

**EXPIRATION OF PHE: IMPACT ON  
HIPAA REQUIREMENTS FOR TELEMEDICINE TECHNOLOGY**

<b>Pre-Pandemic Requirement</b>	<b>Pandemic Waiver (in effect until PHE ends)</b>	<b>Post-PHE Requirement</b>	<b>Other Notes</b>
<p>Technology used by HIPAA covered entities had to comply with HIPAA's requirements to ensure the privacy and security of patient information.</p>	<p>OCR is temporarily exercising enforcement discretion and will not impose penalties against health care providers in connection with the provision of telehealth during the COVID-19 PHE with non-HIPAA compliant technology. However, covered providers can only use non-public facing audio or video communication technology to communicate with patients (so no TikTok or Facebook Live, for example).</p> <p><a href="#">OCR Guidance</a></p>	<p>Telemedicine technology used by covered entities must comply with HIPAA.</p> <p>For a list of technology products purporting to be HIPAA compliant, see <a href="#">OCR Guidance</a></p>	<p>OCR has confirmed the enforcement discretion will end once the PHE expires</p>
<p>Business Associate Agreement (BAA) needed from telemedicine platform vendor if the vendor creates, receives, maintains, or transmits PHI for or on behalf of the HIPAA covered entity</p>	<p>OCR will temporarily not impose penalties against covered providers for lack of a BAA with telemedicine vendors</p> <p><a href="#">OCR Guidance</a></p>	<p>Covered providers need a BAA from a telemedicine platform (including smart phone) vendor that creates, receives, maintains, or transmits PHI</p>	

**EXPIRATION OF PHE: IMPACT ON  
DEA REQUIREMENTS FOR PRESCRIBING CONTROLLED SUBSTANCES**

Pre-Pandemic Requirement	Pandemic Waiver (in effect until PHE ends)	Post-PHE Requirement	Other Notes
<p>One in-person visit prior to prescribing controlled substances (very limited exceptions)</p> <p>For more information:</p> <ul style="list-style-type: none"> <li>• Our <a href="#">article</a> on the Ryan Haight Act</li> <li>• Foley &amp; Lardner <a href="#">article</a></li> </ul>	<p>In-person visit requirement temporarily waived</p> <p><a href="#">DEA Source</a></p>	<p>Will almost certainly go back into effect</p>	<ul style="list-style-type: none"> <li>• Congress could extend temporary waiver - possible</li> <li>• Congress could amend the law – remotely possible</li> <li>• DEA could issue “telemedicine registration” process, which when in effect, will eliminate in-person visit requirement – unclear when this will be done; DEA missed Congress’ deadline of October 2019</li> </ul>
<p>DEA registration required in both state where prescriber is AND in state where patient is, if different</p> <p>For more information:</p> <ul style="list-style-type: none"> <li>• <a href="#">DEA FAQ</a></li> <li>• <a href="#">DEA presentation</a> (slide 32)</li> </ul>	<p>DEA registration in patient’s state temporarily waived</p> <p><a href="#">DEA Source</a></p>	<p>Will likely go back into effect</p>	<ul style="list-style-type: none"> <li>• Need license to practice in patient’s state</li> <li>• Also <b>need practice location in patient’s state</b> – DEA does not allow PO Box or virtual address (<a href="#">DEA Guidance</a>)</li> </ul>

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