

Delta Region Community Health Systems Development (DRCHSD) Program

Telehealth Policy Webinar



The Center's Purpose

The National Rural Health Resource Center (The Center) is a nonprofit organization dedicated to sustaining and improving health care in rural communities. As the nation's leading technical assistance and knowledge center in rural health, The Center focuses on five core areas:

- Transition to Value and Population Health
- Collaboration and Partnership
- Performance Improvement
- Health Information Technology
- Workforce



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U.S. Department of Health & Human Services



HRSA

Federal Office of Rural Health Policy

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National
Rural Health
Resource Center

Diversity, Equity, Inclusion, & Anti-racism



Building a culture where difference is valued

The Center is committed to DEI and anti-racism. We create an environment that reflects the communities we live in and serve; a place where everyone feels accepted and empowered to be their full, authentic selves; and where everyone belongs.

We understand the impact of and seek to defeat racism and discrimination in ourselves, our workplace, and the world. This guides how we cultivate leaders, build our programs and resources, and deliver our technical assistance.

We are an organization that honors, celebrates, and respects all dimensions of diversity. These principles are central to our mission and to our impact.

[Read more at ruralcenter.org/DEI](https://ruralcenter.org/DEI)

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Today's Speaker:



Mei Wa Kwong
Executive Director
Center for Connected Health Policy (CCHP)

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US TELEHEALTH POLICY

National Rural Health Resource Center
Presentation
MARCH 21, 2024



Center for Connected
Health Policy

THE NATIONAL
TELEHEALTH POLICY
RESOURCE CENTER



Mei Wa Kwong, JD,
Executive Director, CCHP

CENTER FOR CONNECTED HEALTH POLICY (CCHP)

is a non-profit, non-partisan organization that seeks to advance state and national telehealth policy to promote improvements in health systems and greater health equity.

DISCLAIMERS

- **Any information provided in today's talk is not to be regarded as legal advice. Today's talk is purely for informational purposes.**
- **Always consult with legal counsel.**
- **CCHP has no relevant financial interest, arrangement, or affiliation with any organizations related to commercial products or services discussed in this program.**



ABOUT CCHP

- Established in 2009 as a program under the Public Health Institute
- Became federally designated national telehealth policy resource center in 2012 through a grant from HRSA
- Work with a variety of funders and partners on the state and federal levels
- Administrator National Consortium of Telehealth Resource Centers
- Convener for California Telehealth Policy Coalition



TODAY'S WEBINAR

- **Provide an overview of the federal and state telehealth policy landscape**
- **Talk about the current status of certain policies**
- **Items to monitor & what might happen this year**
- **This webinar is not one to answer very specific billing questions. If you have a specific billing question, please contact your TRC or CCHP directly**



