

Telemedicine Law and Regulation in Wisconsin

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Telemedicine is Growing Even Faster Than Anticipated

Foley's 2017 Telemedicine & Digital Health Survey:
2014 vs 2017

87%

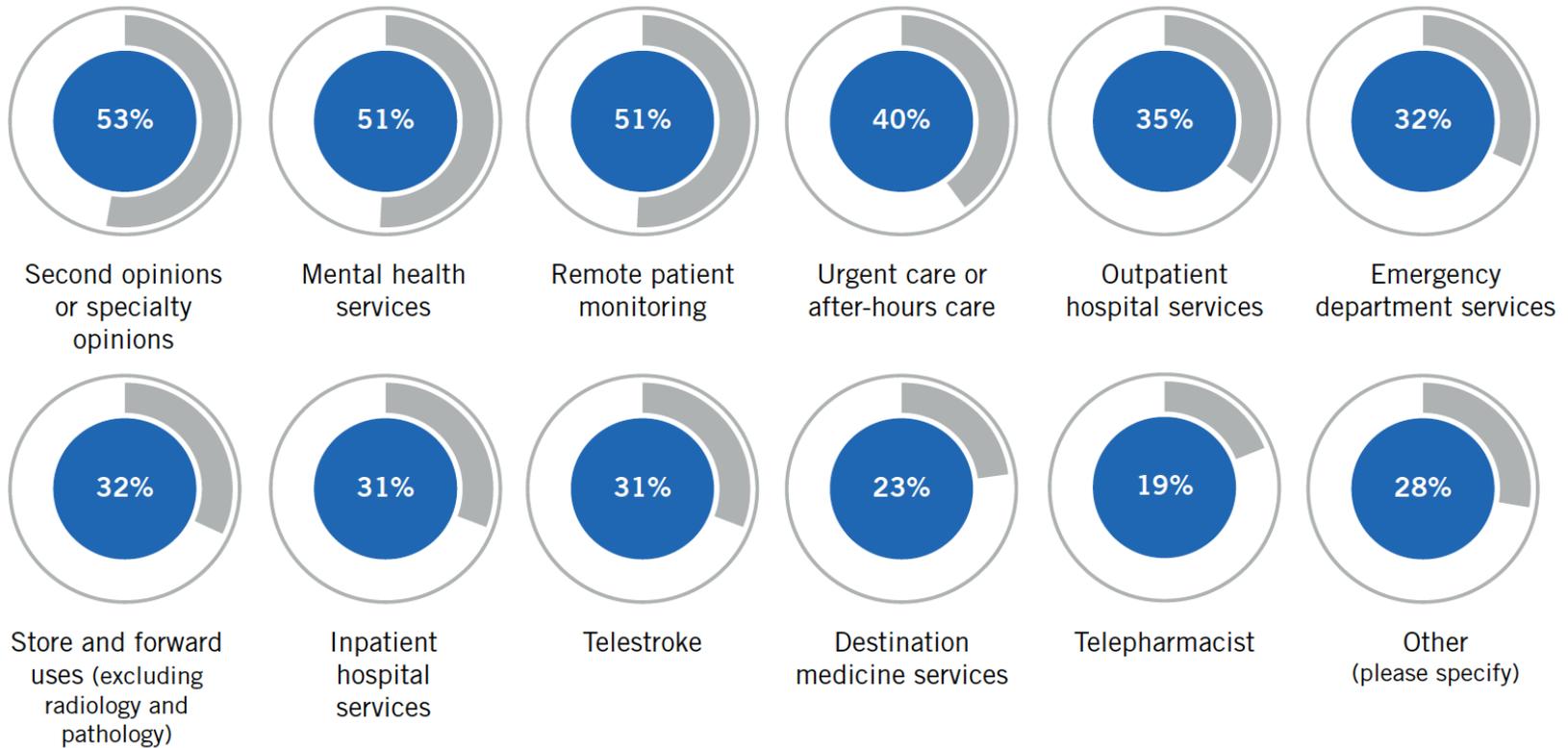
OF RESPONDENTS
TO 2014 SURVEY
DID NOT EXPECT
THEIR PATIENTS
TO BE USING
TELEMEDICINE
SERVICES.

76%

OF RESPONDENTS
TO 2017 SURVEY
OFFER OR PLAN
TO OFFER
TELEMEDICINE.

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Perception of Opportunities in Telemedicine



Entrepreneurs In Highly Regulated Industries

Spend time in the beginning to lay out your idea, plan, strategy, and tactics *before* executing.

- *“We’ll address legal issues after we are successful.”*

Understand the laws and regulations, then make informed business decisions.

- *“It’s probably fine because XYZ Corp. is doing it and they have VC/PE funding or are in the news.”*

Develop a realistic operating budget and consider strategic outside investors, but don’t relinquish control rights.

- *“We are bootstrapping it on a shoestring until we are successful.”*

Licensing

A person is shown from the chest up, holding a tablet computer. The image is heavily blurred and has a semi-transparent blue overlay. The person's hands are visible, interacting with the tablet. The background is indistinct, suggesting an office or professional setting.

