INTEROPERABILITY AND INFORMATION BLOCKING IN HEALTH CARE AND BEHAVIORAL HEALTH

Federal requirements, practical implications and opportunities for better care

MDI Position

Crisis services frequently involve providers caring for individuals they have never met and for whom they have limited clinical information. In these situations, timely access to accurate health information can significantly affect safety, treatment decisions, continuity of care and recovery outcomes.

Recent changes to HIPAA, 42 CFR Part 2, and ONC/CMS interoperability and information blocking rules have significantly expanded opportunities to share information promptly during crisis situations. However, many health care providers remain unaware of these changes or have not updated their policies and procedures to enable effective exchange of protected health information (PHI). **All health care systems that interact with crisis services should review and revise how they share PHI as promptly as currently allowed during crisis events to improve safety and outcomes.**

Legal Disclaimer

The National Council for Mental Wellbeing's Medical Director Institute (MDI) is not a legal authority and does not provide legal advice. This brief is intended as an educational resource to support awareness and understanding of federal interoperability and information blocking requirements and their implications for health care and behavioral health providers.

Organizations should consult legal and compliance experts regarding their specific obligations.

Why This Matters

Federal interoperability rules now require health care organizations to share electronic health information (EHI). The health care system has shifted from a model in which providers may share data under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to one in which they must share data, and in which information blocking is prohibited.

This change affects:

How patients access their health information

How organizations manage compliance and risk

How clinicians coordinate care

How health care systems support continuity, safety and value-based care

Interoperability is no longer primarily a technical initiative. It is now a foundational expectation of modern health care delivery.

National Policy Framework

Two major federal rules form the basis of current interoperability expectations:

- The Centers for Medicare and Medicaid Services (CMS) Interoperability and Patient Access Final Rule (May 1, 2020)
- The Office of the National Coordinator for Health IT (ONC) 21st Century Cures Act Final Rules
  - » 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program (May 1, 2020)
  - » Health Data, Technology and Interoperability: Certification Program Updates, Algorithm Transparency and Information Sharing (Jan. 9, 2024) — amends ONC's information blocking regulations

In addition, the Office of Inspector General (OIG) Civil Monetary Penalties Enforcement Rule (Sept. 1, 2023) imposes financial penalties for information blocking by certain actors (OIG, 2025). The ONC and CMS Provider Disincentives Final Rule (July 1, 2024) applies penalties/disincentives for providers (Gottlieb et al., 2024).

Together, these rules aim to:

- Ensure data moves with patients across providers and payers.
- Enable patient access through modern digital tools.
- Replace fragmented, manual exchange processes.
- Prevent practices that interfere with access, exchange or use of EHI.

These requirements apply broadly to providers, payers, health information exchanges (HIEs) and certified health information technology (HIT) developers.

Who Is Covered

The interoperability and information blocking rules apply to physical health, mental health and substance use care providers, including:

- Acute and psychiatric hospitals
- Critical access hospitals
- Outpatient providers
- Merit-based Incentive Payment System (MIPS) clinicians and group practices
- Accountable Care Organization participants and suppliers
- Health plans
- HIEs and certified HIT developers
- Other residential and facility-based services

Most health care organizations interact with multiple entities subject to these requirements.

What Is Electronic Health Information

EHI includes far more than billing data. It includes clinical and administrative information such as:

- Medications, problems, labs and allergies
- Clinical notes, consults and discharge summaries
- History and physical examinations
- Imaging and pathology narratives
- Progress notes, including regular psychotherapy and counseling notes

Since October 2022, EHI includes **any electronically maintained patient information**, not only the elements defined in United States Core Data for Interoperability (USCDI) standards.

Organizations must be prepared to exchange this information unless a permitted exception applies.

Privacy exception

Patients may request that their information not be shared. To rely on this exception:

Psychological distress alone does not meet the regulatory definition of harm.

Psychotherapy notes exception

Only traditional psychoanalytic process notes analyzing the contents of conversation are exempt.

Most therapy documentation — including diagnosis, symptoms, treatment plans, prognosis and progress — is considered part of the medical record and must be shared (45 CFR § 164.501).

To qualify for exemption, psychotherapy notes must be maintained entirely separate from the rest of the record.

What Is Information Blocking?

Under ONC interoperability rules, information blocking means a practice that interferes with the access, exchange or use of EHI unless the actor can demonstrate the practice is required by law or meets one of the regulatory exceptions (45 CFR Part 171).

Information blocking prohibitions apply regardless of whether an organization participates in incentive programs or uses a certified EHR. Uniformly encouraging patients to decline sharing is considered information blocking.

Major Change

Health care providers are now required to share PHI for the purpose of treatment with other health care providers unless they have documented in their medical record that the patient has requested them not to and the health care provider agreed to the restriction.