FEDERAL & STATE

Federal Policy

- MEDICARE/CMS
- PRESCRIBING OF CONTROLLED SUBSTANCES (DEA)
- HIPAA/PRIVACY/DATA
- LICENSURE

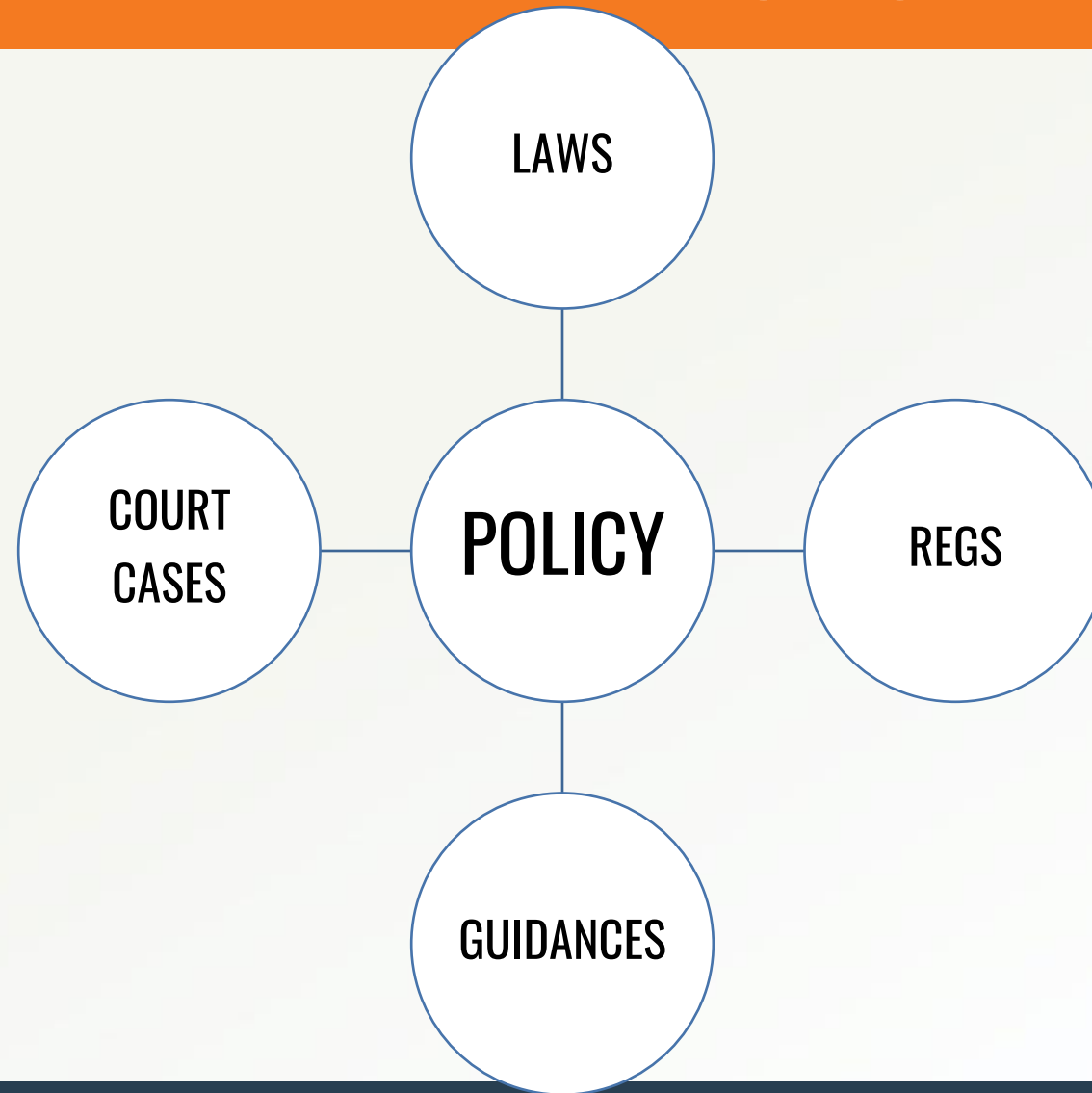
State Policy

- MEDICAID
- PRIVATE PAYER
- PRESCRIBING
- LICENSURE

Note: These are not all of the policy areas related to telehealth. Additionally, sometimes there are “sub-policy” issues under items listed. For example, under Medicaid, a state may have a policy in regards to obtaining consent from the patient before a service delivered via telehealth can take place.