Telemedicine and 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.
- State law expressly or implicitly requires licensure if the patient is located in the state at the time of the consult.
- Special rules for VA physicians (eff. June 11, 2018).
- Special rules for military and qualified military contractors when patient is located on base.
- FSMB Interstate Medical Licensing Compact

Notable Exceptions for Telemedicine

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

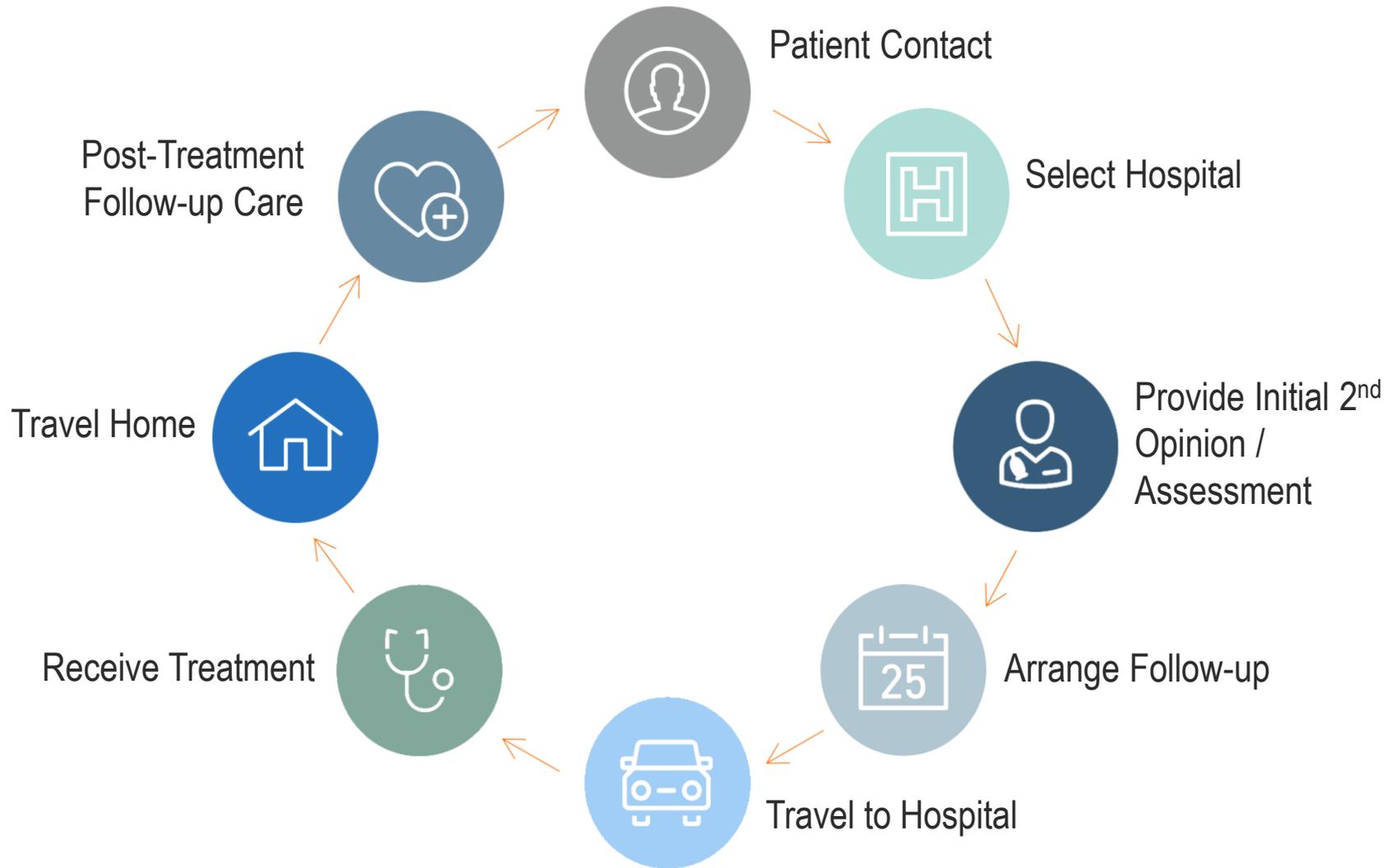
Follow-up Care

Allows physician to provide follow-up care to his/her patient (e.g., post-operation)

Destination Medicine and Follow-Up Care



Online Second Opinions



Wisconsin Consultation Exception

- **Wisconsin licensure not required for a physician located and licensed in another state or foreign country who is in actual consultation with a Florida-licensed doctor.**
 - Exceptions to Wisconsin licensure include: “Actual consultation or demonstration by licensed physicians or perfusionists or certified respiratory care practitioners of other states or countries with licensed physicians or perfusionists or certified respiratory care practitioners of this state.” See Wis. Stat. § 448.03(2)(d)
 - Regulations also allow for such consultations, see Wis. Adm. Code § Med. 24.01, providing: “The rules in this chapter may not be construed to prohibit any of the following: (1) Consultations between physicians or the transmission and review of digital images, pathology specimens, test results, or other medical data by physicians related to the care of patients in this state and (2) Patient care in consultation with another physician who has an established physician-patient relationship with the patient.



