

April 6, 2020

### Providing Telehealth Services During the COVID-19 Public Health Emergency

On March 17, 2020, the Department of Health and Human Services (HHS) announced unprecedented steps to expand access to telehealth services during the COVID-19 public health emergency. The Centers for Medicare and Medicaid Services (CMS) expanded Medicare coverage for telehealth visits, the HHS Office for Civil Rights (OCR) announced it will waive potential penalties under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) for good faith use of telehealth during the COVID-19 public health emergency, and the HHS Office of Inspector General (OIG) provided flexibility for healthcare providers to reduce or waive beneficiary cost-sharing for telehealth visits paid by federal healthcare programs.

In its Notification of Enforcement Discretion, OCR, the entity that is responsible for enforcing certain regulations issued under HIPAA, indicated that covered health care providers subject to the HIPAA rules *“may seek to communicate with patients, and provide telehealth services, through remote communication technologies. Some of these technologies, and the manner in which they are used by HIPAA covered health care providers, may not fully comply with the requirements of HIPAA Rules.”*<sup>1</sup>

OCR further indicated that it will exercise its enforcement discretion and *“will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with the good faith provision of telehealth during the COVID-19 nationwide public health emergency.”*<sup>2</sup>

Read the full announcement from OCR, which includes guidelines regarding telemedicine, [here](#).

OCR encourages providers to use HIPAA-compliant platforms whenever possible. However, OCR notes that “health care providers may use popular applications that allow for video chats, including Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, Zoom, or Skype, to provide telehealth without risk that OCR might seek to impose a penalty for noncompliance with the HIPAA Rules related to the good faith provision of telehealth during the COVID-19 nationwide public health emergency. Providers

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<sup>1</sup> Notification of Enforcement Discretion for telehealth remote communications during the COVID-19 nationwide public health emergency (2020). <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

<sup>2</sup> Notification of Enforcement Discretion for telehealth remote communications during the COVID-19 nationwide public health emergency (2020). <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

are encouraged to notify patients that these third-party applications potentially introduce privacy risks, and providers should enable all available encryption and privacy modes when using such applications.”<sup>3</sup>

**Additional Resources:**

Additional Guidance from OCR <https://www.hhs.gov/sites/default/files/february-2020-hipaa-and-novel-coronavirus.pdf>

HIPAA Security Safeguards <https://www.hhs.gov/hipaa/for-professionals/security/guidance/index.html>

HIPAA Training Materials <https://www.hhs.gov/hipaa/for-professionals/training/index.html>

SAMHSA-HRSA Telebehavioral Health Training and Technical Assistance

<https://www.integration.samhsa.gov/operations-administration/telebehavioral-health#1>

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<sup>3</sup> Notification of Enforcement Discretion for telehealth remote communications during the COVID-19 nationwide public health emergency (2020). <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>