

## **INFORMATION BLOCKING REGULATIONS GO INTO EFFECT**

On April 5, 2021, the Office of the National Coordinator of Health Information Technology (ONC) of the Department of Health and Human Services issued its Final Rule regarding the electronic health information (EHI) blocking and interoperability provisions of the 21st Century Cures Act. As the interoperability provisions are largely within the purview of EHI vendors and technology developers, this article will discuss the information blocking regulations which are applicable to healthcare providers.

At its most basic level, the information blocking regulations prohibit a provider from interfering with the access, exchange or use of EHI. If a patient requests his EHI from a provider, the provider needs to have procedures in place to insure the prompt, secure and complete transmittal of that information to the patient. The EHI sent to the patient needs to include lab results and progress notes, and cannot be subject to an arbitrary automatic delay, or held up pending the prior review of the test results or notes by the provider. Note, however, that there is no requirement to proactively make EHI available to patients, for example through the use of a patient portal or similar mechanism; the regulations only deal with the delivery of EHI upon the request of the patient. The answers to many questions regarding the practical application of the Final Rule are available on the FAQ page of the ONC Final Rule website at <https://www.healthit.gov/curesrule/resources/information-blocking-faqs>.

The Final Rule does provide for eight exceptions to compliance with its terms, provided that all the numerous conditions of each exception are satisfied. Some of the subject matter areas of the exceptions include preventing harm, privacy, security and infeasibility. Providers may also charge reasonable fees subject to the requirements of the Final Rule.

While the penalties for noncompliance with the Final Rule by technology developers and similar entities have been set, the rules regarding the civil monetary penalties applicable to healthcare providers have not yet been finalized. Noncompliance by providers will be dealt with by the Office of Inspector General of HHS on a case by case basis.

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