



# Navigating Telehealth During the Coronavirus Outbreak

## Curi's Recommendations on Frequently Asked Questions

Updated March 19, 2020

Below is a summary of the questions that are addressed in this document. Please click on any question of interest to navigate directly to Curi's recommendations related to that question.

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## **Does my policy cover telehealth?**

Your Medical Professional Liability Insurance Policy with Curi **does cover telehealth visits** during this declared National Emergency—extending, without conditions, for the later of either sixty (60) days from March 16, 2020, or the lifting of the National Emergency declaration by our President. We urge all insured physicians utilizing telehealth modalities to please do the following:

- Use reasonable measures to protect the privacy and security of Protected Health Information;
- Check the medical board website in the state(s) in which you are practicing (see page 11 below), and follow any guidelines they have in place for such encounters;
- Keep a record of all such encounters (see page 3 below for a suggested chart disclaimer for each encounter);
- Provide telehealth services only to your established patients within your state of licensure(s).

*Telehealth visits that meet the above criteria **are covered** with no additional premium consideration during the time periods stated above.*



## **Is there any additional language I should include in my documentation?**

We (and a cross section of our outside defense counsel) strongly recommend practices incorporate the following language into any applicable notes by copy and paste.

*“On March 11, 2020, the World Health Organization declared the COVID-19 (Novel Coronavirus) viral disease to be a pandemic. As a result of this emergency, a rapidly evolving situation, practice patterns for physicians, physician assistants, and nurse practitioners are shifting to accommodate the need to treat in conjunction with unprecedented guidance from federal, state, and local authorities—which include, but are not limited to, self-quarantines and/or limiting physical proximity to others under any number of circumstances.*

*It is within this context (and with the understanding that this method of patient encounter is in the patient’s best interest as well as the health and safety of other patients and the public) that “telehealth” is being provided for this patient encounter rather than a face-to-face visit.*

*This patient encounter is appropriate and reasonable under the circumstances given the patient’s particular presentation at this time. The patient has been advised of the potential risks and limitations of this mode of treatment (including, but not limited to, the absence of in-person examination) and has agreed to be treated in a remote fashion in spite of them.*

*Any and all of the patient’s/patient’s family’s questions on this issue have been answered, and I have made no promises or guarantees to the patient. The patient has also been advised to contact this office for worsening conditions or problems, and seek emergency medical treatment and/or call 911 if the patient deems either necessary.”*



## **What are the newly expedited rules on implementing telehealth into our practice?**

Effective March 17, 2020, the U.S. Department of Health and Human Services Office for Civil Rights provided notice that during the COVID-19 nationwide public health emergency, covered healthcare providers may use popular video chat applications to provide telehealth without risk that OCR might seek to impose a penalty for noncompliance with HIPAA Rules related to the good faith provision of telehealth.

***Permitted applications include Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, or Skype. Curi recommends using a HIPAA-compliant vendor, but these other video chat solutions may be an appropriate interim solution for practices to use until a HIPAA-compliant telemedicine solution can be implemented.***

***Note the full text from the OCR below:***

**March 17, 2020**

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

*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.*



The Office for Civil Rights (OCR) at the Department of Health and Human Services (HHS) is responsible for enforcing certain regulations issued under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act, to protect the privacy and security of protected health information, namely the HIPAA Privacy, Security and Breach Notification Rules (the HIPAA Rules).

During the COVID-19 National Emergency, which also constitutes a nationwide public health emergency, covered health care providers subject to the HIPAA Rules may seek to communicate with patients, and provide telehealth services, through remote communications technologies. Some of these technologies, and the manner in which they are used by HIPAA covered health care providers, may not fully comply with the requirements of the HIPAA Rules.

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. This notification is effective immediately.

A covered health care provider that wants to use audio or video communication technology to provide telehealth to patients during the COVID-19 nationwide public health emergency can use any non-public facing remote communication product that is available to communicate with patients.



OCR is exercising its enforcement discretion to not impose penalties for noncompliance with the HIPAA Rules in connection with the good faith provision of telehealth using such non-public facing audio or video communication products during the COVID-19 nationwide public health emergency. This exercise of discretion applies to telehealth provided for any reason, regardless of whether the telehealth service is related to the diagnosis and treatment of health conditions related to COVID-19.

For example, a covered health care provider in the exercise of their professional judgement may request to examine a patient exhibiting COVID- 19 symptoms, using a video chat application connecting the provider's or patient's phone or desktop computer in order to assess a greater number of patients while limiting the risk of infection of other persons who would be exposed from an in-person consultation.

Likewise, a covered health care provider may provide similar telehealth services in the exercise of their professional judgment to assess or treat any other medical condition, even if not related to COVID-19, such as a sprained ankle, dental consultation or psychological evaluation, or other conditions.

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 video, or Skype, to provide telehealth without risk that 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.



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.

Covered health care providers that seek additional privacy protections for telehealth while using video communication products should provide such services through technology vendors that are HIPAA compliant and will enter into HIPAA business associate agreements (BAAs) in connection with the provision of their video communication products. 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.

Under this Notice, however, OCR will not impose penalties against covered health care providers for the lack of a BAA with video communication vendors or any other noncompliance with the HIPAA



Rules that relates to the good faith provision of telehealth services during the COVID-19 nationwide public health emergency.

