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Differing Deadlines May Cause Use of Information Blocking Exceptions

By Nina Youngstrom

Because three related rules from the 21st Century Cures Act—information blocking, interoperability and patient access—take effect at different times, hospitals and other providers may find themselves in compliance predicaments, an expert says.

For example, patients may request a full copy of their electronic health information (EHI), and if the hospital's electronic health records (EHR) vendor "can't serve it up the way it was requested," the hospital may have to invoke one of the eight exceptions to the Information Blocking Rule, said Kelly McLendon, senior vice president of compliance and regulatory affairs at CompliancePro Solutions.^[1]

It's one of the challenges of the multiplicity of Cures Act rules, which are a "whole new world" because they affect EHI requests by patients, HIPAA-covered entities and third parties that don't fall under the auspices of HIPAA, he noted.

The information blocking regulation is intended to ensure patients have unfettered, real-time access to the EHI. According to the final rule—which was published in the *Federal Register* May 1, 2020, by the HHS Office of the National Coordinator for Health Information Technology (ONC)—any action or inaction that knowingly interferes with the access, exchange or use of EHI may lead to "disincentives" or penalties unless a practice is required by law or falls into one of eight exceptions (e.g., sharing the information would cause patient harm). The rule also has provisions on interoperability and patient access that require affected payers, including Medicare Advantage and Medicaid, "to make claims, encounter and clinical data, including laboratory results available through the Patient Access API [application programming interface]," according to answers to frequently asked questions on CMS's website.^[2]

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