

Cures Act: Information Blocking Q&A

Disclaimer: This presentation is based on the interpretation of PCC staff is not meant to serve as legal advice

Agenda

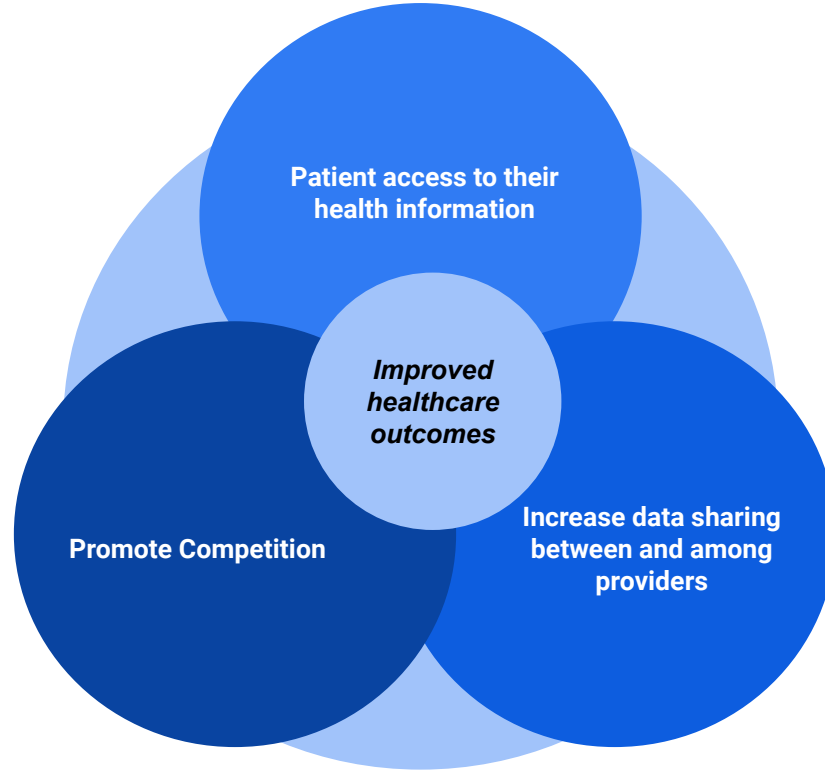
- Definition and overview of Information Blocking
- How to prepare your practice
- PCC EHR functionality considerations
- Q&A

What is Information Blocking?

Information blocking is defined in the 21st Century Cures Act. In summary, information blocking is “a practice that...is likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information,” unless such practice is required by law (e.g., HIPAA), or it meets an exception established through federal rulemaking.

[42 U.S.C. § 300jj-52\(a\)\(1\).](#)

What is the intent of this regulation?



Information Blocking Exceptions

ONC defined eight exceptions when it may be appropriate to NOT comply with the information blocking rule, or alter the way in which EHI is accessed, exchanged, or used

- Exceptions that involve not fulfilling requests:
 - Preventing Harm
 - Privacy
 - Security
 - Infeasibility
 - Health IT Performance
- Exceptions and procedures for fulfilling requests to access, use, or exchange EHI:
 - Content and Manner
 - Fees
 - Licensing

How to Prepare Your Practice

- Appoint an Information Blocking Officer; this is not a requirement of the regulation, however it is ideal to have a point person to review and update policies, as well as answer questions
- Review the information blocking exceptions and define policies to use them; determine where and how exceptions will be documented, logged, and retained
- Teach everyone in your practice/organization how to recognize and act upon a request to access, exchange, or use electronic health information
- Provide education for updated and new policies

