

TOPICAL WEBINAR FOR APA MEMBERS

An Educational Resource from American
Professional Agency

Risk Management and Compliance in Virtual and Private Practice

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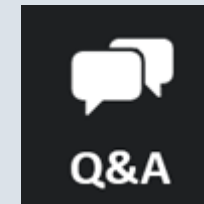
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RECORDING

- A recording of this presentation will be emailed to everyone in 2 weeks' time.
- The recording will include the presentation slides.

HAVE A QUESTION?

- You are on mute. Communicate using the **Q&A box** in the webinar screen. Attendees can view and upvote on submitted questions in the Q&A box to help presenters identify popular topics.
- Presentation slides will be posted in the **chat box** of your webinar screen.





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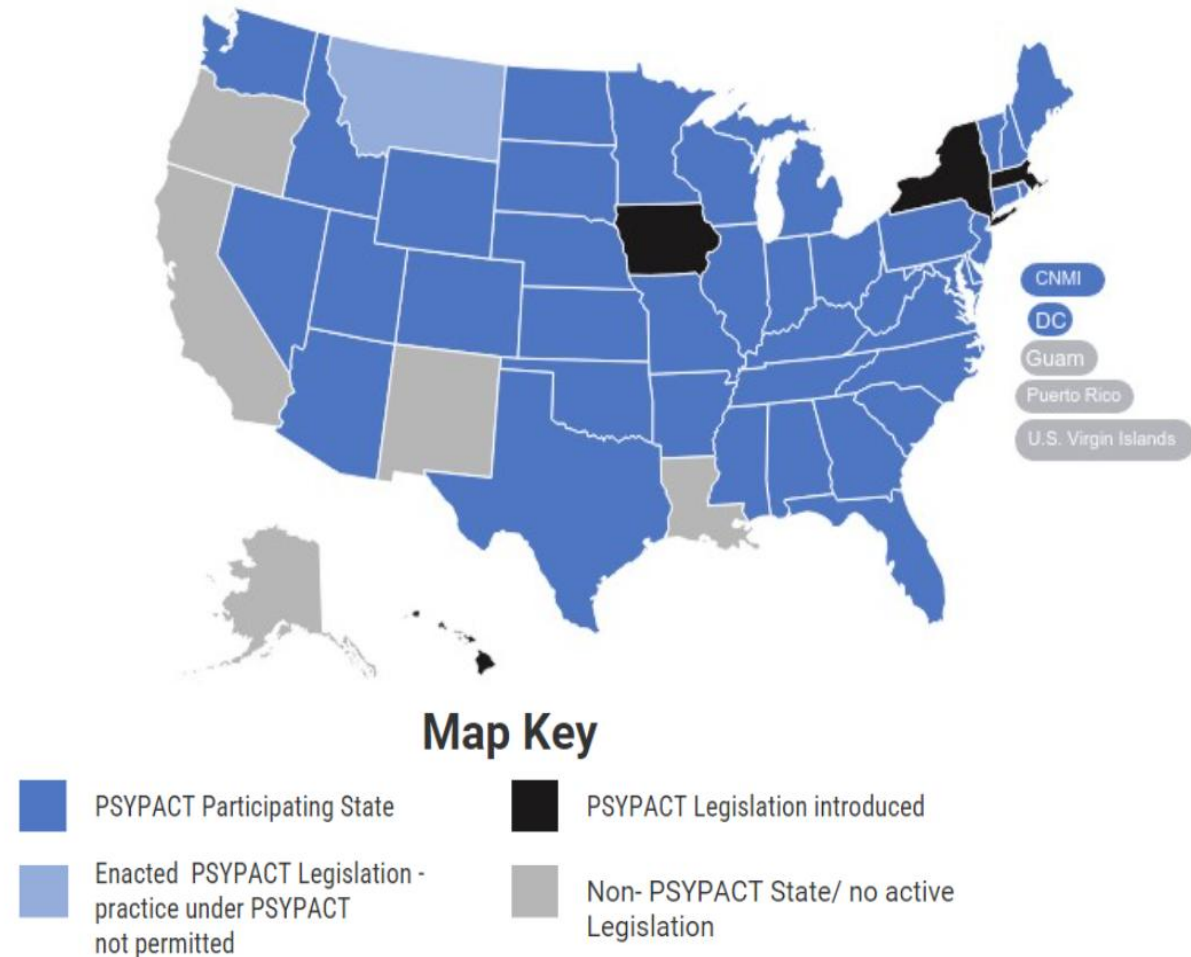
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Interjurisdictional Practice: Pathways to Permission

