

Information Blocking and Interoperability

ONC's Cures Act Rule

On October 29, 2020, the Office of the National Coordinator for Health Information Technology (ONC) announced an interim final rule implementing portions of the 21st Century Cures Act having to do with “information blocking” and “interoperability.” The most important parts of this rule for dentists deal with “information blocking,” which is a practice that is likely to interfere with access, exchange, or use of electronic health information. In a [June 2 letter](#) to ONC, ADA requested clarity on points of the rule that are important to dentists.

ADA has received questions from many dentists about how to comply with information blocking rules. Answers to these questions and other important information about new information blocking and interoperability rules can be found below.

What is Information Blocking?

Information blocking means a practice that: (1) Except as required by law or covered by an exception, is likely to interfere with access, exchange, or use of electronic health information (EHI); and (2) If conducted by a health information technology developer of certified health IT, health information network or health information exchange, such developer, network or exchange knows, or should know, that such practice is likely to interfere with access, exchange, or use of EHI; or (3) If conducted by a health care provider, such provider knows that such practice is unreasonable and is likely to interfere with the access, exchange, or use of EHI.

What is electronic health information?

Electronic Health Information (EHI) is electronic protected health information (ePHI) that would be included in a designated record set, regardless of whether it is maintained by or for an “actor” required to comply with HIPAA.

The information blocking portions of the rule took effect on April 5, 2021, and apply to health care providers, health IT developers of ONC-certified IT, and health information networks (HIN)/ health information exchanges (HIE).

Dentists are included among “health care providers” for purposes of the rule, therefore the rule applies to dentists.

What elements are required for a practice to be considered “Information Blocking”?

- Not required by law
- Not covered by [an exception](#) (see below for a list of exceptions)
- Likely to “interfere with” access, exchange, or use
- Involves electronic health information (EHI)
- By a health information technology developer, HIE/HIN, or provider (an information blocking “actor”)
- Dentist or other “actor” has requisite knowledge

- The information blocking prohibitions in the rule can be met if a dentist does not have all the requested EHI.
- **Dentists and others subject to the rule are not required to have or use health IT certified under the ONC Health IT Certification Program.** Those who are participating in a separate regulatory program that requires the use of certified health IT, such as CMS' Promoting Interoperability Programs, will not be required to immediately upgrade their certified health IT.
- The rule **does not require EHI be held in or shared using specific technology** or particular technical standards.
- Requirements of the rule can be met where a dentist has been restricted by law or where it is permissible to withhold EHI, such as consistent with the [Preventing Harm or Privacy Exception](#).
- While certified health IT developers will be required to make EHI export available by 12/31/23, there is no requirement that developers be certified, or that dentists and other providers use certified health IT. If a vendor does not provide EHI export through a patient portal or some other means, dentists may still provide the requested information in a format available to him or her (such as a PDF printout).

There is no requirement under the information blocking regulations to proactively make EHI available through a patient portal or application programming interface (API) to patients or others who have not requested the EHI.

- Does not limit EHI based on any specific interoperability standard.
- EHI excludes
 - Psychotherapy notes; or
 - Information compiled in reasonable anticipation of legal proceedings.

The rule establishes [eight exceptions](#) offering assurance that the reasonable and necessary “practices” they cover will not be considered information blocking.

Exceptions applicable to delaying, restricting, or denying access, exchange, or use:

1. Preventing Harm Exception
2. Privacy Exception
3. Security Exception
4. Infeasibility Exception
5. Health IT Performance Exception

Exceptions involving procedures for fulfilling access, exchange, or use of EHI:

6. 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.
- Dentists may limit the content and manner of their replies to requests for EHI based on the capabilities of whatever health IT they are using. While many dentists may find APIs and patient portals helpful to both them and their patients, dentists are not required to make EHI available to patients in that manner. ADA expects that many dentists will be taking advantage of the content and manner exception, as few dental health IT vendors' products currently have the features required for ONC certification.

7. Fees Exception

8. Licensing Exception

Remember: The norm is to avoid actions or omissions (“practices”) that are likely to interfere with information sharing

Useful Resources:

[ONC Information Blocking Website](#)

[Electronic Health Information](#)

[ONC Webinar, “What Clinicians and Other Health Care Providers Need to Know”](#)

[ONC FAQs](#)

[Information Blocking After October 6, 2022](#)

[ADA Letter to ONC](#)