OCR has published a bulletin advising covered entities of further flexibilities available to them as well as obligations that remain in effect under HIPAA as they respond to crises or emergencies at <https://www.hhs.gov/sites/default/files/february-2020-hipaa-and-novel-coronavirus.pdf> - PDF.

Guidance on BAAs, including sample BAA provisions, is available at <https://www.hhs.gov/hipaa/for-professionals/covered-entities/sample-business-associate-agreement-provisions/index.html>.

Additional information about HIPAA Security Rule safeguards is available at <https://www.hhs.gov/hipaa/for-professionals/security/guidance/index.html>.

HealthIT.gov has technical assistance on telehealth at <https://www.healthit.gov/telehealth>.





## **What criteria related to telehealth still applies during this public health emergency?**

While in this expedited phase of telehealth, there are still some steps (from the more comprehensive list at the end of this document that should continue to be followed:

- Utilize Curi's telemedicine informed consent form (linked below).
- Practice within your scope of specialty.
- Verify patients' identity.
- Validate the location/jurisdiction of patients and providers.
- Identify access to emergency services local to the patient (should your telehealth session unexpectedly end).
- Identify emergency contacts.
- Assess patients' ability to use the technology platform.
- Verbalize or display provider credentials during a telehealth session.



## **What are the new requirements on prescribing controlled substances through telehealth?**

Due to COVID-19, a nationwide public health emergency was declared on Jan. 31. As such, The Drug Enforcement Administration (DEA) is relaxing rules previously in place with regards to prescribing controlled substances via telehealth. Per the DEA:

***“For as long as the Secretary’s designation of a public health emergency remains in effect, DEA-registered practitioners may issue prescriptions for controlled substances to patients for whom they have not conducted an in-person medical evaluation, provided all of the following conditions are met:***

- *The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice.*
- *The telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system.*
- *The practitioner is acting in accordance with applicable Federal and State law.”*

The entire report can be read [here](#).



## Where can I find information about practicing telehealth in my state?

- The Federation of State Medical Boards (FSMB) resource, “[Telemedicine Policies Board by Board Overview](#),” is searchable by state and includes links to specific telehealth rules.
- The National Consortium of Telehealth Resource Centers divides the U.S. into 12 telehealth resource regions. Their website includes links to webinars, forums with an ability to submit questions, and vendor selection toolkits. The two regions most relevant for our members are:
  - 1) Mid-Atlantic Telehealth Resource Center  
**Phone:** [434.270.5338](tel:434.270.5338)  
**Region:** Virginia, West Virginia, Kentucky, Maryland, New Jersey, Delaware, North Carolina, Pennsylvania, Washington DC [Website Link](#)
  - 2) Southeast Telehealth Resource Center  
**Phone:** [888.738.7210](tel:888.738.7210)  
**Region:** Alabama, Georgia, South Carolina, Florida [Website Link](#)



## Where can I find information about reimbursement for telehealth?

- CMS has announced expanded Medicare telehealth coverage that will enable beneficiaries to receive a wider range of health care services from their doctors without having to travel to a health care facility. Beginning on March 6, 2020, Medicare will temporarily pay clinicians to provide telehealth services.
  - Read the [Fact Sheet](#) on this announcement.
  - Read [Frequently Asked Questions about Medicare Telehealth](#).
- **For NC Members Only.** Read more from the NC Medical Society on [commercial insurers' telehealth policies](#).
- The Centers for Connected Health Policy ([www.cchpca.org](http://www.cchpca.org)) has information available on [Medicaid reimbursement in a state-by-state guide](#).
- Check with your contracted group health insurance payers for their telehealth reimbursement policies.



## **What other resources would be helpful to our practice?**

The Curi website provides members access to these additional resources:

- **Curi Telehealth Overview**  
[https://curi.com/curator/wp-content/uploads/2020/03/CURI\\_TELEHEALTH\\_OVERVIEW\\_2020.pdf](https://curi.com/curator/wp-content/uploads/2020/03/CURI_TELEHEALTH_OVERVIEW_2020.pdf)
- **Telemedicine Informed Consent**  
<https://curi.com/curator/wp-content/uploads/2020/03/Telemedicine-Session-Consent.docx>



## **Once the public health emergency has ended, what are your recommendations for implementing a compliant telehealth program in our practice?**

- Check your specialty association for telehealth resources. For example, The American Academy of Pediatrics has “[Getting Started in Telehealth](#)” resource available on their website. The American Psychiatric Association developed a [Telepsychiatry Toolkit](#).
- Choose a vendor. Again, check with your specialty association to see if they offer materials to support the use of telehealth technologies.
- Sign a Business Associate Agreement, which must be in place with any vendor.
- Ensure computer platforms are secure and HIPAA compliant.
- Review requirements for technical infrastructure on the [healthit.gov website](#).
- Require providers and staff to complete telehealth training.
- Utilize Curi’s telemedicine informed consent form (linked above).
- Practice within your scope of specialty.
- Establish protocols for:
  - verifying patients’ identity,
  - validating the location/jurisdiction of patients and providers,
  - identifying access to emergency services local to the patient (should your telehealth session unexpectedly end),
  - identifying emergency contacts,
  - assessing patients’ ability to use the technology platform, and
  - verbalize or display provider credentials during a telehealth session.