Telemedicine Consent & Retention Checklist

Run before launch and before adding recording or an AI scribe. The layers stack — one signature never covers all four. Engineering guidance, not legal advice.

1 · THE FOUR CONSENTS — capture each separately

- ☐ Telehealth informed consent: state-specific text (45 states + DC), verbal or written per state; re-prompt when the patient's state or the modality changes
- ☐ Medicare virtual services: beneficiary consent captured, may be annual, ancillary staff allowed
- ☐ HIPAA authorization (§164.508) for any non-TPO use — marketing, sale, model training: six core elements, signed, expiring, revocable; patient gets a copy
- ☐ 42 CFR Part 2 (compliance 2026-02-16): TPO consent + separate SUD-counseling-notes consent; never bundled with legal-proceedings consent
- ☐ Treatment never conditioned on signing an authorization (§164.508(b)(4))

2 · RECORDING — wiretap law + product enforcement

- ☐ Treat every multi-state call as all-party consent: every participant agrees before capture
- ☐ Consent exists as a logged event — identity, text version, role, scope, time, method; never as template boilerplate in the note
- ☐ No event = no recording, enforced by the recording service itself
- ☐ Persistent indicator + announced start; mid-call joiners pause or re-prompt
- ☐ AI scribes are recorders: notify before capture (NY 2025); separate health-data consent where required (WA)
- ☐ Revocation as easy as the grant — stops future capture and pending non-TPO uses, logged

3 · RETENTION — strictest applicable clock wins

- ☐ Written retention policy per artifact × jurisdiction × patient age; the policy itself sits on the 6-year documentation clock (§164.530(j))
- ☐ State medical-record laws: 5–10 years typical (3 to 20+); minors: majority + adult period
- ☐ CMS hospitals: ≥5 years (42 CFR §482.24(b)(1)); Medicare managed-care audits reach back 10
- ☐ Signed authorizations and consent events kept 6 years (§164.508(b)(6))
- ☐ Recording posture decided before launch: clinical artifact (medical-record clock, in access scope) or QA-only (30–90-day auto-delete, never used for care)

4 · ACCESS & DELETION — §164.524 · §164.310(d)(2)

- ☐ Designated-record-set map documented: which systems hold chart data, recordings, transcripts (§164.524(e))
- ☐ Access workflow: ID verification → assemble bundle (recordings in a playable format) → deliver; 30 days, one 30-day extension, cost-based fee only
- ☐ Deadline tracker pages an owner at day 20 — the clock has no pause button
- ☐ Deletion fans out through the lineage map: replicas, backups, transcripts, indexes, caches; NIST SP 800-88 sanitization (crypto-erase)
- ☐ Disposal event logged — what, when, policy, method — kept 6 years; nothing deleted before its clock ends, even on patient request

PER-ARTIFACT WORKSHEET — one line per artifact type (video, transcript, AI summary, chat, files), file with your risk analysis

Artifact _____ · In record set ✓/✗ · Consent layers cleared ____ · Retention clock _____ · Delete method _____ · Access export ready ✓/✗