Telemedicine Practice Standards

Telemedicine Practice Standards

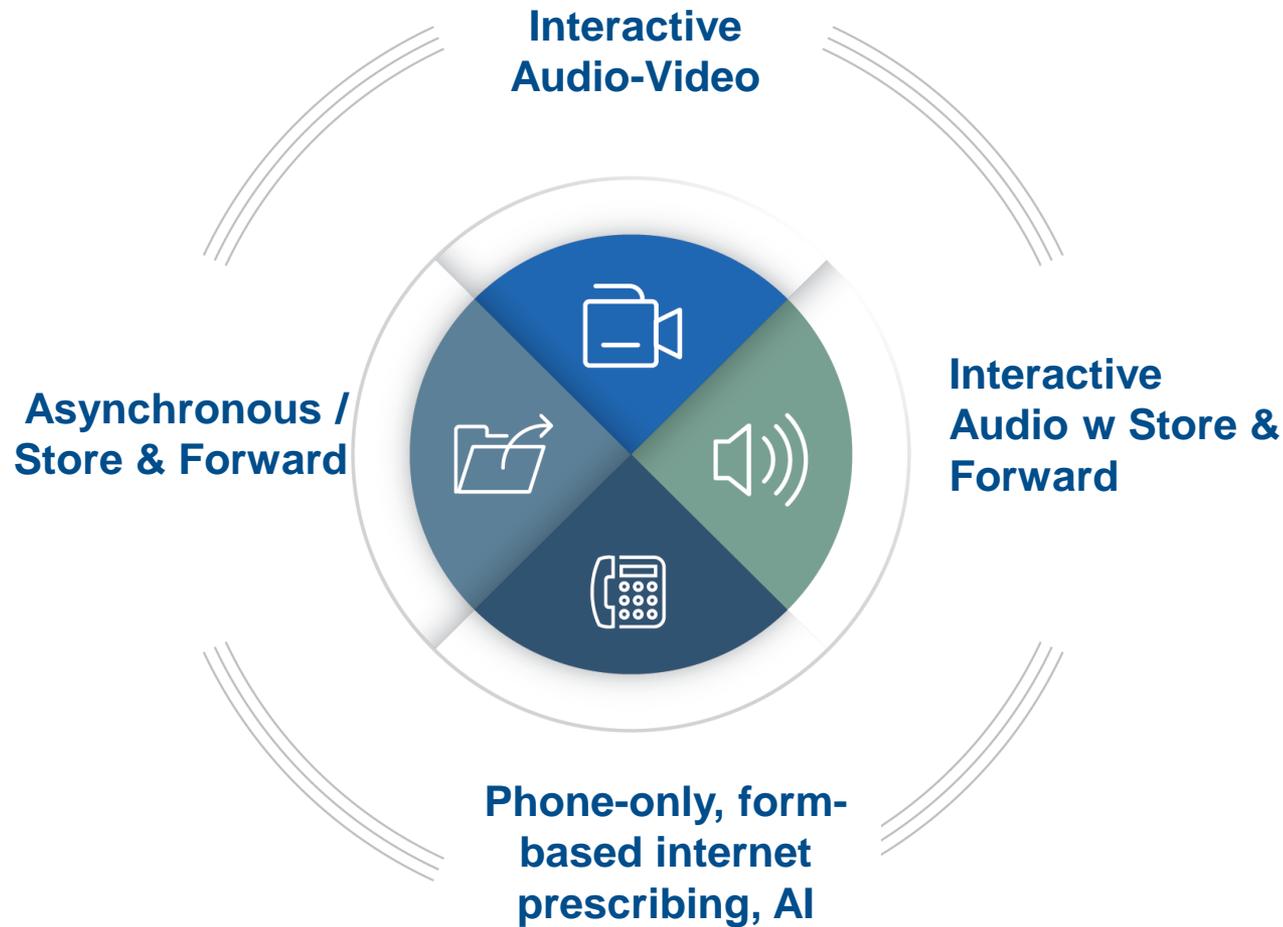
- **Modality Restrictions**
- **“Valid Prescription”**
- **Patient Consent**
- **Disclosures**
- **Choice of provider**
- **Verify patient identity**
- **Record-sharing**
- **Originating site**
- **Special registration**

Wisconsin Telemedicine Practice Standards

Provider-Patient Relationship

- A physician-patient relationship may be established via telemedicine. See Wis. Admin. Code § Med 24.03.
- The technology and equipment used, however, must, at a minimum, provide information that enables the physician to meet or exceed the standard of minimally competent medical practice. See Wis. Admin. Code § Med 24.02.

