

THE E-BULLETIN

NEW YORK STATE PSYCHIATRIC ASSOCIATION

Bringing New York State Psychiatrists Together



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What Psychiatrists Should Know About Information Blocking

Over the past few months, we have received questions from NYSPA members about how the Information Blocking provisions of the 21st Century Cures Act are expected to impact their psychiatric practice. The Cures Act prohibits Information Blocking, which is described as a practice that is likely to interfere with access, exchange and use of **electronic health information**. The Information Blocking provisions go into effect on April 5, 2021.

The intent of this E-Bulletin is to provide members with background regarding the new Information Blocking provisions and to allay any concerns regarding compliance. We anticipate that the current Information Blocking requirements will have very limited day-to-day impact on private psychiatric practices.

The Information Blocking provisions apply **only** to electronic health information (EHI). If you maintain patient records exclusively in paper format, Information Blocking will not apply to your practice. On the other hand, if you maintain health information in any electronic media, including in an electronic medical records system (EMR), a computer hard drive or an icloud drive, your practice will still be subject to the Information Blocking rules.

Even if you maintain EHI in your practice, please keep in mind that New York law already requires health care providers to provide patients with copies of their medical records upon request (New York Public Health Law §18). PHL §18 applies to all patient records, including both paper and electronic records. Therefore, New York physicians already have an obligation to provide patients with access to their health information and Information Blocking will not alter that obligation.

Some clinics and large practices utilize a patient portal that provides patients with direct online access to certain health records or test results by means of a secure user name and password. However, there is no requirement that health care providers use a patient portal or maintain any records electronically - under the Information Blocking provisions or any other law. In fact, we anticipate that most psychiatrists working in solo or small group practices do not have a patient portal and use more traditional means of providing copies of medical records to patients upon request, such as regular mail, overnight courier or secure email. If you utilize a patient portal or an EMR system that includes a patient portal, please confirm with your software vendor that the portal complies with all applicable requirements and does not include any elements that

would prevent or interfere with patient access to electronic health records.

PHL §18 also permits health care providers to impose a reasonable charge for copies of medical records, not to exceed \$0.75 per page. The Information Blocking regulations make clear that it is not Information Blocking for a provider to charge a reasonable fee for access to electronic health information.

Finally, some guidance materials on the Information Blocking provisions have noted that HIPAA prohibits disclosure of psychotherapy notes by behavioral health providers unless separate patient consent has been obtained. However, one must keep in mind that in order to qualify for the higher level of protection, the psychotherapy notes must be kept separate from the rest of the medical record, i.e., on a separate sheet of paper or in a separate section of an EMR. It is our understanding that a majority of psychiatrists do not keep psychotherapy notes separate from the rest of the medical record, whether they are maintained electronically or on paper. In other words, the HIPAA rule regarding psychotherapy notes should have minimal impact on patient access to psychiatric records.

In summary, at this time, we do not expect the Information Blocking provisions to have a significant impact on private practicing psychiatrists because New York law already requires that patients be provided with access to their records. In addition, Information Blocking applies only to electronic health records and any psychiatrists who exclusively maintain paper records are exempt from compliance.

If you would like additional information, please see the APA's guidance on Information Blocking, which may be viewed by clicking here:

<https://www.psychiatry.org/psychiatrists/practice/practice-management/health-information-technology/interoperability-and-information-blocking>
