NARHC Webinar
Wednesday May 26, 2021
Moderator: Nathan Baugh
Speakers: Sarah Badahman

Are You Information Blocking?

Nathan Baugh:

0:05
Good afternoon, everyone. Welcome to another webinar for Rural Health Clinics. My name is Nathan ..., I'm the Director of Government Affairs for the National Association of Rural Health Clinics, and the moderator for today's call.

0:20
Today's topic is, Are You Information Blocking, which is a really good topic for us because, and I'm eager to learn a lot about it because I actually don't know too much about this new regulation.

0:32
So I'm excited for the presentation today.

0:36
Just so you all know, this webinar series is sponsored by HRSA Federal Office of Rural Health Policy.

0:42
Shunning done in conjunction with the National Association of the Rural Health Rural Health Clinics.

0:48
We're supported by this co-operative agreement, which you can see on your screen right now, which is also through the Federal Office of Rural Health Policy. And it allows us to bring you these webinars for free.

1:01
And you can all see our old webinars that we've done on in this series on our website, and RHC dot org.

1:09
The purpose of this series is to provide RIC staff with valuable technical assistance and RIT, specific information.

1:17
This isn't technically RHC specific, but it's information for everyone, Right, Sarah?

Sarah Badahman:

1:23
That is correct Nathan

Nathan Baugh:

Everyone in health care. Yeah, OK. So, but this is an important information nonetheless.

1:30
So, we also would encourage everyone to spread the word about these free webinars by encouraging, any anyone who may benefit from the information to sign up at our website and RHC dot org.

1:44
When we get to the Q and A portion, which we will have at the end, we're going to open up a chat box, and we'll try to get through as many questions as we can.

1:53
As with all webinars, we are at the mercy of Good bandwidth so, and we all know that connectivity can go up and down, particularly in rural areas.

2:03
So if you have any audio or visual friezes, we just suggest that you try refreshing goto Webinar and that usually will work.

2:13
If you continue to have issues, like I said, all our previous webinars are recorded and posted for free on our website, ...

2:20
RHC dot org and, as well as the slides and the transcript.

2:25
And Sarah actually has some free resources that we're going to post there as well.

2:30
So with that, I have the great pleasure to introduce once again our expert on all things HIPAA, Sarah Badahman.

2:39
Sarah has spent over a decade in Health Care Administration in the Health Care Administration field, and particularly the past 10 years, mastering the field of HIPAA, compliance and risk management.

2:53
She holds a Bachelor's in Applied Mathematics and the Masters of Public Health and Epidemiology and Policy, and she's the founder and CEO of hipper Truck.

3:02
As an expert in HIPAA compliance, Sara has developed and administered HIPAA compliance training programs for numerous healthcare organizations.

3:11
And this is, uh, our second HIPAA, sorta oriented webinar this year, so we've been putting Sara to work, and we're very grateful for her explaining all these new regulations to the rural health community. So, Sarah, I'm going to kick it over to you and let you handle it from here until we get to the questions.

Sarah Badahman:

3:34
All right, thank you so much, Nathan, and Kate, I really appreciate it, and thank you to everybody that came to learn about information blocking. So I know you all have heard a lot about this, and folks are utilizing information and Cures Act interchangeably, because they are the same regulation.

3:53
So if you hear somebody say the 21st Act, and they're referencing what you need to do for information blocking, you can read this riveting section yourself: It's Section 4004.

4:05
It is quite long, I think it's over 300 pages, and just identifying exactly what is information blocking, which I'm going to actually talk to you about today.

4:15
It also also is authorizing the Secretary of the OAG to actually identify all this rulemaking as well as what our enforcement activity is going to look like, which I actually just say from this slide. So, I'm going to skip this.

4:33
And so, what exactly is information blocking, right?

4:36
So, it is a practice that restricts authorized access to electronic health information. So, the Cures Act utilizes AHI to define what it is, which is electronic health information, whereas HIPAA calls it protected health information.

4:55
And so, under the information blocking regulations, it is everything that is involved in the US EDI Standard Data Points, which we will go over in the next couple of slides as well.

5:09
So, information blocking is any practice that could prevent this authorized access to ....

5:18
There are some exceptions that we will be going over as well, in which you are permitted to exclude information.

5:24
And if it is, if you as an RHC is ARR, practicing Information Blocking, you have to know that such a practice is unreasonable and is likely to interfere, interfere with the access exchange or use of EHR. So, with some of this, it's important to realize that, even though it states in here, that you have to know that the practices unreasonable, The ONC has put on numerous webinars. Where they have stated that there are some practices that you should automatically know are unreasonable, and I actually have some examples later on that we're going to be going through, so that you guys will be aware of what those are.

6:04

OK, so as I promised, here are the US CDI standards, this is everything that in and in the Cures Act. If you are not sharing this information with patients and other treatment providers, you've considered information blocking.

6:22
So, and one of the things that I would really like to point out is laboratory results and imaging results can no longer be held for provider review before you share those with either another treatment provider or with the patient themselves.

6:39
So, if you have lab results or test results, and they want to have in your patient calls and ask for access to those records, you can know those until your provider has reviewed them.

6:50
They must be released unless it falls underneath an exception, which we'll talk about here in just a little while.

6:58
So, again, all of those Data points is what is referred to as AHI.

7:02
It is important for us to notate that we have until October 62022, so, that is next October for us to be utilizing the U S CDI standards.

7:13
After October 6, 2022, everything you hold electronically is considered AHI, so, it's no longer restricted just to the US CDI standard data points.

7:26
OK, so, Are you an information blocker?

7:29
So, when you're reading through the Cures Act, it's so, HIPAA says, Covered. Entity.

7:35
Information blocking calls it an actor.

7:38
So, where it says Actor here. So, you are regulated as an RHC, you are an actor underneath Cures and, therefore, are, are required to adhere to it.

7:51
Um, the Cures Act encompasses all of your electronic health information, and so you cannot withhold any of that information.

