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CMS Proposes Information Blocking Enforcement Rule for Providers

By Nina Youngstrom

Providers would take a big reimbursement hit for information blocking under a proposed CMS “disincentives” regulation published in the Nov. 1 *Federal Register*.^[1] But the HHS Office of Inspector General (OIG), which investigates complaints, would have to prove providers had the intent to interfere with the access, exchange or use of electronic health information (EHI).

“It’s still a proposed rule but when the final rule is released, we potentially have a meaningful enforcement mechanism against providers,” said attorney Sean Sullivan, with Alson & Bird in Atlanta, Georgia. He described it as an all-or-nothing approach: CMS would take a bite out of a provider’s Medicare reimbursement for a certain period of time unrelated to the severity of the information blocking. For example, hospitals would lose most of their market basket update. The proposed rule also calls for a public shaming of sorts. The HHS Office of the National Coordinator for Health Information Technology (ONC) would post on its website the names of providers who have committed information blocking, their business address and other information.

The enforcement rule for providers was proposed about four months after OIG finalized an information blocking enforcement rule for health information networks, health information exchanges and developers of certified health information technology. The two sets of “actors” are at the heart of the original ONC information blocking regulation, which took effect April 5, 2021. It’s intended to ensure patients, providers and others have unfettered, timely access to EHI. Any action or inaction that knowingly interferes with the access, exchange or use of EHI is prohibited, unless it’s required by law or falls into one of eight exceptions (e.g., sharing the information would cause patient harm).

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