

OpenNotes and Results Release *Information Blocking Regulations*

September 2020

This FAQ document is intended for providers to learn about the upcoming new regulations regarding OpenNotes and Results Release, and the benefits it brings to patients.

Patients are at the center of all we do at Sutter Health. Research shows that providing them with quicker access to their tests results and clinician notes will help them feel more a part of their care team, improve quality and safety, and mark another step on our journey to become a high reliability organization.

We recognize this new regulation represents a potentially big change for you as clinicians, and hope the following information is useful in helping you with the transition.

Topics

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Overview

1. **What is the Cures Final Act?**

This year, the Office of the National Coordinator (ONC) announced the [Final Rule](#) of the 2016 Cures Act, requiring clinicians to electronically release most clinical notes and test results by this fall.

At Sutter Health, the following will be visible to the patient via My Health Online (MHO) on Oct. 29, 2020, including historical data:

- [Clinical notes](#) will be immediately visible once they have been signed, unless a provider blocks the note from being released because of an allowable exception. This new regulation is pertinent to all care settings, including ambulatory, acute care and home health.
 - The eight (8) types of [clinical notes](#) that must be shared are outlined in the [United States Core Data for Interoperability \(USCDI\)](#), and include:
 1. Consultation notes
 2. Discharge summary notes
 3. History & physical notes
 4. Imaging narratives
 5. Laboratory report narratives
 6. Pathology report narratives
 7. Procedure notes
 8. Progress notes

- Clinical results will be immediately visible once resulted in Sutter EHR, unless their release is prohibited by law, a provider uses an allowable exception to prevent a result from releasing, or manually retracts a result that has been released to MHO.

The following **exceptions** apply:

- Behavioral health notes that were written before Oct. 29, 2020.
- Any notes that were marked by the user to be blocked before this date because it meets one of the legally allowable [exceptions](#).
- Specific results are protected from automatic electronic release per California law until the clinician has spoken to patients about the following results:
 - i. HIV antibody results
 - ii. Positive Hepatitis antigen results
 - iii. Positive drugs of abuse screen
 - iv. Pathology results that demonstrate a malignancy

Historically these results were blocked from release. Now, clinicians may manually release these results after communication with the patient.

2. Why is this happening?

Because it is the law. There is no opting out. This new regulation is a federal mandate that originated from the 2016 21st Century Cures act that defines and outlaws information blocking. It was determined in May 2020 that as of this fall, we will be held accountable for compliance of this act and can be fined \$1 million for each violation. Sutter plans to go-live on Oct. 29, 2020, a few days prior to the mandated compliance date of Nov. 2, 2020.

3. What is the plan to communicate this change across Sutter Health?

There is a team focused on communications that will provide clinicians and other key stakeholders with tools that will help them understand and socialize the changes, while providing answers to key questions. A variety of system and local communication channels will be used to share information and provide a feedback loop as new questions arise.

• Sutter Health leader communications	Sept. 10
• Clinician Resource Site	Sept. 14
• <i>Triage</i> clinician newsletter	Sept. 24
• All-clinician email	Sept. 28
• Clinician roundtable Q&A sessions	September & October

4. Will there be training and guidance on policy, definitions and process? When and who will provide the training?

Yes. We will provide Sutter EHR Tip Sheets and Know Do Share documents through normal Sutter EHR communication channels and through local physician informatics liaisons and champions. We will host provider roundtables in September and October to address questions, workflows and expectations of the regulation, and to share provider toolkits, training and additional resources for both ambulatory and acute providers.

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[OpenNotes and Results Release](#)

5. Why does Sutter refer to this change as OpenNotes and Results Release?

The federal requirement to electronically release most clinical notes and test results is consistent with the international OpenNotes movement that has shown positive effects on engaging patients in their care and helping them build stronger relationships with their care teams.

OpenNotes is a concept, not a particular way to write a note. All clinicians should continue to write their notes in a logical, patient-friendly manner. Patients have long had a legal right to request

access to their clinical notes. What is changing is how and when patients can view their electronic clinical notes and results. [Read more](#) on tips for writing patient-friendly clinical notes.

