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3 **Title:** Release of Sensitive Information  
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5 **Introduced by:** Jerome Seid, MD, FACP, for the Michigan Society of Hematology and  
6 Oncology  
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8 **Original Author:** Jerome Seid, MD, FACP  
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10 **Referred To:** Reference Committee B  
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12 **House Action:** **APPROVED AS AMENDED**  
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15       Whereas, patients' active participation in their health care is critical to good outcomes and  
16 predicated on access to their health information, not limited to laboratory test results, and  
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18       Whereas, the federal 21st Century Cures Act requires that patients receive health  
19 information without delay, and  
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21       Whereas, the immediate release of sensitive and confusing information to patients can  
22 occur without the treating or ordering physicians' knowledge or interpretation, and  
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24       Whereas, the immediate release of health information via electronic means (e.g., patient  
25 portals) can precipitate emotional and physical injury to patients who are not properly prepared to  
26 receive and interpret such information without assistance from their physician or other health care  
27 practitioner, and  
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29       Whereas, violation of the information blocking provision of the 21st Century Cures Act can  
30 result in civil and monetary penalties for physicians, information technology developers, and health  
31 care networks/systems, and  
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33       Whereas, the American Medical Association unsuccessfully advocated for the inclusion of a  
34 "common sense exception" to the 21st Century Cures Act and failed to gain the support of the  
35 National Coordinator for Health Information Technology for such an exemption, and  
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37       Whereas, there is a provision in the 21st Century Cures Act that provides an exception to  
38 the Act's immediate release of information requirement for physicians and other clinicians who are  
39 in a state with a state law that requires a delay on release of certain information, and  
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41       Whereas, legislation instituting reasonable timelines for the release of certain sensitive  
42 information has been passed in California, Kentucky, and Texas; therefore be it  
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44       RESOLVED: That MSMS supports the imposition of a reasonable time period before certain  
45 sensitive health information is required to be released to patients to prevent unnecessary  
46 emotional and physical harm or stress to patients from receiving such information without the  
47 benefit of a discussion with their physician or other health care practitioner; and be it further;  
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49 RESOLVED: That MSMS actively identify and work with partners, including patient advocacy  
50 groups, to draft legislation that establishes a reasonable time before certain sensitive health  
51 information is released in order to 1) protect patients from harm, and 2) avoid potential for  
52 federally stipulated monetary penalties to providers who are considered to be in violation of the  
53 information blocking provision of the 21st Century Cures Act; and be it further

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55 RESOLVED: That MSMS continues to update and provide educational resources for  
56 physicians and their practices to help them maintain compliance with the 21st Century Cures Act.  
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59 WAYS AND MEANS COMMITTEE FISCAL NOTE: \$16,000-\$32,000

**Relevant MSMS Policy** - None

### **Relevant AMA Policy**

#### **Redefining the Definition of Harm D-315.972**

Our AMA will: (1) advocate to the Office for Civil Rights to revise the definition of harm to include mental and emotional distress. Such a revision would allow additional flexibility for clinicians under the Preventing Harm Exception, based on their professional judgement, to withhold sensitive information they believe could cause physical, mental or emotional harm to the patient; (2) advocate that the Office for Civil Rights assemble a commission of medical professionals to help the office review the definition of harm and provide scientific evidence demonstrating that mental and emotional health is intertwined with physical health; (3) continue to urge the Department of Health and Human Services (HHS)'s Office of the National Coordinator for Health Information Technology (ONC) and its Office of Inspector General (OIG) to leverage their enforcement discretion that would afford medical practices additional compliance flexibilities; and (4) urge the ONC to earnestly consult with relevant stakeholders about unintended or unforeseen consequences that may arise from the information blocking regulations.

#### **Sources:**

1. Arnold SM, Allison CL, Bernard P: Tempering the 21st Century Cures Act: Physicians, policy advocacy and Kentucky's solution
2. JCO Oncology Practice 18:603-605, 2022 Gerber DE: 21st Century Cures Act: Implementation without understanding implication?
3. JCO Oncology Practice 18:85-87, 2022 Gerber DE: Taking it to the States: Adapting Information Blocking Legislation to Oncology.
4. Journal of Clinical Oncology Ofri D The curious side of medical transparency.
5. The New Yorker, April 29, 2023 Danielle Friedman Your Medical Test Results Are Available. But Do You Want to View Them? New York Times Oct 3, 2022