



# Guidance on the Cures Act Open Notes Rule

May 2022

The [American College Health Association](#) and the [Association for University and College Counseling Center Directors](#) have partnered to provide campus health and counseling centers with the following information on the Office of the National Coordinator for Health Information Technology (ONC) Cures Act Final Rule, which implements interoperability requirements outlined in the Cures Act. ACHA and AUCCCD support the Cures Act Final Rule as a means to empower college students as consumers of health and mental health services.

## What is the Cures Act Rule/Open Notes?

On April 5, 2021, the Cures Act Rule, part of the 21<sup>st</sup> Century Cures Act, went into effect. The rule dictates that U.S. patients must “have rapid, free and full access upon request to test results, medication lists, referral information, and clinical notes, all in electronic formats.”<sup>1</sup>

Many clinicians refer to the Cures Act Final Rule as the “Open Notes Rule,” but [they are not synonymous](#). We encourage you to familiarize yourself with both the [OpenNotes goals](#) and the [Cures Act Final Rule](#).

## What does the Cures Act Final Rule mean for college health/mental health care providers?

If your student health and/or counseling center falls under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) rules, your center may be required to provide patients with access to their health information in their electronic medical record, for free. However, if your student health or counseling center falls under the Family Educational Rights and Privacy Act (FERPA) rules instead of HIPAA, your center may be exempt. Work with your campus legal team to make this determination.

## What are the benefits of open note sharing?

There are many benefits to patients who read their medical notes, including improved patient-provider relationships and a better understanding of their health conditions and treatment plans. This may be especially important to emerging adults as they embark on becoming informed healthcare consumers. To read more about the benefits, click [here](#).

## Does the Cures Act Final Rule apply to all notes?

No, there are eight exceptions. [Per the ONC](#), those exceptions are:

- Preventing Harm Exception
- Privacy Exception
- Security Exception
- Infeasibility Exception
- Health IT Performance Exception
- Content and Manner Exception
- Fees Exception
- Licensing Exception

We recommend you and your campus legal team explore these exceptions to determine how they may apply to your health or counseling service situation.

---

<sup>1</sup> Salmi L, Blease C, Hagglund M, Walker J, DesRoches CM. [US policy requires immediate release of records to patients](#). BMJ 2021; 372:n426 doi:10.1136/bmj.n426

## I've been told that psychotherapy notes are exempt from these requirements. Is this true?

[Psychotherapy notes \(as defined by HIPAA\)](#) are considered substantially different from progress notes and are considered exempt. If psychotherapy notes cannot be “segmented” from progress notes, the progress notes may also be considered an exception (infeasibility).

## What if my center is considering not sharing notes?

If your center is considering not sharing notes, providers are required to specify which of the above exceptions are being invoked and communicate that to patients within 10 business days, along with an alternative means of documentation sharing. We strongly recommend that you and your campus legal team discuss these exceptions and create a process for both documenting the exceptions and providing documentation when requested. These policies and processes should be well communicated among staff members and transparent to patients.

## Does it matter which EHR you use? What if there's no patient portal option with our EHR?

Most electronic health records (EHR) systems used in college health have developed a medical records component in which progress notes, discharge summary notes, and consultation notes may be shared. However, these are considered “add-ons” and may be cost prohibitive for some campuses.

Many campus counseling centers use *Titanium*, an EHR that does not have patient portal feasibility. If a portal feature is not available or too expensive, your campus may want to invoke the infeasibility exception. Again, we recommend working with your campus legal team on policies and processes.

## What else should I know?

Like all new major federal policies, application of the policy is complicated. We recommend you do the following to get started:

- Conduct internal discussions about how the sharing of notes might work within your current system. Determine areas of concern as well as opportunities to utilize and/or expand the practice.
- Work with your campus legal team to create a policy that works within your existing system and to create a process for the sharing of information with patients when possible. **If your legal counsel is not experienced with health/mental health law matters, consult with an expert in health/mental health law before making any decisions.**
- Consider updating your center's informed consent forms to reflect the center's policy and procedure to obtain records.

For more information, visit these resources: [ONC's Cures Act Final Rule](#) and [OpenNotes Movement](#).

## Additional Resources

American Psychological Association

- [New federal rule affects psychologists with electronic health records](#)
- [Detailed FAQs about the information blocking rule](#)
- [HIPAA Information Blocking Rule Presentation](#)

American Psychiatric Association

- [Interoperability and Information Blocking Final Rule Overview for Psychiatrists](#)
- [CHIME/APA/ONC Mental Health and Information Blocking Webinar](#)

National Association of Social Workers

- [Practice Alert: New Federal Rule Provides Patients with Access to Records](#)

**Questions?** Please contact ACHA at [contact@acha.org](mailto:contact@acha.org) or AUCCCD at [office@aucccd.org](mailto:office@aucccd.org).