**CURES ACT (INFORMATION BLOCKING) RULE BASICS FOR PATIENTS**

In 2020, the Office of the National Coordinator for Health IT (ONC) released the Cures Act final rule. A section of this rule, called Information blocking (IB), regulates the sharing of your electronic health information. All healthcare providers had to start complying with this section of the rule beginning April 5, 2021.

The IB requirements apply to the protected health information your providers maintain electronically about you, referred to in the Cures Act rule as Electronic Health Information or EHI. This includes your medical and billing records and other records your providers use to make decisions about you and by definition are included in your providers’ HIPAA Designated Record Set (DRS). The DRS does not include psychotherapy notes. Both the HIPAA Privacy rule and the Cures Act Rule give you the right to view, access, and get copies of your records in your providers’ DRS, but the Cures Act rule only applies to your EHI and not your paper records.

If you or your legal representative requests electronic access to your EHI, the Cures Act rule requires your provider to provide it to you in the electronic form and format you asked for if they are technically able to and must do so without delay, if possible. The quickest way to get your EHI is through a patient portal account. Your provider’s clinical staff can help you set up an account if you do not already have one and show you how to access the information you are requesting. Call or send an email to them for help. If the electronic records you need are not available on the patient portal, your provider may ask you to fill out a request form to tell them what records you want and if you want the electronic records sent to someone else, instead of or in addition to you. If you direct the provider to send your records to someone else, you will need to sign the request form, either on paper or electronically, to consent.

Your health care provider can deny a request for access, exchange, or use of your EHI if the law does not allow your provider to share the EHI or your provider meets the conditions of one or more of eight IB exceptions allowed for in the Cures Act rule. Five of the exceptions involve not fulfilling a legally permissible request for electronic access, exchange, or use of your EHI: 1) preventing harm, 2) privacy, 3) security, 4) infeasibility, and 5) health IT performance. The other three exceptions involve procedures for fulfilling requests to electronically access, exchange, or use your EHI: 1) content and manner, 2) fees, and 3) licensing. The following information provides examples of why or how your provider may use an exception:

* Your provider can decide to withhold certain EHI from your legal representative to prevent a risk of harm to you or others or withhold certain EHI from you or your legal representative to prevent harm to another person mentioned in your EHI. Even if your EHI does not reference another person, your provider may deny your access to certain EHI if there is risk of harm to your or another person’s life or physical safety and this risk of harm is either determined by a health care professional or is because of corrupt data or data that was mismatched to you. Within 30 days, the provider must notify you or your legal representative in writing about the denial and that you/your legal representative have/has the right to request a review of the denial by someone who was not involved in the decision to deny access to the EHI you/your legal representative requested. (Preventing Harm Exception).
* Your provider can deny a request for access, exchange, or use of your EHI if your provider agreed to keep certain EHI private at your request and not share it without your consent, unless a law requires your provider to share the information, such as with a public health agency. (Privacy Exception).
* There may be times when you want electronic access to your EHI, and your provider’s systems are down or unavailable for a certain period for maintenance or to address a security threat. During these times, your provider may have to delay fulfilling requests for access, exchange, or use of your EHI or providing copies of the records you requested. (Health IT Performance or Security Exception).
* If your provider does not have the technical ability to provide you the electronic records in the electronic form and format you requested and you do not agree to any of the alternative manners your provider offers you, the Cures Act rule requires your provider to send you a written notice within 10 days of your request telling you why your request was not feasible under the circumstances. You still have the right to receive a copy of any of your EHI or a summary on paper or in PDF file format at your provider’s office, by U.S. mail or by email if your provider is not able to provide technical access in the manner you requested or when other methods are technically not agreeable to you, available, or feasible. Your provider may charge a reasonable cost-based fee as permitted by the HIPAA Privacy rule to provide you or others copies of your records. However, the Fees exception in the Cures Act rule does not allow your provider to charge any fees for electronic access to your EHI by you, your personal representative, or another person or entity designated by you, such as a patient-facing mobile health app, if your provider has the ability to readily provide electronic access (as defined in the rule for this exception only). Under the Fees exception, electronic access means an internet-based method that makes EHI available at the time the EHI is requested and where no manual effort is required [on the part of your provider] to fulfill the request (e.g., via a patient portal). (Content and Manner, Fees, and Infeasibility Exceptions).

