

## RESOLUTION AGREEMENT

### I. Recitals

1. Parties. The Parties to this Resolution Agreement (Agreement) are the United States Department of Health and Human Services, Office for Civil Rights (HHS) and Parkview Health System, Inc. d/b/a Parkview Physicians Group, f/k/a Parkview Medical Group, a nonprofit Indiana corporation, which shall be referred to as “Parkview” or “Covered Entity”. Parkview and HHS shall together be referred to as the “Parties.”

2. Factual Background and Covered Conduct.

a. *Authority of HHS*

HHS enforces the Federal standards that govern the Privacy of Individually Identifiable Health Information (the Privacy Rule), the Security Standards for the Protection of Electronic Protected Health Information (the Security Rule), and the Notification in the Case of Breach of Unsecured Protected Health Information (the Breach Notification Rule) (45 C.F.R. Part 160 and Part 164, subparts A, C, D, and E, the HIPAA Rules). HHS has authority to conduct investigations of complaints alleging violations of the HIPAA Rules by covered entities, and a covered entity must cooperate with HHS’s investigation. 45 C.F.R. §§ 160.306(c) and 160.310(b).

Parkview is a covered entity as defined in 45 C.F.R. § 160.103. Thus, Parkview is required to comply with the HIPAA Rules. Parkview is an affiliated covered entity pursuant to 45 C.F.R. § 164.105(b).

b. *Covered Conduct*

On June 10, 2009, Dr. Christine Hamilton filed a complaint with HHS against Parkview, Complaint Number 09-99157 (“the Complaint”), alleging that Parkview had violated the Privacy Rule. On May 16, 2011, HHS began investigating the allegations in the Complaint alleging that the Covered Entity is in violation of the Privacy Rule.

HHS’s investigation indicates that the following conduct occurred (“Covered Conduct”):

1. In September 2008, Parkview received and took custody and control of medical records pertaining to approximately 5,000 to 8,000 of Dr. Hamilton’s patients, all of which contained protected health information (PHI) in non-electronic form. Parkview was assisting Dr. Hamilton to transition the patients to new providers, and was considering the possibility of purchasing some of the records from Dr. Hamilton, who was retiring and closing her practice.

2. Parkview was required by 45 C.F.R. §164.530(c) to appropriately and reasonably safeguard the PHI throughout the time the PHI was in Parkview’s possession and was maintained by Parkview until the PHI was permissibly transferred in accordance with 45 C.F.R. §164.502 or rendered unreadable, unusable or indecipherable to unauthorized persons.

3. On June 4, 2009, Parkview failed to appropriately and reasonably safeguard the PHI, when Parkview employees, with notice that Dr. Hamilton had refused delivery and was not at home, delivered and left 71 cardboard boxes of these medical records unattended and accessible to unauthorized persons on the driveway of Dr. Hamilton's home, within 20 feet of the public road and a short distance away (four doors down) from a heavily trafficked public shopping venue.

3. No Admission: This Agreement is not an admission of liability by Parkview.

4. No Concession. This Agreement is not a concession by HHS that Parkview is not in violation of the Privacy Rule and not liable for civil money penalties.

5. Intention of Parties to Effect Resolution. This Agreement is intended to resolve Complaint No. 09-99157 regarding possible violations of the Privacy Rule promulgated by HHS pursuant to the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub.L. 104-191, 110 Stat. 1936. In consideration of the Parties' interest in avoiding the uncertainty, burden and expense of further investigation and formal proceedings, the Parties agree to resolve this matter according to the Terms and Conditions below.

## II. Terms and Conditions

6. Payment. Parkview agrees to pay HHS the amount of \$800,000 ("Resolution Amount"). Parkview agrees to pay the Resolution Amount on the Effective Date of this Agreement as defined in paragraph II.14 by automated clearing house transaction pursuant to written instructions to be provided by HHS.

7. Corrective Action Plan. Parkview 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 Parkview breaches the CAP, and fails to cure the breach as set forth in the CAP, then Parkview will be in breach of this Agreement and HHS will not be subject to the Release set forth in paragraph II.8 of this Agreement.

