

21st Century Cures Act

What Pediatricians Need To Know

Live Webinar Q&A Session

How long do you have to keep Medical Records? If a patient requests old records that we no longer have, can they turn you in for Information Blocking?

- The 21st Century Cures Act doesn't change anything about your legal requirements to maintain medical records which are different for every state/jurisdiction. Check with your state Medical Society and other regional organizations to better understand the requirements for your practice. The 21st Century Cures Act only refers to health information that you have as EHI and your requirements to share that information electronically.

Can a practice with an EHR patient portal set a policy that we offer electronic records via our portal only?

- The 21st Century Cures Act does not restrict practice policies about record sharing. There remain important parts of medical records which are not part of the USCD1v1 data set and may be very important for appropriate continuity of care (such as developmental surveillance, reports from specialists, etc.). While you must provide EHI that you have electronically, if the patient/patient representative requests electronic access, at this time it may be not sufficient to provide appropriate care. It is always best to consider what is in the best interest of the patient and what you would like to receive if you were caring for the patient.

If a parent presents a daycare form for us to complete, does this fall under the Cures Act. Do we have to complete the form immediately? Do we have to provide it electronically?

- Completion of a form that a parent presents to you, does not represent currently stored "EHI" that you possess. As such, completing a form likely does not fall under the 21st Century Cures Act.

If a patient transfers out of the practice, can we give them access to the portal for a period of time - then close it?

- You are not required to provide electronic information to former patients forever. Some of the limitations may be technical in nature and should be discussed by your technology vendor. In some cases, you may not be able to provide read/access only without also allowing other bidirectional communications. You would not want to remain legally responsible for responding to medical requests and questions from someone with whom your doctor-patient relationship has been terminated. Clear practice policies about termination or transition of patients to other providers are recommended, including how to provide complete copies of records during the transition phase (some of which may not be able to be accomplished electronically.)

What about the information that is stored off-site in paper charts?

- That is not EHI that you currently possess if it's on paper and off-site. So, the 21st Century Cures Act does not apply to that information.

If penalties aren't set yet, why must I worry about this stuff right now?

- There is likely going to be some work that most practices will have to do to become fully compliant. However, everyone should have at least a written policy, identified gaps, and a plan in place to protect against risk if there is a complaint. Even without penalties in place, patients may be able to log complaints and penalties/deterrents may be assessed when they are finalized.

At what age can a child/adolescent be allowed to ask for their records without parental consent? What do I do if they make the request but their parent won't sign off on it?

- Nuances about the rights of parents/children and adolescents are bound by jurisdictional laws and regulations. They should be used as the source of truth for your practice and then work toward technical solutions that support those regulations. State/regional laws have precedence over the 21st Century Cures Act.

Can I just download and print the records, or must they be delivered electronically?

- In order to be compliant with the 21st Century Cures Act, if a patient requests an electronic copy of their records, you must be able to provide them electronically. You may not have the ability to provide them that way currently, and may negotiate with the family a reasonable alternative but that should be documented

according to your policy and procedure and you should be working to be able to include that capability in the future.

Must I have a portal to do a records transfer electronically? Can I just do this over an app?

- As long as the patient has the ability to receive the full USCD1v1 data set electronically and be able to use and exchange it as they desire, it can be fulfilled in any way that your technology allows.

What about old paper charts that we have scanned in to an external hard drive or scanned into a chart?

- It is not reasonable for all scanned documents in a patient's chart to be made available electronically, at this time with currently available technology. While the Cures Act refers to the "data elements" in the USCD1v1 and not the manner in which those data elements are stored (you likely have some covered data elements in those scanned documents), there is no reasonable way to electronically share them at this time.
- If a patient or patient representative were to request, for example, "all my prior records from my previous PCP" electronically, it would be reasonable to respond that you have no technically feasible way to provide them electronically. It would be then incumbent upon you, following your practice policy, on how you could meet their needs. If you have a policy, it's reasonable, includes these kinds of issues and you follow it, you would likely not find a case for information blocking substantiated. We will discuss more about exceptions (which this scenario likely falls under), in future educational opportunities.

