

# Compliance in the Age of COVID-19: HIPAA

**During the COVID-19 public health emergency, OCR will not impose penalties against covered health care providers for non-compliance with HIPAA when providing telehealth services in good faith.**

In the midst of the COVID-19 public health emergency, health care providers are tasked with the delicate balance of maintaining compliance with federal laws and regulations while also adapting to emergency rules designed to enhance safety. As part of the response to COVID-19, CMS has temporarily expanded the availability of telehealth services including who may offer telehealth and the types of services that may be reimbursed when provided remotely.

In an effort to encourage the use of remote services and reduce transmission of COVID-19, the HHS Office for Civil Rights (OCR) has announced that it will exercise enforcement discretion and waive penalties for HIPAA violations against health care providers that serve patients **in good faith** through everyday communications technologies during the COVID-19 nationwide public health emergency. This enforcement discretion will be applied to any use of telehealth for the duration, even if not related to COVID-19.

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. This include many popular applications that allow for video chats, including Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, or Skype. 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.

Note that certain video communications such as Facebook Live, Twitch, TikTok, and others are public facing, and thus should **not** be used in the provision of telehealth by covered health care providers.

Notwithstanding the temporary waiver of penalties, health care providers are strongly encouraged to use video communication products through technology vendors that are HIPAA compliant and will enter into HIPAA business associate agreements (BAAs) in connection with their product. 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

Individual health care organizations should always review the BAA offered by the vendor to ensure it meets the standards identified in HIPAA. However, during the COVID-19 public health emergency, OCR will not impose penalties against covered health care providers for the lack of a BAA with a video communication vendor.