

TOPICAL WEBINAR FOR APA MEMBERS

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# Staying Ahead of the Curve: Key Compliance and Risk Management Issues for Practitioners

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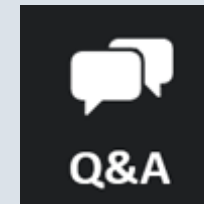
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- A recording of this presentation will be emailed to everyone in 2 weeks' time.
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## HAVE A QUESTION?

- You are on mute. Communicate using the **Q&A box** in the webinar screen. Submit your questions for our speakers using the Q&A box.
- Presentation slides will be posted in the **chat box** of your webinar screen.





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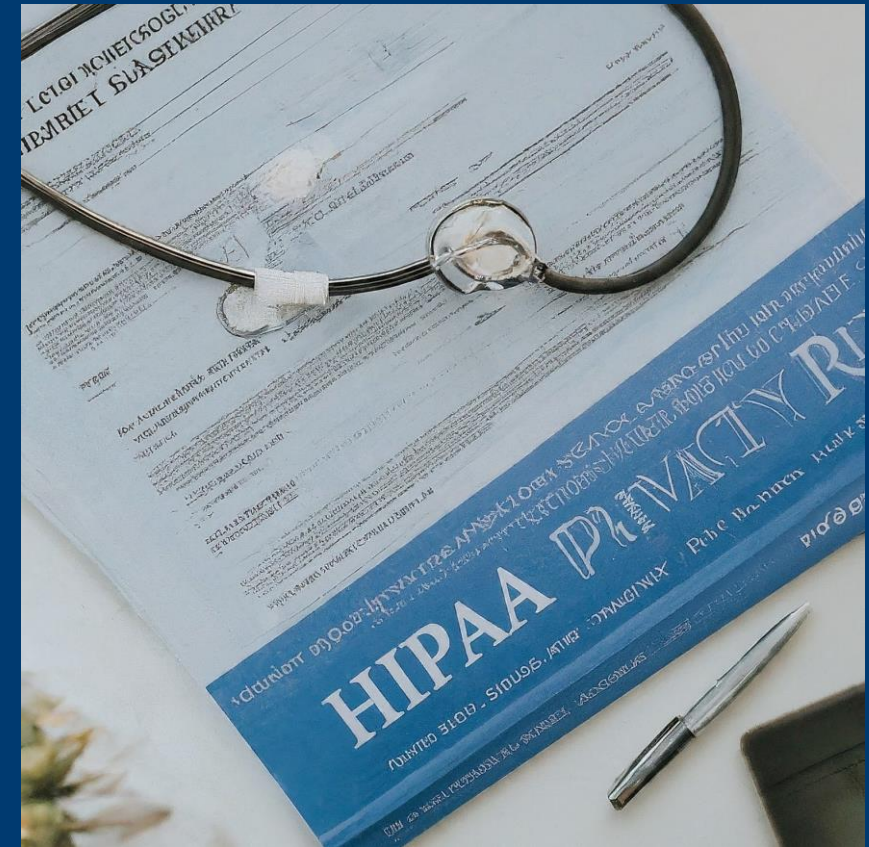
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# Recent Amendments to the HIPAA Privacy Rule - Protecting Reproductive Health Care Privacy


- Key Changes:
  - **Prohibited Uses and Disclosures:** PHI cannot be used or disclosed to investigate or impose liability on someone for seeking, obtaining, providing, or facilitating lawful reproductive health care.
  - **Presumption:** Covered entities must make a reasonable determination about the lawfulness of the reproductive care using the law of the state where it was provided.
    - Presumption that care provided was lawful including:
      - When resident of one state travels to another state to receive reproductive health care
      - When such reproductive health care is protected, required, or authorized by federal law, including the Constitution



# Recent Amendments to the HIPAA Privacy Rule - Protecting Reproductive Health Care Privacy

## ■ Additional Changes:

- **Attestation:** When receiving a request for PHI related to reproductive health care, covered entities must obtain an attestation from the requester confirming the PHI is not sought for a prohibited purpose.
- **Revised Notice of Privacy Practices (NPP):** Covered entities need to revise their NPPs to reflect these changes and the modifications for confidentiality of Substance Use Disorder (SUD) patient records.



