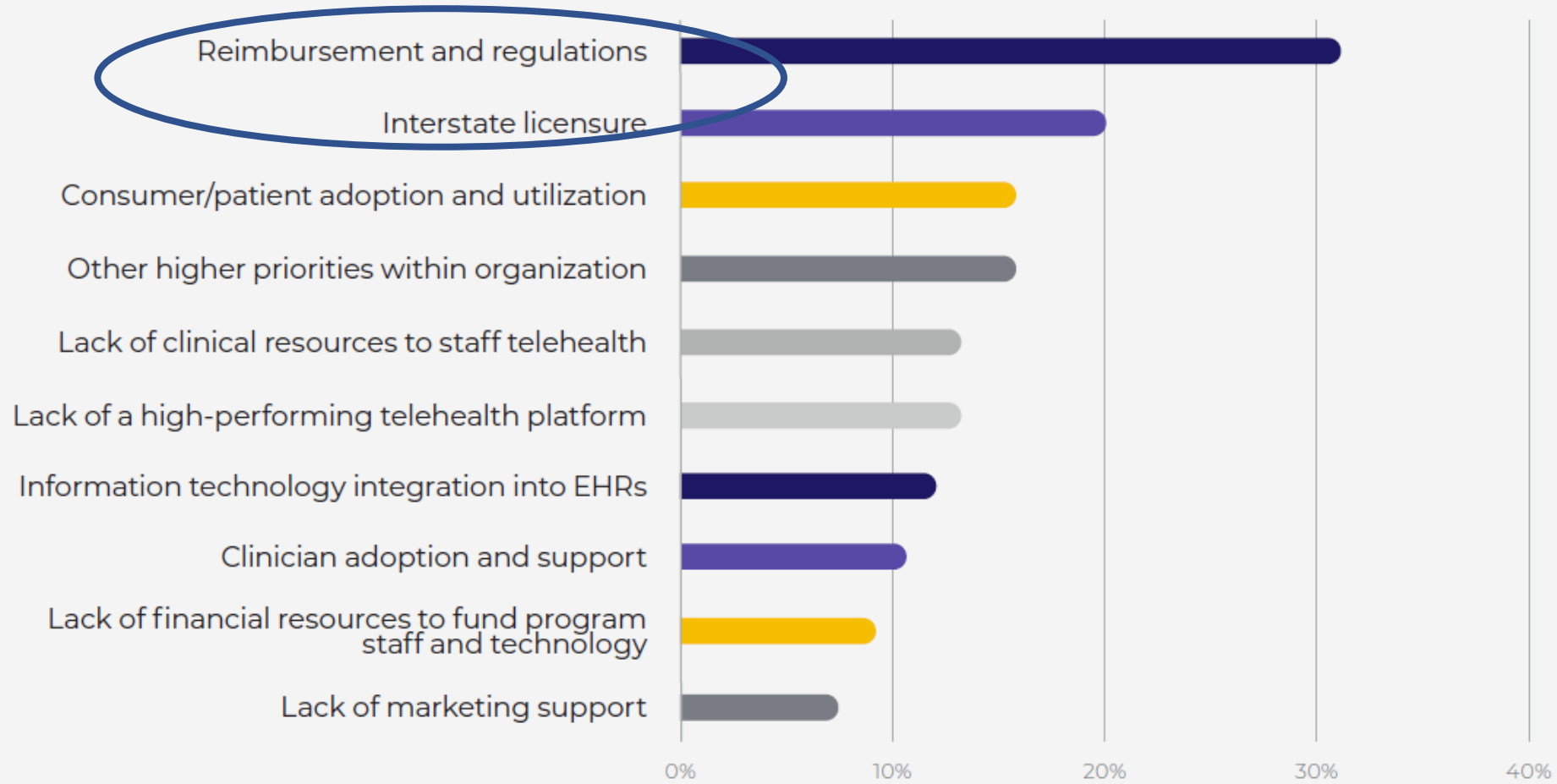
**SAVE THE DATE**

**Webinar on April 12, 2023 (12 pm MST)**

*Navigating Telehealth Legislative and Policy Changes Beyond the Public Health Emergency*

# Why Telehealth Law & Policy?

FIGURE 15 **Leading Barriers to Telehealth Implementation or Growth**





**Modality Mandates:** Clinically unnecessary requirements that providers always use a certain technology to form a relationship or prescribe

- **Holding Telehealth to Higher Standard with Clinically Unnecessary Barriers:** Imposing requirements on telehealth care delivery setting that is not expected in person

**Not Considering Primarily Virtual Providers:** Certain state requirements (often in Medicaid) do not contemplate providers that -- even while licensed-- might not be in physical proximity of patient

- **Prescribing of Controlled Substance Requirements Exceeding Federal Law**
- **Limiting Providers Who Can Use Telehealth Consistent with Scope:** Limit definition of telehealth providers or have supervision requirements that don't account for technology

# Telehealth Law & Policy

## Access

Digital Divide  
In Person Requirements  
Geographic Restrictions  
Modality (audio-only)

