

Coppersmith Briefs

Just in Time Delay: ONC Extends Information Blocking Compliance Deadline to April 5, 2021

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THE INFORMATION BLOCKING RULE

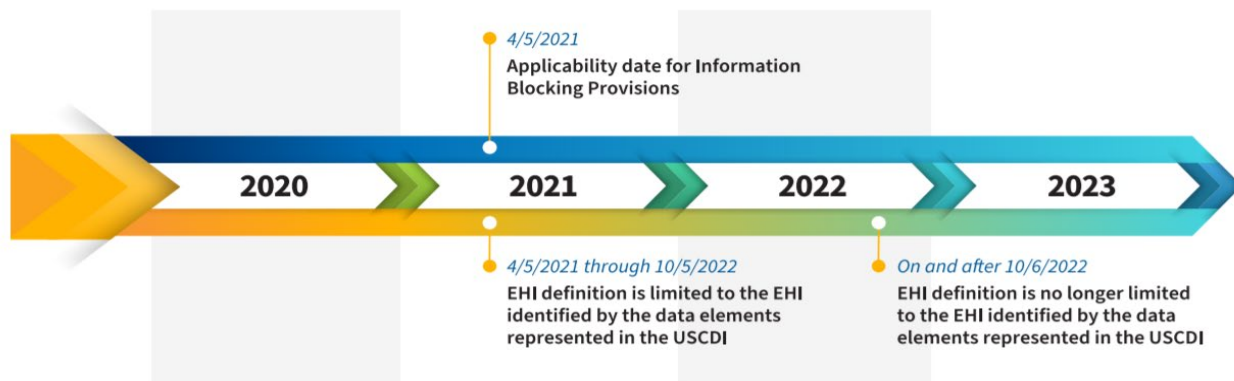
The Information Blocking Rule (collectively, [42 U.S.C. § 300jj-52](#) and [45 C.F.R. Part 171](#)) prohibits health care providers, health IT developers of certified health information technology, and health information exchanges/health information networks (HIE/HIN) from engaging in practices that are likely to interfere with the access, exchange or use of electronic health information (EHI), unless the practice is required by law or a regulatory exception applies. The original compliance deadline was November 2, 2020.

COMPLIANCE DEADLINE DELAYED

Today the Office of the National Coordinator for Health Information Technology (ONC) released an [Interim Final Rule](#) that delays the compliance date of the Information Blocking Rule until **April 5, 2021**. ONC extended the deadline in recognition that the health care system needs this extra time during the COVID-19 pandemic.

The extended compliance deadline will take **effect immediately** upon publication of the Interim Final Rule in the [Federal Register](#). ONC also further extended the period of time during which compliance may be limited to EHI represented in the [USCDI \(v.1\)](#) data elements, until October 6, 2022.

Information Blocking



ONC also extended certain deadlines for certification requirements applicable to health IT developers of certified health information technology (see [42 C.F.R. Part 170](#)).

TECHNICAL CORRECTIONS AND CLARIFICATIONS

ONC also made many technical corrections and clarifications, including (but not limited to) the following:

- **No Purchase/Upgrade Requirements.** ONC clarified that the Information Blocking Rule itself does not require the purchase or update of health IT solutions.
- **Redundant Usage of “Prevent, or Materially Discourage.”** The original rule defined “interfere” or “interference” as meaning “to prevent, materially discourage, or otherwise inhibit.” [45 C.F.R. § 171.102](#). Because of this existing definition, in the Interim Final Rule ONC deleted the redundant use of “prevent, or materially discourage”—in addition to interfere—from the definition of “information blocking,” and the same change was made in the Security exception ([45 C.F.R. § 171.203](#)). These deletions do not change the substantive definition of “information blocking” or the scope of the Security exception.
- **Application to Health IT Developers of Certified Health Information Technology.** ONC further changed the definition of “information blocking” to clarify that it applies to health IT developers of certified health information technology, not all health IT developers.

ONC will accept comments on the Interim Final Rule for up to 60 days after it is published in the Federal Register.

Coppersmith Brockelman is working with health care providers, health plans and HIE/HINs on compliance with the Information Blocking Rule and CMS Interoperability and Patient Access final rule, including drafting information blocking compliance action plans, no information blocking compliance policies and procedures, updates to existing HIPAA policies for alignment with the Information Blocking exceptions, and more. Please do not hesitate to contact us for assistance with this new and developing area.

LEARN MORE

To read more about the Interim Final Rule and the Information Blocking Rule please see:

- [HHS Press Office: HHS Extends Compliance Dates for Information Blocking and Health IT Certification Requirements in 21st Century Cures Act Final Rule](#)
- [ONC, Interim Final Rule: Certification](#)
- [ONC, Interim Final Rule: Information Blocking](#)
- [ONC, New Applicability Dates included in ONC Interim Final Rule](#)

The logo for Coppersmith Brockelman Lawyers features the firm's name in a white, sans-serif font against a dark blue background with a city skyline. The name is split into two lines: 'COPPERSMITH' on top and 'BROCKELMAN' below it, with a thin white horizontal line separating the two. Below the name, the word 'LAWYERS' is written in a smaller, all-caps font.

COPPERSMITH BROCKELMAN

LAWYERS

- [ONC, New Applicability Dates included in ONC Interim Final Rule: Certification](#)
- [ONC, New Applicability Dates included in ONC Interim Final Rule: Information Blocking](#)

ABOUT THE AUTHORS

[Melissa Soliz](#) is a leader in compliance with data privacy and patient access laws (such as HIPAA, 42 C.F.R. Part 2, the ONC Information Blocking Rule, the CMS Interoperability and Patient Access Rule, and state laws), compliance with opioid treatment laws and regulations, health information exchange (HIE), behavioral health/substance use disorder law issues, data breaches and OCR investigations, as well as clinical research compliance and contracting. Melissa regularly speaks in local and national forums on these topics and has been active in state and federal policy making on data privacy and HIE issues.

[Kristen Rosati](#) is one of the nation's leading "Big Data" and HIPAA compliance attorneys; she also has deep experience in data sharing for research, development of artificial intelligence, clinical integration, health information exchange, clinical research compliance, biobanking and genomic privacy, and data breaches. Kristen is a Past President of the American Health Law Association (AHLA) and currently serves on the program planning committee for the AHLA Artificial Intelligence Convener Session.

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