Rule Effective  
Date: **June 25,**  
**2024**

Compliance for  
most requirements  
by **December 22,**  
**2024**

Updates to NPP  
required by  
**February 16, 2026**

# Recent Amendments to the HIPAA Privacy Rule



## What Psychologists Should Do

- Review and Update policies for handling PHI requests to ensure compliance with the new prohibition
- Establish procedures for requesting and responding to attestations, if applicable in your practice
- Revise your NPPs to reflect these changes related to reproductive health care (by 2026)
- Review HHS resources and guidance created to assist with compliance





# FTC Ruling on Non-Compete Agreements

## ■ Key Points

- Ban on new non-compete clauses with all workers (except senior executives)
- Existing non-compete clauses with most workers unenforceable after the effective date
- Senior executive exception (>\$151,164 & policy-making positions) with narrow definition
- Non-competes allowed for sale of business
- Rule does not apply to non-profits (exceptions may exist).
- Legal challenges likely, impacting ultimate outcome.

# FTC Ruling – Impacts on Psychologists

## Employed Psychologists (Hospitals, Clinics, etc.):

- *Existing non-competes likely unenforceable (except for senior executives meeting requirements)*
- *More flexibility to change jobs or start practices*

## Psychologists Running Small Practices:

- *Non-competes largely unenforceable*
- *Need alternative ways to protect patient base and business interest (confidentiality agreements, limited non-solicitation agreements)*

# FTC Ruling- Next steps

- The FTC ruling is a significant development for psychologists but unknown if final rule will be delayed or reversed
- Understand your employment situation and how the ruling may apply to your situation





# Good Faith Estimates (GFEs) under the No Surprises Act

- What is the requirement?
- When did it start?
- Which patients should get a GFE?
  - *Patients who don't have or don't intend to use insurance*
- How detailed does the GFE need to be?  
Is there a good template available?





# Good Faith Estimates (GFEs) Simplified Steps

1

**Review APA  
guidance**

See NSA/GFE  
resources at end

2

**Post a notice  
about GFEs**

3

**Determine if  
your patient  
should get a  
GFE**

4

**If yes, give  
patient an  
initial GFE**

Timing

5

**Update your  
GFE**

especially when  
actual costs  
exceed the  
estimate

# Snapshot of Telehealth, Overall

- COVID-19 pandemic spurred an unprecedented uptick in telehealth adoption by health care providers
- Federal level: CMS allows for numerous MH/BH services to be delivered to Medicare beneficiaries via telehealth
  - No geographic restrictions for originating site for MH/BH telehealth services
  - Audio-only allowed for MH/BH services
  - Medicare patients can receive telehealth services in their home
  - 6-month in-person visit currently waived (12/31/2024)
  - Certain services are provisionally allowed – e.g., psych/neuropsych testing
- State level: states vary on coverage of telehealth services
  - Reimbursement parity, originating site requirements, coverage of audio-only
  - Private insurance, Medicaid and in some cases, state employee health plans
- Temporary waiver of HIPAA compliance enforcement ended as of May 11, 2023

HHS Guidance as to which  
platforms do align with HIPAA  
requirements




And which  
apps/platforms  
do **NOT**



Telehealth services often involves interstate/ interjurisdictional practice.

CMS recognizes provider's authority to provide services via professional licensing compact.

<https://telehealth.hhs.gov/licensure>



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### Medicare Clarifies Recognition of Interstate License Compact Pathways

MLN Matters Number: SE20008 **Revised**      Related Change Request (CR) Number: N/A  
Article Release Date: September 16, 2021      Effective Date: N/A  
Related CR Transmittal Number: N/A      Implementation Date: N/A

**Note:** We revised this Article to clarify language about licenses that certain providers get through interstate licensing compact pathways. You'll find substantive content updates in dark red font on pages 1 and 2.

