

NUMBER: 2.1.44**DATE: 05/26/2021****REVISION: 08/10/2021****PAGE: 1 of 4****SECTION: HIPAA****AREA: HIPAA PRIVACY/SECURITY POLICIES****SUBJECT: PROHIBITION ON INFORMATION BLOCKING**

PURPOSE

To establish compliance with the 21st Century Cures Act (the “Cures Act”) and regulations promulgated under that Act related to Information Blocking at the University of Arkansas for Medical Sciences (“UAMS”).

SCOPE

This policy applies to all UAMS faculty, staff, students, visitors, and guests.

DEFINITIONS

Information Blocking means a practice by a Health Care Provider that is reasonably likely to interfere with access, exchange, or use of Electronic Health Information. For example, delaying patients’ access to their health information when the Health Care Provider has the technological means to make it immediately available upon finalization through the patient portal.

Electronic Health Information (“EHI”) means patient data stored in electronic form that is collected and shared for healthcare delivery and public health purposes, except for: ¹

- (1) Psychotherapy notes; or
- (2) Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding. Examples of such information include, but are not limited to, records related to screenings and assessments ordered by a court under Arkansas Code Annotated Section 9-27-356

Clinician-Patient Relationship means any therapeutic or clinical relationship where the licensed Health Care Provider has or had some clinical responsibility for or to the patient within the professional’s scope of practice. For purposes of this policy, a Clinician-Patient Relationship may be established over a period of time or during the first and only professional encounter. The platform for services (in person, telehealth, etc.) does not limit the formation of a Clinician-Patient Relationship.

Health Care Provider (or “Provider”) includes physicians, nurses, advanced practice partners, and all other allied health care staff who create clinical notes in the UAMS electronic health record.

Patient Portal means the online interface through which a patient or their designated proxy may access their EHI. For example, the Epic MyChart application or similar online or mobile tools are

¹ Until May 2, 2022, EHI for purposes of this definition is also limited to the electronic health information identified by the data elements represented in the United States Core Data For Interoperability standard.

Patient Portals.

POLICY

In accordance with the Cures Act and related regulations, UAMS will not engage in Information Blocking. UAMS will comply with the Cures Act, related regulations, HIPAA Privacy Rules and other applicable laws, rules and regulations regarding the manner, method, and timeliness of providing EHI to patients, vendors, other Providers, and other individuals, entities and agencies.

PROCEDURES

I. Access, Use, and Exchange of Electronic Health Information

Access, use, and exchange of EHI will be in accordance with applicable UAMS policies. Patients, Providers, payers, government agencies, and third parties may request to access, use and exchange EHI. Business Associates of UAMS (as defined in UAMS Administrative Guide Policy 2.1.18) may access, use, and exchange EHI in accordance with a Business Associate Agreement. An individual's inability to access or view EHI via a Patient Portal must be in compliance with this policy and other applicable UAMS policies and procedures. *See UAMS Administrative Guide Policy 2.1.13 Use and Disclosure of PHI and UAMS Administrative Guide Policy 2.1.18 Business Associate Policy.*

II. Exceptions to Information Blocking

There are eight (8) exceptions to Information Blocking. If the conditions of one of the exceptions below are met, UAMS may deny a request for EHI.

1. **Preventing harm exception:** If a Health Care Provider reasonably believes that withholding or delaying release of EHI will substantially reduce the risk of physical harm to a patient or another person, the Provider may deny the request for EHI. *See UAMS Medical Center Policies and Procedures, Number ML.2.15, Patient Portal –Availability of Electronic Health Information.*
2. **Privacy exception:** If the denial protects an individual's privacy under HIPAA or any other applicable state or federal law or regulation, UAMS may deny the request for EHI. To satisfy this exception, the practices to protect an individual's privacy must meet at least one of the four sub-exceptions set forth in 45 C.F.R. § 171.202. *See UAMS Administrative Guide Policy 2.1.13 Use and Disclosure of PHI* (outlining specific circumstances when UAMS may deny access to or a copy of PHI without providing an opportunity for the patient or personal representative to review the denial). *See also UAMS Administrative Guide Policy 2.1.19 Patient Information Restriction Requests.*
3. **Security exception:** UAMS may deny a request for EHI if the denial protects the security of EHI as long as the denial meets the requirements set forth in 45 C.F.R. § 171.203 when such denial is:
 - a. directly related to safeguarding the confidentiality, integrity, and availability

