



GUIDELINES FOR OCR ENFORCEMENT

**DISCRETION FOR
TELEHEALTH REMOTE
COMMUNICATIONS**

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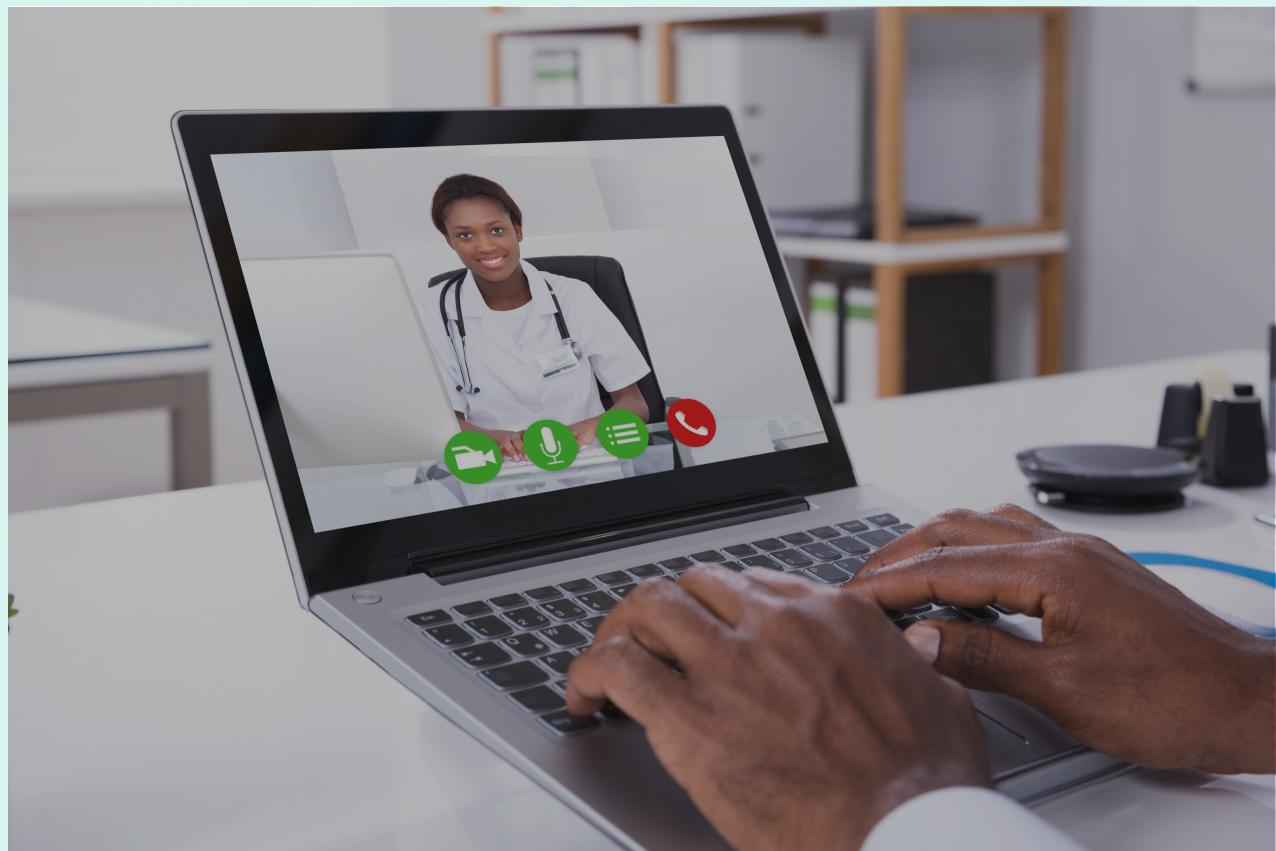
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L E A R N
M O R E

WHAT IS TELEHEALTH?

The Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services (HHS) defines telehealth as:

"The use of electronic information and telecommunications technologies to support and promote long-distance clinical health care, patient and professional health-related education, and public health and health administration. Technologies include videoconferencing, the internet, store-and-forward imaging, streaming media, and landline and wireless communications."



