

Understanding the Information Blocking Rule and Its Application in Skilled Nursing Facilities¹

Introduction

The source of the Information Blocking Rule is the 21st Century Cures Act, a bipartisan healthcare innovation law enacted in December 2016. The rule promotes health information interoperability and prohibits information blocking by “actors.”

The Office of the National Coordinator of Health Information Technology (ONC) states that the patient is at the center of the 21st Century Cures Act. The rule puts patients in charge of their health records, which is a key piece of patient control in healthcare. Additionally, patient control is at the center of the Health and Human Services (HHS) work toward a value-based healthcare system. For the American public as a whole, the final rule promotes innovation in the healthcare technology ecosystem to deliver better information, more conveniently, to patients, clinicians, and payers. It also promotes transparency, by providing opportunities for the American public to regain visibility in the services, quality, and costs of healthcare.²

In essence, the rule is “anti-blocking” of information. Two examples include:

- The rule is designed to give patients and their healthcare providers secure access to health information.
- The rule includes a provision requiring that patients can access all of their **electronic health information**, structured and/or unstructured, **at no cost**.³

This act addresses many health-related issues; however, the focus of this paper will be on complying with the information blocking section and ensuring authorized access to electronic health information. It should be noted that this rule is not replacing the Privacy Rule, which addresses access to both electronic and paper-based protected health information. Therefore, it may be appropriate to consult the

¹ The HIMSS LTPAC (Long-Term and Post-Acute Care) Committee includes representatives from organizations working in or serving the LTPAC industry. Much of the content of this paper will benefit all LTPAC entities. However, the focus of this paper is for skilled nursing facilities (SNFs).

² *About ONC's Cures Act Final Rule*, The Office of the National Coordinator for Health Information Technology (ONC), <https://www.healthit.gov/curesrule/overview/about-oncs-cures-act-final-rule>.

³ *21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program Proposed Rule, Information Blocking (IB) – HITAC IB Task Force* - The Office of the National Coordinator for Health Information Technology (ONC), https://www.healthit.gov/sites/default/files/facas/2019-03-22_ONC_Cures_Act_NPRM_IB_%20HITAC_IB_Task_Force_508.pdf

organization's legal counsel for any potential/appearance of contradiction between this rule and HIPAA, or the organization's state privacy rules.

What is Electronic Health Information?

ONC defines electronic health information (EHI) as the electronic protected health information (ePHI) included in a designated record set (as defined in the Health Insurance Portability and Accountability Act) regardless of whether the records are used or maintained by or for a covered entity. This includes records received from other entities. There is one HIPAA exception that applies: EHI does NOT include psychotherapy notes as defined in HIPAA regulations or information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding. However, EHI covers most data that a psychologist would record in an EHR, including clinical notes, progress notes, assessment and treatment plan, and health concerns.⁴

EHI is the basis of electronic content. For purposes of the rule, there are two dates that healthcare organizations need to know:

- April 5, 2021: Applies to the EHI in the United States Core Data for Interoperability (USCDI) v1. (See Appendix A).
 - For more detail, see [Version 1](#).
 - [Version 2](#) is available but not required at this point.
- October 6, 2022: Applies to any clinical documentation/EHI that is in electronic format.

Electronic content, as described above, is any digital information regardless of whether it was created by the healthcare provider or collected/received by the healthcare provider. This means all notes, comments, reports, photos, digital post-it notes, etc. that are in a digital format. The electronic content is not limited to information created in the EHR. It also includes anything scanned into the EHR or maintained in a system separate from the EHR that is now digital in its format and is governed by the rule.

What is Information Blocking?

The Cures Act defines “information blocking” as business, technical and/or organizational practices that:

- Prevent or materially discourage the access, exchange or use of EHI; and
- For which the “actor” knows, or (for some actors) should know, are likely to interfere with EHI access, exchange or use.
 - The Cures Act defines three categories of “actors” who can block information: healthcare providers, developers of certified health information technology⁵, and health information networks or health information exchanges. **This rule applies to providers of post-acute care (PAC) services.**
 - Many healthcare entities are included within the healthcare provider's “actor” category. This category includes, but is not limited to, skilled nursing facilities, nursing facilities, home health entities or other long-term care facilities, practitioners, or clinicians. Although this paper focuses on long-term care, the actor category also includes acute and long-term acute care hospitals, inpatient rehabilitation facilities,

⁴ Detailed FAQs about the information blocking rule, American Psychological Association Services, <https://www.apaservices.org/practice/business/hipaa/information-blocking-rule-faq>.

