



FAQ: 21st Century Cures Act: Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking Proposed Rule

Updated: November 2023

The US Department of Health and Human Services (HHS) Centers for Medicare and Medicaid Services (CMS) and the Office of the National Coordinator for Health Information Technology (ONC) released the [21st Century Cures Act: Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking](#) proposed rule implementing the disincentive process for health care provider actors found guilty of information blocking. HHS also released a [press release](#) and ONC released an accompanying [blog post](#) to provide additional information on the proposed rule. **Public comments are due January 2, 2024.**

Key Proposals Related to the Disincentives:

- Eligible hospitals or critical access hospitals (CAH) subject to the Medicare Promoting Interoperability Program (PI Program) found guilty of information blocking would receive a disincentive in the form of eligible hospitals being ineligible to earn the three quarters of the annual market basket and eligible CAHs having payment reduced to 100 percent of reasonable costs.
 - While the amount of the disincentive would depend on an eligible hospital's Medicare payments, this proposal could result in a median disincentive amount of \$394,353.
- MIPS eligible clinicians subject to the PI Program found guilty of information blocking would not earn a PI Program score (thus would earn a zero score), which is typically a quarter of the total final composite performance score.
 - Estimates illustrate that the median individual disincentive amount could be a loss of \$686 for an eligible clinician, while an estimated median group of six clinicians could see a loss of \$4,116, with a range of \$1,372 to \$165,326 for group sizes ranging from two to 241 clinicians.
- Under the Medicare Shared Savings Program, a health care provider that is an accountable care organization (ACO), ACO participant, or ACO provider/supplier found guilty of information blocking would be barred from participating in the Shared Savings Program for at least one year and may result in a provider being removed from an ACO or prevented from joining an ACO.
- The appropriate agency that imposes a disincentive would send notice to the health care provider using usual methods of communication for the program or payment system, and the notice would include:
 - A description of the practice or practices that formed the basis for the determination of information blocking;
 - The basis for the application of the disincentive or disincentives being imposed;
 - The effect of each disincentive; and
 - Any other information necessary for a health care provider to understand how each disincentive will be implemented.



Additional Proposals:

- A request for information on additional appropriate disincentives to consider in future rulemaking, particularly disincentives that would apply to health care providers that are not implicated by the disincentives proposed in this rule.
- Additional details on the process of making determinations of information blocking and applications of disincentives, including a proposed approach of how information will be made available to the public about actors that have been determined by OIG to have committed information blocking and subject to an appropriate disincentive.

In June, the Office of the Inspector General (OIG) released its [*Grants, Contracts, and Other Agreements: Fraud and Abuse; Information Blocking; Office of the Inspector General's Civil Money Penalty Final Rule*](#) finalizing the investigation process for all actors and the enforcement process for health information network (HIN), health information exchange (HIE), and developer of certified health IT product actors. Enforcement of the investigation process and penalties for these actors became effective September 1, 2023. This CMS/ONC proposed rule outlines the enforcement process for disincentives for health care providers and is intended to work in tandem with the OIG rule. The agencies have indicated they will work together to enforce these requirements.

If you have questions, please contact the AHIMA Advocacy and Policy team at advocacy@ahima.org.