Telehealth HIPAA Waiver Update

Background

The general principles of telehealth remain intact and the waivers only eliminate certain limitations of the service during the COVID-19 pandemic. Providers may find the Telehealth Start Up Guide helpful in implementing new telehealth services. This document can be accessed at:

https://www.healthit.gov/sites/default/files/telehealthguide_final_0.pdf

The American Medical Association (AMA) has designed a quick guide to support physicians and practices in expediting the implementation of telemedicine which can be found at:

https://www.ama-assn.org/practice-management/digital/ama-quick-guide-telemedicine-practice

Health and Human Services (HHS) released a bulletin that further discusses the HIPAA issues associated with telehealth services.[1] We have shared key paragraphs from this bulletin below, however providers may access the full document at the referenced website.

During the COVID-19 national emergency, which also constitutes a nationwide public health emergency, 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 manner in which 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 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. This notification is effective immediately.

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.

Under this Notice, covered health care providers may use popular applications that allow for video chats, including Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, 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 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, however, Facebook Live, Twitch, TikTok, and similar video communication applications are public facing, and should not be used in the provision of telehealth by covered health care providers.

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

Skype for Business

Updox

VSee

Zoom for Healthcare

Doxy.me

Google G Suite Hangouts Meet

Guidance

✓ Share guidelines with physician practices within the health system.

✓ Confirm only non-public facing remote communication products are in use.

✓ Notify patients that these third-party applications potentially introduce privacy risks.

✓ Review guidelines with the Compliance Department and determine if Business Associate Agreements will be required and execute as appropriate.

Source

1. CPT Assistant, Special Edition, Volume 30, 2020. ◼