

## 21<sup>st</sup> Century Cures Act

### Sample Pediatric Policies & Exceptions

*Live Webinar Q&A Session*

#### **Does the information blocking require us to offer release of records by fax, email, or both?**

- The 21st Century Cures Act requires you to make every attempt to meet the request for medical records in whatever form the requestor wants it, including in an electronic form wherever possible. And if you can't, you work with the requestor to come to a mutually agreeable solution.

#### **I always thought that we were not responsible for copying records from the prior PCP.**

- These regulations are often state-specific. If the prior PCP went out of business, the patient has a right to their information and you may be the only source. If someone transfers from your practice to somewhere else, would you expect the patient to come back to you 5 years from now to get the "original source" of information?

#### **We use a third party vendor to process our medical records requests. Parents are directed to this vendor for all requests. How does this act impact this process?**

- This depends on whether your third party vendor can supply medical records in an electronic format, if requested that way (CDA, API, etc.).

#### **Are we obligated to provide prior PCP's and specialist records?**

- This is state-specific, but you also want to empower your patients to have information to be involved in their own care. (See above)

#### **Are we required to send documents from a previous doctor? I understand it would not be in CDA if a scanned copy.**

- This is state -specific, but see above.

#### **We currently provide 1 free record per year and charge a fee for excessive requests (multiple per year / I lost it / etc.) Will this be acceptable via the 21<sup>st</sup> Century Cures Act?**

- Charging patients to self-access their own EHI may be considered information blocking.

**Can a provider's office limit the options for how medical information is shared as long as the patient is given choices? Specifically wondering if it's ok to NOT offer printed as an option - as that method of release is the most cumbersome and expensive.**

- The 21st Century Cures Act only speaks to sharing of EHI, if requested to share information electronically. As long as you can come to a mutually agreeable solution for the requestor, there are no specifics about how this is shared.

**Our patient portal is not pediatric friendly and we are not in a place to change our entire system. Are there suggestions for portals which work well with peds?**

- This is a great question for a pediatric community listerv. In addition, in order to be functional to provide EHI, it will likely need to be one that exchanges data with your EHR.

**I've always understood that we need NOT (or even CANNOT) release medical records that we did not create (like records from specialists or previous PCP) that are scanned to the chart. Are you saying we are required to also share these records - both now and with the CURES act?**

- These rules are state-specific. I would inquire with your state medical society.

**Is it required by the 21st Century Cares Act for the office to have a written policy about information sharing?**

- While there is nothing specifically stated, it is implied in some of the guidance and we consider it best practice.

**How do these rules apply to practices that are NOT currently using EHR, but paper or combination?**

- If you have any PHI in any electronic coded form (CPT codes or ICDs) then you have EHI and are required to share electronically, if the requestor wants it that way.

**Are there specific regulations for Behavioral Health notes?**

- Behavioral health notes are treated the same with the exception of true **psychotherapy** notes.

### **Do you know where I can find my states rules? (New York)**

- I would start with the New York State Medical Society to ask specific questions about adolescent privacy and other jurisdictional regulations.

### **Do we need to create another HIPAA compliant record release form for Cures Act "records request" in addition to the standard one in use for sharing medical records with new PCPs and specialists? We do not have a portal.**

- The 21st Century Cures Act does not specify any specifics for records requested.

### **Should all Family History be withheld since we aren't getting permission from each of the patient's relatives about their Huntington's Chorea or heart disease or diabetes because revealing the FH is a violation of that relative's HIPAA right to privacy?**

- The family history is not part of the USCD1 data set:  
<https://www.healthit.gov/isa/united-states-core-data-interoperability-uscdi>

### **How do we deal with the fact that dx codes sometimes included RULED OUT diagnoses?**

- I'm not sure how to answer this question. If you are putting a diagnosis on a visit note and goes on a claim, it's part of the medical record. Rule/out diagnosis are not supposed to be used for documentation of information exchange.

### **If +for STI: How can the prescription be filled? As we need parent insurance card when they go to pharmacy.**

- These are specific state requirements and payer requirements which are not related to the 21st Century Cures Act.

### **Sometimes the dx codes would give away the confidential dx, such as gender identity issues.**

- That is correct. If you choose to use those specific diagnoses. Some EHRs allow you to exclude sensitive diagnoses on a problem list, but if it codes in the claim as part of the visit, there is no way to exclude it in the CDA. Many providers use a 'generic' diagnosis instead - when they are concerned.

### **Do we need to always get mother's explicit permission to share the newborn record? i.e should it be in the release form?**

- There is no specific guidance about wording regarding requests for information.

**We record sensitive info disclosed by the teen in the counseling section under "clinical staff only" view. Is this the best place for this info? Does OP recommend a different area for documenting sensitive info?**

- OP specific questions will be addressed in OP specific resources and education.

