

Notification of Enforcement Discretion for telehealth remote communications during the COVID-19 nationwide public health emergency- This notification is effective immediately.

The Office for Civil Rights (OCR) at the Department of Health and Human Services (HHS) is empowering medical providers to serve patients wherever they are during this national public health emergency.

During the COVID-19 national crisis, covered health care providers subject to the HIPAA Rules may seek to communicate with patients and provide telehealth services through remote communications technologies. Some of these technologies, and the way they are used by HIPAA-covered health care providers, may not fully comply with the requirements of the HIPAA Rules.

OCR will exercise its enforcement discretion and will not impose penalties for non-compliance 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.

A covered health care provider that wants to use audio or video communication technology to provide telehealth to patients during the COVID-19 nationwide public health emergency can use any non-public facing remote communication product that is available to communicate with patients.

OCR is exercising its enforcement discretion to not impose penalties for noncompliance with the HIPAA Rules in connection with the good faith provision of telehealth using such non-public facing audio or video communication products during the COVID-19 nationwide public health emergency.

This exercise of discretion applies to telehealth provided for any reason, regardless of whether the telehealth service is related to the diagnosis and treatment of health conditions related to COVID-19.

For example:

1. A covered health care provider in the exercise of their professional judgment may request to examine a patient exhibiting COVID- 19 symptoms.
2. Using a video chat application connecting the provider's or patient's phone or desktop computer to assess a more significant number of patients while limiting the risk of infection of other persons who would be exposed from an in-person consultation.
3. A covered health care provider may provide similar telehealth services in the exercise of their professional judgment to assess or treat any other medical condition, even if not related to COVID-19, such as psychological evaluation.

Under this Notice, covered health care providers may use popular applications that allow for video chats, including the below, to provide telehealth without the risk that OCR might seek to impose a penalty for non-compliance with the HIPAA rules.

1. Apple FaceTime
2. Facebook Messenger video chat
3. Google Hangouts video
4. Skype

Note: Providers 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.

Under this Notice: Public-facing video communication applications should not be used in the provision of telehealth by covered health care providers such as:

1. Facebook Live
2. Twitch
3. Tik Tok

Covered health care providers that seek additional privacy protections for telehealth while using video communication products should provide such services through technology vendors that are HIPAA compliant. As well, enter into HIPAA business associate agreements (BAAs) in connection with the provision of their video communication products.

The list below includes vendors that state they provide HIPAA-compliant video communication products and that they will enter into a HIPAA BAA.

1. Skype for Business
2. Updox
3. VSee
4. Zoom for Healthcare
5. Doxy.me
6. Google G Suite Hangouts Meet

Note: OCR has not reviewed the BAAs offered by these vendors, and this list does not constitute an endorsement, certification, or recommendation of specific technology, software, applications, or products. There may be other technology vendors that offer HIPAA-compliant video communication products that will enter a HIPAA BAA with a covered entity. Further, OCR does not endorse any of the applications that allow for video chats listed above. However, OCR will not impose penalties against covered health care providers for the lack of a BAA with video communication vendors or any other noncompliance with the HIPAA Rules that relate to the good faith provision of telehealth services during the COVID-19 nationwide public health emergency

For additional directives or resources, please see below.

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

<https://www.hhs.gov/hipaa/for-professionals/covered-entities/sample-business-associate-agreement-provisions/index.html>

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

<https://www.healthit.gov/telehealth>

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