Pennsylvania Coalition of Affiliated Healthcare & Living Communities

Practical Application of Information Blocking and Interoperability Rules

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Disclaimer

This presentation, and any ensuing discussion, does not constitute as legal advice and does not establish an attorney-client relationship.

This presentation provides general information and is merely intended for educational purposes and does NOT override your need to exercise sound professional judgement in specific circumstances.

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Information Blocking 101

Information Blocking Defined

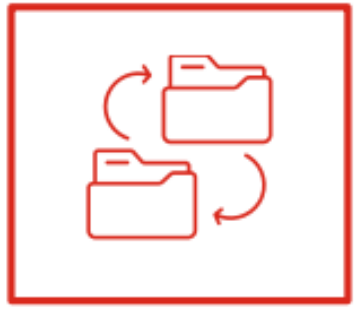
- Cures defines “information blocking” as ***practices*** that:
  - Prevent or materially discourage the access, exchange or use of electronic health information (EHI); and
  - For which the ***Actor*** knows, or [for some actors] should know, are likely to interfere with EHI access, exchange or use

Actors Subject to Information Blocking

Who are the "actors" covered by information blocking?

Health Care Providers

Health IT Developers of Certified Health IT



Health Information Networks (HIN)/ Health Information Exchanges (HIE)

Definition of Electronic Health Information

- Up to October 6, 2022: EHI is represented by the data elements in the United States Core Data for Interoperability (USCDI)
  - https://www.healthit.gov/isa/sites/isa/files/2020-10/USCDI-Version-1-July-2020-Errata-Final_0.pdf

- On and after October 6, 2022: EHI includes electronic protected health information that would be included in a designated record set as defined by HIPAA

Information Blocking Revolves Around Practices

- Information blocking practices may include:
- Restricting authorized access, exchange or use of EHI
- Implementing health IT in nonstandard ways
- Implementing health IT in ways that are likely to:
  - Restrict access, exchange or use of EHI, including for exporting complete information sets or transitioning between health IT systems; or
  - Lead to fraud, waste, or abuse, or impeded innovations and advancements in access, exchange and use

PREVENTING HARM EXCEPTION
PRIVACY EXCEPTION
SECURITY EXCEPTION
EXCEPTIONS THAT INVOLVE not fulfilling requests to access, exchange, or use EHI
INFEASIBILITY EXCEPTION
HEALTH IT PERFORMANCE EXCEPTION
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EXCEPTIONS TO THE INFORMATION BLOCKING PROVISION
LICENSING EXCEPTION
COSTS EXCEPTION
CONTENT AND MANNER EXCEPTION
EXCEPTIONS THAT INVOLVE procedures for fulfilling requests to access, exchange, or use EHI

Information Blocking: Penalties and Enforcement

- Health care providers: Enforcement by CMS and HHS OIG based on CMS incentive program attestations – penalties for false attestations
  - –Other disincentives

- Health IT Developers and HIEs/HINs: Enforcement by ONC and/or HHS OIG—Penalties for not meeting certification conditions or false attestations (certified health IT developers) and up to $1 million civil monetary penalties (CMPs) per violation (developers, HIEs, HINs)

Practical Scenarios

Scenario 1: Obtaining Data from Hospital

Our SNF has been trying to improve transitions of care from Hospital. One issue is receiving data—timely and complete data. Our head of IT shared that this Information Blocking Rule took effect last week.

Can we ‘use’ this rule to get information?

Scenario 2: Attorney Medical Request Delayed

Attorney asks for electronic documents for a patient treated in the ALF for the SNF. Records not received in several days. Attorney claims SNF is creating unnecessary delays that limit timeliness of access to EHI.

Is the attorney correct?

Scenario 3: Lab Report Access to POA/Patient

Physician in our SNF orders a lab test. Results come back in the afternoon and POA wants results. MD asked us not to share the results until they see them first.

Is this information blocking?

Scenario 4: Changing EHR Vendors

SNF is changing EHR vendors & wants electronic download of data from current vendor. Vendor says they can only provide info in PDF, even though they have a way to electronically share data with others.

Is this information blocking?

Scenario 5: HIPAA Requirements

Resident discharged from SNF and returning home. Also going to Senior Center for ‘Adult Day Care Services’. Senior Center requests medical information from SNF and SNF says not able to send, claiming this is due to HIPAA.

Is this information blocking?

Tips and Tools to ensure Compliance

Key Takeaways

- Identify your actor type and review ONC regulations
- Examine how you currently respond to requests for EHI
- Review and update your personnel and training policies and procedures
- Review and update data access and compliance policies
- Evaluate your IT system
- Evaluate your vendors
- Review and update your vendor and contractor agreements
- Identify ways to make compliance easier and data sharing more consistent

Resources

- ONC final rule and accompanying resources: https://www.healthit.gov/curesrule/
- ONC Information Blocking Definitions: https://www.healthit.gov/sites/default/files/cures/2020-03/InformationBlockingActors.pdf
- APTA Resources: https://www.apta.org/your-practice/compliance/health-information-technology-and-patient-privacy/information-blocking
- Reference Tool to Educate and Assist Provider Organizations Subject to the Information Blocking Rule: https://infoblockingcenter.org/

Thank You!

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