

On March 13, 2020, President Trump declared a national emergency related to the COVID-19 pandemic. On January 31, 2020, Department of Health and Human Services (HHS) Secretary Alex Azar [declared](#) a national public health emergency.

These two declarations permit the Secretary of HHS to invoke the 1135 waiver authority for certain federal regulations in order to optimize health care providers response to the emerging COVID-19 outbreak.

Under the 1135 waiver authority, HHS has issued blanket [waivers](#), effective back to March 1, 2020, that impact almost all health care sectors. The following waivers are in place for all home health across the nation.

- Provides relief to Home Health Agencies on the timeframes related to OASIS Transmission. Allows Medicare Administrative Contractors to extend the auto-cancellation date of Requests for Anticipated Payment (RAPs) during emergencies.

There are several other waivers related to provider enrollment requirements that impact all providers including home health and hospices agencies. They are:

- Waive the following screening requirements
 - Application Fee - 42 C.F.R 424.514
 - Criminal background checks associated with FCBC -42 C.F.R 424.518
 - Site visits - 42 C.F.R 424.517
- Postpone all revalidation actions
- Allow licensed providers to render services outside of their state of enrollment
- Expedite any pending or new applications from providers

According to the 1135 declaration, these blanket waivers are effective back to March 1, 2020 and are nationally applied. However, these regulations are modified as determined by CMS to ensure sufficient services are available to meet the needs of patients. CMS has not provided any more details on the criteria needed to justify implementing these modifications. The National Association for Home Care & Hospice (NAHC) has been in touch with CMS and understands that additional information will be forthcoming.

The CMS Regional Offices will review other provider-specific requests as the need arises. NAHC has recommended to CMS additional blanket waives that should be implemented as healthcare resources become strained. CMS blanket waivers should be implemented to promote a proactive federal response rather than waiting for a crisis to ensue.

In addition, this afternoon the Trump Administration announced expanded Medicare telehealth coverage. Beginning on March 6, 2020, Medicare will temporarily pay practitioners to provide telehealth services for beneficiaries residing across the entire country. There are a lot of questions from home health and hospice providers about this announcement. Below is a summary of the key points as well as a link to a Fact Sheet and an FAQ document:

1. Still, only practitioners can bill for telehealth services.
2. Home health agencies, while not being able to bill for telehealth services, may find relief in that the physicians can utilize telehealth technology for a home health F2F encounter.
3. Hospices - We have been in touch with CMS and understand that they are still thinking the issue through, but we have encouraged them (and some of our advocates in Congress) to permit this same flexibility for hospice providers

4. Telehealth technology has been expanded. The FAQ below describes the various technology that will be allowed during this state of emergency (emphasis added).

Q: Is any specialized equipment needed to furnish Medicare telehealth services under the new law?

A: Currently, CMS allows for use of *telecommunications technology that have audio and video capabilities that are used for two-way, real-time interactive communication*. For example, to the extent that many mobile computing devices have audio and video capabilities that may be used for two-way, real-time interactive communication they qualify as acceptable technology. The new waiver in Section 1135(b) of the Social Security Act explicitly allows the Secretary to *authorize use of telephones that have audio and video capabilities for the furnishing of Medicare telehealth services during the COVID-19 PHE*. In addition, *effective immediately, the HHS Office for 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, such as FaceTime or Skype, during the COVID-19 nationwide public health emergency*.

For more information: <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/index.html>

To read the Fact Sheet on this announcement visit: <https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>

To read the Frequently Asked Questions on this announcement visit:

<https://www.cms.gov/files/document/medicare-telehealth-frequently-asked-questions-faqs-31720.pdf>

NAHC is seeking an expansion of this waiver to accommodate those situations where two-way audio and video are not available. We will provide any new information as soon as it is available.

The office of the HHS Secretary also released the following two documents concerning HIPAA. The first document includes reminders about how to handle HIPAA during emergency situations. The second document includes the waiver explaining that providers are able to communicate with patients during this emergency using alternative technologies. Specifically, the notice states:

During the COVID-19 national emergency, which also constitutes a nationwide public health emergency, covered health care providers subject to the HIPAA Rules may seek to communicate with patients, and provide telehealth services, through remote communications technologies. Some of these technologies, and the manner in which they are used by HIPAA covered health care providers, may not fully comply with the requirements of the HIPAA Rules.

OCR will exercise its enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with the good faith provision of telehealth during the COVID-19 nationwide public health emergency. This notification is effective immediately.

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. Providers are encouraged to notify patients that these third-party applications potentially introduce privacy risks, and providers should enable all available encryption and privacy modes when using such applications.

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. Covered health care providers that seek additional privacy protections for telehealth while using video communication products should provide such services through technology vendors that are HIPAA compliant and will enter into HIPAA business associate agreements (BAAs) in connection with the

provision of their video communication products. The list below includes some vendors that represent that they provide HIPAA-compliant video communication products and that they will enter into a HIPAA BAA.

<https://www.hhs.gov/sites/default/files/hipaa-and-covid-19-limited-hipaa-waiver-bulletin-508.pdf>

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