



## 21<sup>ST</sup> CENTURY CURES ACT FINAL RULE ON INFORMATION BLOCKING: How it Applies to Heightened Privacy Protections for SUD and MH Treatment Records

### WHAT YOU NEED TO KNOW

The 21st Century Cures Act aims to put patients in charge of their health records and promote interoperability by establishing penalties for healthcare providers (among others) who engage in information blocking. ONC's Cures Act Final Rule on Information Blocking prohibits healthcare providers from interfering with access, exchange, or use of electronic health information.<sup>1</sup> However, it does not prohibit healthcare providers from protecting information covered by a stricter privacy law, such as 42 CFR Part 2. For more resources about the Information Blocking rule generally, see these resources from the [Office of the National Coordinator for Health Information Technology \(ONC\)](#).

#### KEY POINT

The Information Blocking rule does not require a healthcare provider to use or disclose electronic health information in a way that is prohibited under state or federal privacy laws.<sup>2</sup>

### A CLOSER LOOK:

What does this mean for records protected by the federal privacy protections for substance use disorder treatment or for mental health records protected by state law?

- Providers should continue protecting records according to applicable law, including 42 CFR Part 2, the Health Information Portability and Accountability Act (HIPAA), and state privacy laws for mental health treatment.
- At the same time, when applicable privacy laws *permit* a disclosure, providers should comply with the Information Blocking rule.

## EXAMPLES

ONC described several types of practices that likely would interfere with access, exchange, or use of electronic health information. This resource explains how these examples apply to Part 2 programs and information protected by 42 CFR Part 2. The Information Blocking rule's application to mental health treatment records may vary by state; local practitioners can use these examples as a guide but should refer to state law privacy protections for mental health.

### Example 1

A healthcare provider's internal procedures require a patient's written consent before sharing any of the patient's electronic health information with unaffiliated providers for treatment purposes.<sup>3</sup>

**If the healthcare provider is a Part 2 program, or if the electronic health information is otherwise protected by Part 2, this is NOT "information blocking."** A patient's written consent is required before sharing Part 2 records with unaffiliated providers for treatment purposes. See [ONC Information Blocking Exceptions](#): 42 CFR 2.31.

### Example 2

A healthcare provider directs its EHR developer to configure its technology so that users cannot easily send electronic patient referrals and associated electronic health information to unaffiliated providers, even when the user knows the direct address or National Provider Identifier of the unaffiliated provider.<sup>4</sup>

**Even if the healthcare provider is a Part 2 program or the records are protected by Part 2, this is "information blocking."** Part 2 does not require EHRs to impose barriers to sending electronic patient referrals and associated electronic health information to unaffiliated providers; the only Part 2 requirement is that the patient consent before sending referral information or electronic health information.<sup>5</sup>

### Example 3

A healthcare provider has the capability to provide same-day access to electronic health information in a form and format requested by a patient but takes several days to respond.<sup>6</sup>

**Even if the healthcare provider is a Part 2 program or the records are protected by Part 2, this is "information blocking."** Nothing in Part 2 prevents providers from responding to patient's requests for access to their own records. However, HIPAA's exceptions to the patient right of access still apply. For example, the healthcare provider does not need to release information contained in psychotherapy notes<sup>7</sup> or if the provider determines that access is likely to endanger the life or physical safety of the patient or another person.<sup>8</sup>

**Complaints about information blocking can be submitted through ONC's online [Health IT Feedback Form](#).**



## 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](http://coephi.org).

### Request Technical Assistance

You can request brief, individualized technical assistance and join our mailing list for updates, including news about the publication of new resources and training opportunities, [here](#).



## Disclaimer

Resources, training, technical assistance, and any other information provided through the Center of Excellence for Protected Health Information do not constitute legal advice. For legal advice, including legal advice on other applicable state and federal laws, please seek out local counsel.

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## References

1. 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program, 85 Fed. Reg. 25642 (May 1, 2020), available at <https://www.federalregister.gov/documents/2020/05/01/2020-07419/21st-century-cures-act-interoperability-information-blocking-and-the-onc-health-it-certification>.
2. 45 CFR § 171.202.
3. Adapted from 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program, 84 Fed. Reg. 7424, 7518 (proposed March 4, 2019), available at <https://www.federalregister.gov/d/2019-02224/p-1209>.
4. Adapted from 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program (proposed March 4, 2019), 84 Fed. Reg. 7424, 7519, available at <https://www.federalregister.gov/d/2019-02224/p-1223>.
5. See 42 CFR 2.31.
6. Adapted from 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program (proposed March 4, 2019), 84 Fed. Reg. 7424, 7519, available at <https://www.federalregister.gov/d/2019-02224/p-1226>.
7. 45 CFR 164.524(a)(1)(i).
8. 45 CFR 164.524(a)(3)(i).