## Costs

Reduced Costs  
Fraud & Abuse  
Unnecessary Utilization  
Investment: Tech & Workforce

## Licensure

Interstate Practice  
Compacts  
Telehealth Registration

## Privacy & Consent

HIPAA  
Consumer Data Protection  
Security Risks

## Liability

Malpractice insurance  
Standard of care  
Prescribing of controlled substances

## Reimbursement

Payment Parity  
Safety Net Providers  
Remote Patient Monitoring

# What is the “Digital Divide”?

Limited access to technology

Low digital literacy

Lack inclusive designs



**Digital health equity:** fair and just opportunity to engage with and benefit from digital health tools.

*(e.g., patient-facing mobile health apps, remote monitoring, telehealth, texting, etc.)*

# Population Groups Disproportionately Impacted by the Digital Divide

- Older Adults
- Racial and ethnic minority groups
- Disability
- Low socioeconomic status
- Living in rural areas
- Limited English Proficiency



**(Extended to May 11, 2023 – 12th extension)**



## **Public Health Emergency**

*set to end on January 11, 2023*

**Transition period: 151 – day grace period will go into effect**

- **Geographic and site requirements** still waived by CMS, and patient can receive care in the home.
  - After grace period restrictions will revert to pre-PHE.
- Use of **audio-only** telehealth
  - After grace period likely restricted to behavioral health services.
- **Medicare reimbursement** for telehealth visits for physical therapists, occupational therapists, speech language pathologists, and audiologists will end.

### **No grace period**

- Prescribing controlled substances requires an in-person visit. Ryan Haight Act no longer waived.

# Telehealth policy updates at the federal level and in Arizona

Where are we with telehealth and the public health emergency?

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## Five Key Telehealth Takeaways from the Consolidated Appropriations Act, 2023



<https://telemedicine.arizona.edu/blog/disentangling-telehealth-public-health-emergency>

Full text of the [legislation](#).

**#1:** Patients can continue to access telehealth from their home.

**#2:** Audio-only telehealth services is allowed.

**#3:** In-person visits for telebehavioral health not required under the CAA, but virtual prescribing for controlled substances still tied to PHE.

**#4:** Extend pre-deductible telehealth waiver (safe harbor provision).

**#5:** Expand care options with eligible practitioners, safety net providers, and acute hospital care at home programs.

# Federal

Rep. Liz Cheney's HR 4040

## Advancing Telehealth Beyond COVID-19 Act of 2022

Extends key telehealth flexibilities under the Public Health Emergency (PHE) from first day PHE ends through **to December 31, 2024 / January 1, 2025.**

- Removes geographic requirements and expand originating sites to include patients' homes
- Continue coverage for audio-only telehealth services
- Extends FQHCs and RHCs to furnish telehealth services under Medicare
- Delays the 6-month in-person requirement for telehealth mental health services
- Allows telehealth to recertify eligibility for hospice care
- Expands list of practitioners

# Extra time to **assess**

*Support making telehealth flexibilities permanent part of Medicare*

**Financial** impact expanded telehealth services have on the Medicare program [Medicare increased from **840,000 in 2019 to 52.7 million in 2020**, largely from seniors accessing telehealth from their homes]

- Beneficiaries' health and well-being
- Quality of care
- Integrity issues: Waste, fraud & abuse
- Protect health information privacy
- Importance of amassing and analyzing nationwide data

## Access

Audio Only

In Person Requirements

Geographic Restrictions

Digital Divide

*“Telehealth has become an **integral part** of our healthcare system during this pandemic.”*

*“The waiver of Medicare’s **originating site** and **geographic restrictions**, including **audio-only services**.”*

*“We cannot allow an arbitrary and clinically unsupported **in-person requirement** to act as a barrier.”*

*Costs, health risks, and wait times associated with **in-person visits** and increasing provider shortage.*

## Practice

Audio-Only Modality

Interstate Licensing

Geographic Restrictions

In-person Visit Requirements



## Reimbursement

Payment Parity

Providers & Services

## Established

*Telehealth Advisory Committee on Telehealth Best Practices*

REFERENCE TITLE: telehealth; health care providers; requirements

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
First Regular Session  
2021

## HB 2454

Introduced by  
Representatives Cobb; Osborne, Senator Barto

AN ACT

AMENDING SECTIONS 20-841.09, 20-1057.13, 20-1376.05, 20-1406.05, 23-1026, 32-1401, 32-1854, 32-1901.01, 32-2061, 32-3248.01, 32-3251, 36-2272, 36-3601, 36-3602, 36-3603 AND 36-3604, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 36, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 36-3605, 36-3606 AND 36-3607; AMENDING SECTIONS 38-672 AND 38-673, ARIZONA REVISED STATUTES; RELATING TO TELEMEDICINE.

# Telehealth policy updates at the federal level and in Arizona

Where are we with telehealth and the public health emergency?

