

[PRACTICE NAME]'S ELECTRONIC HEALTH INFORMATION ACCESS POLICY

1. Purpose

This policy supports [PRACTICE NAME]'s commitment to providing patients with timely access to their Electronic Health Information (EHI) and addresses applicable requirements of the 21st Century Cures Act: Information Blocking Rule ("Information Blocking Rule"). We believe that we are better able to treat patients when they are actively engaged in their care. To be engaged, they must have timely access to their health information.

2. What Does Information Blocking Look Like?

Providers may trigger the Information Blocking Rule when they know that a practice is unreasonable and is likely to interfere with access, exchange, or use of EHI, even if no harm materializes.

If a release of EHI is delayed for a particular request (for example, to ensure that the release complies with state law regarding a minor's privacy rights), it is **unlikely** to be considered interference. Importantly, the delay must be no longer than necessary. Another example would be when a provider ordering a particular test for a specific patient, in the exercise of their professional judgment, determines that withholding the results of the test from the patient or patient's representative would substantially reduce a risk to the patient's or another person's life or physical safety.

Such individualized determinations made in good faith by an ordering provider, in the exercise of their professional judgment and in the context of the treatment relationship, are **unlikely** to be considered interference.

A delay **likely** would be considered interference if a practice established a blanket policy imposing delays on the release of lab results in order to allow the ordering provider to review the results or to personally inform patients of the results before patients can electronically access such results. Another example that **likely** would be considered interference is a delay after a patient logs in to the patient portal to access EHI that the practice has where such EHI is not available through the portal for any portion of time.

3. Non-Discrimination

[PRACTICE NAME] (Practice) will address EHI requests consistently and non-discriminatorily in keeping with Practice policies and state and federal laws and regulations.

4. Applicability

This policy applies to Practice's workforce members, including employees, officers, medical staff, residents, fellows, students, volunteers, trainees, affiliates, vendors, contractors, consultants, and agents (Workforce).

5. Health Information Requests

We will honor requests for access to EHI that are made in person, via telephone, through the patient portal, in writing or facsimile.

The Practice will endeavor to fulfill requests without unnecessary delay or within 10 days. If unable to provide the information, the Practice will notify the requestor within 10 days of the request and explore an alternative format and/or manner to provide the requested information that is satisfactory to the requestor. Such communications should be documented in the medical record. If any information cannot be shared with the requestor, this must be documented, along with the reason (which should fall within an exception to the Information Blocking Rule).

6. Who Is Making The Request?

When a request comes in, Practice will endeavor to review it within 1 business day (ideally same day) to address whether the requestor has legal authority to the EHI and whether a release of information is necessary. If a release is needed, Practice will provide one to the requestor without delay and will not take any measures to interfere with obtaining the release.

7. What is EHI?

EHI is the electronic protected health information (ePHI) in a Designated Record Set, which typically includes medical records and billing records about individuals and other records used, in whole or in part, by providers to make decisions about individuals. The Information Blocking Rule does not apply to paper records.

Until October 6, 2022, EHI may be limited to the data elements represented in the US Core Data for Interoperability (USCDI) V1 standard as required by the Information Blocking Rule. After October 6, 2022, Practice will be required to make our patients' ePHI available for access, exchange, and use. If data is available, Practice may choose to release ePHI beyond the USCDI data elements prior to the October 6, 2022 deadline.

8. Fees

Practice will follow policies and related procedures with respect to any fees charged to an individual's (or personal representative's) request to access EHI. Practice will not charge fees that are based in any part on patient access, exchange, or use of EHI that requires no manual effort to fulfill.

Practice will not charge administrative fees for access to the patient portal, however, the Practice may charge fees related to using the patient portal for billable telehealth messaging (telehealth via patient portal messaging with billable CPT codes).

9. Exceptions to Information Blocking

The following represent the exceptions to Information Blocking with details on those exceptions most applicable to our Practice.

A. These activities, when reasonable and necessary, are valid reasons to not fulfill requests to access, exchange, or use EHI.

