

October 25, 2021

Lisa J. Pino
Director
Office for Civil Rights
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue, SW
Washington, DC 20201

RE: Glide Path for HIPAA Enforcement Discretion on Use of Telemedicine Platforms

Dear Director Pino:

On behalf of the physician and medical student members of the American Medical Association (AMA), I am writing to the Office for Civil Rights (OCR) regarding enforcement of the Health Insurance Portability and Accountability Act (HIPAA) regulations in the context of telemedicine during the COVID-19 public health emergency (PHE). We greatly appreciate OCR's recognition early in the PHE that physician practices would need to quickly adopt telemedicine technologies to help provide safe and accessible care to their patients. To help support such adoption, OCR announced [its policy](#) of using discretion in enforcing HIPAA violations for physicians and hospitals who, in good faith, utilized telemedicine platforms and applications to connect with their patients.

The AMA supported this policy as it helped clinicians quickly adopt telemedicine without needing to first implement contracts and security reviews that are often complicated and time-consuming. However, while HIPAA compliance may seem onerous and burdensome, it is a necessary ingredient to the long-term continued use and success of telemedicine technology. HIPAA's requirements are intended to ensure that both clinicians and their business associates are accountable for the privacy and security of patient information, thereby fortifying the trust that is central to the physician-patient relationship. Accordingly, while alerting our members to OCR's enforcement discretion, the AMA encouraged physicians to seek telemedicine platforms that provide secure, end-to-end encryption to prevent unwanted third parties from accessing conversations or files. We also advised physicians to enable and activate all available privacy and security features of the platform they selected. Additionally, in response to a spike in cyber threats seeking to exploit telework technologies during the PHE, the AMA worked with the American Hospital Association to develop resources aimed at providing physicians and hospitals with [guidance on protecting a remote work environment](#). The resources offered direct actions to strengthen home or hospital-based computers, networks, and medical devices from the rise in COVID-19 themed security threats and attacks.

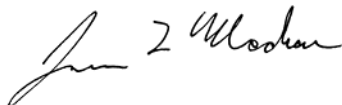
When the PHE declaration ends, we urge OCR to establish a one-year glide path to compliance, during which physicians and other affected parties shall not be subject to HIPAA audits and other HIPAA enforcement activity related to telemedicine. For example, if the PHE were to end on September 30, rather than requiring clinicians to be fully in compliance with HIPAA for telemedicine

purposes on October 1, OCR should provide the opportunity for clinicians to begin taking steps toward compliance—e.g., engage their vendors in discussions about business associate agreements and initiate or implement their security risk analysis of the new telemedicine platform. The agency should also call on telemedicine vendors to assist clinicians with coming into compliance and to create guidance documents that specifically speak to telemedicine platforms and what HIPAA requires for use of such technology. While HIPAA is familiar to many physicians, we encourage the agency to recognize that many clinicians are using telemedicine for the first time and may not be well-versed in the unique risks and vulnerabilities associated with the new tools they are using.

Again, the AMA takes HIPAA seriously and fully supports the need to ensure that patient information is secure and private. Simultaneously, physicians have had to adapt to new technologies to deliver virtual care while also managing multiple stressors on their practices, in-person patients, and staff during an incredibly demanding and difficult pandemic. They will need time once the PHE ends to ensure that their policies, procedures, risk analyses, and business associate agreements are in order.

The AMA welcomes the opportunity to discuss these issues with OCR. Should you have any questions, please contact Laura Hoffman, Assistant Director of Federal Affairs, at laura.hoffman@ama-assn.org.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Madara". The signature is written in a cursive, flowing style.

James L. Madara, MD