

## RESOLUTION AGREEMENT

### I. Recitals

1. Parties. The Parties to this Resolution Agreement (Agreement) are:
  - A. The United States Department of Health and Human Services, Office for Civil Rights (“HHS”), which enforces the Federal standards that govern the privacy of individually identifiable health information (45 C.F.R. Part 160 and Subparts A and E of Part 164, the “Privacy Rule”), the Federal standards that govern the security of electronic individually identifiable health information (45 C.F.R. Part 160 and Subparts A and C of Part 164, the “Security Rule”), and the Federal standards for notification in the case of breach of unsecured protected health information (45 C.F.R. Part 160 and Subparts A and D of 45 C.F.R. Part 164, the “Breach Notification Rule”). HHS has the authority to conduct compliance reviews and investigations of complaints alleging violations of the Privacy, Security, and Breach Notification Rules (the “HIPAA Rules”) by covered entities and business associates, and covered entities and business associates must cooperate with HHS compliance reviews and investigations. See 45 C.F.R. §§ 160.306(c), 160.308, and 160.310(b).
  - B. Advanced Care Hospitalists (“ACH”), which is a covered entity, as defined at 45 C.F.R. § 160.103, and therefore is required to comply with the HIPAA Rules. ACH provides contracted internal medicine physicians to hospitals and nursing homes in the West Central Florida area.

HHS and ACH shall together be referred to herein as the “Parties.”

2. Factual Background and Covered Conduct.

ACH obtained billing data processing services between November of 2011 and June of 2012 from an individual who purported to represent a third-party billing company. ACH did not enter into a business associate agreement with the billing company. On February 11, 2014, a local hospital notified ACH that patient demographic information and, in some instances, limited clinical information was viewable on the third-party billing company’s website. The website was shut down and removed from internet access on February 12, 2014.

HHS’s investigation indicated that the following conduct occurred (“Covered Conduct”).

- A. ACH impermissibly disclosed the PHI of 9,255 of its patients to a third party for billing processing services without the protections of a business associate agreement in place. (See 45 C.F.R. § 164.502(a));
- B. ACH engaged a third party to provide data processing billing services from November 2011 to June 2012. At no time during this provision of service was a written agreement in place to meet the requirements under 45 C.F.R. § 164.502(e) and § 164.308(b);

- C. ACH failed to implement any Privacy, Security or Breach Notification Rule policies or procedures until April 1, 2014. (See 45 C.F.R. § 164. 530(i) and 164.316); and
  - D. ACH failed to conduct a risk analysis until March 4, 2014. (See 45 C.F.R. § 164.308(a)(1)(ii)(A)).
- 3. No Admission. This Agreement is not an admission of liability by ACH.
  - 4. No Concession. This Agreement is not a concession by HHS that ACH is not in violation of the HIPAA Rules and that ACH is not liable for civil money penalties.
  - 5. Intention of Parties to Effect Resolution. This Agreement is intended to resolve HHS Transaction Number 14-184592 and any violations of the HIPAA Rules related to the Covered Conduct specified in Section I.2 of this Agreement. In consideration of the Parties' interest in avoiding the uncertainty, burden, and expense of formal proceedings, the Parties agree to resolve this matter according to the Terms and Conditions below.

