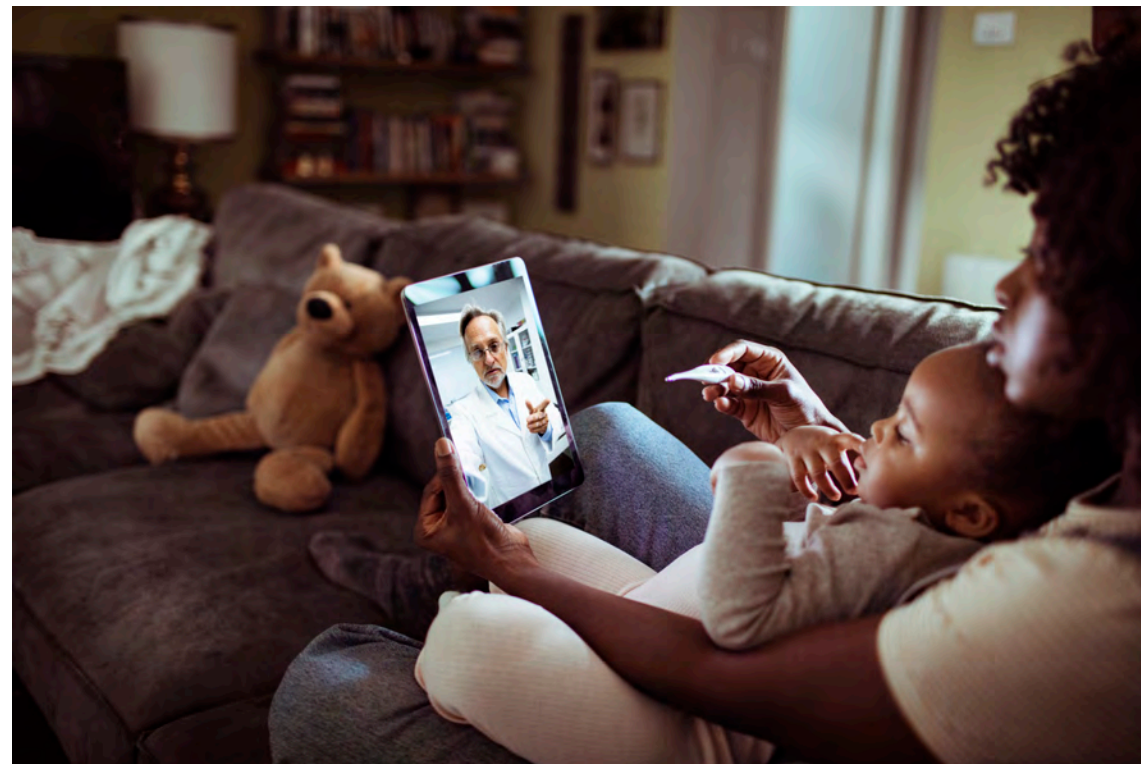


HIPAA Considerations for Telehealth

During and After COVID-19

July 9, 2020



Today's Presenter



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This presentation is for educational purposes only, as well as to provide general information and understanding of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). This presentation is not intended to provide legal advice and should not be used as a substitute for legal advice from a licensed professional attorney in your state.


Abbreviations

- App – Application download on mobile device
- BAA – Business Associate Agreement
- FAQs – Frequently asked questions
- HHS – Department of Health and Human Services
- HIPAA – Health Insurance Portability and Accountability Act
- OCR – Office of Civil Rights
- PHE – Public Health Emergency for COVID-19

What does that mean?



HIPAA Updates from OCR/HHS



The screenshot shows the HHS.gov website with the following elements:

- Header:** HHS.gov, Health Information Privacy, U.S. Department of Health & Human Services.
- Search Bar:** "I'm looking for..." with a search icon and "HHS A-Z Index" link.
- Navigation:** Buttons for "HIPAA for Individuals", "Filing a Complaint", "HIPAA for Professionals", and "Newsroom".
- Breadcrumbs:** HHS > HIPAA Home > For Professionals > Special Topics > HIPAA & COVID-19.
- Left Sidebar:** A list of categories including HIPAA for Professionals, Regulatory Initiatives, Privacy, Security, Breach Notification, Compliance & Enforcement, Special Topics (expanded to show HIPAA and COVID-19), Mental Health & Substance Use Disorders, De-identification Methods, Research, Public Health, and Emergency Response.
- Main Content:**
 - Title:** HIPAA and COVID-19
 - Image:** A 3D rendering of a coronavirus particle.
 - Text:** "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."
 - Text:** "The HHS Office for Civil Rights (OCR) has provided Bulletins, Notifications of Enforcement Discretion, Guidance, and Resources that help explain how patient health information may be used and disclosed in response to the COVID-19 nationwide public health emergency."
 - Section Header:** OCR HIPAA Announcements Related to COVID-19:

- <https://www.hhs.gov/hipaa/for-professionals/special-topics/hipaa-covid19/index.html>

Telehealth During COVID-19

3/17/2020

- **Notification of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency**

- <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

3/20/2020

- **OCR Issues Guidance on Telehealth Remote Communications Following its Notification of Enforcement Discretion (FAQs)**

- <https://www.hhs.gov/sites/default/files/telehealth-faqs-508.pdf>

Telehealth During COVID-19 - Expiration

When does the Notification of Enforcement Discretion regarding COVID-19 and remote telehealth communications expire?