TELEHEALTH POLICY



FEDERAL: **CMS & Medicare** *(Reimbursement & Coverage)*



MEDICARE TELEHEALTH POLICY EVOLUTION

Pre-Covid
Fairly Limited

During Pandemic
Series of Waivers

Post-Pandemic
Majority of waivers
remain until end of
2024

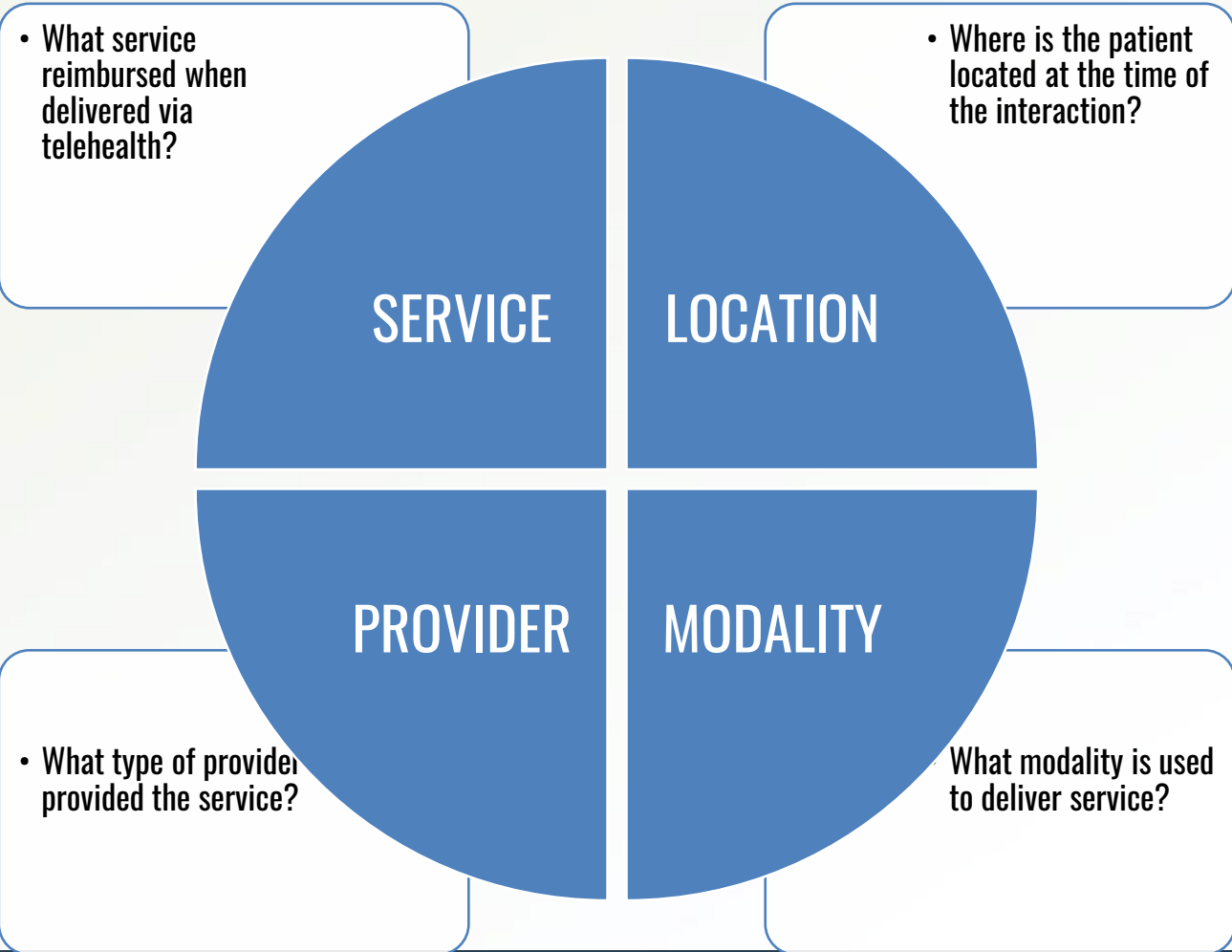


TELEHEALTH REIMBURSEMENT POLICY – 4 AREAS

➤ Most established telehealth policies on reimbursement are made up of

- 4 typical elements
- Most limitations are around these 4 elements

★ Medicare also has a grouping of services they will reimburse that uses telehealth technology to deliver those services but are not regarded as “telehealth”. These services are called Communications Technology Based Services (CTBS) and include remote patient monitoring, evisits, econsult. They are separated out because there is no “in-person equivalent” to them but are services that can be provided because of the technology.



TELEHEALTH POLICY, continued



PRE-COVID MEDICARE

- Limits on patient location geographically & by site
- Limit eligible providers
- Limit on modality
- Limit services



DURING COVID (TEMPORARY)

- Removed location limitations
- Expanded list of eligible providers
- Allowed some services via audio-only
- Expanded eligible services list



THE FUTURE?