- **The Fundamental Principle:** Providing psychological services to a patient located in another state generally requires some form of legal permission from the other state's licensing authority. This is because state licensing boards regulate the practice of psychology within their borders to protect the public.
- Pathways for Interjurisdictional Practice:
 - *Full Licensure in Each State*
 - *Telehealth Registries/Certifications - e.g. Arizona, Florida*
 - *Temporary Permits/Licenses - e.g. Utah, Washington*
 - *Multistate Licensing Compacts (e.g., PSYPACT)*
- Important Considerations: Eligibility requirements, application processes, and the scope of practice permitted under these alternative pathways vary considerably between states.

Understanding Licensure Requirements

- PSYPACT offers two pathways for interstate practice:
 - *Authority to Practice Interjurisdictional Telepsychology (APIT)*
 - *Temporary Authorization to Practice (TAP)*
- Applicable Laws and Jurisdiction
 - **PSYPACT Legislation:** Each state must enact the model legislation to join PSYPACT.
 - **PSYPACT Commission Rules:** The Commission has established rules that govern interstate practice, including definitions, conditions of practice, adverse actions, and dispute resolution.
 - The PSYPACT legislation and rules explicitly state that providers are "responsible for maintaining knowledge of and complying with each PSYPACT State's laws, rules, and regulations - for each PSYPACT state the provider is practicing into or out of."
 - **Public Health, Welfare, and Safety:** Each state maintains its own scope of practice, mandatory reporting requirements, and other regulations that the psychologist must follow when providing services to clients in that state.



Conflicts of Law

State laws restricting gender-affirming care (GAC) or reproductive rights create complex conflicts of law because states have widely divergent—and often directly conflicting—approaches.

Varying state laws on reproductive and GAC -- Some states protect access; others heavily restrict it.

Resources: American Psychological Association. (2024, June 28). *Navigating the legal landscape: FAQs on gender affirming care for minors*. APA Services. <https://www.apaservices.org/practice/legal/managed/legal-landscape-gender-care-minors>
American Psychological Association. (2022, September 1). *Frequently asked questions about abortion laws and psychology practice*. APA Services. <https://www.apaservices.org/practice/business/hipaa/abortion-laws>

