

REVISED 3/23/2020**Issue Brief: Telehealth and COVID-19 State of Emergency**

Guidance for healthcare providers related to the Coronavirus Disease 2019 (COVID-19) is changing rapidly. The ability for the Department of Health and Human Services (HHS) to waive or modify requirements related to telehealth was included in the Coronavirus Preparedness and Response Supplemental Appropriations Act passed by the U.S. Congress on March 6, 2020.

<https://www.congress.gov/bill/116th-congress/house-bill/6074/text?q=%7B%22search%22%3A%5B%22Coronavirus+Preparedness+and+Response+Supplemental+Appropriations+Act%22%5D%7D&r=1&s=1>

A national emergency was declared on March 13. On March 17, the Center for Medicare and Medicaid Services (CMS) announced the **official expansion of certain telehealth benefits to Medicare beneficiaries**. Health care providers must still comply with state telehealth laws and regulations, including professional licensure, scope of practice, standard of care, patient consent, as well as other payment requirements for non-Medicare beneficiaries. Details are available at

<https://www.cms.gov/newsroom/press-releases/president-trump-expands-telehealth-benefits-medicare-beneficiaries-during-covid-19-outbreak>

and at <https://www.modernhealthcare.com/medicare/cms-expands-medicare-telehealth-services-fight-covid-19>.

Some privacy requirements have also been relaxed. Information related to telehealth use and Health Insurance Portability and Accountability Act (HIPAA) is available at <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>. Providers are encouraged to notify patients if the technologies being used for telemedicine pose a privacy concern.

(3/23/2020 REVISED INFORMATION FOLLOWS) Details about **specific technologies that may be used** are addressed in the following statement from the HHS Office of Civil Rights in the Notification of Enforcement Discretion for Telehealth Remote Communications during the COVID-19 Nationwide Public Health Emergency at <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>.

In part:

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

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video, or Skype, to provide telehealth without risk that the Office for Civil Rights (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.

Additionally, 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.**

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.

The Federal Communications Commission has also **relaxed gift rules** related to vendor offerings of support. **Services and materials are allowed to be provided by vendors to improve capacity to improve telehealth** and support learning during this health care crisis. Related information can be accessed at <https://docs.fcc.gov/public/attachments/DOC-363137A1.pdf>

(END OF REVISED INFORMATION)

This CMS **fact sheet** provides concise information for providers: <https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet> . Of interest:

To the extent the 1135 waiver requires an established relationship, **HHS will not conduct audits to ensure that such a prior relationship existed** for claims submitted during this public health emergency.

CMS has posted **Frequently Asked Questions** attached in a link provided near the end of this press release: <https://www.cms.gov/newsroom/press-releases/president-trump-expands-telehealth-benefits-medicare-beneficiaries-during-covid-19-outbreak> . Of interest:

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www.omnisure.com
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Qualified providers who are permitted to furnish Medicare telehealth services during the Public Health Emergency include *physicians* and certain non-physician practitioners such as *nurse practitioners*, *physician assistants* and *certified nurse midwives*. Other practitioners, such as certified nurse anesthetists, licensed clinical social workers, clinical psychologists, and registered dietitians or nutrition professionals may also furnish services within their scope of practice and consistent with Medicare benefit rules that apply to all services. This is not changed by the waiver.

Telehealth-related news, information, policy updates, tools, and resources are also being provided by the American Telehealth Association related to COVID-19; please see the following:

<https://info.americantelemed.org/covid-19-news-resources>.

Updated (2019) **state-specific information** is provided in the report found at the following link:

<https://www.americantelemed.org/initiatives/2019-state-of-the-states-report-coverage-and-reimbursement/>. Additional information on telehealth is provided at <https://www.americantelemed.org/resource/why-telemedicine/>.