## II. Terms and Conditions

- 1. Payment. ACH has agreed to pay HHS the amount of **\$500,000** ("Resolution Amount"). ACH agrees to pay the Resolution Amount on or before **November 30, 2018**, pursuant to written instructions to be provided by HHS.
- 2. Corrective Action Plan. ACH has entered into and agrees to comply with the Corrective Action Plan ("CAP"), attached as Appendix A, which is incorporated into this Agreement by reference. If ACH breaches the CAP, and fails to cure the breach as set forth in the CAP, then ACH will be in breach of this Agreement and HHS will not be subject to the Release set forth in Section II.3 of this Agreement.
- 3. Release by HHS. In consideration and conditioned upon ACH's performance of its obligations under this Agreement, HHS releases ACH from any actions it may have against ACH under the HIPAA Rules for the Covered Conduct identified in Section I.2 of this Agreement. HHS does not release ACH from, nor waive any rights, obligations, or causes of action other than those arising out of or related to the Covered Conduct and referred to in Section I.2. This release does not extend to actions that may be brought under section 1177 of the Social Security Act, 42 U.S.C. § 1320d-6.
- 4. Agreement by Released Parties. ACH shall not contest the validity of its obligation to pay, nor the amount of, the Resolution Amount or any other obligations agreed to under this Agreement. ACH waives all procedural rights granted under Section 1128A of the Social Security Act (42 U.S.C. § 1320a- 7a) and 45 C.F.R. Part 160 Subpart E and HHS claims collection regulations at 45 C.F.R. Part 30, including, but not limited to, notice, hearing, and appeal with respect to the Resolution Amount.
- 5. Binding on Successors. This Agreement is binding on ACH and its successors, heirs, transferees, and assigns.

6. Costs. Each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.
7. No Additional Releases. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against or by any other person or entity.
8. Effect of Agreement. This Agreement constitutes the complete agreement between the Parties. All material representations, understandings, and promises of the Parties are contained in this Agreement. Any modifications to this Agreement shall be set forth in writing and signed by all Parties.
9. Execution of Agreement and Effective Date. The Agreement shall become effective (*i.e.*, final and binding) upon the date of signing of this Agreement and the CAP by the last signatory ("Effective Date").
10. Tolling of Statute of Limitations. Pursuant to 42 U.S.C. § 1320a-7a(c)(1), a civil money penalty ("CMP") must be imposed within six (6) years from the date of the occurrence of the violation. To ensure that this six-year period does not expire during the term of this Agreement, ACH agrees that the time between the Effective Date of this Agreement (as set forth in Section II.9) and the date the Agreement may be terminated by reason of ACH's breach, plus one-year thereafter, will not be included in calculating the six (6) year statute of limitations applicable to the violations which are the subject of this Agreement. ACH waives and will not plead any statute of limitations, laches, or similar defenses to any administrative action relating to the Covered Conduct identified in Section I.2 that is filed by HHS within the time period set forth above, except to the extent that such defenses would have been available had an administrative action been filed on the Effective Date of this Agreement.
11. Disclosure. HHS places no restriction on the publication of the Agreement. This Agreement and information related to this Agreement may be made public by either Party. In addition, HHS may be required to disclose material related to this Agreement to any person upon request consistent with the applicable provisions of the Freedom of Information Act, 5 U.S.C. § 552, and its implementing regulations, 45 C.F.R. Part 5.
12. Execution in Counterparts. This Agreement may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement.
13. Authorizations. The individual(s) signing this Agreement on behalf of ACH represent and warrant that they are authorized by ACH to execute this Agreement. The individual(s) signing this Agreement on behalf of HHS represent and warrant that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

- Signature line on following page -



**For Advanced Care Hospitalists, PL**

09/19/2018

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Gulab Sher, M.D., President  
Advanced Care Hospitalists, PL

Date

**For United States Department of Health and Human Services**



9/20/2018

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Timothy Noonan  
Regional Manager, Southeast Region  
Office for Civil Rights

Date

**Appendix A**  
**CORRECTIVE ACTION PLAN**  
**BETWEEN THE**  
**UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**AND**  
**ADVANCED CARE HOSPITALISTS, PL**

**I. Preamble**

Advanced Care Hospitalists (“ACH”) hereby enters into this Corrective Action Plan (“CAP”) with the United States Department of Health and Human Services, Office for Civil Rights (“HHS”). Contemporaneously with this CAP, ACH is entering into a Resolution Agreement (“Agreement”) with HHS, and this CAP is incorporated by reference into the Resolution Agreement as Appendix A. ACH enters into this CAP as consideration for the release set forth in Section II.3 of the Agreement.

