# Cures Act – Information Blocking

**Policy #:**

**Version #:**

**Approved By:**

**Effective Date:**

**Purpose:**

UBMD is committed to making electronic PHI available and usable for authorized and permitted purposes in accordance with applicable law. This policy focuses on placing patients at the center of our delivery of healthcare services by following the provisions in the Office of the National Coordinator for Health Information Technology (ONC) issued 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program Final Rule (Final Rule). This rule is focused on the removal of the obstacles patients encounter when trying to access their own electronic health information. Specifically, this policy focuses on Information Blocking, as defined in the Cures Act, and the eight (8) exceptions that identify reasonable and necessary practices and activities that do not constitute Information Blocking and that are to be followed to the extent possible. For context, the Information Blocking prohibition and other requirements discussed in this policy derive from a legal regime similar to, but distinct from, HIPAA. As such, UBMD is putting in place separate policies and implementing distinct compliance initiatives to address Information Blocking.

**Procedure:**

1. Addressing Cures Act Requirements

    A. UBMD will enable data sharing within the constraints of the 21st Century Cures Act with patients if the requested data sharing does not violate other regulatory requirements. Data sharing could include third party healthcare entities who are involved with the payment, treatment and/or operations for the patient.

    B. The Cures Act outlines eight (8) detailed practices and activities that would not constitute information blocking even if they do in fact interfere with the access, exchange, or use of electronic health information. The Cures Act deems these practices and activities reasonable and necessary to further the Act's goals, and refers to them as "exceptions."

    C. The eight exceptions to information blocking fall into two categories, for each of which the ONC provides extensive descriptive material about requirements, standards, risks, any other illustrative information:

        1. Exceptions that involve *not fulfilling requests* to access, exchange, or use electronic health information and;
        2. Exceptions that involve *procedures for fulfilling requests* to access, exchange, or use of electronic health information.

D. An activity that does not meet the conditions of an exception will not automatically constitute information blocking; such practices will be evaluated by UBMD on a case-by-case basis to determine whether information blocking has occurred.

E. The HIPAA Privacy Rule provides a floor of privacy protections for individually identifiable health information held by a covered component or by a business associate of a covered component. The Cures Act does not override the HIPAA Privacy Rule.

F. UBMD policies or procedural documentation which detail data sharing workflows and procedures will follow the requirements in this policy.

G. Below are the information blocking exceptions and their definitions as defined by the Cures Act and are grouped into two exceptions categories. Activities that satisfy one or more of these eight exceptions, as applicable, will not be considered information blocking if all the criteria of the applicable exception(s) are strictly met. The requirements for each exception are detailed and comprehensive, and all requirements must be met for the applicable exception(s) to apply. A more detailed explanation of the information blocking exceptions and their requirements is located in the Cures Act Final Rule, 85 Fed Reg. 25642 Section VIII(D), pages 25820-25900.

1. Five (5) exceptions allow not fulfilling requests to access, exchange, or use electronic health information. It is not considered information blocking if one or more of blocking exceptions are strictly met:

   a. Preventing Harm Exception: All Preventing Harm exceptions must be documented. Unique scenarios must be documented on a case-by-case basis. A Preventing Harm exception is acceptable if the practices are reasonable and necessary to prevent harm to a patient or another person, provided certain conditions are met (45 CFR § 171.201):

      i. Must include clinical, technical and other appropriate expertise;
      ii. "Preventing Harm" based on facts and circumstances known or reasonably believed by the actor at the time the determination was made and while the practice remains in use;
      iii. Based on exceptions relevant to implementing the practice consistent with the conditions in the regulation.

   b. Privacy Exception: UBMD will not fulfill a request to access, exchange, or use electronic health information if the request violates an individual's privacy rights. However, for the Privacy Exception to be applicable, certain conditions must be met (45 CFR § 171.202). All Privacy Exceptions must be documented. Unique scenarios must be documented on a case-by-case basis. For the Privacy Exception to apply, the following specific conditions which must be met include:

      i. UBMD has received a version of such a consent or authorization that does not satisfy all elements for consent;
      ii. Use reasonable efforts to provide the patient with a consent or authorization that is satisfactory;
      iii. Not improperly encourage or induce the individual to withhold the consent or authorization;
      iv. Denial of an individual's request for their electronic health information consistent with 45 CFR 164..24(a)(1) and (2);
      v. Respecting an individual's request to not to share information which need to follow all current policies;

vi. UBMD may terminate an individual's request for a restriction to not provide such access, exchange, or use of the individual's electronic health information only if:

(a) In writing;
(b) Orally;
(c) UBMD informs the individual.

c. UBMD will follow Cures Act exceptions as follows:

i. Security Exception;
ii. Infeasibility Exception;
iii. Health IY Performance Exceptions;
iv. Content and Manner Exception;
v. Licensing Exception

d. Fees Exception: A covered component charges fees, including fees that result in a reasonable profit margin, for accessing, exchanging, or using electronic health information, provided certain conditions are met (45 CFR§171.302).
If UBMD chooses to charge fees, including fees that result in a reasonable profit margin, for accessing, exchanging, or using electronic health information, the fees must meet the following conditions:

i. Basis for Fees Condition

(a) The fees an actor charges must be:

1. Based on objective and verifiable criteria that are uniformly applied for all similarly situated classes of persons or entities and requests;
2. Reasonably related to UBMD's costs of providing the type of access, exchange, or use of electronic health information to the person or entity to whom the fee is charged;
3. Reasonably allocated among all similarly situated persons or entities to whom the technology or service is supplied, or for whom the technology is supported;
4. Based on costs not otherwise recovered for the same instance of service to a provider and third party.