⁵ For more information on Certified Health Information Technology, see: <https://www.healthit.gov/topic/certification-ehrs/about-onc-health-it-certification-program>.

other acute care entities and providers, developers of certified health IT, and health information networks or health information exchanges.

If conducted by a healthcare provider, there must also be knowledge that such practice is unreasonable and likely to interfere with, prevent, or materially discourage access, exchange, or use of EHI.⁶

All actors are subject to the information blocking rules and regulations as of **April 5, 2021**. A healthcare provider is an actor **regardless** of whether the provider uses a certified EHR or non-certified EHR.

For purposes of this paper, we will be focusing on what skilled nursing facilities need to be aware of, what to prepare for, and what processes to implement and/or modify to abide by the rule. Other LTPAC entities will find the content in the paper beneficial and applicable in many instances to their environments.

Generally, healthcare providers need to keep the following in mind:

1. The act expects providers (and all actors) will not prevent or discourage access, exchange or use of EHI.
2. The act expects providers to understand what interferes with EHR access, EHI exchange or EHI use. This expectation may require a team at the facility to dissect and assess each of these potential interferences. (See checklist starting on Page 11)

Both of these expectations may require changes in practice and current workflows, such as how we do what we do today as it relates to:

- Providing individuals, or their legal designee, access to their EHI.
- Exchanging EHI with other entities.
- Using EHI.

The American Medical Association (AMA) describes information blocking this way. "Information blocking (info blocking) can occur in many forms. Providers can experience information blocking when trying to access patient records from other providers, connecting their EHR systems to local health information exchanges (HIEs), migrating from one EHR to another, and linking their EHRs with a clinical data registry. Patients also can experience information blocking when trying to access their medical records or when sending their records to another provider."⁷

- "Access" is the ability or means necessary to make EHI available for exchange, use, or both.
- "Exchange" is the ability for EHI to be transmitted between and among different technologies, systems, platforms or networks; and is inclusive of all forms of transmission such as bidirectional and network-based transmission.
- "Use" is the ability for EHI to be understood and acted upon once accessed or exchanged.

⁶ *What is information blocking?*, American Medical Association, <https://www.ama-assn.org/system/files/2021-01/information-blocking-part-1.pdf>.

⁷ Ibid

However, just because an action prevents, materially discourages, or interferes with the access, exchange, or use of EHI does not mean the actor is guilty of information blocking. A review of the facts and circumstances need to be considered. Additionally, the rule provides some exceptions.

Although LTPAC providers are obligated to identify blocking occurrences, their primary responsibility under this rule will be to ensure patients or their representatives have timely access to their electronic medical records. Timely is defined in the rule as within ten (10) business days⁸ or provide the requestor with an explanation for the delay. However, in accordance with Federal Regulations, skilled nursing facilities (SNFs) are required to respond within 24 hours to two days.⁹

Health Information Networks

ONC defines “health information networks” (HINs) as an individual or entity that satisfies one or both of the following¹⁰:

1. Determines, oversees, administers, controls or substantially influences policies or agreements that define business, operational, technical or other conditions or requirements for enabling or facilitating access, exchange or use of EHI between or among two or more unaffiliated individuals or entities.
2. Provides, manages, controls or substantially influences any technology or service that enables or facilitates the access, exchange or use of EHI between or among two or more unaffiliated individuals or entities.

Two parties are affiliated if one has the power to control the other, or if both parties are under the common control or ownership of a common owner. Examples are:

- An entity is established within a state for the purpose of improving the movement of EHI between the healthcare providers operating in that state. The state entity and the healthcare providers are affiliated.
- A large healthcare provider (or other entity) functioning as a HIN is affiliated with the members/users of the HIN.

Skilled nursing facilities may participate in a HIN in order to share EHI between acute care and LTPAC facilities, which many commonly occur between acute care organizations, providers, home health agencies and some SNFs.

