



Information Blocking Overview

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Today's Speaker



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TOPPS

Andrew Tomlinson is CHIME's Director of Federal Affairs, focused on educating members on key federal policies and lobbying on behalf of them with federal agencies.

Career Stats

CHIME: 2020-Present

UnitedHealth Group: 2019-2020

Office of the National Coordinator for Health IT (ONC): 2012-2019

IMC Consulting: 2011-2012

Freelance Hockey Writer: 2008-2011

Education: American University (2010)

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The Birth of Information Blocking

- Signed into law in December of 2016, the 21st Century Cures Act contained multiple provisions impacting health IT.
- Of those provisions, one of them was for “Information Blocking” which encompasses a series of provisions aimed at providing patients with more access to and control of their health information.
- Two agencies contained within the U.S. Department of Health and Human Services (HHS) have taken on the primary responsibilities for developing the regulations and implementing enforcement actions:
 - Office of the National Coordinator for Health IT (ONC)
 - Centers for Medicare & Medicaid Services (CMS)



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What is Information Blocking?

Information blocking is a practice that is:

- (1)** likely to interfere with the access, exchange, and use of electronic health information (EHI) [defined below] except as required by law or covered by an exception; and
- (2)** conducted by a health IT developer, health information network or health information exchange that knows, or should know, that such practice is likely to interfere with, prevent, or materially discourage access, exchange, or use of EHI; or
- (3)** conducted by a health care provider that knows that such practice is unreasonable and likely to interfere with, prevent, or materially discourage access, exchange, or use of EHI.



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Who is Subjected to Info. Blocking Restrictions?

Throughout the regulations, “**Actors**” are the ones detailed as being the subjects of information blocking requirements.

The **Actors** are defined as:

- Providers
- Payers
- Vendors
- Health Information Exchanges (HIEs)/Health Information Networks (HINs)



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Where Do These Requirements Reside in Health Data?

The data that is being transmitted to a patient when they make a request for their data is defined as electronic health information (EHI).

Currently, **until Oct. 6 2022**, EHI is defined as all the contents of the United States Core Dataset for Interoperability (USCDI) as defined by ONC.

After **Oct. 6, 2022**, EHI is defined as all electronic personal health information (ePHI).



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When Can an Actor Utilize an Exception?

There are **eight exceptions** to the information blocking provisions available to actors. The exceptions must:

- Be reasonable and necessary
- Address a significant risk
- Adhere to strict conditions.

The eight available exceptions include:

- Preventing harm
- Privacy
- Security
- Infeasibility
- Health IT Performance
- Content and Manner
- Fees
- Licensing



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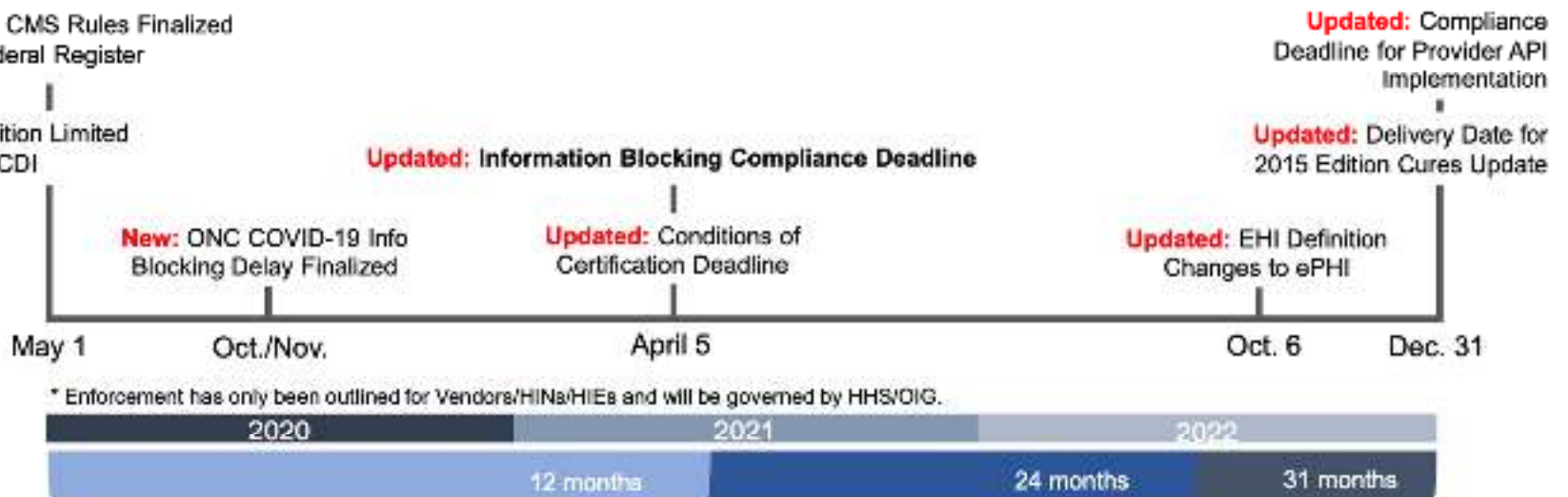
When Do These Provisions Take Effect?

Updated: Key ONC Interoperability and Information Blocking Timelines

10/29/20

ONC and CMS Rules Finalized in the Federal Register

EHI Definition Limited to the USCDI



* Enforcement has only been outlined for Vendors/HINa/HIEs and will be governed by HHS/OIG.

Note: Provider compliance with ONC Information Blocking provisions is contingent on vendor readiness and additional CMS rulemaking outlining disincentive actions. The timeline for CMS information blocking disincentive enforcement is currently unknown.

