

# Legal Issues

*by Capella Healthcare*



## WHAT'S COVERED

In this lesson, you will learn about different legal issues related to telehealth. Specifically, this lesson will cover:

1. Understanding Liability and Risk
2. Practicing Across State Lines
3. Reflect: Understanding Your State's eNLC Status
4. Special Circumstances

## 1. Understanding Liability and Risk

Whenever you adopt new technology, you need to evaluate your liability and risks. Telehealth is no different, especially with all the moving parts and changing world dynamics. We have already discussed some of the most common telehealth-related legal aspects, such as licensing, privacy, security, confidentiality, and informed consent.

Since telehealth rules, regulations, and reimbursement rates are continuously evolving, you need to routinely check telehealth rules and regulations for your state (and/or state of practice) as well as rules related to reimbursement rates (discussed in another course in this unit) and guidelines for the payers most commonly used at your practice. The Center for Connected Health Policy has regularly updated state-based resources including a telehealth policy and reimbursement tracker you can access by state; it covers topics such as regulation, cross-state licensing, and reimbursement (American Medical Association, 2020).

Be sure to talk with your professional liability insurance provider as well. You will need to understand what your policies do and do not cover. Check to ensure you are covered when providing telehealth services within and across state lines. Some current professional liability policies exclude telehealth from standard coverage, so discuss any additional coverage you may need to ensure you are appropriately protected.

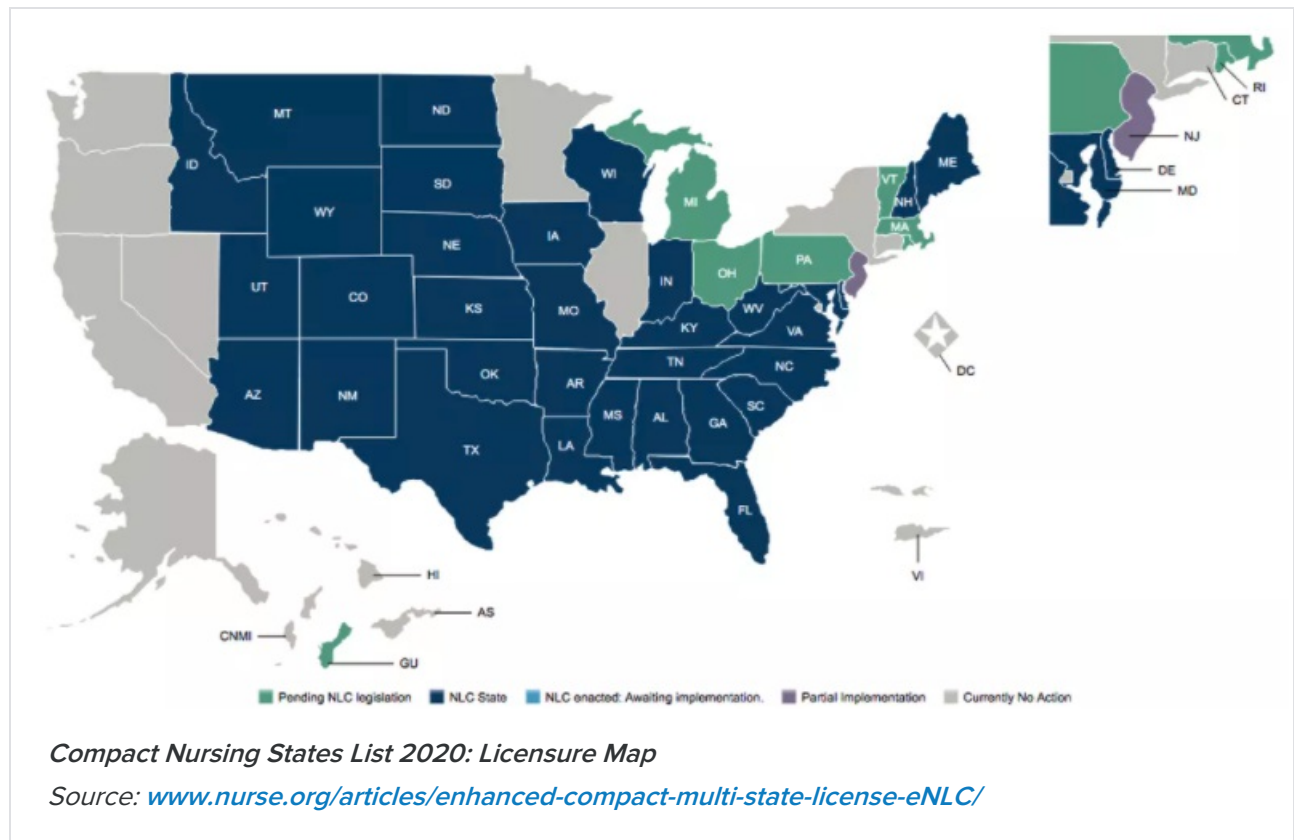
## 2. Practicing Across State Lines

Nurses routinely cross state boundaries to provide the community with access to nursing care and services, and this is especially true with telehealth; a multi-state license facilitates this process. The enhanced Nurse Licensure Compact (eNLC), which became effective in June 2017, allows for registered nurses and licensed

practical/vocational nurses to have one multi-state license that gives them the ability to practice in-person or via telehealth in their home state and other eNLC Compact states.

