

Update on HIPAA and COVID-19

Office for Civil Rights (OCR)
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U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office for Civil Rights

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HIPAA and COVID-19 Updates

- February Bulletin on HIPAA and COVID-19
- Notification of Enforcement Discretion on Telehealth Remote Communications
- Guidance on Telehealth Remote Communications
- Guidance on Disclosures to Law Enforcement, Paramedics, Other First Responders, and Public Health Authorities
- Notification of Enforcement Discretion on Uses and Disclosures of Protected Health Information (PHI) by Business Associates for Public Health and Health Oversight Activities
- Notification of Enforcement Discretion Regarding COVID-19 Community-Based Testing Sites

February Bulletin on HIPAA and COVID-19

- How patient information may be shared without a HIPAA authorization
 - Treatment
 - Public Health Activities
 - Family, Friends, and Others Involved in an Individual's Care or Payment for Care
 - To Prevent or Lessen a Serious and Imminent Threat
- Cautions against disclosures to the media
- Reminds about the minimum necessary standard and reasonable safeguards

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

Notification of Enforcement Discretion on Telehealth Remote Communications

- OCR will not impose HIPAA penalties against covered health care providers for noncompliance in connection with the good faith provision of telehealth using remote communication technologies
- Applies to telehealth provided for any reason (not limited to diagnosis & treatment of COVID-19)
- Covered providers may use popular non-public facing communications apps, like FaceTime or Skype, to provide telehealth
- Public facing communication apps like Facebook Live, Twitch, and TikTok should not be used

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

Telehealth Remote Communications Guidance

- Clarifies how OCR is applying the Notification to support the good faith provision of telehealth
- Guidance includes:
 - What covered entities are included and excluded under the Notification?
 - Which parts of the HIPAA Rules are included in the Notification?
 - Does the Notification apply to violations of 42 CFR Part 2, the HHS regulation that protects the confidentiality of substance use disorder patient records?
 - Where can covered health care providers conduct telehealth?
 - What is a “non-public facing” remote communication product?

<https://www.hhs.gov/sites/default/files/telehealth-faqs-508.pdf>

Guidance on Disclosures to Law Enforcement, Paramedics, Other First Responders, and Public Health Authorities

- Identifies existing HIPAA Privacy Rule permissions and provides examples of when a covered entity may disclose PHI about individuals, without their HIPAA authorization, including:
 - When the disclosure is needed to provide treatment
 - When the disclosure is required by law
 - To notify a public health authority to prevent or control the spread of disease
 - When first responders may be at risk of infection
 - To prevent or lessen a serious and imminent threat
- Reminds about the minimum necessary standard

<https://www.hhs.gov/sites/default/files/covid-19-hipaa-and-first-responders-508.pdf>



Notification of Enforcement Discretion on BA Uses & Disclosures for Public Health and Health Oversight

- OCR will not impose HIPAA penalties against covered health care providers or their business associates for good faith uses and disclosures of PHI by business associates for public health and health oversight activities
- Issued to support Federal public health authorities and health oversight agencies, state and local health departments, and state emergency operations centers who need access to COVID-19 related data, including PHI
- The HIPAA Privacy Rule already permits covered entities to provide this data, and this enforcement discretion now permits business associates to also share this data without risk of a HIPAA penalty

<https://www.hhs.gov/sites/default/files/notification-enforcement-discretion-hipaa.pdf>

Notification of Enforcement Discretion Regarding COVID-19 Community-Based Testing Sites (CBTS)

- OCR will not impose HIPAA penalties against covered health care providers and their business associates in connection with the good faith participation in the operation of a CBTS during the COVID-19 nationwide public health emergency
- The operation of a CBTS includes all activities that support the collection of specimens from individuals for COVID-19 testing
- Reasonable safeguards to protect PHI are encouraged
- Examples of entities and activities that are not covered by the Notification

<https://www.hhs.gov/sites/default/files/notification-enforcement-discretion-community-based-testing-sites.pdf>

New HIPAA and COVID-19 Web Page

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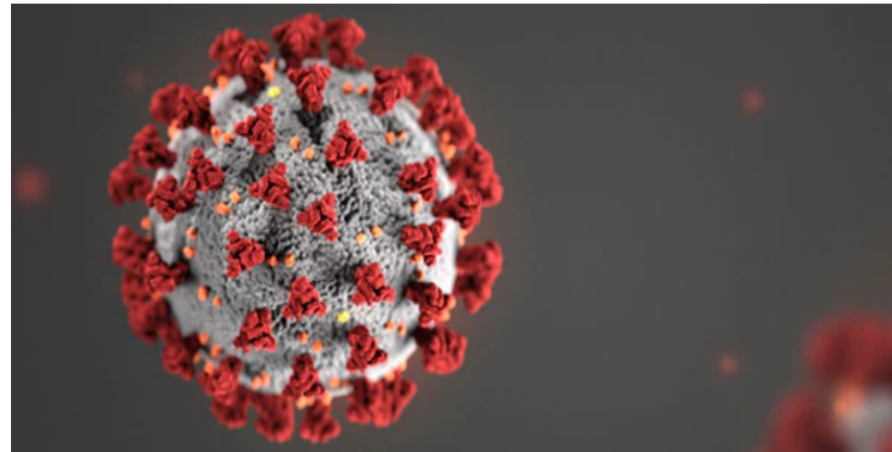
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HIPAA, Civil Rights, and COVID-19



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.

During the COVID-19 public health emergency, the HHS Office for Civil Rights (OCR) has provided guidance that helps explain civil rights laws as well as how the HIPAA Privacy Rule allows patient information to be shared in the outbreak of infectious disease and to assist patients in receiving the care they need.

* Spanish versions of OCR Notifications, Guidance, and Bulletins on Civil Rights, HIPAA, and COVID-19 are now available.





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