#### Provider Types Affected

This MLN Matters Article is for physicians and non-physician practitioners (NPPs) **who get licenses through the** interstate licensing compact **pathways** and wish to bill Medicare Administrative Contractors (MACs) for services they provide to Medicare patients.

#### What You Need to Know

This Article clarifies CMS' recognition of **licenses through** interstate license compact **pathways** as valid and full licenses for purposes of meeting federal license requirements.



#### Background

We are aware of a new trend in medicine involving interstate license compacts. An interstate license compact offers a new, voluntary, and faster pathway to licensure for qualified physicians and NPPs who wish to practice in multiple states.

**All license compacts aren't the same. Physician compacts streamline the licensure process for physicians who want to practice in multiple states. However, if a physician meets all requirements, each state will still issue a separate license from each state the physician intends to practice. We'll continue to rely on the license the state medical board issues to confirm compliance with our federal license requirements.**

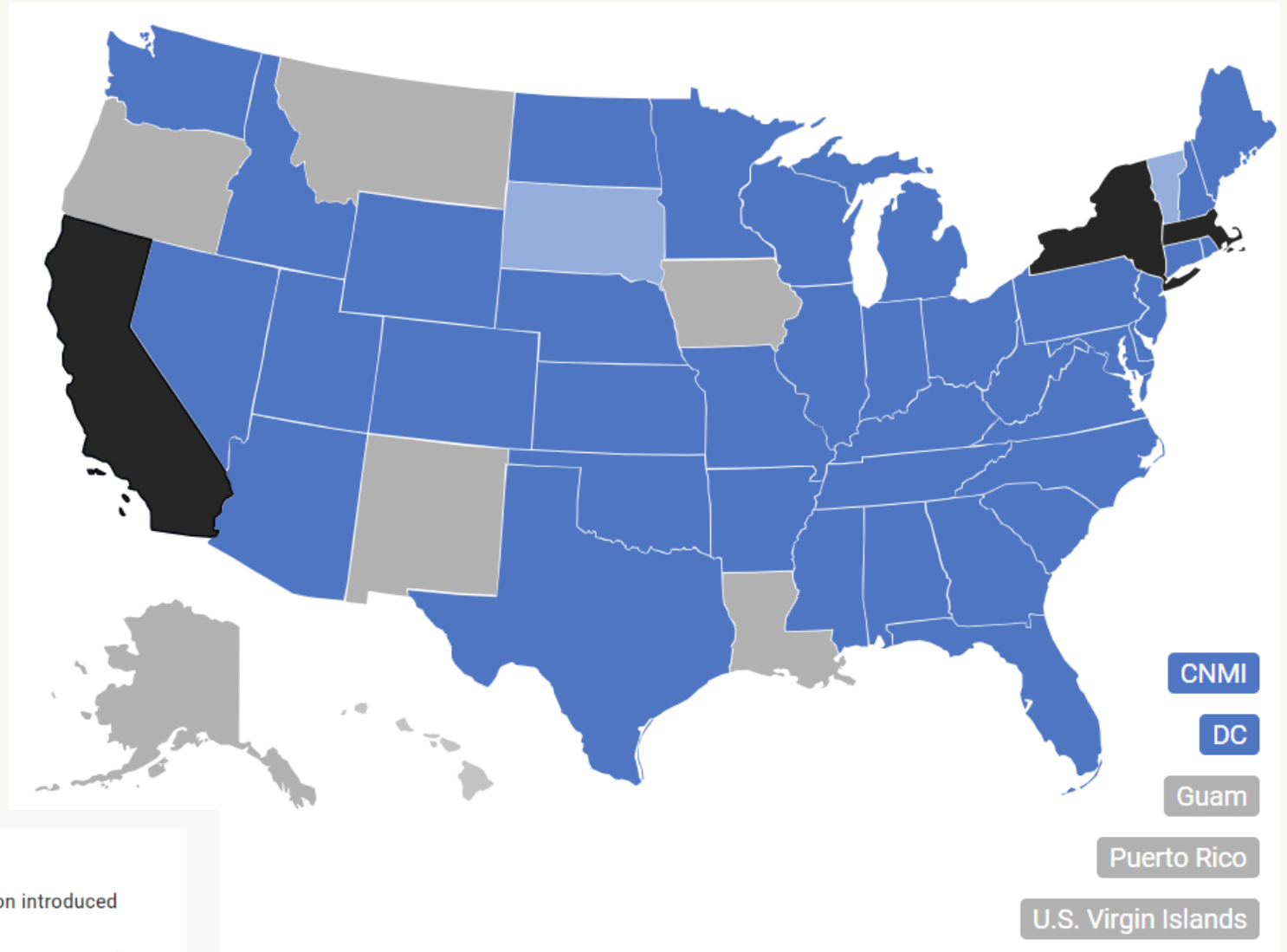
**Some NPP compacts allow the NPP to work in a compact member state, other than their home state, without going through the normal licensure process in the remote state. NPPs working under such a compact must meet both the licensure requirements outlined in the primary state of residence and those established by the compact laws of the interstate compact states.**