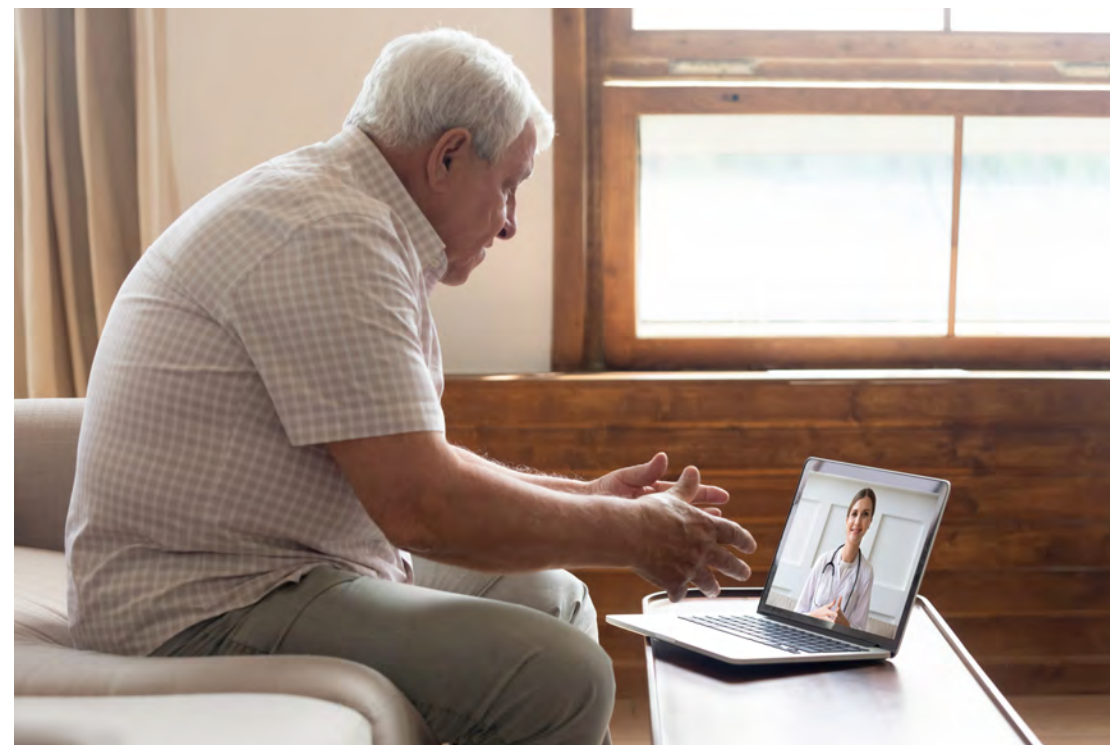
- The Notification of Enforcement Discretion does not have an expiration date. OCR will issue a notice to the public when it is no longer exercising its enforcement discretion based upon the latest facts and circumstances.

