



311 Arsenal Street
Watertown, MA 02472

January 29, 2016

The Honorable Johnny Isakson
Member, Senate Committee on Finance
Co-chair, Chronic Care Working Group
U.S. Senate
Washington, DC 20510

The Honorable Mark Warner
Member, Senate Committee on Finance
Co-chair, Chronic Care Working Group
U.S. Senate
Washington, DC 20510

Re: athenahealth Comments on the Bipartisan Chronic Care Working Group Policy Options Document

Submitted via electronic mail to: chronic_care@finance.senate.gov

Dear Senator Isakson, Senator Warner and members of the Bipartisan Chronic Care Working Group,

athenahealth appreciates the opportunity to comment on the recently released Bipartisan Chronic Care Working Group Policy Options Document (“Policy Options Document”). We commend your efforts in convening the Bipartisan Chronic Care Working Group (“Working Group”) to analyze current law, discuss alternative policy options and develop bipartisan legislative solutions to improve the care of millions in the U.S. managing chronic diseases.

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 72,000 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.

As the Working Group works to finalize its policy recommendations, we urge you to focus on incentivizing—not mandating—the actual exchange of health information as a critical factor to improve chronic disease management. Interoperation (an activity, as opposed to interoperability, a mere capability) is the key to clinical integration, the process of continually aligning patient care across the health care continuum to reduce costs and improve care quality and access. Despite substantial investment in the adoption of health IT, the healthcare industry is not nearly far enough along in achieving ubiquitous information exchange.

There are many policy levers available to address barriers to interoperability, but one that has not received sufficient attention is the ability of this Working Group to promote the infrastructure necessary for chronic care management by revising 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 the Working Group to add to its policy options a revision of the Stark Laws 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 on the Policy Options Document and look forward to continuing to work with the Working Group to ensure successful chronic care reform in the Medicare Program.

Sincerely,

A handwritten signature in black ink, appearing to be 'SZ', with a long horizontal line extending to the right.

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