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## Telehealth Advisory Committee

Submitted [report](#) with recommendations re: **audio-only** on 12/2021.

Monitor **out-of-state providers** until 2026.

Sunset provision for 2029 removed as of 3/23/22 ([SB 1390](#))

Proposed rule changes for telehealth registration for **out of state providers** (12.30.22)

<https://track.govhawk.com/public/registers/1xpK3>

Three Year Pilot Program for **acute care services delivered at home**

Expanded with [HB 2374](#) effective as of 04/14/2022.

Any **nurse visits** under the program may be virtual or in person.

**Paramedic visits** may provide required on-site visits for patient assessment.

## CMS waiver for hospital-at-home designed to address COVID-

### 19-driven capacity issues

Dec 14, 2020

## Leading Health Innovators Launch Alliance To Advance Care In The Home

Coalition to focus on site of service flexibility for clinical care in the wake of pandemic

## Amazon Care, Intermountain, Ascension launch hospital-at-home healthcare alliance

Jackie Drees - Wednesday, March 3rd, 2021 Print | Email

## Where Hospital-At-Home Programs Are Heading After Last Year's Boom



Ashish V. Shah Forbes Councils Member  
Forbes Technology Council COUNCIL POST | Membership (Fee-Based)  
Innovation

[Global Edition](#) [Telehealth](#)

## Kaiser, Mayo, Medically Home found coalition to promote advanced hospital-at-home services

Federal regulators should "put guardrails on, but let us continue the good work," says Mayo Clinic's Dr. Michael Maniaci.

## Hospital at Home: Users Group

**182 hospitals/systems  
now have a program- up  
from 5-10 pre-pandemic**

To date:

**259 hospitals**  
across 37 states  
participating in the  
[program.](#)



# Telehealth legislation and policy updates from national associations

Center for Telehealth and eHealth Law Digital Health Summit, December 2022

American Telehealth Association Policy Edge, December 2022

<https://www.linkedin.com/company/ctel/>

Post-PHE and  
future of **hospital at  
home care**

Impact of telehealth  
on mitigating provider  
**burnout**, esp. for  
behavioral health

How to balance  
protecting data **privacy**  
with data sharing?

Increased OIG  
attention on  
identifying  
telemedicine **fraud**  
via data mining  
and claims outliers

**Telemedicine  
prescribing**

What policy changes can we  
make and drive to support  
**telebehavioral health**  
services?

How to create **hybrid models of care** that  
demonstrate value and ROI?

- What setting(s) are best for patient outcomes:  
in person, at home, virtual, hybrid
- What is needed by providers and payers to  
meet patient demand and preferences?

Access: Audio-only and Licensure

## Audio-Only carve out in definition of 'Telehealth'

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Interactive use of **audio**, video or other electronic media, including **asynchronous** store-and-forward technologies and **remote patient monitoring** technologies, for the practice of health care, assessment, diagnosis, consultation or treatment and the transfer of medical data; and

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**Audio-only** if an audio-visual telehealth encounter is not reasonably available due to the patient's functional status or **lack of technology or infrastructure limits**, as determined by the healthcare provider.



AZ HB 2454  
Enacted May 2021

# Telehealth Legislative Definition

Delivery of medical services through **HIPAA-compliant telecommunications** systems, while the patient is located at an **originating site** and the licensee is located at a distant site.

