



COVID-19 Update: CMS and ONC delay interoperability rules

April 23, 2020

On April 21, 2020, the Department of Health and Human Services (HHS) announced a policy of enforcement discretion regarding compliance with the recently released interoperability final rules. This new policy will afford the health care industry more flexibility while it focuses on responding to the COVID-19 crisis. The [two interoperability rules](#) were finalized on March 9, 2020, by the Office of the National Coordinator for Health Information Technology (ONC) and the Centers for Medicare & Medicaid Services (CMS) to provide patients with more control over their health data and to restrict information blocking by health care providers and developers of certified health information technology.

ONC's interoperability rule ties many of its requirements to the date the final rule is published in the Federal Register, which is now set for May 1, 2020. In light of the COVID-19 public health emergency, however, ONC [announced](#) that it will exercise enforcement discretion for an additional three months at the end of certain compliance dates in the final rule. ONC has published a [timetable](#) with the updated compliance dates.

CMS is also [extending implementation](#) of its interoperability rule by giving providers an additional six months to comply with the new conditions of participation to share admission, discharge and transfer notifications. Those new conditions of participation will now go into effect 12 months after the CMS final rule is published in the Federal Register on May 1, 2020.

Also on April 21, the HHS Office of Inspector General released a [proposed rule](#) related to information blocking. The proposed information blocking enforcement regulations are intended to help improve coordination within the health care system and patients' access to their health care data by addressing the negative effects of information blocking. The OIG's rule outlines civil monetary penalties for information blocking and proposes a maximum fine of one million dollars per violation.

The OIG is seeking comment on when information blocking enforcement should begin. Individuals and entities subject to the information blocking CMPs would have time to come into compliance with any final regulations. At a minimum, enforcement would not begin sooner than the compliance date for the ONC final rule. The OIG has proposed to delay enforcement until 60 days after its rule is final. Commenters are encouraged to submit feedback regarding how the COVID-19 pandemic and other considerations should affect information blocking enforcement timeframes. The OIG also explained that information blocking enforcement requires determining if actors had the right level of intent and that those who make innocent mistakes will not be subject to CMPs.

Authors