8:02
You are only allowed to prevent, if are allowed to block the information, if it is required, at the block, as required by law, or if it's covered by an exception.

8:12
All right, getting into it. So now we're going to ask a question.

8:15

Um, I guess the chat is not open. So think of the answer to yourself, and I'll pause a minute after I read the question.

8:23
If a patient calls and request access to their lab results, are you permitted to withhold the information until the provider is able to review them?

8:31
I just gave you all this answer, so hopefully, everybody is saying no.

8:37
If you do withhold the information until the provider is able to review it and it does not fall underneath an exception, then you are information blocking.

8:50
All right, open notes.

8:51
So this is something that we HIPAA track, I've gotten a lot of questions on, which is: what patients are allowed to receive free of charge?

9:03
Now, then, it is important that this is electronic access only. So, if you have a patient portal, this is pushing information to the patient portal. This is e-mailing it to a patient if they agree to receive it via e-mail or any other electronic means of granting access to these records.

9:22
The Cures Act does not require you to purchase technology, for you to be able to grant open notes, right? So if you do not have a patient portal, or your patient portal is not able to push the necessary information.

9:38
Or if you are patient doesn't, or you do not have encrypted e-mail in which you can send it, then those are things that you can actually apply for exceptions, which I will get to later.

9:48
However, if you do have the capability, you are required to, to release these data points.

9:56
So consultation notes, discharge, summary notes, age and peace, imaging lab and pathology, narratives, procedure notes, and progress notes, you are required to give those free of charge immediately. Right. So without delay.

10:12
And the reason why is because you don't want to be seen as interfering with or causing interference too.

10:18
And the access to the data.

10:21

There are some other practices that may not actually relate to an RHC unless you're part of a larger health system that you need to consider as well.

10:32
So, one of these are these fire URL endpoints.

10:36
So, a lot of times, your health IT providers will have APIs or fire integrations. And they're not allowed to withhold that information, they have to disclose that.

10:49
Um, now, then, if you do have a concern about a third party application that a patient wants you to integrate with, you can educate them on your concerns. However, you may not be discriminatory. And you have to focus on privacy and security risks.

11:09
So, another question for you guys.

11:12
So, if your organization regularly uploads information to the patient portal, however you selectively withhold pushes to the portal, such as diagnostic testing, lab and imaging reports for review.

11:27
Is it information blocking? Keep in mind that the rule does not require you to proactively push lab results and other data to the patient portal.

11:35
But if you are regularly pushing it, then this related would fall, would apply.

11:43
Let me give you a moment to think about it and whether or not this is information blocking.

11:50
So, the answer to this question is yes.

11:52
This is potentially information blocking because you are selectively withholdings certain information, that is in the U S CDI Data points for you to like and you're withholding them for the purpose of review.

12:07
So that could be construed as information blocking or is likely construed as information blocking.

12:15
So, another question.

12:16
If another provider calls to request records on a patient, are you permitted to withhold the records until you have authorization from the patient?

12:26

This one can be a little bit tricky because a lot of RHCS and other clinics, ARR, requiring patients to sign an authorization form, to receive read artist, for them, to send records to another provider, whether it be in a hospital or another clinic.

12:46
So the answer is, now, underneath information blocking, you are not allowed to do this, and that is because it is not just permissible under HIPAA.

12:58
It is now required under Cures, so any disclosure for treatment purposes.

13:04
You are not allowed to put in barriers that are not required by a regulation, right? HIPAA does not require you to get authorization from a patient for treatment purposes that is actually spelled out as an exception underneath the HIPAA Privacy Rule. So, you've always been allowed to disclose information without patient authorization.

13:29
But now, you are required to if it's for treatment purposes, and it must be facilitated without delay. So you can't sit on a request for, you know, 30 days or whatever. Especially if the other provider is calling you and saying, Hey, we're seeing this patient tomorrow, and we need their lab results, or we need their, their last office visit note, you must send that information.

13:54
All right.

13:55
So that is the meat and potatoes of the information blocking, right? So it basically is defining what is information blocking or what is likely information blocking.

14:04
But now we have eight exceptions that we're going to go through and this is going to be where a lot of Y'all probably will have questions, because this is how you can actually delay or completely withhold information either from another treatment provider or from the patient.

14:24
So these exceptions are categorized into two categories. one is not fulfilling the request at all, and one is focusing more on the procedures for fulfilling that request and an alternate manner.

14:38
All right, getting into this. So the prevention of harm exception.

14:43
So this is, you are allowed to withhold information, if you believe that withholding that information, will substantially reduce the risk of harm.

14:55
Now then this must be physical harm, or safety of the patient.

15:01
It cannot be a blanket policy, either, that you're going to in order to reduce harm to your patients.

15:09
You're going to withhold all STD testing from patients, until the provider has to edge an opportunity to review it. It must be on a patient, by patient basis, and the patient must, you, the provider must have a strong indication that if the patient were to receive the information, that they could harm themselves, or harm somebody else.

15:31
Alright. So if the patient has stated that they had homicidal or suicidal tendencies or ideations.

15:37
If you know that the patient's, you know, a family member had passed away from a genetic disease that they were just tested for, and they came back positive for that test, you know, you think that that patient may, may harm themselves as a result of that, then it must be documented, right?

15:55
So the provider must document the reasoning behind their belief on why it's being withheld, and it must in whoever is releasing the records. So, if you haven't, if you have a medical records department, or if you allow your employees to release the information, they need to know where to look for that, in order to be able to not release this information, because a provider doesn't want it released.

16:21
All right, so a couple of questions: A patient has called and requested their genetic test result for a genetic disease, for which there is no effective cure treatment.

16:30
Are you permitted to delay the disclosure of these test results until the provider is able to review the results with the patient?

16:37
Keep in mind that the exception does not have consideration for emotional harm prevention.

16:41
And the exception requires a reasonable belief that withholding the information reduces the harm of life or physical safety.

16:50
So, in this particular example, we do not have enough information in which to make a decision, right?

