

# A Brave New Clinical World

## Developments in Colorado Telehealth Law

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# Objectives

- What are the key Colorado legal regulations with Telehealth?
- Describe medico-legal cases involving Telehealth
- Recognize common legal areas of error with Telehealth

# Telehealth – Lots of Definitions

- Colorado Medical Board (CMB)
- Medical Practices Act
- Insurance – Reimbursement
- Other States
- Federal – Medicare
- Colo SB 20-212



# CMB Definition

- [a] mode of delivery of health care services through HIPAA compliant telecommunications systems, including information, electronic, and communication technologies, and store-and-transfers, to facilitate the assessment, diagnosis, consultation, treatment, education, care management, or self-management of a covered person's health care while the person is located at an originating site and the provider is located at a distant site.
- “Telehealth” includes “Telemedicine” as defined in § 12-240-104 (6), C.R.S.

# More Telehealth Terms

- Distant Site = Provider Location
- Originating Site = Patient Location
- Store-and-Forward = Delayed, Patient Not Present
- Synchronous Interaction = Real Time with Patient

# Colorado – Telehealth Reimbursement

- C.R.S. 10-16-123
- Deletes rural requirement on telehealth
- Discretionary use by provider and/or patient
- Same reimbursement as face-to-face



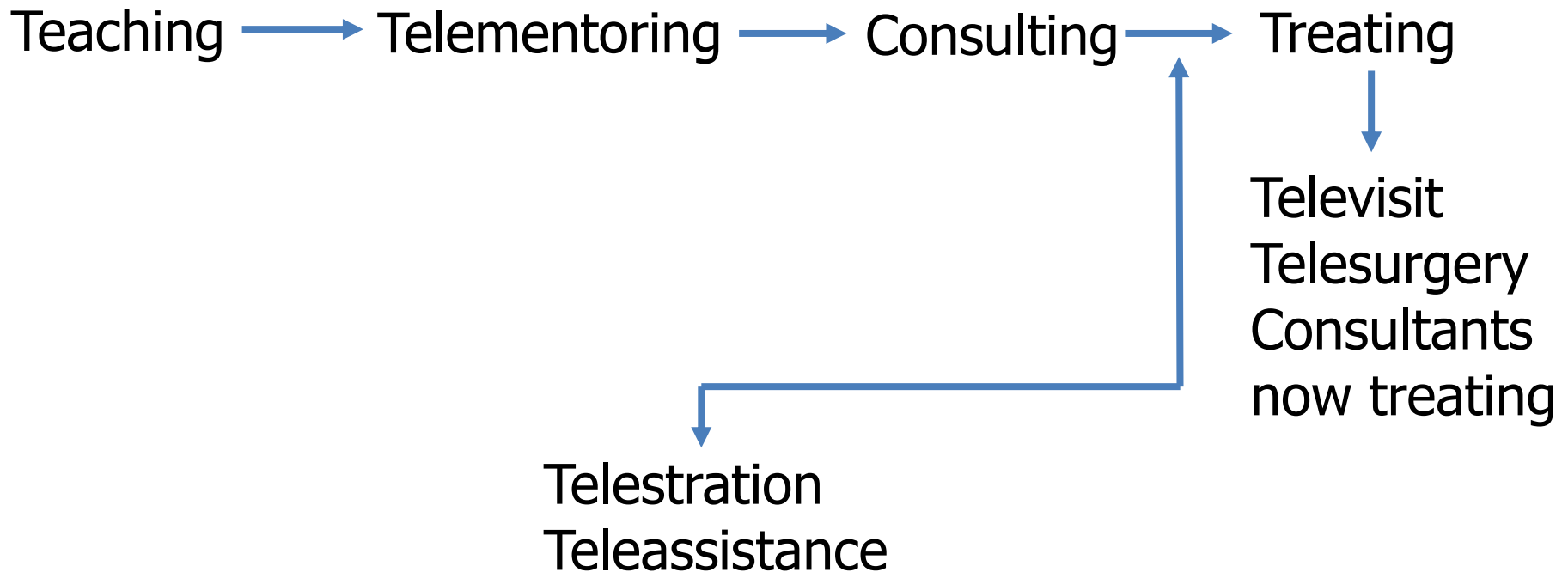
# Reimbursement Cont.

- Reasonable compensation for originating site, that is not a residence
- Telehealth historically does not include telephone, fax or email



# Spectrum of Responsibility to Patient

More Responsible 





# CMB Policy – Key Requirements

- Practice of medicine is at patient location
- Relationship can be established by telehealth
- Emergency plan where appropriate
- Cannot treat/prescribe solely on online questionnaire
- No medical marijuana through telehealth



# Key Requirements

## - Little More Technical -

- Establish relationship:
  - Verify/authenticate patient identity and location
  - Provider disclose identity and credentials
- Ensure privacy in documentation, maintenance and transmission of records
- Records must be accessible

# CMB Policy – Key Judgments

- Treating, consulting, prescribing have same standard of care as face-to-face
- Informed consent as to telehealth: Case by Case
  - Delivery models
  - Treatment methods/limitations
- Ensure continuity and coordination of care

