The U.S. Department of Health and Human Services Office of Civil Rights (OCR) recently announced that telehealth providers must have a Business Associate Agreement in place and telehealth services must be provided on a HIPAA-compliant program by January 21, 2021. The OCR has been aggressive (even during the COVID-19 pandemic) with investigating potential HIPAA violations and collecting significant fines. Covered Entities (medical providers and their Business Associates) will be exposed to HIPAA fines, if they do not return to pre-COVID norms and standards under HIPAA.

Before the COVID-19 pandemic, medical providers were required to use a HIPAA-compliant video platform for providing services via telehealth. As part of that requirement, Covered Entities were required to obtain a Business Associate Agreement with the video platform company. During the pandemic, the OCR loosened this requirement and allowed providers the opportunity to use a non-HIPAA compliant video platform – provided the platform was not public facing and the patient understood and consented to the risks. As a result, the requirement to obtain a Business Associate Agreement was waived until January 20, 2021.

Although the new Presidential Administration may elect to extend the waivers, we strongly recommend, if you are not yet using a HIPAA-compliant platform, to do so prior to January 21.