1. Harm Prevention Exception

Practice may delay or deny access to EHI, if there is a reasonable belief that doing so will substantially reduce a risk of harm to the life or physical safety of patient or another person.

This determination must be based on:

- a. The professional judgment of a licensed health care professional; or
- b. If the risk of harm arises from misidentified, mismatched, or corrupted data.

2. Privacy Exception

Practice may delay or deny a request for access to comply with:

- a. The patient's request to not share EHI;
- b. HIPAA – see Practice's applicable HIPAA/privacy policies;
- c. State Privacy Law - see Practice's applicable HIPAA/privacy policies; or
- d. Federal Privacy Law - see Practice's applicable HIPAA/privacy policies.

3. Security Exception

Practice may deny or modify access to EHI **to protect the security of EHI**. For example, it is not information blocking to verify a person's identity prior to granting access to EHI or to delay a request as a direct response to a known security incident or threat.

If a request is limited or denied to protect security, Practice must document:

- a. Why the security practice is necessary to mitigate security risk; and
- b. That there were no reasonable and appropriate alternatives to address the security risk that would be less likely to interfere with Access, Exchange, or Use of EHI.

4. Infeasibility Exception

Practice may deny a request due to **infeasibility**.

Practice will notify the requestor **within 10 days of the request** if fulfilling the EHI request in the manner requested or in an alternative is infeasible.

It may be infeasible to fulfill a request under the following circumstances:

a. Uncontrollable Events

Practice may not be able to fulfill an EHI request due to a natural or human-made disaster, public health emergency, public safety incident, war, terrorist attack, civil insurrection, strike or other labor unrest, telecommunication or internet service interruption, or act of military, civil, or regulatory authority.

b. Data Segmentation

Practice may not be able to fulfill an EHI request because the Practice cannot segment requested EHI from EHI that cannot be disclosed due to an individual's

privacy preferences, legal requirements, or to prevent harm to the life or physical safety of the individual or another person.

c. Infeasible Under the Circumstances

Practice may determine that a request is not feasible based on the following factors:

- i. The type of EHI and the purposes for which it may be needed;
- ii. The cost of complying with the request in the manner requested;
- iii. The financial and technical resources available to the Practice;
- iv. Whether practice is nondiscriminatory in its application to all requesting parties; or
- v. Control over predominant technology or platform through which EHI is Accessed or Exchanged.

5. Health IT Performance Exception

For health IT to perform properly and efficiently, it must be maintained, and in some instances improved, which may require that health IT be taken offline temporarily. Practice may take reasonable and necessary measures to make health IT temporarily unavailable for the benefit of the overall performance of the health IT.

B. The following exceptions involve procedures for fulfilling requests to access, exchange or use of EHI, so that we are providing the EHI under certain restrictions:

1. Content and Manner Exception

a. Content

Until October 6, 2022, Practice will respond to a request to access, exchange, or use EHI with, at a minimum, the EHI identified by the data elements represented in the United States Core Data for Interoperability (USCDI) standard.

After October 6, 2022, the Practice must respond to a request to access, exchange, or use EHI with the ePHI in Practice's the Designated Record Set.

b. Manner

Every effort will be made to provide EHI in the technical manner requested. Practice may respond to an EHI request in an alternate manner if one of the following circumstances applies:

- i. Practice is technically unable to fulfill the request; or
- ii. Practice is unable to reach agreeable terms with the requestor.

The information should focus on any current privacy and/or security risks posed by the technology or the third-party developer of the technology and be factually accurate, unbiased, objective, and not unfair or deceptive.

Practice may respond to an EHI request in an alternative manner to the one requested, if Practice is technically unable to fulfill the format request and uses, in the following order:

- 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.

2. Fees Exception

Please see Section 8 above regarding fees.

3. Licensing Exception

This would only be applicable if our Practice were to license interoperability elements for EHI to be accessed, exchanged, or used.

Approved by	Revision Date	Description of Change	Author