**II. Contact Persons and Submissions**

A. Contact Persons

ACH has identified the following individual as its authorized representative and contact person regarding the implementation of this CAP and for receipt and submission of notifications and reports:

Gulab Sher, M.D.  
President  
Advanced Care Hospitalists, PL  
4315 Highland Park Blvd, Suite A  
Lakeland, FL 33813  
Voice: (863) 816-5884  
Fax: (863) 940-4856

HHS has identified the following individual as its authorized representative and contact person with whom ACH is to report information regarding the implementation of this CAP:

Timothy Noonan, Regional Manager, Office for Civil Rights  
61 Forsyth St, Suite 16T70  
Atlanta, GA 30303-8909  
Voice: (404) 562-7859  
Fax: (404) 562-7881

ACH and HHS agree to promptly notify each other of any changes in the contact persons or the other information provided above.

B. Proof of Submissions.

Unless otherwise specified, all notifications and reports required by this CAP may be made by any means, including certified mail, overnight mail, or hand delivery, provided that there is proof that such notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

**III. Effective Date and Term of CAP**

The Effective Date for this CAP shall be calculated in accordance with paragraph II.9 of the Agreement ("Effective Date"). The period for compliance ("Compliance Term") with the obligations assumed by ACH under this CAP shall begin on the Effective Date of this CAP and end two (2) years from the Effective Date, unless HHS has notified ACH under Section VIII hereof of its determination that ACH breached this CAP. In the event HHS notifies ACH of a breach under Section VIII hereof, the Compliance Term shall not end until HHS notifies ACH that HHS has determined ACH failed to meet the requirements of Section VIII.C of this CAP and issues a written notice of intent to proceed with an imposition of a civil money penalty (CMP) against ACH pursuant to 45 C.F.R. Part 160. After the Compliance Term ends, ACH shall still be obligated to: (a) submit the final Annual Report as required by Section VI; and (b) comply with the document retention requirement in Section VII. Nothing in this CAP is intended to eliminate or modify ACH obligation to comply with the document retention requirements in 45 C.F.R. § 164.316(b) and § 164.530(j).

**IV. Time**

Any reference to number of days refers to number of calendar days. In computing any period of time prescribed or allowed by this CAP, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a Federal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days.

**V. Corrective Action Obligations**

ACH agrees to the following:

A. Business Associate Agreements

1. Within 120 days of the Effective Date and annually following the Effective Date during the Compliance Term, ACH shall provide HHS with the following:
  - a. An accounting of ACH's business associates, to include the names of business associates, a description of services provided, and the date services began; and

- b. Copies of the business associate agreements that ACH maintains with its business associates.

B. Risk Analysis and Risk Management

- 1. Within 120 days of the Effective Date, ACH shall:
  - a. Conduct and complete an accurate, thorough, enterprise-wide analysis of security risks and vulnerabilities that incorporates all electronic equipment, data systems, programs and applications controlled, administered, owned, or shared by ACH or its affiliates that are owned, controlled or managed by ACH that contain, store, transmit or receive ACH ePHI. As part of this process, ACH shall develop a complete inventory of all electronic equipment, data systems, and applications that contain or store ePHI which will then be incorporated in its Risk Analysis.
  - b. HHS shall review the Risk Analysis and inform ACH in writing as to whether HHS approves or disapproves of the Risk Analysis. If HHS disapproves of the Risk Analysis, HHS shall provide ACH with an explanation of the basis of its disapproval and with comments and recommendations in order for ACH to be able to prepare a revised Risk Analysis. Upon receiving disapproval from HHS, ACH shall have sixty (60) calendar days to provide a revised Risk Analysis. This process will continue until HHS provides final approval of the Risk Analysis; provided that a no point in the process may HHS' approval be unreasonably withheld.
  - c. Within ninety (90) calendar days of HHS's approval of the Risk Analysis required in Paragraph V.B.1.a. above, ACH shall develop an organization-wide risk management plan to address and mitigate any security risks and vulnerabilities identified in its Risk Analysis. The plan shall include a process and timeline for implementation, evaluation, and revision. The plan shall be forwarded to HHS for its review and approval.
  - d. HHS shall review the risk management plan and inform ACH in writing as to whether HHS approves or disapproves of the risk management plan. If HHS disapproves of the risk management plan, HHS shall provide ACH with comments and recommendations in order for ACH to be able to prepare a revised risk management plan. Upon receiving disapproval of the risk management plan from HHS, ACH shall have sixty (60) calendar days to provide a revised plan. This process will continue until HHS provides final approval of the plan; provided that at no point in the process may HHS' approval be unreasonably withheld. ACH

