



## OVERVIEW FACT SHEET OF PROPOSED RULE

# 21<sup>ST</sup> Century Cures Act: Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking

October 2023

## Proposed Rule Highlights

The proposed rule establishes disincentives for health care providers that have committed information blocking as authorized by Section 4004 of the 21st Century Cures Act (Cures Act). Department of Health and Human Services (HHS) agencies, including the Office of the National Coordinator for Health Information Technology (ONC), the Centers for Medicare & Medicaid (CMS), the Office of Inspector General (OIG), and others have collaborated to develop this proposed rule. These proposals directly advance HHS priorities for deterring information blocking and promoting safer, more coordinated care for all patients through electronic health information sharing. This fact sheet provides an overview of select provisions of the proposed rule.

## What is in the Proposed Rule?

The Information Blocking Provider Disincentives proposed rule:

- Establishes disincentives for health care providers that commit information blocking as determined through an investigation by OIG.
- Describes the process by which OIG would investigate a claim of information blocking conduct by a health care provider, determine the health care provider has committed information blocking, and refer that health care provider to be subject to disincentives.
- Proposes to share information with the public about actors (including health care providers, health IT developers of certified health IT, and health information exchanges and health information networks) that commit information blocking.

## What Are the Proposed Disincentives?

In this proposed rule, HHS proposes to establish the following disincentives for health care providers that have been determined by OIG to have committed information blocking and for which OIG refers its determination to the Centers for Medicare & Medicaid Services (CMS):

### **Medicare Promoting Interoperability Program**

- Under the Medicare Promoting Interoperability Program, an eligible hospital or critical access hospital (CAH) would not be a meaningful electronic health record (EHR) user in an applicable EHR reporting period. The impact on eligible hospitals would be the loss of 75 percent of the annual market basket increase; for CAHs, payment would be reduced to 100 percent of reasonable costs instead of 101 percent.



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#### **Quality Payment Program**

- Under the Promoting Interoperability performance category of the Merit-based Incentive Payment System (MIPS), an eligible clinician or group would not be a meaningful user of certified EHR technology in a performance period and would therefore receive a zero score in the Promoting Interoperability performance category of MIPS, if required to report on that category. The Promoting Interoperability performance category score typically can be a quarter of a clinician or group's total MIPS score in a year.

#### **Medicare Shared Savings Program**

Under the Medicare Shared Savings Program, a health care provider that is an Accountable Care Organization (ACO), ACO participant, or ACO provider or supplier would be deemed ineligible to participate in the program for a period of at least one year. This may result in a health care provider being removed from an ACO or prevented from joining an ACO. Restricting the ability of health care providers to participate in the Shared Savings Program for at least 1 year would result in these health care providers potentially not receiving revenue that they might otherwise have earned if they had participated in the Shared Savings Program.

**Disclaimer:** This fact sheet describes select proposals described in 21st Century Cures Act: Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking proposed rule. While every effort has been made to ensure the accuracy of this fact sheet, it is not a legal document. Please refer to the published proposed rule for full provision details.