

COVID-19 Overview

The declaration that COVID-19 constituted a public health emergency (PHE) by HHS Secretary Alex Azar and several related laws and regulatory changes created dozens of waivers and exceptions that medical practices could use to protect staff and patients from infection. For example, CMS expanded the definition of telehealth to allow the service for patients in any part of the U.S. and allowed encounters by telephone. However, with a few exceptions the waivers only apply during the COVID-19 PHE.

Each PHE lasts 90 days and must be renewed by HHS. Here is the text of the current declaration, which was issued Jan. 7, 2021.

“As a result of the continued consequences of the Coronavirus Disease 2019 (COVID-19) pandemic, on this date and after consultation with public health officials as necessary, I, Alex M. Azar II, Secretary of Health and Human Services, pursuant to the authority vested in me under section 319 of the Public Health Service Act, do hereby renew, effective January 21, 2021, my January 31, 2020, determination, that I previously renewed on April 21, 2020 October 23, 2020, my January 31, 2020, determination, that I previously renewed on April 21, 2020, July 23, 2020, and October 2, 2020, that a public health emergency exists and has existed since January 27, 2020, nationwide.”

When PBAB went to press the declaration was set to expire April 21, 2021. Practices should bookmark and monitor the PHE.gov website: www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-20Oct2020.aspx to determine the status of the PHE.

This chapter provides an overview of some of the changes that were enacted during the PHE, including a variety of telehealth provisions. See the Telehealth Services chapter for a list of services that will be covered permanently, during the PHE and until the end of the year when the PHE ends.

HIPAA COVID-19 exception applies to all patients and communications-based services

You can use readily available communications apps such as Google Hangouts and Skype to provide telehealth and communications-based services to all patients during the COVID-19 emergency, the HHS Office for Civil Rights (OCR) has clarified. But make sure the app or platform you use meets OCR’s guidelines.

Providers may use a variety of communications apps to provide telehealth services without fear of being penalized for HIPAA violations, the OCR announced March 17. A follow-up FAQ released March 20 makes it clear that the notice of enforcement discretion goes beyond Medicare’s designated telehealth services and includes remote services such as online E/M and virtual check-ins.

For the purposes of the OCR waiver technologies that providers may use include texts, “videoconferencing, the internet, store-and-forward imaging, streaming media, and landline and wireless communications.” The OCR specifically states that restrictions under Medicare and Medicaid “do not limit the scope of the HIPAA Notification of Enforcement Discretion regarding COVID-19 and remote telehealth communications.”