8. Release by HHS. In consideration and conditioned upon Parkview's performance of its obligations under this Agreement, HHS releases Parkview from any actions it may have against Parkview under the Privacy Rule for the Covered Conduct identified in paragraph I.2. HHS does not release Parkview from, nor waive any rights, obligations, or causes of action other than those specifically referred to in this paragraph. 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.

9. Agreement by Released Parties. Parkview shall not contest the validity of its obligations to pay, nor the amount of, the Resolution Amount or any other obligations agreed to under this Agreement. Parkview 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.

10. Binding on Successors. This Agreement is binding on Parkview and its successors, heirs, transferees, and assigns.

11. 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.

12. 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 any other person or entity.

13. 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.

14. 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).

15. Tolling of Statute of Limitations. Pursuant to 42 U.S.C. § 1320a-7a(c)(1), a civil money penalty must be imposed within six years from the date of the occurrence of the violation. To insure that this six-year period does not expire during the term of this agreement, Parkview agrees that the time between the Effective Date of this Resolution Agreement (as set forth in paragraph 14) and the date same may be terminated by reason of Parkview'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. Parkview waives and will not plead any statute of limitations, laches, or similar defenses to any administrative action relating to the covered conduct identified in paragraph 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 Resolution Agreement.

16. 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 this Agreement and related material 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.

17. 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.

18. Authorizations. The individual(s) signing this Agreement on behalf of Parkview represent(s) and warrant(s) that they are authorized by Parkview to execute this Agreement. The individual signing this Agreement on behalf of HHS represents and warrants that she is signing this Agreement in her official capacity and that she is authorized to execute this Agreement.

**For Parkview Health System, Inc.**

By \_\_\_\_\_

Date \_\_\_\_\_

Its \_\_\_\_\_

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

\_\_\_\_\_

Date \_\_\_\_\_

Celeste H. Davis  
Regional Manager  
Office for Civil Rights, Region V

## Appendix A

### CORRECTIVE ACTION PLAN

#### I. Preamble

Parkview Health System, Inc. d/b/a Parkview Physicians Group, f/k/a Parkview Medical Group, a nonprofit Indiana corporation, (“Parkview” or “Covered Entity”), enters into this Corrective Action Plan (“CAP”) with the United States Department of Health and Human Services, Office for Civil Rights (“HHS”). Contemporaneously with its execution of this CAP, Parkview is entering into a Resolution Agreement (“Agreement”) with HHS. This CAP is incorporated by reference into the Agreement as Appendix A. Parkview enters into this CAP as part of the consideration for the release set forth in paragraph II.8 of the Agreement.

#### II. Contact Persons and Submissions

##### A. Contact Persons

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

David Storey  
Senior Vice President, General Counsel  
Parkview Health System  
10501 Corporate Drive  
Fort Wayne, Indiana 46845  
Telephone: 260-373-7005  
Facsimile: 260-373-7017  
David.Storey@parkview.com

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

Celeste H. Davis  
Regional Manager  
U.S. Department of Health and Human Services  
Office for Civil Rights, Region V  
233 North Michigan Avenue, Suite 240  
Chicago, Illinois 60601  
Telephone: 312-353-8101  
Facsimile: 312-886-1807  
Celeste.Davis@hhs.gov

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

B. Proof of Submissions

Unless otherwise specified, all notices and reports required by this CAP may be made by certified mail, overnight mail, or hand delivery, provided that there is proof that such notification was received. Emailed notices and reports are acceptable only in addition to those means identified above. 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 14 of the Agreement (Effective Date). The period of compliance obligations assumed by Parkview under this CAP shall expire on the one (1) year anniversary of HHS's approval of Parkview's training materials, pursuant to section V.E.2 of this CAP. In addition, Parkview shall be obligated to submit the Final Report, as set forth in section VI, and comply with the document retention requirement set forth in section VII, both of which extend beyond the compliance period for all other corrective action obligations.

**IV. Time**

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 legal holiday, in which event the period runs until the end of the next day that is not one of the aforementioned days.

