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Electronic Health Records Association Expresses Concerns Regarding Accounting for Disclosures Proposed Rule

CHICAGO (August 15, 2011) – The Electronic Health Records (EHR) Association in its comments earlier this month expressed support for some aspects of the Office of Civil Rights' (OCR) recent Notice of Proposed Rule-Making (NPRM) on Accounting for Disclosures of electronic protected health information (ePHI), along with substantial concerns about other proposed approaches.

"We recognize the importance of providing transparency to patients regarding how their health information is being accessed and disclosed by covered entities and business associates, and we fully support aspects of the proposed rule that provide clarity and reduce burdens on healthcare providers," said Leigh Burchell, Vice President of Government Affairs for Allscripts and Chair of the Association's Public Policy Workgroup. "For example, we generally agree with the OCR's proposed approach to articulate the specific set of disclosure circumstances for which an accounting will be required. We also applaud their recognition that being required to report disclosures made during the act of health information exchange could be overly burdensome, without providing commensurate benefit to requesting individuals."

However, the EHR Association also expressed several major concerns in its comments. Representing 42 EHR supplier companies, the Association submitted comments earlier this month, which were developed collaboratively by representatives from its member companies who, collectively, support the majority of installed, operational EHRs in the US.

The Association's concerns about the NPRM focus primarily on the proposed access reports and the accompanying proposed use of the designated record set (DRS) as the basis for those reports.

"The focus of the HITECH legislation that led to the OCR proposed rule was the electronic health record, but conversely, DRS is defined very broadly in the OCR's new rule and well beyond the data that exists in an EHR," elaborated Justin McMartin, Coordinator of Government and Industry Relations, LSS Data Systems, and Chair of the Association's Privacy and Security Workgroup, which worked with Ms. Burchell workgroup. "Following the broad definition of DRS will likely make generating the proposed access reports unworkable for providers, creating a major burden without ultimately furnishing consumers the data that they really need," McMartin went on to say. The Association thus proposes that a focus on electronic health records is

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most consistent with the enacting statute and recommends that OCR reconsider EHRs as the source of ePHI for this aspect of the proposed rule.

The EHR Association also expressed concerns that OCR does not fully appreciate the burden of producing the proposed access reports. "During a single patient hospital stay, there are thousands of data elements captured – often across multiple hospital systems – and that data has been viewed by multiple healthcare professionals and support staff through the course of treatment," Ms. Burchell added. "Based on what our clients are telling us and looking all the other regulatory activity in health IT, it would be a sizable burden without commensurate benefits to produce an integrated access report for a single patient, as proposed in the NPRM, for both providers and vendors We're also concerned that the communications required to explain these reports could interfere with the core physician/patient relationship. In contrast to its generally well-conceived proposal for Accounting for Disclosures, we ask OCR to rethink its access report proposal."

The Association's response to the NPRM is available at www.himssehra.org.

About the HIMSS EHR Association
The HIMSS EHR Association is a trade association of 42 electronic health record (EHR) companies that join together to lead the health IT industry in the accelerated adoption of electronic health records in hospital and ambulatory care settings in the US. The Association provides a leadership forum for the EHR software provider community to speak with a unified voice relative to standards development, the EHR certification process, interoperability, performance and quality measures, and other EHR issues as they become subject to increasing government, insurance and provider-driven initiatives and requests. Membership is open to HIMSS Corporate Members companies that design, develop and market their own EHRs. The Association is a partner of the Healthcare Information and Management Systems Society (HIMSS) and operates as an independent organizational unit within HIMSS. For more information, visit http://www.himssEHRA.org.

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