



Information Blocking Disincentives Common Questions for External Audience

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1. Who is a health care provider under the information blocking regulations?

For the purposes of information blocking, a health provider is defined in [45 CFR 171.102](#), which is the definition of health care provider found in section 3000(3) of the Public Health Service Act (PHSA). For more information about who is a health care provider for information blocking, see our [resource](#).

2. How will OIG decide what information blocking claims to investigate?

The proposed rule states that OIG expects to use four priorities for enforcement when investigating information blocking practices by health care providers. OIG expects to prioritize practices that: (i) resulted in, are causing, or had the potential to cause patient harm; (ii) significantly impacted a provider's ability to care for patients; (iii) were of long duration; and (iv) caused financial loss to federal health care programs, or other government or private entities. OIG is soliciting comments in the proposed rule on these priorities and whether other issues specific to health care provider information blocking should warrant changing these priorities or adding others.

3. When will OIG determine that a health care provider has committed information blocking?

OIG will find that a practice (act or omission) by a health care provider constitutes information blocking if it finds that the health care provider "knows that such practice is unreasonable and is likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information" and the practice was neither required by law nor meets an [exception](#).

4. How would a health care provider learn if they are subject to a disincentive following a determination of information blocking by OIG?

Following referral of a determination of information blocking by OIG, the proposed rule states that an appropriate agency that imposes a disincentive would send a notice to the health care provider subject to the disincentive or disincentives, via usual methods of communication for the program under which the disincentive is applied.



5. Will the impact of a disincentive be the same for every provider?

Because the Cures Act requires disincentives to be established using authorities under applicable federal law, the impact of a proposed disincentive would vary based on circumstances specific to each provider and their participation in the program under which a disincentive is imposed.

6. Are all health care providers included in the definition of health care provider for information blocking purposes impacted by the proposed rule?

No, some health care providers that are subject to the information blocking regulations are not impacted by the programs under which HHS is proposing to establish disincentives in this proposed rule. The proposed rule is a first step that focuses on authorities which pertain to one set of health care providers that furnish a broad array of health care services to large numbers of Medicare beneficiaries and other patients.

7. Will additional disincentives for health care providers be established in the future?

HHS believes optimal deterrence of information blocking calls for imposing appropriate disincentives on all health care providers (as defined at 45 CFR 171.102) determined by the Office of the Inspector General (OIG) to have committed information blocking.

We have not set a target publication date for a rulemaking that would include additional disincentives for health care providers. However, the proposed rule includes a request for information from the public on additional appropriate disincentives that we should consider in future rulemaking, particularly disincentives that would apply to health care providers that are not impacted by the disincentives proposed in this rule. We encourage commenters to identify specific health care providers (e.g., laboratories, pharmacies, post-acute care providers, etc.) and associated potential disincentives using applicable federal law. We also request information about the health care providers that HHS should prioritize when establishing additional disincentives.

8. Will other agencies besides CMS have disincentives?

All disincentives for health care providers that commit information blocking must be established through notice and comment rulemaking. This proposed rule includes proposals for disincentives only under CMS authorities.