**"I can't share all of the results" immediately results in parental demands for "WHY NOT?!"**

- Setting appropriate expectations is always a challenge for some of our families.

**How long does the information need to be available? When we mark someone as inactive they lose access to the portal. Is that considered blocking?**

- You are only responsible for the practice-patient relationship while patients are active. How long information remains in a portal is specific to the technology.

**Currently, the only information we allow parents to see on the portal are immunizations. Do we need to open our portal up to full access with the 21st Century Cures Act?**

- Unless you have another way to provide EHR electronically, then you will likely want to work towards adding additional functionality to your portal.

**If we have a 3rd party ROI Company that handles our medical release company, we should work with them on this topic, correct?**

- Yes.

**In the example where you redacted the hcg, do you have to disclose to the parent that they are receiving only some of the labs they requested?**

- You do not, unless they explicitly ask for the information.

**Do we need a "release of records" signed if they request recs from our portal to be sent back to the portal? Or per HIPAA everyone still needs to sign a release?**

- The 21st Century Cures Act does not specify how request for information should be made or documented. However, legitimate portal authentication allows for self-serve without any request. And HIPAA does not require a written request. It allows practices to have a policy to request one - provided that it is stipulated in advance: <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html>

**How do you handle the situation where I need to document things (like compliance issues) where other providers need to know this? But direct sharing with the parent may interfere with the doctor patient relationship.**

- The 21st Century Cures Act does not stipulate communications release of information between healthcare team members that are not part of the USCDI data set (such as part of an encounter note.)

**For the "dinosaurs" who do not have EMR, how do we approach the CURES act?**

- In my opinion, moving forward, it will be difficult to be in compliance with the 21st Century Cures Act without having access to some form of electronic information sharing of the patient's own medical information.

**What if we have a parent who refuses to have access to their child's patient portal? Is that considered an exception?**

- If a parent refuses to access a portal, and that is how you can provide EHR electronically, then they cannot accuse you of information blocking. If they request their information, you work together to agree upon a solution which may be in a form other than electronic.

**If a mother screens positive for postpartum depression, can that information be blocked?**

- Some would argue that it is mandatory for you to redact/withhold that information from releasing as part of a child's chart. That is the mother's medical information and she is entitled to protection of that information under HIPAA unless she expressly permits/requests it.

**Can you charge a patient when supplying a thumb drive for records?**

- If you are supplying a copy of a CDA on a thumb drive and that is the only way you can provide a patient "electronic access to their EHI" then you should not charge for it. IF you are providing PDFs or other non-electronic data on that thumb drive, then you can charge whatever is allowable by your state laws.

**THANK YOU, SUE! YOU'RE A HERO!**

- Thanks, but no hero. Just a pediatrician with a dominant advocacy gene. Happy to be of help.

### **Once patients are no longer considered 'active' via transfer out, how does Cures Act apply to those former pts?**

- You are only responsible for the practice-patient relationship while patients are active. How long information remains in a portal is specific to the technology.

### **What did you say about No-show fees and patients with Medicaid plans?**

- This is not pertinent to the 21st Century Cures Act but most Medicaid plans do not allow you to charge for administrative fees such as forms and no-shows. However, this is state-specific and I suggest checking with your state Medicaid office/state AAP Chapter for specifics.

### **Are the processing of requests guidelines in the sample policy a sample or the Cures Act guidelines?**

- There are no specific guidelines for this, but the sample policy is meant to be an example.

### **Do we need to give a copy of our policy to every patient? Or just have it available upon request?**

- Your practice policy for information sharing is for your practice use and in the event that someone files a potential Information Blocking complaint. How you communicate information about information sharing to your patients and families, is entirely up to you. There may be parts of the policy that are not appropriate to share with your patients.

### **How carefully do we need to go through charts looking for parental info in family and social history in notes? Is it limited to sensitive info like drug & alcohol, mental health? Is the only issue for this divorce because Cures only applies to parents requesting own kid's records?**

- How you handle sensitive information is entirely up to your practice. You should just make sure you have done work to understand what your vulnerabilities are and how to make sure whatever decisions you make are done in a non-discriminatory manner.

### **What should providers start doing to "clean" up patients' medical record? i.e. updating problem etc.**

- This is dependent on the technology you have available to your practice.

**We have paper charts on site. Are we responsible to send those records electronic also? If we send them offsite, are we responsible?**

- The 21st Century Cures Act only applies to EHI. You can't send paper or scanned information in an "electronic format" because it is not coded data. Whatever you have as coded electronic information you must be prepared to share electronically.

**Do we have to disclose records received from other providers? What is information in the notes that should not be sent?**

- This is dependent on your state regulations and practice policy decisions.

