**The Cures Act Final Rule and FAQs**

**Risk Tip Sheet 2**

**Who can submit a request?**

A request can be received from a patient for their electronic heath information (EHI), a 3rd party for access to an individual’s EHI or from a 3rd party to establish a connection, known as an Application Programming Interface (API), through which EHI can later be received.

**What do I need to include in a request for records?**

Include what they asked for, to the extent the information is contained within the “designated record set.” This includes medical and billing records and any other record that is used to make decisions about the patient.

**How do I handle a records request if images are involved?**

If the images are in your system, and you are relying on them for diagnosis and treatment decisions, you must produce them to the patient if requested to do so. If you are relying on a link to another health care provider’s systems, then you can direct the patient to the other health care provider for that information.

**Do I have to comply with a patient’s request that I email records?**

Yes. Give the patient a basic warning related to email risks, and obtain a verbal or written confirmation from the patient that the patient is aware of the risk and still wants to receive the records via email. Document the patient acknowledges and understands these risks.

**Do I have to comply with a patient’s request that I share records through an app?**

If a patient requests that you share information through an app, you are required to do so under HIPAA if you have the technology to do so. Encourage them to check the privacy policy before downloading a health app to make sure their information will not be misused.

**What are considered “clinical notes”?**

[According to OpenNotes.org](https://www.opennotes.org/onc-federal-rule-interoperabilty-information-blocking-and-open-notes/?utm_source=STAT+Newsletters&utm_campaign=09fda3ad1c-health_tech_COPY_02&utm_medium=email&utm_term=0_8cab1d7961-09fda3ad1c-151651713#:~:text=The%20program%20rule%20on%20Interoperability,healthcare%20provider%20beginning%20November%202), “the eight (8) types of clinical notes that must be shared are outlined in the United States Core Data for Interoperability (USCD). The 8 types include:

* Consultation notes
* Discharge summary notes
* History & physical
* Imaging narratives
* Laboratory report narratives
* Pathology report narratives
* Procedure notes
* Progress notes

The following clinical notes generally are not covered by the new OCN rule:

* Psychotherapy notes recorded (in any manner) by a mental health professional – who is *“documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and****that are separated from the rest of the individual’s medical record****.”*
  + *“Note: Clinicians and organizations****are required to share****medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.”*
* Information that was gathered to be used in a criminal, civil, or administrative proceeding.

**When do clinical notes have to be shared?**

Clinical notes must be shared with patients (on request) by health systems starting on April 5, 2021 – and with a patient’s third-party app by October 6, 2022.

Generally clinical notes cannot be blocked unless one of the 8 exceptions to the Rule apply.

Resources:

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

<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>