- of EHI;
 - b. tailored to specific security risks; and
 - c. implemented in a consistent and non-discriminatory manner. For purposes of this exception, UAMS Administrative Guide Policy 2.1.32 *IT Security Incident Identification and Handling Policy* and 2.1.36 *IT Risk Analysis and Risk Management of Electronic Systems* constitute qualifying organizational security policies under the Cures Act and related regulations.
- 4. Infeasibility exception:** If a request for EHI is denied for any of the reasons below, a written response must be provided to the requestor within ten (10) business days of the request, and must state why the request is infeasible. UAMS may deny a request for EHI due to any of the following:
- a. Uncontrollable events, including, but not limited to, natural or human-made disaster, public health emergency, public safety incident, war, terrorist attack, civil insurrection, strike or other labor unrest, telecommunication or internet service interruption, or act of military, civil or regulatory authority;
 - b. The inability to segment the requested EHI from other non-discloseable EHI;
 - c. Demonstration through a contemporaneous written record or other documentation its consistent and non-discriminatory consideration of certain factors that led to its determination that complying with the request would be infeasible under the circumstances.
- 5. Health IT Performance exception:** UAMS may deny a request for EHI based on a practice that is implemented to maintain or improve health IT performance when such a practice meets the requirements set forth in 45 C.F.R. § 171.205. Action may be taken against a third-party application that is negatively impacting health IT's performance, provided that the actions is:
- a. for a period of time no longer than necessary to resolve any negative impacts;
 - b. implemented in a consistent and non-discriminatory manner; and
 - c. consistent with existing service level agreements, where applicable.
- 6. Content and Manner exception:** UAMS may limit the content of its response to a request to access, exchange, or use EHI or the manner in which it fulfills a request to access, exchange, or use EHI, provided certain conditions are met. UAMS may provide EHI in a manner other than the manner requested, when:
- a. UAMS is technically unable to fulfill the request in any manner requested; or
 - b. UAMS cannot reach agreeable terms with the requestor to fulfill the request.
- 7. Fees exception:** UAMS may charge fees, including fees that result in a reasonable profit margin, for accessing, exchanging, or using EHI, provided the fee:
- a. is based on objective and verifiable criteria that are uniformly applied for all similarly situated classes of persons or entities and requests;
 - b. is reasonably related to the costs of providing the type of access, exchange, or use of EHI; and
 - c. is not based on whether the requestor or other person is a competitor, potential competitor, or will be using the EHI in a way that facilitates competition with

the actor.

8. **Licensing exception:** UAMS may license interoperability elements for EHI to be accessed, exchanged, or used, provided the conditions set forth in 45 C.F.R. §171.303 are met.

III. Handling Requests for EHI

Requests for EHI unrelated to an individual accessing EHI through a Patient Portal are primarily handled by the Health Information Management Department (“HIM”) or appropriate designee.

IV. Handling Denials of EHI

Requests for EHI may be denied in accordance with UAMS HIPAA policies and the Information Blocking exceptions outlined in this policy or as may be required by law. To the extent that a written denial is required under Exception 4 as stated above, such a denial shall be provided by HIM; any such written denials under Exception 4 will be documented and retained in accordance with HIM department procedures.

V. SANCTIONS

Violation of this Policy may result in disciplinary action, in accordance with UAMS *Administrative Guide Policy 4.4.02, Employee Discipline* or the University of Arkansas System Board of Trustees Policy 405.1, *Appointments, Promotion, Tenure, Non-Reappointment, and Dismissal of Faculty*, as applicable.

REFERENCES

45 C.F.R. Part 171 “Information Blocking”

UAMS Administrative Guide Policy 2.1.32 *IT Security Incident Identification and Handling Policy*

UAMS Administrative Guide Policy 2.1.36 *IT Risk Analysis and Risk Management of Electronic Systems*

UAMS Administrative Guide Policy 2.1.13 *Use and Disclosure of PHI*

UAMS Administrative Guide Policy 2.1.18 *Business Associate Policy*

UAMS Medical Center Policies and Procedures, Number ML.2.15, *Patient Portal –Availability of Electronic Health Information*

Signature: _____



Date: August 10, 2021