



311 Arsenal Street
Watertown, MA 02472

February 5, 2016

The Honorable Orrin Hatch
Chairman
Senate Committee on Finance
U.S. Senate
Washington, DC 20510

The Honorable Ron Wyden
Ranking Member
Senate Committee on Finance
U.S. Senate
Washington, DC 20510

The Honorable Kevin Brady
Chairman
House Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20510

The Honorable Sander Levin
Ranking Member
House Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20510

Re: athenahealth Comments on Improvements to the Stark Law

*Submitted via electronic mail to: kim_brandt@finance.senate.gov,
tegan.gelfand@mail.house.gov, and alyssa.palisi@mail.house.gov*

Dear Senator Hatch, Senator Wyden, Representative Brady, and Representative Levin,

athenahealth appreciates the opportunity to provide input on ways to improve the Stark Law. Specifically, we are concerned with ways in which the Stark Law, and the closely-related Anti-Kickback Statute, impede ubiquitous information sharing in health care, which in turn threatens the successful implementation of the Medicare Access and CHIP Reauthorization Act of 2015 ("MACRA").

As you know, we provide electronic health record ("EHR"), practice management, care coordination, patient communication, data analytics, and related services to physician practices and hospitals, working with a network of over 75,000 healthcare professionals in all 50 states. All of our providers access our services on the same instance of continuously-updated, cloud-based software. Our clients' successes, exemplified by a Meaningful Use attestation rate more than double the national average, underscore the very real potential of health IT to improve care delivery and patient outcomes while increasing efficiency and reducing systemic costs.

Interoperation (an activity, as opposed to interoperability, a mere capability) among health IT systems is fundamental to the successful implementation of the Merit-Based Incentive Payment System and Alternative Payment Models under MACRA. Without the ability to seamlessly communicate and coordinate care across IT platforms, providers are unlikely to successfully manage the cost and quality of patient populations. Despite substantial investment in the adoption of health IT, the healthcare industry is not nearly

far enough along in achieving ubiquitous information exchange, and Congress should look to ways to incentivize—not mandate—further progress in this area.

There are many policy levers available to address barriers to interoperability, but one that has not received sufficient attention is need to revise out-dated fraud and abuse laws.

In most every functioning marketplace across the economy, high-quality, curated data is treated as the valuable commodity that it is. Market participants in need of data are able to pay fair market value for that data, supporting the creation and maintenance of the necessary technological infrastructure to enable the efficient, secure exchange of health information. As a result, a sustainable market for information exchange emerges. This is true everywhere from banking and online trading systems to the national information network that enables the tracking and exchange of after-market auto parts.

In healthcare, however, because the transfer of patient data occurs most frequently in the context of a care referral, any accompanying transfer of value is deemed illegal remuneration under the Stark Laws and/or the Anti-Kickback Statute. As a result, in healthcare the owner/curator of quality data is obligated to assume the cost of electronic transfer of information to a recipient. The beneficiary of the work and the infrastructure investment necessary to curate that data and enable its secure and efficient transfer—the recipient—is literally legally prohibited from paying fair market value for that work and investment. This paradigm, which forces the curator of data to pay for the privilege of sending it electronically to a recipient, operates as a very effective economic disincentive to information sharing in healthcare.

We urge your committees to consider a revision of the Stark Law and Anti-Kickback Statute to allow fair market value payments for information exchanged in conjunction with a patient referral. Policymakers must recognize that laws intended to prevent fraud and abuse in a fee-for-service world, written before the age of information technology, are increasingly overbroad when applied to increasingly-prevalent fee-for-value arrangements and actively impede the information sharing necessary to make those arrangements successful.

athenahealth appreciates the opportunity to share our thoughts and looks forward to continuing to work with your staff on improvements to the Stark Law that can lead to dramatic increases in interoperability.

Sincerely,



Stephanie Zaremba
Senior Manager, Government & Regulatory Affairs
athenahealth, Inc.