

Health Law Hacks

CRACKING THE CODE OF HEALTHCARE COMPLIANCE



Medicare Physician Fee Schedule Proposed Rule for 2023

Critical Changes to E/M Coding and Payment
to Begin Preparing for Now

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MARTING LAW



Richelle Marting is an attorney, registered health information administrator, and certified coder who focuses on healthcare coding, billing, and reimbursement issues. She has served as an outpatient multi-specialty surgery coder, hospital-based outpatient coder, compliance coordinator for a large multi-specialty medical group, interim system privacy officer, and interim director of managed care. As an attorney she advises clients proactively on complex reimbursement questions and has guided multiple clients through extensive Medicare, OIG and private payor audits and investigations. She has also served as an expert in litigation in matters involving health information management, reimbursement, and privacy.



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Anne Kindling devotes her legal practice to health and hospital law, administrative and regulatory defense, and civil litigation. Anne counsels organizational and individual health care providers on physician contracts, medical staff relations, peer review and risk management, practice compliance issues such as HIPAA and EMTALA, professional licensure, and defense of medical malpractice claims throughout Kansas. Her nearly 30 years of experience as an attorney includes over 10 years managing claims and risk management for a 500-bed hospital and multi-specialty clinic, pairing her sound legal knowledge with field experience that affords her clients practical solutions to complex questions.



Diane Bellquist

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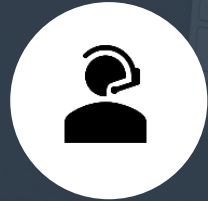


Diane L. Bellquist is an attorney with Joseph, Hollander & Craft LLC whose practice is focused on providing licensure defense services for professionals and entities. She received her Juris Doctorate from the University of Kansas School of Law. Prior to private practice, Diane served as General Counsel for the Office of the State Bank Commissioner and as Assistant General Counsel for the Kansas Board of Healing Arts

Overview

Evaluation and
Management

Telehealth Policy



Remote Monitoring

RHCs/FQHCs



Evaluation and Management Services

American Medical Association is changing the E/M section substantially, including general guidelines, elimination of all observation codes, revaluing hospital codes, deleting level 1 consult codes, and merging nursing facility/nursing home codes.

