

(7) *Shipments to Overseas U.S. Military Addresses, Foreign Service Posts (e.g., Diplomatic Post Offices), and Embassies.* The Administrator believes the intent of the Presidential Memorandum is to protect Americans by ensuring their access to covered materials. The Administrator believes this extends to all Americans, including those serving our country overseas. For this reason, the Administrator believes that it is necessary and appropriate to promote the national defense to allow shipments of covered materials to be shipped overseas to U.S. government employees working abroad.

(8) *In-Transit Merchandise: Shipments in Transit through the United States with a Foreign Shipper and Consignee, Including Shipments Temporarily Entered into a Warehouse or Temporarily Admitted to a Foreign Trade Zone.* The April 3 Presidential Memorandum states that “To ensure that these scarce or threatened PPE materials remain in the United States for use in responding to the spread of COVID-19, it is the policy of the United States to prevent domestic brokers, distributors, and other intermediaries from diverting such material overseas” (emphasis added).<sup>12</sup> The Administrator believes that merchandise merely passing through the United States is outside the scope of the Presidential Memorandum. In addition, the Administrator believes that diversion of these specific types of materials would cause significant impacts to international relations, diplomacy, and global supply chains, each of which is a factor that is specifically identified in the allocation order as being necessary and appropriate to promote the national defense. Therefore, the Administrator is explicitly exempting these shipments from the enforcement of the allocation order.

FEMA will require a letter of attestation to be submitted to FEMA via CBP’s document imaging system and placed on file with CBP, certifying to FEMA the purpose of the shipment of covered materials.

(9) *Shipments for Which the Final Destination is Canada or Mexico.* The Administrator recognizes the important role our closest neighbors play in the national defense interests of the United States. The integration of the economies

and supply chains among the United States, Mexico, and Canada is robust. Many critical sectors—including, for example, food and agriculture; communications and energy; automotive and industrial; water and wastewater management; and law enforcement and first responders—cross national boundaries. Negative impacts to workers, including a lack of PPE, in these and other critical sectors in Canada and Mexico may cause significant interruptions to the corresponding supply chains in the United States, and in turn, may disrupt the large flow of cross-border trade with our neighbors. In addition, the United States maintains close economic and diplomatic ties with these nations, which would be negatively impacted by the restriction of exports of covered materials into these countries. In the allocation order, the Administrator specifically identified minimization of disruption to the supply chain, both domestically and abroad, and international relations and diplomatic considerations as key elements of promoting the national defense. Each would be negatively impacted by slowing or halting the transportation of covered materials across country lines to Canada and Mexico. For these reasons, the Administrator has determined that this exemption is necessary and appropriate to promote the national defense.

FEMA will require a letter of attestation stating that the items being shipped are for use in and not for transshipment through Canada or Mexico, to be submitted to FEMA via CBP’s document imaging system and placed on file with CBP, certifying to FEMA the purpose of the shipment of covered materials.

(10) *Shipments by or on behalf of the U.S. Federal Government, including its Military.* The Administrator recognizes that any shipment of covered materials made by or on behalf of the Federal Government, including its military, are inherently necessary and appropriate to promote the national defense, and so should be exported without delay.

**Peter T. Gaynor,**

*Administrator, Federal Emergency Management Agency.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Parts 160 and 164

#### Notification of Enforcement Discretion for Telehealth Remote Communications During the COVID–19 Nationwide Public Health Emergency

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notification of enforcement discretion.

**SUMMARY:** This notification is to inform the public that the Department of Health and Human Services (HHS) is exercising its discretion in how it applies the Privacy, Security, and Breach Notification Rules under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As a matter of enforcement discretion, the HHS Office for Civil Rights (OCR) 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.

**DATES:** The Notification of Enforcement Discretion went into effect on March 17, 2020, and will remain in effect until the Secretary of HHS declares that the public health emergency no longer exists, or upon the expiration date of the declared public health emergency, including any extensions, (as determined by 42 U.S.C. 247d),<sup>1</sup> whichever occurs first.