# Consultants

- Curbside Consult v. Consult as Treater
- Telehealth policy does not apply if:
  - Solely providing consultation services to provider
  - Primary patient relationship with provider
- “Occasional Rendering” of consulting even without Colorado license



# Telehealth and Licensure

- Need license where patient is treated
- Most states allow “occasional rendering” subject to certain criteria
- Interstate Medical Licensure Compact
  - Lots of details to work out
  - Exposure to other state laws and regulations

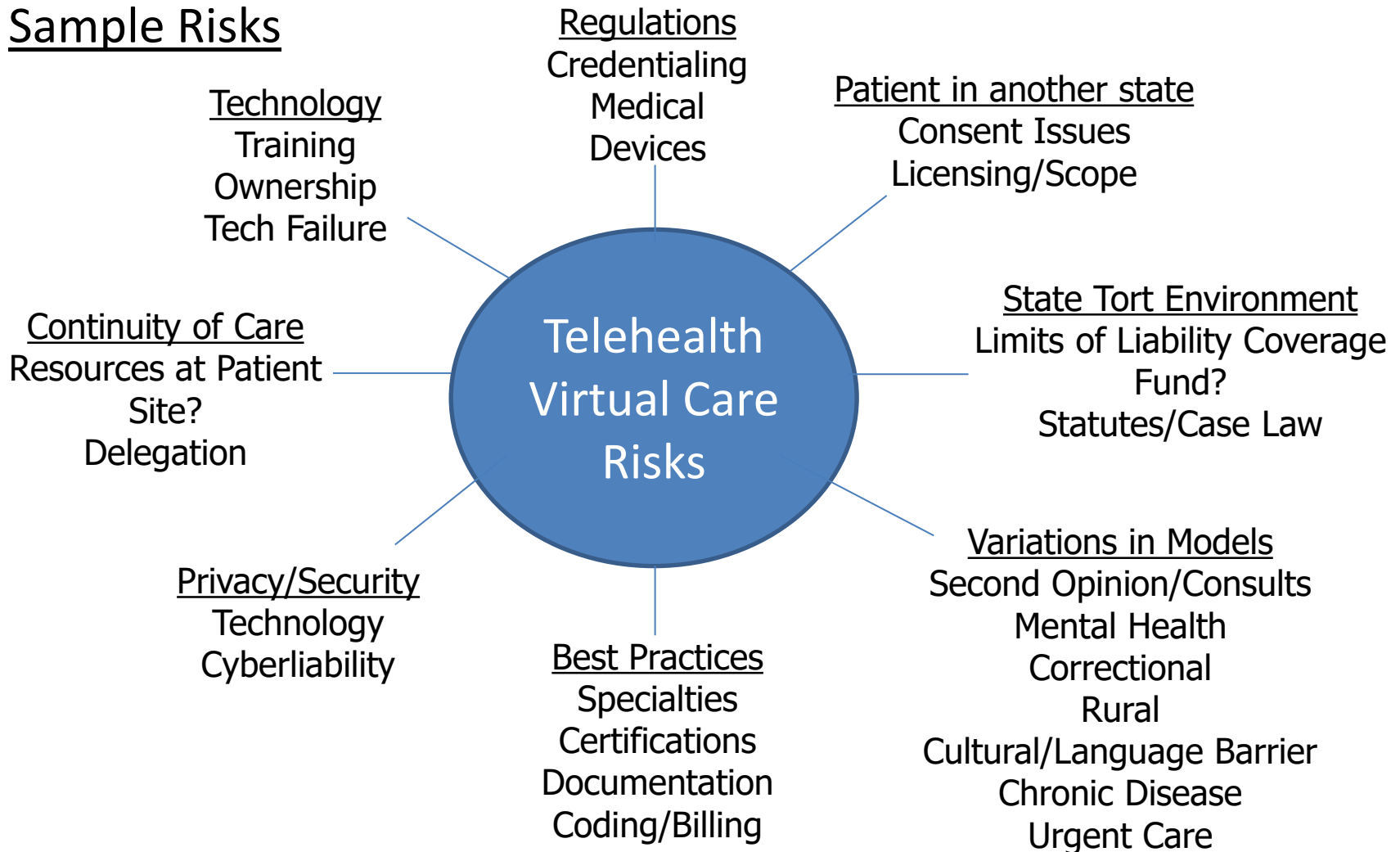
# COVID and Telehealth: Changing the Landscape

## HHS Office of Civil Rights 2020:

- Waiver of Potential HIPAA penalties for good faith use of telehealth
- Can use any non-public facing communication
- CMS reimbursement for telehealth visits
- DEA exception on Ryan Haight Act
- Audio included
- Allowing out-of-state licensed physicians to practice within a state

# Sample Telehealth Risks

## Sample Risks



# Good Ideas

Know the law and regulations on telehealth

Key CMB Policies\*: 40-3, 40-9, 40-27

Key Colorado Statutes\*: §§ 10-16-123 (reimbursement)  
12-240-104 (licensure)

Have great technology support

Create practical telehealth policies

-Educate and train

(\*Other policies and statutes may  
apply on a case by case basis)





Thank You

*What will you do  
differently using  
Telehealth?*

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