Under the eNLC, nurses can practice in other eNLC states without having to obtain additional licenses. The National Council of State Boards of Nursing has put together this program to support nurses in member states to be able to provide telehealth services to patients in other states without having to obtain additional licenses. Licensing standards are aligned in eNLC states so all nurses applying for a multi-state license are required to meet the same standards.

As of May 2020, there were 32 states that were honoring the eNLC, with two more states expected to at least partially adopt it in the next quarter.



An up-to-date map with those states participating can be found [here](#) (Gaines, K., 2020). If you are not in an active Compact state, you are unfortunately not eligible for the multi-state license. There is a provision, however, that as a resident of a non-Compact state, you may apply for a license by obtaining an endorsement from a Compact state.

### 3. Reflect: Understanding Your State's eNLC Status

Review the [map](#) discussed above that identifies which states participate in the eNLC and details specific legislation applicable to each state.



1. Locate your state. Is it listed as a state participating in the multi-state compact allowing telehealth practice across state lines?
2. It is important to also check if there are any state-specific laws relating to practicing across state lines. Is your state listed as having pending legislation? Active legislation? How could these laws impact your practice?
3. The Commission has developed 11 uniform licensure requirements for a multi-state license. If you are in a Compact state, do you meet these requirements to apply for a license?

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## 4. Special Circumstances

Telehealth is increasing, and the benefits have been demonstrated in the literature (American Academy of Ambulatory Care Nursing, 2018; Arends, R. et al., 2020; and Lee, I. et al, 2020), but during times of health emergencies, telehealth can take center stage. There are special circumstances where the rules discussed above are waived or reprieve is provided in good faith. We have learned recently during the **COVID-19** public health emergency that the government and accreditation agencies have stepped in to assist in making telehealth accessible and easier, for both patients and providers (Lee, I, et al., 2020).

To this end, the U.S. Department of Health and Human Services (HHS) waived several telehealth rules (American Academy of Family Physicians, 2020) in response to the COVID-19 pandemic. Highlights include:

- Originating site requirement has been suspended; therefore, patients can receive telehealth services anywhere, regardless of where they live.
- Established patient-clinician requirements are not being enforced. Audits confirming the pre-established relationship are not being conducted, so new patients seeking an appointment may be provided one through telehealth.
- HIPAA penalties have been eliminated for clinicians during the good-faith provision of telehealth, so telehealth services may be delivered through common video calling applications (Skype, FaceTime, etc.) without fear of penalty. Please note, state medical privacy laws may still apply and should be consulted.

The above modification to existing rules applies to Medicaid, but many private payers have followed suit. Always be sure to check the regulations for the latest updates to the rules. Additional, up-to-date information can be found on the following websites:

- [CMS: Medicare Telemedicine Health Care Provider Fact Sheet](#)
- [HHS: FAQs on Telehealth and HIPAA during the COVID-19 nationwide public health emergency](#)

The following website, developed by the American Academy of Family Practitioners, further discusses specifics for operationalizing telehealth visits during the COVID-19 public health emergency:

- [AAFP: Coronavirus Disease 2019 \(COVID-19\)](#)

In addition, licensing requirements have become more generous. You can see a complete list of emergency action by states and associated license verification requirements here:

- [CCHP: Current State Laws & Reimbursement Policies](#)
- [NCSBN: State Response to COVID-19](#)

CMS is reviewing the changes made to the regulations and is considering what should become permanent going forward. It is your responsibility to keep apprised of the federal and state laws, rules, and regulations for

telehealth as well as requirements by third-party payers.



Both emergency licensing waivers and applicable statutory/administrative provisions are included.



### COVID-19

The official name for the respiratory disease that is causing the 2019 novel coronavirus outbreak, first identified in Wuhan, China.


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## Support

If you are struggling with a concept or terminology in the course, you may contact [TelehealthSupport@capella.edu](mailto:TelehealthSupport@capella.edu) for assistance.

If you are having technical issues, please contact [learningcoach@sophia.org](mailto:learningcoach@sophia.org).



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