Telemedicine and Evolving Modalities

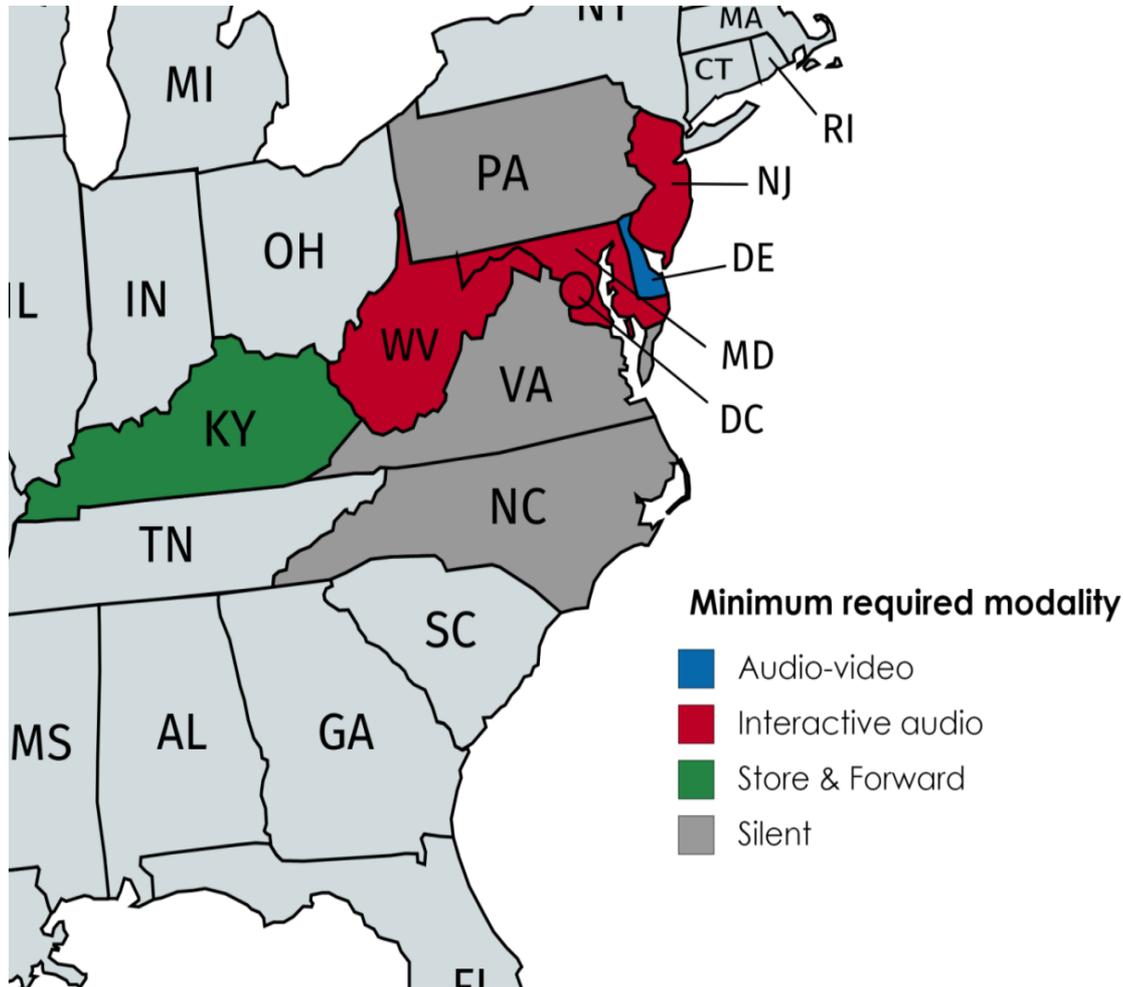


Wisconsin Telemedicine Practice Standards

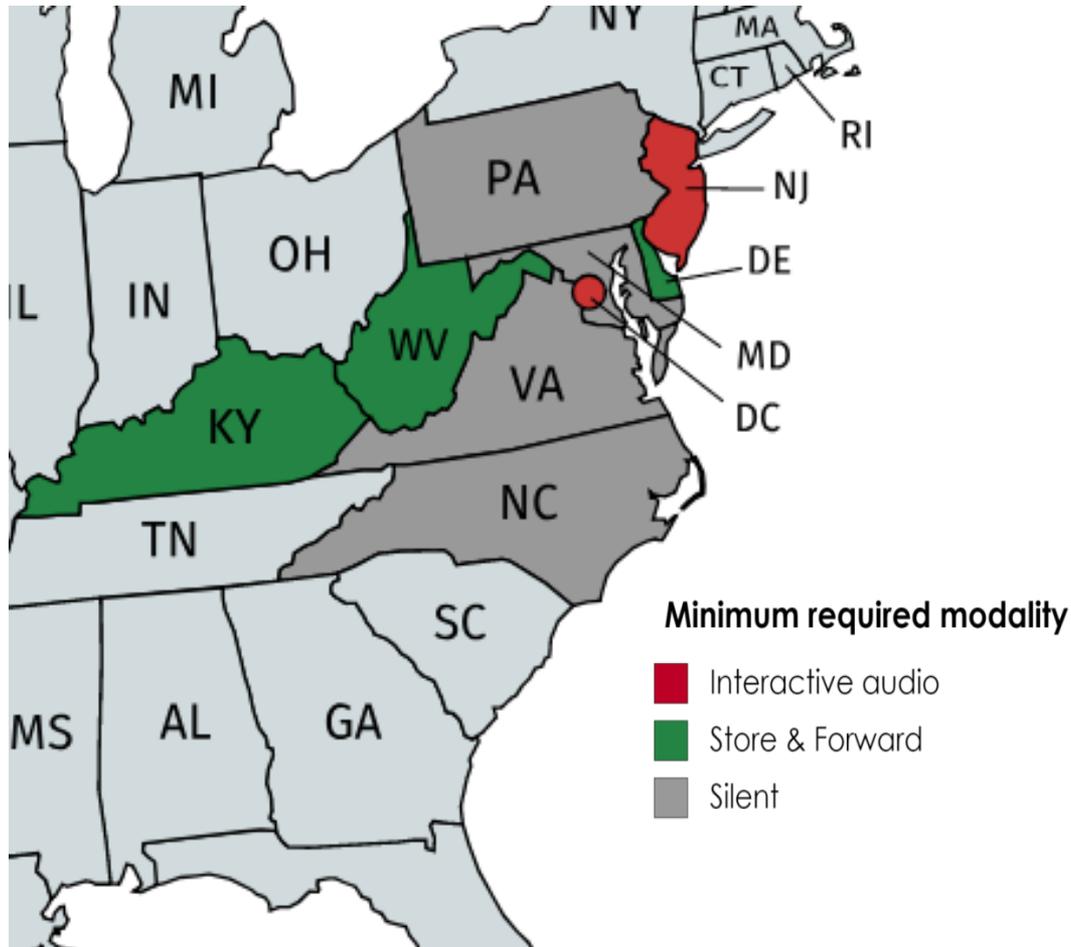
Telemedicine Modality

- Telemedicine means the practice of medicine involving the provision of patient care, treatment or services through electronic communications is not prohibited by Wisconsin law. See Wis. Admin. Code § Med 24.02.
- Telemedicine does not include the provision of health care services only through an audio-only telephone, email messages, text messages, facsimile transmission, mail or parcel service, or any combination thereof.

Minimum Required Modality to Create Doctor-Patient Relationship



Minimum Required Modality *After* Creating Doctor-Patient Relationship



Wisconsin Telemedicine Practice Standards

Telemedicine Evaluation

- Before providing treatment recommendations or issuing a prescription, the following elements must have been met:
