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Community Rounds Workshop Series

A Qualitative Analysis of US State Laws Regulating Incentives for Health Behavior

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Disclosures

There is nothing to disclose for this UVM CORA Community Rounds session.

Potential Conflict of Interest:

All potential conflicts of Interest have been resolved prior to the start of this program.

All recommendations involving clinical medicine made during this talk were based on evidence that is accepted within the profession of medicine as adequate justification for their indications and contraindications in the care of patients.

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Objectives

- Describe the benefits of contingency management for treating substance use disorders
- Discuss implications of state policies for delivery of contingency management
- Outline findings related to state-by-state review of policies related to contingency management for substance use disorders
- Discuss the impact of such policies on members of rural populations

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Contingency Management

- Contingency management (CM) is a behaviorally-oriented treatment approach that provides systematic, tangible rewards to individuals contingent upon objective evidence of healthy behavior change
- CM is one of the most effective treatments for substance use disorder (SUD)

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Research Background

- Several barriers exist to implementation, including in rural areas
  - Lack of treatment providers
  - Transportation barriers
  - Funding
- Extent to which state laws hinder or facilitate CM is not well understood
- But we know that some state laws explicitly permit incentives/inducements for behavior change (e.g., insurer wellness programs)

(Bolivar et al., 2021; Davis et al., 2016; Dutra et al., 2008; Lussier et al., 2006; Prendergast et al., 2006)

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Research Motivation

- Identifying state laws that already permit health incentives outside of SUD-related care could **inform CM dissemination efforts**
- Existing studies of such state laws have focused on **insurer or workplace wellness programs** only
- But **states may explicitly permit incentives in other contexts too!**
- State laws that already permit incentives for health behaviors could serve as a **model for state laws to facilitate CM**

(Klautzer et al., 2012; Pomeranz et al., 2016)

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Research Objectives

- To identify state laws that permit or prohibit patient, employee, or insurance beneficiary incentives for ***SUD-related*** **health behaviors or outcomes**
- To identify state laws that explicitly permit delivery of incentives for ***any*** **health behaviors or outcomes**

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Methods: Data collection

A search was conducted of the NexisUni legal database for laws, statutes, or regulations in 51 US jurisdictions (50 states plus D.C.) effective during 2022, using terms/phrases related to:

- Incentives, rewards, or kickbacks
- Health or health care

Initial sample: **5121 laws**

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Methods: Data collection

The following were manually excluded:

- Incentives for general “good behavior” in the justice system
- Incentives for saving costs (e.g., rebates to incentivize selection of a less costly healthcare provider)
- Incentives for workforce training into new careers
- Incentives given to a health insurer, treatment provider, or facility as opposed to a patient, employee, or health insurance beneficiary; and
- Laws not applicable to the entire state

Resulting sample uploaded to Dedoose: **246 laws**

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Methods: Data analysis

Two high-level categories resulted (not mutually exclusive):

1. Laws permitting or prohibiting incentives for **SUD-specific** behaviors or outcomes

    a) Specific SUD mentioned (e.g., “tobacco” or “smoking”)
    b) Non-specific SUD mentioned (e.g., “substance use treatment”)

2. Laws permitting incentives for **any** health behaviors or outcomes (after excluding laws prohibiting incentives)

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Results: Laws regulating incentives related to SUD

We identified **27 laws across 16 jurisdictions (8 rural*)** that explicitly permit delivery of incentives to patients, employees, or insurance beneficiaries for *SUD-related* health behaviors or outcomes

These laws occur in four contexts:

- **Health insurance** (14 laws across 10 states)
  - Most of these relate to wellness programs
  - FL, IL, MA, MI, MN, NY, TN, TX, VA, VT
- **Employment** (6 laws in 5 jurisdictions)
  - DC, IN, KY, ME, WV
- **Government health promotion** (1 law in CA)
- **SUD treatment facility licensing** (6 laws in AR)