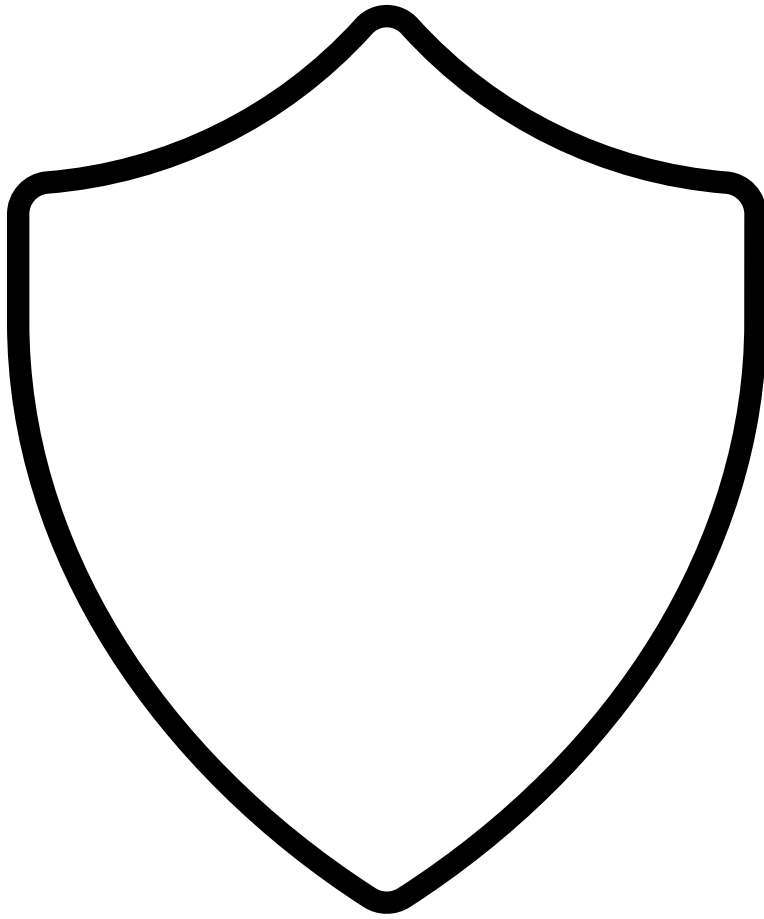


Overview of State Shield Laws: Key Provisions

- Designed to protect providers and patients from legal actions in other states.
- Key provisions often include:
 - Protecting Lawful In-State Activities
 - Limiting Cooperation with out-of-state actions
 - Blocking Subpoenas
 - Protecting Providers' Licenses



SHIELD LAWS 101



Scope of Shield Law Protection

- Fundamentally, shield laws aim to safeguard the provision of, access to, and assistance with legally protected healthcare services
- They seek to achieve this by limiting the reach of other states' restrictive laws
- The specific protections offered by shield laws vary from state to state - difference in scope of protection

****The effectiveness of shield laws has not been tested.**



PSYPACT and Shield Laws

Interplay between PSYPACT and state shield laws

How PSYPACT affects state jurisdiction –

Even though a psychologist is licensed in a PSYPACT state with a shield law, they must still adhere to the laws of the state where the patient is receiving services.

Potential conflicts and unresolved issues

Which law takes precedence? How might licensing boards interpret these situations? What legal recourse is available to psychologists?

UNDERSTANDING OTHER LAWS AND POLICIES THAT IMPACT VIRTUAL PRACTICE



Informed Consent

General Informed Consent Principles

- All the usual requirements for informed consent apply to virtual practice as in-person care

Additional Considerations for Virtual Practice

- Jurisdictional Issues
- Technology Risks and Limitations
- Emergency Procedures (e.g. how to contact local emergency services in the patient's location)



Virtual Practice: Patient Confidentiality & Minor Consent

General Confidentiality Principles extend to virtual practice

Mature Minor Doctrine

- Minors who demonstrate sufficient understanding and capacity to make their own decisions may be able to consent to certain healthcare services without parental involvement.
- Variations in mature minor laws by states

Mental Health Care

- Many states allow minors to consent to their own outpatient mental health therapy particularly at a certain age (e.g. 14 or older)
- The age of consent, types of therapy allowed and parental access to records can vary significantly

Virtual Practice: Data Privacy

Providing virtual psychological services involves the collection, storage, and transmission of sensitive patient data, making data privacy and security paramount.