CPT makes some of the most significant changes to the E/M codes in decades



Level of Service Reporting

Extending 2021 changes to office visit codes to all E/M categories

No more history, exam levels

No more 1995, 1997 exam level disputes

HISTORY	HPI <input type="checkbox"/> Location <input type="checkbox"/> Severity <input type="checkbox"/> Timing <input type="checkbox"/> Mod. Factors <input type="checkbox"/> *Chronic Condition 1 <input type="checkbox"/> Quality <input type="checkbox"/> Duration <input type="checkbox"/> Context <input type="checkbox"/> Assoc. S/S <input type="checkbox"/> *Chronic Condition 2 *1997 Only After 4/19/12 Cmts: <input type="checkbox"/> *Chronic Condition 3	Brief 1 element	Brief 2 – 3 elements	Extended > 4 elements or status of ≥ 3 chronic or inactive conditions	Extended > 4 elements or status of ≥ 3 chronic or inactive conditions	
	ROS <input type="checkbox"/> Constitutional <input type="checkbox"/> ENMT <input type="checkbox"/> GI <input type="checkbox"/> Integumentary <input type="checkbox"/> Endo <input type="checkbox"/> Eyes <input type="checkbox"/> Card/Vas <input type="checkbox"/> GU <input type="checkbox"/> Hem/Lymph <input type="checkbox"/> All/Immun <input type="checkbox"/> Resp <input type="checkbox"/> Musculo <input type="checkbox"/> Neuro <input type="checkbox"/> Psych <input type="checkbox"/> All Others Neg.	None	Pertinent 1 system	Extended 2 – 9 Systems	Complete ≥ 10 systems or some systems with statement “All others negative”	
	PFSH <input type="checkbox"/> Past Medical } <input type="checkbox"/> Past Family } (Not required for 99231 – 99233, 99261 – 99263, <input type="checkbox"/> Past Social } 99311 – 99333	Established/ ER	None	None	1	2 - 3
		New/ Consult/ Admit	None	None	1 – 2	3
Mark the entry farthest to the right for each history area. To determine the history level, draw a line down the column with the circle farthest to the left.		PF <input type="checkbox"/>	EPF <input type="checkbox"/>	Detailed <input type="checkbox"/>	Comprehensive <input type="checkbox"/>	
EXAM	Organ Systems No distinct exam documentation; carried fwd from prev. <input type="checkbox"/> Constitutional <input type="checkbox"/> ENMT <input type="checkbox"/> GI <input type="checkbox"/> Integumentary <input type="checkbox"/> Eyes <input type="checkbox"/> Card/Vas <input type="checkbox"/> GU <input type="checkbox"/> Hem/Lymph/Immun <input type="checkbox"/> Resp <input type="checkbox"/> Musculo <input type="checkbox"/> Neuro <input type="checkbox"/> Psych	Area or System Related to Problem	2 – 4 Systems/ Body Areas	5 – 7 Systems/ Body Areas	8 or more Systems	
	Body Areas <input type="checkbox"/> Head <input type="checkbox"/> Neck <input type="checkbox"/> Chest <input type="checkbox"/> Abdomen <input type="checkbox"/> RUE <input type="checkbox"/> LUE <input type="checkbox"/> RLE <input type="checkbox"/> LLE <input type="checkbox"/> Genitalia/Groin/Buttock <input type="checkbox"/> Back	PF <input type="checkbox"/>	EPF <input type="checkbox"/>	Detailed <input type="checkbox"/>	Comprehensive <input type="checkbox"/>	



E/M Guidelines

CPT



- Exact Same Subspecialty
- On call providers' specialties are imputed based on specialty of provider being covered
- NPPs and physicians considered same subspecialty as the docs they work with

CMS



- Doesn't recognize subspecialties
- Does not address on-call guideline
- NPPs "are always classified in a different specialty than the physician"



E/M Guidelines: Initial Visits

CPT



- Current: Attending only.
 - ⑩ Others use consult or subsequent care codes
- New: Once per specialty/subspecialty/same group practice per admission
 - ⑩ Allows consulting providers to report initial codes

CMS



- Current: Multiple providers; attending uses –AI
- New: One per specialty/group practice/admission
- Remember NPPs/physicians are different specialties
- No subspecialty recognition
- **“Retain current billing policy” that provider must see patient in ED, admit**
- **RM:** Inconsistent with current rules



E/M Guidelines: Prolonged Services

CPT



- Inpatient prolonged services 99356 deleted
- 993X0 to report prolonged total direct, non-direct time on the same day as hospital service. 15+ minutes beyond time to report highest-level primary service

CMS



- Ignoring code 993X0
- New G code for prolonged hospital service
- 15 minutes beyond primary service time
- Can only be reported when underlying code is selected based on time
- Cannot bill 99358, 99358 (non-direct contact) cannot be billed with 99221-99223; 99231-99236



E/M Guidelines: Split/Shared

CPT



- Not limited to facility setting
- Does not define who reports

CMS



- Limited to facility setting
- Professional rendering substantive portion reports
- “More than half”
- Delaying definition of substantive until 1/1/2024




Observation Codes Eliminated



- Today's "Inpatient" codes become more generally "hospital" codes
- Observation consults: Office/other outpatient category
- Values for hospital category changing (today, inpatient/observation valued the same)
- Observation discharge 99217 didn't require time
- All hospital discharges should now document time





*Medicare is
creating four (4)
new G codes but
would no longer
pay CPT RTM codes*

Reporting Monitoring

Concern with RTM codes performed by therapists and valuation including clinical labor





Medicare is moving many temporary telehealth codes to the Category 3 list

Telehealth Policy

There are no services being permanently added as telehealth for 2023 as a result of proposals from the public