16:57
So if this is all the information that we have on the patient, then you likely would need to disclose the information because there's not enough information here to withhold it, right.

17:07
So it would be whether or not there has been, no, the provider has made a recommendation, or if you talk to the nurse about it.

17:18

But you need some sort of decision on whether or not this pay that would be harmful to the patient.

17:26
All right.

17:26
Another question: A patient spouse calls requesting records. The patient has visited your facility several times with injuries you suspect were caused by domestic violence.

17:38
Are you permitted to withhold information from a personal representative? You believe is an abuser.

17:44
Now remember, under HIPAA, a personal representative has the same rights as the patient, and because the not every spouse has a personal representative, but because this is designating them as a personal representative, they have the same rights as the patient.

18:03
OK, so, in this particular case, you could prevent, you could withhold the information because you have a reasonable belief that if you were to disclose information to an abusive spouse, that that spouse could cause further harm to the patient, you would just need to make sure that you are documenting it.

18:26
All right, the privacy exception.

18:28
This is probably one of my favorite exceptions, so this is if there is another state or federal law, that states you must have consent or authorization from the patient prior to releasing the information, you are permitted to withhold the information.

18:47
A great example of this is 42 CFR Part two, which is the privacy rule that governs addictive use disorders.

18:54
So alcohol use disorder and drug use disorder, right?

19:00
So that would be a good example of utilizing this.

19:03
If your state has regulations requiring permission, right?

19:08
So I know there are states that minor's over the age of, you know, 12, 13 varies by state, are permitted to withhold their sexual health from their parents, without the Minor's permission, right? So that would be another example that could be utilized here.

19:31

Right? Or if the patient says they do not want their information shared with a particular person, then that would also fall underneath this privacy exception.

19:44
So if you are a hospital or a clinic, right, that has a part two program, that has treated the patient under part two, and as a covered entity, and you receive a request from another provider for all records on a patient, are you permitted to withhold only the Part two data until you obtain patient consent?

20:06
Remember, that cures only applies to permissible disclosures. And the exception only applies until the precondition is satisfied.

20:14
So the answer to this question is yes. You are permitted to withhold only the part two data until you receive patient consent.

20:22
And then after you receive patient consent, you can disclose all of the information that you must release the HIPAA information burst.

20:32
Right.

20:33
Immediately, without delay, and then after you receive the part two consent, then you can release the other information.

20:43
All right, security exception, I believe that this is going to be A An exception that is not used frequently because this is not releasing information, because there is a very specific risk that will compromise your confidentiality, integrity, and availability of your EHR.

21:05
And if you were to make that release, all right.

21:09
So, you are allowed to delay that request or deny that request, depend based off of what the risk is, because it must be tailored and very specific to a security risk. And then once that security risks is dealt with an over, then you are allowed to release the information.

21:31
So here is an example.

21:33
Are you permitted to deny a request to push ... to an API?

21:38
If you question the security of the API?

21:41

Keep in mind that it must be tailored to a specific risk, and that this exception does require a policy.

21:46
So in order to be able to invoke this exception, you have to have a policy on how you will handle this exception.

21:56
The answer to this question is probably not, right?

22:00
You're probably not going to be allowed to deny or request to push electronic health information to an API. If you are only questioning the security of that API, you have to have a very specific risk that you are trying to avoid in order to deny the request.

22:20
Alright, and feasibility exception: this one is one that we've also received quite a few questions on, because a lot of folks are trying to utilize this.

22:29
So and the question that we've gotten, I don't even know how many times, like hundreds of times, over the past few weeks, has been, can I deny a request based off of the segmentation exception of information blocking? If I have scanned in all of my records and my records aren't entered into my electronic health record as structured data.

22:53
And the answer is no, because the segmentation exception here only applies if you cannot unambiguously segment that ... or .... Right.

23:09
So that is, if you've scanned in, you know, an entire chart of a patient as one large file into your EHR, and some of that information is not permissible to be disclosed, then you can utilize this exception.

23:29
Then we also have an uncontrollable events which just makes sense.

23:33
You are allowed to not fulfill an exchange.

23:37
If you're in the middle of a natural disaster, or a public health emergency, or you're, know, all of a sudden we have war on American soil, you're a victim of a terrorist attack, keno.

23:51
Any of these things, that's an uncontrollable events and you can delay or deny, or request based off of that, right? If you invoke the end feasibility exception, you must provide written notice to the requester within 10 days of the day that you received the request.

24:11
It is very important to note that these are 10 calendar days, not business days.

24:17
So if you receive it on a Friday, the days start ticking away from Friday and Saturday and Sundays count.

24:27
All right, so here's an exception or a question.

24:30
If a competing physician who is not credentialed with your hospital requests AHI to be pushed to its EMR and a manner with credentialed physicians, are you permitted to withhold or delayed this request.

24:45
This is likely not going to happen in an RHC. This is a question that the ONC put out.

24:49
There are an example that the ONC put out there. And the answer to this is, it would be Information blocking.

24:56
Because you are preventing somebody else from accessing the information who has authorization to do so.

25:06
So, as an RHC, this, you could actually be the provider who is not allowed to get the information pushed to your EMR, in a manner that other credentialed physicians are permitted to do.

25:18
So, you this could be you on the victim end of this, Right?

25:23
So remember that if a hospital is pushing the HIE to EMRs that are not employed physicians, Right?

25:31
Then you are allowed to have that information pushed to your EMR as well.

25:36
All right, the health IT performance exception.

25:39
Right, so, this is, if you are performing maintenance on your network, or on your EMR, or anything else, and you need to delay a request so that you can finish that maintenance, or those updates, then you are allowed to, under the health IT performance exception.

26:02
Right.

26:02
So, it is a temporary delay in being able to fulfill the request, not an out and out denial of the request.

26:14

So, when we look at the questions, if your EMR is undergoing maintenance, and you receive a request for ..., while the EMR is down, are you permitted to delay that request?

26:24
I just gave you all the answer to that one too.

