**Key Points: The Cures Act Final Rule**

**Risk Tip Sheet 1**

**What is The Cures Act Final Rule?**

The Cures Act Final Rule focuses on allowing patients timely access to their electronic health record. The intention of the Cures Act is to remove delays related to traditional medical record requests and support sharing of said medical information. IB requirements are in addition to existing HIPAA regulations and exclude psychotherapy notes, information compiled in anticipation of litigation (civil, criminal admin action/proceeding) or de-identified data.

Rules specify that clinical notes must not be blocked and must be made available free of charge to patients. Clinical notes are defined as: consultation notes, discharge summary notes, history & physical, imaging narratives, lab report narratives, pathology report narratives, procedure notes and progress notes created by doctors, nurses, PAs and a broad range of therapists.

**When does it apply?**

April 5, 2021

**Eight Exceptions to the Cures Act**:

An actor’s practice that does not meet the condition(s) of an exception will *not* automatically constitute information blocking. The Office of the National Coordinator (ONC) describes "actors" as: health care providers; health IT developers of certified health IT; and Health Information Networks/ Health Information Exchanges (HIN/HIEs). For more detailed information clarifying the term “actors”:<https://www.healthit.gov/buzz-blog/information-blocking/pssst-information-blocking-practices-your-days-are-numberedpass-it-on> and https://www.healthit.gov/cures/sites/default/files/cures/2020-03/InformationBlockingActors.pdf

Exceptions are in two categories:

* Exceptions that involve not fulfilling requests to access, exchange, or use electronic health information include:
  1. Preventing Harm Exception
  2. Privacy Exception
  3. Security Exception
  4. Infeasibility Exception
  5. Health IT Performance Exception
* Exceptions that involve procedures for fulfilling requests to access, exchange, or use electronic health information include:
  1. Content and Manner Exception
  2. Fees Exception
  3. Licensing Exception

For more detailed information about the exceptions: https://www.healthit.gov/sites/default/files/cures/2020-03/InformationBlockingExceptions.pdf

**Preparing for the new Rule:**

Begin NOW to prepare for the new rule by doing the following:

* **Become familiar with the Cures Act** and the proposed rules.
* **Take advantage of the new rule.** Providers should determine how the new rule may be of benefit to them. Consider, for example, the ability to obtain access to previously unavailable patient information enabling a physician to provide more effective and more efficient patient care.
* **Educate staff.**  Identify and educate those persons who will be responsible for making and responding to requests.
  + Current HIPAA training should be revised to include IB training
  + Conduct regular training on IB topics and document attendance
* **Review EHI practices.** Providers will need to review and update their policies and practices concerning requests for access by patients and third parties to avoid any information blocking issues.
  + Do not inappropriately delay or impose unreasonable restrictions to information sharing.
  + Establish processes for evaluating and responding to requests to access information and appropriate costs or limitations associated with such access.
  + Identify system capabilities as well as limitations that may justify a denial of a request to share information.
* **Review EHI system functionality.** Ensure your system doesn’t unintentionally allow for IB.
  + Review contracts for terms that might trigger the information blocking rule; including licensing agreements, software services, business associate agreements, and other EHI contracts.
  + Compliance with the IB regulations should be included in the design, support and maintenance of your IT systems going forward
* **Respond appropriately to requests for information sharing.**
  + Direct requests to the right staff person ensuring a timely and appropriate response is made.
* **Watch for new developments/requirements**
* **Review your Business Associate Agreements (BAA)**
* **Learn about apps.** Familiarize yourself with apps to identify ones that may be particularly helpful to your patients. (i.e. medication reminder apps)
* **Reach out to your EHR vendors.**
  + Learn about their plans to meet the new requirements

Resources:

<https://www.opennotes.org/onc-federal-rule/>

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<https://www.ama-assn.org/system/files/2020-02/patient-records-playbook.pdf>

<https://journal.ahima.org/the-compliance-clock-is-ticking-on-oncs-21st-century-cures-act-regulations/>

https://www.ama-assn.org/system/files/2020-10/onc-final-rule-ama-summary.pdf

<https://www.healthit.gov/curesrule/resources/information-blocking-faqs>

<https://www.healthit.gov/curesrule/what-it-means-for-me/clinicians>

<https://sironastrategies.com/wp-content/uploads/2020/03/HIT-Leadership-Roundtable-WP-FINAL.pdf>