TABLE 9: Services Proposed for Permanent Addition to the Medicare Telehealth Services List on a Category 1 Basis

HCPCS	Short Descriptor
GXXX1	Prolonged inpatient or observation services by physician or other QHP
GXXX2	Prolonged nursing facility services by physician or other QHP
GXXX3	Prolonged home or residence services by physician or other QHP



Temporary v. Category 3

Temporary



- End when the PHE ends

Category 3



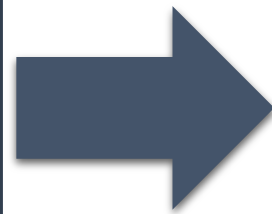
- In effect until 12/31/23

Temporary → Category 3

Temporary



- Therapy 97150, 97530, 97542



Category 3

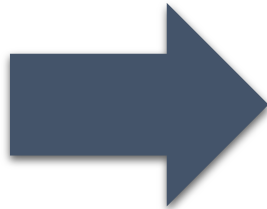


- 97110, 97112, 97116, 97161 – 97164, 97535, 97750, and 97755
Already Category 3



Temporary Category 3

Temporary



Category 3



HCPCS	Short Descriptor		
90875	Psychophysiological therapy	96112	Devel tst phys/qhp 1st hr
90901	Biofeedback train any meth	96113	Devel tst phys/qhp ea addl
92012	Eye exam estab pat	96127	Brief emotional/behav asmt
92014	Eye exam & tx estab pt 1/>vst	96170	Hlth bhv ivntj fam wo pt 1st
92507	Speech/hearing therapy	96171	Hlth bhv ivntj fam w/o pt ea
92550	Tympanometry & reflex thresh	97129	Ther ivntj 1st 15 min
92552	Pure tone audiometry air	97130	Ther ivntj ea addl 15 min
92553	Audiometry air & bone	97150	Group therapeutic procedures
92555	Speech threshold audiometry	97151	Bhv id asmt by phys/qhp
92556	Speech audiometry complete	97152	Bhv id suprt asmt by 1 tech
92557	Comprehensive hearing test	97153	Adaptive behavior tx by tech
92563	Tone decay hearing test	97154	Grp adapt bhv tx by tech
92567	Tympanometry	97155	Adapt behavior tx phys/qhp
92568	Acoustic refl threshold tst	97156	Fam adapt bhv tx gdn phy/qhp
92570	Acoustic immitance testing	97157	Mult fam adapt bhv tx gdn
92587	Evoked auditory test limited	97158	Grp adapt bhv tx by phy/qhp
92588	Evoked auditory tst complete	97537	Community/work reintegration
92601	Cochlear implt f/up exam <7	97542	Wheelchair mngment training
92625	Tinnitus assessment	97530	Therapeutic activities
92626	Eval aud funcj 1st hour	97763	Orthc/prostc mgmt sbsq enc
92627	Eval aud funcj ea addl 15	98960	Self-mgmt educ & train 1 pt
94005	Home vent mgmt supervision	98961	Self-mgmt educ/train 2-4 pt
95970	Alys npgt w/o prgrmg	98962	Self-mgmt educ/train 5-8 pt
95983	Alys brn npgt prgrmg 15 min	99473	Self-meas bp pt educaj/train
95984	Alys brn npgt prgrmg addl 15	0362T	Bhv id suprt asmt ea 15 min
96105	Assessment of aphasia	0373T	Adapt bhv tx ea 15 min
96110	Developmental screen w/score		