**What does API mean?**

- <https://www.infoworld.com/article/3269878/what-is-an-api-application-programming-interfaces-explained.html>

**An issue we have seen is parents/caregivers are seeing some notes and not others, this will immediately lead to suspicion around what and why something is being withheld and potentially lead to undue pressure by caregiver on patient to disclose or authorize disclosure to parent. We frequently see this dynamic now playing out with our adolescent patients (who are able to restrict access) and our current iteration of their EHR, which those 14+ do not want their therapy notes accessed. Any advice?**

- This is a difficult problem for pediatricians who care for adolescent patients. In my opinion, it is best handled at a practice policy level and explaining to parents of adolescents that you will share what you can, but protect what is necessary under other regulations. Having a conversation with families about how you 'will have some private time' with the teen during the visit is a great place to also have a conversation about sharing information on the portal. But make sure you are complying with the Cures Act and using exceptions to only protect what should be protected.

**Should we have parents/patient sign our Information sharing policy like how they have to sign HIPAA?**

- There is no regulation or requirement to do so.

### **Are we obligated to send notes from specialists that we have scanned to the EMR?**

- This is dependent on state regulations and not part of the 21st Century Cures Act.

### **What about requests for visit notes before they are finalized?**

- The ONC's answer to this is "It depends." Please refer to the FAQs: <https://www.healthit.gov/curesrule/resources/information-blocking-faqs>

### **Can practices that are on paper records still charge a fee for copying, scanning and sending a patient's medical information?**

- Non-electronic information is not subject to 'sharing electronically' and is subject to your state regulations of charging for medical records. There are web resources available and your state medical society is a good resource <https://medicopy.net/who-we-are/blog/guide-of-state-statutes-for-copies-of-medical-records>

### **When Dr K refers to "check your state laws" - where should I be looking?**

- State laws regarding what kinds of information is protected (such as adolescent rights to private care regarding sexual activity) can be found at your state medical society. Another good resource is: <https://www.guttmacher.org/>

### **Do we need to send billing records?**

- Most EHR clinical notes have billing information that has EHI (CPTs and ICDs) and can be shared as part of the clinical note. If you only have a practice management system, but no EHR, then there is a requirement to share the billing information electronically.

### **Are we required to provide records that were created by OTHER providers? If we get copies of large prior records, or reports from prior specialists? Or can parents be told to get those records from the provider that created it?**

- The 21st Century Cures Act does not specific any policy about prior records. If you have that data in an electronic format (in the format of a CDA that was sent to you via an HIE or Direct Messaging) then you may be required to re-share it. If it is in a non-electronic form such as a scanned PDF, then if/how you share that depends on state regulations.



**What do you see as the likely use cases for sending information in CDI format? Are EHRs set up to routinely import and export structured data such as growth records, vital signs, problem lists, and prescriptions? Our experience with migrating from one EHR vendor to another suggests this is not a straightforward or standardized process.**

- Data conversion is different from sharing data through a CDI or API (electronic format) and very vendor dependent. This is not specifically addressed under the 21st Century Cures Act. There are absolutely current challenges in exchanging CDAs which will be evolving into the foreseeable future.

**If our office request records from another office of a patient who is transferring to us but they do not respond to our request would that be against the Cures act? This particular office calls the patient once they receive our request. They call the patient to make them come in their office to pay for their records to be sent to us.**

- That's an interesting question and one not explicitly covered in the 21st Century Cures Act unless the patient/family is asking for an electronic copy of the EHI and the practice is blocking their access or you are asking for EHI on their behalf and you could receive and consume a CDA than that may constitute a reason to file an Information Blocking complaint with the OIG.

**If we choose to block this kind of information from parents (per request of patient) this will still prompt questions and potential confrontation of the patient, which in the past has led our patients 14+ to acquiesce to parents demands that they allow them access (to their medical record). This could lead patients to disclose information (disclosed in therapy) before they are mentally prepared to do so. There are certainly many other likely scenarios that will arise that prospective information blocking and/or open discussion with patient and family may be insufficient to address ethical concerns and allow a clinician to fulfill our obligation to do what is in the best interest of the patient.**

- There are likely ways that you can be compliant with what you share by using the available exceptions.

**For security purposes, can we provide the thumb drive for requestors and charge them for it so we are not opening ourselves up for security risks?**

- These questions are not specific to the 21st Century Cures Act. If you are supplying a copy of a CDA on a thumb drive and that is the only way you can provide a patient "electronic access to their EHI" then you should not charge for it. IF you are providing PDFs or other non-electronic data on that thumb drive then you can charge whatever is allowable by your state laws. Security risks are a separate issue and can be mitigated with technology such as password protection or encryption.