6. Do we have experience with OpenNotes within Sutter Health?

Yes, there are ambulatory physicians from every medical group who have been sharing their notes for a number of years. In fact, all ambulatory clinicians from Sutter Valley Medical Foundation are currently live on OpenNotes, and have been since 2016.

Feedback from participating clinicians has been overall positive and clinicians have said the release of data has often been unnoticed by patients.

7. When will these notes be released?

Beginning Oct. 29, 2020 all eligible historical notes will become available to patients in MHO. Moving forward, all clinical notes within the 8 categories noted above will be released immediately when they are signed. For ambulatory notes, this typically happens when the encounter is closed unless the provider chooses to sign the note before closing the encounter. For inpatient notes, notes will be released upon signature. If a co-signature is required as part of graduate medical education, notes will be released once the co-signer has signed.

8. Is it possible that patients will see results before the provider does?

Yes, it is possible. Clinicians are encouraged to set expectations with patients at the time of ordering to mitigate patient concerns. Clinicians should plan to contact patients as appropriate to discuss results.

9. Will it be possible to block a result from being released to a patient at their request?

Yes. On Oct. 29, 2020, new functionality will be available to allow a provider to retract a result from being visible to a patient in MHO using the MHO Results Release Navigator. On Nov. 8, 2020, with the Sutter EHR system upgrade, providers will also have the ability to mark a result from being released to MHO at the time of placing the order. Sutter EHR Tip Sheets will be made available for these workflows.

10. What has been the experience of our colleagues who piloted Open Notes in the past?

Most clinicians who use Open Notes report no or very minimal impact. This is also true for providers currently using OpenNotes within Sutter Health.

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[Exceptions](#)

11. What are the exceptions that allow me to block a note or test result from a patient?

The two most common exceptions are:

- I. **Preventing physical harm:** A note or result can be blocked if a provider believes that viewing the note could cause substantial risk of harm to the life or physical safety of the patient or another person. Please be aware that causing mental or emotional harm is NOT an allowable reason for a note to be blocked from release.
- II. **Privacy:** A note or result can be blocked if sharing the information would result in a violation of the patient's privacy. Any direct request from patients to block a note or result from their MHO account is allowable under the privacy exception. Information compiled in a note for use in civil, criminal or administrative actions or proceedings also applies.

12. Are there other exceptions?

Yes, but they will be incredibly rare. Read more about the exceptions [here](#).

13. Will I be able to block historical notes that meet the exception criteria from being released to MHO on Oct. 29, 2020?

Yes. All providers will be given this ability beginning Oct. 1, 2020. Providers who are currently live with OpenNotes will be sent a list of all notes they have manually blocked so they can review them for compliance with the legally defined exceptions. Only notes that are re-blocked after Oct. 1 will not be shared to MHO on Oct. 29, 2020. All other notes will be shared to MHO. See [Technical Questions](#) below & Sutter EHR Tip Sheets for more detail.

14. Will I be audited on the notes and results that I block?

Sutter Health is committed to complying with this regulation, and will monitor blocked notes to ensure appropriateness as fines can amount to \$1 million for each violation of the federal mandate.

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[Liability and Consequences of Non-Compliance](#)

15. What is my liability if I don't block a note that I should have blocked?

Liability does not change with the information blocking regulations. Please speak with your local risk officer if you have specific concerns.

16. Will I be liable for any mistake revealed (wrong antibiotic chosen, missed fracture, etc.) by the notes becoming transparent?

Liability does not change with the information blocking regulations. Please speak with your local risk officer if you have specific concerns.

17. Has there been an increase in lawsuits because notes are more transparent to the patient?

No, the national experience with the OpenNotes movement has not shown that, and this mirrors our own experience for those who are sharing their notes now at Sutter.

18. Will there be penalties if I block a note and don't have a good enough reason for having blocked it (i.e., is someone going to be auditing those validations we provide?)

