



Guidance on Utilizing Telepractice by OASAS Providers

On March 17, 2020, the Office for Civil Rights (OCR) published a Notification of Enforcement Discretion for telehealth remote communications during the COVID-19 nationwide public health emergency. The notification is effective immediately and remains in place for the duration of the COVID-19 national emergency.

The notice grants providers flexibility to use certain videoconferencing technologies, even if not fully compliant with the HIPAA Rules. OCR announced that it will not impose penalties for noncompliance with applicable HIPAA requirements against providers that provide telehealth services in good faith using any non-public facing remote communication product.

Healthcare providers may use any non-public-facing remote communication product to communicate with patients (e.g., Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, Skype for Business / Microsoft Teams, Updox, Vsee, Zoom for Healthcare, Doxy.me, Google G Suite Hangouts Meet or Skype are all explicitly permitted).

Public-facing video applications are not permitted (e.g., Facebook Live, Twitch, Tik Tok are expressly excluded).

Providers are still encouraged to advise patients of the potential privacy risks with using such interfaces, and they should use all encryption and privacy modes, to the extent available.

Consistent with OCR's guidance on March 19, 2020, SAMSHA issued guidance advising providers subject to 42 CFR Part 2 that with the increased need for telehealth services in some situations providers may not be able to initially obtain written patient consent for disclosure of substance use disorder records. Providers should document the client's verbal consent in the client's record and then obtain written consent as soon as practical. Additionally, SAMSHA has advised that if a provider has to disclose a patient's protected information prior to obtaining the patient's consent, it may be permissible for the provider to utilize Part 2's medical emergency exception to justify such disclosure.

Consequently, providers can avail themselves of a several communication applications and provider Telepractice services consistent with amended HIPAA and Part 2 requirements.