Additional Resources

- Checkout CHIME's Information Blocking Toolkit:
 - <https://chimecentral.org/public-policy/interoperability/>
- Review the Key Interoperability Timelines
 - <https://chimecentral.org/wp-content/uploads/2020/10/Oct.-Update-ONC-CMS-Timelines-Chart.pdf>

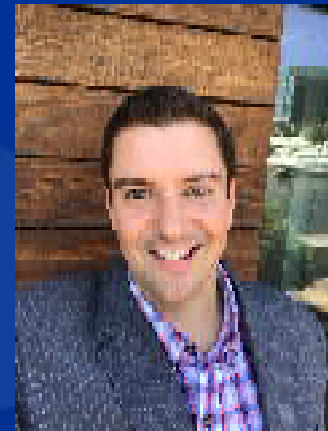
Feel free to reach out to CHIME staff with any questions at
policy@chimecentral.org



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ONC FINAL RULE AND PSYCHIATRY: SOME CONSIDERATIONS

Nathan Tatro, MA | Deputy Director, Digital
Health | American Psychiatric Association



PSYCHIATRY AND THE ONC FINAL RULE



- EHI and USCDI
 - Allergies and Intolerances
 - Health Concerns
 - Assessment and Plan of Treatment
 - Immunizations
 - Procedures
 - Provenance
 - Care Team Members
 - Labs
 - Medications
 - Patient Demographics
 - Vitals
 - **Clinical Notes**
 - **What do these include?**

THE RULE AND PSYCHOTHERAPY NOTES

- Psychotherapy notes and HIPAA
- HHS definitions of psychotherapy vs. progress notes
 - <https://www.hhs.gov/hipaa/for-professionals/faq/2088/does-hipaa-provide-extra-protections-mental-health-information-compared-other-health.html>
- Patient access to records
 - “Right to access” <https://www.hhs.gov/sites/default/files/righttoaccessmemo.pdf>
 - Complying with the Final Rule: Timeline & technology
- State laws and mental health records

EXCEPTIONS TO INFORMATION BLOCKING



- The eight Exceptions fall under two categories: 1) those that involve **not fulfilling requests** to access, exchange, or use EHI, and (2) exceptions that involve **procedures for fulfilling requests** to access, exchange, or use EHI (<https://www.healthit.gov/curers/sites/default/files/curers/2020-03/InformationBlockingExceptions.pdf>)
- The eight exceptions are: Preventing Harm, Privacy, Security, Infeasibility, Health IT Performance, Content and Manner, Fees, Licensing.
- For not fulfilling requests:
 - **Preventing Harm Exception:** It will not be information blocking for an actor to engage in practices that are reasonable and necessary to prevent harm to a patient or another person, provided certain conditions are met.
 - **Infeasibility Exception:** It will not be information blocking if an actor does not fulfill a request to access, exchange, or use EHI due to the infeasibility of the request, provided certain conditions are met.
 - **Privacy Exception:** It will not be information blocking if an actor does not fulfill a request to access, exchange, or use EHI in order to protect an individual's privacy, provided certain conditions are met. For example: abiding by 42 CFR Part 2 the law and regulations governing the confidentiality of substance use disorder patient records.

EXCEPTIONS TO INFORMATION BLOCKING



- For procedures involving fulfilling requests:
 - **Content and Manner Exception:** It will not be information blocking for an actor to limit the content of its response to a request to access, exchange, or use EHI or the manner in which it fulfills a request to access, exchange, or use EHI, provided certain conditions are met.

COMPLIANCE CONSIDERATIONS



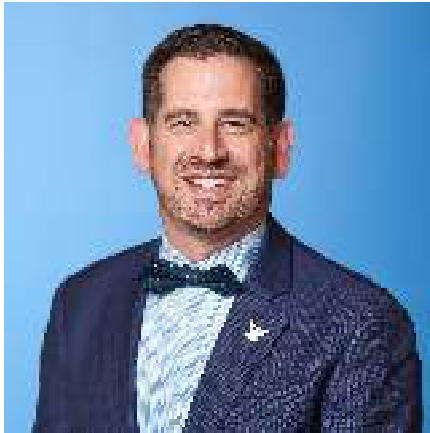
- Overall timeline
- Penalties
 - OIG rules
- Working with your vendor or IT department
- How does this align with MIPS?
- APIs, apps, and beyond the USCDI
 - APA App Advisor (www.psychiatry.org/appadvisor)

APA RESOURCES



- APA Final Rule summary: <https://www.psychiatry.org/psychiatrists/practice/practice-management/health-information-technology/interoperability-and-information-blocking>
- Guidance on selecting an EHR: <https://www.psychiatry.org/psychiatrists/practice/practice-management/health-information-technology/ehr-faq>
- APA HIPAA and Health IT Primer: <https://www.psychiatry.org/psychiatrists/practice/practice-management/hipaa/hipaa-and-hit-primer>
- For APA members: Practice Management Help Line (practicemanagement@psych.org)

ONC Fireside Chat on Info. Blocking



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Executive Director of Policy

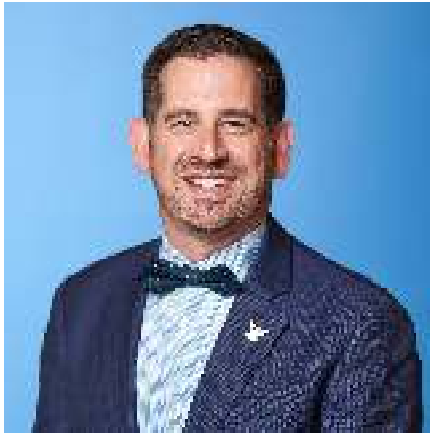


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Questions?



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