

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

December 9, 2018

To: Subcommittee on Health Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Hearing on “Implementing the 21st Century Cures Act: An Update from the Office of the National Coordinator”

On **Tuesday, December 11, 2018 at 10:15am in Room 2322 of the Rayburn House Office Building**, the Subcommittee on Health will hold a hearing titled “Implementing the 21st Century Cures Act: An Update from the Office of the National Coordinator.”

I. THE 21st CENTURY CURES ACT

The bipartisan 21st Century Cures Act (Cures Act) was signed into law on December 13, 2016.¹ The law consists of three divisions: Division A – 21st Century Cures Act; Division B – Helping Families in Mental Health Crisis; and Division C – Increasing Choice, Access, and Quality in Health Care for Americans. The purpose of the hearing is to discuss the status of Division A provisions being implemented by the Office of the National Coordinator for Health Information Technology (ONC). These provisions aim to promote the adoption, use, and interoperability of electronic health records (EHRs). Please refer to the [bipartisan summary](#) of the 21st Century Cures Act for more information on each section of the law.²

A. Implementation Status of Sections 4001-4008 of the Cures Act

¹ Pub. L. No. 114-255.

² Summary of the 21st Century Cures Act prepared by bipartisan Committee staff (<https://rules.house.gov/sites/republicans.rules.house.gov/files/114/PDF/114-SAHR34-Sxs.pdf>); See also Congressional Research Service, *The 21st Century Cures Act, Division A of P.L. 114-255* (Dec. 23, 2016) (<http://www.crs.gov/Reports/R44720?source=search&guid=7b425d8813284929a0dd74dbc7947b80&index=0>).

In January 2018 ONC established the Health Information Technology Advisory Committee (HITAC)³ and released for public comment a draft Trusted Exchange Framework and Common Agreement (TEFCA) as required by Section 4003.⁴ Among other topics, HITAC informs ONC's work on TEFCA and interoperability. HITAC is also charged with producing an annual progress report. TEFCA is intended to establish principles and conditions necessary for the trusted exchange of health information between providers. ONC is in the process of selecting a Recognized Coordinating Entity (RCE) that will act as a governing body for TEFCA.

As part of its implementation of Section 4006, in April 2018 ONC announced the *Get It, Check It, Use It* campaign⁵ and released, in partnership with the Office for Civil Rights (OCR), *The Guide to Getting & Using Your Health Records*.⁶ These resources are intended to help inform patients of their rights under the Health Insurance Portability and Accountability Act (HIPAA) as well as options for managing their records such as through secure mobile apps.

In May 2018 the Government Accountability Office (GAO) released a report examining barriers to patient access to health information as required by Section 4008.⁷ Under HIPAA patients have a right to request a copy of their medical records, however, providers are permitted to charge a "reasonable, cost-based fee" when providing such records. GAO's report found that some patients incurred excessive fees when trying to obtain their records.

In August 2018 ONC issued a request for information on the EHR Reporting Program which ONC was instructed to establish under Section 4002. ONC has since reviewed comments and will designate a contractor to implement the program, which is intended to help providers choose an EHR by comparing different EHRs on criteria such as usability, interoperability, and security.

On November 28, 2018 ONC, in partnership with the Centers for Medicare and Medicaid Services (CMS), released for public comment a draft *Strategy on Reducing Regulatory and Administrative Burden Relating to the Use of Health IT and EHRs* as required by Section 4001. The final strategy is expected to be published late 2019.

³ Office of the National Coordinator for Health IT (ONC), *Health Information Technology Advisory Committee (HITAC)* (<https://www.healthit.gov/hitac/committees/health-information-technology-advisory-committee-hitac>).

⁴ ONC, *Draft Trusted Exchange Framework* (Jan. 5, 2018) (<https://www.healthit.gov/sites/default/files/draft-trusted-exchange-framework.pdf>).

⁵ ONC, *Get it. Check it. Use it.* (<https://www.hhs.gov/hipaa/for-individuals/right-to-access/index.html>).

⁶ ONC, *The Guide to Getting & Using Your Health Records* (<https://www.healthit.gov/how-to-get-your-health-record/>).

⁷ Government Accountability Office (GAO), *Medical Records: Fees and Challenges Associated with Patients' Access* (May 2018) (GAO-18-386) (<https://www.gao.gov/assets/700/691737.pdf>).

Outstanding Cures Act deliverables include the proposed rule on reasonable and necessary activities that do not constitute information blocking and certification requirements for developers under the ONC Health IT Certification Program as required by Sections 4002 and 4004. GAO will also release a report on the issue of patient matching as required under Section 4007.

II. WITNESS

Don Rucker, M.D.

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