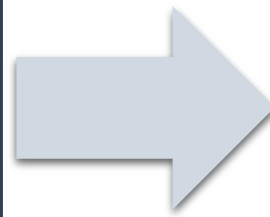


Temporary → Category 3

Temporary



- New Additions:
97537, 97763,
90901, and 98960-
98962



Category 3



- 97537, 97763,
90901, and 98960-
98962



Temporary \neq Category 3

Temporary



- Audio-only codes



Category 3



Medicare Telehealth After the PHE



Removal

HCPCS	Short Descriptor
77427	Radiation tx management x5
92002	Eye exam new patient
92004	Eye exam new patient
92550	Tympanometry & reflex thresh
92552	Pure tone audiometry air
92553	Audiometry air & bone
92555	Speech threshold audiometry
92556	Speech audiometry complete
92557	Comprehensive hearing test
92563	Tone decay hearing test
92565	Stenger test pure tone
92567	Tympanometry
92568	Acoustic refl threshold tst
92570	Acoustic immitance testing
92587	Evoked auditory test limited
92588	Evoked auditory tst complete
92601	Cochlear implt f/up exam <7
92625	Tinnitus assessment
92626	Eval aud funcj 1st hour
92627	Eval aud funcj ea addl 15
93750	Interrogation vad in person
94002	Vent mgmt inpat init day
94003	Vent mgmt inpat subq day
94004	Vent mgmt nf per day
96125	Cognitive test by hc pro
99218	Initial observation care
99219	Initial observation care
99220	Initial observation care

99221	Initial hospital care
99222	Initial hospital care
99223	Initial hospital care
99234	Observ/hosp same date
99235	Observ/hosp same date
99236	Observ/hosp same date
99304	Nursing facility care init
99305	Nursing facility care init
99306	Nursing facility care init
99324	Domicil/r-home visit new pat
99325	Domicil/r-home visit new pat
99326	Domicil/r-home visit new pat
99327	Domicil/r-home visit new pat
99328	Domicil/r-home visit new pat
99341	Home visit new patient
99342	Home visit new patient
99343	Home visit new patient
99344	Home visit new patient
99345	Home visit new patient
99441	Phone e/m phys/qhp 5-10 min
99442	Phone e/m phys/qhp 11-20 min
99443	Phone e/m phys/qhp 21-30 min
99468	Neonate crit care initial
99471	Ped critical care initial
99475	Ped crit care age 2-5 init
99477	Init day hosp neonate care



Place of Service, Modifier Reporting

- Location where telehealth service was rendered
 - Through PHE, 151-days after with modifier -95
 - Using POS 02 causes payment at facility rate
- Day 152+, use 02 and 10
- 02 and 10 will be paid at facility rate
- Modifier -93 Synchronous Telemedicine Service Rendered Via Telephone or Other Real-Time Interactive Audio-Only Telecommunications System
 - RHCs, FQHCs currently using –FQ will change to -93
- Supervising practitioners continue to be required to append the “FR” modifier on any applicable telehealth claim when required to be present through an interactive real-time, audio and video telecommunications link, as reflected in each service’s requirement



Supervision of Telehealth

- After December 31 of year when PHE ends, pre-PHE rules for direct supervision return
 - Immediate availability, virtual presence goes away
- Proposed rule says: “so telehealth services can no longer be performed by clinical staff incident to a physician’s professional service.”
 - RM/AK Comment: 2021 Final Rule said nothing prohibits telehealth from being rendered incident to. Elimination of virtual presence *should* only mean auxiliary staff and billing provider must be in the same office suite



Supervision and Documentation

- In addition to “immediate availability” supervision for telehealth, consider best practices related to documentation.
 - Policy regarding supervision
 - Policy regarding chart review
 - Best practices regarding chart review



Compensation

- Upcoming changes may impact provider compensation models
 - Valuation of codes are changing
 - Affects productivity and travel
 - wRVU's with telehealth will require immediate availability
 - So, may have to travel to location where mid-level is located
 - Or, may not be compensated
 - Review contracts regarding supervision and productivity



Telehealth and Provider Licensing

- Licensing requirements were relaxed in many states as a result of the PHE to maximize access to healthcare nationwide safely
- There is no federal license scheme that authorizes physicians to practice anywhere within the US (and its territories) with one single license
- The individual states have the police power to regulate the practice within their respective state borders
- This results in a patchwork of licensing requirements and laws across the 50 states and US territories



