



NH Telehealth Guidance - CMS

Q1. Who is allowed to provide telehealth services to patients during the COVID-19 crisis under the telehealth expansion 1135 Waiver?

A1. CMS states that it can include “physicians, nurse practitioners, physician assistants, nurse midwives, certified nurse anesthetists, clinical psychologists, clinical social workers, registered dietitians, and nutrition professionals. ⁽⁵⁾”

Governor Sununu’s Emergency Order states, “Medical providers include Physicians and Physician Assistants, APRNs/Clinical Nurse Specialists/Nurse Midwives, Certified Registered Nurse Anesthetists, Clinical Psychologists and School Psychologists licensed by the Board of Psychologists, Clinical Social Workers, master’s level psychiatric nurses, Pastoral psychotherapists, marriage and family therapists, clinical mental health counselors, and any other provider licensed by the Board of Mental Health Practice, LADCs, MLADCs, CRSWs, applied behavioral analysts, Registered Dietitians or nutritional professionals, Dentists, and community mental health providers. ⁽¹⁾”

Q2. Under the emergency order, what platforms can be used for telehealth visits?

A2. “Effective immediately, the HHS Office of Civil Rights (OCR) will exercise enforcement discretion and waive penalties for HIPAA violations against health care providers that serve patients in good faith through everyday communications technologies [that may not fully comply with HIPAA], such as FaceTime or Skype, during the COVID-19 nationwide public health emergency. ⁽⁵⁾”

“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.⁽⁴⁾” OCR states that, “a covered health care provider that wants to use audio or video communication technology to provide telehealth to patients...can use any non-public facing remote communication product that is available to communicate with patients ⁽⁴⁾. [See Q3 for exclusions and examples of public facing products].

Governor Sununu’s Order states that “All medical providers shall be allowed to perform health care services through the use of all modes of telehealth, including video and audio, audio-only, or other electronic media, to treat the residents of the state for NH for all medically necessary services⁽¹⁾”



Q3. Can I use any type of communication/platform to provide telehealth services?

A3. NO! The Office of Civil Rights specifically stated, “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. ⁽⁴⁾”

Q4. What is best practice when it comes to Telehealth platforms?

A4. Best practice is to use a HIPAA-compliant video communication with a corresponding Business Associate Agreement (BAA). Some HIPAA-compliant platforms noted by OCR include Skype for Business/Microsoft Teams; Updox; VSee; Zoom for Healthcare; Doxy.me; Google G Suite Hangouts Meet⁽⁴⁾. GoToMeeting also offers a HIPAA-compliant version. Many EHRs offer integrated Telehealth services with recording & photo capabilities for medical assessment purposes.

To satisfy the "good faith" standard, a provider's office should document its decision to use whatever technology chosen and its communication to employees stating which communication/platforms should not be used to provide telehealth services.

Q5. Vice President Pence announced on March 18, 2020 all doctors and medical professionals can practice across state lines. Does this mean I can practice wherever I need to now?

A5. VP Pence was quoted as saying, “With regard to medical personnel, at the President’s direction, HHS is issuing a regulation today that will allow all doctors and medical professionals to practice across state lines to meet the needs of hospitals that may arise in adjoining areas. ⁽⁶⁾”

As of March 25, 2020, no orders, regulations or guidelines have been published by HHS.

Both the Maine & Massachusetts social work/mental health boards are reporting that no regulations or guidelines have been received and, at present, anyone treating their residents must be licensed in the state. Massachusetts has an exception for college students who attend school in Massachusetts and have returned to their home state.

Q6. Governor Sununu issued an order that licensed providers from other states may practice in NH. Are there any requirements?

A6. Yes, there are 4 conditions. The most important being that an out-of-state provider must become licensed in NH. There appears to be a streamlined process (untested). The order states the following 4 conditions must be met:



- a) The medical provider is licensed and in good standing in another United States jurisdiction.

- b) The medical services provided within New Hampshire are in-person or through appropriate forms of telehealth, as set forth in Emergency Order #8.

- c) The medical provider presents to the Office of Professional Licensure & Certification evidence that they are licensed in good standing in another jurisdiction. Such medical providers shall be issued an emergency New Hampshire license at no cost, which shall remain valid during the declared state of emergency.

- d) Medical providers shall be subject to the jurisdiction of the appropriate state licensing body while providing services within New Hampshire. ⁽²⁾

There are specific provisions for medical professionals providing services related to children, schools and Individualized Education Programs (IEPs).

References:

1. State of NH – Emergency Order #8 Pursuant to Executive Order 2020-04
Temporary expansion of access to Telehealth Services to protect the public and health care providers ⁽¹⁾
2. State of NH - Emergency Order #15 Pursuant to Executive Order 2020-4
Pursuant to Section 18 of Executive Order 2020-4 ⁽²⁾
3. Department of Health & Human Services – March 2020
Limited Waiver of HIPAA Sanctions and Penalties During a Nationwide Public Health Emergency ⁽³⁾
4. Department of Health & Human Services – March 17, 2020
5. OCR Announces Notification of Enforcement Discretion for Telehealth Remote Communications
During the COVID-19 Nationwide Public Health Emergency ⁽⁴⁾
6. Center for Medicare & Medicaid – March 17, 2020
Medicare Telemedicine Health Care Provider Fact Sheet ⁽⁵⁾
7. James Brady Press Briefing March 18, 2020
Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press
Briefing ⁽⁶⁾