



21ST CENTURY CURES ACT: INTEROPERABILITY, INFORMATION BLOCKING, AND THE ONC HEALTH IT CERTIFICATION PROGRAM PROPOSED RULE

Information Blocking Exception for Practices that Maintain and Improve Health IT Performance

OVERVIEW

Under the proposed exception, it will not be information blocking for an actor to interfere with the access, exchange, or use of electronic health information (EHI) by making health IT unavailable in order to undertake maintenance or improvements to the health IT, provided certain conditions are met.

To qualify for this exception, the unavailability of health IT for maintenance or improvements must be:

For no longer than necessary to achieve the maintenance or improvements for which the health IT was made unavailable

+

Implemented in a consistent and non-discriminatory manner

+

Agreed to by the individual or entity to whom the health IT is supplied*

Objective



For health IT to perform properly and efficiently, it must be maintained, and in some instances improved. This may require that health IT be taken offline temporarily.

Actors should not be deterred from taking reasonable and necessary measures to make health IT temporarily unavailable for the benefit of the overall performance of health IT.

“Actors” regulated by the information blocking provision:



- Health Care Providers
- Health IT Developers of Certified Health IT
- Health Information Exchanges
- Health Information Networks

* This specific condition does not apply when health IT is made unavailable for maintenance or improvements at the initiative of a recipient (e.g., customer) of health IT.

Interaction with Preventing Harm and Promoting Security Exceptions

When health IT is made unavailable for maintenance or improvements aimed at preventing harm to a patient or other person, or securing EHI, an actor must comply with the conditions specified in proposed § 171.201 or § 171.203 respectively, in order to qualify for an exception to the information blocking provision.