

# THE ADVISOR

## MONTHLY COMPLIANCE COMMUNICATOR

## Navigating Information Blocking: A Comprehensive Practice Guide

As Electronic Health Record (EHR) companies prepare for potential fines reaching up to \$1 million regarding information blocking violations, healthcare practices and hospitals find themselves at the cusp of impending changes. Although no fines have been enforced for practices or hospitals yet, discussions regarding their imposition are actively underway.

One aspect that practices may need to adjust to is the immediate release of medical imaging and laboratory results to patient portals as soon as they become available, often preceding the physician's opportunity to review and analyze them. This phenomenon is addressed under the Information Blocking Rule (IBR), with a particular focus on its Clinical Impact component.

The IBR dictates that clinical laboratories and medical imaging centers must provide patients with digital access to their test results. Similarly, in most cases, physicians' EHR systems are expected to release results to patient portals without delay. This shift means that, in many instances, patients will have access to results before physicians can review, interpret, and communicate them to the patient.

However, it is essential to note that the IBR allows patients or their representatives to request a delay in the release of results, particularly for sensitive tests such as cancer screenings. Physicians can engage in discussions with patients about this option, providing additional time for result analysis and patient communication. The ability to offer this delay depends on the capabilities of the individual EHR system, as they may vary in this regard.

It is crucial to understand that the IBR does not mandate entities to notify patients when results are available or prompt them to review the results. Patients have the autonomy to choose whether to access their results immediately or delay their viewing.

### Newsletter Content

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## **Additional Resources on Information Blocking:**

1. HIMSS offers a comprehensive resource that explains the 21st Century Cures Act, including information on information blocking and interoperability:  
<https://www.himss.org/resources/21st-century-cures-act-part-two-information-blocking-and-interoperability>
2. Direct access to the Information Blocking Rule is available here:  
<https://www.healthit.gov/topic/information-blocking>. An informative download outlining exceptions to information blocking is accessible via the above link.
3. Information Blocking CFR: <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-D/part-171/subpart-A/section-171.103>. FR to the exceptions: <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-D/part-171/subpart-C>.
4. OpenNotes provides valuable insights into the Information Blocking Federal Rule:  
<https://www.opennotes.org/onc-federal-rule/>
5. The OIG Final Ruling can be accessed here: <https://oig.hhs.gov/reports-and-publications/featured-topics/information-blocking/#:~:text=The%20final%20rule%20establishes%20the,%241%20million%20penalty%20per%20violation>
6. The Federal Register: <https://www.federalregister.gov/documents/2023/07/03/2023-13851/grants-contracts-and-other-agreements-fraud-and-abuse-information-blocking-office-of-inspector>

## **Policy Implementation Recommendations by TMC:**

To navigate the evolving landscape of information blocking, TMC suggests the following steps:

1. Review and update your policies and procedures for fulfilling patient health information requests to ensure compliance with regulations, expedience, and consistency in handling electronic and physical information requests.
2. Develop a documented process for managing exceptions to information requests, aligning them with consent, privacy, and regulatory requirements. This process should encompass the eight exceptions mentioned here: <https://www.healthit.gov/sites/default/files/cures/2020-03/InformationBlockingExceptions.pdf>.
3. Create clear documentation for exceptions on a case-by-case basis for records management purposes. Consider developing templates for responding to requests that will not be honored, with reasons communicated transparently to the patient or their representative.
4. Establish a structured process for handling information blocking complaints. Ensure that patients are aware of how to file complaints using the provided resources, such as <https://inquiry.healthit.gov/support/plugins/servlet/desk/portal/6>.
5. Maintain documentation of any complaints or incidents related to information blocking for a minimum of six years.

TMC is committed to assisting you with any inquiries or concerns you may have. Please do not hesitate to reach out to [Client Services](#) or your consultant for further information and support.

By adhering to these guidelines and staying informed about information blocking regulations and potential violations, your practice can adapt effectively to the changing healthcare landscape.

# It's Your Call

## **HIPAA: Who can be fined under the Information Blocking Rule and what are the Office of Inspector General's (OIG) priorities?**

Only certain entities are currently subject to an OIG information blocking penalty. They are:

1. Health IT developers of certified health IT
2. Entities offering certified health IT
3. Health information exchanges
4. Health information networks

These penalties began on September 1, 2023, and OIG will not be imposing penalties for any blocking conduct that happened prior to that date. They also expect they will be receiving more complaints than they will be able to initially investigate. According to the Centers for Medicare and Medicaid Services, OIG will use the following priorities to select cases for investigation:

- Resulted in, is causing, or had the potential to cause harm,
- Significantly impacted a provider's ability to care for patients,
- Was a long duration,
- Caused financial loss to Federal health care programs, or other government or private entities, or
- Was performed with actual knowledge.

