

## Federal Rules on Information Blocking, Interoperability, and Price Transparency What Providers Need to Know

A series of rulemaking from the Centers for Medicare and Medicaid Services (CMS) and the Office of the National Coordinator (ONC) has set the stage for patients to have unprecedented access to healthcare information. While health IT vendors, insurance payers, and hospitals are more impacted by these changes, providers should be aware of the general provisions of these recent rules.

### ONC Information Blocking Rule

This rule implements certain provisions of the 21<sup>st</sup> Century Cures Act (Cures Act) meant to advance interoperability and support the access, exchange, and use of electronic health information (EHI). In short, the Cures Act requires patients be provided access to all the health information in their electronic medical records without charge by their healthcare provider. At the provider level, key components of this rule establish new federal penalties to discourage the practice of ‘information blocking’, identifies eight exceptions to the rule, and defines the individuals and entities who are ‘covered actors’ eligible for such penalties. Information blocking policies apply to EHI datasets defined by the [US Core Data and Interoperability \(USCDI\) standard](#) but the rule expands covered EHI to eventually include the full HIPAA electronic designated data set in 2022.

#### ***What is information blocking?***

Information blocking is anything that interferes with, prevents, or materially discourages access, exchange, or use of electronic health information (EHI). For example - failing to respond appropriately to another provider’s request to establish access, exchange or use of EHI could constitute as information blocking.

The ONC has defined eight exceptions to information blocking, available [HERE](#).

Each reported instance will be investigated by HHS on a case-by-case basis so failure to meet the exception criteria does not automatically constitute information blocking.

#### ***What does this mean for providers?***

Information blocking rules now apply to all data elements defined by the USCDI standard and patients must have access to all health information in their electronic medical record. Included in the USCDI standard is a data set of ‘clinical notes’ which cover the following data types:

- Consultation notes
- Discharge summary notes
- History and physical
- Imaging narratives
- Lab report narratives
- Pathology report narratives
- Procedure notes
- Progress notes

Providers will need to review current workflows and policies for potential conflicts with the ONC's definition of information blocking.

This may pose a challenge for specialties, like Radiology, where practices may have internal procedures on when information is made available to ordering providers versus patients. The ONC released FAQ guidance that this practice would **likely** be considered an interference to the access or exchange of information:

*“It would **likely** be considered an interference for purposes of information blocking if a health care provider established an organizational policy that, for example, imposed delays on the release of lab results for any period of time in order to allow an ordering clinician to review the results or in order to personally inform the patient of the results before a patient can electronically access such results.”*

However, there is no requirement under the information blocking regulations to proactively make available any EHI to patients or others who have not requested the EHI. All providers should respond to requests for EHI in a timely manner to safeguard against information blocking issues.

#### ***What is the timeline for compliance?***

ONC information blocking rules are applicable as of April 5<sup>th</sup>, 2021, but enforcement of the rules will depend on future HHS rulemaking when disincentives are established for 'bad actors' who violate the rules.

## **CMS Interoperability Rule**

The CMS final rule on interoperability creates new data-sharing standards for payers participating in Medicare Advantage (MA), Medicaid, CHIP and the Federally-facilitated Exchanges (FfEs). The rule modifies the Medicare Conditions of Participation (CoPs) to require hospitals to electronically notify a patient's primary care provider when a patient is admitted, discharged, or transferred.

CMS believes that these measures will improve care coordination by allowing a receiving provider, facility, or practitioner to reach out to the patient and deliver appropriate follow-up care in a timely manner.

***What does this mean for providers?***

Providers will start receiving notifications from hospitals when their patient is admitted, transferred, or discharged. Hospitals and payers are responsible for complying with enhanced data-sharing standards under the rule. Due to the COVID-19 pandemic, the implementation of this rule has been pushed back to **July 1<sup>st</sup>, 2021**.

## **CMS Price Transparency Rules**

These rules aim to allow the public to have greater insight into healthcare costs by requiring hospitals and insurance payers to disclose pricing information on healthcare services. Payers are required to make the information available through an online, self-service tool, including in-network rates, out-of-network charges and allowed amounts, and prescription drug pricing.

Hospitals are required to disclose their standard charges, including negotiated rates with third-party payers in a machine-readable format and display pricing information for 300 'shoppable services' that patients can schedule in advance. Hospitals that fail to comply will be charged a fine of \$300 dollars per day.

***What does this mean for providers?***

As this rule applies to hospitals and insurance payers, providers have no obligations for compliance but should be aware of the unprecedented access to healthcare cost information that is available to patients under the rule. These rules were effective starting January 1<sup>st</sup>, 2021.

## **Recommended Actions**

**ONC Information Blocking Rule** – Providers should educate themselves on what constitutes as information blocking and assess current workflows/policies for potential conflicts. Responding to requests related to accessing, exchanging, or using EHI in a timely manner will help safeguard against possible violations. For the ONC's FAQs on the Information Blocking Rule – [CLICK HERE](#)

**CMS Interoperability Rule** – Providers should be aware that they may receive notifications related to patient hospital stays beginning July 1<sup>st</sup>, 2021 related to this rulemaking. Data sharing standards implemented by hospitals and payers will enhance provider access and exchange of EHI for patients within Medicare Advantage (MA), Medicaid, CHIP and the Federally-facilitated Exchanges (FEEs) plans.

**CMS Price Transparency Rules** – Providers should be aware of this rule and its applicability to hospitals and insurance payers. Although this rule does not require action for individual providers under this rule, price transparency is a growing movement within the healthcare landscape that may lead to expanded regulations.

As always, ADVOCATE will keep you up to date on this and all issues impacting medical groups as they become available.

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