CO HB 1190  
Enacted May 2021



# Medicaid:

## CMS Should Assess Effect of Increased Telehealth Use on Beneficiaries' Quality of Care

GAO-22-104700

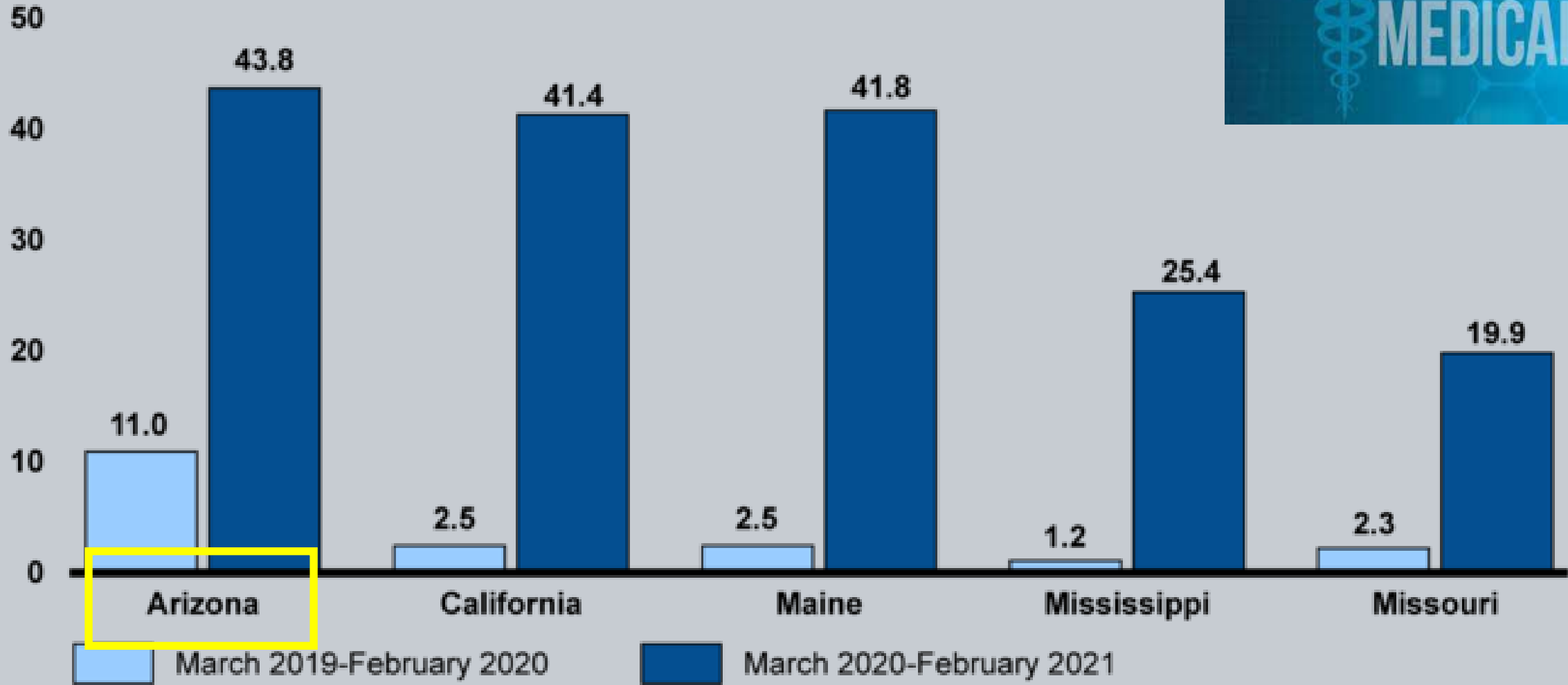
Published: Mar 31, 2022. Publicly Released: Mar 31, 2022.

**Medicaid** enrolls about 76 million low-income Americans.

**Medicaid** beneficiaries living in five states increased telehealth use dramatically at **15x** the pre-pandemic level.



Percentage



Source: GAO analysis of Centers for Medicare & Medicaid Services data. | GAO-22-104700

- Almost 1 in 5 beneficiaries used certain audio-only telehealth services, with the vast majority of these beneficiaries using them exclusively.
- Older beneficiaries were more likely to use these audio-only services than younger beneficiaries.
  - Notable because older beneficiaries were less likely to use all telehealth services than younger beneficiaries.

Medicare Telehealth Services During the First Year of the Pandemic: Program Integrity Risks

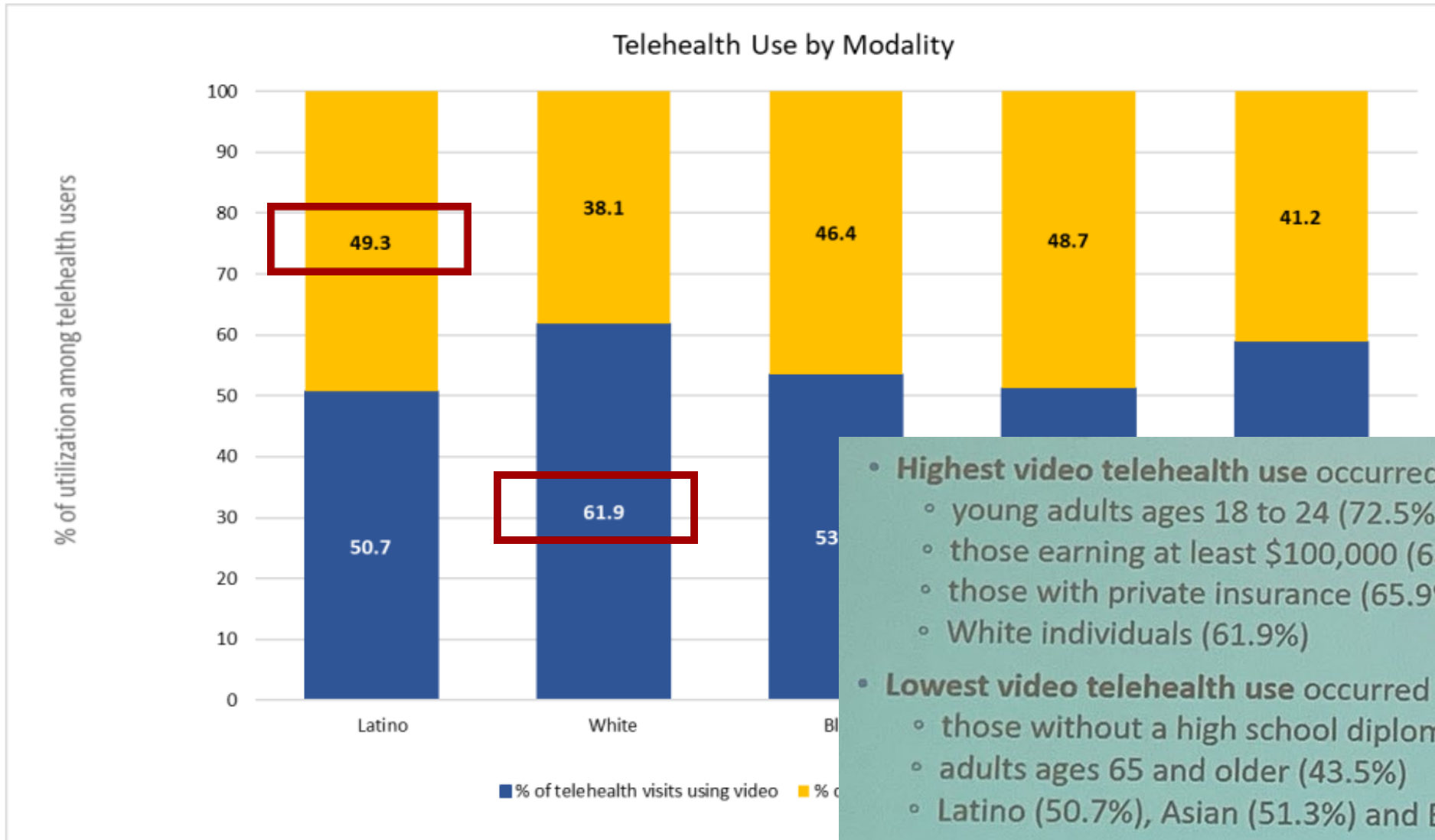
<https://oig.hhs.gov/oei/reports/OEI-02-20-00720.pdf>