## **OSHA: Our state has no rules on ionizing radiation exposures. What are the rules and common citations under Federal OSHA?**

OSHA requires that employers protect staff from exposures to ionizing radiation when it is not regulated by the Nuclear Regular Commission, other federal agencies, and/or state agencies.

To avoid common OSHA citations under 29 CFR 1910.1096, an office must:

- Ensure that occupational dose limits are not exceeded (1910.1096(b) and (c)).
- Survey radiation hazards in order to comply with the standard (1910.1096(d)(1)).
- Supply appropriate personal monitoring (e.g., dosimeters) (1910.1096(d)(2)).
- Post caution signs, labels, and signals (1910.1096(e)).
- Provide instruction to personnel and post-operating procedures (1910.1096(i)).

More information can be found on the website for your local medical and dental boards, OSHA, and other regulatory agencies.

# Understanding and Managing Respiratory Illnesses

Respiratory illness season is upon us. These viruses can take root in the nose, mouth, airway, and/or lungs. Illnesses that have been reported are Influenza (flu), Respiratory Syncytial Virus (RSV), and COVID-19. Common signs and symptoms among all these illnesses can range from fever, cough, runny/stuffy nose, chills, sore throat, and muscle/body aches. Some additional illness-specific symptoms include:

- COVID-19: new loss of taste or smell.
- RSV: Wheezing.
- COVID-19 and Influenza can present with similar symptoms. Testing is the only way to distinguish between the two.

## **Illness Transmission**

All the illnesses are transmitted differently. COVID-19 is reportedly transmitted by a combination of droplets and airborne particles. These particles can travel up to 6 feet and may be carried through the air in droplets so small that they stay in air currents and can be inhaled. The flu virus is reportedly spread by large droplets when a person coughs, talks, or sneezes. RSV can be spread through contact with droplets from the nose and throat of infected people when they cough and sneeze, direct contact (such as kissing the face of a child) or touching a surface with the virus on it (such as a doorknob), and then touching your face.

There are similar ways to prevent the spread of illness. Hand hygiene is the single most critical measure in reducing transmitting organisms to your patients and your coworkers. Frequently washing your hands for 20 seconds with soap and water and whenever your hands are visibly soiled or dirty, along with using hand sanitizer are three best practices when it comes to hand hygiene. Another possible way to prevent the spread of illness is through vaccination, which, according to the CDC, is the best way to prevent spread.

## **Preventing Transmission**

However, there are other everyday ways to prevent transmission that can be done in healthcare to reduce the spread of these illnesses. To prevent the spread of respiratory illnesses, the CDC states that source control (masking) should be utilized when hospital admission rates are high and when levels of illness are high in your community. Signs can be posted at the entrance of your facility and/or messaging on your business website, or messaging during appointment reminders. Non-urgent treatment should be postponed for patients with suspected or confirmed respiratory illnesses.

Personal protective equipment (PPE) should be utilized and available during the delivery of healthcare. Use is determined based on the risk of exposure to blood, bloody saliva, and possible respiratory illness. PPE is to be provided and maintained by the employer. The different types of PPE are gowns, gloves, masks, eye protection, and N-95 respirators. N-95 respirators should be available and considered to be used during any aerosol generating procedures. Commonly known procedures that create aerosols in medical facilities are intubation, tracheotomy, CPR, bronchoscopy, and sputum induction. Dental equipment known to create aerosols are ultrasonic scalers, high-speed dental handpieces, air/water syringe, air polishing, and air abrasion. It should be noted that fit testing is required for all N-95s prior to their first use and annually thereafter if an employee could be exposed to people who have or may have COVID-19.

## **Employee Guidance**

If an employee is sick with a respiratory illness, they should follow the CDC's guidance on when to return to work:

- COVID-19: The guidance says that employees with mild to moderate illness of COVID-19, who are not moderately to severely immunocompromised may return to work after five days have passed since symptoms first occurred (day 0) and COVID-19 testing is performed. If a NAAT (PCR) test is negative on day 5, then return to work on day 7. If an antigen test (home tests are an example) is negative on day 5, then repeat the test 48 hours later. If both tests are negative, return to work. If either test is positive, on day 5 or 7, return to work on day 10. If testing is NOT performed, then return to work on day 10. Employees must be fever free for 24 hours and symptoms have improved.

- Flu: Employees with confirmed flu who have a fever should be fever free for 24 hours without the use of fever-reducing medicine. Employees with suspected or confirmed flu, who do not have a fever, should stay home from work at least 4-5 days after the onset of symptoms.
- RSV: Employees with RSV are contagious for 3-8 days. Employees can return to work when fever free for at least 24 hours and symptoms have improved.

