

ONC Targets Information Blocking

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By Kathy Downing, MA, RHIA, CHPS, PMP, and Jessica Mason

A NEW REPORT to Congress from the Office of the National Coordinator for Health IT (ONC), released in April, has put information blocking in the spotlight.¹ The ONC report comes out on the heels of a recent article written by five US senators titled, “Where Is HITECH’s \$35 Billion Dollar Investment Going?”² That article questioned the current state of the program and ONC’s Roadmap to Interoperability.³

The senators wrote that there was “inconclusive evidence that the program [HITECH] has achieved its goals of increasing efficiency, reducing costs, and improving the quality of care.” The senators singled out interoperability as the key factor in restraining success. They argued that the ONC Roadmap lacked specifics for how to achieve true interoperability and sustain meaningful use of electronic health records (EHRs).

In a [HealthIT.gov](#) blog post on April 10, 2015, ONC Director Karen DeSalvo, MD, MPH, MSc, and Jodi Daniel, director of the ONC Office of Policy, announced the release of the “Report to Congress on Health Information Blocking.”^{4,5}

In the post they wrote that “The secure, appropriate, and efficient sharing of electronic health information is the foundation of an interoperable learning health system” and that information blocking hinders progress toward that goal. The report was compiled at the request of Congress as outlined in the Consolidated and Further Continuing Appropriations Act of 2015, signed by the President on December 16, 2014.

The legislation required a detailed report from ONC regarding the extent of the information-blocking problem, including an estimate of the number of vendors or eligible hospitals or providers who block information. The act further required a comprehensive strategy on how to address the information blocking issue.

Information Blocking Defined

Requirements under HITECH and the “meaningful use” EHR Incentive Program state that certified EHRs need to provide for the transmission of data. In the case of information blocking, the vendor (health IT developer), health system, hospital, or accountable care organization (ACO) has opted not to send data electronically even when they can. While the report acknowledges that not all information blocking is intentional or misplaced, certain practices fall under the definition of intentional information blocking and interference, including:

- Setting contract terms, policies, or other business or organizational practices that restrict individuals’ access to their electronic health information, or restrict the exchange or use of that information for treatment and other permitted purposes
- Charging prices or fees (such as for data exchange, portability, and interfaces) that make exchanging and using electronic health information cost prohibitive
- Developing or implementing health IT in non-standard ways that are likely to substantially increase the cost, complexity, or burden of sharing electronic health information, especially when relevant interoperability standards have been adopted by the Secretary of the US Department of Health and Human Services (HHS)
- Developing or implementing health IT in ways that are likely to “lock in” users of electronic health information; lead to fraud, waste, or abuse; or impede innovations and advancements in health information exchange and health IT-enabled care delivery

Information blocking is the antithesis of interoperability goals for healthcare information exchange. According to the report, information blocking “occurs when persons or entities knowingly and unreasonably interfere with the exchange or use of electronic health information.” ONC was careful to note the difference between intentional blocking and inadvertent technical or practical issues.

The report outlines three criteria that define intentional blocking: interference, knowledge, and unreasonable justification. True information blocking involves “conduct that interferes with the ability of authorized persons or entities to access, exchange, or use electronic health information.” Further, the decision to engage in information blocking must be made knowingly. Finally, not all conduct that knowingly interferes with electronic health information exchange is information blocking. Rather, information blocking involves conduct that is objectively unreasonable in light of public policy.

The Extent of the Problem

ONC recognizes that the full extent of the information blocking issue is difficult to assess. Their documentation is derived from complaints, anecdotal evidence, and survey-derived data analyzing the adoption of exchange functionalities and capabilities. Otherwise, empirical data on information blocking is limited at present. Still, from the evidence available, ONC concludes it is “readily apparent that some providers and developers are engaging in information blocking.”

In 2014, ONC received approximately 60 unsolicited complaints regarding information blocking. ONC also reviewed documented incidences, interviewed a variety of stakeholders, and conducted in-person discussions and phone calls related to the issue.