shall begin implementation of the plan and distribute to workforce members involved with the implementation of the plan upon HHS' approval.

- e. ACH shall annually conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of e-PHI held by ACH and affiliates that are owned, controlled, or managed by ACH, and document the security measures ACH implemented or is implementing to sufficiently reduce the identified risks and vulnerabilities to a reasonable and appropriate level. Subsequent risk analyses and corresponding management plans shall be submitted for review by HHS in the same manner as described in this section until the conclusion of the CAP.

C. Policies & Procedures

1. ACH shall review and revise its written policies and procedures to comply with the Privacy, Security, and Breach Notification Rules, pursuant to 45 C.F.R. Part 160 and Subparts A, C and E of Part 164. ACH's policies and procedures shall include, but not be limited to, the minimum content set forth in Paragraph V.E below.
2. ACH shall provide such policies and procedures, consistent with Paragraph V.C.1 above, to HHS within sixty (60) days of receipt of HHS' approval of the risk management plan required by Paragraph V.B above. Upon receiving any recommended changes to such policies and procedures from HHS, ACH shall have thirty (30) days to revise such policies and procedures accordingly and provide the revised policies and procedures to HHS for review and approval. This process shall continue until HHS approves the policies and procedures; provided that at no point in the process may HHS' approval be unreasonably withheld.

D. Adoption, Distribution, and Updating of Policies and Procedures

1. Within sixty (60) calendar days of obtaining HHS' approval of the policies and procedures required by Section V.C of this CAP, ACH shall finalize and officially adopt the policies and procedures in accordance with its applicable administrative procedures.
2. ACH shall distribute the approved policies and procedures to all ACH workforce members, including all workforce members of covered entities that are owned, controlled or managed by ACH, as appropriate.
3. ACH shall distribute the approved policies and procedures to all new workforce members within thirty (30) days of when they become



workforce members of ACH. ACH will not permit new workforce members to have access to PHI until documentation that the workforce members have read and understand the policies and procedures is obtained.

4. At the time of distribution of policies and procedures, ACH shall document that workforce members have read, understand, and shall abide by such policies and procedures. This documentation shall be retained in compliance with Section VII of this CAP.
5. ACH shall review the approved policies and procedures routinely and shall promptly update the policies and procedures to reflect changes in operations at ACH, federal law, HHS guidance, and/or any material compliance issues discovered by ACH that warrant a change in the policies and procedures. ACH shall assess, update, and revise, as necessary, the policies and procedures at least annually. ACH shall provide such revised policies and procedures to HHS for review and approval until conclusion of the CAP. Within thirty (30) days of the effective date of any approved revisions, ACH shall distribute such revised policies and procedures to all workforce members. ACH shall document that workforce members have read, understand, and shall abide by such policies and procedures.