(b) The fees an actor charges must not be based on:

1. Whether the requestor or other person is a competitor, potential competitor, or will be using the electronic health information in a way that facilitates competition with the actor.
2. Sales, profit, revenue, or other value that the requestor or other persons derive or may derive from the access, exchange, or use of the electronic health information.
3. Costs UBMD incurred due to the health IT being designed or implemented in a non-standard way, unless the requestor agreed to the fee associated with the non-standard design or implementation to access, exchange, or use the electronic health information.
4. Costs associated with intangible assets other than the actual development or acquisition costs of such assets.

5. Opportunity costs unrelated to the access, exchange, or use of electronic health information.
6. Any costs that led to the creation of intellectual property, if UBMD charges a royalty for the intellectual property pursuant to §171.303 and that royalty included the development costs for the creation of the intellectual property.

ii. Excluded Fee Condition

(a) A fee prohibited by 45 CFR 164.52(c)(4).
(b) A fee based in any part on the electronic access of an individual's electronic health information by the individual.
(c) A fee to perform an export of electronic health information via the capability of health IT certified to §170.315(b)(10) of this subchapter for the purposes of switching health IT or to provide patients their electronic health information.
(d) A fee to export or convert data from an EHR technology that was not agreed to in writing at the time the technology was acquired.

2. Automatic Data Feeds

The Cures Act defines the information which must be made available for the access, exchange, or use of electronic health information. The information which is required are standardized to the elements identified in the Cures Act as the United States Core Data for Interoperability (USCDI) elements.

UBMD will use the USCDI elements as the baseline of the data which will be delivered as electronic health information as part of patient portal feeds and data interfaces. Additional data to what is defined in the USCDI can be provided at the approval of the UBMD Chief Medical Information Officer and Chief Medical Officer.

A. Continuity of Care Documents (CCD) will be utilized as the primary method to transfer required data elements electronically to partner and data exchange environments. However, since CCDs are established and locked down by the EMR vendor, UBMD is not able to make changes to the CCDs.

1. Forms and Format and Manner of Access

a. The Privacy Rule requires UBMD to provide the individual with access to the PHI in the form and format requested, if readily producible in that form and format, or if not, in a readable hard copy form or other form and format as agreed to by the covered entity and individual. See 45 CFR 164.524(c)(2)(i). If the individual requests electronic access to PHI that the covered entity maintains electronically, the covered entity must provide the individual with access to the information in the requested electronic form and format, if it is readily producible in that form and format, or if not, in an agreed upon alternative, readable electronic format. See 45 CFR 164.524(c)(2)(ii). The terms "form and format" refer to how the PHI is conveyed to the individual (e.g., on paper or electronically, type of file).
b. HIPAA – Release of Information
c. UBMD standard method to deliver the information electronically is:

i. Patient Portal and/or
ii. Adobe PDF format and copied to an encrypted USB Flash Drive

B. Lab results:

1. Lab results are sent to the portal upon completion or immediately after received via interface.
2. Laboratory results are transferred immediately to the patient portal. Patients might review the laboratory result before the Physician has had the opportunity to review the transmitted laboratory result. In addition, even though a Physician may have made every attempt to contact a patient, the Physician and the patient may not have had an opportunity to discuss the laboratory results. A qualification note is warranted to verify that the patient has every right and expectation to review their laboratory results with UBMD's clinical staff.

The following is the standard qualification note for laboratory results:

*"New information has been posted to your portal account. Please note, lab results and reports are automatically sent to your patient portal at the same time they have been sent to your provider. Therefore, your provider may not have reviewed the results yet. Any results should be discussed with your healthcare provider to obtain the best clarity on how they pertain to your health and treatment. If you have any questions or concerns on any documents in your portal, please call your provider's office or message your healthcare team through the portal."*

C. Notes and Reports which are delayed because the caregivers have to be given time to review the results. Some of these results can be traumatic to the patient and should be delivered directly by a caregiver. However, the reports will only be delayed a specific period time in order to prevent Information Blocking.

1. The following reports are to be delayed to the release to the patient portal by 72 hours.

    a. Radiology
    b. Pathology

2. The following categories of notes are not going to be sent to the patient portal

1. Coding Summaries
2. Scanned records from outside facilities
3. Confidential notes
4. Protected psychotherapy notes