

Oklahoma State Health Information Exchange

NASW-Oklahoma Requests Continued Exemption for Licensed Clinical Social Workers

SUMMARY: Oklahoma HIE — The proposed revisions will implement the changes required by OK Senate Bill 1369 to the Oklahoma statewide Health Information Exchange (HIE). See Reference: APA WF # 22-16.

Licensed Clinical Social Workers throughout Oklahoma have serious concerns about the requirement to be compliant with the mandated health information exchange (HIE) by the implementation date of July 1, 2023. The mandates, as written, will force small businesses and sole proprietors to close and result in a mass exodus of Licensed Clinical Social Workers, as well as create undue hardships on active military and military spouse who are Licensed Clinical Social Workers.

ISSUE 1: The mandatory fees (\$5000 initial fee plus ongoing monthly fees) equate to a non-mandated tax on small businesses in the State of Oklahoma and are prohibitively expensive given the scope and size of the small business. This mandate is especially hard on small businesses and sole proprietors due to the increased regulatory burdens, as well as active military members and military spouses licensed as Clinical Social Workers.

ISSUE 2: Licensed Clinical Social Workers do not prescribe medications, order lab tests, nor provide any invasive medical procedures. The intent of the Oklahoma HIE is to reduce medical errors, redundant procedures, and coordinate service delivery in a cost-effective and efficient manner for tax dollars spent on state-funded healthcare. The mandatory inclusion of Licensed Clinical Social Workers does not meet the desired outcomes of the HIE and creates an unintended administrative burden for the HIE as well as the small, independent Licensed Clinical Social Workers and active military members and military spouses who are licensed as Licensed Clinical Social Workers.

ISSUE 3: Licensed Clinical Social Workers are not equipped technologically.

Licensed Clinical Social Workers were excluded from the meaningful user definition under the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act) and as a result, have lacked access to critical incentive funding to cover the significant start-up costs for acquiring and maintaining a robust and secure electronic health records (EHR) system. Moreover, federal and state privacy laws recognize the most sensitive patient data (typically MH/BH and substance abuse data) should be afforded greater protection from disclosure to third parties (including, but not limited to, payers and other providers) and to patients themselves. One consequence is many EHR systems are not designed to handle the greater privacy protections required by federal and state laws compared to other health data.

Due to Licensed Clinical Social Workers being excluded from the start-up funding to

facilitate transfer to electronic records, licensed clinical social workers in small and independent practices have fallen far behind corporate health care systems in their ability to exchange electronic health data in a secure manner. The costs for licensed clinical social workers to become compliant is high and in most instances, cost prohibitive. The initial cost of investing in the software, hardware and training required to use an electronic health record system is expensive and time-consuming and absolutely not possible. Licensed Social Workers in small independent practices, as well as those operating in rural and underserved areas have low operating margins and limited working capital.

Moreover, Licensed Clinical Social Workers operating small businesses do not have resources for the outside support of IT, compliance, or legal consultants. Regulations will have little impact on large health care corporations but will force small businesses to close and no longer provide mental health services to communities already lacking sufficient access to mental health care and services. This requirement for mandatory participation is coming at a time when demand by the public for mental health services is at an all-time high and the State of Oklahoma is in a critical shortage of mental health providers throughout each of the 77 counties.

The National Association of Social Workers-Oklahoma Chapters offer the following solutions and alternatives to alleviate the mass exodus of licensed clinical social workers; to avoid the closure of small business throughout the state; and to ensure existing mental health services remain available to Oklahomans after the agency rules for OKSHINE are implemented:

SOLUTION 1: Allow Licensed Clinical Social Workers to be exempted and given the opportunity to participate voluntarily. Most states with a HIE exempt Licensed Clinical Social Workers from the HIE but do allow for voluntary participation.

SOLUTION 2: If the inclusion of small, independent Licensed Clinical Social Workers is deemed critical. Enact safeguards for the Oklahoma Healthcare Authority to have sufficient and on-going funding for providing grants or waivers based on financial hardships and/or for the workforce shortages so long as Licensed Clinical Social Workers are required participants.

SOLUTION 3: Provide exemptions for active military members and military spouses to alleviate additional financial burdens for individuals and families serving in the armed forces.

Oklahoma Health Care Authority

The Oklahoma Health Care Authority (OHCA) values your feedback and input. It is very important that you provide your comments regarding the proposed rule change by the comment due date. Comments can be submitted on the OHCA's [Proposed Changes Blog](#).

OHCA COMMENT DUE DATE: September 15, 2022

The proposed policy is an Emergency Rule. The proposed policy will be presented at the September 6, 2022 Tribal Consultation. Additionally, this proposal is scheduled to be presented to the Medical Advisory Committee on September 8, 2022 and the OHCA Board of Directors on September 21, 2022.

Reference: APA WF # 22-16

SUMMARY: Statewide HIE — The proposed revisions will implement the changes required by OK Senate Bill 1369 to the Oklahoma statewide Health Information Exchange (HIE).

