

## What to HIOs Need to Know about Information Blocking, Patient Matching, and the Provider Directory in the 21<sup>st</sup> Century Cures Act

The 21<sup>st</sup> Century Cures Act attempts to address a number of interoperability and patient access issues, most of which will have an impact on health information organizations (HIOs). This is Part 3 in a series of three white papers highlighting the impact of the 21<sup>st</sup> Century Cures Act on HIOs. [Click here for Part 1: Patient Access](#), and here for [Part 2: Trusted Exchange Framework and Common Agreement](#).

### Information Blocking

Information blocking is defined as any practice that “is likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information” except where the law or regulations prevent exchange and if it’s an HIO who is performing the practice, the HIO knows or should know that the practice is likely to information block. In other words, information blocking is knowingly preventing the sharing of health information or implementing practices that the HIO should have known would prevent the sharing of health information. The Act goes on to identify a handful of practices that would constitute information blocking, including: preventing the exchange of health information for treatment purposes, even when state and federal laws do not limit the exchange; implementing health IT in non-standard ways that make connectivity complex; and implementing health IT in a way that knowingly prevents the exchange of health information or leads to fraud and abuse.

Since these practices are fairly general and could be interpreted in many ways, the Department of Health and Human Services (HHS) was also charged with identifying practices that are not considered information blocking, through the rulemaking process (i.e. a notice of proposed rulemaking, a comment period, and a final rule). The bill does not include a timeframe for when HHS must start the rulemaking process. It will be important for HIOs to watch for the release of rules related to information blocking, and provide comments to HHS to help them define non-information blocking practices correctly. HIOs can do this by monitoring the Federal Register for key words.

The second major provision in the bill around information blocking is the ability for HHS to levy fines of up to \$1 million per violation on health IT developers, HIOs, and health information networks that participate in information blocking. Note that healthcare systems and providers can be investigated for information blocking. While the Act does not lay out a new financial penalty for providers if they are found to be information blocking, they could face penalties under the Quality Payment Program or the Meaningful Use Program for violating their attestation to not information block. It is likely that how HHS defines practices that are not information blocking in their rulemaking process will determine the guardrails for these penalties.

when the Office of the Inspector General (OIG) investigates reports of information blocking. While HIOs are not the first organizations folks think of to information block, how HHS defines practices in the rule may put them at risk. In particular, if there are certain EHR vendors or other HIOs an HIO won't connect with or networks an HIO won't join HHS could consider it to be information blocking. HHS could use the definition of practices not considered information blocking to incentivize adoption of the trusted exchange framework and common agreement by allowing organizations who have adopted them to not be considered information blocking if they will not exchange with organizations who have not. HIOs will need to keep a close eye on how this develops to ensure they aren't at risk for penalties.

## Patient Matching

The Government Accountability Office (GAO) is directed in the Act to study patient matching policies and best practices from both the Office of the National Coordinator for Health Information Technology (ONC) and the industry and develop a report with its findings. The GAO will focus on improving match rates, reducing matching errors and duplicate records, and privacy and security of patient information. The GAO will also evaluate whether ONC needs to take additional steps around defining a set of data elements used for matching and requiring health IT systems record those data elements in using specific standards. In ONC's 2015 Edition certification criteria, there is a requirement that certified health IT systems exchange a set list of patient demographics when they send data to another system to aid with matching. But the GAO study goes a step further and will look at whether a set of data elements should be required fields at the point of capture. HIOs should familiarize themselves with the [ONC funded report on patient matching](#), which contained a number of recommendations, as well as the 2015 Edition requirements, so they can provide feedback to GAO as they research this issue.

## Provider Directory

HHS is directed to establish a "provider digital contact information index" within three years. HHS can either establish this directory themselves or partner with a private organization to establish the directory. The bill stipulates that the directory must contain contact information at both the provider and organization level and should include all healthcare professionals who need to share information. Over the last year, ONC has worked with the industry on provider directory issues, including hosting a two day working session to allow the industry to collaborate on a path forward. One of the main pushes from the industry during that meeting was to use the National Plan and Provider Enumeration System (NPPES) as a source of truth for other provider directories. CMS has been working to make changes to the NPPES, including the release of APIs last year that make it easy to access information. HHS could choose to use NPPES as the directory, adding in fields for digital contact information, or they could also choose to work with existing industry directories, such as CAQH. HIOs should keep an eye on how HHS proceeds with the provider directory work, particularly the standards they decide to use for making the data available to the industry, i.e. potentially FHIR APIs being developed by the Argonaut project for provider directory information.