



PRACTICE ALERT

NEW FEDERAL RULE PROVIDES PATIENTS WITH ACCESS TO RECORDS

March 2021

The 21st Century Cures Act (Cures) is a bipartisan health care innovation law enacted by Congress in 2016 that includes provisions to promote the free flow of health information and interoperability. Under regulations issued in March 2020 by the United States Department of Health and Human Services to implement Cures, health information networks and health care providers may not interfere with access exchange or use of electronic health information also known as “information blocking.” Beginning April 5, 2021, a patient must be given immediate access to their health information in their electronic health records without charge. Prior to the rule, the Health Insurance Portability and Accountability Act (HIPAA) required patients to be given access to their electronic information within 30 days. When the new rule goes into effect, social workers will need to provide patients with immediate and direct access to their records. By October 6, 2022, health care providers must also be able to share health information via a patient’s third-party application such as a smart phone. As a result, patients will gain greater access to their health information.

The new rule aligns with the OpenNotes movement that began in 2010 through a patient empowerment initiative at three major health systems. Over 200 public and private health systems already provide patients access to clinical notes in their electronic health records. The movement is focused on making health care more open and transparent by encouraging health care professionals to share their clinical notes with patients.

There are different facets of Cures. Social workers may primarily be affected by:

- Access to clinical notes (a.k.a. Open Notes); and
- Release of tests and studies.

Social Workers in Health Care Systems

Clinical notes written by social workers in health care systems must not be blocked and made immediately available to patients upon request through a secure, online portal at no cost. The eight types of clinical notes that must be shared with patients include the following:

- Consultation notes
- Discharge summary notes (may also include closing summary)
- History and physical (psychosocial assessment including plan of care)
- Imaging narratives (not applicable to social workers)
- Laboratory report narratives (not applicable to social workers)
- Pathology report narratives (not applicable to social workers)
- Procedure notes (description of interventions used)
- Progress notes (summary of each interview, goals, and progress made)

Social workers employed in health care systems should follow the guidance developed by their organization for health care providers which may vary by state and in each setting.

Clinical Social Workers in Mental Health Settings

Clinical social workers (CSWs) in mental health settings must also adhere to the new rule and the types of open notes that can be shared with patients. They are required to share the following:

- Counseling sessions start and stop times
- The modalities and frequencies of treatment furnished
- Results of clinical tests

- Summary of diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date.

The new rule does not apply to psychotherapy notes as long as they meet the HIPAA definition of psychotherapy notes which states:

Psychotherapy notes are recorded (in any medium) by a health care provider who is a mental health professional 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.

In order to be excluded from Cures, psychotherapy notes must be stored separately in a designated "psychotherapy notes" section of an electronic health record or physically from the rest of a medical/clinical record.

Providers' Experience

Many providers have reported positive experiences with open notes. JAMA Network Open reported in 2020 that 74 % of health care providers approved of the practice. Social workers have also reported positive experiences on MyNASW. Open notes have changed the way in which social workers and other providers document their services. Knowing that patients will have access, the notes are written in a way in which they

- Are understandable to patients
- Focus more on the patients' needs and what they need to know
- Engage patients in the treatment process
- Reflect nonjudgmental language

Examples on how to write open notes can be found at <http://www.opennotes.org/wp-content/uploads/2020/10/2020-1020HowToWriteAnOpenNote-UCHealth.pdf>

Patients' Experience

Cures places the patient in charge of their health care, improves quality health care outcomes, creates competitive options in getting the best health care available, and encourages transparency around patient safety issues. As a result, patients have reported positive

experiences and appear excited to be more involved in their health care and the decisions made. The rule provides patients with an opportunity to

- Improve communications and enhance their relationship with their social worker and other providers
- Increase their understanding of the care being provided
- Gain a sense of control over their health care information
- Participate in their care by providing their perspectives in the note-taking

Although Cures focuses on electronic health information and large health care systems, it is expected that it may also affect solo and group practices who do not have electronic health records. Cures health data philosophy stresses that all patients should have access to the notes recorded by their clinicians during health encounters.

NASW plans to provide additional information about Cures in the coming weeks.

Resources

JAMA Network Open. 2020. *The Views of Experiences of Clinicians Sharing Medical Record Notes with Patient*. Downloaded from: <https://jamanetwork.com/> on 03/03/2021

ONC'S Cures Act Final Rule: First Wave Begins. 2020. Retrieved from <https://www.foreseemed.com/blog/oncs-cures-act-final-rule> on March 3, 2021.

21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program. 2020. Retrieved from <https://www.federalregister.gov/documents/2020/05/01/2020-07419/21st-century-cures-act-interoperability-information-blocking-and-the-onc-health-it-certification> on March 3, 2021

What Providers Must Know About Patient Access to Clinical Notes. 2020. Retrieved from <https://patientengagementhit.com/news/what-providers-must-know-about-patient-access-to-clinical-notes> on March 3, 2021

United States Department of Health and Human Services. *Does HIPAA Provide Extra Protection for Mental Health Information Compared with Other Health Information?* Retrieved from <https://www.hhs.gov/hipaa/for-professionals/faq/2088/does-hipaa-provide-extra-protections-mental-health-information-compared-other-health.html> on March 3, 2021.

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