Telehealth and Provider Licensing

- Currently 10 states have a waiver process for out-of-state physicians to provide telemedicine within their state borders
- Federation of State Medical Boards created the Interstate Medical Licensure Compact (IMLC) – operational since 2017

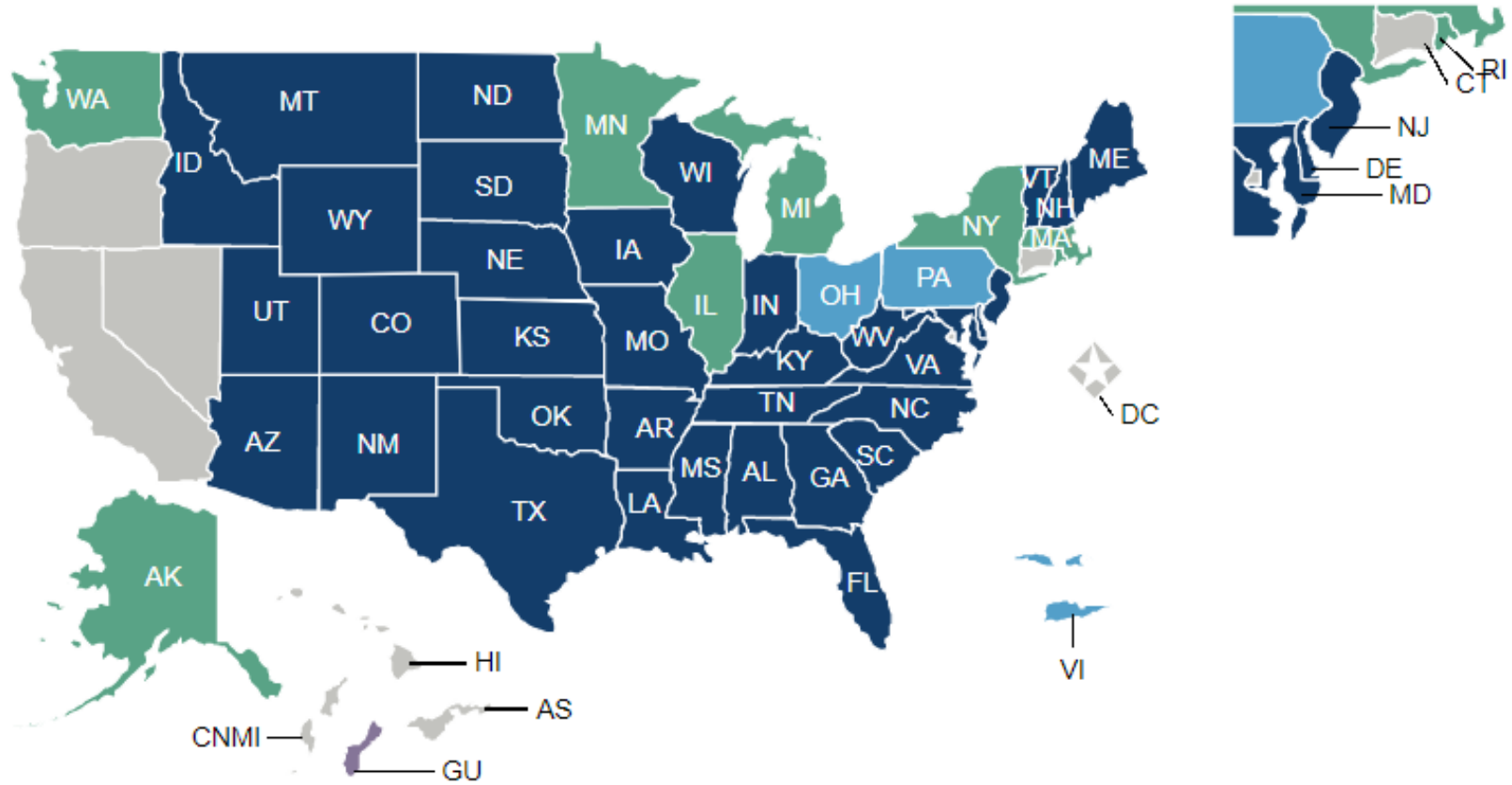


Interstate Medical Licensing Compact

- IMLC Eligibility
 - Graduated from an accredited medical school or one listed in the International Medical Education Directory
 - Completed ACGME or AOA accredited postgraduate training
 - Passed each component of the USMLE, COMLEX or equivalent in no more than three attempts for each component