With these measures in place and following the guidance from the CDC and other resources, we can provide a safe, healthful environment for our patients as well as our employees.

# HIPAA Compliance in the Age of Social Media

Protecting patient privacy is the goal of HIPAA regulations for healthcare practices. While HIPAA regulations were established before the era of social media, the Privacy Rule safeguards against the unauthorized disclosure of patient health information (PHI) on these platforms.

## What is ePHI under HIPAA?

Electronic PHI is any health information that is created, stored, transmitted, or received in electronic format or media relating a patient's past, present, or future:

- Physical or mental health condition
- Health care services provided
- Payment of health care

Individually identifiable health information also includes the 18 common identifiers listed under the Privacy Rule. Full list of the identifiers available [here](#).

Almost anything identifiable to a patient in your records is protected by HIPAA. Importantly for social media, this includes photos in which a patient's name, face, or other recognizable details are visible.

## HIPAA and Social Media

The HIPAA Privacy Rule prohibits the disclosure of PHI on social media without express consent from patients. This includes information about patients that could lead to them being identified in:

- Text
- Photos
- Videos

"Express consent" is written consent from the patient and PHI can only be used for the purpose specifically mentioned in the consent form.

## Patient Consent Form

What needs to be included in a patient consent form to use PHI on social media:

- Specific description of the information to be used or disclosed
- Description of each purpose for the use or disclosure
- The individual's right to revoke the authorization
- An expiration date or event for the authorization

## Common Violations via Social Media

- Posting images and videos of patients without written consent
- Posting gossip about patients, even if name is not disclosed
- Posting of any information that could allow an individual to be identified
- Sharing of photographs or images taken inside a healthcare facility in which patients or PHI are visible
- Sharing of photos, videos, or text on social media platforms within a private group

### **Examples of Violations on Social Media**

There have been cases in recent years of HIPAA violations relating to social media and revealing PHI.

In 2010, a nurse posted on social media after treating the suspect in the fatal shooting of a police officer. While she left out names, she did post enough details so that other social media users could quickly connect her post with news coverage. A HIPAA fine and professional discipline followed.

Another example is of a Rhode Island physician who was reprimanded after posting information describing the injuries of a trauma patient who the physician had recently treated. The post did not identify the patient specifically but included enough details that the patient could easily be identified.

### **Social Media Policies**

Practices should have established policies and procedures to ensure HIPAA compliance. Policies should include:

- An outline of how HIPAA affects social media
- PHI is never disclosed on social media unless prior patient consent is obtained
- Include guidelines addressing the professional and personal use of social media
- HIPAA rules apply to the personal accounts of healthcare employees.
- Requirements for posts coming from practice's social accounts and any approval process
- e., content should be approved by Privacy/Security Officer or Office Manager before posting

### **Example of Social Media Policy Wording**

Here some examples of wording that could be used in a social media policy to explain the purpose or rules relating to the practice specifically.

- "This policy provides guidance on the proper and acceptable use of social media through both external platforms (External Social Media), including YouTube, LinkedIn, Facebook, Twitter, Instagram, Pinterest, Snapchat, TikTok, or any other existing or future social media platform, as well as internal social media tools like Slack, Microsoft Teams, Yammer, and other future social media tools used by the company internally (Enterprise Social Media)."
- "Remember that you are responsible for your actions. Realize that what you post may be shared by others or even go viral, spreading rapidly and widely. You are personally responsible for the content you publish on social media. This means you should use common sense and use at least the same caution with social media as you do with all other forms of communication."
- "You are not authorized to use any online name or other identification that incorporates the Company's name or any of its brand names (or any variants thereof)."

## Guidelines for Practices

Some guidelines for practices to mitigate the exposure of PHI through social media channels:

- Limit who has access to practice's social media accounts
- All employees should be trained on and understand the policies relating to social media whether they have access to PHI or not. Employees without access to PHI can still inadvertently disclose information on social media.
- Build a system of HIPAA violation social media sanctions into the guidelines. This ensures employees understand the repercussions of breaking the rules.
- Provide ongoing training/reminders to reiterate the importance of protecting patient information.
- Periodic updates to these policies may be warranted to account for new technologies and changing circumstances.

As the landscape of healthcare communication evolves with social media, it is imperative for healthcare practices to adapt their policies to maintain HIPAA compliance. To avoid common violations and potential consequences, healthcare organizations should implement clear social media policies and ensure that employees are well-versed in the rules governing the professional and personal use of social media. With a proactive approach, practices can effectively protect patient privacy in the age of social media while continuing to provide quality healthcare services.



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## Instructions

Print and post newsletter in office for staff review. Each member should sign this form when completed. Keep on file as proof of training on these topics.

## Newsletter Content

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Need to contact us? Scan the QR code for all the ways to get in touch!