26:27
So, the answer is, yes, You are allowed to, but only, but, again, only for the limited time that you need in order for your EMR to be backed up. And it's also important to remember that, in this exception, if the health IT performance is because of a security breach, or if it's because you're trying to prevent harm to another patient, you need to consider an alternative exception.

26:55
All right. Content and manner, I'm going to spend some time on this one.

26:58
So, when we think about content and manar, content is the what, and the manner is the how.

27:05
So, even though this is one exception, it's almost like 2 and 1.

27:10
Right, so if we focus just on the content part of it.

27:13
Right, So again, in the Cures Act we have 24 months after the publication date of the Cures Act Final rule where we're only going to be using the US CDI data element standard, and after that then you are you have to respond to the action or the access exchange or use of .... With all of it. Right and so and this is on or after October 6, 2022 according to the ONC website.

27:46
So when we look at the the manner or condition or the manner part of the exception, this is If somebody requests information and you are technically not able to fulfill that request in the way that they asked for it, you may agree with the requester on an oped cognitive manner to get them the information.

28:09
If you cannot reach those agreeable terms, you are allowed to tell them, I can't fulfill your request, because we can't agree on or on an alternative manner.

28:21
Now then you need to consider reasonable alternative manors. You can't tell a patient that you will fax the information to their house because most people do not have a fax machine in their home.

28:34
So it needs to be reasonable and appropriate and you must agree with the requester on how that's done.

28:41

If you fulfill the request in an alternative manner, it has to comply with all the other regulations. And it must satisfy the fees and licensing exceptions, if necessary, Which we will go into those two exceptions here in just a moment.

28:58
Meaning, you're allowed to charge a reasonable fee, and for that access to the, the platform, if you need another platform, and you have to have a license if it's being done through a secondary platform.

29:15
All right.

29:15
So, if a patient requests records that you are permitted to share, however, you do not have the technical capability to share the information in the manner the patient requests the information, are you permitted to delay the request?

29:29
Keep in mind that the exception has deadlines for being able to respond to the content, or the what of the requests raised. So, that's October six, and the exception requires, you consider alternative manners to fulfill the request.

29:44
So the answer to this is, you may delay while you guys are in negotiation for the manner in which you're going to.

29:53
And be releasing the information, right? But you can't stay in negotiations for an extended period of time. You need to make reasonable efforts to come to an agreeable term on how to exchange the information.

30:14
Alright, the fi's exception: it will not be information blocking for you to charge fees, including fees that results in a reasonable profit for exchanging this information. That is very strong member, while we're looking at this fees exception, that HIPAA is very, very specific on what you're allowed to charge the patients.

30:36
Patients are only allowed to be charged according to federal or state.

30:42
Like, your state may also have regulations on how to charge a patient, but it's only actual cost under HIPAA.

30:49
So, if it exceeds the actual cost of what it is, for you to exchange the record, then you're not allowed to charge. So even though the ... exception exists inside of course, you are not allowed to charge it to other patients. You could, however, charge it to other providers, if you need to. I think you're going to find that a very difficult thing to, to accomplish.

31:13

You're going to see where this is going to be primarily invoked for developers of health care information technology that are also required to meet the Cures Act, right?

31:27
And so, they may be seeking to charge fees for this, right?

31:33
So your EMR company, for example, maybe charging you an additional fee to exchange information through your patient portal.

31:43
Alright, so, here's our question, If your organization decides to develop a proprietary piece of software to help facilitate access to records, are you permitted to charge a fee to patients for them to utilize this amazing new piece of technology that you've created.

31:59
Keeping in mind that HIPAA prohibits charging patients more than cost based fees, and that the rule requires patients are granted free and immediate access under open notes.

32:11
So, the answer to this question is, no.

32:15
You are not allowed to charge patients for this information, But if you develop this piece of software, you need to tell everybody about it because we would all pay you a lot of money as clinics and hospitals for use of this technology.

32:31
All right, licensing exception.

32:34
So, this one I think, is going to be one that is also very unlikely to occur in an RHC.

32:42
But this is if a patient comes to you and wants you to push information to a third party application.

32:50
And that third party application is requiring you to get a license in order to be able to push that information.

33:00
Then you can actually delay the request from the pit shed by 10 days while you negotiate through the there's the agreement, and then you have 30 days total to complete the negotiation process for a licensing agreement.

33:19
If you cannot come up with an agreement, then you can deny the request based off of the licensing exception, right.

33:29
So keep in mind, you have 30 days total to negotiate a license.

33:33
If you cannot come to terms with that, then you're allowed to invoke this exception.

33:40
Alright, question. A patient requests that you receive information through a third party Apps API, the third party app developer contacts you about the technical details to connect to the app, are you permitted to ignore the request?

33:57
So there are a couple of trigger words inside of this question that I want to, to point out.

34:02
one is that this says a patient request that you receive, not that you send, and the word ignore, right? So those are the two big words that are triggering inside of this question here.

34:17
So inside of information blocking, you are not required to receive information from a patient.

34:24
You are required to share information with the patient, so but you still are not permitted to ignore this request.

34:34
You can get with the patient, and you can tell them that you're not going to be receiving any information from a third party application until you've gone through a due diligence process.

34:45
Or if you do want to go ahead and connect to this third party application, you have to go through the licensing process.

34:54
So, there's that question.

34:56
So now, we're going to talk about compliance and enforcement, and getting through this a lot faster, because there's not the interaction in the chat that I'm used to with these questions.

Nathan Baugh:

35:07
I'm so sorry, we can.

35:11
Kate, do you know if they, if they can send chat question stuff to us now?

Cate Visser:

35:20
If I turn it on, then yeah, they can.

Sarah Badahman:

35:23

Yeah, I've got about five minutes left to get through this stuff and then we can open it up for questions,

Nathan Baugh:

OK, Well, yeah, all right, so we'll just open it up then, and all the international occur there, Sorry, Sarah.

Sarah Badahman:

35:36
No worries. All right, compliance and enforcement, which I know is what everybody is really excited about, is to know what they have to do. So we all knew that we had to be compliant with this on April fifth of 2021.

