



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

# Application Programming Interface (API) Condition of Certification: Permitted Fees Conditions

## FEES CHARGED BY API TECHNOLOGY SUPPLIERS

### PROHIBITED...

- ✗ ...from charging any API technology-related fees except as permitted
- ✗ ...from charging fees in connection with supporting the use of API technology that facilitates a patient's ability to access, exchange, or use their electronic health information (EHI).
- ✗ ...from charging fees to API Users except for "value-added services."

### PERMITTED...

- ✓ **...to charge API Data Providers**
  - Fees to recover costs reasonably incurred to develop, deploy, and upgrade API technology.
  - Fees to recover the incremental costs reasonably incurred to support the use of API technology (excluding the support of a patient's ability to access, exchange, or use their EHI).
- ✓ **...to charge API Users**
  - Fees for "value-added services" supplied in connection with software that can interact with API technology, provided that such services are not necessary to efficiently and effectively develop and deploy such software.

### API TECHNOLOGY ROLES

-  **API Technology Supplier**  
Health IT developer that creates API technology presented for certification in the ONC Health IT Certification Program
-  **API Data Provider**  
Health care organization that deploys the API technology
-  **API User**  
Persons and entities that use or create software applications that interact with API technology

## FEES CHARGED BY API DATA PROVIDERS

**API Data Providers may charge fees to offset the costs they incur to deploy, maintain, and enable the use of APIs.**

**Such fees are NOT subject to the API Permitted Fees Conditions**

(because API Data Providers are not developers of certified health IT and do not participate in the ONC Health IT Certification Program).



**Fees charged by API Data Providers may, however, implicate the information blocking provision.**

- If an API Data Provider charges a fee that is likely to interfere with access, exchange, or use of EHI, the fee may violate the information blocking provision unless the Provider meets the exception proposed at 45 CFR 171.204.
- Under the information blocking provision, an API Data Provider must not charge any fee inconsistent with the API Condition of Certification: Permitted Fees Conditions (§ 170.404).

**The proposed exception for recovering costs reasonably incurred would permit an API Data Provider (or other entity) to charge API users fees based on its costs reasonably incurred to provide access, exchange, or use of EHI, provided certain conditions are met.**

**The method by which an actor recovers costs must:**

- Be based on objective and verifiable criteria that are uniformly applied for all substantially similar or similarly situated classes of API Users and requests.
- Be reasonably related to the actor's costs of providing API-based access, exchange, or use to, or at the request of, the API User.
- Be reasonably allocated among all relevant API users.
- Not be based in any part on whether the API User is a competitor, potential competitor, or will be using the data in a way that facilitates competition with the API Data Provider.
- Not be based on the sales, profit, revenue, or other value that the API User or other persons may derive from the access, exchange, or use.

An API Data Provider cannot recover fees that are specifically excluded under the exception, including: fees prohibited under the HIPAA access rule; fees based on an individual's electronic access to their electronic protected health information; fees to perform a data export via a certified capability for the purposes of switching health IT or providing patients their EHI; fees to export or convert data from an EHR technology not agreed to at the time the technology was acquired; fees that recover costs incurred due to the non-standard design or implementation of health IT; and certain costs associated with intangible assets and opportunity costs.