

The Honorable Xavier Becerra
Secretary, US Department of Health & Human Services
200 Independence Ave, SW
Washington, DC 20201

June 13, 2022

Dear Secretary Becerra:

On behalf of the undersigned organizations, we urge you to direct the Office of the National Coordinator for Health Information Technology (ONC), the US Department of Health and Human Service (HHS) Office of the Inspector General (OIG), and the Centers for Medicare & Medicaid Services (CMS) to collectively work together to provide additional education to providers related to the information blocking laws and requirements and to consider issuing corrective action warning communications to providers prior to imposing any disincentives related to an information blocking adjudication in the future.

Our organizations represent a broad range of providers and health information technology (health IT) end-users nationwide. Our members range from those providing direct care, to key leaders in managing health information, and up through those in leadership positions implementing health IT at the enterprise level. We reflect the views of the full care continuum and work on behalf of providers to assist in information blocking implementation.

Prior to and since implementation of the Cures Act Final Rule, our organizations have engaged in a two-year campaign educating our members on the details and nuances of the final rule including CMS' companion rule, the Interoperability and Patient Access final rule. Additionally, we have worked to prepare our members for what the final OIG investigation rule could include and how HHS may proceed with implementing disincentives against providers. Despite our success with these campaigns, significant knowledge gaps still exist within the provider community with respect to implementation and enforcement of information blocking regulations. In fact, several independent, small, rural, and solo medical practices are still unaware or underinformed about information blocking requirements. This likely plays a major role in allegations that providers are blocking access to patient data.

The provider community is committed to continuing to provide education on the information blocking policies. However, we seek ONC and CMS' assistance in providing additional educational content to providers. Currently, there is no robust set of best practices and implementation guides published by ONC and CMS that providers can reference as they prepare for the investigation and disincentive phase of information blocking regulations. For example, most information available restates confusing regulatory and preamble language verbatim. Without real-world guidance, providers will continue to struggle with implementing internal policies to avoid allegations of information blocking. If information sharing is the goal, then the federal government must improve education on its regulations. Having clear guidance is most important for small and under resourced providers who lack the time and funds necessary to appropriately prepare for information blocking requirements and who crucially rely on government resources to support their compliance activities.

We also request HHS engage in a comprehensive education campaign similar to when the Health Insurance Portability and Accountability Act (HIPAA) was first implemented. This campaign should feature interactive webinars and public Q&A sessions to allow providers to ask questions related to specific areas of confusion. Additionally, more information is critically needed to assist providers in

understanding the role other information blocking Actors (e.g., health IT vendors) play in information sharing. We also urge HHS to create a toll-free support line or interactive live chat – in the spirit of the resources HHS provided for HIPAA implementation in the 1990s and early 2000s – for provider Actors to seek assistance from implementation and compliance experts. Moreover, we suggest information provided be specific, actionable, and operationally focused as to offer providers assistance on how to implement information blocking requirements in the real world. Many providers need additional contextual information and real-world scenarios to fully understand and successfully implement information sharing policies.

As HHS considers how best to implement disincentives for providers found to be information blocking, we request that appropriate provider-based disincentives include an initial warning and corrective action letter prior to moving towards a penalty phase. This structure of warning and corrective action is utilized across multiple other programs throughout HHS, most notably with the Electronic Prescribing of Controlled Substances (EPCS) program in which, as finalized in the CY 2022 Physician Fee Schedule, CMS issues warning letters to providers if they are out of compliance with EPCS requirements for the first year. This approach is also successfully used by ONC when evaluating health technology vendors' noncompliance with certification requirements.

Following a program pathway of issuing initial warnings with corrective action steps enables providers to work in good faith to share data instead of operating from a place of fear of penalty. Given the existing education gap that remains across the provider community, a warning and corrective action letter is an appropriate first step and a necessary educational tool. Leveraging such an enforcement pathway would allow providers to navigate information blocking requirements to the best of their abilities and correct errors as they are alerted to them. We reiterate that the vast majority of providers want to share information; often it is not a providers' intent to block information nor an action they take knowingly. Patients would also be able to get timely access to their data without providers being unduly penalized should they operate in good faith in fulfilling such requests.

As HHS moves forward with the continued implementation of the information blocking regulations it is important for the agency to remember the totality of the program hinges on health system and actor readiness. For information blocking to be successful, no single Actor can push forward without the other Actors having an equal level of readiness and implementation. If one or more Actors lag on its deadlines and implementation, then it will have a whole of healthcare impact on how quickly and nimbly other Actors are able to operationalize information blocking. As we move towards the provider Actor focused deadliness mentioned above, we urge HHS to ensure it is monitoring and reacting appropriately as the whole of healthcare readiness fluctuates.

The journey from the passage of the Cures Act to implementation has been long but taking a practical approach to information blocking policies will chart a clear course for the health care community towards improved patient control and access. We encourage you to remain committed to education and ensuring those who lack understanding are provided opportunities to comply. It is often the carrot and not the stick that assists in successful policy implementation, and with information blocking regulations this too will likely be the case.

We look forward to hearing from you and learning more about your future implementation plans. If you'd like to discuss the contents of our letter with the undersigned organizations please do not hesitate

to reach out to Andrew Tomlinson, AHIMA's Director of Regulatory Affairs, at andrew.tomlinson@ahima.org.

Thank you,

American Academy of Family Physicians (AAFP)

American Health Information Management Association (AHIMA)

American Medical Association (AMA)

College of Healthcare Information Management Executives (CHIME)

Medical Group Management Association (MGMA)

CC: National Coordinator Dr. Micky Tripathi, Administrator Chiquita Brooks-LaSure, and Inspector General Christi Grimm