**The Cures Act Final Rule and Information Blocking**

**Risk Tip Sheet 3**

**What is information blocking (IB)?**

The Cures Act Final defines information blocking (IB) as any practice that is likely to interfere with, prevent, or materially discourage access, exchange, or use of Electron Health Information (EHI) when the entity knows it is likely to do so. (45 CFR & 171.103)

When IB occurs, penalties or other disincentives determined by the HHS Secretary will follow unless required by law or an exception to IB is met.

IB will change how you respond to requests for EHI.

**How will HHS handle information blocking complaints?**

According to HHS, complaints will be handled on a case-by-case basis.

**Who is subject to the information blocking policies?**

The Cures Act identified three types of participants in health care, called actors, covered under information blocking:

1. health care providers
2. health IT developers of certified health IT
3. health information networks (HINs) and health information exchanges (HIEs).

**Information Blocking Basics:**

1. The law applies to the access, exchange, and use of EHI regardless of what technology is used.

2. State laws still apply

3. The law applies to actors referenced above

4. Penalties identified and established for information blocking vary by entity

## What’s Covered Under Information Blocking?

IB policies apply to all electronically protected health information (EPHI) as defined by HIPAA to the extent EPHI would be included in a designated record set.

**Does IB apply to historical information?**

Yes, IB applies to both historical information and future information.

Resources:

<https://www.ama-assn.org/system/files/2020-02/patient-records-playbook.pdf>

<https://journal.ahima.org/the-compliance-clock-is-ticking-on-oncs-21st-century-cures-act-regulations/>

https://www.ama-assn.org/system/files/2020-10/onc-final-rule-ama-summary.pdf

<https://www.healthit.gov/curesrule/resources/information-blocking-faqs>

<https://www.healthit.gov/curesrule/what-it-means-for-me/clinicians>

<https://sironastrategies.com/wp-content/uploads/2020/03/HIT-Leadership-Roundtable-WP-FINAL.pdf>

<https://www.opennotes.org/onc-federal-rule/>