NOTIFICATION FROM THE OFFICE FOR CIVIL RIGHTS(OCR)

The Office for Civil Rights (OCR) has made it easier for all covered healthcare providers to participate in telehealth during the COVID-19 nationwide public health emergency. Their notification states:

"The Office for Civil Rights will not impose penalties for noncompliance with HIPAA Rules in connection with the good faith provision of telehealth using such non-public facing audio or video communication products."

IMPORTANT: Penalties will only not be imposed for telehealth related items. Penalties for non-compliance with other sections of the HIPAA regulations will still apply!





WHEN DOES THIS NOTIFICATION OF ENFORCEMENT DISCRETION REGARDING COVID-19 AND REMOTE TELEHEALTH COMMUNICATIONS EXPIRE?

The Notification of Enforcement Discretion does not have an expiration date. OCR will issue a notice to the public when it is no longer exercising its enforcement discretion based upon the latest facts and circumstances



WHO SHOULD EVALUATE USING TELEHEALTH IN THEIR ORGANIZATION?

All covered healthcare providers covered by HIPAA. HIPAA defines healthcare providers as:

"a provider of medical or health services (including hospitals and other facilities) or any other person or organization who furnishes, bills, or is paid for health care in the normal course of business." 145 C.F.R. § 160.103 (definitions)

This could be nurses, clinics, home health aides, laboratories, etc.

OCR'S EXERCISE OF DISCRETION APPLIES TO TELEHEALTH PROVIDED FOR ANY REASON

Covered healthcare providers may evaluate utilizing video chat applications to examine a patient exhibiting COVID-19 symptoms

- This can increase the number of patients a provider is able to assess
 - This can limit the risk of infecting others who could be exposed from an in-person consultation

Covered healthcare providers 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 a sprained ankle, dental consultation, psychological evaluation or other conditions