The vast majority of beneficiaries who used certain audio-only services **did not use any audio-video telehealth services.**



Source: OIG analysis of CMS data, 2022.

Figure 2. Telehealth Modality (Video vs. Audio) Among Telehealth Users, By Race/Ethnicity



- **Highest video telehealth use** occurred among:
  - young adults ages 18 to 24 (72.5%)
  - those earning at least \$100,000 (68.8%)
  - those with private insurance (65.9%)
  - White individuals (61.9%)
- **Lowest video telehealth use** occurred among:
  - those without a high school diploma (38.1%)
  - adults ages 65 and older (43.5%)
  - Latino (50.7%), Asian (51.3%) and Black individuals (53.6%)

Source: <https://aspe.hhs.gov/sites/default/files/documents/4e1853c0b4885112b2994680a58af9ed/telehealth-hps-ib.pdf>

## Audio-Only Coverage of Behavioral Health Common Across Medicaid Programs

Amid the COVID-19 pandemic, a majority of US states expanded Medicaid coverage of telebehavioral health, with most extending access to audio-only delivery of these services.



Source: Getty Images

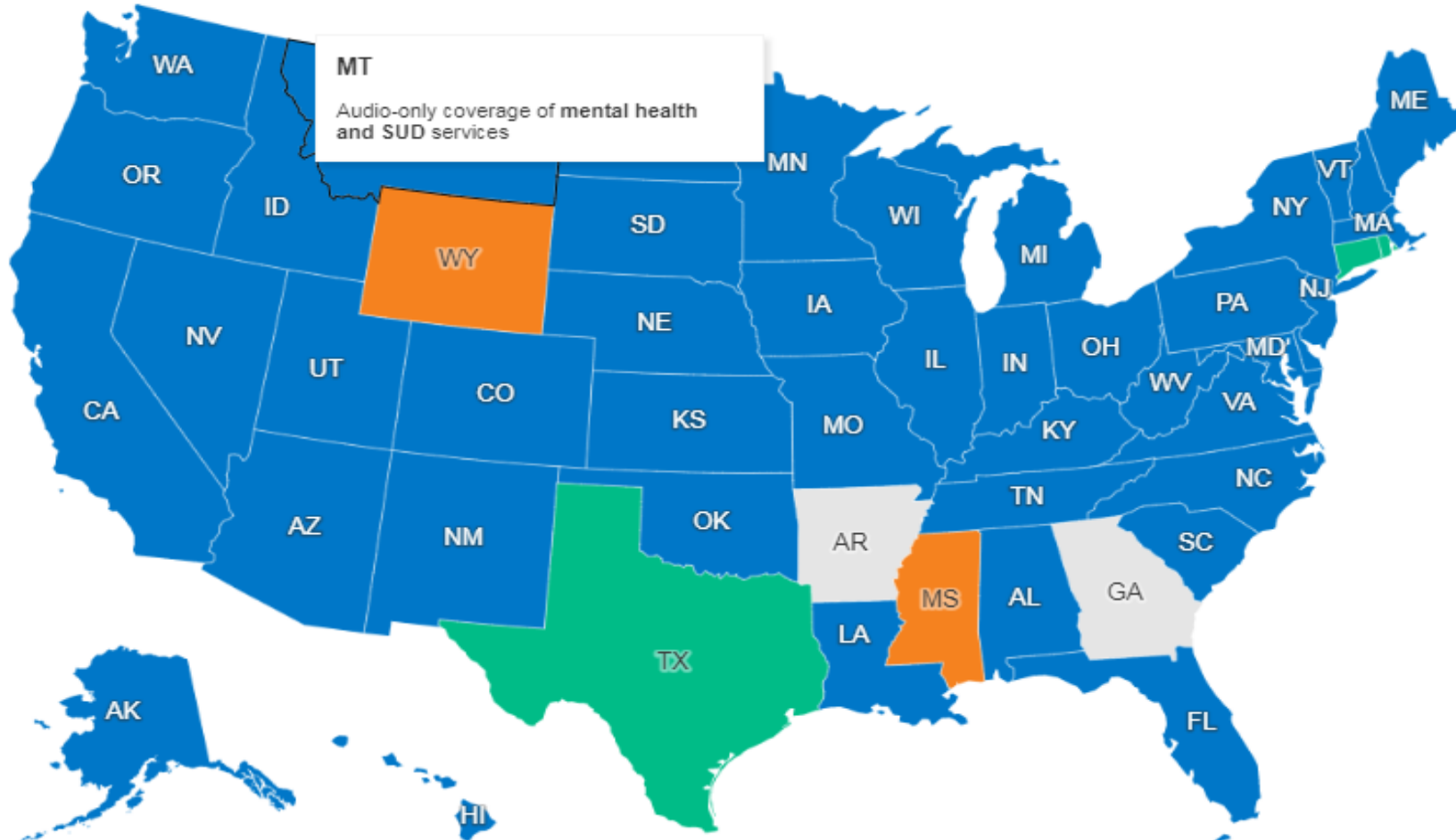
As of July 2022,  
**44 states** provided audio-only  
coverage of mental health and  
substance use disorder services.