 - Hold an unrestricted medical license in a Compact member-state
 - State of Principal License is the physician's primary residence (and declared state of residence for federal income tax purposes)
 - Physician must practice at least 25% in state for Principal License
 - Physician is employed in the state of Principal License
 - No history of disciplinary actions
 - No criminal convictions (or deferred adjudications)
 - Not under investigation



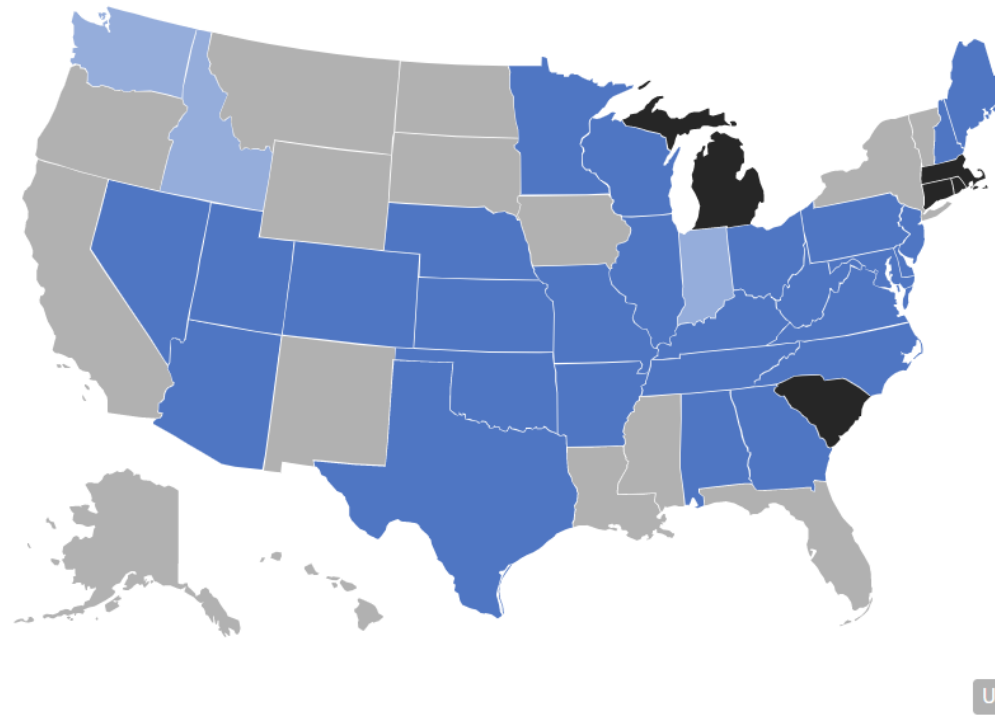
Nurse Licensure Compact






- Pending NLC legislation
- NLC State
- NLC enacted: Awaiting implementation.
- Currently No Action
- Partial Implementation



