



Teletherapy Best Practices – COVID 19 Pandemic

Generally speaking, your policy with our agency covers you for all **professional services** rendered, subject to the exclusions and limitations of the policy. For coverage purposes, *it is irrelevant whether the treatment rendered is conducted face to face or via a teletherapy platform*, provided that all state and federally imposed regulations (if any) are followed. Since the rules vary from *state to state* and are rapidly evolving, we encourage you to **check with your specific licensing board** to confirm the requirements of your jurisdiction/profession.

While rules may be relaxed due to the current public health emergency, we continue to recommend the following best practices:

- 1) **Use of a HIPAA compliant teletherapy platform.** The Office of Civil Rights issued a bulletin on 03/17/2020, copy attached, advising that they would not impose penalties for noncompliance with regulatory requirements under HIPAA as it relates to the good faith provision of teletherapy services during this nationwide public health emergency. This, however, may not render you immune from prosecution on the state level or indemnify you for a claim or lawsuit brought by a client. *Thus, we continue to recommend that you utilize a HIPAA compliant platform.*
- 2) Have your client execute a separate “**teletherapy consent form**”. This consent must specify the client’s consent to treat via teletherapy and highlight the potential risks of same (i.e. session can be interrupted by loss of service/signal; someone could potentially hack the session and eavesdrop, etc.) While we cannot endorse any specific product and have no experience with these specific platforms, oftentimes, teletherapy platforms such as www.simplepractice.com and www.counsol.com, amongst the many others, have sample teletherapy consent forms.
- 3) Ensure that your client is **physically located within a state that you are licensed**, or seek reciprocity or exemption to licensure on a permanent or temporary basis, or ensure that your licensure requirements have been lifted due to the current pandemic.
- 4) Familiarize yourself with **emergency resources** in the immediate vicinity of your clients’ locations in the event of a crisis or emergency (i.e. police department, hospital emergency room).
- 5) **Confirm** that your client’s insurance carrier allows for teletherapy and ascertain whether a CPT modifier is needed to properly bill them.

Notification of Enforcement Discretion for telehealth remote communications during the COVID-19 nationwide public health emergency

We are empowering medical providers to serve patients wherever they are during this national public health emergency. We are especially concerned about reaching those most at risk, including older persons and persons with disabilities. – Roger Severino, OCR Director.

The Office for Civil Rights (OCR) at the Department of Health and Human Services (HHS) is responsible for enforcing certain regulations issued under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act, to protect the privacy and security of protected health information, namely the HIPAA Privacy, Security and Breach Notification Rules (the HIPAA Rules).

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.

For example, a covered health care provider in the exercise of their professional judgement may request to examine a patient exhibiting COVID-19 symptoms, using a video chat application connecting the provider's or patient's phone or desktop computer in order to assess a greater number of patients while limiting the risk of infection of other persons who would be exposed from an in-person consultation. Likewise, 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 a sprained ankle, dental consultation or psychological evaluation, or other conditions.

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.

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 and will enter into HIPAA business associate agreements (BAAs) in connection with the provision of their video communication products. The list below includes some vendors that represent that 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

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 into a HIPAA BAA with a covered entity. Further, OCR does not endorse any of the applications that allow for video chats listed above.

Under this Notice, 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 relates to the good faith provision of telehealth services during the COVID-19 nationwide public health emergency.

OCR has published a bulletin advising covered entities of further flexibilities available to them as well as obligations that remain in effect under HIPAA as they respond to crises or emergencies at <https://www.hhs.gov/sites/default/files/february-2020-hipaa-and-novel-coronavirus.pdf> - PDF.

Guidance on BAAs, including sample BAA provisions, is available at <https://www.hhs.gov/hipaa/for-professionals/covered-entities/sample-business-associate-agreement-provisions/index.html>.

Additional information about HIPAA Security Rule safeguards is available at <https://www.hhs.gov/hipaa/for-professionals/security/guidance/index.html>.

HealthIT.gov has technical assistance on telehealth at <https://www.healthit.gov/telehealth>.

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