Figure 2

## States Providing Medicaid Coverage of Behavioral Health Services Delivered via Audio-Only Telehealth, as of 7/1/2022

■ Audio-only coverage of **mental health and SUD** service (44 states incl DC) ■ Audio-only coverage of **mental health** services (not SUD) (3 states) ■ No audio-only coverage of mental health or SUD services (2 states) ■ NR (2 states)



## [Telehealth Delivery of Behavioral Health Care in Medicaid: Findings from a Survey of State Medicaid Programs](#)

NOTE: Findings are from KFF's 22nd annual [budget survey](#) of Medicaid officials conducted by KFF and Health Management Associates (HMA).  
SOURCE: [Telehealth Delivery of Behavioral Health Care in Medicaid: Findings from a Survey of State Medicaid Programs](#) • PNG



Jan 10, 2023

# Issues to Consider Involving **Audio-Only**

Audio-only visits will lead to **fraud and abuse**.

Additional (unnecessary) **utilization** that will drive up healthcare costs.

Need to place **limits** on number of audio-only visits.

“CMS estimated that 30% of telehealth visits were audio only during the pandemic. Estimates higher **because low-income patients** face unique barriers to accessing video visits and FQHCs lack resources to develop the necessary infrastructure.”

-- Uscher-Pines L, Sousa J, Jones M, et al. Telehealth Use Among Safety-Net Organizations in California During the COVID-19 Pandemic. JAMA. 2021;325(11):1106–1107.

“Actively address the connectivity issue & technology divide. Bridge the gap until everyone does have **broadband access**. Such solutions could include **subsidies** to access the internet, providing **hot spots** in certain regions, offering **training** to help with digital literacy, and providing **equipment** to access live video such as laptops or smartphones.”

--Center for Connected Health Policy, Impact of Audio-only Telephone in Delivering Health Services During COVID-19 and Prospects for Future Payment Policies, p. 13, (August 25, 2021), <https://www.cchpca.org/2021/10/FSMB-Audio-Only-Reportfinal.pdf>

If require in-person visit or limit licensure for out-of-state providers:

## Increasing costs and restricting access justified?

### Considerations:

- Patient-centered care?
- Provider shortage?
- *Which legislative approach is more likely to reinforce disparities in care?*

Competency and standard of care should suffice, *regardless of method*  
(Federal Trade Commission)

## A Cancer Patient's Brutal Commute

Maki Inada has to drive 5½ hours to see a doctor because of state laws restricting telemedicine.