35:47
Right?

35:48
If you didn't know, now you know, April fifth was a date that we had to comply with and with the Cures Act, right? And it does prescribe penalties, including civil monetary penalties of up to one million dollars per provider. Now. We still don't know what those final rules are going to look like, because the OAG has not released that information yet.

36:09
But we do know that CMS is going to have three attestation statements under MIPS, that you have to attest for. If you are attesting to MIPS.

36:21
In order to to comply with this, we also know that CMS is going to have a wall of shame for information blockers.

36:31
So, if you do not a test to these three statements in MIPS, so if you are testing the MIPS, and you cannot answer in the affirmative for these three statements, then you will be on this Wall of Shame of information blockers. Which that is another wall of shame that we do not want to be on, right? So we don't want to be on the HIPAA Wall of Shame, and we don't want to be on the information blocking wall of shame.

36:56
So, we know that, at a minimum, the timeframe for enforcement will not begin sooner than April fifth, 2021. However, we are still waiting on the OAG CNP final rule. We do not have that yet so it is unlikely that we will see any enforcement activity until that final rule has been published.

37:20
However, that is an assumption, right?

37:23
So, I said, unlikely not, and like not impossible, because we did have to be compliant by April fifth.

37:32
So, the OAG has stated that they will be using discretion on whether or not they're going to then like had any enforcement activity until that final rule is published. They have not. They have also not indicated a timeline on when the CNP final rule will be published.

37:51
Alright, so straight off of the ONC website this is a graph that they have published up there on the timeline of what information blocking is looking like. And it's basically the stuff that I've been saying over and over again throughout this presentation today, one April fifth was the deadline for us to comply.

38:11
And then on an or after October 6, 2022, it is no longer limited to the U S CDI data elements.

38:21
Alright, so here is your, if you are a certified rural health care professional, here is your code to utilize for your continuing education, reporting. And now, let's take your questions.

Nathan Baugh:

38:41
OK, thank you, Sarah.

38:43
Um, the question box should be open.

38:48
So, everyone, feel free to come in and type your questions in that box, and then we will get to as many as we can.

39:00
I'll just maybe start as, as a general question. What are you?

39:05
What are you seeing as like the most difficult part of this new regulation Sarah?

39:12
What's the hardest piece if you could focus, or if you could say.

Sarah Badahman:

I think the hardest piece is understanding these exceptions. Right?

39:21
They are, um, more than what we've ever seen before. And what we need to create policy for, and train our employees on.

39:31
Right. And so, when we look through the exceptions, it's also difficult to understand where those exceptions will come into play.

39:40
Right. And so, one of the handouts that we provided is an exceptions policy.

39:47
It is very important to remember that when you're looking at that policy template that we provided, that you have to customize it. This is not going to be a policy template, that you can just download off the Internet in or from us.

40:00
and change the name to your clinic name. and say, you now have the policy, is going to take a lot of work on your guises and to make sure that it is what you need. Particularly around the risk of harm, Exception, that is going to take input from not only whoever is responsible for releasing the records, but, also, from the providers and your organization. You may even need to talk to your EMR company to see how you can put an alerts to not release certain information, if it falls underneath the risk of harm exception. So, I think that that is going to be one that is the most difficult to to work through, because it takes more input from more people inside of an RHC than any other policy that you currently have.

Nathan Baugh:

40:49
Perfect. Thanks, Sarah. Alright. So the questions are pouring in and so we'll just start knocking them out.

40:54
First question is from Kelly Woerner.

40:57
Be asked, how do we deal with this when dealing with pediatric patients?

Sarah Badahman:

41:05
Deal with information blocking with pediatric patients. So the patient or the patient's parent or legal guardian has all the same rights underneath information blocking as HIPAA. Right. So, because remember that cures information blocking only applies to permissible disclosures, right, And disclosing pediatric records to parents and legal guardians is a permissible disclosure.

41:31
So, but so, but if a patient's parent comes in and request a record, it is just like a personal representative coming in and requesting the information, and the personal representative is treated just like the patient.

Nathan Baugh:

OK, perfect.

41:50
Next question is from Chelsey Rust, who asks, or she states, we give our patients one free copy of their records. After that, we charge them $1 per page.

42:03
Can we no longer do this? I was this on our last presentation.

Sarah Badahman:

42:07
It is. And I, I believe I provided a record fee calculator because it depends on the state and the, like, There's a whole bunch of stuff. So, I would refer back to the ... website, because I'm almost positive. I provided a record fee calculator that can be downloaded and used.

Nathan Baugh:

Yes, you did so.

42:25
Chelsea, go to an RHC dot org and go to our resources and then TA webinars. And then look for the last webinar that started was that in January or February?

Sarah Badahman:

Don't ever remember, it's been. It's crazy. Yeah.

Nathan Baugh:

And, and in there, you'll see that the calculator, so an RHC dot org resources and then TA webinars and then find serra's previous presentation.

42:54
All right next question is from Camilla Grotto She asks can a mental health counseling organization withhold records from PCP who refer the patient?

Sarah Badahman:

43:09
that?

43:09
no really know the only thing you're allowed to withhold on mental health records are and What's called psycho therapy notes and psycho therapy notes are very specific right?

43:22
So a psychotherapy note is a hand-written note That does that is never part of your electronic health records as soon as you scan a psychotherapy note into your EMR It is no longer classified as a psychotherapy note is therefore subject to HIPAA and all the rules including disclosures. And then, it, because it's now electronic, it also falls underneath the Information Blocking rule.

43:49
So, mental health records are still healthcare records.

43:54
The only exception is for psychotherapy notes, which are hand written notes, that are not, um, they are meant, really, to trigger the, the thought process of the therapist, right, versus being recordings of the treatment.

Nathan Baugh:

44:18
OK, perfect, I got, I, I got that, so, makes sense to me.

