



HIPAA EN MOMENTOS DE COVID-19

La Oficina de Derechos Civiles (OCR) del Departamento de Servicios de Salud y Humanos de Estados Unidos (HHS) en notificación del pasado 17 de marzo de 2020 informa que durante la situación de pandemia por COVID-19 no se impondrá penalidades por incumplimiento de disposiciones y requisitos de la Ley HIPAA por entidades de salud cubiertas referentes a comunicaciones remotas a través de tecnologías de telemedicina. Esta determinación está enmarcada en su facultad discrecional de actuar en ocasiones de emergencia afectando la salud pública.

En notificación de OCR en el mes de febrero de 2020 y en la arriba mencionada se incluyen las siguientes expresiones:

“This exercise of discretion applies to widely available communications apps, such as FaceTime or Skype, when used in good faith for any telehealth treatment or diagnostic purpose, regardless of whether the telehealth service is directly related to COVID-19. In support of this action, OCR will be providing further guidance explaining how covered health care providers can use remote video communication products and offer telehealth to patients responsibly 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. 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.”