- Mental health services locations limitations lifted if certain conditions met
- Audio-only allowed for mental health services if certain conditions met



MEDICARE TELEHEALTH POLICY IN 2024

WAIVER DURING COVID-19	REMAINS UNTIL THE END OF 2024
Waiver of geographic requirement	✓
All eligible providers in Medicare & FQHCs/RHCs to be eligible providers	✓
Site limitation waived (allowing places such as the home)	✓
Allow some services to be provided via audio-only	✓
Expanded list of eligible services to be provided via telehealth	Varies, but mostly remains intact



MEDICARE TELEHEALTH POLICY IN 2024, continued

WAIVER DURING COVID-19	REMAINS UNTIL THE END OF 2024
Allowing provider to use business address rather than putting home address	✓ ★
Waiving frequency limit on telehealth visits in SNFs	✓
Allowing for direct supervision to be done via telehealth	Some remain intact such as supervision of residents when the service is furnished virtually.

- [CCHP 2024 Physician Fee Schedule Fact Sheet](#)
- [2024 Physician Fee Schedule Final](#)
- [Consolidated Appropriations Act 2023](#)
- [CMS Telehealth Fact Sheet \(Dated 12/2023\)](#)

★ March 2024 – Federal Register published final rule that Individual Provider (entity = 1) can enter a USPS PO Box or Commercially Provider PO Box in address line instead of home address (permanent policy)



FEDERAL: Prescribing & Controlled Substances



CONTROLLED SUBSTANCE PRESCRIBING VIA TELEHEALTH

Limited
Exceptions in
Ryan Haight
Act

One exception
is when PHE
declared,
COVID
activated
exception

DEA Issues
Proposed Post-
PHE Regs

Temporary
extension to
11/2023

Late 2023,
DEA extended
the exception
through to the
end of 2024

[DEA Full Text of Extension to end of 2024.](#)

January 31, 2024 Final rules on the prescribing of buprenorphine by OTP, may take place via audio-video or audio-only. Limited ability to use audio-visual for methadone



FEDERAL: HIPAA/PRIVACY/DATA



HIPAA



Pre-COVID Telehealth
wasn't specifically
addressed



During/Post-COVID -
Realization HIPAA
outdated



HIPAA, continued

- During COVID, OCR issued guidance that they would “exercise discretion” on HIPAA as it related to using telehealth technology. This has since expired.
- Biden Administration issued Executive Order to look at updating HIPAA regulations
- In the meantime, several resources have been provided related to telehealth by HHS
 - [Resource for Health Care Providers on Educating Patients about Privacy and Security Risks to Protected Health Information when Using Remote Communication Technologies for Telehealth](#)
 - [Privacy and Security Tips for Patients](#)
 - [General HHS site on HIPAA & Telehealth](#)
 - [Guidance on How the HIPAA Rules Permit Covered Health Care Providers and Health Plans to Use Remote Communication Technologies for Audio-Only Telehealth](#)



PRIVACY/DATA

- Conversation now gone beyond just HIPAA and concerns about privacy, data and tracking
- In 2023 FTC and HHS warned hospitals and telehealth providers about privacy and security issues related to online tracking
 - CCHP Newsletter – [FTC & OCR Stress \(Again\) the Importance of How Health Data is Handled \(Sept. 2023\).](#)
 - HHS - [Use of Online Tracking Technologies by HIPAA Covered Entities and Business Associates](#)

* Change Health Care Cyber Attack



FEDERAL: Licensure



US District Court for New Jersey Court Case

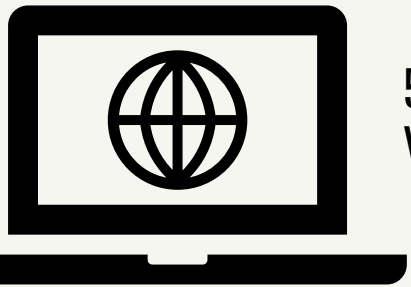
- *MacDonald v. New Jersey State Board of Medical Examiners*
- Specific case on telemedicine and licensure that makes the argument that requiring a license of an out-of-state provider is in violation of the US Constitution
- Based arguments on:
 - Commerce Clause (Dormant Commerce Clause)
 - Privileges & Immunities Clause
 - First Amendment (Speech)
 - Fourteenth Amendment Due Process Clause