44:23
Next question is from Laura Mcghee, and in, Laura mentioned that there are patient radiology clinic. I presume that, you know, she also maybe as Anna System with the rural health clinic. But she's talking about the radiology clinic in this context.

44:39
And she says that they have a patient portal with that post the results for their radiology and then they hold a mammogram results for three days. So the patient has time to speak with there.

44:52
Referring provider to understand the results. It can be traumatic for a patient to read, that they have cancer without their physician going over it with them.

45:01
Is this information blocking?

Sarah Badahman:

45:04
It could be yes, because you are doing it for every patient without consideration. Right, it is just a, it is the blanket policy that I was talking about before. That is not allowed.

45:18
It has to be specific to each patient.

45:23
So you cannot withhold N, because Cures Act does not account for emotional harm. It only accounts for physical harm.

45:33
So, risk of life or safety.

Nathan Baugh:

Could, could you have a blanket policy that applied to all sort of positive results?

Sarah Badahman:

45:46
No. Because they had.

45:48
No.

45:49
Because, again, like, let's see, if I am a completely healthy, normal patient, right? I've never had suicidal thoughts, I've never had homicidal thoughts, right? I've never told you that I had those kinds of thoughts, right?

46:04
And then I find out that I am cancer positive, Yes. I'm going to be sad. I'm going to be depressed.

46:10
It's going to be hard, but I'm not going to harm.

46:13
It does not cause any harm to share that information with me.

46:19
Now, then, if I have told you that I am suicidal homicide, or whatever, then you can withhold that information. Because you don't want me to cause harm to myself or somebody else. Very soon, the net result.

Nathan Baugh:

46:32
Yeah, so you really have to have a prior, um, sort of assessment, if you're going to do that with withholding of results.

Sarah Badahman:

46:42
Correct, so you cannot blankety withhold results.

Nathan Baugh:

46:46
All right. Well, that that one.

46:48
I can see how that's difficult.

46:51
That's difficult. Maybe the what would you say, suggest?

46:55
You know, like, that the, that the provider, you know, be on top of it, if it is Positive.

47:01
And so that, you know, the provider, like call the patient immediately. Same as time that it's getting posted.

Sarah Badahman:

47:09
Well, I mean, it's, so here, like the immediate electronic access under Open notes is only if the patient requests it.

47:17
Right.

47:17

So you can push, But you would have to push all results. you cannot be selective, right? So it's the selectively holding mammogram results. That's the issue.

47:28
If you held all results for three days, that's not discriminatory, right? You're not discriminating against how you're pushing information. It's every result, no matter what, is held for three days.

47:43
Right, right, It would.

Nathan Baugh

That wouldn't be a blanket policy, though.

Sarah Badahman:

47:47
It's, So, Here's the situation. So, when I was on one of the ONC webinars, somebody asked a question, you know, that they only pushed to the portal once a week, because they're small, and their EMR automatically push stuff to the portal. So they do all their portal pushes on Fridays, because it is just easier that way.

48:11
And the ONC's that was not information blocking because they are not discriminating against which patients, which, test types nothing. It's just, all results being pushed once a week, because that's what's easier, because there wasn't an automated way to do it.

48:25
The ONC's data that, that was not information blocking, the question that was, right.

48:30
So like if you withhold everything for a specific timeframe because it's easier for you to push or it's, you know, what your policy is on how to do it, then that should not be considered information blocking.

48:43
Because you're doing it in a non discriminatory manner, right.

48:47
It's when you're discriminating and you're not pushing mammogram results then that can be discriminatory but it's so do you understand I'm trying to explain?

Nathan Baugh:

Yeah, I do, but I think this is like the nuance of stuff.

49:03
Well, I don't want to focus too much on this because mammogram is probable probably less common than like lab results or something like that in a rural health clinic setting. So we'll move on. Next. Question is from Tricia Foley.

49:21

Yeah, sorry, the phone rang and there.

49:25
She asks, what if we receive a record request from another provider for part two records, but there is nothing on the request that specifically gave us permission to release part two records by the patient.

49:39
She says that our requests specifically state that the records being released are related to 42 CFR Part two, so the patients are aware.

Sarah Badahman:

49:48
Exactly.

49:49
So, you that would fall underneath the privacy exception where you Because 42 CFR Part two requires that you get specific patient consent to release that information. Right.

50:03
So, you do have to get that specific consent. So, you're able to delay that request until you receive the patient consent.

Nathan Baugh:

50:14
Got it.

50:15
Next question is from Misi Beasley Um, PS, if a patient requests a progress note, what is considered a reasonable amount of time that the note should be completed by the provider?

Sarah Badahman:

50:28
Ha ha. Ha, This has been another question that we receive a lot, right? So, I know back in the day and I know it's been 20 years since I worked in an RHC.

50:40
However, when I worked at the RHC, our provider would leave those notes open sometimes for months without closing them. And it was because, you know, we would see 40 patients are so every day in the RHC and the provider didn't have a chance to really close all those notes up. So, there has to come a time where you guys are force, or are enforcing some sort of policy to close those notes off, because you cannot disclose incomplete records.

51:08
So, a provider also cannot refuse to close a note, because they are still trying to withhold information from a patient, right?

51:17

So, it has to be a reasonable thing in that reasonable timeframe is going to have to be something that you and your providers agree upon.

51:25
Right. So, I think that 15 days is a reasonable thing to request in an RHC, especially, even if you're a busy RHC, 15 days is more than enough time to get a record complete. The only reason to leave a record open would be if you're awaiting information from another provider or from a lab or imaging company that you need in order to complete the record.

Nathan Baugh:

51:49
Perfect.

51:51
All right, next question is from Debbie Matz.

51:54
Um I think it's similar to the mammogram question, but it's she says, So a patient wants a copy of the lab but the doctor has an review.

52:04
We give them a copy, but clinical staff are not required to review results.

52:08
That would be required to be done by the doctor and she's asking, does that make sense to you?

Sarah Badahman:

52:16
So.

52:20
They have mammogram results, right? Our results imaging results and the.

