

Physicians Beware: Feds Start Tracking Information Blocking Claims

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The federal government's efforts to thwart information blocking are underway. As such, physicians would do well to be standing at the ready when the [information blocking regulations](#), designed to ensure that patients can access their electronic health information (EHI), shift into full gear.



Recently, the Office of the National Coordinator (ONC) revealed that the Department of Health and Human Services (HHS) has received 299 reports of information blocking since inviting anyone who suspected that healthcare providers, IT developers, or health information networks/exchanges might have interfered with access, exchange, or use of EHI through the Report Information Blocking Portal on April 5, 2021.

The vast majority of these claims — 211 — were filed against providers, while 46 alleged incidents of information blocking were by health IT developers, and two claims point to health information networks/ exchanges. The other 25 claims did not appear to present a claim of information blocking.

Of the 274 possible claims of information blocking recently released by ONC, 176 were made by patients.

The ONC has sent all possible claims to the HHS' Office of the Inspector General. The claims have not yet been investigated and substantiated.

Do the Stats Tell the Story?

The numbers in the recent ONC report do not shed much light on how much impact the regulations are having on information sharing. Healthcare providers — including physicians — might not yet be complying with the rules because monetary penalties are not in place.

Indeed, HHS has yet to spell out exactly what the disincentives on providers will be, though the 21st Century Cures Act (Cures Act) stipulates that regulators could fine up to \$1 million per information-blocking incident.

"Some providers might be saying, 'I'm not going to be penalized at this point...so I can take a little bit longer to think about how I come into compliance.' That could be just one factor of a host of many that are affecting compliance. We also are still in the middle of a public health emergency. So it's hard to say at this point" exactly how the regulations will affect information blocking, Lauren Riplinger, vice president of policy and public affairs at the American Health Information Management Association, told *Medscape Medical News*.

A Long Time Coming

The government first zeroed in on ensuring that patients have access to their information in 2016 when President Obama signed the Cures Act into law. The legislation directed ONC to implement a standardized process for the public to report claims of possible information blocking.

The initiative appears to be picking up steam. The ONC is expected to release monthly reports on the cumulative number of information blocking claims. The announcement of associated penalties is expected sometime in the future.

Industry leaders are advising healthcare providers to brush up on compliance. Physicians can look to professional groups such as the American Medical Association, the Medical Group Management Association (MGMA), and other specialty associations for guidance. In addition, the ONC is educating providers on the rule.

"The ONC has provided a lot of great content for the past couple months, not only in terms of [putting out FAQs](#) to help clarify some of the gray areas in the rule, but they also have produced a series of provider-specific webinars where they walk through a potential scenario and address the extent to the rules apply," Riplinger said.

With Education, More Is Better

These efforts, however, could be expanded, according to MGMA.

"There is a general awareness of the rules, but we encourage ONC to continue educating the provider community — more FAQs and educational webinars would be helpful," Claire Ernst, JD, director of government affairs for MGMA, told *Medscape Medical News*. "A June 2021 MGMA poll found that 51% of medical groups said they needed more government guidance on complying with the new information blocking rules."

Although ONC already has provided some "scenario-based" education, more of this type of guidance could prove valuable.

"This rule is that it is very circumstance based...and so it's those more nuanced cases that I think are more challenging for providers to know whether or not they are engaging in information blocking," Riplinger noted.

For example, a physician might choose to not upload lab test results to a patient portal and prefer to wait to discuss the results directly with the patient, which could potentially be construed as information blocking under the regulations.

The MGMA is requesting that ONC take a second look at these situations — and possibly adjust the regulations.

"MGMA has heard concerns about the impact of providing immediate results to patients before medical groups have the time to thoroughly review test results and discuss them compassionately with their patients," Ernst said. "To address this, ONC could expand the current definition of harm to account for other unintended consequences, such as emotional distress, or provide more flexibility in terms of the timeframe."

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