Examples of Information Blocking

Information blocking may be intentional or unintentional. The rule does not override other state or federal law. For instance, some federal or state laws impose specific preconditions that must be satisfied before

⁸ 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program Final Rule, §171.204(a) and §171,204(b)

⁹ *F573 State Operations Manual Appendix PP Guidance to Surveyors for Long Term Care Facilities*, Centers for Medicare & Medicaid Services, <https://www.cms.gov/medicare/provider-enrollment-and-certification/guidanceforlawsandregulations/downloads/appendix-pp-state-operations-manual.pdf>.

¹⁰ See also: *Cures Act Final Rule: Information Blocking Actors*, The Office of the National Coordinator for Health Information Technology (ONC), <https://www.healthit.gov/cures/sites/default/files/cures/2020-03/InformationBlockingActors.pdf>.

information can be released—such as substance use or HIV status information. Providers would likely not be guilty of information blocking when the provider is required to follow state or federal laws applicable to the release of medical records.

Skilled nursing facilities may violate the Information Blocking Rule if they knowingly take actions that interfere with exchange, access and use of EHI, even if no harm materializes. A SNF, for instance, may have a policy that restricts access to resident records in the EHR for a certain amount of time or until all documents are signed. Even if residents or their representatives are not aware there is a delay between when the timely completion of documents by providers are available to the SNF and when they are made available to the patient, a SNF that is merely “likely” to interfere with the access, use or exchange of EHI could be considered information blocking.

AMA suggests¹¹ that high-risk information blocking actions include interfering with:

- Residents who seek to access their own EHI.
- Providers who seek EHI for treatment or quality improvement.
- Payers who seek EHI to confirm a clinical value.
- Resident safety and public health.

Examples of blocking that may occur in post-acute environments include:

1. Practices that impose **formal** restrictions on authorized access, exchange or use of EHI under applicable state or federal law of such information for treatment and other permitted purposes under such applicable law:
 - Example: Your entity's policy requires staff to obtain a resident's written consent before sharing any EHI with unaffiliated providers for treatment purposes.
 - Example: Not allowing the resident's representative to look at (access) the EHR documentation of a resident's fall from the night before until the Director of Nursing (DON) is available.

To Do: Review facility policies and procedures for practices that impose formal restrictions.
2. Practices that impose informal restrictions on authorized access, exchange or use of EHI under applicable state or federal law of such information for treatment and other permitted purposes under such applicable law:
 - Example: Not responding to a resident representative's request for copies of the resident's records for three weeks and providing no explanation for the delay. However, if the delay is because the clinician hasn't reviewed the documentation yet, this, too, will be considered information blocking.
 - Example: Failure to provide copies of or send a copy of certain reports to a clinical consultant who will be seeing the resident in time for the resident's consultation visit.
 - Example: A healthcare provider has the capability to provide same-day access to EHI in a form and format requested by a resident or a resident's healthcare provider, but takes several days to respond.¹²

¹¹ *What is information blocking?*, American Medical Association, <https://www.ama-assn.org/system/files/2021-01/information-blocking-part-1.pdf>.

¹² *Information Blocking: Ready or Not, Here it Comes!*, Husch Blackwell Healthcare Law Insights, <https://www.healthcarelawinsights.com/2020/10/information-blocking-ready-or-not-here-it-comes/>.

To Do: Explore daily workflow processes related to exchanging information for any informal restrictions or unstated policies that are currently in use. Determine if these could be perceived as information blocking and take action where applicable on the findings.

3. Implementing health IT in nonstandard ways that are likely to substantially increase the complexity or burden of accessing, exchanging or using EHI;
 - Example: Selecting an EHR that is unable to exchange data electronically.
 - Example: Blocking certain data elements within the EHR from being interoperable, i.e., electronically transferred, (except under local/state law), e.g., Incident documentation, behavior tracking reports.

To Do: Evaluate EHR's limitations and settings that could be perceived as information blocking and take action where applicable on the findings.

4. Limiting or restricting the interoperability of health IT, such as disabling or restricting the use of a capability that enables sharing EHI with users of other systems or restricting access to EHI by certain types of persons or purposes that are legally permissible, or refusing to register a software application that enables patient access to their EHI (assuming there is not a legitimate exception).
 - Example: Failure to activate the data export function to electronically send prescriptions.
 - Example: Refusal to provide the patient documentation electronically, which is currently within the facility's EHR.

