

March 5, 2020

The Honorable Alex Azar
Secretary
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue
Washington, DC 20001

RE: Action needed to support hospitals' ability to respond to COVID-19

Dear Secretary Azar:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, our clinician 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) thanks the Department of Health and Human Services (HHS) and its agencies for the many actions taken to date to respond to the novel coronavirus (COVID-19). In particular, America's hospitals and health systems are grateful for the expert advice and guidance developed by Centers for Disease Control and Prevention (CDC) and the coordination provided by the HHS Assistant Secretary for Preparedness and Response (ASPR).

Ensuring safe care for patients, protecting health care professionals providing patient care, and supporting the health and safety of communities are the main priorities for hospitals and health systems preparing for and responding to COVID-19. We urge the administration to take the following regulatory actions to support these efforts:

1. **Enable broader use of telehealth.** In recently released guidance, CDC encourages hospitals to use video visits to diagnose and support patients so they can care for themselves at home, if appropriate. Hospitals typically use secure networks for telehealth so that they are completely compliant with HIPAA requirements. Hospitals want to enable individuals who are experiencing symptoms and may suspect they have COVID-19 to consult with a care provider without going to the hospital, and thus want to be able to use FaceTime and Skype — or similar familiar modalities — to connect a patient with a doctor or nurse practitioner. However, hospitals have concerns that these technologies may not be compliant with the HIPAA privacy and security requirements.



We urge HHS to waive HIPAA privacy requirements, as well as permit a similar waiver of applicable security rule requirements in any emergency area and for the emergency period identified in the public health emergency declaration. In addition, the AHA supports allowing HHS the ability to loosen reimbursement rules to allow coverage of services for telehealth in the event of public health emergencies and natural disasters, consistent with the bipartisan CONNECT Act.

2. **Temporarily waive fit testing requirements.** The supply of N95 respirators is a concern for hospitals. The respirators are used to protect health care workers from many serious illnesses. **To preserve this vital resource so that they can be used to protect health care personnel in caring for patients who carry the highest risk of disease spread, we request temporary suspension of the annual fit testing requirements for staff.** It is rare for an individual to require a different size respirator from one fit test to the next; therefore, the annual fit testing of respirators represents an unnecessary use of a respirator that could better be used in the care of patients. If a health care worker has had a significant change in facial features due to weight gain or loss, surgery or injury that would warrant new fit testing, it should be done. In addition, initial fit testing should continue to be provided to new employees. However, for the majority of workers, we want to be able to defer the fit testing until such time as there is an adequate supply of N95 respirators. This is a requirement of the Occupational Safety and Health Administration and is reinforced through compliance surveys done by the Centers for Medicare & Medicaid Services (CMS).
3. **Ensure patients can access care.** No individual who thinks they may have been infected with COVID-19 should let concerns about paying for care stop them from seeking testing or treatment. The best way to protect the health of the broader community is to identify and appropriately manage all suspected cases consistent with CDC guidance. **We urge CMS to ensure coverage of the necessary screening, monitoring and treatment of suspected cases within the Medicare, Medicaid and Marketplace populations by mandating that medical necessity determinations be made based on presenting symptoms and not the final diagnosis, as well as holding harmless such patients from any cost-sharing obligations. We urge these same practices apply in all forms of coverage outside of CMS's jurisdiction as well. In addition, we urge you to use ASPR's national disaster medical systems definitive care reimbursement program to fund hospital costs of caring for both patients who have COVID-19 but no insurance coverage and those who are under investigation for COVID-19 and need to be kept isolated to reduce the chance of community-wide spread of the disease.**
4. **Emergency Medical Treatment and Labor Act (EMTALA) waiver.** Hospitals remain committed to treating all patients that come through their doors. **In situations where a health system may have multiple hospitals within close proximity, we urge CMS to allow health systems to designate a specific facility to treat patients presenting with suspected COVID-19 cases.** This reduces the chance of spread of the virus to uninfected patients in the hospital

and allows for conservation of scarce personal protective equipment. It also allows the system to make the best use of its experts in infectious disease instead of duplicating efforts across multiple settings.

- 5. Suspension of surveys.** In the event of a COVID-19 outbreak in a region, hospitals and other health care facilities will be extremely busy meeting the needs of all of their patients. These include patients with COVID-19, the flu and any of the many other diseases and disorders that lead to hospitalization. Adding the burden of a compliance survey on top of an extraordinary patient volume and a scarcity of other resources would be problematic. **We ask that CMS pay attention to where the COVID-19 outbreaks are occurring and delay any scheduled surveys during a time of emergency in a community.**

- 6. Preparing for and moving to community outbreak.** As we begin to experience community spread of COVID-19 — as we are seeing in Washington state — it will be important to have the changes in guidance from CDC to help us understand who can likely care for themselves at home and who should be hospitalized; what personal protective equipment is needed and who should wear it; what precautions we should take with hospital staff who may have been exposed to someone with COVID-19; and many other protocols that may need to be changed. **We ask that you expedite the release of this guidance so that our hospitals and health systems can use it to prepare for a possible outbreak in their communities.** Further, our members will want to know if the switch from containment strategies to strategies for caring for a community outbreak will happen simultaneously across the nation or if it will occur more community-by-community as warranted by local experience. In addition, it would be helpful to know what factors are considered in determining if it is time for the switch to occur.

Thank you for considering these requests. We look forward to continuing to partner with you in protecting communities all across the nation from COVID-19.

Sincerely,

/s/

Richard J. Pollack
President and Chief Executive Officer

cc: Seema Verma, Administrator, CMS