 - 1) Physician is licensed to practice medicine and surgery by the Wisconsin medical examining board
 - 2) The physician's name and contact information have been made available to the patient.
 - 3) Informed consent as required under s. 448.30, Stats., and ch. Med 18.
 - 4) A documented patient evaluation has been performed that includes a medical history and, to the extent required to meet or exceed the standard of minimally competent medical practice, an examination or evaluation, or both, and diagnostic tests.
 - 5) A patient health care record is prepared and maintained as required under ch. Med 21.

Wisconsin Telemedicine Practice Standards

Telemedicine Prescribing

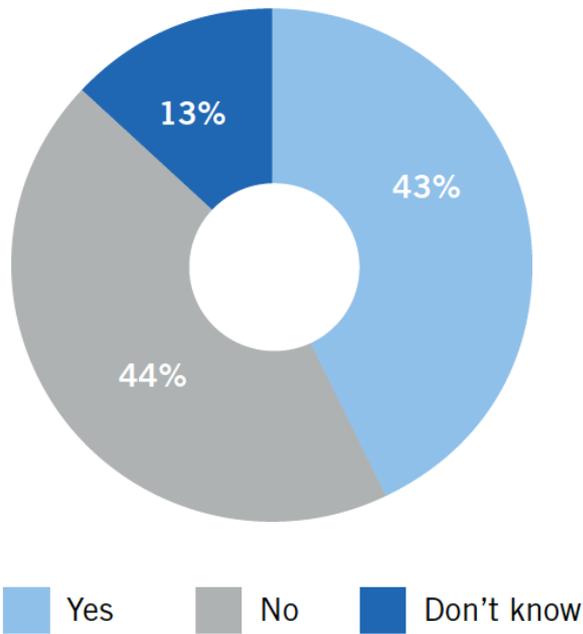
- Can prescribe via telemedicine.
- However, providing treatment recommendations, including issuing a prescription, based only on a static electronic questionnaire does not meet the standard of minimally competent medical practice. See Wis. Adm. Code § Med 24.07.

