

21st Century Cures Act: Information Blocking and Behavioral Health Provider Responsibilities



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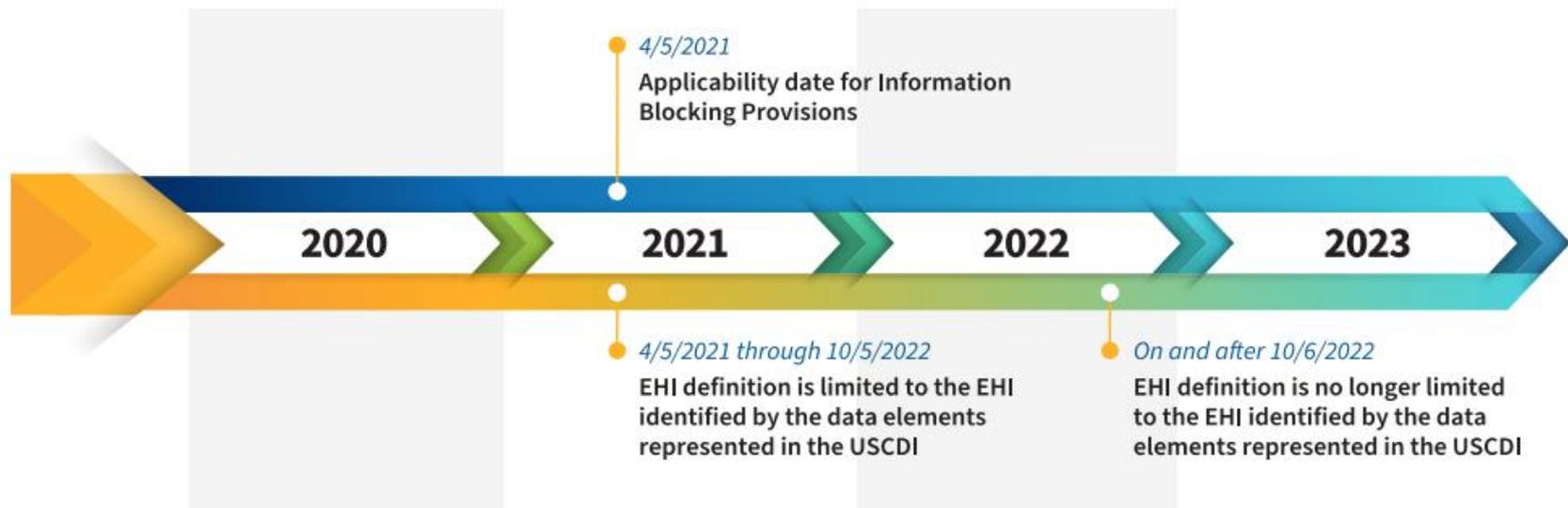
What is the Cures Act?

- Goal is to drive data exchange of patient medical records
- Designed to accelerate medical product development and bring innovations and advances to patient care
- The effective date was extended to April 5, 2021

*Easing into the rules:
EHI definition from April 5, 2021-Oct. 5, 2022*

- From April 5, 2021-Oct. 5, 2022 health care providers must offer patients unhindered free electronic access only to electronic health information (EHI) identified by data elements represented in the United States Core Data for Interoperability (USCDI) v1

Information Blocking



EHI = Electronic Health Information USCDI = United States Core Data for Interoperability

USCDI v1 Summary of Data Classes and Data Elements

Allergies and Intolerances

- Substance (Medication)
- Substance (Drug Class)
- Reaction

Assessment and Plan of Treatment

- Assessment and Plan of Treatment

Care Team Members

- Care Team Members

Clinical Notes

- Consultation Note
- Discharge Summary Note
- History & Physical
- Imaging Narrative
- Laboratory Report Narrative
- Pathology Report Narrative
- Procedure Note
- Progress Note

Goals

- Patient Goals

Health Concerns

- Health Concerns

Immunizations

- Immunizations

Laboratory

- Tests
- Values/Results

Medications

- Medications

Patient Demographics

- First Name
- Last Name
- Previous Name
- Middle Name (including Middle Initial)
- Suffix
- Birth Sex
- Date of Birth
- Race
- Ethnicity
- Preferred Language
- Current Address
- Previous Address
- Phone Number
- Phone Number Type
- Email Address

Problems

- Problems

Procedures

- Procedures

Provenance

- Author Time Stamp
- Author Organization

Smoking Status

- Smoking Status

Unique Device Identifier(s) for a Patient's Implantable Device(s)

