

# Telehealth Services and Obtaining Consent

Telehealth patient consent requirements, like most aspects of health care delivery, vary by state. While at the federal level, the Centers for Medicare and Medicaid Services (CMS) does not require that providers obtain an informed consent for Medicare telehealth services prior to delivering such care, many states do have informed consent requirements within their Medicaid program or more broadly for all health care providers for telehealth services. Even when informed consent for telehealth services is not strictly required, many providers still elect to go through the process to make sure that their patients are sufficiently educated about telehealth services. As virtual care expands rapidly, many more patients are engaging in telehealth for the first time and may benefit from education about how it works and what their rights are when receiving telehealth care.

This guide explains the difference between general consent for services and informed consent for telehealth, provides information and resources for developing the latter, and describes strategies for obtaining either type of consent.



## General Consent for Services and Informed Consent for Telehealth Services – What is the difference?

**General consent for services** – is obtained prior to delivering patient care, regardless of whether that care is provided in a health center or by telehealth. In many states, general consent may be obtained prior to a patient's first visit and then updated periodically (often annually) thereafter.

- **FOR ESTABLISHED PATIENTS:** you might not need to obtain a general consent for services when providing telehealth unless the patient is due to update their general consent per your health center's policy.
- **FOR NEW PATIENTS:** you likely will need to obtain a general consent for services when providing care to new patients via telehealth.

**Informed consent for telehealth services** – refers specifically to educating patients about telehealth delivery of care and obtaining their consent to deliver services in this manner. Informed consent for telehealth is often used to ensure that a patient understands what telehealth is and how their care will be provided using the selected technology.

- **FOR BOTH ESTABLISHED AND NEW PATIENTS:** if your health center decides to obtain informed consent for telehealth services, it should be obtained from both new and established patients at the frequency established in your health center's policy.



## State Requirements for Consent

You can determine what your state requires for general and/or informed consent for telehealth service at the Center for Connected Health Policy's (CCHP) website:

**FIRST** Use [CCHP's Interactive Map](#) to see your state's current telehealth laws and reimbursement policies, including for telehealth consent. Just click on your state and scroll down to read about Consent under the Medicaid, Private Payer, and/or Professional Regulation sections. (Also available in [PDF report format](#)).

**THEN** Check [CCHP's Telehealth COVID-19 Related State Actions Page](#) to determine if any of the requirements related to consent for telehealth services in your state have been waived under the COVID emergency.



## Required and Recommended Elements of Informed Consent for Telehealth Services

Prior to developing an informed consent for telehealth services form for your health center(s), determine if your state requires that any specific content be included. Elements that are commonly required or recommended to be included in consent for telehealth services include the following:

- General explanation of what telehealth is, who the provider delivering care by telehealth is, and what the technology being used is
- Voluntary nature of services, including the patient's right to stop or refuse telehealth treatment
- Location of patient and provider
- Description of the care that can be provided via telehealth and how any needs for in-person care will be managed (examples: by referral to another provider or with a follow-up in-person visit)
- Patient responsibilities when receiving telehealth treatment
- Potential benefits, constraints, and risks of telehealth
- Confidentiality protections and limitations
- Patients' right to access medical record from the telehealth services
- What will happen in the event that technology or equipment fails during the telehealth visit (example: provider will call the patient back on the phone)
- Any variations in billing or sliding fee scale procedures for telehealth services



## Sample Informed Consent for Telehealth Services Forms

Below are links to sample forms for obtaining informed consent for telehealth services. These examples can be customized to meet the needs of your health center(s).

- [FPNTC Telehealth Services Informed Consent Samples](#)
- [AHRQ's Easy-to-Understand Telehealth Consent Form](#)
- [Cooperative of American Physicians Sample Consent to Use Telemedicine Form](#)
- [Sample Consent to Telehealth Consultation from California Telehealth Resource Center](#)

Contact your regional Telehealth Resource Center (TRC) to request additional examples from your region or to ask specific questions. Find your TRC at <http://telehealthresourcecenter.org/>.



## Strategies for Obtaining Consent

There are many mechanisms available for obtaining consent, both general consent for services and informed consent for telehealth services. The strategies listed below can be applied to obtaining either type. As with everything, you will need to ensure that the strategies you select are in line with current requirements in your state. In addition to their above sample consent form, AHRQ has created a [how-to guide for providers on obtaining informed consent for telehealth](#) with tips for discussing consent effectively with patients.

### VERBALLY

Providers are often able to obtain and document verbal consent. In some states this is a flexibility allowed during the COVID emergency, while in other states verbal consent is always acceptable when providing telehealth care. When obtaining verbal consent, providers should document the key items discussed in the medical record. This may be done by including a field(s) in the medical record for the provider to select so that the data is easily retrievable. Alternatively, a free text field may be used to document with a reference to the appropriate consent form or with a SmartPhrase. Per [AHRQ guidance](#), after discussing consent for telehealth services providers should also document the patient's ability to correctly teach back the information in the medical record to demonstrate that informed consent was effectively provided.

In addition to obtaining verbal consent, consider using a secondary strategy from the list below to provide a copy of consent forms to patients.

### MAIL

Patient consent forms may be delivered by mail. Some providers opt to mail a paper copy to patients in advance of a visit so that they can review the consent form(s) together during the telehealth encounter. Patients may also be provided with a duplicate copy to sign and return via pre-paid envelope if a provider is required to obtain a physical copy. Care does not have to be delayed until the signed copy is received and providers can proceed with a telehealth visit by documenting verbal consent.

### EMAIL

Consent forms may also be sent to patients by email. If possible, patients may return a scan or photo of a signed copy of their consent form(s). Similarly to mailing consent forms, this strategy may be useful for providing a copy of the consent form(s) to the patient to review with the provider who will then document verbal consent if a physical or electronic signature cannot be feasibly obtained.

## PATIENT PORTAL

If your health center(s) have access to a patient portal, you may be able to send consent forms to patients in this way and obtain an electronic signature. Determine during scheduling or other patient communications, whether the patient is able to access the portal and/or can be assisted to access it and consent online. Since most health centers do not achieve total enrollment in their patient portal, a secondary strategy should be developed for patients who cannot provide consent through the portal.

## ELECTRONIC SIGNATURE THROUGH REDCAP OR DOCUSIGN

Patient consent may also be obtained by using a service such as RedCAP or DocuSign. These options provide patients with a link to review consent forms and provide an electronic signature. Both options have features that allow additional information and/or forms to be collected electronically. RedCAP is a secure web application for building and managing online surveys and databases. It is available for free to non-profit organizations. DocuSign offers a cloud-based service for obtaining patient consent and other forms. Pricing varies by plan.

## TELEHEALTH PLATFORM

Some telehealth platforms have an option to integrate consent forms into your telehealth workflow. Patients will receive, review, and electronically sign consent documents through the telehealth platform. If your health center(s) use a telehealth platform that is not integrated with an electronic medical record, determine how the signed consent forms will be documented in the patient's medical record.

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For more information, contact Callie Wise at [cwise@nfprha.org](mailto:cwise@nfprha.org).

National  
**Family Planning**  
& Reproductive Health Association

1025 Vermont Ave., Suite 800  
Washington, DC 20005  
[www.nationalfamilyplanning.org](http://www.nationalfamilyplanning.org)  
(202) 293-3114 • [info@nfprha.org](mailto:info@nfprha.org)