OCR Telehealth FAQs 3/20/2020

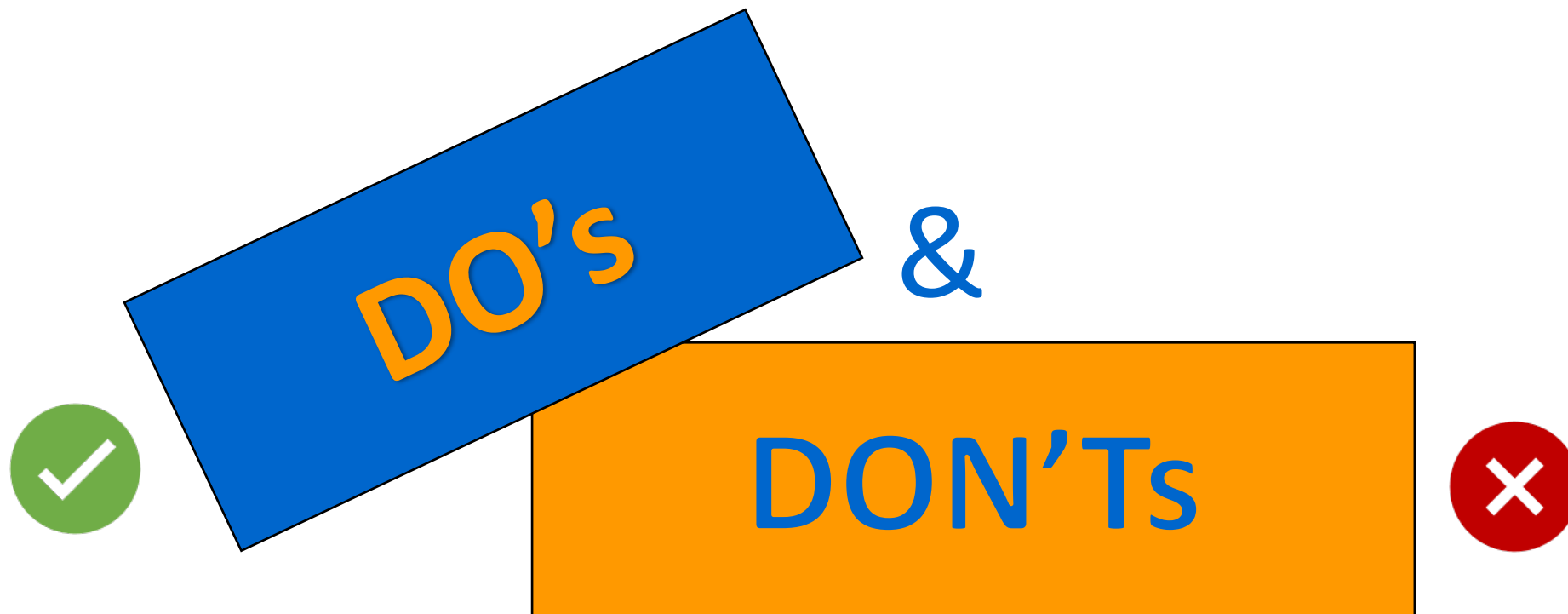
OCR Telehealth During the PHE

*“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.”*

OCR Telehealth Notice 3/17/2020



HIPAA Do's and Don'ts of Telehealth



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 consistently use technology that provides a secure connection with a vendor who signs a HIPAA BAA.

Choosing Telehealth Technology



During and after the PHE: DO

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/Microsoft Teams
- Updox
- VSee
- Zoom for Healthcare
- Doxy.me
- Google G Suite Hangouts Meet
- Cisco Webex Meetings / Webex Teams
- Amazon Chime
- GoToMeeting
- Spruce Health Care Messenger

▪ **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.

OCR Telehealth Notice 3/17/2020

Choosing Telehealth Technology



During the PHE: DO

■ Non-public facing remote communication products:

- Apple FaceTime
- Facebook Messenger video chat
- Google Hangouts video
- WhatsApp video chat
- Zoom
- Skype

■ Texting apps:

- Signal
- Jabber
- Facebook Messenger
- Google Hangouts
- WhatsApp
- iMessage

Choosing Telehealth Technology



During and after the PHE: **DON'T**

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.

OCR Telehealth notice 3/17/2020

Choosing Telehealth Technology



After the PHE: DON'T

■ OCR has indicated that HIPAA flexibilities with telehealth technology options would likely go away when the PHE is over. You are required to use technology that is HIPAA-compliant with a company that will sign a BAA.

Choosing Telehealth Technology



- Review the technologies mentioned in the notice
- Document:
 - Process to choose telehealth methods
 - Efforts to get a BAA signed with the vendor
 - Verbal education to the patient when using nonsecure technology
 - Patient's verbal informed consent
 - Any other good faith efforts

Informed Consent for Treatment



During the PHE: DO

The consent must give the patient all information that will enable the patient to knowledgeably evaluate the options available and the risks inherent in the practice of telemedicine. **Check your state requirements** — they could change after the PHE.

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?

Informed consent for treatment



After the PHE: **DO**

- Consider getting written consent in pre-visit scheduling workflows. Consent form could be provided on website or through portal for patient to complete prior to telehealth appointment. Update consent form to include telehealth risks and considerations.

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

Best Practice for all Telehealth Visits



Confirm Patient Identity



Confirm patient identity: **DO**

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



Confirm patient identity: **DON'T**

- Do not assume you have the correct patient for the visit.
- Always confirm patient identity.

Share Staff 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

- Do not assume that the patient or their visitors know the provider or staff members.
- Always introduce yourself.

Secure Room



Secure room: DO

- Encourage patients to attend telehealth visits in a secure room.
- Let the patient know 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 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.

Additional Tips

- Print OCR guidance and place in policy and procedure manual
- Update policies and procedures or create a telehealth policy
- Documentation
- Waivers end when the public health emergency ends
- If in doubt, follow the HIPAA guidelines



Resources

Future notices, guidance and bulletins can be found on the HHS HIPAA, Civil Rights and COVID-19 website. Be sure and check this site often for updates. <https://www.hhs.gov/hipaa/for-professionals/special-topics/hipaa-covid19/index.html>



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

AFMC COVID-19 Updates and Resources

- Telehealth crosswalk for coding and billing assistance
- Telehealth and in-office scripts to encourage patient visits (customizable)
- Patient telehealth preparation handouts
- Webinar recordings
- Other resource links
 - Telehealth toolkits
 - HIPAA waivers
 - Treatment guidelines
 - CARES Act options
 - CDC resources

Check it out 

<https://afmc.org/covid-19-updates-and-resources/>

Questions?