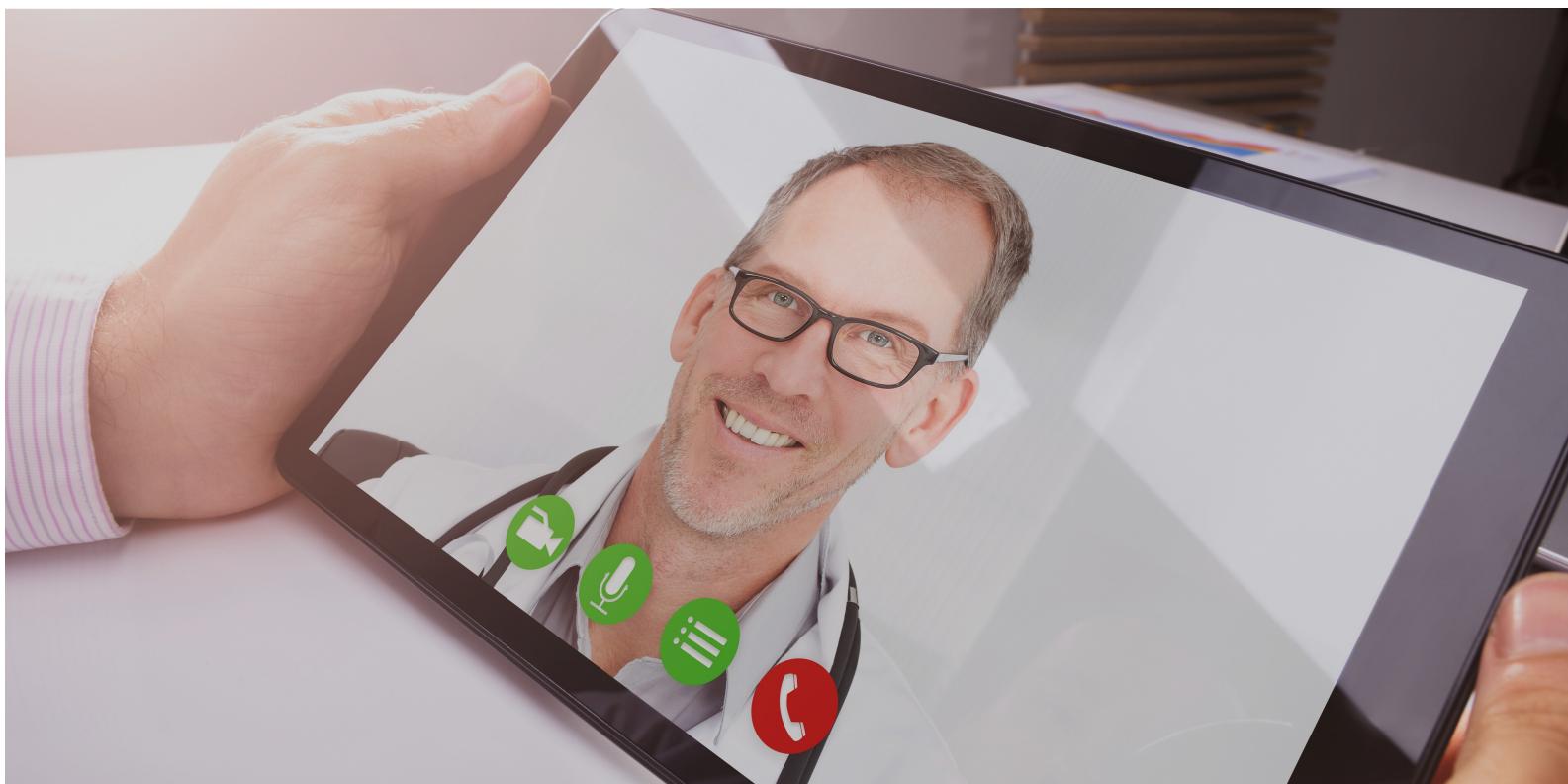


ARE THERE RESTRICTIONS ON REIMBURSEMENT FOR TELEHEALTH?

For purposes of reimbursement, certain payors, including Medicare and Medicaid, may impose restrictions on the types of technologies that can be used. Those restrictions do not limit the scope of the HIPAA Notification of Enforcement Discretion regarding COVID-19 and remote telehealth communications

CMS has provided the following resources to help understand reimbursement for telehealth:

- <https://www.cms.gov/files/document/03052020-medicare-covid-19-fact-sheet.pdf>
- <https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>



HOW CAN YOU START UTILIZING TELEMEDICINE IN YOUR ORGANIZATION?

- ◆ Healthcare providers may use popular **non-public** applications that allow for video chats, including Apple Facetime, Facebook Messenger video chat, Google Hangouts video, or Skype to provide telehealth
- ◆ Providers are encouraged to notify patients that these third-party applications potentially introduce privacy risks
- ◆ Enable encryption and privacy modes in video chatting applications when possible
- ◆ Public-facing communication applications such as Facebook live, Twitch, or TikTok should **not** be used
- ◆ Healthcare providers that seek additional privacy protections for telehealth should use video communication technology vendors that are HIPAA compliant and will sign a Business Associate Agreement

ADVICE FOR IMPLEMENTING TELEHEALTH

- ◆ Before video chatting with a patient, get verbal consent to the video chat and note that in the EMR/patient's chart
- ◆ If possible, try to keep telehealth conversations professional and private. Avoid having conversations in public areas as much as possible
- ◆ See if there are ways to minimize the bandwidth on each app used. The Internet is being stressed right now, and video can be choppy
- ◆ You should have an app ready to use and available in the office for iPhone, Android and PC. Each patient should be able to use at least one of these devices
- ◆ Develop instructions for each app that can be sent to the patient via email. They may need to download an app from an app store
- ◆ Make sure the patient has Wi-Fi on their phone to assure the best video quality



HEALTH AND HUMAN SERVICES (HHS) RESOURCES FOR COVID-19 NOTIFICATION OF ENFORCEMENT DISCRETION

NOTIFICATION OF ENFORCEMENT DISCRETION ANNOUNCEMENT

<https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

FAQ ON TELEHEALTH AND HIPAA DURING THE COVID-19 NATIONWIDE PUBLIC HEALTH EMERGENCY

<https://www.hhs.gov/sites/default/files/telehealth-faqs-508.pdf>



QUESTIONS? LOOKING FOR MORE INFORMATION?
WE'RE HERE TO HELP! CONTACT US:

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