



## FINAL RULE OVERVIEW FACT SHEET

# 21<sup>st</sup> Century Cures Act: Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking

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The Department of Health and Human Services (HHS) agencies, including the Office of the National Coordinator for Health Information Technology (ONC), the Centers for Medicare & Medicaid (CMS), the Office of Inspector General (OIG), and others have worked on the final rule: 21<sup>st</sup> Century Cures Act: Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking (Disincentives Final Rule). The final rule advances HHS priorities for deterring information blocking and promoting safer, more coordinated care for all patients through electronic health information sharing. The final rule will become effective 30 days after it is published in the Federal Register on July 31, 2024. This fact sheet provides an overview of select provisions of the final rule.

## Disincentives Final Rule Highlights



Establishes disincentives for health care providers that commit information blocking as determined through an investigation by OIG.



Describes the process by which OIG investigates a claim of information blocking by a health care provider, determines the health care provider has committed information blocking, and refers that health care provider to an appropriate agency to be subject to disincentives.



Establishes sharing of information with the public about actors (including health care providers, health IT developers of certified health IT, and health information exchanges and health information networks) that commit information blocking.

## Information Blocking Disincentives for Health Care Providers

In this final rule, HHS establishes the following disincentives for health care providers that have been determined by OIG to have committed information blocking and for which OIG refers its determination to CMS.

- **Medicare Promoting Interoperability Program**

Under the Medicare Promoting Interoperability Program, an eligible hospital or critical access hospital (CAH) that commits information blocking will not be a meaningful electronic health record (EHR) user in an applicable EHR reporting period. The impact on eligible hospitals will be a reduction of three quarters of the annual market basket update; for CAHs, payment will be reduced to 100 percent of reasonable costs instead of 101 percent.

- **Quality Payment Program**

Under the Promoting Interoperability performance category of the Merit-based Incentive Payment System (MIPS), a MIPS eligible clinician that commits information blocking will not be a meaningful user of certified EHR technology in a performance period and will therefore receive a zero score in the Promoting Interoperability performance category of MIPS, if required to report on that category. Similarly, if a MIPS eligible clinician participating in group reporting is found to have committed information blocking, only the individual will be subject to a disincentive, not the group. The Promoting Interoperability performance category score typically can be a quarter of a clinician or group's total MIPS score in a year.



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- **Medicare Shared Savings Program**

Under the Medicare Shared Savings Program, an Accountable Care Organization (ACO), ACO participant, or ACO provider or supplier may be deemed ineligible to participate in the program for a period of at least one year. This may result in a health care provider being removed from an ACO or prevented from joining an ACO; and in the instance where a health care provider is an ACO, this may prevent the ACO's participation in the Shared Savings Program. Restricting the ability of health care providers to participate in the Shared Savings Program for at least 1 year will result in these health care providers potentially not receiving revenue that they might otherwise have earned if they had participated in the Shared Savings Program. Prior to applying a disincentive under the Shared Savings Program, CMS will consider an OIG information blocking determination in light of the relevant facts and circumstances (such as the nature of the health care provider's information blocking, the health care provider's diligence in identifying and correcting the problem, the time since the information blocking occurred, whether the provider was previously subject to a disincentive in another program, and other factors).

**Disclaimer:** This fact sheet describes select provisions described in 21st Century Cures Act: Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking final rule. While every effort has been made to ensure the accuracy of this fact sheet, it is not a legal document. Please refer to the published final rule for full provision details.