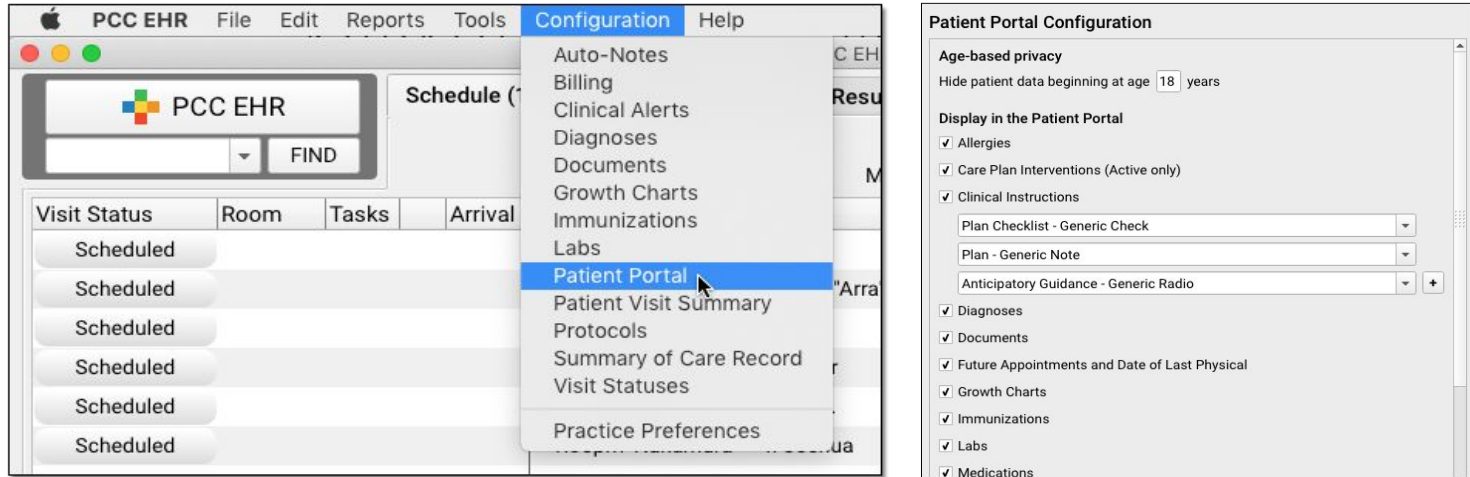
Information Blocking Written Policy Considerations

- Policy outline and guidance forthcoming
- Required:
 - Preventing Harm exception
 - Security exception
 - Privacy exception

Information Blocking Written Policy Considerations

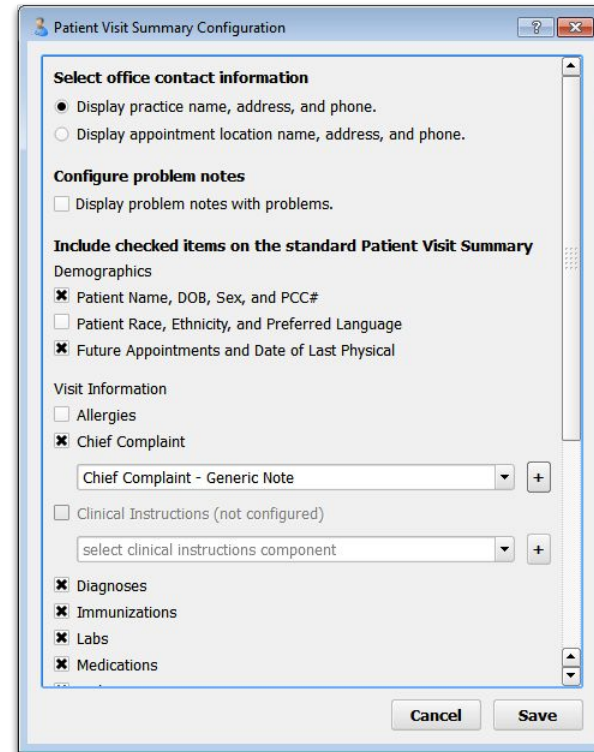
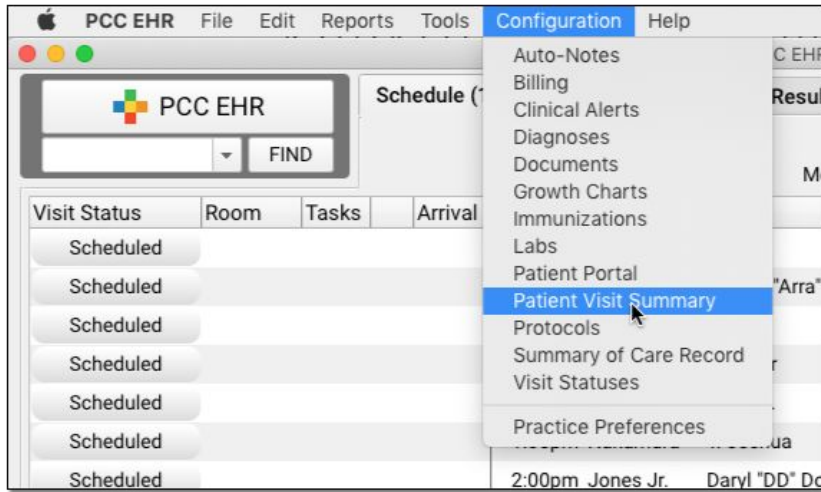
- Recommended:
 - Fees for data exchange
 - Review existing fee structure: It will not be information blocking for an actor to charge fees for some things, it is prohibited to charge patients fees for electronic access to EHI
 - Data sharing/responding to requests for EHI
 - Types of requests and typical/expected response time (*having a data sharing policy that states you will respond in X number of days is good, but not a safe harbor against information blocking allegations*)
 - Content and Manner/Infeasibility
 - Health IT Performance
 - Consult legal guidance

