

Information Blocking and the 21st Century Cures Act

Question

What do I need to know about compliance with the information blocking (also known as open notes) rule of the federal 21st Century Cures Act (“Cures Act”) and any potential risk in documentation?

Answer

The legislation in the Cures Act, which was passed in 2016, makes access to electronic health records (EHRs) easier and unrestricted. In an effort to increase interoperability across EHR platforms, vendors and users are required to enable the development of computer and smartphone applications to give patients full and portable access to their healthcare information under the Cures Act.

The Cures Act’s final rules specifically require that healthcare organizations provide patients access to their personal EHR notes without delay. This means that healthcare organizations cannot block or prolong their patients’ access to any eligible information contained in their EHR, including test and study results.

Currently, eight categories of clinical notes in electronic health systems must be made immediately available to patients who request them through a secure online portal. The Office of the National Coordinator for Health Information Technology plans to expand these categories in the future.

These eight categories include the following:

- Consultation notes
- Discharge summary notes
- History and physicals

- Imaging narratives
- Lab report narratives
- Pathology report narratives
- Procedure notes
- Progress notes¹

Exemptions to the eight categories previously listed include (1) notes compiled in reasonable anticipation of, or use in a civil, criminal, or administrative action or proceeding, and (2) psychotherapy session notes.²

Section 4004 of the Cures Act addresses eight information blocking exceptions, including the Preventing Harm Exception, Privacy Exception, Security Exception, Infeasibility Exception, Health IT Performance Exception, Content and Manner Exception, Fees Exception, and the Licensing Exception.³

Healthcare professionals and organizations should have discussed these rules with their EHR vendors to ensure compliance with the regulations. It would behoove them to review all their policies related to their responses to information requests and update their policies and procedures as needed to maintain compliance.

Additionally, it's crucial for healthcare professionals to be cognizant not only of the importance of documenting care, but also their patients' possible perceptions about the words used in documentation. A study from July 2021 indicates that the language that physicians use when documenting in patients' health records can affect healthcare delivery and may contribute to disparities in care.⁴ Further, an article in *STAT* notes that common medical terminology and abbreviations – such as “patient complaint,” “patient refuses,” and “F/U” – can confuse patients and may cause negative feelings.⁵

To avoid any potential risks resulting from the choice of words in documenting care, [CRICO](#) and [The OpenNotes website](#) offer a number of general and specific tips that can help clinicians improve note writing.

Resources

- American Medical Association: How Do I Comply With Info Blocking and Where Do I Start?
- CRICO: Cures Act Overview
- HealthIT.gov: Fact Sheets
- HealthIT.gov: Information Blocking FAQs
- HealthIT.gov: ONC's Cures Act Final Rule
- Information Blocking Resource Center

¹ CRICO Strategies. (2021, April 2). Cures Act overview. Retrieved from www.rmf.harvard.edu/Clinician-Resources/Article/2021/Cures-Act-Overview

² Ibid.

³ HealthIT.gov. (n.d.). Final Rule policy: Information blocking. Retrieved from www.healthit.gov/curesrule/final-rule-policy/information-blocking

⁴ Park, P., Saha, S. & Chee, B., et al. (2021, July 14). Physician use of stigmatizing language in patient medical records. *JAMA Network Open*, 4(7):e2117052. doi:10.1001/jamanetworkopen.2021.17052. Retrieved from <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2781937>

⁵ Preston, E. (2021, June 18). Clinicians open their notes to patients in a grand experiment in medical care. *STAT*. Retrieved from www.statnews.com/2021/06/18/clinicians-open-their-notes-to-patients-in-a-grand-experiment-in-medical-care/

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