


2023
BUSINESS IN 2022
WEEKLY WEBINAR SERIES

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2021
2020
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1

**Introduction, COVID and Other Public Health Updates,
Healthcare Worker Bonus/Education Portal Updates**



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2

TODAY'S AGENDA

Gabe Oberfield – (12:00PM-12:05PM)

- Intros / Agenda
- Healthcare Updates

Tom Eron – (12:05PM-12:15PM)

- Comments on Presentation by Nat'l Labor Relations Board General Counsel Jennifer Abruzzo

Shannon Knapp (12:15PM-12:25PM)

- Cybersecurity Awareness Month: Best Practices

Dustin Dorsino (12:25PM-12:35PM)

- NYS Green Lights Personal Cultivation of Medical Cannabis

Travis Talerico – (12:35-12:45PM)

- Expanded Information Blocking Rules Go Into Effect

G. Oberfield – (12:45PM)

- Fielding Open Questions and Final Remarks



3

COVID-19 Updates

Sources: [hhs.gov](https://www.hhs.gov/); [CBSnews.com](https://www.cbsnews.com/);

- Public Health Emergency Extended
 - Reauthorized 10/13/22
- Concerns about New Sub-Variant Risks
 - BQ.1 and BQ.1.1
 - "Qualities or characteristics that could evade some of the interventions we have," per Dr. Anthony Fauci
 - XBB
- Vaccines
 - Approval for children as young as 5 years to receive boosters

CDC Expands Updated COVID-19 Vaccines to Include Children Ages 5 Through 11

[Print](#)

Media Statement

For Immediate Release: Wednesday, October 12, 2022
Contact: Media@cdc.gov
(404) 639-3286

Today, CDC's Director Rochelle P. Walensky, M.D., M.P.H., signed a decision memo expanding the use of updated (bivalent) COVID-19 vaccines to children ages 5 through 11 years. This follows the Food and Drug Administration's (FDA) authorization of updated COVID-19 vaccines from Pfizer-BioNTech for children ages 5 through 11 years, and from Moderna for children and adolescents ages 6 through 17 years.



NIAID Director Anthony S. Fauci, M.D.
Credit: NIAID

RENEWAL OF DETERMINATION THAT A PUBLIC HEALTH EMERGENCY EXISTS

As a result of the continued consequences of the Coronavirus Disease 2019 (COVID-19) pandemic, on this date and after consultation with public health officials as necessary, I, Xavier Becerra, Secretary of Health and Human Services, pursuant to the authority vested in me under section 319 of the Public Health Service Act, do hereby renew, effective October 13, 2022, the January 31, 2020, determination by former Secretary Alex M. Azar II, that he previously renewed on April 21, 2020, July 23, 2020, October 2, 2020, and January 7, 2021, and that I renewed on April 15, 2021, July 19, 2021, October 15, 2021, January 14, 2022, April 12, 2022, and July 15, 2022, that a public health emergency exists and has existed since January 27, 2020, nationwide.

October 13, 2022

/s/

Date

Xavier Becerra



4

NYS Healthcare and Mental Hygiene Worker Bonus Program Updates

Source: New York State Dept. of Health



- 'Vesting Period Two' is open – and closes on 10/31/22
- Providers in education now can access the portal
- New FAQ content issued yesterday

NYS Healthcare Worker Bonus Program
Frequently Asked Questions (FAQ)
[Last Updated 10/17/2022](#)

FAQ Table of Contents

- [General](#)
- [Attestation](#)
- [Eligibility \(Qualified Employers\)](#)
- [Education Sector Employers](#)
- [Tax Questions](#)
- [Payment Issuance](#)
- [Eligibility \(Employees\)](#)
- [Portal Registration and Claims Submission](#)
- [Employee Separation](#)
- [Enforcement](#)
- [Help and Support](#)



5

Comments on Presentation by NLRB General Counsel



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6

Cybersecurity Awareness Month: Best Practices



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7

NYS Green Lights Cultivation of Medical Cannabis



Dustin M. Dorsino

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8

Legislative Background

- Office of Cannabis Management (OCM) proposed regulations on June 8
- Public comment period closed July 25
- Final regulations approved by Cannabis Control Board on October 5



9

Who Can Grow Cannabis?

- Certified patients – 21+ and registered with OCM
 - Must be certified by a doctor who has taken the required training course(s)
 - Requires a “serious medical condition” such as ALS, Parkinson’s, MS, PTSD, or “any other condition at the discretion of a certified doctor”
- Designated caregivers – 21+ and registered with OCM
 - Can grow for patients under the age of 21 or for those whose “physical or cognitive impairments prevent them from cultivating cannabis”
 - Can grow for up to 4 patients, but only 1 person can grow on behalf of a single patient
 - Patients can also serve as caregivers for other patients



10

Where and How Much Can I Grow?