Under HIPAA:

- A covered health care provider may disclose protected health information (PHI) without an individual's signed authorization for treatment, payment and health care operations. Treatment includes the provision, coordination or management of health care and related services by one or more health care providers (45 CFR § 164.506 and 45 CFR § 164.501).
- A covered entity is not required to agree to an individual's request for restriction, but is bound by any restrictions to which it agrees (45 CFR 164.522[a]).
- However, when a provider may share PHI under HIPAA for treatment purposes, and a request for access, exchange or use of that information is made and technically feasible, failing to fulfill that request may be a prohibited practice under the information blocking definition.

Under other stricter federal or state laws:

- ONC's information blocking rule does not require disclosure that is prohibited by law.
- 42 CFR Part 2 requires patient consent and therefore means providers do not have to share information (Center of Excellence for Protected Health Information, 2023).
- More restrictive state privacy laws, such as those in New York and California, may also supersede these requirements.

Takeaway: This regulatory framework, as finalized by ONC, effectively means that providers subject to the rule are expected to share EHI/PHI when legally permitted (e.g., for treatment) and technically capable, because otherwise the practice could "interfere with" access, exchange or use of that information. In combination, HIPAA and ONC/CMS information blocking rules means that health care providers must share PHI for the purposes of treatment upon request from other health care providers, unless their electronic medical record documents that the patient has requested the information not be shared and the provider has accepted that request or one of the exceptions applies.

Professional Responsibility and Due Diligence

Interoperability requirements do not remove professional judgment or responsibility.

Providers must continue to:

- Verify the requestor.
- Confirm the purpose of the request.
- Share the minimum necessary information for administrative and billing purposes — noting that "the minimum necessary restriction standard **does not apply** to disclosures to or requests by a health care provider for treatment" (45 CFR § 164.502[b][2][i]).
- Document privacy-based refusals.

Penalties and Disincentives

Providers found to engage in information blocking may face:

- Medicare payment update reductions
- Zero Promoting Interoperability scores under MIPS
- Loss of eligibility for quality programs
- Accountable Care Organization participation consequences
- Public posting of violations

Even when financial penalties are limited, reputational and governance risk is significant.

EHR and IT Considerations

To remain certified, EHR systems must support:

- Data export capability
- API-based access
- Interoperability functionality

Core export capability is generally included in electronic health record (EHR) certification, while portal or HIE connectivity may require additional modules.

As the EHR contract holder, organizations have the responsibility to understand how their vendor supports interoperability compliance, and they must partner with EHR vendors to implement necessary changes.

Clinical and Operational Opportunity

Incomplete and/or missing PHI is a major cause of missed diagnoses, redundant tests, inappropriate treatments and low-quality health care. Fragmentation also leads to frustrating experiences for patients and their families. Taken together, HIPAA and ONC/CMS interoperability rules are a transformative opportunity to improve the quality of health care and reduce the administrative burdens of sharing PHI between providers.

Research on open notes and collaborative documentation demonstrates:

- Improved patient engagement
- Reduced documentation errors
- Increased trust and transparency
- Stronger patient participation in care

Interoperability supports these goals by enabling shared understanding and continuity.

The Crisis Care Context

While these federal requirements apply across all health care settings, they are especially visible in high-transition, high-acuity environments such as emergency and crisis services. Information blocking can cause delays in care and result in adverse outcomes, often after regular business hours. Health care providers have a direct responsibility to ensure timely availability of accurate information on a 24/7, real-time basis for crisis providers, to support the safety, continuity of care and recovery of their shared patients.

MDI Recommendation

MDI encourages health care and behavioral health organizations to approach interoperability not only as a compliance requirement, but as a strategic opportunity to improve care quality, patient experience and system coordination.

MDI urges health care and behavioral health organizations to review and revise their policies and procedures, consent and patient information forms, staff trainings and HIT practices to bring them into compliance with the combined requirements of HIPAA and ONC/CMS interoperability rules and take full advantage of the enhanced opportunity to share PHI more extensively and efficiently, for the benefit of patients and providers alike.

In addition to being a regulatory and technical obligation, interoperability is a core element of modern, patient-centered health care. When implemented thoughtfully, it strengthens trust, coordination, accountability and outcomes across the health care system.

References

Center of Excellence for Protected Health Information. (2023). *21st Century Cures Act Final Rule on Information Blocking*. https://coephi.org/app/uploads/2023/07/21st-century-cures-act-final-rule-2023.pdf

Gottlieb, D. F., Cannatti, J. A., III, & Bank, R. (2024, July 3). *HHS issues provider information blocking disincentives final rule*. McDermott Will & Schulte. https://www.mwe.com/insights/hhs-issues-provider-information-blocking-disincentives-final-rule/

Office of Inspector General. (2025, September 4). *Information blocking*. U.S. Department of Health and Human Services. https://oig.hhs.gov/reports/featured/information-blocking/