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The New Information Blocking Rules: Preventing Harm Exception and Test Result

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Spring is approaching, pandemic restrictions are (we hope responsibly) lifting, and the April 5, 2021 deadline for compliance with the new information blocking rules are looming. We continue our Frequently Asked Question series on the regulations that have been issued by U.S. Department of Health and Human Services Office of the National Coordinator (ONC) with one of the more subjective aspects of the rules that health care providers will be coming to grips with in the months and years to come – the Preventing Harm Exception.

Does the Preventing Harm Exception allow a general delay on the release of laboratory or other test results to patients?

Many providers have been asking this question and, unfortunately, the Preventing Harm Exception does not allow for a general delay in the release of lab or other test results. The Preventing Harm Exception is designed to cover only “practices that are no broader than necessary to reduce a risk of harm to the patient or another person.” ONC FAQs.

So in what particular circumstances would the Preventing Harm Exception protect the withholding of test results?

This exception applies where a provider orders a particular test for a particular patient and, exercising their professional judgment and acting in good faith, makes an individualized determination for that patient that:

- Withholding those test results from the patient would substantially reduce a risk to the patient or another person’s life or physical safety (which does not include emotional harm), or

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- Withholding those test results from a representative of the patient would substantially reduce a risk of substantial harm to the patient or another person. ONC FAQs.[1], [2]

Keep in mind that the information blocking rule does not require that lab and other test results be proactively uploaded to a patient portal. However, until further clarifications are issued, the ONC guidance to date would suggest that providers who regularly upload information to a patient portal but selectively delay the release of certain types of information, such as lab and other test results, could be considered to be engaged in information blocking. Once a request is made for the information, a response must be provided on a timely basis, and “a delay in the release or availability of EHI in response to a request for legally permissible access, exchange, or use of EHI may be an interference under the information blocking regulations.” ONC has not provided an exact timeframe that will be considered an acceptable delay and has stated that they will evaluate each instance based on the facts and circumstances.

[1] The provider also must hold a “reasonable belief” that the practice will achieve these results.

[2] ONC has also clarified that the harm need not be expected to occur within a particular time period, and the likelihood of the harm does not need to be high enough to be considered “imminent.”

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