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## State of PSYPACT Adoption (May 2024)

40 states effective,  
42 enacted



### Map Key

- |  |   |
|--|---|
|  PSYPACT Participating State  |  PSYPACT Legislation introduced            |
|  Enacted PSYPACT Legislation - practice under PSYPACT not permitted |  Non- PSYPACT State/ no active Legislation |

# Telehealth Registry – Out of State Providers

## ARIZONA

- A.R.S.§36-3606 requires a health care provider who is not licensed in Arizona to register with the applicable Arizona healthcare provider board before providing telehealth services to patients in Arizona.
- Not a full license to practice in Arizona

## FLORIDA

- Fla. Stat. §456.47 requires Out-of-state health care practitioners to register with the Florida Department of Health to perform telehealth services for patients in Florida.
- May not provide in-person health care services to patients located in Florida

# Telehealth or other temporary practice provisions

## Utah

- ❑ Utah Code §58-61-307 allows an out-of-state licensed health care provider, in good standing, to deliver short term transitional mental health therapy remotely to a client in Utah only if:
  - There is an existing provider-patient relationship.
  - Mental health therapy is short-term, transition and only during the 45-day period beginning when the client relocates to Utah.
  - The provider notifies the relevant Utah board, in writing, within 10 days after the day on which the client relocates to Utah, of the intent to provide short term transitional mental health therapy remotely to the client.

## Washington State

- ❑ 2024 SB 5481 allows an out-of-state health care practitioner may provide telehealth services to a patient located in Washington if:
  - For consultation with a Washington-licensed health care provider
  - For specialty assessment, diagnosis, or recommendation for treatment but does not include treatment
  - For continuity of care with an established patient who is temporarily located in Washington and received treatment in the state where the practitioner is located and licensed



## GFEs: What Guidance/Resources Does APA offer?

- **Overview (this link takes you to other resources below)**  
: <https://www.apaservices.org/practice/legal/managed/no-surprises-act>
- “Seven Basic Steps” for Compliance: <https://www.apaservices.org/practice/legal/managed/good-faith-estimate-compliance>
- FAQs: <https://www.apaservices.org/practice/legal/managed/faqs-no-surprise-act>
- Template GFE Form <https://www.apaservices.org/practice/legal/managed/good-faith-estimate-template.docx>

# HIPAA Privacy Rule Resources

- **APA Service's HIPAA Privacy Rule Primer:**  
<https://www.apaservices.org/practice/business/hipaa/hippa-privacy-primer.pdf>
- **HHS' Office of Civil Rights – HIPAA for Professionals:**  
<https://www.hhs.gov/hipaa/for-professionals/index.html>
- **HIPAA Privacy Rule Final Rule to Support Reproductive Health Care Privacy: Fact Sheet**  
<https://www.hhs.gov/hipaa/for-professionals/special-topics/reproductive-health/final-rule-fact-sheet/index.html>