The federal mandate does specify that we can be fined \$1 million for each violation. Detailed audits will likely happen only if there are specific complaints. A draft policy on this topic is under review, and will be shared here once it is available.

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[How Do I? – Technical Questions](#)

19. How do I share a note?

Beginning Oct. 1, 2020, all notes eligible for release within the Sutter EHR, will have a “Share with Patient” button available and selected by default. No additional action is required by the provider to share a note to MHO.

Although the button will appear on Oct. 1, 2020, patients will not receive MHO access until Oct. 29, 2020 to view these notes.

20. How do I block a note?

If you determine that a particular note should not be shared in MHO due to an allowable exception, you will be able to unselect the “Share with Patient” button to block the note from being shared. Providers should use the SmartPhrase **.MYNOTESHIDE** at the end of the note text to select and document the specific exception that is being used.

Beginning after the Sutter EHR upgrade scheduled for Nov. 8, 2020, ambulatory providers will also receive a hard-stop reminder to use the **.MYNOTESHIDE** SmartPhrase to document reason for exception if this has not already been done, when attempting to close the encounter.

21. How will I block historical notes from being released to MHO? Will I have to block each of those notes individually?

To block a historical note from release you will have to addend the encounter containing the note. You will need to do this for each individual note.

Beginning Oct. 1, 2020, when you enter the addendum for a specific note within an encounter, the “Share with Patient” button will be visible at the top of the navigator. Providers will need to unselect the “Share with Patient,” and then use **.MYNOTESHIDE** SmartPhrase within addended note to select and document the exception criteria.

On Oct. 29, 2020, when all shareable notes are released to MHO, any notes that have been blocked using this workflow will not be released.

22. How do I block a note later, after initially releasing it?

You can addend the note and un-select on the “Share with Patient” button. Then use the **.MYNOTESHIDE** SmartPhrase within the note text to select and document the exception criteria.

23. How do I release a note later, after initially blocking its release?

Yes. You can addend the encounter, enter note, and select “Share with Patient” button. You will also need to remove the **.MYNOTESHIDE** SmartPhrase you previously entered, or the SmartPhrase will be visible to the patient within the note in MHO.

24. How do I block just part of a note?

This is not technically feasible at this time. Any information that meets an exception criteria and needs to be blocked should be documented in a separate note and blocked per the steps noted above.

25. What do I do if I documented in the wrong patient’s chart?

If you signed the note, be aware that it became available to the patient in MHO and there is a possibility that they viewed it. You should addend the note and delete any incorrect content. Once you do this and sign the addendum, no deleted content will be visible to the patient. You should then [submit an IS ticket](#) so the note can be deleted from Sutter EHR. For any further concerns, please contact your local risk officer.

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[General Questions for all Providers](#)

26. How should I handle patient comments and requests to change the notes?

If the change is appropriate, you can amend the note to make it more accurate. In any circumstance, you can also direct the patient to the Health Information Management (HIM) Department at the affiliate where he/she received service. HIM will work with you on the requested change.

27. What can I do if I get questions or comments about another clinician’s notes?

Based on national experiences with OpenNotes, as well as at our Sutter medical foundations, we do not expect this to be a burdensome issue. Providers should continue to address patient questions as they deem appropriate.

28. Since patients can see results immediately, what is to prevent a patient from contacting us before we have the chance to review the results?

It is important to set expectations with patients at the time of ordering. The following will be included in all After Visit Summaries (AVS): *“Results for any tests that were ordered during your visit will be available to you in My Health Online as soon as they are finalized. This means you may see a result before your provider has had a chance to review it. We ask that you wait for your provider or your clinical team to contact you (typically 3-6 business days) to discuss any interpretation of the results.”*

There will also be similar verbiage within the MHO Test Results page where patients will be able to view their actual result.

29. If we block a note and state as a reason that we are afraid a domestic violence situation will escalate, will we still need to report the situation to the local police?

