

January 31, 2023

Melanie Fontes Rainer
Director for Office of Civil Rights (OCR)
U.S. Department of Health and Human Services
Office for Civil Rights
Attn: SUD Patient Records
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue, SW
Washington, DC 20201

Re: Confidentiality of Substance Use Disorder (SUD) Patient Records NPRM, RIN 0945-AA16

Submitted electronically via www.regulations.gov

Dear Ms. Fontes Rainer,

athenahealth, Inc. (“athenahealth” or “athena”) appreciates the opportunity to respond to the Department of Health and Human Services (HHS) Notice of Proposed Rulemaking (NPRM) on the Confidentiality of Substance Use Disorder Patient Records.

Over the past 26 years, athenahealth has built a network of approximately 385,000 healthcare providers in both the ambulatory and acute settings in all 50 states. We provide electronic health record (EHR), practice management, care coordination, patient engagement, data analytics, revenue cycle management, and related services to physician practices and hospitals. More than 155,000 providers utilize athenahealth’s nationwide, cloud-based network. We also support on-premise software solutions. athenahealth’s vision is to create a thriving healthcare ecosystem that delivers accessible, high quality, and sustainable healthcare for all. We work towards this vision partially by reducing the burden of regulatory requirements and administrative challenges facing healthcare providers today.

We applaud the administration’s efforts to simplify and align regulatory requirements in pursuit of improved patient outcomes and increased provider satisfaction. All too often outdated and misaligned regulatory requirements create confusion for participants in the healthcare system. This confusion negatively impacts care delivery. Through this NPRM the administration recognizes that reducing burden and improving data portability does not have to come at the expense of privacy, security, and patient safety. In fact, simplifying overlapping regulations and increasing data flow actually improves care and patient safety under the proven privacy and security framework of the Health Insurance Portability and Accountability Act (HIPAA).

The proposal to align behavioral and substance use disorder data elements with HIPAA is a welcome improvement to our healthcare system. It is our experience that too often clinicians lack the full patient narrative required to deliver the best care possible. This is an unintended consequence of multiple, often

conflicting, privacy frameworks for different data elements that make navigating appropriate consent for exchange and receipt unnecessarily difficult. All the regulations have the common goal of protecting patients. However, when important data elements are not shared and clinician's lack a complete picture of the patient's care history, the quality and safety of care suffers. We believe that the NPRM effectively balances the efficient exchange of important clinical information while preserving the patients' fundamental right to manage, use, and disclose the information through consent procedures.

As HHS and the Office of Civil Rights (OCR) work to improve the current paradigm, athenahealth does not support the proposal to include all access of substance use data for treatment, payment, and healthcare operation (TPO) authorized by a single patient consent in the Accounting of Disclosures. The administration should be wary of unintended consequences and the confusion this volume and type of data will cause for patients and providers. We believe the proposal cuts against the spirit of the rule to align data elements with HIPAA protections that improve clarity for providers and patients.

In every patient care situation, several qualified professionals may access a patient's medical record for approved actions under the HIPAA definition of TPO. The access points are all in pursuit of delivering the highest possible level of care for the patient and are part of the patient consent preferences that information is exchanged for the purposes of TPO. This may include dozens of reviews, consultations with other clinicians, and all the administrative work required to comply with payer specific quality programs. We are concerned that this list will create confusion for the patient without advancing outcomes or aiding in patient directed navigation of the care system. Currently TPO access is exempted from HIPAA Accounting of Disclosures. We urge HHS OCR to align the SUD Accounting of Disclosures with HIPAA's current Accounting of Disclosures. This will allow for transparency and information access that adds value and allows patients to engage meaningfully with their healthcare providers.

We look forward to continuing to work with your team to improve healthcare. Please do not hesitate to contact me directly at 617-402-8516.

Regards,

A handwritten signature in black ink, appearing to read "Greg Carey".

Greg Carey
Director, Government & Regulatory Affairs
athenahealth, Inc.