## Abortion Law Resources

- **Frequently Asked Questions About Abortion Laws and Psychology Practice**  
<https://www.apaservices.org/practice/business/hipaa/abortion-laws>

## FTC Noncompete Rule

- **Fact Sheet on the FTC's Noncompete Rulemaking:**  
[https://www.ftc.gov/system/files/ftc\\_gov/pdf/Non-Compete-Fact-Sheet.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Non-Compete-Fact-Sheet.pdf)
- **Noncompete Clause Rule: A Compliance Guide for Businesses and Small Entities:**  
[https://www.ftc.gov/system/files/ftc\\_gov/pdf/Business-and-Small-Entity-Compliance-Guide-updated.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Business-and-Small-Entity-Compliance-Guide-updated.pdf)

# Telepsychology Resources

- **Telehealth and Telepsychology:**

<https://www.apa.org/practice/telehealth-telepsychology>

- **APA Guidelines for the Practice of Telepsychology**

<https://www.apa.org/practice/guidelines/telepsychology>

*(Pending Revision)*

# Patient records management: Retention, Destruction and Release of Information

## ■ Who Can Consent to Release Records?

- The Patient
- Parents (Married, Divorced/Legally Separated)
- Legal Guardians/Guardian Ad Litem/Conservator/Medical Power of Attorney
- Minors (Age of Consent)
- Power of Attorney
- Executor/Administrator of Estate following death (Probate Court)

## ■ Release of Information to Third Parties

- Regulators (e.g., Licensing Board, DCF, DPH)
- Law Enforcement
- Medical Examiner's Office
- Health Insurers
- Employers
- Attorneys
- Court
- Schools
- Medical Providers/Consultants

# **Patient records management: Retention, Destruction and Release of Information**

## **■ Maintaining Medical Records**

- Retention of Records
- State Statutes
- Medical Malpractice Statute of Limitations

## **■ Destroying Medical Records**

- Shredding/Burning
- Use of Outside Vendors
- Destruction Log

# AUDIENCE Q&A



**Q1. What additional insurance do I need to carry if I am now on PSYPACT?**

**Q2. What are the insurance considerations when practicing telehealth and/or under PSYPACT?**

**Q3. What are some of the key risk considerations when practicing telehealth and/or under PSYPACT?**

**Q4. What is my obligation regarding talking to lawyers who send a subpoena, and do I have to divulge all of my notes, not psychotherapy notes?**

**Q5. Is there a new HIPAA Authorization form that needs to be signed for disclosure of PHI based on the new HIPAA rule regarding reproductive health information?**

**Q6. Which privacy law takes precedence: the federal HIPAA Privacy Rule, or state law?**

**Q7. If I offer an on-line course that is psychoeducational in nature, can I offer it outside of the state where I am licensed?**

**Q8. How can I recognize when a subpoena for records is mandatory?**

## **Q9. How frequently do we need to redo Good Faith Estimates?**

**Q10. Are there any additional processes that should be included as standard in the intake process for out of state therapy clients?**

**Q11. What are the most important considerations for a psychologist living in one state and primarily serving clients in other states?**



**Q12. What are some issues associated with releasing records of minors to their guardians and the associated HIPAA rules?**

**Q13. Who controls the release of medical records once a minor turns 18?**

**Q14. How do we document sessions related to pregnancy when discussing with patients' decisions regarding abortion?**

**Q15. When licensed in two states, and on PSYPACT, can you declare both states as home states?**

**Q16. How long do I need to retain medical records?**

**Q17. What can be done about the fact that the No Surprises Act's good faith estimate requirement can be difficult for forensic psychologists -- because they often do not know how to estimate costs accurately prior to the initial visit?**

**Q18. How do the privacy laws impact telehealth?**



# FINAL THOUGHTS

- A recording will be emailed to you in 2 weeks. It will include the presentation slides.
- Take our survey immediately after the webinar has concluded.

# THANK YOU!