Considerations:

- HIPAA Compliance & State Specific Data Privacy Laws – often state laws grant individuals more control over their personal data e.g. CCPA, CPRA, VCDPA
- Must comply with both HIPAA and any applicable state laws, adhering to the stricter standard.
- Technology Considerations – security of telehealth platforms and technologies





Virtual Practice: Request for Records/Release of Records

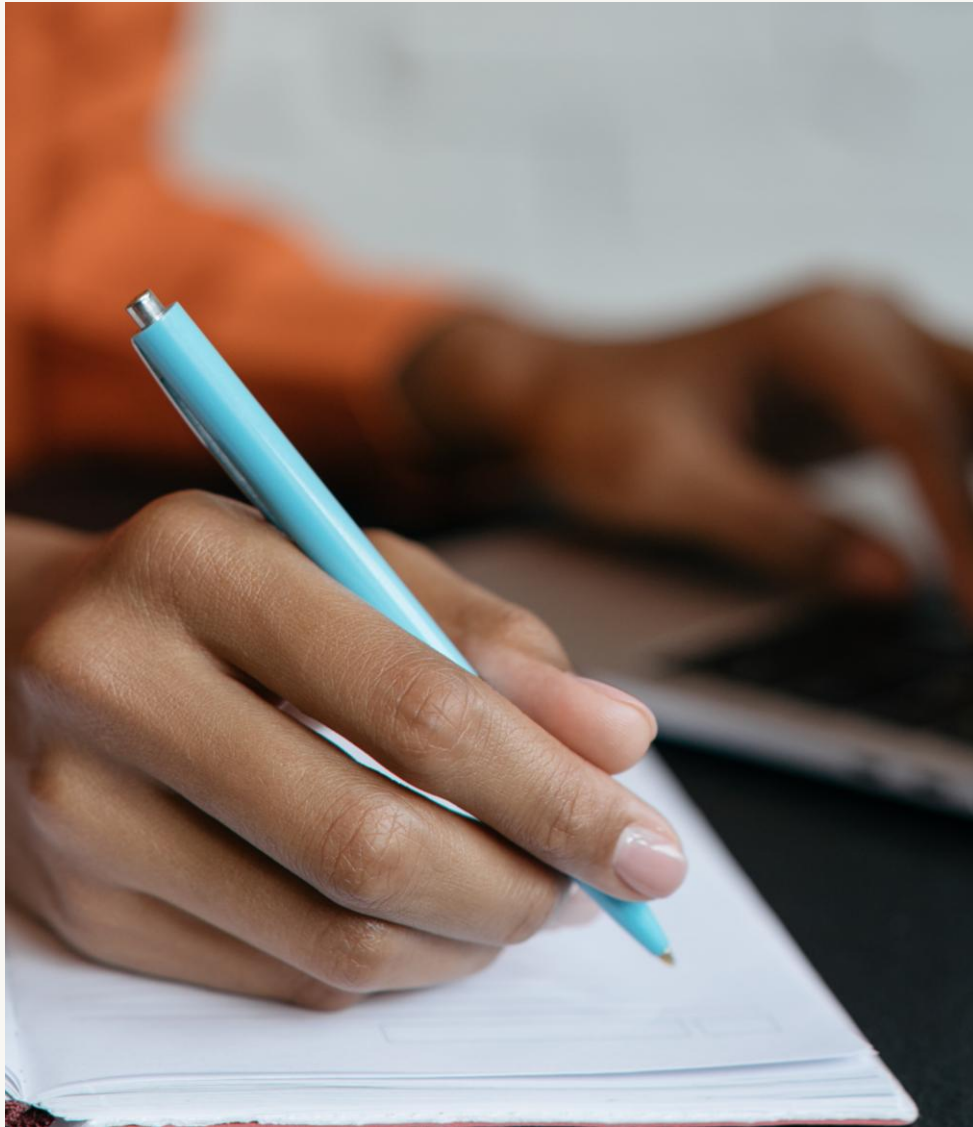
Releasing patient records across state lines introduces legal complexities due to variations in privacy laws and the existence of shield laws.

Many states have their own privacy laws that may be stricter than HIPAA.

Shield laws can complicate record release.

Differentiate between:

- **Patient requests for records:** Generally, psychologists must comply with valid patient requests.
- **Subpoenas:** Legal orders to produce records; compliance may be required, but shield laws can create exceptions.
- **Court orders:** Direct orders from a court; compliance is generally mandatory, but legal counsel should be sought if conflicts arise with shield laws.



