



MEMO

Date: October 12, 2020

To: Telehealth Providers

From: Bernard Hooper, Corporate Compliance and Privacy Officer

Re: The Use of Public Facing Platforms for the provision of Telehealth Services

Recently, the Detroit Wayne Integrated Health Network (“DWIHN”) surveyed the telehealth service providers within its network. DWIHN specifically requested information regarding the use of public-facing platforms for the provision of telehealth services. Responses to this question indicated that some organizations are using a public-facing remote communication platform to provide telehealth services. DWIHN is requiring all telehealth providers currently using a public-facing platform to transition to a non-public facing remote communication platform **by November 16, 2020**.

The enforcement agency for HIPAA violations¹ issued the Notification of Enforcement Discretion, which applies to all health care providers that are covered by HIPAA and provide telehealth services during the COVID-19 nationwide public health emergency. Covered health care providers will not be subject to penalties for violations of the HIPAA Privacy, Security, and Breach Notification Rules that occur in the good faith provision of telehealth services during the COVID-19 emergency. This Notification does not affect the application of the HIPAA Rules to other areas of health care outside of telehealth during the emergency. Use of public-facing remote communication products, such as TikTok, Facebook Live, Twitch, or a public chat room, which OCR has identified in the Notification as unacceptable forms of remote communication for

¹ U.S. Department of Health and Human Services, Office of Civil Rights (“OCR”).

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Telehealth are prohibited because they are designed to be open to the public or allow wide or indiscriminate access to the communication.

A “non-public facing” remote communication product is one that, as a default, allows only the intended parties to participate in the communication. Non-public facing remote communication products would include, for example, platforms such as Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, Whatsapp video chat, Zoom, or Skype. Such products also would include commonly used texting applications such as Signal, Jabber, Facebook Messenger, Google Hangouts, Whatsapp, or iMessage. Typically, these platforms employ end-to-end encryption, which allows only an individual and the person with whom the individual is communicating to see what is transmitted.

The Notification regarding the enforcement of HIPAA Rules for telehealth services is temporary and providers of telehealth services will be required to comply with the standard requirements. The transition of telehealth services to a non-public facing platform is the first step in a multi-step approach as we move toward full compliance with HIPAA Rules for telehealth services. DWIHN will issue guidance in the coming weeks regarding next steps in the process for HIPAA-compliant Telehealth services, including HIPAA-complaint Business Associate Agreements and Patient Consent requirements.

DWUHN recognizes that we are all working in challenging times and are encountering conditions every day that we certainly could not imagine. We thank you for all that you do for those we have taken a responsibility to serve. The health records, the service delivery and the integrity of those services, and care of those we serve must be maintained and delivered with an abundance of caution and responsibility. Thank you so much.