
Information Blocking

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Oregon
Health
Authority

Definition of Information Blocking

<https://www.congress.gov/bill/114th-congress/house-bill/34/text>

Section 4004:

- (1) In general.-- In this section, the term ‘information blocking’ means a practice that--
- (A) except as required by law or specified by the Secretary pursuant to rulemaking under paragraph (3), is likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information; and
- (B)(i) if conducted by a health information technology developer, exchange, or network, such... knows, or should know, that such practice is likely to interfere with, prevent, or materially discourage the access, exchange, or use of electronic health information; or
- (ii) if conducted by a health care provider...

Definition of Information Blocking (cont.)

- (2) Practices described.-- The information blocking practices... may include—
- (A) practices that restrict authorized access, exchange, or use under applicable State or Federal law... for treatment and other permitted purposes... including transitions between certified health information technologies;
 - (B) implementing health information technology in nonstandard ways that are likely to substantially increase the complexity or burden of accessing, exchanging, or using electronic health information; and
 - (C) implementing health information technology in ways that are likely to--
 - (i) restrict the access, exchange, or use...; or
 - (ii) lead to fraud, waste, or abuse, or impede innovations and advancements...

Purpose of Exceptions

- (3) Rulemaking.-- The Secretary, through rulemaking, shall identify reasonable and necessary activities that do not constitute information blocking for purposes of paragraph (1).
- (4) No enforcement before exception identified.
 - ONC rulemaking established April 5, 2021 as the compliance date.

Examples

- It is not information blocking if a provider does not share information because a patient would not authorize them to do so.
- It is not information blocking if an HIE disabled exchange for 15 minutes for scheduled routine maintenance.

Penalties for Information Blocking

- (1) In general.--The inspector general of the Department of Health and Human Services may investigate any claim that-- (A) a health information technology developer...; (B) a health care provider...; or (C) a health information exchange or network engaged in information blocking.
- (2) Penalties.--
 - (A) Developers, networks, and exchanges.-- Any individual or entity that the Inspector General... determines to have committed information blocking shall be subject to a civil monetary penalty determined by the Secretary... which may not exceed \$1,000,000 per violation.
 - Neither the Secretary nor the OIG have finalized rulemaking to establish civil monetary penalties.

Exceptions to Information Blocking

<https://www.healthit.gov/topic/information-blocking>

The infographic is a large graphic with a blue background, divided into three horizontal sections. A large yellow number '8' is centered in the middle. The top section is a lighter blue and contains three icons: a person being held, a hand holding a key, and a padlock. The middle section is a darker blue and contains two icons: a speech bubble with an 'X' and a smartphone with signal waves. The bottom section is the darkest blue and contains three icons: a hand holding a lightbulb, a bar chart with a dollar sign, and an envelope. Text boxes describe the categories of exceptions.

PREVENTING HARM EXCEPTION

PRIVACY EXCEPTION

SECURITY EXCEPTION

EXCEPTIONS THAT INVOLVE not fulfilling requests to access, exchange, or use EHI

8

EXCEPTIONS TO THE INFORMATION BLOCKING PROVISION

INFEASIBILITY EXCEPTION

HEALTH IT PERFORMANCE EXCEPTION

LICENSING EXCEPTION

FEE EXCEPTION

CONTENT AND MANNER EXCEPTION

EXCEPTIONS THAT INVOLVE procedures for fulfilling requests to access, exchange, or use EHI

Exceptions to Information Blocking

<https://www.healthit.gov/cures/sites/default/files/cures/2020-03/InformationBlockingExceptions.pdf>

- An actor's practice that does not meet the conditions of an exception will not automatically constitute information blocking
- Practices will be evaluated on a case-by-case basis to determine whether information blocking has occurred
- In general, exceptions must meet “practices that are reasonable and necessary” and “provided certain conditions are met” tests