

## Health Care Hot Topics (July 2010)

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### **New Case Provides Useful Reminder: Ohio Law is Sometimes More Strict Than HIPAA**

To the unsuspecting Ohio health care provider that is asked to disclose patient medical records, it may come as a surprise to learn that Ohio's physician-patient privilege is at times more restrictive than the Health Insurance Portability and Accountability Act (HIPAA). A recent decision from the U.S. District Court for the Northern District of Ohio provides an excellent reminder. The lesson: prior to disclosing patient medical records, relevant state laws and their interpretation in the courts should be considered in addition to HIPAA.

In *Turk v. Oiler*, the Cleveland Clinic received a grand jury subpoena issued by the Cuyahoga County Clerk of Courts. The subpoena requested the disclosure of medical records in relation to a criminal investigation. The Cleveland Clinic disclosed the records but was subsequently sued for an alleged invasion in privacy that was related, at least in part, to the disclosure of the medical records.

HIPAA allows the disclosure of protected health information in response to a grand jury subpoena. However, Ohio's physician-patient privilege permits disclosures only in certain limited circumstances, and responding to a grand jury subpoena is not one of them. Grand juries in Ohio may compel the production of documents, but privileged materials are beyond their reach. In *Turk*, the District Court held that Ohio's more restrictive law concerning the disclosure of medical records was not preempted by HIPAA. As a consequence, the Ohio law applied, and the Cleveland Clinic's attempts to obtain a favorable judgment as a matter of law on the invasion of privacy claims were unsuccessful.

Source: *Turk v. Oiler*, No. 09-CV-381 (N.D. Ohio Feb. 1, 2010).

### **Billing and Denial Patterns for Top Services: 2001–2008**

Several top-billed codes have seen a denials increase from 2001–2008, and health care providers should consider reviewing and updating their billing and coding criteria and related templates in order to avoid denials based on billing or coding errors. A recent analysis of statistics derived from the latest available CMS claims data shows that three of the top ten most common codes saw denial rates increase over the eight-year time frame.

The three codes seeing an increase in denials include: (1) 17003, a low-level dermatology service; (2) 95004, a common allergy test; and (3) 99213, the most commonly billed code for office/outpatient visits. One particularly noteworthy denial rate increase is the allergy test code, which has doubled from 8.4% in 2001 to 16.8% in 2008. The alarming increase in denials for allergy tests may be attributable to coding errors, such as using wrong diagnosis codes or leaving off modifier 25 for tests done on the same day as an unrelated office visit.

Source: Part B News 6/7/10