

CURES Act Reminder



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The 21st Century Cures Act (“Cures Act”), signed into law in 2016, has several key provisions. One provision which seems to be problematic for clinicians to implement is the electronic health information (“EHI”) blocking provision. We have recently seen an uptick in inquiries from policyholders asking if they are permitted to delay patient access to EHI for relatively short periods, such as when the physician is absent due to illness or vacation. The reasons given for desiring the delay are usually noble and appear on their face to be reasonable. For example, they do not want to burden the other physicians in their group during their absence by having them review tests or other results for people who are not their patients. They also express concern about unnecessarily alarming patients who may access negative information before their provider has the opportunity to discuss it with them. Unfortunately, the Cures Act does not recognize these types of real-world situations as exceptions.

The specific exceptions permitted are identified in 45 CFR Part 171, and if one of these exceptions is met, the denial of access to EHI will not be considered information blocking. The exceptions include:

Preventing Harm: when a provider reasonably believes that providing the information could cause harm to the patient or another person; however, the harm must be to life or physical safety, not emotional harm such as distress.

Privacy: to protect patient privacy or comply with federal or state privacy laws.

Security: to protect the security of the EHI system or to prevent unauthorized access or use.

Infeasibility: if there are legitimate technological or practical obstacles to provide the information.

Licensing Exception: A reasonable fee can be charged by the EHI vendor for providing access to the EHI system (in cases where a practice has migrated to a new system or the practice has closed), provided it meets the specific conditions outlined in the Cures Act.

Content and Manner Exception: Providers can choose the content and manner in which the EHI is provided, as long as it doesn't materially discourage access, exchange, or use.

Cures Act Final Rule: Information Blocking Exceptions

Should you have any questions or wish to discuss a specific situation, please contact our Risk Education Department or our Claims Department and speak with a Claims Attorney.

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