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Information Blocking Enforcement May Ease EHR Problems, Lawyer Says

By Nina Youngstrom

The HHS Office of Inspector General's (OIG) enforcement rule on information blocking, which took effect Sept. 1, may be a vehicle for hospitals and their vendors to access data when electronic health record (EHR) vendors don't make it easy, an attorney said.^[1]

Some EHR vendors ask other hospital vendors to jump through hoops to get data they need for billing, quality improvement and other activities, according to attorney Sean Sullivan, with Alston & Bird LLP in Atlanta, Georgia. He said the hoops include separate contracts, licensing fees, long waiting periods and requirements that other vendors use separate platforms instead of "directly accessing the hospital's native EHR system." What's ironic is the vendors are business associates of hospitals under HIPAA and have business associate agreements, which means the hospitals have already paved the way for the vendors to access the data, Sullivan said.

If the EHR vendors interfere with the access, use and exchange of electronic health information (EHI), hospitals could report them to OIG under the information blocking rule, he said. "It remains to be seen if OIG will go after this type of activity, but I think it falls right within the wheelhouse of their enforcement priorities."

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