The **.MYNOTESHIDE** SmartPhrase requires you to select from a list of clearly defined approved note blocking exceptions. For a domestic violence case, you may choose to select the Patient Harm or Privacy exception, depending on the specific situation.

The blocking of a note does not negate a healthcare provider's responsibility to report the situation to appropriate authorities.

30. What if a provider is no longer with a clinic? Will all their notes be released, as well?

Yes. All eligible historical notes will be made available electronically within MHO. Please refer above for specific exceptions.

31. What do I do about documentation that can be offensive to the patient, but I feel is still medically important to include in my note (for example, difficult patient or obese patient)?

Clinicians are encouraged to use [patient-friendly language](#) in writing notes. All eligible clinical notes will be released to patients in MHO.

32. How will In-Basket Care teams be involved?

This will be up to local operational leaders and teams to determine.

33. Will results be released for pediatric patients?

Yes. For children under 12 years of age, notes and results will be released to parent/guardians with proxy MHO accounts. For children ages 12-17, notes and results will be released to the teen's account directly but not to the parent. For more information, please refer to the [Patient Proxies](#) section of this FAQ.

34. How will we handle patient questions or concerns in the inpatient setting if patients learn of the change or want to talk to someone about notes they've received?

While a patient is hospitalized, it is the responsibility of the treating provider to address questions from patients. Once a patient is discharged, patients can be instructed to refer questions to their primary care provider. If a patient does not have a PCP, they should be encouraged to establish one.

35. Will the Handoff Summary be released as part of OpenNotes?

No. The Handoff Summary is not considered to fall within one of the 8 note types that is required to be released to MHO.

36. As an emergency department physician, can I block a note from being seen by a patient?

Sensitive situations common in the emergency department do not necessarily fall within the allowable exceptions noted above. These may include substance abuse, domestic violence, child abuse, sexual assault, acute psychiatric episodes, in custody of law enforcement as a suspect or victim, seeking secondary gain, etc. The provider should use his/her discretion in determining if an exception applies.

37. Is there a place in the EHR where the clinical team can communicate what will not be released as part of the OpenNotes initiative?

The only notes that will be shared as part of this change are those in the 8 note types. Per the federal regulation, the current sharable note types will expand in May 2022 and will include all electronic health information.

38. Will a patient's family have access to OpenNotes and clinical results?

Only if they have proxy MHO account access. For children <12 years, proxy account holders will have access to all notes and results. If a patient 18 years of age or older has granted proxy MHO

access to a family member, that proxy user will have access to view clinical notes and results shared within MHO.

39. Are Transition of Care Messages impacted by the new regulations?

Yes. Instead of being sent 24 hours after discharge, the Transition of Care messages for all inpatients will be sent immediately upon discharge.

40. Will patients be able to view first and last names of providers in MHO?

Yes. The first and last name of the provider and the type of provider, such as nurse, physician, therapist, etc., will be displayed within the notes that are shared.

41. Does the regulation for releasing notes also apply to notes from nursing and ancillary services (respiratory therapy, physical therapy, dietitians, speech therapy, occupational therapy, social workers, case managers)?

The Cures Act does not limit electronic access to specific authors. Progress notes authored by nursing and ancillary staff will be shared in MHO.

42. Will scanned documents be made available on My Health Online?

Not automatically. Scanned documents will not be immediately released to patients via MHO. Patients can request documentation from HIM, and HIM will review the scanned documents for sensitive information before sharing with the patient.

43. Will we share Care Everywhere data from other organizations?

Sutter will not share third party data directly to MHO unless this data has been manually reconciled into the patient's local record. If the patient has linked another MyChart account within their MHO account through the "Happy Together" feature, the patient will be able to view those notes and results based on the release configuration of the source organization.

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[Radiology](#)

44. How will the release of radiology results change with the Cures Final Act?

All final radiology results reported within the Sutter EHR that are currently released to MHO with a 3-day delay will be released immediately to MHO. This includes all historical radiology reports, as well. Preliminary reports will not be released.