STATE: Medicaid & Private Payer *(Reimbursement & Coverage)*



MEDICAID & PRIVATE PAYER LAWS



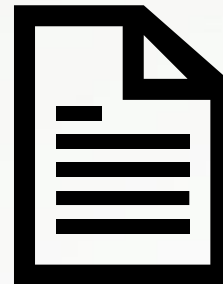
50 States & DC reimburse for Live Video



43 States have some reimbursement for audio-only



33 States reimburse for some store and forward (some may only do it for CTBS)



43 States, DC and Virgin Islands have a private payer law



37 States have some reimbursement for RPM



MEDICAID AUDIO ONLY POLICIES



Medicaid program reimburses for some audio-only



Did not find audio-only policy or prohibited it in Medicaid



NOT ALL POLICIES ARE CREATED EQUAL

ILLINOIS

When using modifier 93, the communication during the audio-only service must be of an amount or nature that meets the same key components and/or requirements of a face-to-face interaction. Modifier 93 is effective with dates of service beginning July 1, 2022.

LOUISIANA

Hospices may report some social worker calls as a visit. Hospices may not report any other types of phone calls.

Rural health clinics (RHC) and federally qualified health clinics (FQHC) are required to indicate the appropriate place of service, either 02 (other than home) or 10 (home), based on the beneficiary's location at the time of and append modifier 95 for the billing of telemedicine/telehealth services. Services delivered via an audio/video system and via an audio-only system are to be coded the same way.



STATE: Prescribing



PRESCRIBING POLICIES IN THE STATES

- Prescribing/establishing a patient-provider relationship
 - Can telehealth be used to establish a relationship?
 - Most states allow if live video is used
 - A few exceptions allow asynchronous
- Limitations on Prescribing
 - Abortion
 - Vision & Hearing
 - Marijuana
 - Controlled Substances

Optometrist-patient relationship. Pursuant to T.C.A. § 63-1-155(b), an optometrist-patient relationship with respect to telemedicine or telehealth is created by mutual consent and mutual communication, except in an emergency, between the patient and the optometrist. The consent by the patient may be expressed or implied consent; however, the optometrist-patient relationship is not created simply by the receipt of patient health information by an optometrist unless a prior optometrist-patient relationship exists. - TN



STATE: Licensure



LICENSURE

- **Compacts**
 - **Compacts are structured differently**
- **Registries**
- **Limited Exceptions**
 - **Prior established relationship**
 - **Infrequent interactions**
 - **Contiguous state exception**

Social Work – Temporary Permits for Out-of-State Independent Clinical (and Non-Clinical) License Holders

The temporary permit holder shall be allowed to practice telehealth in Kentucky if the permit holder:

- Provides evidence to the board of appropriate training for telehealth practice;
- Is complying with all telehealth laws and regulations of Kentucky; and
- Has written consent for telehealth with clients.

The temporary permit holder shall provide evidence to the board of appropriate training for social work telehealth practice

Temporary permit holders shall not practice telehealth outside of Kentucky, which means that the location of the temporary permit holder and the client at the time of service shall be in **Kentucky**.



What to Look Out For in 2024



FEDERAL

- Decisions on temporary Medicare policies & prescribing of controlled substances
 - Look for potentially some policies to be in larger bills
- HIPAA Update due this year
- AI Continues to be a significant point of discussion
 - [Executive Order on AI](#)
 - [NIST Draft Guidance on Privacy Protection Technique for AI](#)
- Broadband – Affordable Connectivity Program – proposal to continue funding it, but it will need to make it through the budget process