If your provider uses federally certified Electronic Health Record (EHR) technology that includes a patient portal, the Cures Act rule requires this technology to meet certain certification criteria and standards for accessing, exchanging, and using EHI. With certified EHR technology, your provider has the ability to give you electronic access to view, download, or transmit directly to another person a specified subset of your EHI without delay. This subset includes allergies, medications, records of immunizations, a provider’s clinical notes from a visit, lab results, imaging reports, and several other data elements. The clinical note types you should be able to access electronically include the following: consultation notes, discharge summary notes (applicable to hospitals and post-acute care settings only), history & physicals, procedure notes, progress notes (i.e., outpatient visit/encounter note), lab report narratives, pathology report narratives, and imaging narratives. You can access this EHI via your patient portal account or a patient-facing mobile health app you choose that is able to connect to your provider’s certified technology. The Cures Act rule, however, does not require your provider to use federally certified EHR technology, but other federal rules may require it.

The Cures Act rule requires developers of certified health IT to enable any patient-facing application (“app”), such as a mobile health app, to connect to their certified EHR technology and receive a specified subset of EHI data with a patient’s authorization if the app follows the applicable application programming interface (API) standards and implementation guide. The developer of a patient-facing app must register the app before it can connect. If the app was developed and implemented correctly and can successfully connect to your provider’s patient portal via your provider’s API, you will be able to electronically authorize the app to receive your EHI. These apps normally get your electronic authorization by connecting you to your provider’s patient portal log in page. The app should be able to tell you which health care providers it is able to connect to (i.e., has completed registration). After you enter your log in credentials and select sign in, the portal authenticates you. Your provider’s portal may provide some information about the app’s privacy practices and then confirm if you want to continue or deny access. If you continue, then it will allow you to authorize the app to receive all or some of your EHI from your account, depending on what the app requests, and will ask how long you want to authorize the app’s access. After confirming, you should see the EHI you authorized within the app. The app should give you the option to remove its access to the EHI you authorized at any time. Your providers and their staff may not know which patient-facing apps conform to the standards and are able to connect to their EHR technology. To find out, you should contact the app developer that is offering the app you are considering using.

If you are switching to a new provider, you may want to get an electronic copy of your full electronic record to give to them or may also want a copy for your own use, instead of the partial records directly available to you to download or transmit via your patient portal or mobile health app. Your provider may or may not have the technical ability to provide you this full copy of your records electronically. The Cures Act rule requires by December 31, 2023, that developers of certified health technology develop a capability for its customers to be able to export all a patient’s EHI to a computable, machine-readable copy. If you request an export of your EHI, this copy may not be in a format that is easy for you to read but could possibly be imported into another provider’s system if you chose to move to another provider and wanted to give the new provider all your data. If your provider is unable to technically provide an EHI export to you or another authorized requestor, the Cures Act rule requires your provider to respond in writing within 10 days of receipt of the request for an EHI export if they determine the request is infeasible under the circumstances.

If your provider does not promptly fulfill or denies your or your legal representative’s request for access to your EHI and the provider did not timely provide you or your legal representative a valid reason for delaying or denying access in writing, you or your legal representative can file an information blocking complaint on the [ONC Information Blocking Portal](https://inquiry.healthit.gov/support/plugins/servlet/desk/portal/6) or with the [OIG Hotline](https://oig.hhs.gov/fraud/report-fraud/).

For information and assistance with electronically accessing your EHI or for questions about your provider’s information blocking exception policies and procedures, contact your provider’s office.

Patient Resources:

[ONC’s Guide to Getting & Using Your Health Record](https://www.healthit.gov/how-to-get-your-health-record/)