

Specialty Practice

Consent Requirements for Telehealth Services

- Policy:** It is the policy of [Organization name here] to ensure consent for telehealth services is obtained from qualified beneficiaries in a HIPAA-complaint environment.
- Purpose:** To explain consent for the provision of telehealth services, from a Medicare Rules and Regulations perspective.
- Scope:** This document is applicable for specialty practices, in accordance with the rules and regulations of the Centers for Medicare & Medicaid Services (CMS). Each organization should check their state regulations for further requirements and opportunities.

*Temporary PHE Guidance**

"The patient must verbally consent to receive virtual check-in services."

"Individual services need to be agreed to by the patient; however, practitioners may educate beneficiaries on the availability of the service prior to patient agreement."

For further reading: <https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>

"Beneficiary consent may be obtained annually for all CTBS (e.g. remote evaluation of patient images/video and virtual check-ins) or interprofessional consultation services occurring within the year (84 FR 62699)."

For further reading: <https://edit.cms.gov/files/document/medicare-telehealth-frequently-asked-questions-faqs-31720.pdf>

*Temporary guidance related to Public Health Emergency (PHE)

Procedures:

I. Obtain Consent for a Virtual-Type Visit.

- A. Ensure medical/intake forms are reviewed by the legal team and recognize that state laws vary for obtaining consent.
- B. Obtaining consent is typically done before the first appointment and is verified verbally at each appointment.

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- C. If there is anyone observing the visit, tell the patient and get their consent at the start.
- D. Ask the patient if they have any questions regarding consent.
- E. Arrange for a qualified interpreter if the patient does not speak English very well. Use the interpreter for the entire consent discussion.
<https://telehealth.hhs.gov/providers/preparing-patients-for-telehealth/obtaining-informed-consent/>

II. Document Consent for a Virtual-Type Visit.

- A. Any verbal consent must be documented in the medical record before services are provided.
- B. A signed consent must be entered into the medical record (i.e., scan, etc.).
 - 1. Mail or use the patient portal to send the form in advance, so patients can review it ahead of time.
- C. If the patient did not sign the consent, note it in the medical record.
- D. If recording the telehealth visit, an additional consent must be obtained for the recording.
- E. The patient's appropriateness must be ensured for any telehealth services.
 - 1. The patient should have access to connectivity and be able to effectively use any equipment that is needed for the telehealth visit.
 - 2. The patient should be in a private space during the entire duration of the telehealth visit.
 - 3. An adequate exam, or the collection of necessary medical information from the patient, should be able to be performed.
 - 4. If there is any history of previous, or current, difficulty managing patient behavior, it must be addressed and documented in the patient's medical record.
<https://static1.squarespace.com/static/5e7a1f8890664f18b1bf2112/t/5e863262c928fc4df03f3829/1585853031656/4P+Quick+Start+Tutorial+-+Mental+Health-0402.pdf>

III. Types of Consent for a Virtual-Type Visit.

- A. A verbal consent can be used for telehealth services.
 - 1. The verbal consent is needed for virtual check-in and e-visits.
- B. An informed consent may be used for telehealth services.
 - 1. The informed consent must be explained to the patient.
 - a) Any informed consent must address services to be rendered.
 - b) The informed consent should include discussion of any anticipated results and benefits of the services to be provided.

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- c) The informed consent must discuss the risks related to the services.
- d) Any alternatives to the telehealth services should also be addressed when obtaining an informed consent.

<https://www.ahrq.gov/health-literacy/improve/informed-consent/obtain.html>

IV. Patient Education During Consent

- A. Discuss with the patient what they may expect from the telehealth visit.
 - 1. Inform the patient that calls are not recorded during their telehealth visit.
 - 2. Provide the patient a number to phone if the call is dropped.
 - 3. The patient should be informed of any confidentiality risks and how to minimize them.
 - 4. Discuss with the patient the importance of using only approved software and the links provided.
 - 5. Emphasize to the patient the need to connect from a quiet, safe, private place with minimal distractions.
 - 6. The patient should be informed that the patient portal and video are not emergency contact methods.

Tips:

- *If a consent is verbal, it should be included in the general consent and revisited often. See Procedure I.*
- *Consider having the patient repeat what was talked about in the consent discussion. Use open-ended questions versus those with a yes or no response. Offer to read the consent form aloud to the patient. See Procedure I.*
- *If patients can sign the consent form in your patient portal, ask whether they are able to access the portal. If they are, direct them to staff who can walk them through how to consent online. See Procedure III.*
- *If patients cannot use the patient portal, mail consent forms (one to sign and return, one to keep) and a stamped return envelope, and ask patients to sign and mail back the form. See Procedure III.*

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