45. What happens to radiology notes that include pathology specimens or tissue (for example, ultrasound-guided biopsy)?

Effective Oct. 29, 2020, ordering providers or their proxies will be able to manually release these results after having an oral discussion of the findings with the patient. We do not currently allow these results to be released to MHO at all.

46. Are images themselves released, or just reports?

Just reports. We do not currently have the capabilities for patients to their view radiology images online unless a provider has specifically copied and pasted an image into a note. Patients can request a CD of imaging studies through local care centers.

47. Are reports of archived outside studies released, or just Sutter studies?

Reports for outside studies that are archived within a scanned document type will not be released immediately to MHO, and can only be released to the patient through an HIM request.

48. Are addendum reports released, or just the original reports?

Any signed addendums to final reports will be shared immediately through MHO.

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Pathology

49. Will pathology results be automatically released?

No. At this point, all pathology and cytology reports must be manually released by providers. This also applies to historical pathology results from prior to Oct. 29, 2020. Per California law, malignant diagnoses must be orally discussed with the patient prior to manual release of pathology reports. In the future, we hope to be able to automatically release non-malignant cytopathology results to patients avoiding the need for these to be manually released by ordering providers.

50. How will pathology results be released to the patient?

The only way to release pathology results to MHO is by manually releasing them using the MHO Results Release Navigator within Sutter EHR. Please refer to the Sutter EHR Tip Sheet for details on how to do this.

Behavioral Health/Mental Health

51. Will behavioral health historical notes be released?

Behavioral health progress notes dated prior to Oct. 29, 2020 will not be automatically released to MHO. Behavioral health progress notes refers specifically to those written by a provider working in behavioral health and documented within a behavioral health encounter. This does not include notes from other clinicians who might discuss behavioral health concerns (for example, primary care notes about a patient's anxiety will not fall under this category).

Historical behavioral health notes will be available for manual release upon patient request through the HIM/ROI process. Providers may also share historical behavioral health notes upon patient request by selecting the "Share with Patient" button after Oct. 29, 2020.

Any behavioral health notes written after Oct. 29 will be shared automatically to MHO unless the provider blocks the note due to an allowable exception.

52. Will there be education and training available to help mental health providers prepare for this change?

Yes. We have scheduled provider roundtable sessions for in October to address remaining questions.

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Patient Proxies

Patients under 12 years old:

53. Which notes and results will proxies be able to see in MHO for children under 12 years old?

Proxies will be able to see all allowable notes and results for children under 12 years old.

54. Am I able to block notes for one proxy only? For example, if a child's proxies are divorced parents, can I block a note so only one proxy can see it?

No. There is no current capability to provide different access to different proxies.

55. What action should I take if I am asked to change a note by a proxy?

If the change is appropriate, you can amend the note to make it more accurate. In any circumstance, you can also direct the patient to the HIM Department at the affiliate where he/she received service. HIM will work with you or the note's author on the requested change.

Patients 12-18 years old:

56. How will this affect teen-age patients who have their own MHO accounts?

Teens 12 through 17 years of age can request full access to their own medical records within MHO. As such, they will be able to see their notes and results. The proxy (parent/guardian) will not be able to view the teen's clinical notes within the proxy MHO account.

57. Does the new law impact our obligation to protect adolescent confidentiality?

No, we are still obligated to protect adolescent confidentiality by California state law.

58. Sometimes a teen's proxy will use the teen's username and password to access health information, even though this is not what we recommend nor what they agreed to. What steps will we take to ensure that adolescents know this change is coming so they can proactively increase the security of their accounts?

Prior to Oct. 29, 2020, an email communication will be sent to the personal email address of all teen MHO account owners with information about this upcoming change and directions on how to change their password, if necessary, to protect the privacy of their information. Providers are also encouraged to discuss this with their teen patients to help prepare them for this change.

Patients over 18 years old:

59. Which notes and results will proxies be able to see in MHO for patients >18 years of age?

Proxies will have the same MHO access as the patient. Both will be able to see all notes and results.

