

# Compliance Today – October 2021

## Legacy data management and compliance: Prepare your business today

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In recent years, it has become easier than ever before for people to share information and ideas instantly. Whether through a text, email, or other platform, technological advances make this kind of sharing possible. When it comes to the healthcare industry, the focus on interoperability and value-based care requires patients, physicians, and vendors to seamlessly share data and information in a productive, compliant way.

On April 5, 2021, the 21<sup>st</sup> Century Cures Act information blocking final rule went into effect.<sup>[1]</sup> In summary, the rule puts patients in the driver's seat and ensures access to their health records. This article provides strategies to manage legacy data, work with members of your organization to ensure timely response to patient requests, and provide savings through legacy data migration and archiving.

### 21<sup>st</sup> Century Cures Act and information blocking

The Office of the National Coordinator for Health Information Technology final rule implements interoperability requirements outlined in the 21<sup>st</sup> Century Cures Act (the act). The act's initiative puts the patient first in all aspects of their healthcare journey, including price transparency, competitive options, technology standards compliant with smartphone applications with access to patient records, and innovation and choice through an app economy serving patients, physicians, hospitals, and payers.

Actors, as defined in the act, include, but are not limited to, hospitals, physician groups, specialty practices, payers, and health IT vendors. Actors are required to release information according to the act. It is imperative actors share information seamlessly from one point of care to another and ensure release of information in a standardized format, aligned to the act and HIPAA requirements. Actors are classified as information blockers if they participate in any of the qualified information-blocking activities and may be subject to fines.

Under the act, actors have an obligation to provide electronic health information (EHI), as defined in the act, to the patient in the manner requested. The act does not restrict EHI based on its age. Therefore, the actor should provide all of the requesting patient's EHI, which may include data from current health information systems, as well as legacy systems no longer updated day to day.

### Exceptions to information blocking

There are eight exceptions that enable providers to deny patient EHI requests without being subject to fines as information blockers. These exceptions are broken into two categories. The first category pertains to exceptions that involve not fulfilling requests to access, exchange, or use EHI. These include:

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1. Preventing harm
2. Privacy
3. Security
4. Infeasibility
5. Health IT performance

The second category pertains to exceptions that involve procedures for fulfilling requests to access, exchange, or use EHI. We examine this category in more depth as these exceptions apply to data sets as a whole, whereas the five outlined above more so focus on specific cases and individual requests. The three exceptions include:

1. Content and manner
2. Fees
3. Licensing

### **Exceptions that involve procedures for fulfilling requests to access, exchange, or use EHI**

As mentioned, there are several scenarios regarding requests to access, exchange, or use EHI where information blocking occurs but exceptions are made. These conditions include:

- **Content and manner exception:** In this exception, the actor (such as an IT vendor or provider) provides patient data in a format that contradicts what the patient requested. If the patient requests data and the provider or vendor cannot provide it in that specific format, they still have an obligation to provide it in whatever way they can. In situations like these, the reasoning for noncompliance must be documented very well on the provider/vendor side.
- **Fees exception:** An actor who is charging a fee to provide data under the act must apply that same fee for all persons and entities. This condition most commonly applies to vendors. The exception is intended to allow actors “to charge fees related to the development of technologies and provision of services that enhance interoperability, while not protecting rent-seeking, opportunistic fees, and exclusionary practices that interfere with access, exchange, or use of EHI.”<sup>[2]</sup>
- **Licensing exception:** Actors are allowed “to protect the value of their innovations and charge reasonable royalties in order to earn returns on the investments they have made to develop, maintain, and update those innovations.”

For each of these exceptions, it is important to thoroughly document the reason the actor cannot comply with the patient’s EHI request and how the actor provided the information instead.

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