Wisconsin Telemedicine Practice Standards

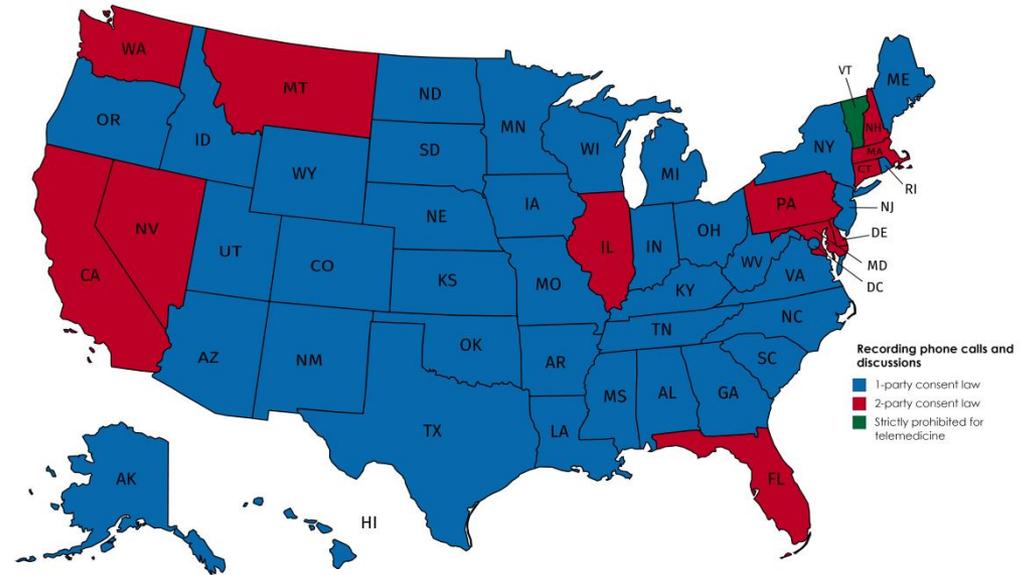
Telemedicine Prescribing

- Wisconsin is silent on requirements specific to controlled substance prescribing via telemedicine
- Federal Ryan Haight Act.
- Same standards apply - “minimally competent medical practice”

Recording Telemedicine Consults

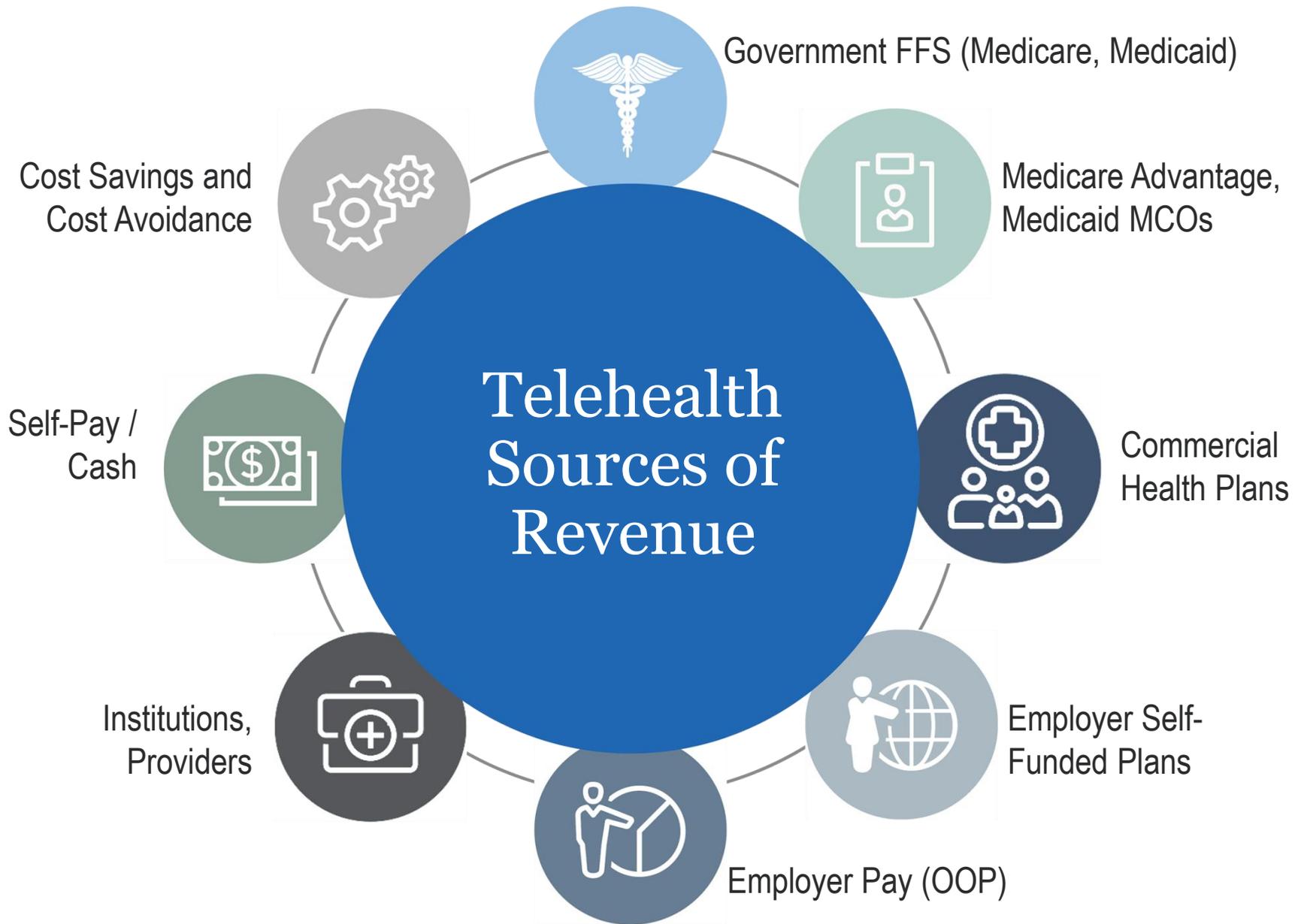


Source: Foley & Lardner 2017 Telemedicine & Digital Health Survey (Nov 2017)





Payment and Reimbursement Landscape



What Are Your Sources of Payment?

