



INFORMATION BLOCKING EXCEPTION #5: Health IT Performance

Official Title – Health IT Performance Exception: When will an actor’s practice that is implemented to maintain or improve health IT performance and that is likely to interfere with the access, exchange, or use of EHI not be considered information blocking?

Exception applies if an actor takes reasonable and necessary measures to make health IT temporarily unavailable or to degrade the health IT’s performance for the benefit of the overall performance of the health IT, provided certain conditions are met.

Objective of the Exception – This exception recognizes that for health IT to perform properly and efficiently, it must be maintained, and in some instances improved, which may require that health IT be taken offline temporarily. Actors should not be deterred from taking reasonable and necessary measures to make health IT temporarily unavailable or to degrade the health IT’s performance for the benefit of the overall performance of health IT.

Key Conditions of the Exception:

- ✓ Be implemented for a period of time no longer than necessary to achieve the maintenance or improvements for which the health IT was made unavailable or the health IT’s performance degraded;
- ✓ Be implemented in a consistent and non-discriminatory manner; and
- ✓ Meet certain requirements if the unavailability or degradation is initiated by a health IT developer of certified health IT, HIE, or HIN.

An actor may take action against a third-party app that is negatively impacting the health IT’s performance, provided that the practice is:

- ✓ For a period of time no longer than necessary to resolve any negative impacts;
- ✓ Implemented in a consistent and non-discriminatory manner; and
- ✓ Consistent with existing service level agreements, where applicable. w

If the unavailability is in response to a risk of harm or security risk, the actor must only comply with the Preventing Harm or Security Exception, as applicable.

Addressed on: [Page 25870 of final rule](#). For a detailed explanation of this exception also please reference our detailed [cheat sheet](#).