60. Is there a way to block notes or results from being shared to the proxy, but not the patient?

No. There is no current functionality to provide different access between patient and proxy MHO accounts.

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How Do I Support My Patients With This Change?

61. How will this release of information affect my patients?

Patients have been able to request their paper medical records from HIM under HIPAA regulations. The new Cures Act regulation makes the patient notes and results information available electronically and more conveniently through MHO.

62. How will patients become aware of this change?

There will be no active notification sent to patients about this change. Beginning Oct. 29, 2020, patients will be able to view historical notes and results within their MHO accounts. The following will be included in all After Visit Summaries (AVS): *"Results for any tests that were ordered during your visit will be available to you in My Health Online as soon as they are finalized. This means you may see a result before your provider has had a chance to review it. We ask that you wait for your provider or your clinical team to contact you (typically 3-6 business days) to discuss any interpretation of the results."*

There will also be similar verbiage within the MHO Test Results page where patients will be able to view their actual result.

Patient information related to this new regulation will be available on the [Sutter Health MHO FAQ website](#).

63. How will patients receive the notes and results if they're not enrolled in My Health Online?

Patients should be encouraged to enroll in MHO. Information on how to enroll can be found on the [Sutter MHO Wiki site](#). If a patient does not have access to MHO, they can request copies of their information through HIM.

64. Is there someone to whom we can direct patients to answer their questions?

Patients should be encouraged to discuss content within the notes and results with the author of the note, or the ordering provider. Additional questions can be referred to their primary care providers.

65. Will patients be told they can change the notes if they ask their doctor to do so?

No. However, patients may still make such requests. If the change is appropriate, you can amend the note to make it more accurate. In any circumstance, you can also direct the patient to the HIM Department at the affiliate where he/she received service. HIM will work with you on the requested change.

66. Will there be guidance for patients if they have concerns about results after 5 p.m. on Friday or over the weekend?

Not specifically. Providers are encouraged to set expectations with patients during the clinical visit regarding notes and results. As noted above, After Visit Summaries and the MHO website will contain verbiage notifying patients that providers may not immediately review results. The Call Centers may be able to assist with scheduling the patient for a follow-up visit, and or sending a message to the care team.

67. Will patients be given a general guide to notes and clinical terminology?

[MedlinePlus](#) provides explanations of common abbreviations automatically linked to terms on MHO to help patients better understand medical jargon. Clinicians are encouraged to share this useful tool with their patients.

68. How do I rephrase notes to be more patient-friendly?

Read these OpenNotes [tips](#) for writing patient-friendly clinical notes. For further suggestions, you may wish to review this paper published in the [American Journal of Medicine](#).

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[Resources and Links](#)

Information Blocking

Per the [HealthIT.gov website](#), the specific definition of information blocking *is a practice by a health IT developer of certified health IT, health information network, health information exchange, or health care provider that, except as required by law or specified by the Secretary of Health and Human Services (HHS) as a reasonable and necessary activity, is likely to interfere with access, exchange, or use of electronic health information (EHI)*. This website provides specific and clear information about the new regulation.

ONC's Cures Act Final Rule

ONC, or The Office of the National Coordinator for Health Information Technology, announced the [Final Rule](#) of the 2016 Cures Act earlier this year, requiring clinicians to electronically release most clinical notes and test results as of Nov. 2, 2020. Sutter Health will comply by Oct. 29, 2020.

OpenNotes

OpenNotes is the international movement supporting and studying the effects of transparent communication. It helps patients, families, doctors, nurses, therapists and others to prepare and share meaningful notes describing a telehealth or office visit. This [OpenNotes website](#) provides valuable information for providers and patients alike.

Sutter Clinician Resources Page

OpenNotes and Results - Resource Page for Clinicians: This [Clinician Resource Page](#) is intended for all clinicians who care for Sutter patients, and can be opened from inside or outside the Sutter network.

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