LEGAL AUTHORITY

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; and Senate Bill 1369

RULE IMPACT STATEMENT:

STATE OF OKLAHOMA OKLAHOMA HEALTH CARE AUTHORITY

SUBJECT: Rule Impact Statement
APA WF # 22-16

A. Brief description of the purpose of the rule:

The proposed revisions will update policy to comply with OK Senate Bill 1369 which made changes to the statewide Health Information Exchange (HIE). The proposed revisions include repealing all previously approved language; adding the Office of the State Coordinator for HIE; designating that the Office of the State Coordinator for HIE will oversee the state-designated entity for HIE; and revising the definition of "health information exchange organization" to indicate that it is an organization governed by its stakeholders. Additional revisions will state that beginning July 1, 2023, all qualified health care providers, as defined by OHCA rules and who are licensed by and located in Oklahoma, shall be actively engaged with the HIE in the onboarding process of connecting to the HIE in order to meet the legislative requirement to report data to and utilize the state-designated entity for HIE.

B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the cost of the proposed rule, and any information on cost impacts received by the agency from any private or public entities:

All healthcare providers as defined within the rule, the citizens of Oklahoma, and healthcare agencies/organizations will be affected by the proposed rule. No information on any cost impacts were received from any entity; however, there will be a cost for providers to connect to the statewide HIE. The cost will vary depending on the type and size of the organization.

- C. A description of the classes of persons who will benefit from the proposed rule:

The proposed rule change will benefit all healthcare providers as defined within the rule, the citizens of Oklahoma, and healthcare agencies/organizations, by enhancing the structure of the statewide HIE by improving security of member information, coordination of member care, and the efficiency of health care delivery.

- D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:

There is no probable economic impact and there are no fee changes associated with the rule change for the above classes of persons or any political subdivisions; however, there will be a cost for providers to connect to the statewide HIE. The cost will vary depending on the type and size of the organization.

- E. The probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated affect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency:

The proposed rules are budget neutral for the agency; however, there will be a cost for providers to connect to the statewide HIE. The cost will vary depending on the type and size of the organization.

- F. A determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:

The proposed rule changes will not have an economic impact on any political subdivision or require their cooperation in implementing or enforcing the rule changes; however, there will be a cost for providers to connect to the statewide HIE. The cost will vary depending on the type and size of the organization.

- G. A determination of whether implementation of the proposed rule will have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:

The agency does not anticipate that the proposed rule changes will have an adverse effect on small businesses; however, there will be a cost for providers to connect to the statewide HIE. The cost will vary depending on the type and size of the organization.

- H. An explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or non-regulatory methods or less intrusive methods for achieving the purpose of the proposed rule:

The agency has taken measures to determine that there are no other legal methods to achieve the purpose of the proposed rule. Measures included a formal public comment period and tribal consultation.

- I. A determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:

The proposed rule should have no adverse effect on the public health, safety or environment.

- J. A determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented:

The agency does not anticipate any detrimental effect on the public health and safety if the proposed rule is not passed.

- K. The date the rule impact statement was prepared and if modified, the date modified:

Prepared date: July 18, 2022

Modified: August 17, 2022 and August 25, 2022

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE**

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-35. ~~Oklahoma State Health Information Network and Exchange (OKSHINE)~~ Statewide Health Information Exchange

(a) **Authority.** This rule is promulgated under the authority granted in Title 63 of the Oklahoma Statutes Section 1-133 (63 O.S. § 1-133). This Section is intended to be read in conjunction with applicable Oklahoma statutes and federal law.

(b) **Applicability and purpose.**

(1) **Applicability.** This section shall apply to and govern the establishment and operation of the statewide health information exchange (HIE), ~~herein referred to as OKSHINE.~~

(2) **Purpose.** ~~OKSHINE is the state-designated organization that facilitates the exchange of health information to and from authorized individuals and health care organizations in the state for the purpose of improving health outcomes, as per 63 O.S. § 1-133.~~ The Office of the State Coordinator for HIE is the office within the Oklahoma Health Care Authority (OHCA) that holds the power and duty to oversee the state-designated entity for health information

exchange, as described under 63 O.S. § 1-133.

(c) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

~~(1) "OKSHINE" means an organization that oversees, governs, and facilitates health information exchange among health care providers that are not related health care organizations as defined in the Oklahoma Statutes, to improve the security of patient information, coordination of patient care, and the efficiency of health care delivery.~~

~~(2) "Participant" means an organization, health care practitioner or institution, health plan, or health care clearinghouse who has executed a written participation agreement (PA) and business associate agreement (BAA) with OKSHINE.~~

~~(3) "Participant agreement" means the agreement between OKSHINE and a participant which authorizes the participant to have access to OKSHINE and outlines the policies and procedures for access, protection, and use of the electronic protected health information.~~

~~(4) "Oklahoma Statewide Health Information Exchange (OKHIE)" means a certified HIE as referenced in 63 O.S. § 1-133 whose primary business activity is health information exchange.~~

