

## Telehealth Information Paper

September 2021

On March 17, 2020, Health and Human Services (HHS) and The Office for Civil Rights (OCR) issued a waiver notification that OCR would 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. The public health emergency declaration and the enforcement discretion is still in place as of the date of this Information Paper. This enforcement discretion applies to telehealth treatment or diagnostic purposes regardless of whether the telehealth service is directly related to COVID-19.

Prior to this waiver, the HIPAA security rule required certain safeguards to be in place before video conferencing was used for telemedicine. An example safeguard is point-to-point encryption for the video connection thereby securing the patient's privacy. With this enforcement discretion, OCR will not penalize the Covered Entity for noncompliance with the HIPAA rules in connection with the good faith provision of telehealth using commercial non-public facing audio and video communication.

A non-public facing remote communication product is one that allows only the intended parties to participate in the communication, whether it is audio or video. Video is preferred, but there may be reasons remote communication is accomplished by audio only. For instance, WiFi may not be available, equipment may not be video capable, or access is limited. These non-public facing platforms employ end-to-end encryption, which allows only an individual and the person with whom the individual is communicating to hear or see what is transmitted. In addition, these platforms support individual user accounts, logins, and passcodes to limit access and verify participants. Nevertheless, providers should notify patients of potential privacy risks associated with these third-party applications. Use of these commercial platforms is optional, there is no training available, and MTF Commanders/Directors must weigh the risk/benefit of using them with the value they provide to their COVID-19 care strategy. The only three non-public facing video platforms authorized for use by military covered entities during this COVID-19 emergency declaration are:

- Apple Facetime
- Google Duo
- Microsoft Skype

Video-conferencing capabilities already in place and available for use by military covered entities include Adobe Connect and CMS (Cisco Meeting Server) Cisco System.

On the other hand, public-facing platforms are not acceptable forms of remote communication for telehealth because they are designed to be open to the public and allow wide access to the communication. In other words, there is no confidentiality for the provider to patient communication. Examples of public-facing platforms are:

- TikTok
- Facebook Live
- Twitch
- Public Chat Rooms

These public-facing platforms are strictly prohibited for use by military covered entities.

During this enforcement discretion period by HHS/OCR, Covered Entities will not be subject to penalties for violations of the HIPAA Privacy, Security, and Breach Notification rules that occur during the good faith use of telehealth medicine using the non-public facing platforms. None-the-less, health care providers should conduct telehealth in private settings, such as a doctor's office to a patient's home. Providers should always use private locations and patients should not receive telehealth services in public or semi-public settings, except in exigent circumstances and with the patient's consent. If a private setting cannot be used, implement reasonable HIPAA safeguards to limit incidental uses and disclosures. Reasonable precautions include using lowered voices, not using the speakerphone, or having the patient move to a reasonable distance from others while discussing PHI.

In summary, using commercial non-public facing audio or video teleconferencing platforms is only authorized for use while this COVID-19 nationwide public health emergency remains in place. Using these platforms is optional and at the discretion of the MTF Commander/Directors. Authorized non-public facing video platforms include FaceTime, Google Duo, and Microsoft Skype. If you have questions about Telehealth procedures, please contact your HIPAA Privacy Officer or the DHA Privacy Office at the address listed below.



## Reference:

- DHA Memorandum, SUBJECT: Tiered Telehealth Health Care Support for COVID-19, dated March 27, 2020, signed by LTG Ronald J. Place.
- *OCR Announces Notification of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency* - March 17, 2020

*If you have any questions about any of the information above, please contact the DHA Privacy Office at: [DHA.PrivacyMail@mail.mil](mailto:DHA.PrivacyMail@mail.mil).*