- Where: the patient's or caregiver's "private residence"
 - Any building or part of a building, or structure designed and occupied for **residential purposes only**
 - Patients and caregivers can only grow where they primarily reside
- How Much?
 - Max for any one patient – 3 immature and 3 mature plants
 - Max at any private residence – 6 immature and 6 mature plants



11

What Can't I Do?

- Possess more than 5 lbs. of cannabis (not including plants)
- Grow in places that are plainly visible to public view
- Sell or offer for sale any cannabis or cannabis plants
- Caregivers can't charge a patient for home cultivation, but may be reimbursed for costs and expenses incurred
- Process home-grown cannabis using any liquid or gas that has a flashpoint below 100 degrees Fahrenheit, other than alcohol.



12

Expanded Information Blocking Rules Go Into Effect



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13

Cures Act Information Blocking

- Went into effect on April 5, 2021, codified at 45 C.F.R. §171.1, §171.2, and § 171.3.
- The stated purpose of the information blocking provisions of the Cures Act is to increase transparency between health care providers and their patients, cut costs, improve care, and allow faster access for patients to access their records. There is commentary in the Final Rule such as setting a goal of patients being able to see their test results concurrently when they are released to their doctors, and that EHI should be available for patients “when and where they want it.”



14

Cures Act Information Blocking

- What is information blocking?
- According to the Cures Act, it is a “practice that is likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information.”



15

Cures Act Information Blocking

- Who is subject to these provisions?
- Healthcare Providers, Developers of Certified IT, and Health Information Networks and Exchanges.
- “Health care provider” includes a hospital, skilled nursing facility, nursing facility, home health entity or other long term care facility, health care clinic, community mental health center, renal dialysis facility, blood center, ambulatory surgical center, emergency medical services provider, federally qualified health center, group practice, a pharmacist, a pharmacy, a laboratory, a physician, a practitioner, a provider operated by, or under contract with, the Indian Health Service or by an Indian tribe, tribal organization, or urban Indian organization, a rural health clinic, a covered entity under Section 340B, a therapist, and any other category of health care facility, entity, practitioner, or clinician determined appropriate by the HHS Secretary.



16

Cures Act Information Blocking

- What is required of providers?
- In sum, the Cures Act requires health care providers to allow access to their EHI in real-time, without having to go through the delayed procedures of requesting records or test results, with a delay for the patient in getting their information. In practice, this could mean a patient would be able to access their EHI such as test results in parallel to the availability of the test results to the ordering clinician.
- The Act does not specify exactly what type of mediums a provider must use in order to satisfy this instantaneous access, but seems to strongly encourage use of portals and apps to allow patients to access their EHI, with API's appearing to be the preferred method of access.



17

Cures Act Information Blocking

- The Cures Act does not require a provider to take any proactive measures to provide EHI to their patients who have not requested it. However, if a patient requests their EHI, the provider must have a system in place to be able to readily provide that information in a timely manner. A delay in the release or availability of EHI in response to a request for legally permissible access, exchange, or use of EHI may be an interference under the information blocking regulations. If the delay were to constitute an interference under the information blocking regulations, an actor's practice or actions may still satisfy the conditions of an exception under the information blocking regulations (45 CFR 171.200-303).



18

Cures Act Information Blocking

- What is EHI?
- Prior to October 6, 2022, ONC defined EHI as the data elements in the United States Core Data for Interoperability (USCDI) standard. Almost all USCDI data elements are already captured in 2015 Edition certified EHRs today – which means that the information blocking policies will apply to the information that is likely available on an actor's system.
- Prior to October 6, 2022, these data elements were limited to consultation notes, discharge summary notes, history & physical notes, imaging narratives, laboratory report narratives, pathology report narratives, procedure notes, and progress notes.



19

Cures Act Information Blocking

- As of October 6, 2022, the EHI definition now the full HIPPA electronic designated data set. Any health information which is in the possession of a provider but not maintained electronically, is still subject to the relevant HIPPA requirements.
- Specifically, the definition of EHI is now broadened to include EHI as defined in 45 C.F.R. §171.02 – which essentially means all individually identifiable health information which is transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium, subject to several exceptions.



20

Cures Act Information Blocking

- Penalties?
- At the moment, there are still not any sort of defined penalties for noncompliance with these provisions of the Cures Act for providers, other than generalized references to “disincentives”



21

Questions?



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22

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Expanded Information Blocking Rules Go into Effect

Travis Talerico, ttalerico@bsk.com

New York Employment Law: The Essential Guide

NYS Bar Association Members can buy the book from the bar [here](#).

Non-NYS Bar Association Members can purchase through Amazon [here](#).



23

Thank You

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It is not to be considered as legal advice.

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24