To Do: Evaluate EHR's limitations and settings as well as organizational policies, procedures or practices that could be perceived as information blocking and take action where applicable on the findings.

5. Implementing health IT capabilities in ways that are likely to restrict the access, exchange or use of EHI with respect to exporting complete information sets or in transitioning between health IT systems. This would include acts that make transitions between health information technologies more challenging (e.g., an EHR vendor charging excessive fees or using tactics to delay a practice's switch from their EHR to another vendor's EHR):
 - Example: EHR vendor announces that support for the EHR will end as of Dec. 31, and the healthcare organization must transfer the resident records by that date or pay a legacy system activation fee equivalent to two times the current annual license fee.
 - Example: Prior EHR vendor exports historical information in a non-usable format (e.g., assessments for every resident are now contained in one excel spreadsheet).

To Do: Evaluate termination clauses in current EHR vendor's contract with the facility.

6. Implementing health IT in non-standard ways (system settings) that substantially increase the complexity or burden of accessing, exchanging or using EHI (for instance, not complying with section 3004 of the PHSA or consensus standards). This category implies intentional acts:
 - Example: The Compliance Office restricts certain data from being exchanged (incident reports, behavior tracking).

To Do: Evaluate EHR's limitations and settings as well as organizational policies, procedures, or practices that could be perceived as information blocking and take action where applicable on the findings.

7. Imposing terms or conditions on the use of interoperability elements that discourage their exchange of information:
- Example: Unwillingness to send information electronically to a SNF owned by a competing organization
 - Example: Unwillingness to send information electronically to another provider because it would share a process (or form) that the organization considers proprietary.
- To Do:** Evaluate the organization's policies, procedures or practices that could be perceived as information blocking and take action where applicable on the findings.
8. Acts that lead to fraud, waste, or abuse, or impede innovations and advancements in health information access, exchange and use, including care delivery enabled by health IT:
- Example: The EHR automatically authenticates provider notes after five days for a provider.
 - Example: Copy/paste from previous notes to avoid the effort of creating a new note.
 - Example: EHR vendor releases a version that includes features that promote electronic sharing of additional data. However, the organization choose not to implement it.
- To Do:** Evaluate EHR's settings and organizational decisions that could be perceived as information blocking and take action where applicable on the findings.
9. Restrictions on access, exchange and use, such as those that may be expressed in contracts, license terms, EHI sharing policies, organizational policies or procedures or other instruments or documents that set forth requirements related to EHI or health IT, such as Business Associate Agreements (BAAs):
- Example: Releasing information by paper to payers, while releasing information electronically to treatment providers.
 - Example: Restricting needed information to a certain group based on competition, e.g., restricting information from being sent to a specialty pharmacy to keep prescriptions in house or with a contracted pharmacy.
- To Do:** Review contracts, policies and other documents for language that implies restrictions. Determine if the verbiage could be perceived as information blocking and take action where applicable on the findings.
10. Rent seeking (e.g., gaining larger profits by manipulating economic conditions) or other opportunistic pricing practices. The term rent implies profits/income:
- Example: Excessively charging for an update that included pandemic-related data elements to take advantage of the crisis and the need to capture pandemic-related information.
 - Comment: OIG/ONC has yet to define what a "reasonable" profit margin is.
- To Do:** LTPAC providers should be aware of this category of information blocking and, if needed, remind the organization's EHR software vendors of this concern.
11. Discriminatory practices that frustrate or discourage efforts to enable interoperability:
- Example: Exchanging information with a post-acute healthcare facility in the network and refusing to send information to a competing non-network post-acute facility.

- Example: Exchanging information with physicians that refer residents to the facility, but refusing to share information with a physician who rarely refers to the facility and who now has a patient in the SNF.

To Do: Evaluate organization's policies, procedures or practices that could be perceived as information blocking and take action where applicable on the findings.

Exceptions Available in the Information Blocking Rule¹³

There are two categories of exceptions:

- Five exceptions that involve not fulfilling requests to access, exchange or use EHI.
- Three exceptions that involve procedures for fulfilling requests to access, exchange or use EHI.

