



# What you need to know about Information Blocking

## Information Blocking Background:

In March 2019, the Office of the National Coordinator for Health Information Technology (ONC) issued a Proposed Rule, 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program and released a final rule in March 2020. The 21st Century Cures Act (Cures) is a landmark bipartisan health care innovation law enacted in December 2016. Cures includes provisions to promote health information interoperability and prohibit information blocking by “Actors,” which are defined as health information networks (HINs), health information exchanges (HIEs), health information technology developers of certified health IT, and health care providers. Information Blocking is one of the key principles of the 21st Century Cures Act and it applies to health care providers, like NCHS. The new rules will have an impact on how our organization operates and how it interacts with our patients.

Below are key points on Information Blocking:

## What is Information Blocking?

Cures defines Information Blocking as business, technical, and organizational practices that prevent or materially discourage the access, exchange or use of electronic health information (EHI) when an Actor knows that these practices are likely to interfere with access, exchange, or use of EHI. If conducted by a health care provider, there must be knowledge that such practice is unreasonable and likely to interfere with, prevent, or materially discourage access, exchange, or use of EHI. In other words, information blocking is any action or practice that interferes with a patient's access to their medical data.

## What is EHI?

EHI is defined as the electronic protected health information (ePHI) in a designated record set. The Health Insurance Portability and Accountability Act (HIPAA) defines the designated record set as typically including:

- Medical records and billing records about individuals;
- Other records used, in whole or in part, by physicians to make decisions about individuals.

## What are the Exceptions to Information Blocking?

The exceptions allow providers, developers and health networks to comply with other legitimate business practices – even though some may technically be viewed as information blocking. Cures requires exceptions to be considered on an individual, case by case basis, and documented individually. The specific facts and circumstances associated with a decision to use an exception will be important to include in the documentation. The eight exceptions fall into one of these categories:



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1. Denial exceptions, or providing a variety of reasons why a request for EHI access, exchange or use is denied
2. Approval and process exceptions that involve procedures for fulfilling a request for access, exchange or use

## **Exceptions that involve not fulfilling requests to access, exchange, or use EHI:**

- × Preventing Harm Exception
- × Privacy Exception
- × Security Exception
- × Infeasibility Exception (tighter deadline for compliance)
- × Health IT performance Exception

## **Exceptions that involve procedures for fulfilling requests to access, exchange, or use EHI**

- ✓ Content and Manner Exception
- ✓ Fees Exception
- ✓ Licensing Exception

## **What is the scope of information considered in the Information Blocking Rule?**

Starting **April 5, 2021**, provisions of this rule will apply to all Actors. To promote interoperability and to offer a minimum acceptable standard with which Health IT systems can support information exchange, ONC has prescribed the USCDI (United States Core Data for Interoperability) which includes important clinical information about patients that needs to be included in any information access request response. USCDI serves as the scope of Information or EHI with respect to Information Blocking until **10/05/2022**. After this date, the scope of EHI expands to cover all aspects of **designated record set** as defined by HIPAA.

## **How will the prohibition on Information Blocking be enforced?**

Actors found to engage in activity/activities that constitute Information Blocking, will be subject to investigation by HHS Office of Inspector General (OIG) and potentially face civil monetary penalties (CMPs). The OIG's proposed rule on interoperability allow the OIG to impose CMPs—up to \$1 million per violation—on those actors found to have knowingly interfered with the access, use or exchange of EHI. Hence, it is important to fully understand the scope of this rule and ensure that necessary processes are in place to support the requirements of this regulation.



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## NCHS Next Steps

In preparation for this new rule, NCHS' IT Department and Clinical and Operational leadership, is preparing to create governance processes and policies to ensure successful implementation. Stay tuned for more information in the next couple of weeks.

For more information, please contact the Ethics and Compliance Department @ 786-624-3838 or by email [EthicsandCompliance@nicklaushealth.org](mailto:EthicsandCompliance@nicklaushealth.org).

As a reminder, reports of any PHI or potential violations of NCHS policies and procedures can be made to the Compliance Hotline (888) 323- 6248 or reported directly to the NCHS Privacy Officer, Helen Blake.