



BRAD LITTLE – Governor
DAVE JEPPESEN – Director

IDAHO DEPARTMENT OF
HEALTH & WELFARE

MATT WIMMER - Administrator
DIVISION OF MEDICAID
Post Office Box 83720
Boise, Idaho 83720-0009
PHONE: (208) 334-5747
FAX: (208) 364-1811

March 25, 2020

MEDICAID INFORMATION RELEASE MA20-13

To: All Medicaid Providers

From: Matt Wimmer, Administrator

Subject: COVID-19 Telehealth HIPAA Guidance

The Idaho Department of Health and Welfare continues to monitor and prepare for impacts resulting from the 2019 Novel Coronavirus (COVID-19). During this time it is vitally important that Medicaid participants receive services and get their needs met.

Idaho Medicaid wants to empower providers to serve participants wherever they are during this public health emergency. To that end, Idaho Medicaid expanded the number of codes reimbursable via telehealth (see Information Release [MA20-07](#)).

During the COVID-19 public health emergency, Idaho Medicaid Providers subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Rules may seek to communicate with participants, and provide telehealth services, through remote communications technologies. Some of these technologies, and the manner in which they are used, may not fully comply with the requirements of the HIPAA Rules.

United States Health and Human Services (HHS) Secretary Alex Azar has issued a waiver of certain regulatory requirements under the HIPAA Rules during the COVID-19 public health emergency. This was followed by a notification from the HHS Office for Civil Rights (OCR) that it will exercise its enforcement discretion around telehealth during this time. **The HHS Office for Civil Rights (OCR) will not impose penalties for noncompliance with the regulatory requirements under the HIPAA rules in connection with the good faith provision of telehealth during the COVID-19 public health emergency.**

An Idaho Medicaid provider that wants to use audio or video communication technology to provide telehealth to participants during the COVID-19 public health emergency can use any non-public facing remote communication product that is available to communicate with participants. This applies to telehealth provided for any reason, regardless of whether the telehealth service is related to the diagnosis and treatment of health conditions related to COVID-19.

Idaho Medicaid will not sanction providers for using telehealth technology that would otherwise be noncompliant with the HIPAA rules around telehealth technology.

Idaho Medicaid 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 the Office for Civil Rights (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 public health emergency. Providers are encouraged to notify participants that these third-party applications potentially introduce privacy risks, and providers should enable all available encryption and privacy modes when using such applications. The OCR will not impose penalties for the lack of a business associate agreement (BAA) with video communication vendors or any other noncompliance with the HIPAA Rules that relates to the good faith provision of telehealth services during the COVID-19 public health emergency.

Important considerations include:

- **Facebook Live[®], Twitch[®], TikTok[®], and similar video communication applications are public facing, and should not be used in the provision of telehealth.**
- **Providers should continue to make all reasonable and prudent efforts to protect Personally Identifiable Information (PII) and Protected Health Information (PHI).**

Further information on use of telehealth by Idaho Medicaid providers is available in Information Release [MA20-07](#). As a reminder, Place of Service (POS) is required on all claims. Idaho Medicaid is clarifying to Providers that regarding telehealth Originating Site designations, a participant's home can be a Place of Service.

Additional information on these issues is available at:

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

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

<https://www.hhs.gov/hipaa/for-professionals/security/guidance/index.html>

<https://www.healthit.gov/telehealth>

We thank you for your service to Idaho Medicaid participants and appreciate your work to address this public health threat.

MW/cab