E. Minimum Content of the Policies and Procedures

The Policies and Procedures shall include measures to address the following Privacy and Security Provisions:

*Privacy Rule Provisions:*

1. Uses and Disclosures of PHI - 45 CFR § 164.502(a)
2. Minimum Necessary - 45 CFR § 164.502(b)
3. Disclosures to Business Associates- 45 C.F.R. § 164.502(e)(1)
4. Training – 45 C.F.R. § 530(b)(1)
5. Safeguards - 45 C.F.R. § 164.530(c)(1)
6. Changes to Policies and Procedures - 45 C.F.R. § 164.530(i)(2)

*Security Rule Provisions:*

7. Administrative Safeguards, including all required and addressable implementation specifications – 45 C.F.R. § 164.308(a) and (b)
8. Physical Safeguards, including all required and addressable implementation specifications – 45 C.F.R. § 164.310
9. Technical Safeguards, including all required and addressable implementation specifications – 45 C.F.R. § 164.312

F. Training

1. Within sixty (60) days of HHS' approval of the revised policies and procedures required by Section V.C of this CAP, ACH shall forward its proposed training materials on to HHS for its review and approval.
2. HHS will inform ACH in writing as to whether HHS approves or disapproves of the proposed training materials. If HHS disapproves of them, HHS shall provide ACH with comments and required revisions. Upon receiving notice of any required revisions to the training materials from HHS, ACH shall have thirty (30) calendar days in which to revise the training materials and then submit the revised training materials to HHS for review and approval. This process shall continue until HHS approves the training materials.
3. Within thirty (30) days of HHS' approval of the training materials, ACH shall provide training to all workforce members, in accordance with ACH's approved procedures. Any new workforce members that are hired during or after the initial training period described in this paragraph shall be trained within thirty (30) days of when they become workforce members of ACH.
4. ACH shall continue to provide annual retraining using the training materials HHS approved under this CAP to all workforce members for the duration of the Compliance Term of this CAP and as required by ACH's approved training procedures.
5. Each workforce member who is required to receive training shall certify, in electronic or written form, that he or she received the training. The training certification shall specify the date on which the training was received. All training materials and certifications shall be retained in compliance with Section VII of this CAP.
6. ACH shall be responsible for ensuring workforce members comply with training requirements and complete all required training.
7. ACH shall review the training materials annually, and, where appropriate, update the training to reflect changes in Federal law or HHS guidance, any issues discovered during audits or reviews, and any other relevant developments.

## **VI. Reportable Events and Annual Reports**

### **A. Reportable Events**

1. During the Compliance Term, upon receiving information that a workforce member may have failed to comply with any provision of the revised policies and procedures required by Section V.C of this CAP, ACH shall promptly investigate the matter. If ACH determines that a workforce

member has violated the revised policies and procedures required by Section V.C of this CAP, ACH shall notify HHS in writing by the end of the current quarter. Such violations shall be known as "Reportable Events." The report to HHS shall include the following:

- a. A complete description of the event, including relevant facts, the person(s) involved, and the implicated provision(s) of ACH's Privacy, Security, and Breach Notification policies and procedures; and
  - b. A description of actions taken and any further steps ACH plans to take to address the matter, to mitigate the harm, and to prevent it from recurring, including the application of appropriate sanctions against workforce members who failed to comply with its Privacy, Security, and Breach Notification policies and procedures.
2. If no Reportable Events occur during any one Reporting Period, as defined in Section VI.B.1 of this CAP, ACH shall so inform HHS in its Annual Report for that Reporting Period in accordance with section VI of this CAP.