Risk reduction considerations for all professionals who use telehealth services:

- Practice within the scope of practice and associated guidelines for your profession
- Follow all rules, definitions, and directives of your state licensing or regulatory board, including interpretations
- Maintain compliance with all HIPAA standards (see relaxing of these standards above)
- You must be licensed to practice in the state where the PATIENT or CLIENT is located unless you live in one of 29 states that have adopted the Enhanced Nurse Licensure Compact (eNLC).
 - Nurses who hold a multi-state license from an eNLC member state can practice in all eNLC states, including telehealth practice. More information can be found at <https://www.ncsbn.org/11945.htm>.
- It is preferable to use telemedicine technologies that are integrated into your patient record system if possible
- Understand any factors that have impacted previously scheduled remote visits such as school-based therapy programs
- Be sure that your professional malpractice insurance provides coverage for telehealth services
- If you are providing telemedicine services for an agency for whom you are not employed, be clear about accountabilities and a formal agreement should be executed
- Pay attention to EMERGENCY AND DISASTER DIRECTIVES at the state and federal level that could impact use of telemedicine and payment for services.

PROFESSIONAL RESOURCES related to TELEHEALTH SERVICES

For Nurses

The American Nurses Association 2017 research and many links can be found at

<http://ojin.nursingworld.org/MainMenuCategories/ANAMarketplace/ANAPeriodicals/OJIN/TableofContents/Vol-22-2017/No2-May-2017/Nurses-Advancing-Telehealth-Services.html>

American Academy of Telehealth Nursing. <https://www.aacn.org/practice-resources/telehealth>

Nurses who hold a multi-state license from an eNLC member state can practice in all eNLC states, including telehealth practice. More information can be found at <https://www.ncsbn.org/11945.htm>

For Nurse Practitioners

For state-by-state practice information, utilize the following link from the American Association of Nurse Practitioners <https://www.aanp.org/practice/practice-information-by-state>

Rutledge, CM et al. (2017). Telehealth and eHealth in nurse practitioner training: current perspectives. *Adv Med Educ Pract*. 2017; 8: 399–409. doi: 10.2147/AMEP.S116071
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5498674/>

Melanie Balestra, JD, PNP. (2018). Telehealth and Legal Implications for Nurse Practitioners. *The Journal for Nurse Practitioners*. January 2018. Volume 14, Issue 1, Pages 33–39.
DOI: <https://doi.org/10.1016/j.nurpra.2017.10.003> OR
[https://www.npjjournal.org/article/S1555-4155\(17\)30808-5/pdf](https://www.npjjournal.org/article/S1555-4155(17)30808-5/pdf)

For Social Workers

Association of Social Work Boards 2017. Regulations impacting social work electronic practice.
<https://members.aswb.org/wp-content/uploads/2017/11/Regulations-for-social-work-electronic-practice-11.14.17.pdf>

For Counselors

Guidelines for the Practice of Telepsychology <https://www.apa.org/practice/guidelines/telepsychology>

Telehealth mental health services across state lines. <https://www.zurinstitute.com/telehealth-across-state-lines/>

Summary of state rules and regulations <https://telementalhealthtraining.com/states-rules-and-regulations>

For Occupational Therapists

Bierman, R.T. et. al. State Occupational and Physical Therapy Telehealth Laws and Regulations: A 50-State Survey. Int J Telerehabil. 2018 Fall; 10(2): 3–54. doi: 10.5195/ijt.2018.6269
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6296796/>

The American Occupational Therapy Association - Telehealth Resources
<https://www.aota.org/Practice/Manage/telehealth.aspx>

For Physical Therapists

Bierman, R.T. et. al. State Occupational and Physical Therapy Telehealth Laws and Regulations: A 50-State Survey. Int J Telerehabil. 2018 Fall; 10(2): 3–54. doi: 10.5195/ijt.2018.6269
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6296796/>

The American Physical Therapy Association – Telehealth <https://www.apta.org/telehealth/>

For Speech Therapists

The American Speech-Language-Hearing Association
<https://www.asha.org/Practice-Portal/Professional-Issues/Telepractice/> or
<https://www.asha.org/prpprinttemplate.aspx?folderid=8589934956>

For Dietitians

Commission on Dietetic Registration: Telehealth <https://www.cdrnet.org/telehealth>