Is there a time frame required to respond to requests?

- There are no specific timeframes delineated, however "undue delays" may constitute Information Blocking. See ONC's FAQs which are updated periodically here: <https://www.healthit.gov/curesrule/resources/information-blocking-faqs>

Does emailing records count as an electronic copy or must it be via portal?

- Email does not allow for use of the data electronically. If the patient/patient representative does not specify that they want it electronically, and they agree email is acceptable (please use encrypted technology to be HIPAA compliant) that does not constitute information blocking. If they request a "CDA so they can use the information to be electronically consumed" you must either provide it that way or document why you cannot according to one of the 8 acceptable exceptions and find a mutually agreeable way to get them what they need.

With increasing government interference into medical practice, and the unrestricted flow of information, should we charge a yearly fee for electronic access?

- Charging fees in and of itself may constitute Information Blocking. I would seek legal advice before instituting any practice fees by policy.

Do we need to allow patients to have access to specialist reports, hospital summaries etc.?

- Allowing patients access to their EHI may, in part, be limited how you store that information. If you receive a CDA from an outside hospital or referral source, that is EHI and should be capable of electronic sharing. If you have a scanned document, you may not have the technical capability to share that electronically and should state so in your practice policy and include the exception that would prohibit you from sharing.

Does messages in patient's chart in OP need to be shared at portal? Do we have control over what to share and what not to through portal?

- Your practice's Information Blocking Policy should state what you share and how. Technology may allow you to limit what is shared or redact information before sharing but it should be as granular as possible and be supported by an exception and your policy. Remember there is a difference between sharing passively and responding to a request to share.

Can electronic format mean providing the patient with a CD of his/her medical records?

- A CD does not allow them to use their information in an electronic format and share it electronically. If a patient requests a copy of their information via a CD and you fulfill their request, than that does not constitute Information Blocking. If they ask for a CDA that they can send via Direct Message to their new doctor, then the CD does not fulfill their request for their information in an electronic format.

Do you know of any funding resources to help pediatricians pay for a patient portal?

- I am not aware of any current funding sources.

How does the requirement impact practices who are not currently on an EHR (i.e. still have paper records)?

- If a practice has paper records, but has some data in an electronic format (such as a Practice Management System to send/receive claims), then they must have a way to electronically provide the data they have (CPTs, ICDs, etc.).

We still experience lots of resistance to our patient portal. Any thoughts on making it a requirement for patients, if not for all, for those requesting records for personal use?

- Strategies for improving patient portal uptake are best held in a provider community sharing format such as the SOAPM or OP listervs. Remember that not all information that is important for patient care is currently in a shareable electronic format.

What about photographs, specifically those related to injuries, and located on "private parts of the body"?

- Any information can be protected if it meets one of the exceptions that will be discussed in future learning opportunities. Additionally, information can be found: <https://www.healthit.gov/buzz-blog/information-blocking/to-share-or-not-to-share-whats-an-exception-to-information-blocking>.

Does this mean our office can no longer charge for personal copies of medical records once this becomes effective?

- The 21st Century Cures Act does not mandate any practice policies. Remember "complete medical records" for transfer may be distinctly different than responding to specific requests for sharing electronic information. However, unreasonable fees or requests may be subject to Information Blocking challenges. Many states now have legal limits on charges for medical records. We recommend checking in with your State Medical Society or other appropriate regional resources for regulations that apply to your practice.

If we do not have portal with OP, what else can we do? What is FHIR and API?

- More educational opportunities will be forthcoming for both the pediatric community as a whole through the Pediatric Success Series and others specific to Office Practicum community. To learn more about an API and FHIR, click through the hyperlinked resources on the slides once they are distributed.

How can we know (at what age) we can give information to a teenager?

- This is state/jurisdictionally mandated and we recommend contacting local experts for the laws that apply to your patients and your practice.