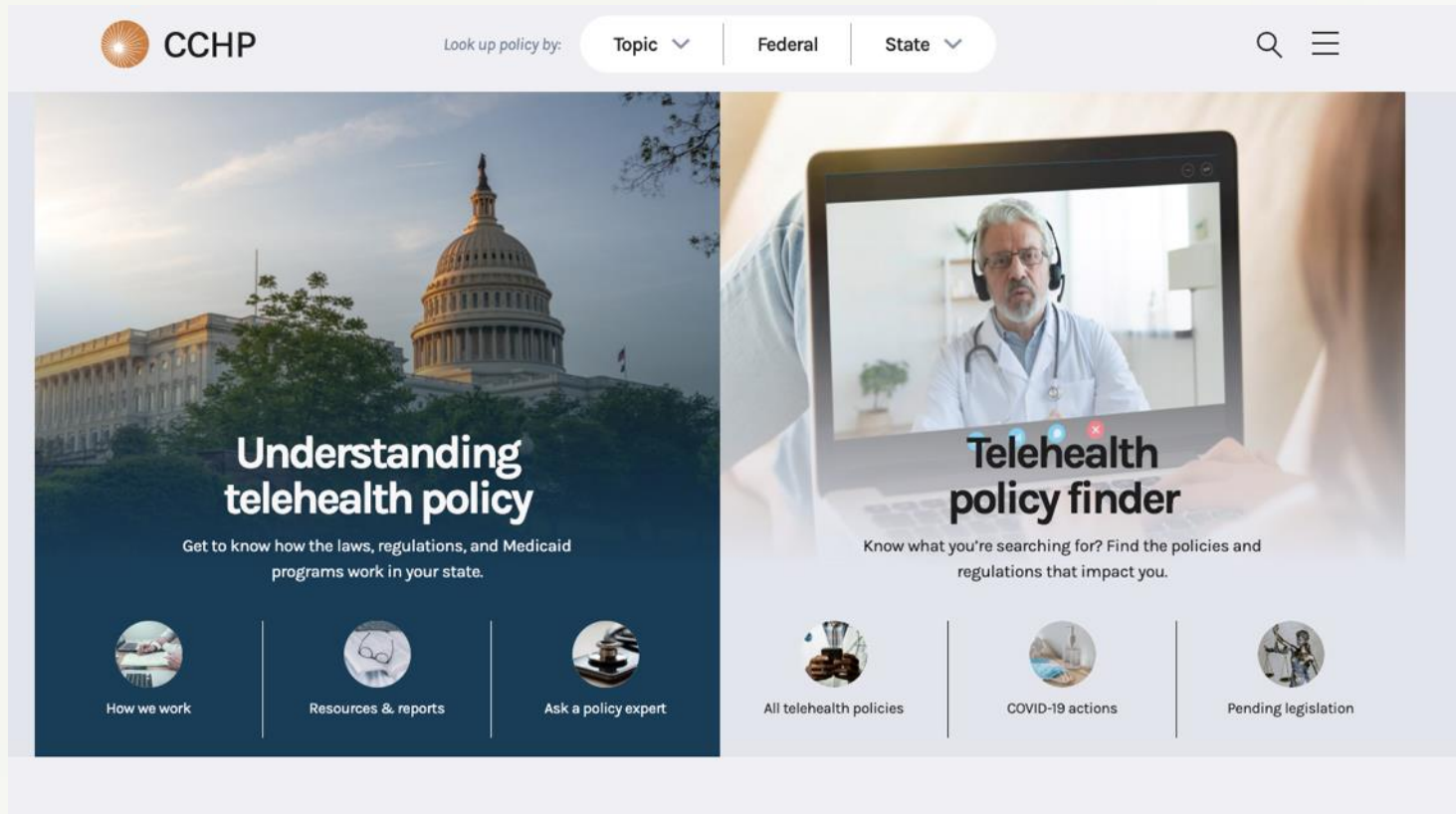


STATES

- Most states have settled on their policies
 - Increasing interest in data collection, efficacy
 - Some have also temporary extensions
 - Areas of further policy development/discussion
 - Expanding Medicaid
 - Licensure
 - Prescribing
- **State Budget Shortfalls**



➤ CCHP Website – cchpca.org



➤ Subscribe to the CCHP newsletter at cchpca.org/contact/subscribe





**Center for Connected
Health Policy**

THE NATIONAL
TELEHEALTH POLICY
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Thank You!

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Questions or Comments



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