



## **FAQ: OIG Information Blocking Enforcement Final Rule**

Updated: June 2023

The US Department of Health and Human Services (HHS) 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 Rules* final rule implementing the information blocking investigation process for all actors and the penalty process for health information network (HIN), health information exchange (HIE), and developer of certified health IT product actors.

**Enforcement will begin 60 days after the final rule is posted in the federal register.** The OIG has indicated that it will not impose a penalty on information blocking conduct occurring before then. It encourages actors to review its [Information Blocking](#) webpage for updates on the enforcement date.

### **Enforcement Priorities**

Along with the final rule, the OIG provided a list of enforcement priorities. The OIG states they will use the following priorities to select cases for investigation regardless of the type of actor. Those priorities encompass information blocking activities that:

- resulted in, is causing, or had the potential to cause patient harm;
- significantly impacted a provider's ability to care for patients;
- was of long duration;
- caused financial loss to federal health care programs, or other government or private entities; or
- was performed with actual knowledge.

### **Investigation Process**

The OIG further outlined what the investigation process will entail for actors subject to civil monetary penalties. This process may include provider actors; however the OIG will not be the agency enforcing the provider penalties. The Office of the National Coordinator for Health Information Technology (ONC) is scheduled to release an information blocking disincentives proposed rule for provider actors in 2023. For all actors, the OIG will follow the following process for investigating information blocking complaints.

1. The OIG receives an information blocking complaint
2. The OIG uses its enforcement priorities to assess complaints
3. The OIG opens an information blocking case
4. The OIG investigates the complaint by gathering facts, conducting interviews, document requests, etc.
5. The OIG may consult with ONC to assess facts and information blocking regulations.
6. Investigation may be closed if OIG concludes information blocking was not committed.
7. The OIG provides an opportunity to the entity to discuss the OIG's investigation.
8. If the OIG concludes the entity committed information blocking, a demand letter is sent to the entity.
9. Entity has the opportunity to appeal the OIG's decision to impose a penalty

## Other Key Provisions of the Final Rule:

- Any health care provider determined by the OIG to have committed information blocking shall be referred to the appropriate agency to be subject to appropriate disincentives using authorities under applicable Federal law. Provider disincentives will be proposed by ONC in a future rule.
- The OIG's enforcement priority related to patient harm is not limited to individual harm, but may also encompass harm to a patient population, community, or the public.
- The OIG may prioritize cases in which an actor has actual knowledge of information blocking versus cases where the actor should have known that the practice was likely to interfere with, prevent, or materially discourage the access, exchange, or use of electronic health information (EHI).
- The OIG anticipates coordinating with other HHS agencies to avoid duplicative penalties.
- The OIG will refer instances of information blocking to the HHS Office for Civil Rights (OCR) when they overlap with HIPAA or when penalties would be better assessed under HIPAA.
- The OIG has six years to impose civil monetary penalties (CMPs) on an actor found guilty of information blocking.
- The OIG anticipates engaging with providers and other entities to better understand its function as an agency in such investigations and to offer the provider an opportunity to explain why it is not an HIN/HIE when determining penalty authority.

The OIG did not outline specific criteria identifying the difference between single or multiple violations of information blocking. As the OIG gains more experience in assessing allegations, conducting information blocking investigations, and imposing CMPs, the agency may identify patterns or data that allows them to develop guidance with more specific criteria.

The OIG will not reimburse actors under investigation for costs associated with an investigation. For example, an actor may incur costs in preparing documents in response to a subpoena or hiring an attorney to represent them during an investigation. These legal costs are not reimbursed by the OIG.

If you have questions, please contact the AHIMA Policy & Government Affairs team at [advocacy@ahima.org](mailto:advocacy@ahima.org).