Patient Portal Configuration



- Specify the data elements you want to share in the portal
- Holding back ALL diagnoses, medications, labs, screenings, etc makes you more vulnerable to Information Blocking allegations

Visit Summary Configuration



- Specify the default data elements to share in the Patient Visit Summary generated from the EHR
- Confidential orders will not appear

Clinical Instructions

The screenshot shows the 'Patient Portal Manager' interface with the 'Configuration' tab selected. Under the 'Configuration' section, there are three main areas: 'Age-based privacy', 'Display in the Patient Portal', and 'Diagnoses'. The 'Display in the Patient Portal' section is expanded, showing a list of components with checkboxes. The 'Clinical Instructions' checkbox is checked and highlighted with a red box. Below this checkbox, three generic chart note components are listed in dropdown menus: 'Additional History - Generic Check', 'Plan Checklist - Generic Check', and 'Anticipatory Guidance Discussed - Generic Radio'. A plus sign button is visible to the right of the last dropdown.

Patient Portal Manager

Administration Configuration

Configuration

Age-based privacy
Hide patient data beginning at age years

Display in the Patient Portal

- Allergies
- Care Plan Interventions (Active only)
- Clinical Instructions
 - Additional History - Generic Check
 - Plan Checklist - Generic Check
 - Anticipatory Guidance Discussed - Generic Radio
- Diagnoses

- You can add any generic chart note component to the Clinical Instructions, and they will appear.

Diagnosis Configuration

Diagnosis Configuration
Search Filter: pregnant

Favorite	Allergy	Family Hx	Diagnosis
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Abdominal pain in early pregnancy
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Abdominal pain in pregnancy
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Antenatal ultrasound confirms intrauterine pr...
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Finding of shape of pregnant abdomen
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	First trimester pregnancy
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Galactorrhea not associated with childbirth
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Gravida 2
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	History of recurrent miscarriage - not pregnant
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Intends to continue pregnancy
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	MRSA carriage

Edit Diagnosis
Description: First trimester pregnancy

- Include on Patient Reports
- Apply historically throughout all patient charts
- Favorite - available for selection in the Diagnoses and Problem List components
- Allergy - available for selection in the Allergies component
- Family Hx - available for selection in the Family Medical History component

Unchecking this box will hide the diagnosis by default

Checking this box will retroactively hide all instances of the diagnosis

Cancel Save

- Use Diagnosis Configuration Tool to make a diagnosis hidden by default

Lab Configuration

Lab Configuration

Lab Orders Common Tests Lab Facilities

Lab Orders

Name	Type	Default Lab Facility
▶ Hepatitis B surface antigen	Lab Order	
▶ HEPATITIS B SURFACE ANTIGEN W/REFL CONFIRM Elab	Lab Order	Quest Diagnostics
▶ HEPATITIS C ANTIBODY Elab	Lab Order	Quest Diagnostics
▶ Hepatitis Panel	Snap Lab Order	n/a
▶ HgA1C	Lab Order	
▶ HIV	Lab Order	
▶ HIV AB, HIV 1/2, EIA, WITH REFLEXES Elab	Lab Order	Quest Diagnostics
▶ HIV ANTIBODY, HIV 1, WESTERN BLOT Elab	Lab Order	Quest Diagnostics
▶ HLA B27	Lab Order	
▶ HPV DNA (HIGH RISK) Elab	Lab Order	Quest Diagnostics
▶ IgA antibody	Lab Order	
▶ Influenza A	Lab Order	
▶ Influenza A/B	Lab Order	Use Appointment Location
▶ Influenza B	Lab Order	