**V. Corrective Action Obligations**

Parkview agrees to the following:

A. Policies and Procedures

1. Parkview shall develop, maintain, and revise, as necessary, written policies and procedures ("Policies and Procedures") for its workforce that: (a) address the requirements stated in section V.C.; (b) are consistent with the Federal standards that govern the privacy of individually identifiable health information (45 C.F.R. Parts 160 and 164, Subparts A and E of Part 164, the Privacy Rule); and (c) are applicable to and implemented by Parkview and all covered entities that are owned, controlled, or managed by Parkview Health System, Inc. Policies and Procedures required under this CAP are in addition to, and may be incorporated into, any policies and procedures required by the Privacy Rule.

2. Parkview shall provide such Policies and Procedures, consistent with subparagraph 1 above, to HHS within thirty (30) days of the Effective Date for HHS's review and either approval or disapproval. Within thirty (30) days of its receipt of Parkview's proposed Policies and Procedures, HHS will inform Parkview in writing as to whether HHS approves or disapproves of the proposed Policies and Procedures. If HHS disapproves of them, HHS shall provide Parkview with detailed comments and recommendations in order for Parkview to be able to prepare revised Policies and Procedures. Upon receiving any required changes to such Policies and Procedures from HHS, Parkview shall have thirty (30) days in which to revise its Policies and Procedures accordingly, and then submit 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's approval be unreasonably withheld.

3. Within thirty (30) days of HHS's approval of the Policies and Procedures, Parkview shall finalize and officially adopt its Policies and Procedures in accordance with its applicable administrative procedures.

**B. Distribution and Updating of Policies and Procedures**

1. Within thirty (30) days of HHS's approval of Parkview's Policies and Procedures identified in section V.A. of this CAP, and any subsequent revisions thereto, Parkview shall distribute the approved Policies and Procedures to all Parkview workforce members who use or disclose PHI, including all workforce members of covered entities that are owned, controlled or managed by Parkview Health System, Inc.

2. Parkview shall distribute such Policies and Procedures to new, respective members of the workforce, as described above, within twenty (20) business days of the commencement of each such workforce member's engagement by Parkview.

3. Parkview shall review the policies and procedures periodically, and shall promptly update the Policies and Procedures to reflect changes in operations at Parkview, federal law, HHS guidance, and/or any material compliance issues discovered by Parkview that warrant a change in the Policies and Procedures.

**C. Minimum Content of the Policies and Procedures**

The Policies and Procedures referenced herein shall, at minimum, provide for administrative, physical and technical safeguards ("safeguards") to protect the privacy of non-electronic PHI to ensure that such PHI is appropriately and reasonably safeguarded from any intentional, unintentional or incidental use or disclosure that is in violation of the Privacy Rule.

**D. Reportable Events**

If Parkview determines that a workforce member has violated the Policies and Procedures required by section V.A.1., Parkview shall notify HHS in writing within thirty (30) days. Such violations shall be known as "Reportable Events." The report to HHS shall include a complete description of the event, including the relevant facts, the persons involved, and the provisions of the Policies and Procedures implicated; and a description of Parkview's actions taken to mitigate any harm and further steps Parkview plans to take to address the matter and prevent it from recurring.

E. Training

1. Parkview shall provide general safeguards training to all workforce members who have access to PHI, as required by the Privacy Rule.

2. Within thirty (30) days of HHS's approval of the Policies and Procedures required in section V.A. or HHS's approval of any revised Policies and Procedures pursuant to section V.A.2., Parkview shall submit written or electronic evidence of training materials for HHS's review and either approval or disapproval. Within thirty (30) days of its receipt of Parkview's training materials, HHS will inform Parkview in writing as to whether HHS approves or disapproves of the proposed training. If HHS disapproves, HHS shall provide Parkview with detailed comments and recommendations in order for Parkview to be able to prepare revised training. Upon receiving any required changes to such training from HHS, Parkview shall have thirty (30) days in which to revise its training accordingly, and then submit the revised training to HHS for review and approval. This process shall continue until HHS approves the training, provided that at no point in the process may HHS's approval be unreasonably withheld.

3. Within sixty (60) days of HHS's approval of Parkview's training materials and any subsequent revisions thereto, Parkview shall provide training on its approved Policies and Procedures to all active Parkview workforce members, including all workforce members of covered entities that are owned, controlled or managed by Parkview Health System, Inc., as necessary and appropriate for the workforce members to carry out their functions. In addition, Parkview shall train members who return to the active workforce after this 60 day period and any new, respective members of the workforce, as described in the foregoing sentence, on such Policies and Procedures within twenty (20) business days of the commencement of each such workforce member's return to active status or engagement by Parkview.