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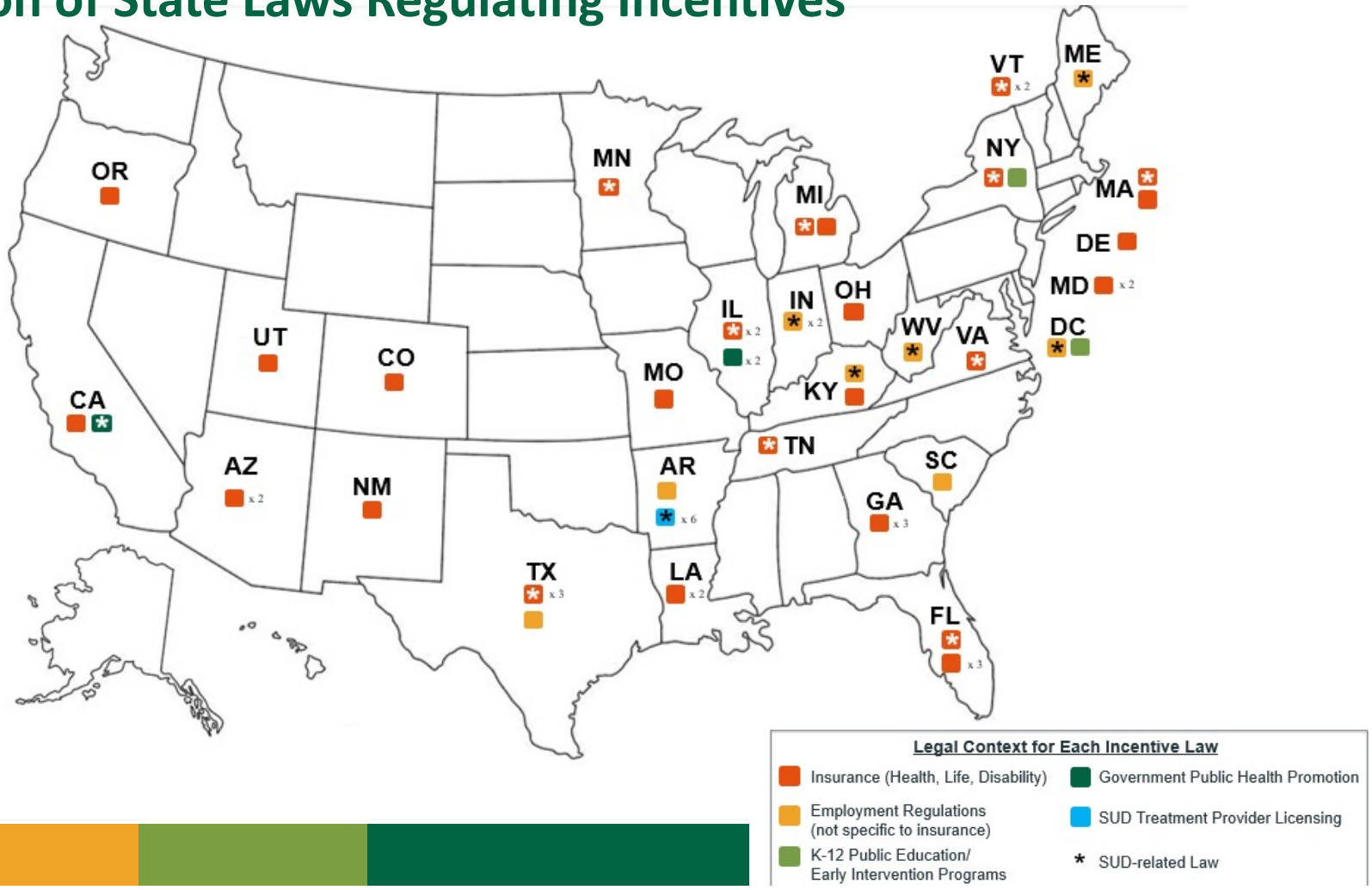
Results: Laws regulating incentives for any health outcomes/behaviors

We identified a total of **57 laws from 29 jurisdictions (11 rural*)** that explicitly permit provision of incentives to patients, employees, or insurance beneficiaries for *any* health behaviors or outcomes.

These laws occur in five contexts:

- **Health, life, or disability insurance**
- **Employment**
- **Government public health promotion**
- **K-12 public education/early childhood intervention**
- **SUD treatment provider licensing**

Distribution of State Laws Regulating Incentives



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Results: Laws regulating incentives for any health outcomes/behaviors

Most of the SUD-related laws (15 of 27) specifically name **tobacco** use as the SUD for which incentives apply.

> e.g., **Virginia** law says, "A wellness program may include…a program that reimburses individuals for the cost of **smoking cessation programs** without regard to whether the individual quits smoking"
>
> (Virginia Code Annotated, Va. Code Ann. § 38.2-3454)

Remaining SUD-related laws (12 of 27) explicitly encompass **multiple/any/all SUDs** as the target.

