

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: July 14, 2023

The proposed policy is an Emergency Rule. The proposed policy was previously presented as a Permanent rule at the September 6, 2022 Tribal Consultation, the September 8, 2022 Medical Advisory Committee, and the March 22, 2023 OHCA Board of Directors meeting. The proposed changes are scheduled to be presented as Emergency Rules at the July 5, 2023 Tribal Consultation meeting, July 13, 2023 Special MAC meeting, and July 17, 2023 Special OHCA Board of Directors meeting.

Reference: APA WF # 23-17

SUMMARY: Statewide HIE — The proposed revisions will implement the changes required by OK Senate Bill 1369 from Oklahoma's 2022 regular legislative session to the Oklahoma statewide Health Information Exchange (HIE) as well as allow for exemption upon request.

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 # 23-17

A. Brief description of the purpose of the rule:

Oklahoma Senate Bill 1369 made changes to the Statewide HIE during the 2022 legislative session. The Agency promulgated permanent rules which were adopted by the OHCA Board on March 22, 2023; however, the proposed rules were disapproved by the Governor on June 23, 2023. The new proposed emergency revisions were written in order to align policy with feedback received from members, providers, and the Governor to allow the HIE Coordinator to grant exemptions from the HIE when requested by any provider. Additionally, the proposed revisions provide information about the availability of grant funds to help cover connection fees.

- 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 and the citizens of Oklahoma 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, for which an avenue to request grant funds will be available.

- 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 and the citizens of Oklahoma, 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, as well as periodic subscription fees.

- 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 and subscribe to the statewide HIE as well as grant funds to help cover the connection costs.

- 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 and subscribe to the statewide HIE as well as grant funds to help cover the connection costs.

- 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 and subscribe to the statewide HIE as well as grant funds to help cover the connection costs.

- 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: June 15, 2023

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 (SDE) for HIE.~~

(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 any public or private organization, corporation, authority, partnership, sole proprietorship, association, agency, network, joint venture, or other entity that is established and licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of business or practice of a profession and/or employs licensed health care workers in the State of Oklahoma. Health care provider includes but is not limited to facilities such as: ambulatory surgery centers, clinics, home care agencies, hospices, hospitals, intermediate care facilities, laboratories, long-term care agencies, medical centers, mental health and substance use disorder treatment centers, nursinghomes, PACE centers, pharmacies, physicians' offices, psychiatric hospitals, public health clinics, and rehabilitation centers.

(2) "Health Information Exchange (HIE)" means the electronic movement of health-related information among organizations according to nationally recognized standards for purposes including, but not limited to payment, treatment, and administration.

(3) "Health information exchange organization" means an entity whose primary business activity is health information exchange and which is governed by its stakeholders.

(4) "OKSHINE" means the Oklahoma Statewide Health Information Network and Exchange, a collective effort of the Office of the State Coordinator and SDE in support of statewide health information exchange.

(5) "Report data to" means that health care providers shall establish a direct, secure connection to the state designated entity for HIE and submit data according to the United States Core Data for Interoperability (USCDI) standard. The form and format are further defined in the specifications on the OKSHINE website. Providers shall transmit data types they collect within their Electronic Health Record, with the exception of any data that: 1) the provider determines to be sensitive patient information that is to be suppressed from transmission to the SDE; 2) is subject to a patients' request for exclusion, consistent with a provider-implemented policy; or 3) such transmission would violate state or federal law or regulation.

(6) "State designated entity (SDE)" means the health information exchange organization

designated by the State of Oklahoma. The name and contact information for the state designated entity for HIE is found on the OKSHINE website.

(7) "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. '11-133, 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 (OHiet) shall be deemed an OKHIE.~~

~~(3) An HIE must provide documentation of certification from OHiet 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) All health care providers as defined above and who are licensed by and located in the state of Oklahoma and are not otherwise exempted, shall submit an application to report data to and utilize the SDE. Providers may register for an exemption from required participation as specified in paragraph (f) of this Section.

(2) Paragraph (d) of this Section shall not apply to:

(A) A health care provider that does not currently own or subscribe to an electronic health records technology system or service.

(B) Health care providers classified as substance abuse treatment facilities covered by 42 Code of Federal Regulations (CFR) Part 2.

(3) Patient-specific protected health information requiring patient consent prior to disclosure, shall only be disclosed in compliance with relevant state or federal privacy laws, rules, regulations, or policies including, but not limited to, the Health Insurance Portability and Accountability Act of 1996, and any laws that require patient consent prior to sharing health information.

(4) 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.

(5) In order to meet the requirement to utilize the SDE, each health care provider 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.

(e) Fees.

(1) **Subscription fees.** Health care providers as defined in this section are required to subscribe and to pay a subscription fee directly to the SDE on a monthly or annual basis. Subscription fees are determined based on the organization type and size. Subscription fee schedule is established by the SDE based on network operating costs as approved by the SDE board and can be obtained upon request to the SDE. The Office of the State Coordinator for HIE shall receive notice from the SDE of the established subscription fee schedule or changes to the fee schedule no later than ninety (90) days prior to the effective date.

(2) **Connection fees.** Health care providers as defined in this section are required to connect their electronic health record to the SDE to securely report data to the HIE. This is a variable one-time fee paid to the SDE. The Office of the State Coordinator for HIE shall receive notice of connection fees established by the SDE no later than thirty (30) days of being established.

(3) **Grant funds.** Health care providers may apply for a grant to cover connection fees subject to the availability of funds. Grant fees for connection will be paid directly to the SDE on behalf of the provider. Information on grant eligibility can be found on OKSHINE website.

(f) Exemptions.

(1) Any health care provider as defined in paragraph (c) of this section may register an exemption from reporting data to the SDE and/or utilizing the HIE on the OKSHINE website by registering an exemption with the Office of the State Coordinator for HIE.

(2) All providers that register an exemption shall be granted such exemption and shall not be subject to pay subscription fees and/or connection fees.

(3) The exemption will automatically renew annually unless the provider withdraws their exemption and elects to participate.