

December 17, 2020

Roger Severino, Director  
Office for Civil Rights  
U.S. Department of Health & Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Director Severino:

On behalf of the membership of the National Association of Insurance Commissioners<sup>1</sup>, we write to request that you take action to assure that telehealth services remain available for consumers. During the current public health emergency and after its end, telehealth services offer crucial benefits including reduced risk of disease spread, increased convenience for consumers and providers, better adherence to appointments, and potentially better health with lower costs. OCR's enforcement discretion with regard to privacy and security standards under the Health Insurance Portability and Accountability Act (HIPAA) has helped facilitate the rapid shift toward health services delivered through telecommunication this year and we urge you not to reintroduce regulatory barriers that could limit access.

The dramatic move toward telehealth adoption shows that providers and consumers are eager to make use of existing technologies. Protecting patients' privacy and security are critical goals, but they must be weighed together with infection control, consumer choice, cost, and the availability of alternative service modes. State insurance regulators support the enforcement discretion choices OCR has made in response to the pandemic. Indeed, many states have adjusted their own regulations around telehealth to take advantage of the increased flexibility spearheaded by OCR and the Centers for Medicare and Medicaid Services (CMS). We see no reason to quickly reimpose restrictions on telehealth use. First, the pandemic emergency continues. Second, even once the country makes progress in controlling the pandemic, many patients will continue to need expanded access, including those in areas with few providers, who face transportation challenges, and those with health conditions that make in-person services risky. CMS has already moved forward to make some telehealth flexibilities permanent in Medicare and we urge OCR to consider permanent changes to HIPAA enforcement.

We believe the existing enforcement discretion allows patients to access their providers using technologies that work for them. In the past, HIPAA-compliant technologies often were not as accessible or user-friendly as the services patients use for everyday communication outside of health care settings. In particular, for patients with limited or no access to broadband internet service, providing telehealth over telephone connections is a critical means for making health care available. While this is changing rapidly, we believe HIPAA enforcement should continue to allow for the use of widely-available

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<sup>1</sup> Founded in 1871, the NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

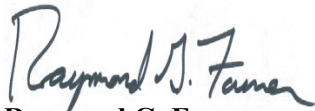
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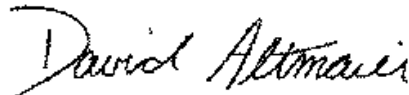
technologies, including telephone, for the provision of telehealth services. Providers should be expected to take reasonable steps to protect privacy and security while using these technologies. Patients should be permitted to opt-in to the telecommunication method they prefer, provided they are given appropriate disclosure of any privacy or security risks. We also recommend that additional education be provided to consumers to enable them to make informed decisions about choosing the most secure method that is readily accessible to them.

We appreciate OCR's ongoing work to assess the effectiveness of its enforcement discretion and to engage stakeholders as it considers its future HIPAA enforcement priorities. State insurance regulators want to continue to work with OCR and HHS to make sure that regulation of insurers and health care providers at both the state and federal levels supports patient access to needed services.

Sincerely,



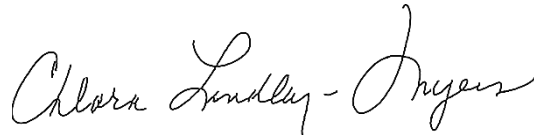
**Raymond G. Farmer**  
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Cc: Linda Sanches, Senior Advisor, Health IT and Privacy Policy