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Prohibition of Information Blocking of Electronic Health Information

1. Background

Following the publication of the [21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program Final Rule \(Final Rule\)](#) entered into the Federal Register by the Office of the National Coordinator for Health Information Technology (ONC), Healthcare Organizations (HCOs) across the United States are required by law to cease any practices deemed "Information Blocking," defined as:

"...a practice by a health IT developer of certified health IT, health information network, health information exchange, or health care provider that, except as required by law or specified by the Secretary of Health and Human Services (HHS) as a reasonable and necessary activity, is likely to interfere with access, exchange, or use of electronic health information (EHI)." - <https://www.healthit.gov/topic/information-blocking>

To allow for real-world application of the provisions, the ONC Rule provides for a number of exceptions that acknowledge legal requirements and define conditions which may prohibit an Actor from providing patient data upon request and will not be found to be Information Blocking.

VITL provides services to healthcare organizations and operates the Vermont Health Information Exchange ("VHIE") to make protected health information available for exchange as permitted by state and federal law. As a 'health information exchange', VITL is subject to the Information Blocking requirements.

2. Purpose

This policy is intended to outline VITL's framework for compliance with the Final Rule to ensure Information Blocking is not performed, and interoperability of healthcare data is performed fairly between all interested parties.

3. Scope

This policy governs all aspects of VITL's business as it relates to prohibiting Information Blocking practices; including but not limited to VITL staff, new and established workflows, and system designs. This document is not intended to identify the capabilities of the VHIE, but rather how those capabilities may or may not be used in the context or responding to requests for EHI. For details on capabilities, refer to VITL's CPL-005 - VHIE Technical Capabilities Related to EHI and Access policy.

4. Policy

VITL is committed to making EHI available and usable for authorized and permitted usage in accordance with applicable laws and in compliance with its contractual obligations with healthcare organizations and others. This policy is intended to ensure there are no unnecessary obstacles that may deter patients from obtaining and interacting directly with their own healthcare information or may restrict the ability of healthcare providers to provide better-informed care for their patients.

The Information Blocking rule has specific exceptions that identify reasonable and necessary activities or practices that would not constitute Information Blocking for VITL's operations. In particular, the privacy exception to the rule permits restrictions to access and disclosure of EHI pursuant to state and federal law which are set forth in VITL's agreements to provide services to healthcare organizations, including the exchange of EHI and access to the VHIE. Other scenarios where an Information Blocking exception will be applied to VITL's intended practices are outlined within "Section 5" and explained in detail in VITL's CPL-004 - Information Blocking Exceptions and Agreeable Terms policy. VITL intends to apply the Information Blocking exceptions fairly when applicable. As new services, capabilities, and workflows are established, application of exceptions may be adjusted to align with the changed areas.

5. Specified information Blocking Exceptions

The Final Rule includes eight separate exceptions, split up into two major categories, providing guidance to when a Practice will not be considered Information Blocking, although it may directly interfere with the access, exchange, or usage of EHI. The full list of allowable exceptions from the Final Rule are summarized as follows:

Five (5) exceptions apply to not fulfilling requests to access, exchange, or use EHI: It is not considered information blocking if...

1. **Preventing Harm exception:** an Actor engages in practices that are reasonable and necessary to prevent harm to a patient or another person, provided certain conditions are met (45 CFR § 171.201).
2. **Privacy exception:** an Actor does not fulfill a request to access, exchange, or use EHI in order to protect an individual's privacy, provided certain conditions are met (45 CFR § 171.202).
3. **Security exception:** an Actor interferes with the access, exchange, or use of EHI in order to protect the security of EHI, provided certain conditions are met (45 CFR § 171.203).
4. **Infeasibility exception:** an Actor does not fulfill a request to access, exchange, or use EHI due to the infeasibility of the request, provided certain conditions are met (45 CFR § 171.204).
5. **Health IT Performance exception:** an Actor takes reasonable and necessary measures to make health IT temporarily unavailable or to degrade the health IT's performance for the benefit of the overall performance of the health IT, provided certain conditions are met (45 CFR § 171.205).

Three (3) exceptions involve procedures for fulfilling requests to access, exchange, or use EHI: It is not considered information blocking if...

1. **Content and Manner exception:** an Actor fulfills a request to access, exchange, or use EHI in any manner requested or in an alternative manner, provided certain conditions are met, using (i) certified health IT specified by the requestor; (ii) content and transport standards specified by the requestor and published by the federal government or a standards-developing organization accredited by the American National Standards Institute; or (iii) an alternative machine-readable format, including the means to interpret the EHI, agreed upon with the requestor (45 CFR §171.301). This exception both establishes the content an Actor must provide in response to a request to access, exchange, or use EHI in order to satisfy the exception, and establishes the manner in which an Actor must fulfill a request to access, exchange, or use EHI in order to satisfy this exception.
2. **Fees exception:** an Actor charges fees reasonably related to its costs, including fees that result in a reasonable profit margin, for accessing, exchanging, or using EHI, provided certain conditions are met (45 CFR §171.302).
3. **Licensing exception:** an Actor licenses interoperability elements for EHI to be accessed, exchanged, or used, provided certain conditions are met (45 CFR §171.303).

VITL's CPL-004 - Information Blocking Exceptions and Agreeable Terms policy further elaborates on how these exceptions may be applied to requests for EHI received by VITL outside of the services it offers relating to the VHIE.

6. References

<https://www.healthit.gov/topic/information-blocking> - This website was used as a summary guide and introduction to information blocking and the available exceptions.



<https://www.federalregister.gov/documents/2020/05/01/2020-07419/21st-century-cures-act-interoperability-information-blocking-and-the-onc-health-it-certification> - This link redirects to the full text of the Final Rule in the Federal Register.

7. Refer to other policies and procedures for tracking and responding to requests and for staff training.

- Policy Documentation:
 - CPL-002-Disclosure of Protected Health Information
 - CPL-003 Pricing Policy for Access to PHI
 - CPL-004-Information Blocking Exceptions and Agreeable Terms
 - CPL-005-VHIE Technical Capabilities Related to EHI and Access
 - CPL-006-Glossary of Information Blocking Terms
- Process Documentation:
 - Patient Information Requests Procedure Documentation
- Training Materials:
 - VITL Information Blocking Summary for new Employees or Contractors
 - Information Blocking Summary VITL Staff Training

8. Policy Review & Approval

VITL management performs periodic reviews of this policy as referenced by the next review date field above; based on this review, VITL management reserves the right to update this policy.

	04/05/2021
_____ Policy Sponsor	_____ Date
	04/05/2021
_____ Approving Official	_____ Date