4. Each workforce member who is required to attend training shall certify, in electronic or written form, that he or she received the training. The training certification shall specify the date training was received. All course materials shall be retained in compliance with section VII.

5. Parkview shall review the training materials periodically and shall update the training materials to reflect any changes in policies or procedures being followed by Parkview, federal law, HHS guidance, and/or any material compliance issue(s) discovered during audits or reviews.

**VI. Final Report**

The one-year period after the date upon which HHS gives final approval to Parkview's training materials, as required by section V.E.2, shall be referred to as the "Compliance Period." Within 60 days after the expiration of the Compliance Period, Parkview shall submit a Final Report to HHS regarding Parkview's compliance with this CAP. The Final Report shall include:

A. An attestation signed by an officer of Parkview attesting that: (a) the Policies and Procedures required by this CAP were fully implemented within thirty (30) days of HHS's approval of the Policies and Procedures; and (b) the Policies and Procedures have been distributed to each appropriate member of the workforce within 30 days of HHS's approval;

B. A copy of all training materials used for the training required by this CAP and a written description of the training, including a summary of the topics covered, the length of the

session(s), and a schedule of when the training session(s) were held and/or the days during which on-line training was provided;

C. An attestation signed by an officer of Parkview, attesting that it has obtained and 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 in this CAP;

D. A summary of Reportable Events (as defined in section V.D. of this CAP) identified during the Compliance Period and the status of any corrective and preventative action relating to each such Reportable Event; and

E. An attestation signed by an officer of Parkview, stating that he or she has reviewed the Final Report, has made a reasonable inquiry regarding its content and believes that, based upon such inquiry, that the information is accurate and truthful.

## **VII. Document Retention**

Parkview shall maintain for inspection and copying all documents and records relating to compliance with this CAP for six (6) years from the Effective Date. The term “document” shall be broadly construed to include, but not be limited to, letters, memoranda, brochures, bulletins, e-mails, CD-ROMs, tapes, evidence of possible or alleged improper disclosure, affidavits, court pleadings, and the like.

## **VIII. Requests for Extensions and Breach Provisions**

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

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

Parkview 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 at least ten (10) business days prior to the date by which any act is due to be performed or any notification or report is due to be filed and must contain a description of the facts giving rise to the request. HHS will consider such a request and make a reasonable determination as to whether to grant it, generally providing no more than one 30-day extension of time for a particular deadline without a showing of exigent circumstances.

### **B. Notice of Breach.**

The Parties agree that a breach of this CAP by Parkview constitutes a breach of the Agreement. Upon determination by HHS that Parkview has breached this CAP, HHS may notify Parkview in writing of the breach thereof (this notification is hereinafter referred to as the “Notice of Breach”).

C. Parkview's Response.

Parkview shall have 30 days from the date of receiving HHS's Notice of Breach to demonstrate to HHS's satisfaction that:

1. Parkview 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: (i) Parkview has begun to take the action(s) necessary to cure the breach; (ii) Parkview is pursuing such action with due diligence; and (iii) Parkview has provided HHS with a reasonable timetable for curing the breach.

D. Imposition of CMP.

If at the conclusion of the 30-day period or other time frame described in section VIII.C.3 above, Parkview fails to meet the requirements of section VIII.C to HHS's satisfaction, HHS may proceed with the imposition of a CMP against Parkview pursuant to 45 C.F.R. Part 160, for the Covered Conduct set forth in paragraph 2 of the Agreement and any other conduct that constitutes a violation of the Privacy, Security or Breach Notification Rules. HHS shall notify Parkview in writing of its determination to proceed with the imposition of a CMP.

**For Parkview Health System, Inc.**

By \_\_\_\_\_  
Its \_\_\_\_\_

Date\_\_\_\_\_

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

\_\_\_\_\_  
Celeste H. Davis  
Regional Manager  
Office for Civil Rights, Region V

Date\_\_\_\_\_