Self-Payment

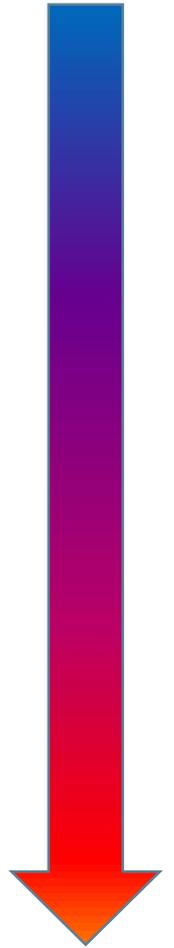
Commercial Insurance (incl. employer-pay)

Medicare Advantage

Medicaid Managed Care

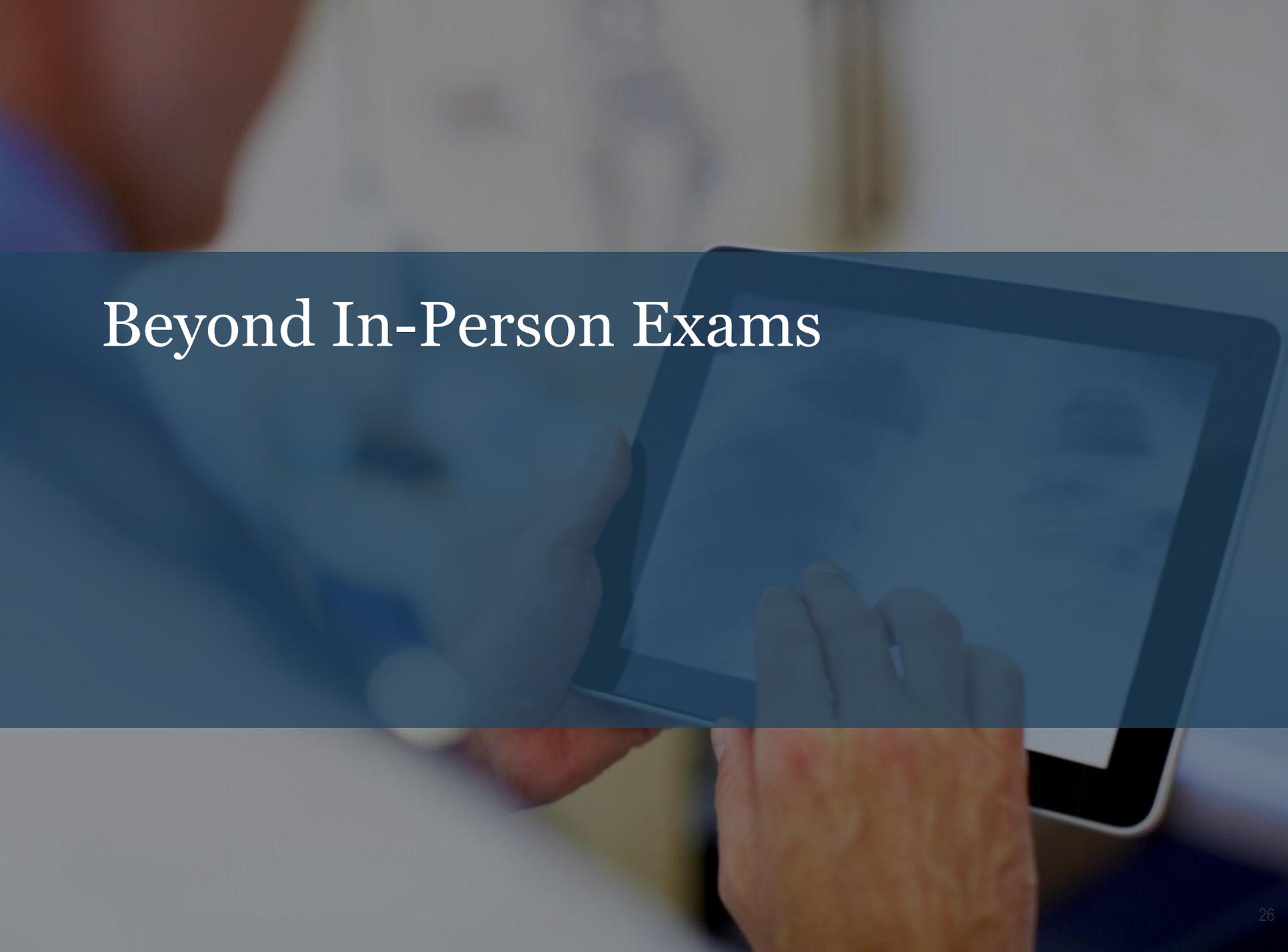
Medicare FFS

Medicaid FFS



Hot Issues in Medicare Telehealth Compliance

- Qualifying rural area*
- Qualifying originating site*
- Eligible modality*
- Overseas providers*
- Distant site billing for orig. site facility fee*
- Reassignment to originating site*
- Charging beneficiaries out of pocket for telehealth services*
- Telehealth vs non-face-to-face services*
- Telehealth admitting physician*
- Incident to billing*
- Global surgical period and post-op, follow-up care*
- G code and consultations*
- Telemedicine and EMTALA*
- Conditions of Participation vs. Conditions for Payment*

A person is shown from the chest up, holding a tablet computer. The person's hands are visible, and they appear to be interacting with the screen. The background is blurred, suggesting an indoor setting. A semi-transparent blue banner is overlaid across the middle of the image, containing the text "Beyond In-Person Exams".