Unchecking this box will hide the lab order by default

Lab Configuration

Lab Orders Common Tests Lab Facilities

Edit Lab Order

Lab Order Name: HIV

Default Lab Facility: select a lab facility

Enable recording of Specimen Collection user, date and time

"Include on Patient Reports" will be selected when this order is issued

Allow this order to be Refused

Allow this order to be Contraindicated

SNOMED CT Procedure for reporting

[Add a Procedure](#)

E-lab Vendor Order Mapping (for automated results)

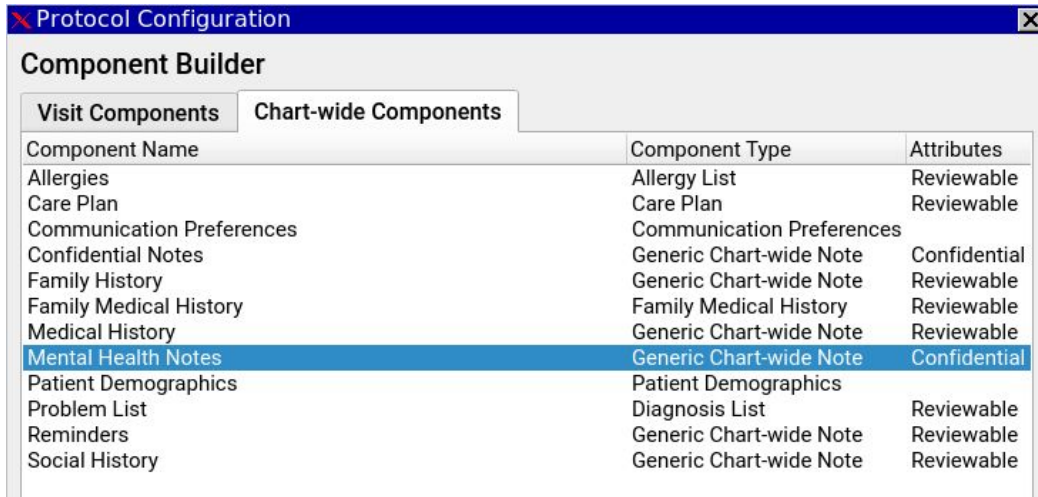
FAHC: select a FAHC order

LabCorp: select a LabCorp order

Cancel Save

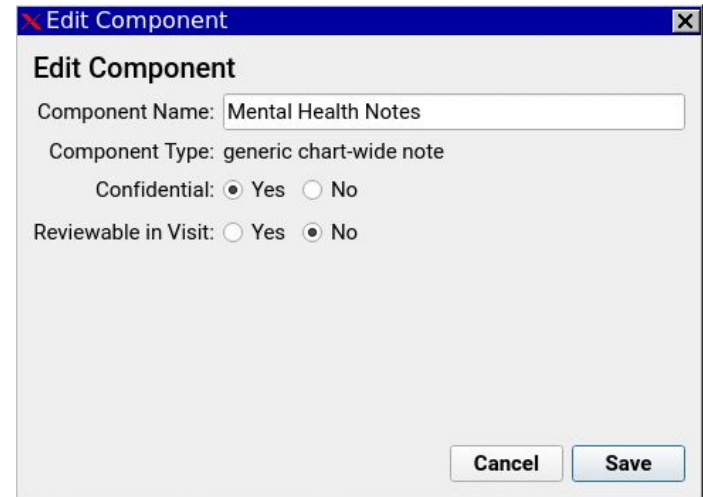
- Use Lab Configuration Tool to make a lab order hidden by default

Confidential Notes



The screenshot shows the 'Protocol Configuration' window with the 'Component Builder' tab active. It features two tabs: 'Visit Components' and 'Chart-wide Components'. Below the tabs is a table listing various components with their types and attributes.

Component Name	Component Type	Attributes
Allergies	Allergy List	Reviewable
Care Plan	Care Plan	Reviewable
Communication Preferences	Communication Preferences	
Confidential Notes	Generic Chart-wide Note	Confidential
Family History	Generic Chart-wide Note	Reviewable
Family Medical History	Family Medical History	Reviewable
Medical History	Generic Chart-wide Note	Reviewable
Mental Health Notes	Generic Chart-wide Note	Confidential
Patient Demographics	Patient Demographics	
Problem List	Diagnosis List	Reviewable
Reminders	Generic Chart-wide Note	Reviewable
Social History	Generic Chart-wide Note	Reviewable



The screenshot shows the 'Edit Component' window for 'Mental Health Notes'. It includes a text field for the component name, a dropdown for the component type, and radio buttons for confidentiality and reviewability settings.

