

Blog Post

Pharmacy Testing Centers: A Prescription for Fighting COVID-19 in Florida

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Pharmacists can now engage in a new role in the battle against COVID-19 – testing patients for the virus. Recognizing the advanced health care training that pharmacists receive and the unique consumer access to community pharmacies during the Pandemic, the Florida Department of Health has designated pharmacists as medical professionals authorized to order and provide COVID-19 tests. Additionally, pharmacies, as Community-Based Testing Sites (CBTS) will benefit from the waiving of penalties for noncompliance with the HIPAA Privacy, Security, and Breach Notification Rules (HIPAA Rules) during the public health emergency in the situations discussed below.

Florida Licensure

In order to effectively respond to the COVID-19 emergency, the Florida Surgeon General issued Emergency Order No. 20-006 to allow pharmacists to administer COVID-19 tests. Although previously prevented from doing so under certain statutes, pharmacists are now temporarily able to:

- Perform COVID-19 tests without being separately licensed to do so; and
- Order, administer, and report the results of COVID-19 tests authorized by the United States Food and Drug Administration at locations with clear and active pharmacy licenses.

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These suspensions of the licensure requirements shall remain in place until Executive Order No. 20-52 expires on May 8, 2020, unless otherwise extended. We expect Emergency Order No. 20-006 to remain in place as Florida phases in its reopening, but must await the passage of extensions.

HIPAA Rule

Now that pharmacies are ensured a greater role in the fight against COVID-19, they should be relieved to know that certain regulatory hurdles ordinarily imposed by the Office of Civil Rights (OCR) have been removed. Specifically, the OCR issued a Notification of Enforcement Discretion, pursuant to which it will not impose penalties against covered entities and business associates for violations of the HIPAA Rules, when such entities are:

- participating in the operation of COVID-19 CBTS (e.g., drive-through and walk-up sites that only perform COVID-19 collection and testing services),
- performing this operation in good faith, and
- doing so during the COVID-19 public health emergency.

A pharmacy will therefore be protected from penalties for violations of the HIPAA Rules while the pharmacy is participating in good faith in the operation of a CBTS during the COVID-19 public health emergency. However, the pharmacy will not be protected from violations unrelated to the CBTS.

Even though the OCR will not impose penalties if the requirements discussed above are met, the OCR still encourages covered entities and business associates to implement reasonable safeguards to protect individuals' privacy and security. For example, it is recommended that these entities establish a "buffer zone" to prevent the media and public from filming individuals who approach a CBTS.

The Notification is retroactive to March 13, 2020 and shall remain in place until the Secretary of the Department of Health and Human Services declares that the public health emergency no longer exists, or until the expiration of the declared public health emergency (including any extensions), whichever occurs first.

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