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UPDATE:

**AMENDMENT TO OKLAHOMA'S PHYSICIAN/PATIENT
PRIVILEGE STATUTE**

Effective November 1, 2009, a change to Oklahoma's physician/patient privilege statute, 12 Okla. Stat. § 2503, goes into effect that clarifies the scope of this law and makes it consistent with the HIPAA privacy rule.

Prior Standards for Disclosure Uncertain

Prior to the clarification, Oklahoma health care providers had little concrete guidance as to the applicability and scope of Oklahoma's physician/patient privilege statute. In essence, this law allows a patient to restrict certain disclosures by the patient's physician or psychotherapist of the patient's health information. While some assumed that the privilege applied only to testimonial disclosures, there existed nothing in the statute to confirm such was the case. On the other hand, the HIPAA privacy rule specifically permits a physician to disclose a patient's healthcare information without specific patient consent or authorization, if such disclosure is for purposes of treatment, payment or health care operations. As a result, providers faced two equally unappealing options. First, providers could disclose medical information for purposes of treatment, payment and/or health care operations in the belief the statute applied only to testimonial disclosures and risk suit for breach of privacy. Alternatively, providers could refuse to disclose medical information without a patient consent or authorization, and risk suit for breach of a duty to disclose.

In addition to these liability concerns, the uncertainty surrounding the statute slowed the delivery of care and added an administrative burden by requiring additional paperwork and forms.

Certainty for Requirements Governing Health Information Disclosures

Through Senate Bill 994, the Oklahoma legislature responded to these concerns by making a minor but important clarification within the statute. The statute now expressly states the privilege applies only to testimonial disclosures. Consequently, federal and state privacy laws are the exclusive sources of authority determining the requirements for health information disclosures made in the course of a provider's day-to-day practice. Therefore, patient consent or authorization for disclosure of health information is not necessary under the statute if not otherwise mandated under HIPAA or other federal or Oklahoma state privacy laws.

Conclusions

As amended, the Oklahoma's physician/patient privilege now clearly states when the statute requires patient authorization for disclosure of health information:

1. Patient authorization is not necessary for disclosures related to treatment, payment, health care operations, or other activities permitted by federal or Oklahoma state privacy laws.
2. Patients generally must continue to authorize disclosure of health information in litigation or court proceedings. Thus, the protections offered by the statute in these contexts remain unchanged.

This change in Oklahoma's physician/patient privilege statute should enhance and streamline delivery of care to Oklahoma patients. Additionally, clarification of the standards governing disclosure should eliminate the administrative costs of obtaining and maintaining unnecessary authorizations, and providers should no longer face exposure to civil actions based upon the vagueness of the pre-amendment privilege statute.

Questions or Concerns

Crowe & Dunlevy attorneys Karen Rieger, Kevin Gordon, and Christopher Keim provided extensive analysis, drafting assistance, and education to members of the Oklahoma legislature, the Oklahoma Health Information Security and Privacy Council, and the office of Governor Brad Henry in conjunction with this legislative change, which hopefully will ease the administrative burden of healthcare providers.

If you have questions or concerns regarding the impact of this change on your respective business practices for managing health information, please do not hesitate to contact Karen Rieger at (405) 235-7788 or karen.rieger@crowedunlevy.com; Kevin Gordon at (405) 239-6619 or kevin.gordon@crowedunlevy.com; or Christopher Keim at (405) 235-7709 or christopher.keim@crowedunlevy.com.