Component Name:

Component Type: generic chart-wide note

Confidential: Yes No

Reviewable in Visit: Yes No

- Generic chart-wide components can be added and made confidential
 - Include these within the Medical Summary or individual protocols

Direct Secure Messaging (DSM)

- DSM ([Direct Secure Messaging](#)) is secure email used for exchanging patient clinical data among clinicians
 - Only useful if you have the Direct address for other clinician and they also use the feature
- Send patient Summary of Care (C-CDA) and other documents to clinicians
- Receive Summary of Care, images or pdfs from other clinicians
- Not a required functionality within Info Blocking regulations

Clinical Document Exchange (CDE)

- Participate in [Clinical Document Exchange](#) to share patient clinical data with other clinicians within the national Carequality Network
- Responder Role (now available in PCC EHR):
 - Respond to requests from other organizations within the Carequality Network
 - Longitudinal Summary of Care is shared
- Initiator Role (now in pilot testing):
 - Request patient records from other organizations within the Network
 - Longitudinal and encounter-based Summaries of Care are typically shared
- Not a required functionality within Info Blocking regulations



Q: Can you give a real-life example of EHI?

A: EHI (electronic health data) means electronic health information that includes patient demographic and clinical health information, defined as the Common Clinical Data Set, and the United States Core Data for Interoperability. This is the data included in the CDA/Summary of Care. Examples include lab tests and values, vital signs, smoking status, allergies, and medications.

Q: Are records on thumb drive or disk considered EHI?

A: Data that requires manual intervention (printing to .pdf and sending, or placing documents on a thumb drive) are not EHI in this context.

Q: Could you explain what an API is, generally how it works, and how it may be beneficial to patients?

A: API is short for Application Programming Interface and is an intermediary software that allows two programs to interact with one another.

For example, an API is used to transmit data to and from an outside lab vendor or hospital.

This rule intends to expand their use such that patients eventually will be able to use the app of their choice, from their smartphone to access their complete health data. It is correct to think of this as the essence of interoperability - when patients and clinicians use and share health data as they wish.

Q: Our clinicians store confidential information in various places in PCC EHR. Do we need to make all of those notes available to patients?

A: The information blocking rule does not supersede the HIPAA privacy and security rules. It is not a requirement of the rule to release all confidential information available to patients (or their guardians).

Q: If a parent requests their child's entire health record to be shared (electronically or via paper), am I required to share clinical notes from specialists or hospitals that were included in the patient's chart?

A: Providers and practices should share patient data that is clinically relevant and has been requested (e.g. HIPAA minimum necessary rule). If this includes data from other practitioners, then it should be shared.

Conversely, if the provider believes there is a risk of harm or security when sharing the patient's data, they should review and apply the appropriate Information Blocking exception given the specific circumstances.

The net is that there isn't a definitive answer, what is provided is based on the facts and circumstances of each situation.

(From an [ONC FAQ](#) update on 3/19/21):

Q: When would a delay in fulfilling a request for access, exchange, or use of EHI be considered an interference under the information blocking regulation?

It would *likely* be considered an interference for purposes of information blocking if a health care provider established an organizational policy that, for example, imposed delays on the release of lab results for any period of time in order to allow an ordering clinician to review the results or in order to personally inform the patient of the results before a patient can electronically access such results (see *also* 85 FR 25842 specifying that such a practice does not qualify for the “Preventing Harm” Exception).

Resources

Final Rule:

<https://www.federalregister.gov/documents/2020/05/01/2020-07419/21st-century-cures-act-interoperability-information-blocking-and-the-onc-health-it-certification>

Interim Final Rule:

<https://www.federalregister.gov/documents/2020/11/04/2020-24376/information-blocking-and-the-onc-health-it-certification-program-extension-of-compliance-dates-and>

OIG Proposed Rule:

<https://www.federalregister.gov/documents/2020/04/24/2020-08451/grants-contracts-and-other-agreements-fraud-and-abuse-information-blocking-office-of-inspector>

ONC Cures Site: <https://www.healthit.gov/curesrule/>

ONC Cures Rule FAQs: <https://www.healthit.gov/curesrule/resources/information-blocking-faqs>

ONC Cures Rule Fact Sheets: <https://www.healthit.gov/curesrule/resources/fact-sheets>

Other Questions?

For more information and future questions, talk with your Client Advocate and/or reach out to:

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