Exceptions that involve **not** fulfilling requests:

1. 171.201 — Preventing harm

This exception recognizes that the public interest in protecting patients and other persons against unreasonable risks of harm can justify practices that are likely to interfere with access, exchange or use of EHI. The actor must hold a reasonable belief that the practice will substantially reduce a risk of harm:

- Example: Resident has signs of physical abuse upon return from a weekend pass with the family. Photos of the bruises and interviews with the resident where he stated “they weren’t very nice to me” have been documented in the record. The family has asked for copies of the record. The copies provided are redacted for this information.
- Comment: Depending on state or federal regulations, there may be a requirement for attending provider involvement. Regardless, restricting access is what this rule is attempting to avoid.

2. 171.202 — Promoting the privacy of EHI

This exception recognizes that if an actor is permitted to provide access, exchange or use of EHR under a privacy law, then the actor should provide that access, exchange or use. However, an actor should not be required to use or disclose EHI in a way that is prohibited under state or federal privacy laws:

- Example: The resident is competent and has specifically requested that no information be shared with his daughter. His daughter is not paying for any of his care. The daughter requests to see the resident's record. Consistent with current privacy laws, the request is denied.
- Example: A state requires the use of their prescribed authorization to release information, including providing access, by the individual (resident) or their representative. The Department of Veteran Affairs (DVA) has issued a request for the

¹³ *Understanding the Eight Exceptions to Information Blocking*, Journal of AHIMA, <https://journal.ahima.org/understanding-the-eight-exceptions-to-information-blocking/> and Cures Act Final Rule: *Information Blocking Exceptions*, The Office of the National Coordinator for Health Information Technology (ONC), <https://www.healthit.gov/sites/default/files/cures/2020-03/InformationBlockingExceptions.pdf>.

record to determine if they will start paying for a portion of the resident's services. The resident or their representative must complete the state prescribed authorization prior to releasing the record to DVA.

- Example: Other examples consistent with current privacy laws include denying access subject to HIPAA Privacy Rule §164.524(a)(1) and (2):
 - The psychotherapy notes exception may be an option for temporarily holding patient information while it can be determined how to treat it or segment it.
 - Information compiled in reasonable anticipation of, or for use in, a civil, criminal or administrative action or proceeding;
 - A covered entity that is a correctional institution or a covered healthcare provider acting under the direction of the correctional institution may deny, in whole or in part, an inmate's request to obtain a copy of protected health information, if obtaining such copy would jeopardize the health, safety, security, custody or rehabilitation of the individual or of other inmates, or the safety of any officer, employee, or other person at the correctional institution or responsible for the transporting of the inmate.
 - An individual's access to protected health information created or obtained by a covered healthcare provider in the course of research that includes treatment may be temporarily suspended for as long as the research is in progress, provided that the individual has agreed to the denial of access when consenting to participate in the research that includes treatment, and the covered healthcare provider has informed the individual that the right of access will be reinstated upon completion of the research.
 - The protected health information was obtained from someone other than a healthcare provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.

3. 171.203 — Promoting the security of EHI

This exception is intended to cover all legitimate security practices by actors, but does not prescribe a maximum level of security or dictate a one-size-fits-all approach:

- Example: An organization can only support transport layer security (TLS)¹⁴ 1.0 for exchange, although the framework for exchange requires TLS 1.2 and above.
- Example: An SNF receives a request to deliver documentation for a recently discharged resident to a local senior community center to provide daycare services for the patient. The senior community center asks for these documents to be sent to their generic Gmail account. The SNF offers to place the information on a secured portal for the requestor from the senior community center to access and download, citing concern about the need to secure the information from inappropriate access.