(1) "Health care provider" means the following individuals and organizations who are licensed pursuant to the laws of the State of Oklahoma and includes organizations who employ or contract with such licensed individuals for the purpose of providing services associated with their licenses to residents of Oklahoma:

(A) A hospital or related institution licensed pursuant to 63 O.S. § 1-702;

(B) Nursing facilities licensed pursuant to 63 O.S. § 1-1903;

(C) Doctors as specified in 59 O.S. § 725.2, subsection A, paragraphs 1 through 9;

(D) Physical therapists as specified in 59 O.S. § 887.2, paragraph 3;

(E) Physician assistants as specified in 59 O.S. § 519.2, paragraph 5;

(F) Pharmacists as specified in 59 O.S. § 353.1, paragraph 15;

(G) Nurses as specified in 59 O.S. § 567.3a, paragraphs 3 through 10;

(H) Licensed Mental Health Professionals as specified in 43a O.S. § 1-103; and

(I) Home Health Care Agencies and/or providers licensed pursuant to 63 O.S. § 1-1965.

(2) "Health care provider organization" means the legal entity that offers the services of health care providers to patients in Oklahoma.

(3) "Report data to" means that health care providers shall establish a direct, secure connection to the state designated entity for HIE and submit data in the form and format as defined on the Office of the State Coordinator for HIE website.

(4) "State designated entity (SDE)" means the health information exchange organization designated by the State of Oklahoma under 63 O.S. § 1-133. The name and contact information for the state designated entity for HIE is found on the Office of the State Coordinator for HIE website.

(5) "Utilize" means to actively use the HIE services to securely access records during and/or in support of patient treatment or health care operations.

~~(d) **OKHIE Certification.** Per 63 O.S. § 1-133, an initial certification and an annual recertification will be required for health information exchanges to qualify as an OKHIE. In order to receive certification, the applying HIE must submit an application to the Oklahoma Health Care Authority (OHCA) and provide all requested documentation. The application and standards for certification shall be posted on the OHCA OKSHINE public website.~~

- ~~(1) The OHCA shall establish a health information exchange certification with input from stakeholders.~~
- ~~(2) Until such time as the health information exchange certification is established by the OHCA, an OKSHINE or an HIE organization that was previously certified by the Oklahoma Health Information Exchange Trust (OHMET) shall be deemed an OKHIE.~~
- ~~(3) An HIE must provide documentation of certification from OHMET to OHCA in order to receive initial OKHIE certification.~~

~~(e) Fees.~~

- ~~(1) **Certification fees.** Each health information exchange which applies for certification, will be required to pay annual certification/recertification fees. The OHCA will develop the certification criteria and will publish the criteria and associated fees, when available, on the OHCA OKSHINE public website.~~
- ~~(2) **Participant fees.** Each participant, as defined in this section, will be required to pay an annual participation fee as outlined in the participant agreement. The OHCA will develop the criteria for the fees and will publish the criteria when available. The participant agreement and fee schedule will be posted on the OHCA OKSHINE public website.~~

(d) Required participation.

- (1) By July 1, 2023, all health care providers as defined above and who are licensed by and located in the state of Oklahoma shall report data to and utilize the SDE.
- (2) The state acknowledges that establishing the connection to the HIE can take substantial time to complete. A health care provider will be considered to have met the requirement to report data to the SDE as long as the provider is actively engaged with the HIE in the onboarding process of connecting to the HIE, and as reported by the SDE.
- (3) In order to meet the requirement to utilize the SDE, each health care provider or their health care provider organization shall secure access to HIE services by the following:
 - (A) Completing and maintaining an active participation agreement with the SDE for HIE;
 - (B) Executing annually an order form electing at a minimum the set of core services relevant to the provider practice or organization; and
 - (C) Maintaining good standing as a participating organization in the SDE for HIE by remaining compliant with the terms and conditions, network policies and procedures, and paying all fees associated with the services elected on the order form.
- (4) Each health care provider or health care provider organization will provide a utilization report from the SDE to the Office of the State Coordinator for HIE on an annual basis. Utilization metrics and benchmarks will be determined annually by the Office of the State Coordinator for HIE in consultation with the board of directors of the SDE and will be published three (3) months prior to the commencement of each State Fiscal Year.

(e) Hardship exemption.

- (1) The Office of the State Coordinator for HIE may allow exemptions from the requirement to report data to and utilize the SDE beginning July 1, 2023, on the basis of financial hardship, size, or technological capability of a health care provider or organization or such other bases as may be provided by rules promulgated by OHCA.
- (2) Any health care provider or health care provider organization as defined above that believes they will fall under hardship in order to meet the requirements to report data to and utilize the SDE must submit a request for exemption providing detailed justification as to the hardship they will sustain as specified on the Office of the State Coordinator for HIE website.

(3) The authorization of a hardship exemption does not exclude the provider from having to meet the requirements to report data to and utilize the SDE but will provide additional time for the provider to mitigate their hardship in doing so.

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