52:27
They're required to be reviewed by the provider. Is that the question?

Nathan Baugh:

52:32
Um, while she's making a distinction, Debbi, maybe you can ask your question again.

52:38
Please, making a distinction between clinical staff and the doctor, Whether she's saying that our clinical staff are not required, but, but she's wondering if that's a doctor, I guess, still is required to review the results. Which seems like it wouldn't make sense to me, but.

Sarah Badahman:

52:56
Right, I was like, and that's more of a clinical question. Right. So, you are required to release the records.

53:06
Right, but your staff, if they're not clinicians. Yeah, you're not qualified to go over the results. Right. So, it starts to ask questions, then you have to tell them to wait to speak to the provider.

53:22
That's how I would.

Nathan Baugh:

53:24
Yeah. Yeah, I think that makes sense.

53:28
Then Debbie, if that doesn't answer your question, just put another one in.

53:33
Next question is from Rae Ann Isaacson.

53:38
She asks, What is your understanding of a requirement to notify the PCP of patient, ADT, which is, admit, discharge, transfer? If a patient requests a restriction to notify is the covered entity still required to send ADT info?

Sarah Badahman:

53:56
The patient requested a restriction, so you're required. Your first obligation is to respect that patient request.

54:08
Alright. So at the patients requested, you not notify the PCP, then you're not allowed to notify the PCP because the patient has the right to request privacy restrictions under HIPAA.

54:19
And so, if the PCP were to call and request that ADT, then you are still not permitted to disclose it, because the patient has that privacy restriction there. Right?

Nathan Baugh:

So, it's pretty clear, no, you're not required to send. In fact, you're not allowed to send.

Sarah Badahman:

Yeah, you're not allowed.

Nathan Baugh:

54:42
OK.

54:44
Next question is from Bobby Ferris and she says being an all paper Chart RHC.

54:51
How would that apply to actual costs in regards to fees for requests?

Sarah Badahman:

54:58
That's very clear, if you are an all paper RHC, information blocking does not apply to you because it only applies to electronic health information.

Nathan Baugh:

55:09
OK, I love these easy ones OK, next one is Mary Clapp she says, Our previous.

55:17
And actually, before I asked this question, I'm just going to note, Sarah is graciously offered to go a little bit over. But we are going to have a hard stop at about 4 10.

55:29
PM Eastern.

55:31
And we will be posting answers to questions that we don't get to in a couple of days on our website. So, but when we are going to have a hard stop at, about 4, 10. All right. So, next question is from Mary Clark.

55:51
She says that our previous EMR provider turned off our access for read only.

55:57
We still need copies of chart notes occasionally, and they want to charge $600 to turn it on hundred 99 for the first and last month, and then 199 per month.

56:10
So, $499 if they want to access to the financials.

56:19
If we turn off access and then get another medical records request, the fees start over again.

56:23
Is this information blocking in the form of excess fee's?

56:28
And are there regulations related to this?

Sarah Badahman:

56:32
Huh.

56:33
So, this would probably fall underneath the Licensing exception, right? Because you do not have a license to the software, and they're charging you a fee to that.

56:42
So, the Cures Act does not dictate what EMRs are permitted to charge, which is why you see everything from fee free EMRs to EMRs that cost hundreds of thousands of dollars per year.

56:56
So.

57:00
You can, if you are not able to have access to that information because of a licensing issue, which it sounds like you, you may have, then that would fall underneath the licensing exception where you do not have a license to it, to access the information.

Nathan Baugh:

57:18
OK, perfect.

57:20
Next question is from Edward Refman, he says, In regards to mental behavioral health practices, can we withhold patient notes assessments under the preventing harm exceptions as long as we have supporting documentation? Can we block all notes or just certain ones?

Sarah Badahman:

57:39
Well, that's going to depend, right? So, it depends. Like, that's a case by case issue, Right?

57:44
So, if you have a patient with multiple behavioral and mental issues that is clear that having access to their information would cause harm to themselves or someone else, then, yes, you can have one that prevents access to or like for that patient to access their records, right. You just can't have a policy that states all mental health records for all patients can be withheld.

Nathan Baugh:

58:11
Right, should it be all preventing?

58:15
Can they categorize it somehow, like preventing harm?

58:20
All vending harms are blocked.

Sarah Badahman:

58:24
Yes, as long as it's been notated that it somehow would cause harm, right? So that's where you need to work with your EMR provider to see how like if they have a place to notate that.

58:36

OK, so, I know we've spoken to several EMR providers that are working on trying to get away to, excuse me, a way to notate that inside the chart. Because currently a lot of EMRs do not have it. You have to create some sort of note in there that prohibits the release of that record.

58:53
So I think that it's something that I think if enough folks are talking to the EMRs, they'll start to have a way to categorize that right now.

59:01
I don't know if your EMR provides it. You have to ask.

Nathan Baugh:

59:03
Yeah, OK, that makes sense. Next question.

59:07
Next question is from Roger Whorls, he asks, if I request a disk of an MRI, and the computer only allows a one-time web view, can I request a full disk?

59:22
OK, so, it makes sense.

Sarah Badahman:

59:26
I think so.

59:28
That would be under the content and manner exception, right, where the content you're changing the content of what you want, because you're changing it to a full disk, you write.

59:41
So, I mean, I, yeah, I mean, I think that that would have to be agreed upon right between the clinic hospital and the patient.

59:51
But, if that's something that you guys would agree to, then yes, you're allowed to do that.

Nathan Baugh:

59:58
OK, alright, next two questions are from Kamilah Guerrero, again, and she's, um, asking, can you please clarify that we are not allowed to charge patients a $10 nominal fee for paper records and a locker. That's Question one.

1:00:16
Question two is, Can you please clarify if we're allowed to release patient's records to spouse or family member without a patient's consent, which I think I already know the answer to that one, is that it depends, but, go ahead, Sarah.