4. 171.205 — Responding to requests that are infeasible

This exception recognizes that legitimate practical challenges may limit an actor's ability to comply with requests for access, exchange or use of EHI. An actor may not have—and may be unable to

¹⁴ Transport Layer Security, or TLS, is a widely adopted security protocol designed to facilitate privacy and data security for communications over the Internet. For more information see: *What is TLS (Transport Layer Security)?*, Cloudflare, <https://www.cloudflare.com/learning/ssl/transport-layer-security-tls/>.

obtain—the requisite technological capabilities, legal rights or other means necessary to enable access, exchange or use:

- Example: An organization receives a request from a family to create an API to send all data for their mother to them. The organization does not have the IT staff to create this API, nor does the SNF have the legal rights to create this for the EHR they are using. For these reasons, they refuse this request, citing this exception.
- Example: During a severe hurricane, the healthcare facility loses all power and is unable to electronically transmit information until the power is restored.

5. 171.207 — Maintaining and improving health IT performance

This exception recognizes that for health IT to perform properly and efficiently, it must be maintained, and in some instances improved, which 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 or to degrade the health IT's performance for the benefit of the overall performance of health IT:

- Example: The facility installed an update patch for converting time for daylight savings which resulted in the inability to log-in to the EHR. A resident's wife asked to see her husband's record during this period. The Director of Nursing (DON) advised that the access would need to occur another day and explained the EHR was down at this time. After some research, the facility's IT consultant found it was a known problem and backed out the update until the resolution was determined.

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

1. 171.206 — Licensing of interoperability elements on reasonable and non-discriminatory terms

This exception allows actors 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:

- Example: The Forever Healthy Community, Inc. (FHC), a hypothetical network of 40 SNFs in the Rocky Mountain region, uses an EHR that is common in the industry. In order to facilitate centralization of certain services within this region, FHC has developed interfaces between the facilities and the central office. The central office is able to process all payer requests for copies of records and upload those copies to the payers' portals. At the end of each month, each facility is levied a small charge for the number of requests the central office handled to offset the central office's labor and technology investment costs.

2. 171.204 — Recovering costs reasonably incurred

This exception enables actors to charge fees related to the development of technologies:

- Example: The news of Forever Healthy Community's success in reducing labor costs becomes known in the community. The IT consultant for another hypothetical organization, Still Nifty after 60 Community, Inc. (SN60C) has asked FHC if they could create the same interfaces since SN60C uses the same EHR. FHC agrees and proposes a fee to do so, which SN60C accepts.

3. 171.301 — Content and manner

This exception provides clarity and flexibility to actors concerning the required content (i.e., scope of EHI) of an actor's response to a request to access, exchange or use EHR and the manner in which the actor may fulfill the request. This exception supports innovation and competition by allowing actors to first attempt to reach and maintain market negotiated terms for the access, exchange and use of EHI:

- Example: An organization contacts a SNF and asks for data via FHIR¹⁵ standards. The SNF responds that it cannot exchange via FHIR standards and proposes instead to share using CDA standards. Both parties agree to this option.

Operationalizing the Information Blocking Rule

Recognizing that these regulations require significant collaboration in any post-acute care organization, the below listed items should be considered for inclusion in the entity's action plan. **The list below should not be considered all-inclusive.**

CHECKLIST

Action Item	Possible Team Members	Due Date	Date Completed
Identify a person to lead this project. Alternatively, utilize your information governance (IG) team, your Chief Information Officer (CIO), IT or HIM consultant to lead this project. Your existing Quality Assurance and Performance Improvement (QAPI) Committee could also be used to drive this process.	Administrator, IG Team, QAPI Committee, CIO, or IT or HIM Consultant	ASAP	
Review state privacy laws to learn if releasing certain information is allowable. <ul style="list-style-type: none"> ▪ Validate against Appendix A: USCDI V.1 data elements. 	Compliance Officer, HIM	ASAP	
Review all policies and procedures for any language that could be perceived to “prevent or materially discourage the access, exchange, or use of EHI.” <ul style="list-style-type: none"> ▪ Example of request for medical records to go “through” the Medical Records Department and be provided within (example) 30 days (time issue here could be perceived as information blocking). 	Compliance Officer, HIM/HIM Consultant, IG Team	ASAP	
Review contracts with other providers for language that could be perceived to	Compliance Officer, Administrator,	ASAP	

¹⁵ Fast Healthcare Interoperability Resources. Overview, HL7 FHIR Release 4, <https://www.hl7.org/fhir/overview.html>.

