

COMPLIANCE CONSIDERATIONS FOR THE CURRENT PANDEMIC NATIONAL PUBLIC HEALTH EMERGENCY

The ongoing Covid-19 pandemic and the resulting impact on healthcare practices raises questions around the usual **compliance activities** within a practice, and how they may need to be **adjusted** or **re-directed** during these unprecedented times. Partial or full practice closures with associated staff reductions will likely necessitate a re-evaluation of compliance priorities given reductions in both patient encounters and available staff resources. This document is designed to provide some timely considerations that may help practices re-prioritize and communicate appropriately while **continuing to adhere to all relevant compliance guidelines and requirements**.

1. Re-evaluate Compliance Priorities

What needs to be continued?

- **HIPAA Privacy and Security.** Regulators expect providers to initiate reasonable and good faith efforts to maintain HIPAA privacy and security rules. Providers and staff should make every effort to comply with their HIPAA plan during the pandemic. However, the Office of Civil Rights (OCR) has advised penalties for HIPAA violations will be suspended during this designated national emergency. The penalties have been suspended temporarily, but not the rules. Do your best to maintain compliance with what is available to you while working in a remote location, communicating with patients, etc. 
- **Staff Policies for Adjusted Work Arrangements.**
 - If you have implemented a **work-from-home** policy for staff, consider publishing guidelines for your employees, including activities to protect patient confidentiality and work product expectations.
 - [This link](#) can provide useful ideas in creating a telework policy, based on policies adopted by the US Government during this crisis.
 - Staff and providers working in remote locations should be reminded to limit incidental disclosures of protected health information (PHI).
 - Utilize your professional resources (HR attorney, state-specific unemployment office, federal publications, etc.) as necessary as you make staffing decisions. The materials and links on [BSM's COVID-19 resource page](#) may be of assistance.
- **Telehealth Policies and Processes.** If your practice is providing patient care via telehealth services, create a policy or process that supports best practices available during this time. The materials and links on [BSM's COVID-19 resource page](#) may be of assistance.
 - Ensure the method you are using for telehealth is not a public forum, but a “non-public facing” communication tool. The OCR’s waiver does not cover public-facing tools such as FacebookLive, Twitch, and TikTok.
 - Determine approved methods of end-to-end, secured by login communication (phone, email, secure messaging through a portal, Skype, Zoom, FaceTime, Facebook Messenger, What’s App, Google Hangouts, Jabber, Signal, etc.).
 - For additional information on new flexibility provided to empower practices to care for patients through telehealth during this period, this [Notice of Enforcement Discretion](#) may be useful.
- **Ongoing Monitoring of Policies, Regulations and Legislation.** Stay informed by monitoring guidelines issued from the OCR, Office of Inspector General (OIG), Center for Medicare and Medicaid Services (CMS), Department of Health and Human Services (HHS), etc. as flexibility rules offered during the national pandemic will likely end when the pandemic resolution is announced.

What can or should be de-prioritized?

- You may need to suspend your usual Compliance Plan commitment activities (such as internal chart auditing and internal policy reviews) due to pandemic activities and reduced staff. Ensure thoughtful discussion with the practice's leadership team on which Compliance Plan activities should be suspended.
- It is not advisable to perform your annual Security Risk Assessment (SRA) during a national public health emergency as you are not in normal operating conditions.
- You will likely need to reschedule/delay upcoming performance evaluations for staff/providers during this national emergency time.

2. Communicate and Document Revisions to the Compliance Plan



Roles and Responsibilities

- Ensure the Compliance Officer is available during the national emergency. If not, designate a point-person (i.e., acting Compliance Officer) if needed.
- Ensure the Compliance Officer or acting Compliance Officer:
 - Sends an all-staff memo opening a heightened compliance communication channel for any concerns employees may have.
 - Instruct staff to be on alert for phishing emails, fraudulent websites, etc., per the government warning of an increase in opportunistic “bad actors.”
 - Direct any compliance-related communication to the Compliance Officer or other designated point-person.
 - Responds to any concerns in a timely fashion.

Amend the Compliance Plan with New Actions, Revised Timelines, etc.

- Consider creating a memo to add to your Compliance Plan, stating the suspension of any usual compliance activities to which the practice has committed.
- Add documentation to your existing Security Risk Analysis regarding the temporary approved use of nonstandard methods of patient and patient-related communication for this emergency period.
- Include a Human Resources compliance statement regarding the suspension of usual performance evaluations, etc., that you may have committed to in your policies.



Consider using this document as a checklist and documentation of **Compliance Plan attention and activities**, and filing it in your compliance plan.

3. Make a Plan to Re-assess Regularly

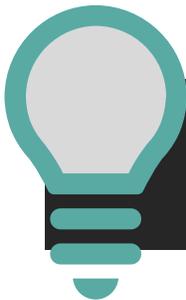


When will the delayed items come due?

- The COVID-19 nationwide public health emergency invoked on March 17, 2020, did not include an expiration date.
- Due to the national emergency, the OCR and OIG announced a relaxation of regulation enforcement through waivers. However, if you are asked to produce any data related to an ongoing or new audit for the OCR, OIG, or HHS during this time or immediately following the pandemic, the agencies advise to contact their offices to organize extended deadlines as necessary.
- To identify when the national emergency and enforcement waiver terminates, continue to remain alert to announcements from OCR, OIG, and HHS.

As the practice re-opens or returns to business as usual, how will the original Compliance Plan be re-introduced?

- During the national emergency, flexibility was offered, and auditing suspended. However, when business resumes, it is time to return to best practices for full compliance.
- Create a reinstatement memo once Compliance Plan activity commitments can be reinstated.
- Evaluate your telemedicine protocols, especially in light of HIPAA Privacy and Security, as flexibility for the emergency ends.
- The OCR's enforcement waiver covered failures to enter into Business Associate Agreements (BAAs) where applicable. Examine the patient communication tools the practice used during the national emergency to determine if use should continue and if BAAs are needed. Evaluate if vendors used temporarily are "true" business associates or were "conduits" during the emergency period and will not require continued use.



Conduct your annual Compliance Plan training with the staff to effectively re-launch full commitment to compliance activities outlined in the Plan.