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ONC interoperability rule: Notable exceptions to upcoming information blocking prohibition

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On March 9, 2020, the Office of the National Coordinator for Health Information Technology (ONC) released its [final interoperability rule](#) that aims to provide patients with more control of their health data and restrict information blocking by health care providers, developers of certified health information technology, health information exchanges and networks (called “actors” throughout the rule). ONC’s final rule implements the information blocking provisions of the 21st Century Cures Act, which prohibit any practice that is likely to interfere with, prevent or materially discourage access, exchange or use of electronic health information, except as required by law, or if the practice meets an exception.

ONC’s rule establishes eight exceptions to the general information blocking prohibition. An actor may block information when:

- Preventing harm: They reasonably believe that the practice will substantially reduce the risk of harm to a patient or another person. The practice must not be broader than necessary to reduce the risk of harm.
- Privacy: Disclosure of the information is prohibited under state or federal privacy laws or when the patient requests that the health information be

restricted.

- Security: Disclosure of the information would be a risk to the confidentiality, integrity or availability of health information. The information may only be blocked if it is done in a consistent and nondiscriminatory manner and if there are no reasonable alternatives to blocking the information.
- Infeasibility: Access to the information is infeasible due to uncontrollable events, such as disasters, public health emergencies, public safety incidents, wars or terrorist attacks. Sharing information can also be deemed infeasible when the information cannot be segmented from information that cannot be shared due to the patient's preference or legal restrictions.
- Performance: Access is blocked temporarily due to the maintenance or improvement of health information technology. Restrictions to access for this reason can only last as long as necessary to complete the maintenance or improvement and must be implemented in a consistent and non-discriminatory manner.
- Content and manner: Limited information is disclosed, but the information meets certain content conditions or manner of transmission conditions. For content, for the first 24 months after publication of the final rule in the Federal Register, the information must at least include data elements from the United States Code Data for Interoperability and, thereafter, the information must include all electronic health information. For manner, the data must be transmitted in the manner requested, unless it is not technically feasible or agreeable license terms cannot be reached, in which case an alternative method can be utilized.
- Fees: Reasonable fees have not yet been paid. In order to be a valid exception, the fees must be based on objective, and verifiable criteria must be reasonably related to the cost of providing the access and applied uniformly to similarly situated classes of people or entities and requests.
- Licensing: The actor licenses applications to access the information, the licensing is done timely and in a reasonable and nondiscriminatory manner, and the license meets specified licensing conditions.

If at least one exception is met, the practice will not be subject to enforcement.

Failure to meet an exception does not automatically mean the practice is prohibited information blocking but only means the practice will not be guaranteed protection from enforcement and will be evaluated on a case-by-case basis. ONC's final rule will be effective 60 days after publication in the Federal Register, but ONC has delayed compliance with the information blocking provisions for six months from the date of publication. Although ONC issued the rule on March 9, 2020, the rule has not yet been published. In a recent [Health Information Technology Advisory Committee](#)

meeting, ONC officials stated that they are considering delaying implementation of the timeline due to issues surrounding COVID-19 but have not yet made a final determination.