Beyond In-Person Exams

Beyond In-Person Exams

Federal

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

State

- Patient Brokering Acts
- Fee-Splitting Laws
- Self-Referral Laws
- Corporate Practice of Medicine
- eCommerce
- Insurance Laws
- Supervision of NPPs
- Privacy & Security
- Medical Advertising

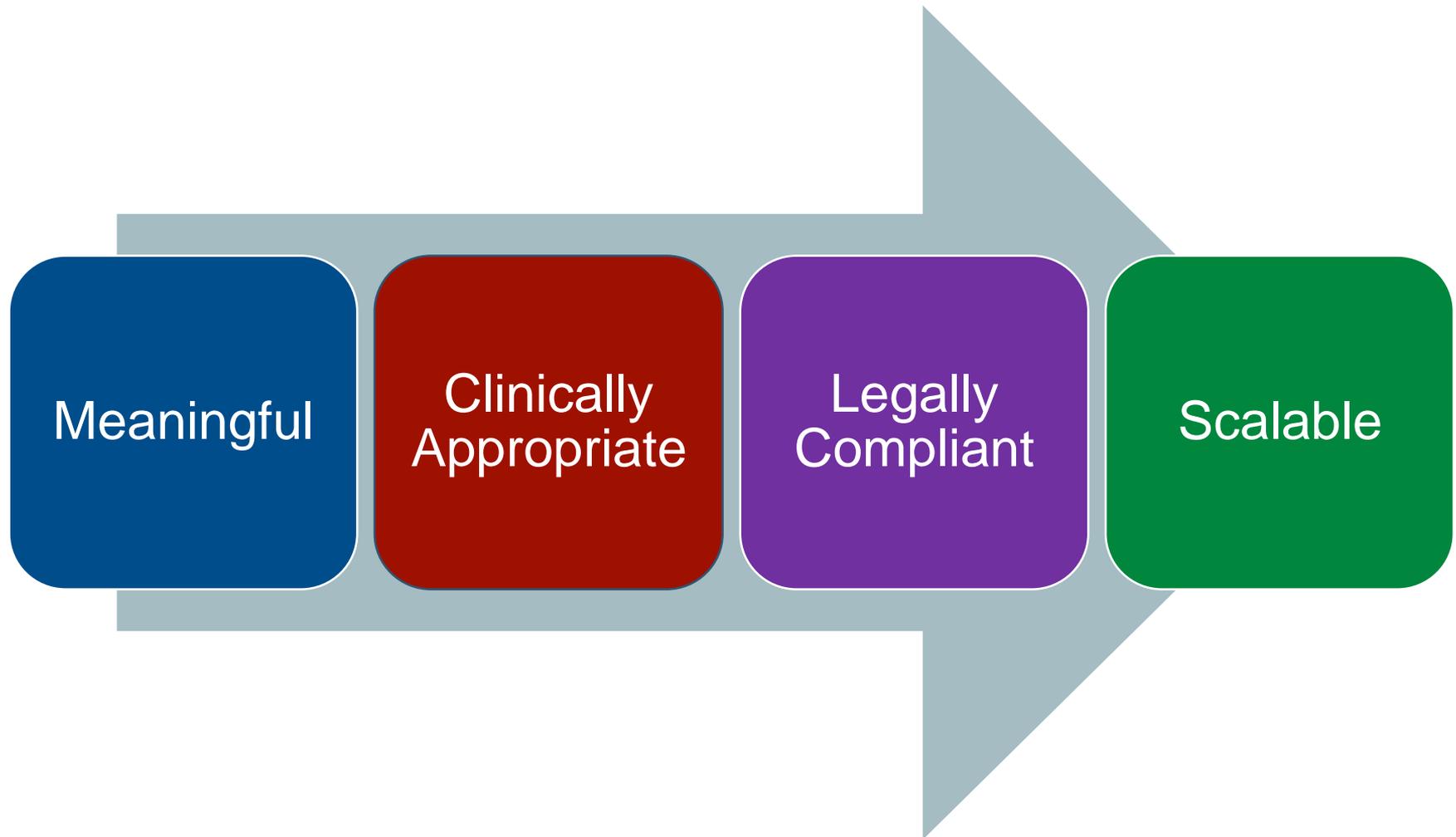
International

- 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; data sharing
- Intellectual Property

Selected Reading

- [Sharing and Mining Patient Data in Digital Health and Telemedicine: Laws You Need to Know](#)
- [Is My Telehealth App Subject to HIPAA?](#)
- [Telemedicine Providers: Are My Doctors Employees or Independent Contractors?](#)
- [Remote Patient Monitoring Reimbursement: What Providers Need to Know](#)
- [Telemedicine Prescribing and Controlled Substances Laws](#)
- [Medicare's New Virtual Care Codes: A Monumental Change and Validation of Asynchronous Telemedicine](#)
- [Telehealth and Consumer Subscription Models](#)
- [Telehealth Law Handbook: A Practical Guide to Virtual Care*](#)
- [Understanding Telehealth*](#)

Build a Telemedicine Offering That Is...



Questions?



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Thank you

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