

HIPAA Do's and Don'ts for Telehealth

During and After the Public Health Emergency (PHE) for COVID-19

CHOOSING TELEHEALTH TECHNOLOGY

• During the PHE

DO **Providers can select technology that is most effective and accessible for the patient.** It is recommended to use HIPAA-compliant technology as much as possible. Providers are encouraged to notify patients if they use third-party applications or methods that could potentially introduce privacy risks. Providers should enable all available encryption and privacy modes when using such applications.

LONG TERM GOAL: Implement and use technology that provides a secure connection and the vendor signs a HIPAA business associate agreement.

• After the PHE

DON'T **Don't assume this flexibility will last forever.** The Office of Civil Rights has indicated that HIPAA flexibilities with telehealth technology options would likely go away when the PHE is over. You will be required to use technology that is HIPAA-compliant with a company that will sign a business associate agreement.

INFORMED CONSENT FOR TREATMENT

• During the PHE

DO **In Arkansas, consent for treatment for telehealth can be verbal, but the response from the patient must be documented.** The consent must give the patient all information that will enable the patient to enable the patient to knowledgeably evaluate the options available and the risks inherent in the practice of telemedicine.

TIP: What should informed consent include? You will want to explain how telemedicine works, who will be treating the patient, what type of technology is being used and what information may be shared over telemedicine. You can list the benefits of telemedicine, but you will also want to list the possible risks and what the patient should do in the event of technical difficulty or emergency.

ASK THE PATIENT: Do you give consent for me or the provider to treat you through video or on the phone today?

• After the PHE

DO **Check your state requirements for informed consent for telehealth as they could change after the PHE.** Make it a habit to get written consent in pre-visit scheduling workflows. Consent forms could be provided on the website or through the portal for the patient to complete prior to a telehealth appointment. Update the consent form to include telehealth risks and considerations.

LONG TERM GOAL: Gather written consent for telehealth services prior to the visit.

HIPAA Do's and Don'ts for Telehealth During and After the Public Health Emergency (PHE) for COVID-19 (CONTINUED)

BEST PRACTICE FOR ALL TELEHEALTH VISITS

- **Confirm patient identity**

DO At the beginning of the telehealth visit, do confirm the patient identity before sharing patient information.

Ask the patient to give you identifiers to make sure they are the correct patient: name, date of birth, address, etc. If there are others in the room with the patient, ask them to introduce themselves and document their attendance.

- **Confirm patient identity**

DON'T Don't assume you have the correct patient for the visit.

Always confirm patient identity.

- **Share staff identity**

DO After you confirm the patient identity and others in the patient's room are introduced, identify all persons in the provider room including nurses, providers and support staff.

- **Share staff identity**

DON'T Don't assume that the patient or their visitors know the provider or staff members.

Always introduce yourself.

- **Secure room**

DO Encourage patients to attend telehealth visits in a secure room. Also, let the patient know that you have taken steps to secure your room, the security of the technology you are using and any precautions you have taken to keep their patient information secure. Even with precautions, there are potential risks to using this technology, including interruptions, privacy risk and technical difficulties.

ASK THE PATIENT: Before we begin the visit, for the security of your information, is your room secure where no one else can hear us?

- **Secure room**

DON'T Doing telehealth visits in public areas or in group settings where others can overhear patient information is discouraged for protection of privacy.

HIPAA Do's and Don'ts for Telehealth During and After the Public Health Emergency (PHE) for COVID-19 (CONTINUED)

FORMS TO GATHER FROM THE PATIENT BEFORE TELEHEALTH VISIT

Provide patients access to forms on your clinic website or through the patient portal for easy access.

- 1 Consent for treatment (update content to include telehealth visits).
- 2 Provide Notice of Privacy Practice to new patients and gather acknowledgment of receipt. Also, provide to patients after the content has been updated. The same Notice requirements apply to telehealth visits as office visits.
- 3 Guarantor statement or payment arrangements including co-pays or deductibles.
- 4 CMS Questionnaires (Medicare) as needed.
- 5 Updated history or medication list.



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