Psypact

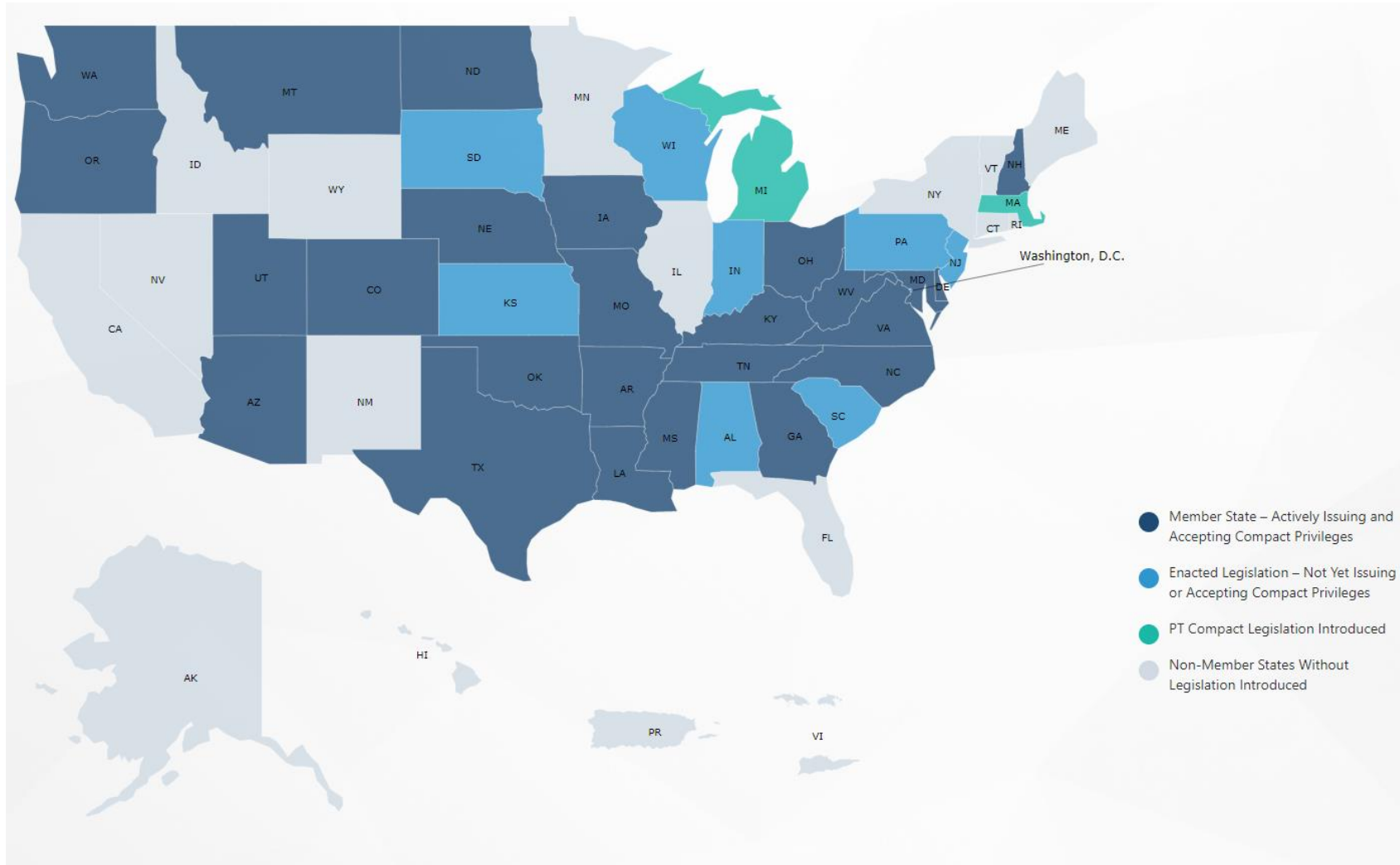


Map Key

-  PSYPACT Participating State
-  Enacted PSYPACT Legislation -practice under PSYPACT not permitted
-  PSYPACT Legislation introduced



Physical Therapy Licensure Compact



Provider Risk and Employment

- SUPERVISION
 - Reiterate upcoming changes to
- DOCUMENTATION
- COMPENSATION





RHCs, FQHCs

Increased coverage and separate payment for pain management services is on the way

New codes added to separately pay for specified set of pain management and treatment services



Questions?



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