B. Annual Reports

1. The one-year period after HHS' last approval of the policies and procedures required by Section V.C of this CAP, and each subsequent one-year period during the Compliance Term, as defined in Section III of this CAP, shall each be known as a "Reporting Period." ACH shall submit to HHS a report with respect to the status of and findings regarding its compliance with this CAP for each Reporting Period ("Annual Report"). ACH shall submit each Annual Report to HHS no later than sixty (60) days after the end of each corresponding Reporting Period. Each Annual Report shall include:
  - a. An attestation signed by an officer of ACH attesting that the policies and procedures required by Section V.C of this CAP: (a) have been adopted; (b) are being implemented; and (c) have been distributed to all workforce members;
  - b. An updated accounting required by Section V.A.;
  - c. A copy of all training materials used for the workforce training required by Section V.F of this CAP and a description of the training, including a summary of the topics covered, who conducted the training, who participated in the training, and a schedule of when the training session(s) were held;

- d. An attestation signed by an officer of ACH attesting that it is maintaining written or electronic certifications from all workforce members that are required to receive training that they received the requisite training pursuant to the requirements set forth on this CAP and pursuant to ACH's approved training procedures;
- e. An attestation signed by an officer of ACH listing all of its locations, the name under which each location is doing business, the corresponding mailing address, phone number and fax number for each location, and attesting that each location has complied with the obligations of this CAP;
- f. A summary of Reportable Events identified during the Reporting Period, if any, and the status of any corrective or preventative action(s) taken by ACH relating to each Reportable Event; and
- g. An attestation signed by an officer of ACH stating that he or she has reviewed the Annual Report, has made a reasonable inquiry regarding its content, and believes that, upon such inquiry, the information is accurate and truthful.

#### **VII. Document Retention**

ACH shall maintain for inspection and copying, and shall provide to OCR upon request, all documents and records relating to compliance with this CAP for six (6) years from the Effective Date.

#### **VIII. Breach Provisions**

ACH is expected to fully and timely comply with all provisions of its CAP obligations.

##### **A. Timely Written Requests for Extensions.**

ACH may, in advance of any due date set forth in this CAP, submit a timely written request for an extension of time to perform any act or file any notification or report required by this CAP. A "timely written request" is defined as a request in writing received by HHS at least five days prior to the date by which any act is due to be performed or any notification or report is due to be filed. It is within HHS's sole discretion as to whether to grant or deny the extension requested.

##### **B. Notice of Breach and Intent to Impose CMP.**

The Parties agree that a breach of this CAP by ACH constitutes a breach of the Resolution Agreement. Upon a determination by HHS that ACH has breached this CAP, HHS may notify ACH of (a) ACH's breach; and (b) HHS's intent to impose a civil money penalty (CMP) pursuant to 45 C.F.R. Part 160 for the Covered Conduct set forth in Section I.2 of the Agreement and any other conduct that

constitutes a violation of the HIPAA Privacy, Security, or Breach Notification Rules (this notification is hereinafter referred to as the "Notice of Breach and Intent to Impose CMP").

C. Response.


ACH shall have thirty (30) days from the date of receipt of the Notice of Breach and Intent to Impose CMP to demonstrate to HHS' satisfaction that:

1. ACH is in compliance with the obligations of the CAP cited by HHS as being the basis for the breach;
2. The alleged breach has been cured; or
3. The alleged breach cannot be cured within the 30 day period, but that ACH (i) has begun to take action to cure the breach; (ii) is pursuing such action with due diligence; and (iii) has provided to HHS a reasonable timetable for curing the breach.

D. Imposition of CMP.


If at the conclusion of the 30 day period, ACH fails to meet the requirements of this CAP to HHS's satisfaction, HHS may proceed with the imposition of a CMP against ACH pursuant to 45 C.F.R. Part 160 for the Covered Conduct set forth in Section I.2 of the Resolution Agreement and any other conduct that constitutes a violation of the HIPAA Privacy and Security Rules. HHS shall notify ACH in writing of its determination to proceed with the imposition of a CMP.

**For Advanced Care Hospitalists, PL**

  
\_\_\_\_\_  
Gulab Sher, M.D., President  
Advanced Care Hospitalists, PL

09/19/2018  
\_\_\_\_\_  
Date

**For United States Department of Health and Human Services**

  
\_\_\_\_\_  
Timothy Noonan  
Regional Manager, Southeast Region  
Office for Civil Rights

9/20/2018  
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Date