On the whole, most complaints of information blocking were directed at health IT developers. These complaints largely centered on developer fees. Developers are accused of charging prohibitive fees to:

- Send, receive, or export electronic health information stored in EHRs
- Establish interfaces that enable such information to be exchanged with other providers, persons, or entities
- Send, receive, or query a patient’s electronic health information
- Establish certain common types of interfaces
- Extract data from EHR systems or move to a different EHR technology⁶

The report acknowledges concerns about wide variation in developer fees. Though fee variation may reflect differences in developer technology and services, it cannot adequately explain all the variation in prices reported to ONC. The report considers that developers may be engaging in opportunistic pricing practices.

Other complaints aimed at developers allege that some EHR developers either prohibit or make it unnecessarily difficult or expensive for their customers to connect to third-party health IT modules, even when such modules have been certified by ONC. The report cites recurring complaints that developers prevent the exchange of health information with competitors or with specific providers by refusing to establish interfaces or connections with certain technologies or entities.

Healthcare providers do not escape scrutiny in the report. Providers are also accused of information blocking. A recurring complaint is that some hospitals or health systems block information to control referrals and augment their standing in the market. Providers typically claim this is to comply with privacy and security requirements. However, ONC finds that privacy and security laws are cited in circumstances in which they do not in fact impose restrictions. Other complaints charge that providers are information blocking by coordinating with developers to restrict exchange with unaffiliated providers.

Strategy and Action

The report includes a comprehensive approach to addressing information blocking. ONC believes both target actions and broad strategies will be necessary to combat information blocking.

There are actions that interfere with the exchange and use of electronic health information, but that do not meet the criteria for information blocking. ONC believes that these actions, along with systemic barriers to interoperability and exchange, require a broad approach, including:

- Continued public and private sector collaboration to develop and drive the consistent use of standards and standards-based technologies that enable interoperability
- Establishing effective rules and mechanisms of engagement and governance for electronic health information exchange
- Fostering a business, clinical, cultural, and regulatory environment that is conducive to the exchange of electronic health information for improved healthcare quality and efficiency

- Clarifying requirements and expectations for secure and trusted exchange of electronic health information—consistent with privacy protections and individuals’ preferences—across states, networks, and entities⁷

The report further outlines the targeted actions developed by ONC to address information blocking, including:

- Strengthen surveillance of certified health information technology
- Promote greater transparency in certified health IT products and services
- Establish governance rules that deter information blocking
- Work in concert with the HHS Office for Civil Rights to improve stakeholder understanding of the HIPAA privacy and security standards related to information sharing
- Coordinate with the HHS Office of Inspector General (OIG) and the Centers for Medicare and Medicaid Services (CMS) concerning information blocking in the context of the federal anti-kickback statute and physician self-referral law
- Refer illegal business practices to appropriate law enforcement agencies
- Work with CMS to coordinate healthcare payment incentives and leverage other market drivers to reward interoperability and exchange, and discourage information blocking
- Promote competition and innovation in health IT and healthcare
- Constrain standards and implementation specifications⁸

The report examines concerns that may lie beyond the scope of ONC. The discovery of information blocking practices requires direct access to potentially sensitive documentation. ONC notes in the report that it has no authority to demand the production of relevant documentation or access to information. The agency does note that there are, however, avenues open to Congress that could effectively address information blocking practices.

Notes

¹ Office of the National Coordinator for Health IT. “Report on Health Information Blocking.” April 2015. http://healthit.gov/sites/default/files/reports/info_blocking_040915.pdf.

² Thune, John et al. “Where Is HITECH’s \$35 Billion Dollar Investment Going?” *Health Affairs*. March 4, 2015. <http://healthaffairs.org/blog/2015/03/04/where-is-hitechs-35-billion-dollar-investment-going/>.

³ Office of the National Coordinator for Health IT. “Connecting Health and Care for the Nation: A Shared Nationwide Interoperability Roadmap.” 2015. www.healthit.gov/sites/default/files/nationwide-interoperability-roadmap-draft-version-1.0.pdf.

⁴ DeSalvo, Karen B. and Jodi G. Daniel. “Blocking of health information undermines health system interoperability and delivery reform.” *Health IT Buzz*. April 10, 2015. www.healthit.gov/buzz-blog/from-the-onc-desk/health-information-blocking-undermines-interoperability-delivery-reform/.

⁵ Office of the National Coordinator for Health IT. “Report on Health Information Blocking.”

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

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Article citation:

Downing, Kathy; Mason, Jessica. "ONC Targets Information Blocking" *Journal of AHIMA* 86, no.7 (July 2015): 36-38.

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