

U.S Department of Health and Human Services (HHS) Announcement of Enforcement Discretion for Telehealth Remote Communications

The Office for Civil Rights at the U.S. Department of Health and Human Services (HHS) has announced that it will exercise its enforcement discretion and will waive potential penalties for HIPAA violations against health care providers that serve patients through everyday communication technologies during the COVID-19 public health emergency.

During this time, covered health care providers subject to HIPAA may provide telehealth services, in good faith, through remote communications technologies that may not fully comply with HIPAA requirements. This applies to telehealth provided for any reason, whether related to health conditions related to COVID-19 or not.

- What Telehealth Platforms Can I Use?

HHS states that covered health care providers can use any non-public facing remote communication product that is available to communicate with patients. This includes popular applications that allow for video chats, such as the following:

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

Providers are encouraged to notify patients that these third-party applications potentially introduce privacy risks. Providers should enable all available encryption and privacy modes when using these applications.

- What Platforms Are Still Prohibited?

HHS still prohibits using communication products that are public-facing. Therefore, do not use these types of platforms. Examples of public-facing communication products include, but are not limited to, the following:

- Facebook Live
- Twitch
- TikTok

- I Still Want to Use a HIPAA Compliant Telehealth Platform For My Practice. What Are Some Examples Of These?

HHS provides some examples of products that are HIPAA compliant and will enter into HIPAA business associate agreements (BAAs) in connection with the provision of their video communication products. (They stress that they have not reviewed the BAAs for the below entities, and that this is not an endorsement, certification, or recommendation):

- Skype for Business
- Updox
- VSee
- Zoom for Healthcare
- Doxy.me
- Google G Suite Hangouts Meet

- HHS Notes That HIPAA Applies Only to Covered Entities and Business Associates. How do I Know If It Applies To Me?

HHS provides the following bulletin. This topic is covered toward the end of Page 5: <https://www.hhs.gov/sites/default/files/february-2020-hipaa-and-novel-coronavirus.pdf>

- Where Can I Find More Information?

You can use the following links for more information from HHS:

<https://www.hhs.gov/about/news/2020/03/17/ocr-announces-notification-of-enforcement-discretion-for-telehealth-remote-communications-during-the-covid-19.html>

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

<https://www.hhs.gov/sites/default/files/february-2020-hipaa-and-novel-coronavirus.pdf>