By Ateev Mehrotra and Barak Richman  
July 12, 2021 6:40 pm ET

PRINT TEXT

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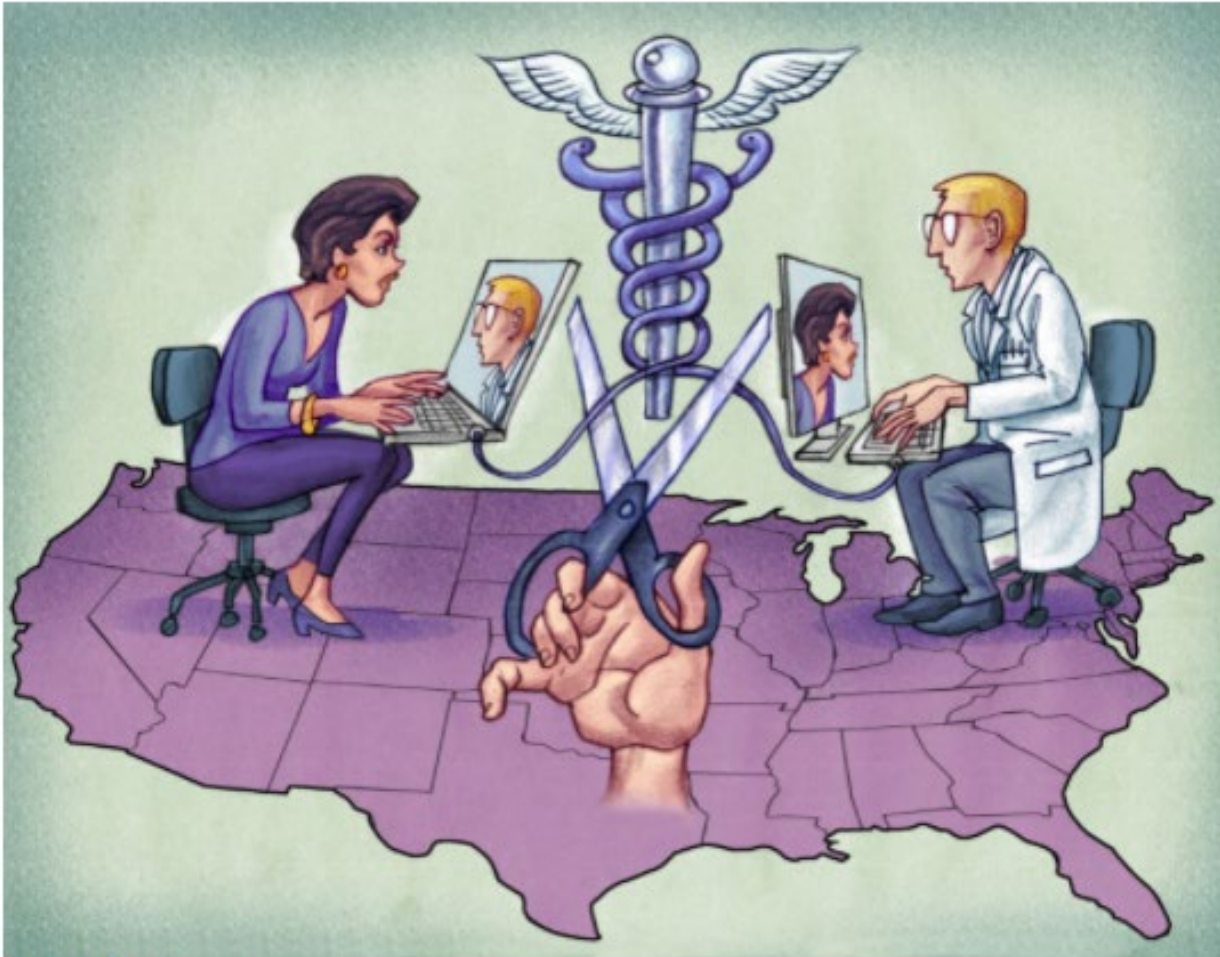


ILLUSTRATION: DAVID KLEIN

Dana-Farber told Ms. Inada she'll have to be **physically located in Massachusetts** for a visit.

She doesn't have to go all the way to the doctor's office, a 5½-hour drive each way.

She can drive 3½ hours, **cross the border** into Massachusetts, pull over, and have a telemedicine visit in the car.”

# Looking ahead

Interstate practice allowing telehealth registration, not a license, and rise in licensure compacts

## Telehealth Registration

- Current, valid, and unrestricted license in another state;
- Not subject to any past disciplinary proceedings in any state where the provider holds a professional license;
- Must maintain and provide evidence of professional liability insurance;
- Must not open an office or offer in-person treatment in that state; and
- Must annually register and pay a fee with the appropriate state licensing board.

Telehealth registration is currently across seven states:

- [Arizona](#)
- [Florida](#)
- [Indiana](#)
- [Kansas](#)
- [Minnesota](#)
- [Vermont](#)
- [West Virginia](#)

# Looking ahead

Interstate practice allowing telehealth registration, not a license, and rise in licensure compacts

## **Eight Active Compacts**

*Increasing in number of states, applications, and new compacts*

- Interstate Medical Licensure Compact (IMLC)
- Nurse Licensure Compact (NLC) and Advanced Practice Registered Nurse Compact (APRN Compact)
- Recognition of Emergency Medical Services Personnel Licensure Compact (The EMS Compact)
- The Physical Therapy Compact (PT Compact)
- The Psychology Interjurisdictional Compact (PSYPACT)
- Audiology and Speech-Language Pathology Interstate Compact (ASLP-IC)
- The Occupational Therapy Licensure Compact (OT Compact)
- Counseling Compact - (CC)