Virtual Practice: Recordkeeping

Accurate and comprehensive recordkeeping is essential for ethical practice, continuity of care, and legal protection.

State-Specific Requirements: State laws and professional guidelines vary on specific recordkeeping requirements, and these variations become critical in interjurisdictional virtual practice.

Examples of Variations:

- Retention Periods
- Content Specifics
- Access and Transfer
- Electronic Recordkeeping – EHRs and telehealth platforms

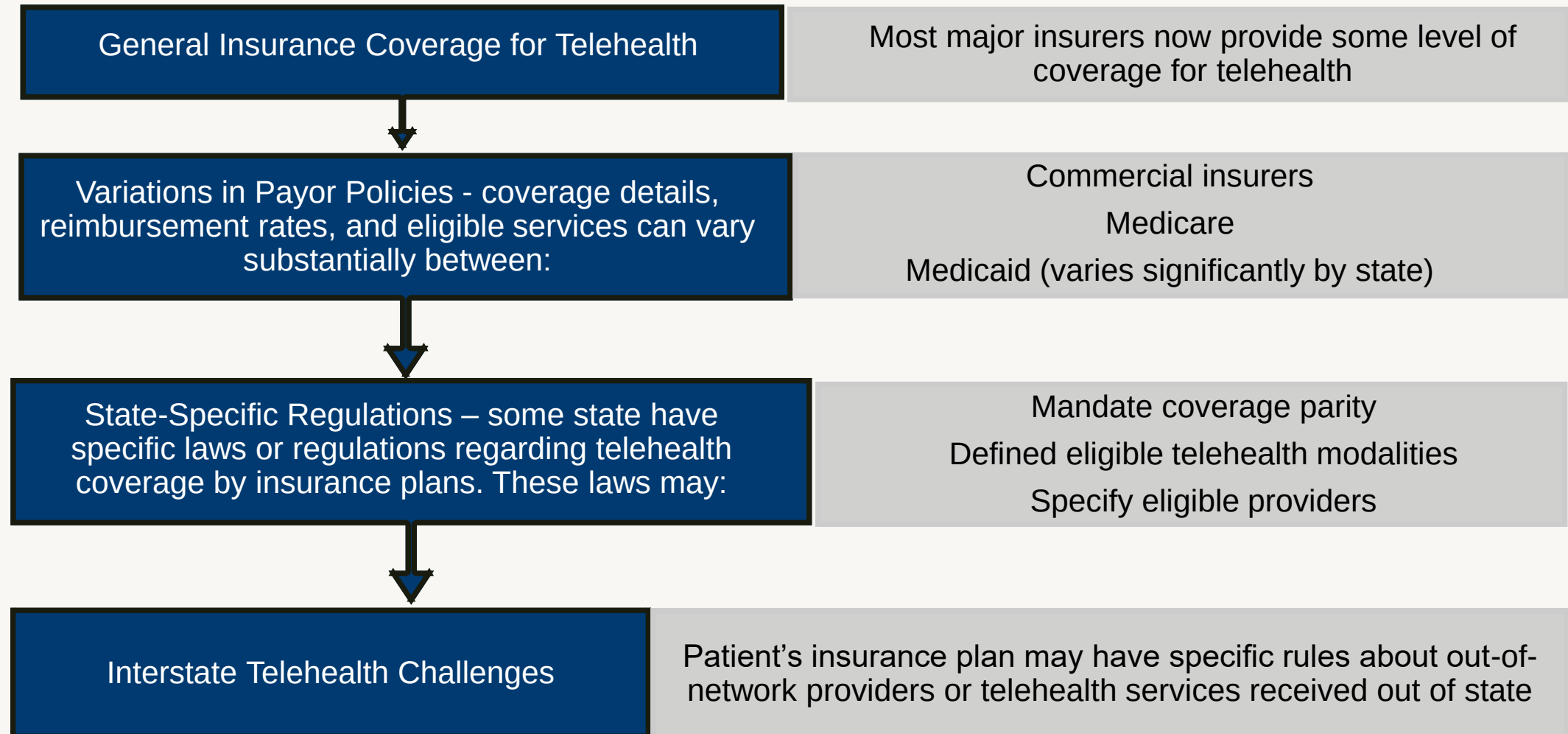
In the context of potential legal challenges, the nature and content of records can significantly impact a psychologist's defense.

