

HIPAA Guidance Relating to Community Based Testing Sites

Some dentists, as well as other healthcare providers, are supporting efforts to provide COVID-19 testing services at Community Based-Testing Sites. Be aware of the Office for Civil Rights' enforcement discretion for good faith participation by healthcare workers at those locations.

I'm considering participating at a COVID-19 testing site. Is there a risk I might be liable for a HIPAA violation?

On April 9, the Office for Civil Rights (OCR) announced that it will not impose penalties for the good faith participation in the operation of COVID-19 Community Based-Testing Site (CBTS). Examples of CBTS include mobile, drive-through, or walk-up sites that only provide COVID-19 specimen collection or testing services to the public.

The OCR enforcement discretion is effective retroactively to March 13, 2020 and will continue in effect until the public health emergency no longer exists, or upon the expiration date of the declared public health emergency, including any extensions, whichever occurs first.

This enforcement discretion applies to HIPAA covered entities such as HIPAA covered dental practices, as well as to business associates that choose to participate in the operation of a CBTS. To help determine if a dental practice is covered by HIPAA, visit the Centers for Medicare & Medicaid Services, "[Are You a Covered Entity?](#)"

OCR's enforcement discretion does not extend to potential HIPAA violations that may occur in a covered dental practice's non-CBTS activities.

Although OCR will not impose penalties for violations of the HIPAA rules that occur in connection with the good faith operation of a CBTS, OCR encourages implementing reasonable safeguards to protect the privacy and security of individual's protected health information (PHI) at a CBTS.

Examples of reasonable standards listed in the notification include using and disclosing only the minimum PHI necessary (except when disclosing for treatment purposes), controlling foot and car traffic to create adequate distancing to minimize seeing or overhearing interactions at the CBTS, establishing a buffer zone to provide privacy from the public and the news media and posting a sign prohibiting filming, using secure electronic technology to record and transmit PHI at the CBTS, and posting a Notice of Privacy Practices (NPP) or information about how to find the NPP online.

HIPAA covered dental practices should be aware of any applicable state and data privacy and security laws, because HIPAA does not preempt more stringent state law, nor state law that does not conflict with HIPAA. Dental practices that are not covered by HIPAA must comply with applicable state law.

Data privacy and security is only one of several legal considerations that may arise in the context of CBTS participation. Other examples include scope of practice laws, professional liability coverage and volunteer immunity statutes, if applicable.

The Notification of Enforcement Discretion on CBTS during the COVID-19 Nationwide Public Health Emergency may be found at <https://www.hhs.gov/sites/default/files/notification-enforcement-discretion-community-based-testing-sites.pdf> - PDF.

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