

Provider Practices and Patient Privacy: MyChart and OpenNotes Safe Practices

OpenNotes and the 21st Century Cures Act

What is OpenNotes?

OpenNotes is not a software; it is a movement to create transparency visit documentation for patients. Sharing notes can improve communication among patients, families, and clinicians, build stronger, more trusting relationships, enhance patient safety, and strengthen adherence to medications. Patients report improved understanding of their health and medical conditions, recall their care plan more accurately, are better prepared for visits, feel more in control of their care, take better care of themselves take their medications as prescribed more frequently, have more successful conversations and stronger relationships with their doctors. OpenNotes can also improve equity for low SES patients, ESL patients, and patients who rely on caretakers.

21st Century Cures Act

The 21st Century Cures Act was passed by Congress in December, 2016. It authorized \$6.3 billion in funding, mostly to the NIH. Among other things, it was designed to streamline the drug and device approval process and bring treatments to market faster. The Act defined electronic health system interoperability and prohibited EHI blocking.

ONC Final Rule on Information Blocking

Information Blocking is defined in the CURES Act, and requires all care providers, nurses, therapists, other licensed clinicians, etc. to share electronic health information in a way that does NOT interfere with, prevent, or discourage access, exchange, or use of electronic health information. Information Blocking is any action with interferes with: authorized access, exchange, or use of EHI, release of electronic health information to patients without delay, or removal of generally applied time-based holds on any release of EHI. The ONC Final Rule (DHHS) defines the extended effective date: April 5, 2021. After this date, all hospitals, care facilities etc. are required by law to comply with the Information Blocking provisions in the CURES Act, including sharing patient notes.

Information Blocking Exceptions

The *preventing harm exception* states that, "It will not be information blocking for an actor to engage in practices that are reasonable and necessary to prevent harm to a patient or another person, provided certain conditions are met." The ***privacy exception*** states that, "It will not be information blocking if an actor does not fulfill a request to access, exchange, or use EHI in order to protect an individual's privacy, provided certain conditions are met."

Privacy and Safety Concerns

Impacts

Privacy and safety concerns raised by use of OpenNotes poses a threat of harm or privacy violation through issues surrounding MyChart consent and fraud, minors' privacy, and care access.

See a full description of the issues and impacted populations linked in the SharePoint under the title "[OpenNotes Privacy and Safety Concerns](#)"

MyChart Vulnerabilities

A MyChart can be created using either a medical record number (which can be acquired by calling the hospital records number, providing the patient's first and last name, and providing the patient's date of birth), or a patient access code, along with other readily available information such as name, address and sex. This presents grave safety and privacy concerns, as it would be fairly easy to create a fraudulent MyChart account for a stranger, and nearly effortless if you were the family, friend, or acquaintance of the person you were making the account to impersonate.

Already Blocked Notes

Notes at the following clinics will remain **private** by default:

Care Everywhere Restricted Departments and Wakebrook, UNC Alcohol and Substance Abuse Program (ASAP), Psychiatry and Behavioral Health clinics, Pain Clinics, Transplant Specialty Clinics, and Departments with “Transplant” in their name, UNC Hospitals Beacon Program (interpersonal abuse), Adolescent-only clinics.

Remaining Vulnerabilities

Individuals in the following settings are not sufficiently protected by **existing note blocking** policies:

Adolescents in non-pediatric settings, OBGYN, Family Medicine, ED, ENT, Urgent Care, etc., behavioral health patients in non-psychiatric settings, patients experiencing abuse and violence, and patients with diminished consent capacity.