## **In development**

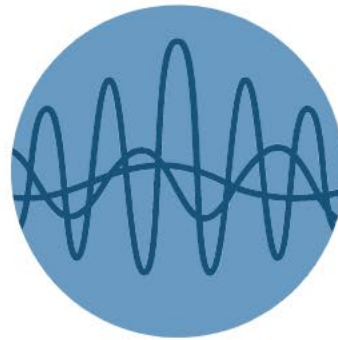
- Social Work Compact
- Physician Assistant Compact
- Dentists and Dental Hygienists Compact



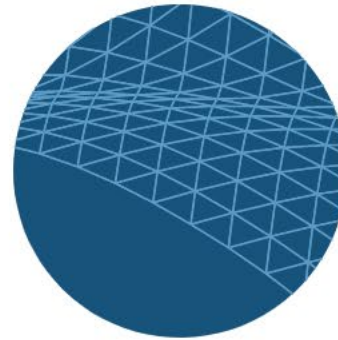
## Licensing resources for



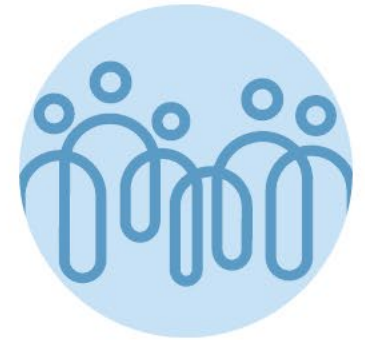
Occupational Therapists



Physical Therapists



Psychologists



Social Workers

<https://licensureproject.org/>

# SAVE THE DATE

## Webinar

April 12, 2023

(12 pm MST)

## Navigating Telehealth Legislative & Policy Changes Beyond the Public Health Emergency



### ARIZONA TELEMEDICINE PROGRAM WEBINAR SERIES

The practice and delivery of healthcare is changing with an emphasis on improving quality, safety, efficiency, & access to care. Telemedicine can help you achieve these goals! The Arizona Telemedicine Program and Southwest Telehealth Resource Center invite you to a free one-hour CME webinar on the implementation and practice of telemedicine.

CME provided by The University of Arizona College of Medicine - Tucson

### NAVIGATING TELEHEALTH LEGISLATIVE AND POLICY CHANGES BEYOND THE PUBLIC HEALTH EMERGENCY

**WEDNESDAY, APRIL 12, 2023**

12:00 pm MST ~ 1:00 pm CST ~ 2:00 PM EST

Join us to learn about the latest in telehealth legislation and policy changes.

#### OUTCOME OBJECTIVES

- Incorporate into telehealth practice current legislation, policies, and regulations.
- Implement recommended processes for complying with telehealth legislation and regulations.
- Gain proficiency in current federal and state legislation that impact telehealth and virtual care options.
- Increase understanding in the impact of telehealth legislation across provider specialty areas and patient population groups.

#### CONTINUING MEDICAL EDUCATION

##### Accreditation Statement

The University of Arizona College of Medicine - Tucson is accredited by the Accreditation Council for Continuing Medical Education to provide continuing medical education for physicians.

The University of Arizona College of Medicine - Tucson designates this live activity for a maximum of 1.0 AMA PRA Category 1 Credit(s)<sup>™</sup>. Physicians should claim only the credit commensurate with the extent of their participation in the activity.

##### Disclosure Statement

All Faculty, CME Planning Committee Members, and the CME Office Reviewers have disclosed that they do not have any relevant financial relationships with ineligible companies that could constitute a conflict of interest concerning this CME activity.

For more information, contact Melanie Esher, MAdm, at [mesher@telemedicine.arizona.edu](mailto:mesher@telemedicine.arizona.edu)

#### PRESENTER



**Tara Sklar, JD, MPH**

Faculty Director, Arizona Law  
Senior Advisor, Arizona Telemedicine  
Program

Tara Sklar is the Faculty Director of the Health Law & Policy Program at Arizona Law. She also holds appointments as Senior Advisor for Telehealth Law & Policy with the Arizona Telemedicine Program and for Innovations in Healthy Aging with the University of Arizona Health Sciences. Sklar currently serves as a telehealth policy consultant with the Department of Health and Human Services, Health Resources & Services Administration in the Office for the Advancement of Telehealth.

#### REGISTRATION

[www.telemedicine.arizona.edu](http://www.telemedicine.arizona.edu)

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ARIZONA  
TELEMEDICINE  
PROGRAM



THE UNIVERSITY OF ARIZONA  
JAMES E. ROGERS COLLEGE OF LAW

Health Law

# Thank you

[trsklar@arizona.edu](mailto:trsklar@arizona.edu)

 @trsklar

<https://telemedicine.arizona.edu/>

<https://southwesttrc.org/>

<https://law.arizona.edu/health>