



December 11, 2023

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
US Department of Health and Human Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Dr. Micky Tripathi
National Coordinator
Office of the National Coordinator for Health
Information Technology
US Department of Health and Human Services
330 C St SW, Floor 7
Washington, DC 20201

Dear Administrator Brooks-LaSure and National Coordinator Tripathi:

On behalf of the American Health Information Management Association (AHIMA), I am responding to the Centers for Medicare & Medicaid Services (CMS) and Office of the National Coordinator for Health Information Technology (ONC) *21st Century Cures Act: Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking* proposed rule published in the Federal Register on November 1, 2023.

AHIMA is a global nonprofit association of health information (HI) professionals. AHIMA represents professionals who work with health data for more than one billion patient visits each year. The AHIMA mission of empowering people to impact health drives our members and credentialed HI professionals to ensure that health information is accurate, complete, and available to patients and providers. Our leaders work at the intersection of healthcare, technology, and business, and are found in data integrity and information privacy job functions worldwide.

The healthcare community has long anticipated the proposed provider disincentives for actors found to have committed information blocking. AHIMA applauds ONC and CMS for completing this important milestone, giving those subject to information blocking regulations clarity on the full investigation and enforcement process. Providing this clarity allows healthcare to move from an implementation to normalization process for information blocking, solidifying these requirements as part of the everyday business of healthcare.

In response to the proposals contained within the proposed rule, AHIMA encourages CMS and ONC to undertake an in-depth economic analysis to ensure the proposed disincentives contained within the current CMS program, such as the Promoting Interoperability Program, the Merit-Based Incentive Payment System (MIPS), and the Medicare Shared Savings Program (MSSP),

equitably apply penalties across the programs. A review will ensure CMS and ONC propose disincentives equitably regardless of which CMS program an actor participates in. Additionally, a review also ensures that the disincentives are structured in a way that deter certain provider types from absorbing disincentives and continuing to engage in information blocking practices because the disincentives lack a real impact to produce correction action on the part of the provider. If the enforcement process is not equitable, information blocking enforcement may not produce its intended objective of encouraging information sharing.

AHIMA also recommends CMS and ONC examine existing policy pathways to punish repeat information blockers that choose to absorb penalties as a cost of doing business. The proposed disincentives do not allow for an increasing disincentive for those found to be repeat information blockers, and thus those actors may suffer limited impact of enforcement. At the same time, the proposed disincentive structure places a greater burden on smaller and less resourced providers who may spend additional resources to achieve compliance than better resourced facilities who choose to purposefully flaunt the rules. By determining additional pathways for disincentives, CMS and ONC could create a penalty system that holds all actors accountable regardless of their size.

As part of that pathway examination, AHIMA also recommends CMS and ONC explore whether a corrective action plan or initial notice of non-compliance opportunity exists, similar to how CMS has implemented the electronic prescribing of controlled substances (EPCS) disincentives for certain types of providers – such as rural and less resourced providers. This would give CMS and ONC a pathway to allow providers to implement policy changes to avoid future disincentives. Additionally, this would lessen the burden for those who have high compliance costs relative to their operating expenses and revenues as opposed to those with a better financial standing.

Furthermore, as part of the agencies' regulatory reviews, AHIMA recommends CMS and ONC commit to holding stakeholder listening sessions to determine the best way to disincentivize provider types not covered under these proposals. At this time, AHIMA and many others in the provider community are not fully equipped to understand the tools at CMS' and ONC's disposal to disincentivize providers not covered by this proposed rule. Once CMS and ONC are able to propose the best regulatory pathway to disincentivizing those providers, the healthcare community will be better equipped to evaluate the perceived success or failure of the disincentives. AHIMA welcomes being included in this process and is open to offering CMS and ONC any support needed.

Finally, AHIMA applauds ONC for the inclusion of the transparency proposals for all providers found to have violated information blocking requirements in this proposed rule. The facts and circumstances nature of information blocking has been discussed throughout the implementation of this rule. As such, better understanding is needed in terms of how ONC, CMS, and the Office of the Inspector General (OIG) will interpret specific real-world scenarios as part of penalty and disincentive actions to better understand how the information blocking rules will be applied in the real-world environment. By providing transparency, ONC is ensuring there will be less ambiguity in how information blocking is viewed by the US Department of Health and Human

Services (HHS) and how covered actors should adjust internal policies and procedures as necessary.

AHIMA and its membership look forward to continuing its partnership with both CMS and ONC as you move to finalize the proposals discussed above. As you review our comments, if you have any questions or would like to discuss further how AHIMA or its membership can provide additional support in this process please contact Andrew Tomlinson, director of regulatory affairs, at (443) 676-7106 or andrew.tomlinson@ahima.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Lauren Riplinger", is centered within a light gray rectangular box.

Lauren Riplinger, JD
Chief Public Policy & Impact Officer