Best Practice Recommendations

Hospital Wide Best Practice

- A. Provide plain language explanations of OpenNotes and MyChart policy in high accessibility/traffic areas, and in multiple formats
- B. Increase rigor of consent procedures for MyChart and OpenNotes
- C. Build provider side functions into the EPIC portal to facilitate safe practices and Trauma Informed Care (TIC) when charting
- D. Increase rigor of credentials required for MyChart access

See a full description of these recommendations linked in the SharePoint under the title [“Best Practice Recommendations to Improve MyChart and OpenNotes Patient Safety and Privacy”](#)

Provider and Staff Level Best Practice

- A. Implement standard procedures to incorporate MyChart/OpenNotes safe practices into all patient interactions
 - Begin all patient visits by disclosing that visit notes, including medications lists and histories are available through the MyChart portal.
 - Explicitly state to patients that they have the right to ask anything they say not be released
 - Disclose to all patients that notes are viewable by anyone w/ access to patient portal
 - Implement a list of “ABR - Ask Before Releasing” topics which providers must always double check with patients before releasing
 - Incorporate MyChart/OpenNotes safety measures into existing practice recommendations for cases of suspected/reported abuse or sexual assault
- B. Improve protocols for interacting with minors outside of pediatric settings to ensure privacy and safety
 - Explicitly encourage use of proxy portal access for minors and guardians, or elderly patients and caretakers during visits with patients
 - Always carefully review auto-populated portions of the note, including medications lists, with the patient and ask if they wish for those to appear without restriction in their MyChart portal
 - Always place content disclosed by the parent of an adolescent, which that parent prefers stay confidential from another parent and/or their child in a separate, blocked note in the child’s chart
 - Inform adolescents about their health care rights and confidentiality protections under state law, as well as the information their parents can see and access through MyChart during a time when parents leave the room

Best Practice Logistics

How to Block Notes

For all notes (ambulatory, inpatient and ED), Share w/ Patient is defaulted. Signed Ambulatory notes are released when the ambulatory encounter is closed. Inpatient notes are released to the patient’s My UNC Chart upon note signing.

Signed ED notes will go to the patient's My UNC Chart when the patient is discharged or admitted to an Inpatient Unit. Providers and clinicians can "*unshare*" specific notes on an individual basis for two reasons: the preventing harm exception, or a patient or proxy request for the note to not appear in the patient portal.

ABR Categories

Release of information in the following categories should ***always be discussed*** with patients before being released into the patient portal:

SANE exam results, disclosure of abuse/assault (any, including past incidents), STI, pregnancy, contraceptive use, and other sexual and reproductive health related issues for adolescents, or anyone with a documented history of domestic violence, gender identity/pronouns/sexuality disclosure for adolescents, disclosure of sensitive health issues (substance use, serious mental health issues), discussion of future plans the patient would like to keep private (plans to move, healthcare decisions).

See a full description of these categories with example patient interactions linked in the SharePoint under the title "[ABR Poster](#)"

Patient Interaction Procedures

The following procedures should be taken with all patients in compliance with OpenNotes safe practices:

1. Ask if patient is using or familiar with MyChart and OpenNotes
2. Inform/remind patients that visit notes, including medications lists and histories are available through the MyChart portal, and viewable by anyone with access to their account
3. If the patient indicates that no one else has access to their account, then there is no need to pursue the issue further
4. If the patient states that someone else does have access to their account, or does not give any indication, begin taking patient's history by stating that they have the right to ask anything they say not be shared
5. Review auto populated and copy/pasted notes with patient to ensure accuracy and check that patient wants everything to remain in their notes
6. Refer to ABR list, and check if patients want any ABR topics blocked

See a description of OpenNotes safe interaction procedures for adolescents in non-pediatric settings, and for cases of reported/suspected abuse or sexual assault linked in the SharePoint under the title "[OpenNotes Safe Patient Interaction Procedures](#)"

Case Examples

See a pamphlet of case examples and solutions to OpenNotes safety issues linked in the SharePoint under the title "[OpenNotes Safety Case Example Pamphlet](#)"

SharePoint Access

This document, and the resources mentioned herein are available for access on the Beacon Program SharePoint via the following link and QR code:

<https://collab.unchealthcare.org/sites/BeaconTools/SitePages/Home.aspx>