> e.g., **Florida** law says, "Each plan operating in the managed medical assistance program shall establish a program to encourage and reward healthy behaviors. At a minimum, each plan must establish a medically approved smoking cessation program, a medically directed weight loss program, and a medically approved **alcohol or substance abuse recovery program**."
>
> (Florida Statutes Annotated, Fla. Stat. § 409.973(3))

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Results: Laws regulating incentives for any health outcomes/behaviors

Types of incentives permitted depends on the state but might explicitly include:

- Cash dividends or monetary rewards
- Debit cards
- Gift cards
- Reimbursement of costs
  - Cost of fitness, smoking cessation, stress management, or other health programs
- Contributions to health savings accounts; and reductions in copayments, coinsurance, or deductibles.

Note: some incentives may be more or less appropriate in rural areas

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Results: Laws regulating incentives for any health outcomes/behaviors, cont.

In some instances, laws explicitly permitting financial incentives include monetary limits.

e.g., **Texas** law says, "The reward for the outcome-based wellness program, coupled with the reward for other health-contingent wellness programs with respect to the plan, **must not exceed in total value 30 percent of the cost** of employee-only or member-only coverage under the plan."

(Texas Administrative Code, 28 TAC § 21.4708(b)(1))

e.g., **Missouri** limits wellness program incentives for state insurance beneficiaries to a **$25 discount on monthly premiums**, although "*de minimis*" gifts for specific behaviors detailed

(Missouri Code of State Regulations, 22 CSR 10-2.120)

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Results: Laws regulating incentives for any health outcomes/behaviors

Laws permitting insurers to offer incentives generally allow them to choose the health behavior or outcome they wish to target

> e.g., **Georgia** law allows insurers offering high deductible plans to enhance "affordability" by providing incentives for beneficiary "participation in and adherence to **health behaviors that recognize the value of the personal responsibility of each citizen to maintain good health, seek preventive care services, and comply with approved treatments**"
>
> (Official Code of Georgia Annotated, O.C.G.A. § 33-51-2)

Rarely, state laws limit the types of behaviors or outcomes for which an incentive can be provided (e.g., participation in health education programs only).

Some states require that certain health behaviors or outcomes *must* be incentivized in wellness programs (e.g., tobacco cessation in **West Virginia**)

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Results: Laws regulating incentives for any health outcomes/behaviors

Several states explicitly clarify that wellness program incentives do not violate ethics laws, such as prohibitions against unethical advertising practices, prohibitions against patient inducement, and/or illicit use of public funds for gifts.

> e.g., a **New Mexico** law says, "No health care insurer shall use monetary or other valuable consideration, engage in misleading or deceptive practices, or make untrue, misleading, or deceptive representations to applicants in order to induce enrollment… **Inducements do not include incentives specified or provided for in the MHCP contract given to covered persons and to promote the delivery of preventive care or other health improvement activities**."
>
> (New Mexico Administrative Code, 13.10.23.13 NMAC(E))

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Discussion

- Incentives are already explicitly permitted in many contexts.
  → **Why are incentives so controversial for SUD treatment?**

- **No state had laws that *explicitly prohibited* SUD-related incentives**,
  and some states actually required incentives (typically in health insurer context)

- 8 largely-rural states* had laws that ***explicitly permitted*** **SUD-related incentives**
  - AR, IN, KY, ME, MI, TN, VT, WV

- 34 states **did not address the topic of SUD-related incentives**
  - 12 states have only non-SUD incentive laws
  - 22 states have no incentive-related laws at all

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Discussion, cont.

- **Model law should be designed** permitting incentives for SUD treatment/outcomes. Potentially important components:
  - Explicit exception from violation of ethics laws
  - Types of health conditions/outcomes/behaviors to which the law applies
  - Types of incentives permitted and limits on the incentives (if appropriate)
- Some existing wellness program laws (health insurance context) might already implicitly include SUD treatment/outcomes
- 11 largely-rural states* already have laws explicitly permitting incentives for health behaviors/outcomes generally – typically via insurer wellness programs
  - AR, KY, LA, ME, MI, MN, MO, SC, TN, VT, WV

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Research Limitations

- 2022 (outdated?)
- **Federal** law not examined
- State **guidelines** not examined
- **Generic anti-kickback laws, anti-inducement** laws not examined

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Thank you!
Questions?

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