



Information Blocking Rule Requirements for Part 2 Data in Patient Portals

The 21st Century Cures Act Information Blocking Rule aims to promote patient access to health information and increase system interoperability by establishing penalties for actors who engage in “information blocking.”

What you need to know

Generally, information blocking includes practices that would “interfere with, prevent, or materially discourage the access, exchange, or use of electronic health information.”¹ However, the Information Blocking Rule does not preempt stricter privacy laws and regulations such as 42 CFR Part 2, and healthcare providers are still obligated to protect information covered by such provisions.

Information blocking exceptions

The Information Blocking Rule includes eight exceptions for permissible practices that do not constitute “information blocking.” They include:²

- The preventing harm exception
- The security exception
- The health IT performance exception
- The fees exception
- The privacy exception³
- The infeasibility exception⁴
- The licensing exception
- The content and manner exception

The privacy and infeasibility exceptions are particularly instructive for individuals and entities that maintain data subject to heightened privacy protections such as Part 2.

The privacy exception

The privacy exception specifies that a healthcare provider is not required to use or disclose health information in a way that is prohibited under state or federal privacy laws.

A closer look

If a provider is required by a law like 42 CFR Part 2 to obtain patient consent or authorization before providing access, exchange, or use of protected health information, the provider may only provide access to the information if the patient has provided consent or authorization. For more information about the Information Blocking Rule and its application to heightened privacy protections for SUD and MH treatment records, see our resource, [21st Century Cures Act Final Rule on Information Blocking](#).

Key point

Following a legal requirement to obtain patient consent for a disclosure meets the “privacy exception” in the Information Blocking Rule and is not considered information blocking.

The infeasibility exception

The infeasibility exception specifies that a healthcare provider is not required to provide access to requested health information if the requested information cannot be “unambiguously segmented” from information protected by law or from information that “the patient has expressed a preference not to disclose.”⁵

A closer look

Practically, this means that the infeasibility exception may often apply to electronic health portals that do not have the capacity to distinguish between patient and proxy access to health information, if the patient records include information protected by heightened privacy laws like 42 CFR Part 2 that require consent for disclosures to the proxy.

Key point

If a portal cannot segment Part 2-protected records or prevent a patient’s proxy from unconsented access to such records, the healthcare provider should not share Part 2-protected records on the portal.

Example:

A Part 2 program⁶ within a larger hospital system is wondering whether to upload all patients’ Part 2 records into the hospital’s patient portal, since the hospital’s portal allows access by patients’ proxies and does not have processes in place to segment Part 2 records or flag whether patient proxies have consent to access Part 2 records.

Would withholding the records from the portal be information blocking?

1. NO. According to the infeasibility exception, if the hospital's electronic health portal does not have the capacity to unambiguously segment a patient's Part 2 data from the rest of their health information, the healthcare provider must withhold the patient's Part 2 data from the portal.
2. It does not matter whether the patient has already established a healthcare proxy because they might do so at any point in the future.

Not only does the infeasibility exception permit the provider to withhold Part 2 protected information from such a portal, but federal law also prohibits the provider from disclosing protected information in this way.

For More Information

Resources

This resource is one of many that are available within the Center of Excellence for Protected Health Information's resource library, which can be found at coephi.org.

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References

1. See 42 U.S.C. 300jj-52(a)(1).
2. For more information about the eight exceptions to the Information Blocking Rule, see <https://www.healthit.gov/sites/default/files/page2/2020-03/InformationBlockingExceptions.pdf>.
3. See 45 CFR § 171.202.
4. See 45 CFR §171.204.
5. See 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program, 85 Fed. Reg. 25,642, 25,865 (May 1, 2020).
6. A "Part 2 program" is a substance use disorder treatment provider that is both federally assisted and meets the definition of a "program" under [42 CFR § 2.11](#).