



FEDERAL AND STATE AUTHORITIES RELAX RULES FOR TELEHEALTH DURING COVID-19 OUTBREAK

As people around the world heed calls from public health authorities to engage in “social distancing” to contain the outbreak of COVID-19, telehealth has become an increasingly important way to provide healthcare. The federal government and the Commonwealth of Massachusetts recently issued important guidance intended to facilitate the use of telehealth during this public health emergency.

On March 17, the federal Office of Civil Rights (“OCR”) issued guidance that relaxes the application of HIPAA to telehealth. OCR’s guidance’s makes two important changes:

1. Providers can now use “any non-public facing remote communication product that is available to communicate with patients.” OCR specifically mentioned FaceTime, Facebook Messenger video chat, Google Hangouts video and Skype as examples of platforms that may now be used for telehealth. Providers do not need Business Associate Agreements with the companies that offer these products.
2. OCR will not impose penalties for HIPAA noncompliance “in connection with the good faith provision of telehealth during the COVID-19 nationwide public health emergency.”

OCR’s guidance does not, however, address all of the legal issues that are posed by increased reliance on telehealth during the COVID-19 outbreak. Providers should consider at least the following issues:

- Whether personal electronic devices can be used for telehealth;
- How to remotely access electronic health record systems in a secure manner;
- How to comply with licensure laws when providers and patients are in different states;
- Whether and how telehealth is covered under professional liability insurance; and
- How to comply with ethical rules governing various medical professions.

Massachusetts has taken additional steps to promote the use of telehealth services during this public health emergency. On March 15, Governor Baker signed an order that made four important changes with respect to telehealth:

1. Insurers must “allow all in-network providers to deliver clinically appropriate, medically necessary covered services to members via telehealth.”
2. Payment rates for telehealth must not be lower than rates for in-person services.
3. Prior authorization requirements for medically necessary telehealth related to COVID-19 are prohibited.
4. Insurers may not impose specific requirements on the technologies used to provide telehealth.

A Division of Insurance Bulletin expanding on Governor Baker's order also established telehealth standards that providers must comply with. If your practice is engaging in telehealth during the COVID-19 outbreak or is interested in doing so, please contact a Bulkley Richardson attorney below for advice on these and other legal issues.

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