Virtual Practice: Patient Termination/Abandonment

- When a psychologist is unable to provide or continue providing services to a patient in another state, ethical and legal considerations surrounding patient termination and abandonment become critical.

- Interstate telehealth adds complexity - State laws may provide specific requirements for patient termination, particularly regarding:
 - Notice periods
 - Record transfer procedures
 - Documentation of termination

Virtual Practice: Insurance & Payer Policies



PRIVATE PRACTICE TRENDS/ISSUES

- <https://www.apaservices.org/practice/news/nonenforcement-2024-mental-health-parity-rule>



Understanding the BCBS Provider Antitrust Settlement

BCBS accused of limiting competition and underpaying providers.

Settlement Amount: \$2.8 billion – minus up to almost 900M for attorneys' fees and administrative costs

Available Funds: 8% of the remainder for professionals (vs. hospitals and other facilities)

Who Qualifies: US providers who served BCBS patients between July 24, 2008, and October 4th, 2024

Key dates:

- Opt-Out Deadline: March 4, 2025 (Passed)
- Claim Submission Deadline: July 29, 2025
- Same day as hearing for final settlement approval





How Settlement Payments are Calculated

Payment Factors: Your payment depends on:

- Your total billings to BCBS (2008-2024)
- How BCBS practices affected reimbursements in your area
- The number and size of claims filed by other providers.

Simplified Calculations

- Points are assigned based on your billings
- Points are adjusted based on your location
- Your share of the fund is calculated based on your adjusted points.

Filing Your Claim: Two Methods

Claims Data: The settlement uses a database with billing data from 2008-2024

Default Method (Easiest):

- If your data is in the database, the system estimates your allowed amounts
- No extra documentation is needed for 2015-2024

Alternative Method:

- For providers not in the database
- Submit records for any years you have data from 2008-2024

Submit your claim by July 29, 2025

Resources:

<https://www.bcbsprovidersettlement.com/>

<https://www.apaservices.org/practice/reimbursement/commercial/blue-cross-blue-shield-antitrust-settlement>

ue Shield Provider Settlement Website Home FAQs Contact Us Claim Submission V

This website is for **Providers** (persons and entities that provide healthcare services) to submit claims for the Blue Cross Blue Shield Provider Settlement. This settlement is separate from the Blue Cross Blue Shield Subscribers Settlement. For information on the Subscribers Settlement, visit www.BCBSSettlement.com.

Welcome to the Blue Cross Blue Shield Provider Settlement Website.

The class action lawsuit, *In re: Blue Cross Blue Shield Antitrust Litigation*, addresses Provider Plaintiffs' claim that the Settling Defendants violated antitrust laws by illegally dividing the United States into "Service Areas" and agreeing not to compete in those areas. Provider Plaintiffs also claim that the Settling Defendants fixed prices for services provided. The class action is pending in the United States District Court for the Northern District of Alabama, Southern Division. U.S. District Judge R. David Proctor is overseeing it. Both sides want to avoid the risk and cost of further litigation and have agreed to the Settlement. The Provider Plaintiffs and their attorneys think the Settlement is best for the Settlement Class.

This Settlement Class includes all Providers in the U.S. (except Excluded Providers [FAQ 5](#), who are not part of the Settlement Class) who currently provide or provided healthcare services.

AUDIENCE Q&A

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!

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