Sarah Badahman:

1:00:28
OK, so, for the first question, $10 nominal fee, you're allowed to charge a $10 nominal fee so long as it's less than what the federal HIPAA law permits, Right, so, for paper records, if it was a electronic record, you can say, all electronic access to patients is seven dollars and 50% underneath the HIPAA regulation.

1:00:53
However, for paper records, it still needs to be less than the actual cost and retrieval cost is not included in that cost.

1:01:03
Again, I would recommend downloading that the calculator that nark that we provided to nark, because it does have every state listed on there and what's permitted state by state.

1:01:14
So, I would definitely go and download that calculator for that.

1:01:18
Second question was on what HIPAA and whether or not you can release to a family member, and Nathan, you are correct.

1:01:29
That does depend, because if that patient has not designated the family member as a personal representative, then authorization is required. Right.

1:01:41
So, for example, I have an adult child, that I am a personal representative for her, at her cardiologist's office, right.

1:01:49
So, meaning, I can do everything, just like she can with her records there. But if Bethany were to revoke that right, then I no longer am allowed to do that, right? So she's allowed to say, you can no longer, like, have my mom involved in my care. And she can, that she is within her rights to do that as well.

1:02:08
So, if I had a spouse, then my spouse could actually only access my records if you know that they are directly involved in my care, or if I've signed a form stating that they can do that, right?

1:02:22
Which this is where it gets really, really tricky in rural health, because everybody knows everybody, right? And so, my recommendation, particularly in rural health, is before you disclose to a family member. Make sure that you have it in writing, that you are allowed to disclose that information, because we are too familiar with our community when we work in rural health, and it is too easy to make an unauthorized disclosure unless it is documented.

Nathan Baugh:

1:02:52

OK, Perfect next question is From Laurie Enders.

1:02:59
He says that they just went through an audit and any hand-written anything was dinged due to illegibility issues.

1:03:10
So she asks, Does it have to be a hand-written or could it be typed and printed and put with the psychotherapy notes for that patient?

Sarah Badahman:

1:03:19
Psychotherapy notes should never, ever, ever be part of an audit.

1:03:23
They are private and they should only be viewed by that provider, period, OK, Now then if they do not want to handwrite them and they want to type them up, it must not be included in the pay it must never ever go into the EMR.

1:03:43
Never must be kept separately.

1:03:46
Hmm, So, and then, I would also just be, like, I don't know, my thing is to always exercise caution. Right?

1:03:55
So, if they are electronically doing them, like typing them in Word, I would say print them and then delete the Word document because you don't want it to on October 6, 2022 to fall under EHR.

1:04:10
Just because it won't fall under ... under HIPAA, doesn't mean that it can't be under each eye of the Cures Act.

Nathan Baugh:

1:04:20
Got it. Next question is from Patty Dixon.

1:04:25
We talk, we talked about this a little bit before, but I'll just put it to Sarah. She says, could a blanket policy that says, all radiology results will not be released to the portal for 72 hours so that the provider can review with the patient on all results will be released without prejudice as a 72 hour mark.

1:04:42
Is that info blocking based on what you previously said?

Sarah Badahman:

1:04:49
Yes, Because it says, so the provider can review.

1:04:53
If it is, a policy, did not say, so, the provider could review, said, there'll be released every 72 hours. It's not information blocking, But, if you write your policy to state, so the provider can review, then, yes, it is information blocking because it's with prejudice.

1:05:10
It's bias.

Nathan Baugh:

1:05:12
OK, OK.

1:05:15
I mean, it seems, where, why is their bias, just because the providers are taking, right,

Sarah Badahman:

Because it's the review part, right? So because you're trying to do it for review, and then after 72 hours, some of those results are going to have been reviewed, and some may not have been reviewed, because the provider may not have gotten to them.

Nathan Baugh:

1:05:36
OK, OK, so if they remove that rationale, and they just state it, than if they're good?

Sarah Badahman:

1:05:45
Yes.

Nathan Baugh:

1:05:48
All right, we got, maybe time for one more question. And this is from Patty Brown.

1:05:55
And she says, Is it the responsibility of the outpatient lab, or radiology, to release the information to the patient, or would it be the ordering provider's responsibility?

Sarah Badahman:

1:06:08
Uh, that is a good question.

1:06:11
Um, and I wish I had Cheryl Stevens on the call with me to answer that one, can you put that one for me? I need Cheryl from my team to answer that question. I don't know,

Nathan Baugh:

OK, OK, sure.

1:06:24
That is a good segue into closing this out, because I know Sarah does have to run. So, thank you, of course, to Sarah. Everyone's who's question we didn't get to.

1:06:34
What we're gonna do is we're going to have A in our an RHC dot org page where we're posting this recording. We'll have a little Excel sheet that will have answers to it posted in a couple of days.

1:06:49
With that said, I would like to close this out and thank everyone, especially, of course, Sarah, for a presentation today.

1:06:58
As well as the Federal Office of Rural Health Policy. Please encourage others who could benefit from this webinar series. Just tell people about an RHC dot oregon, the free webinars, and everything that we post there.

1:07:11
Again, the code, just to have it verbal for those CRHCP professionals.

1:07:18
As 479 WK 479 W K, we will be scheduling the next webinar.

1:07:25
I think pretty quickly, because there's a lot going on in the rural health clinics world, including the nofollow for the vaccine hesitancy grant.

1:07:35
Just getting posted while we are on this webinar, OK, yeah, it's exciting, right? Yeah.

1:07:42
So that, I'm sure there's, there's going to be a lot of webinars, not only from us, but from other entities.

1:07:48
So, you'll be notified, and, you know, just keep your ear to the ground on, all these things that are happening for rural health clinics. So, with that, Sarah, do you have any last final?

1:07:59
Closing thoughts? Do you have your contact information in here?

Sarah Badahman:

1:08:02
I forgot to put my e-mail address is just Sarah, S A R a H, at HIPAA check dot com, and my phone number is (314) 272-2598.

Nathan Baugh:

1:08:16
OK, perfect, so thank you very much, Sarah. Thank you, everyone, and that concludes today's call.