Action Item	Possible Team Members	Due Date	Date Completed
<p>“prevent or materially discourage the access, exchange, or use of EHI.”</p> <ul style="list-style-type: none"> Example: Restricting a provider from sharing or releasing data to anyone without written permission from the vendor. 	CIO or IT/IT Consultant, IG Team		
<p>Identify all current processes and scenarios for requests for information—from patients, family, attorney, third party app, etc.</p> <ul style="list-style-type: none"> Make a list of every scenario in your location and how often this request comes through. Use this list as a “priority process” for your review. 	HIM/HIM Consultant	ASAP	
<p>Designate a point person(s) for release of information (ROI) requests.</p>	Administrator	ASAP	
<p>Understand the composition of your medical record and capabilities for release of information. In addition to your EHR, make a list of any data collection utilized (e.g., scanning, dictation, interfaced documents, etc.). Identify any “shadow records” (records kept separately, typically by ancillary departments) and ensure you understand where every aspect of your record is maintained.</p>	HIM/HIM Consultant, CIO or IT/IT Consultant, IG Team, DON	ASAP	
<p>Create “how to address” procedures to facilitate release of information for any type of request.</p>	HIM/ HIM Consultant, CIO or IT/IT Consultant, IG Team	ASAP	
<p>Evaluate and update your compliance infrastructure to provide the information electronically (and securely) and to document/track that this was completed.</p>	Compliance Officer, CIO or IT/IT Consultant	ASAP	
<p>Proactively clean-up any inappropriate documentation practices that impact timely completion or accurate sharing of medical records (e.g., ensure completion of “in progress” or draft assessments; ensure revisions/versions are properly captured and changes properly annotated, and re-sent to requestors that had received prior version).</p>	Compliance Officer, DON	ASAP	
<p>Consider how this rule could be “used” to “receive” information from a referral source:</p> <ul style="list-style-type: none"> NOTE: ONC has suggested that PAC providers report instances when data is not received so they can improve the process. ONC has a confidential 	Compliance Officer, Administrator, DON	ASAP	

Action Item	Possible Team Members	Due Date	Date Completed
website for anonymously reporting instances of information blocking.			
<p>Begin providing education to all employees:</p> <ul style="list-style-type: none"> ○ Emphasize the need to promptly notify the designated individual in the facility of a request for any kind of information (payer, family, attorney, etc.). ○ Reiterate that most ANYTHING obtained or maintained electronically is available to be shared. As defined by ONC, ultimately, this means sharing the information within minutes of the data being collected—and consider how this might or might not be 'received' by the patient/family. 	IT or IT Consultant, HIM or HIM Consultant, DON, Administrator, External Consultants	ASAP	
Review all electronic data to learn what 'odd notes' are maintained and consider how these might be provided upon request.	IT Consultant	ASAP	
Consider creating a patient portal and providing the information through this portal (with ability for patient/resident representative to download any information from the portal). NOTE: A portal is NOT required. However, it is one secure option to provide the data and the ability to track who collects what data and when.	Administrator, IT, HIM	ASAP	
<p>Promote access:</p> <ul style="list-style-type: none"> • Notification to patient or responsible party. • Distribute a written notice to all residents and/or their responsible party advising of the access rights and/or portal procedures, including who to contact, application form for system access, etc. 	All Staff	ASAP	
<p>Set specific expectations and prepare procedures for access:</p> <ul style="list-style-type: none"> ▪ Notification process to the facility's designee. ▪ Timeliness of release/access. ▪ How the resident can access. ▪ What the resident can access. ▪ How the patient authorizes others to access: <ul style="list-style-type: none"> ○ Who will manage the system access rights and 	HIM, IG Team, CIO/IT or IT Consultant, HIM Consultant	ASAP	

Action Item	Possible Team Members	Due Date	Date Completed
<p>training of those who are accessing information?</p> <ul style="list-style-type: none"> ▪ Will others be allowed to access? <ul style="list-style-type: none"> ○ Payers ○ State surveyors ▪ Infeasibility exception. 			
<p>Address any fees: No fees can be charged for access to digital information by residents and/or resident representatives. State regulations may permit charges to be made for copies or placement of EHI on alternative media, such as a jump drive or DVD.</p>	<p>Compliance Officer HIM</p>	<p>ASAP</p>	

