FAQ From 3/23/21 AHIMA and CHIME Joint Information Blocking Webinar
Replay of Webinar Available Here

Some questions have been edited for clarity and readability

Q: Within a behavioral health electronic medical record (EMR), can progress notes (not kept separately), psychiatric evaluation and psychiatric medication review be excluded from portal access, so a patient's access is via a request for their records.

A: Unless state or other federal law imposes a precondition prior to the sharing of such information, the information blocking final rule requires such information be available upon request to the patient. Any organizational policy that would delay in fulfilling a request for access, exchange or use of electronic health information (EHI) ***may*** be considered an interference under the information blocking regulations. An exception may be invoked to prevent the transmission of the EHI but would require the conditions of that exception to be met and the exception process would need to be documented.

Q: For 2020 attestation, we were only required to attest to existing Information Blocking attestation statements per the U.S. Centers for Medicare & Medicaid Services (CMS). However, please confirm when CMS may introduce additional attestation statements for 2021 OR will the existing 3 statements be the same until CEHRT 2015 Cures Edition which based on your timeline is due to be released 12/31/2022?

A: CMS has not released any updated guidance regarding information blocking attestation and no information blocking disincentives for providers have been published. At this time, a timeline is not known for either guidance or disincentive publication at this time.

Q: Can portions of a psychiatric record be redacted in regard to that information being potentially detrimental to the patient, (e.g. exacerbating symptoms/condition)?

A: If an actor is able to fulfill the following conditions of the preventing harm exception, then a failure to release information would be ***unlikely*** to be considered information blocking. Those conditions include:

- The actor must hold a reasonable belief that the practice will substantially reduce a risk of harm;
- The actor's practice must be no broader than necessary;
- The actor's practice must satisfy at least one condition from each of the following categories: type of risk, type of harm, and implementation basis; and
- The practice must satisfy the condition concerning a patient's right to request review of an individualized determination of risk of harm.

More information is available in ONCs information blocking exceptions cheat sheet and in their information blocking FAQs.

Q: Is this the correct interpretation - Under Info Blocking, HIPAA fees can be charged unless the information is electronically accessed which means an internet based method and where no manual effort is required to fulfill the request. If this is correct, if a request is then received to be released via email and requires manual effort to fulfill the request, can an appropriate fee be charged and not be info blocking?

A: The information blocking requirements are separate from the HIPAA regulations as it relates to fees and the ability to charge for information release. As it relates to information blocking, there is a Fees Exception available under information blocking with the objective of:

- This exception enables actors to charge fees related to the development of technologies and provision of services that enhance interoperability, while not protecting rentseeking, opportunistic fees, and exclusionary practices that interfere with access, exchange, or use of EHI.

More information on the conditions that must be met in order to invoke the fees exception prefer refer to ONC's information blocking exceptions cheat sheet.

Additionally, please refer to the Office for Civil Rights' HIPAA guidance for questions and requirements related to HIPAA fees.

Q: With regards to Pathology reports, is it expected that the full report be available in a patient portal, as well, as if it was specifically requested from the HIM Department?

A: Until October 6, 2022 the definition of electronic health information (EHI), which is the minimum standard of what needs to be made available in order to comply with information blocking, is limited to the contents of the United States Core Data for Interoperability (USCDI). After October 6, 2022 the definition of EHI changes to all ePHI that is included in the designated record set.

Q: If an item is not proactively available in a patient portal and a patient asks for it to be available in their portal, do we have to update our portal parameters to allow this particular type of information (if we can even do it), or do we just have to respond with the information via an alternative media such as protected email or another electronic method as soon as we can?

A: There are multiple exceptions underneath information blocking that governs how to handle requests outside of your current technical capabilities. You are able to utilize, and also document, the infeasibility and/or the content and manner exceptions in cases where your technology is not "technically unable" to fulfill the requested format or data as requested by the requestor. However, any organizational policy that indicates the actor has the capability to implement these technical transmission specifications, but chooses to do so due to cost or burden, ***may*** be found to have impeded the exchange of data and thus have committed information blocking.

More information on the infeasibility and content and manner exceptions, along with their accompanying conditions, are available in ONC's exceptions cheat sheet.

Q: Does this apply to small rural providers and physician owned practices too?

A: The information blocking requirements impact all providers who utilize or possess electronic health information (including providers that do not utilize certified health IT systems.)

Q: Are there any published technical standards or specifications related to the API aspect of this rule?

A: ONC has released a Standards-based API Certification Criterion that outlines the technical requirements under the new 2015 Cures Update Edition Certification.

Q: Can you further explain the date for the provider API implementation? How is this different from USCDI and DRS availability?

A: The API functionality is apart of the 2015 Cures Update Edition Certification that is required for vendors to implement by December 31, 2022. The definition of what information must be transmitted as apart of electronic health information (EHI) changes from USCDI to ePHI on October 6, 2022.

More information on timelines for both APIs and USCDI is available here.

Q: In the content and manner example you provided where there is manual effort to release USCDI data elements, can you charge a reasonable rate?

A: There is a Fees Exception available under information blocking with the objective of:

- Enabling actors to charge fees related to the development of technologies and provision of services that enhance interoperability, while not protecting rentseeking, opportunistic fees, and exclusionary practices that interfere with access, exchange, or use of EHI.

More information on the conditions that must be met in order to invoke the fees exception is available in ONC's information blocking exceptions cheat sheet.