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Vital Signs

- Diastolic Blood Pressure
- Systolic Blood Pressure
- Body Height
- Body Weight
- Heart Rate
- Respiratory Rate
- Body Temperature
- Pulse Oximetry
- Inhaled Oxygen Concentration
- BMI Percentile (2 - 20 Years)
- Weight-for-length Percentile (Birth - 36 Months)
- Head Occipital-frontal Circumference Percentile (Birth - 36 Months)

EHI definition on and after Oct. 6, 2022

- EHI will be considered electronic protected health information (ePHI) as defined for HIPAA
- The EHI definition is no longer limited to the EHI identified by the USCDI data elements
 - It relies on EHI as defined in 45 CFR 171.102

Who must comply?

- All health care providers
- Health information exchanges
- Certified IT developers

***Behavioral health providers
must include the following:***

- Counseling session start/stop times
- Modalities and frequencies of treatment
- Clinical and psychological test results

Sharing exceptions

- Psychotherapy notes (as defined by HIPAA) should be stored separately
 - Store electronically in a designated “psychotherapy notes” section of EHR and/or physically separate from the rest of the medical record
 - Distinguished from progress notes
- Information compiled in anticipation of civil, criminal or administrative actions or proceedings

Are there other sharing exceptions?

- There are no blanket exceptions
- The Rules have exceptions, such as to protect patient privacy and security
- Documentation is critical if invoking an exception—include specific facts and circumstances associated with the decision

The spirit of the Act is to disclose records

- Health care providers are prohibited from practices likely to intentionally or unintentionally interfere or restrict patient access, exchange or use of electronic health information
- Providers found to engage in blocking activities or practices could be subject to monetary penalties if non-compliance is found

What does blocking look like?

- Provider is unnecessarily slow or delays patient or other providers access to EHI, and no exception can be shown
- Provider refuses to release EHI to another provider for treatment or diagnosis because the patient has not provided written authorization

What about smartphone apps?

- The Final Rule establishes secure standards-based application programming interface requirements to support a patient's access of info through a smartphone app of choice
- Review current EHR contracts for provisions that prevent users from sharing EHR-related info through screenshots or video

Next Steps

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- Confirm the IT vendor is prepared to support the requirements and can make configuration changes
 - Review and revise clinical workflow policies and procedures to streamline patient record request responses
 - Ensure HIPAA privacy policies and notices adequately address patient access requests

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- Develop process for patient responses
 - Develop policy for incoming reports from providers, as well as lab and test results
 - Consider if provider training and education is needed on sensitivity of language used in notes

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- Determine any electronic health information that may reside in non-EHR applications, and plan for patient access
 - Identify and obtain legal counsel to advise and assist with compliance and exceptions



Procedure requires clients sign a Release of Information form before we exchange information with another provider/physician. Even though HIPAA allows for release of medical information between providers for continuity of care without client authorization, we prefer the caution of having the signed release.

If getting the client to sign the release causes a delay in providing the requested records, could this be considered information blocking?

Yes.

If the provider does not have the Client Portal with their electronic health record, can they use other available methods, such as encrypted email?

It is not a requirement to have a client portal.

Is requiring a patient to pick up records in person considered information blocking?

Yes, in general, if the records are available online through a portal.

A fee is often charged in accordance with what is allowed through HIPAA. Is requiring a fee to be paid upfront to release records considered information blocking?

A fee is permitted but there are limitations such as to a patient for their own records, see:

<https://www.healthit.gov/curesrule/final-rule-policy/information-blocking>

What effect do the information blocking regulations have on 42 CFR Part 2 requirements and the release of substance use disorder treatment records? Especially if the provider uses the same electronic health records chart for both mental health and substance use treatment and is not able to separate the two or filter out the SA records?

42 CFR Part 2 must be followed; the Information Blocking Rule does not override it.

How do third-party apps and API (Application Programming Interface) apply to release of information, and how does it affect providers? Is there a requirement and deadline for providers to have the capability to provide records in this format?

APIs allow a software “Application A” to interact with a software “Application B” without Application A needing to know how Application B's software is designed internally. This is an issue for API developers.

Other Questions?



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ATTORNEYS AT LAW

This is provided as an informational service and does not constitute legal counsel or advice, which can only be rendered in the context of specific factual situations.

If a legal issue should arise, please retain the assistance of competent legal counsel.

Thank You



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