

March 25, 2020

Alex M. Azar  
Secretary  
U.S. Department of Health & Human Services  
200 Independence Avenue, S.W.  
Washington, DC 20201

Dear Secretary Azar:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, our clinical partners – including more than 270,000 affiliated physicians, 2 million nurses and other caregivers – and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association (AHA) urges you to consider clarifications for waivers relating to the Health Insurance Portability and Accountability Act (HIPAA) and the Emergency Medical Treatment and Labor Act (EMTALA).

On Jan. 31, your office declared a public health emergency in the U.S. for COVID-19, representing an important first step in combatting this virus. The public health emergency together with the President's recent national emergency declaration on March 13 enabled your office to make several critical waivers consistent with section 1135 of the Social Security Act. We appreciate your swift action in announcing these waivers.

However, there remains significant uncertainty among hospitals and health systems whether your declaration specific to EMTALA creates protections that every hospital can automatically rely on for the duration of the emergency. We ask that you clarify that no further action by the Centers for Medicare & Medicaid Services (CMS) is needed or required to create the protections and that hospitals do not have to make individual requests or seek permissions from the agency. We also ask for clarification to ensure that CMS does not have to make any individual determinations about individual hospital's circumstances.

With respect to HIPAA waivers, the Office of Civil Rights (OCR) construes the waiver more narrowly than the 1135 statute dictates. Under 1135, the period of a waiver is determined by the nature of the emergency, in this case a public health emergency



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which involves a pandemic infectious disease. In such circumstances, the duration would extend for the life of the emergency. We urge you and the OCR to revise the guidance that limits protection to 72 hours and confirm that the protection extends through the duration of this declared public health emergency.

If the Department of Health and Human Services is unable to revise the waivers of the requirements of EMTALA and HIPAA, the AHA urges you to announce that the Department will exercise enforcement discretion and not take action against hospitals that fail to meet the requirements of EMTALA and HIPAA during the COVID-19 crisis. In this unprecedented moment for our country, hospitals and health systems should be able to devote full attention to their health care missions without fear of penalty.

We appreciate the leadership you have provided on ensuring our nation's ability to respond to COVID-19, and we look forward to continuing to work with you during this critical time to protect the health of our nation.

Sincerely,

/s/

Thomas P. Nickels  
Executive Vice President

CC: Roger Severino, Director, Office of Civil Rights