**FOR FURTHER INFORMATION CONTACT:** Rachel Seeger at (202) 619–0403 or (800) 537–7697 (TDD).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Office for Civil Rights (OCR) at the Department of Health and Human Services (HHS) is responsible for enforcing certain regulations issued under the Health Insurance Portability and Accountability Act of 1996 (HIPAA),<sup>2</sup> as amended by the Health

<sup>1</sup> Public Health Emergency Declaration issued by HHS Secretary, pursuant to Section 319 of the Public Health Service Act, on January 31, 2020, with retroactive effective date of January 27, 2020. For more information, see <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>.

<sup>2</sup> Due to the public health emergency posed by COVID–19, the HHS Office for Civil Rights (OCR) is exercising its enforcement discretion under the conditions outlined herein. We believe that this guidance is a statement of agency policy not subject to the notice and comment requirements of the Administrative Procedure Act (APA). 5 U.S.C. 553(b)(3)(A). OCR additionally finds that, even if this guidance were subject to the public participation provisions of the APA, prior notice

<sup>12</sup> See Memorandum on Allocating Certain Scarce or Threatened Health and Medical Resources to Domestic Use for the Secretary of Health and Human Services, the Secretary of Homeland Security, and the Administrator of the Federal Emergency Management Agency, sec. 1 (Apr. 3, 2020), <https://www.whitehouse.gov/presidential-actions/memorandum-allocating-certain-scarce-threatened-health-medical-resources-domestic-use/>.

Information Technology for Economic and Clinical Health (HITECH) Act, to protect the privacy and security of protected health information, namely the HIPAA Privacy, Security and Breach Notification Rules (the HIPAA Rules).

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.

A covered health care provider that wants to use audio or video communication technology to provide telehealth to patients during the COVID-19 nationwide public health emergency can use any non-public facing remote communication product that is available to communicate with patients. OCR is exercising its enforcement discretion to not impose penalties for noncompliance with the HIPAA Rules in connection with the good faith provision of telehealth using such non-public facing audio or video communication products during the COVID-19 nationwide public health emergency. This exercise of discretion 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.

For example, a covered health care provider in the exercise of their professional judgement may request to examine a patient exhibiting COVID-19 symptoms, using a video chat application connecting the provider's or patient's phone or desktop computer in order to assess a greater number of patients while limiting the risk of infection of other persons who would be exposed from an in-person consultation. Likewise, a covered health care provider may provide similar telehealth services in the exercise of their professional

judgment to assess or treat any other medical condition, even if not related to COVID-19, such as a sprained ankle, dental consultation or psychological evaluation, or other conditions.

Under this Notification, covered health care providers may use popular applications that allow for video chats, including Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, Zoom, 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 notification, 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.

- Skype for Business I Microsoft Teams
- Updox
- VSee
- Zoom for Healthcare
- Doxy.me
- Google G Suite Hangouts Meet
- Cisco Webex Meetings I Webex Teams
- Amazon Chime
- GoToMeeting
- Spruce Health Care Messenger

OCR has not reviewed the BAAs offered by these vendors, and this list does not constitute an endorsement, certification, or recommendation of specific technology, software, applications, or products. There may be other technology vendors that offer HIPAA-compliant video communication products that will enter into a HIPAA BAA with a covered entity. Further, OCR does not endorse any of the

applications that allow for video chats listed above.

Under this notification, however, OCR will not impose penalties against covered health care providers for the lack of a 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 nationwide public health emergency.

### III. Collection of Information Requirements

This notice of enforcement discretion creates no legal obligations and no legal rights. Because this notice imposes no information collection requirements, it need not be reviewed by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: April 2, 2020.

**Roger T. Severino,**

*Director, Office for Civil Rights Department of Health and Human Services.*

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## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### National Endowment for the Humanities

**45 CFR Part 1168**

**RIN 3136-AA39**

### Implementing the Federal Civil Penalties Adjustment Act Improvements Act of 2015

**AGENCY:** National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The National Endowment for the Humanities (NEH) is adjusting the civil monetary penalties it imposes for violations of NEH's New Restrictions on Lobbying regulation, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act). The 2015 Act, which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act), requires such adjustments to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect.

**DATES:** *Effective date:* This interim final rule is effective on April 21, 2020. Comments must be submitted on or

and comment for this guidance is impracticable, and there is good cause to issue this guidance without prior public comment and without a delayed effective date. 5 U.S.C. 553(b)(3)(B) & (d)(3).