Discussions Required with EHR Vendor and Business Associates

Who has the patient's data? Often, we do not think about the fact that our business associates (BAs) retain resident information. BAs may include contracted providers for therapy, pharmacies, biomedical equipment, billing services, medical directors, etc. Each of these BAs must abide by the rule and if contacted by a resident or resident's representative, comply with access in the same timely manner as is expected of the facility. These BAs may need to understand that telling a resident to contact the facility when the BA has the information being requested will be considered a hurdle and, therefore, information blocking. Contractually, the BA may be required to notify the facility of the request, but delaying access to the resident's EHI is not an acceptable practice. The SNF/LTPAC provider should consider how they might be left "out of the loop" if a BA does not inform the provider of these requests in a timely manner nor share with the provider what data was provided to the resident. NOTE: In most cases, the resident/family will contact the SNF directly. In these cases, the SNF may need to have a process in place to communicate with the respective BA to secure the resident's data.

For organizations that have an EHR without a portal, consideration should be given to what benefits a portal may offer to the organization. However, discussions with the EHR vendor need to include a thorough understanding of the effort and cost involved to create, design and maintain a portal. The person(s) responsible for the ongoing support of the portal also needs to be defined. If a portal is justified, the next questions to be answered are what will be routinely uploaded to the portal and when (how quickly after creation).

Common contents in a portal may include:

- Outside test reports (laboratory, radiology)
- Medications lists
- Immunization record
- Care plans
- Transcribed reports, such as history and physicals, progress notes and consultations
- Bill pay
- Ability to message
- Ability to update demographic information

What all Staff Members Need to Know

What they write — the patient can see: There's no cleansing of documentation permitted. And, more importantly, the resident can demand to see it immediately. Under HIPAA, the resident was always permitted to see the documentation. However, the difference with this rule is the timeliness.

- Examples:
 - Results of lab tests and such could be available to the resident simultaneously to when the clinician is able to see them – but not later and this certainly means that sharing the results with the resident cannot be delayed until the medical director sees the results.
 - A physical therapist assistant might document results of a balance test. Then, before the physical therapist has a chance to review and discuss with the patient/representative, the patient might be looking up (online) the meaning of the results. In the past, organizations might have 30 days before providing this information to the resident or resident representative. Now, this information may be available immediately.

Documentation tips: Write in two language, medical, so others understand, and “common/familiar,” so patients or their representatives can understand. Work with a software vendor to create canned “transferrable” common verbiage. Ensure documentation is as objective as possible. Leave feelings out of the medical record.

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Appendix A – USCDI V.1

USCDI v1 Summary of Data Classes and Data Elements

Allergies and Intolerances

- Substance (Medication)
- Substance (Drug Class)
- Reaction

Assessment and Plan of Treatment

- Assessment and Plan of Treatment

Care Team Members

- Care Team Members

Clinical Notes

- Consultation Note
- Discharge Summary Note
- History & Physical
- Imaging Narrative
- Laboratory Report Narrative
- Pathology Report Narrative
- Procedure Note
- Progress Note

Goals

- Patient Goals

Health Concerns

- Health Concerns

Immunizations

- Immunizations

Laboratory

- Tests
- Values/Results

Medications

- Medications

Patient Demographics

- First Name
- Last Name
- Previous Name
- Middle Name (including Middle Initial)
- Suffix
- Birth Sex
- Date of Birth
- Race
- Ethnicity
- Preferred Language
- Current Address
- Previous Address
- Phone Number
- Phone Number Type
- Email Address

Problems

- Problems

Procedures

- Procedures

Provenance

- Author Time Stamp
- Author Organization

Smoking Status

- Smoking Status

Unique Device Identifier(s) for a Patient's Implantable Device(s)

- Unique Device Identifier(s) for a Patient's Implantable Device(s)

Vital Signs

- Diastolic Blood Pressure
- Systolic Blood Pressure
- Body Height
- Body Weight
- Heart Rate
- Respiratory Rate
- Body Temperature
- Pulse Oximetry Concentration
- Inhaled Oxygen Concentration
- BMI Percentile (2 - 20 Years)
- Weight-for-length Percentile (Birth - 36 Months)
- Head Occipital-frontal Circumference Percentile (Birth - 36 Months)