

New Regs Seek to Improve Access to Medical Records

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Beginning April 5, new regulations from the U.S. Department of Health and Human Services that prohibit practices likely to "interfere with access, exchange, or use of electronic health information" go into effect.

Called the Information Blocking Rule, [the new regulations](#) are designed to allow patients and providers easier access to their electronic health information to facilitate better treatment and outcomes for patients.

The rule applies to all "health care providers, health [information technology] developers of certified health IT, health information networks, and health information exchanges," but creates different standards for different actors.

For health IT developers of certified health IT, health information networks or health information exchanges, information blocking occurs when the actor *knows or should know* that a practice is likely to interfere with access, exchange or use of electronic health information. Violations of the rule result in monetary penalties of up to \$1 million in this category.

For health care providers, a practice will be deemed to be information blocking only when the actor *knows* that the practice is *unreasonable* and likely to interfere with access, exchange or use of electronic health information. Penalties for health care providers are not expected to be monetary, but rather "appropriate disincentives." The U.S. Office of the Inspector General is still working on what disincentives to impose and intends to issue proposed rules in the future.

Importantly, actual interference with access, exchange or use of electronic health information is not necessary for a practice to be deemed information blocking. All that is required is that the practice is *likely* to cause such interference.

The Information Blocking Rule does not significantly expand a patient's right to access records, which existed under the HIPAA regulations, but does give patients greater power in exercising that right. It seems clear that improving the flow of health information is a priority for HHS. As we wrote about in an article last year, HHS's Office of Civil Rights [already has been targeting health care providers](#) that are failing to provide access to patient records as required under HIPAA. The Information Blocking Rule provides another tool to regulators to force providers to improve patient access to records.

The new regulations give health care providers much to consider with respect to their medical recordkeeping practices. Practitioners should continue to use the same best practices for medical recordkeeping they have previously been employing, but keep in mind that someone else - either another provider or the patient - is likely to be reviewing these notes in the future. Timeliness of documentation is also going to be more important than ever. Health care entities should be certain to review their policies and procedures with respect to the release of records to ensure that they are compliant with the new regulations.

If you have any questions about the Information Blocking Rule of the 21st Century Cures Act, or how it could affect your practice or business, please [contact me](#) or anyone in the [Barley Snyder Health Care Industry Group](#).

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