



January 2, 2024

Submitted via regulations.gov

Dr. Micky Tripathi
National Coordinator
Office of the National Coordinator for Health IT
Mary E. Switzer Building
Mail Stop: 7033A
330 C Street SW
Washington, DC 20201

Re: 21st Century Cures Act; Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking (RIN 0955-AA05)

Dear National Coordinator Tripathi,

Thank you for the opportunity to provide input into the *21st Century Cures Act: Establishment of Disincentives for Health Care Providers That Have Committed Information Blocking* proposed rule.

The **Partnership to Empower Physician-Led Care (PEPC)** is a membership organization dedicated to supporting value-based care among independent physicians and practices to reduce costs, improve quality, empower patients and physicians, and increase access to care. Our members include Aledade, American Academy of Family Physicians (AAFP), California Medical Association (CMA), and Medical Group Management Association (MGMA). We also have individual and small medical group supporters across the country, many of whom are independent physicians or practices and wish to remain so.

We are supportive of strong enforcement of information blocking practices, but believe that penalties should be constructed to continue to encourage the movement to accountable care and to ensure that providers – particularly smaller, independent practices – understand regulatory requirements and have an opportunity to meaningfully engage to correct any improper behavior prior to being penalized.

Our comments on HHS' proposals are outlined in more detail below. We offer two specific comments on the proposed rule for your consideration regarding the approach to determination of disincentives and the application of disincentives; and the disincentives for Medicare Shared Savings Program (MSSP) accountable care organizations (ACOs), ACO participants, and/or ACO providers and suppliers.

Approach to Determination of Disincentives and Application of Disincentives

PEPC is supportive of strong enforcement of information blocking provisions. However, we are concerned that the approach outlined in the proposed rule, and specifically the reliance on patient reports of information blocking, may disproportionately impact independent primary care physicians given the frequency of their patient encounters. We are also concerned about the lack of notification or warning process given the complexity of the information blocking regulations and exceptions. This will be particularly harmful for small and independent practices who generally lack the resources and support of hospitals and health systems, such as a compliance team.

We urge CMS to model its approach off other programs that provide clinicians with a notification of noncompliance and the opportunity to come into compliance before being penalized.



In determining “appropriate disincentives” for providers who are information blocking, HHS must ensure the disincentive is appropriate given the size and reach of the provider organization and should consider stronger disincentives for providers who information block to obtain or retain a competitive advantage over another provider. **We recommend changes to the proposed rule to consider the above factors.**

In [previous letters](#), we have recommended that ONC provide technical assistance to support small and mid-sized practices in navigating any new requirements. This should be coupled with an education and communications campaign to ensure that providers understand what is permitted for other providers, IT vendors and other stakeholders. Without additional support from HHS, small practices and independent providers are unlikely to be able to fully benefit from information blocking restrictions.

We continue to believe that more education and physician communication would be useful, particularly as information blocking restrictions begin to be enforced through disincentive policies.

Disincentives for Medicare Shared Savings Program (MSSP) ACOs, ACO participants and/or ACO providers/suppliers

We are concerned that HHS has proposed penalties that will disproportionately impact ACOs, ACO participants, and ACO providers/suppliers. For hospitals and Merit-based Incentive Payment System (MIPS) eligible clinicians who do not participate in MSSP, the penalties for information blocking would equal about one to two percentage points of their total Medicare revenue. However, because many physicians who participate in MSSP are also MIPS-eligible clinicians, these ACO participants would be subject to these same penalties *in addition to* exclusion from MSSP for at least one year. This would unfairly and inequitably punish physicians who are taking on accountability for their patients’ costs and outcomes and has the potential to interrupt and harm Medicare beneficiaries’ care.

ACO participants face significant disruption by being removed from an ACO without notice or the opportunity to come into compliance with information blocking rules. We fear that this will act as a disincentive for providers to move into alternative payment models (APMs), hindering our shared goals of bringing more Medicare beneficiaries into [accountable care relationships](#) and [developing payment models for doctors to remain independent](#).

Importantly, this proposal would have a direct, negative impact on Medicare beneficiaries’ quality of care. ACOs combine health records and claims data with analysis, in addition to providing direct additional services, to improve care experiences and outcomes. If HHS were to exclude a provider from MSSP for information blocking, it would no longer provide claims data for the participant’s patients, thereby making it impossible to deliver many of those services.

We believe this proposal would be a step in the wrong direction, and encourage HHS to carefully balance information blocking enforcement with efforts to make it easier for all providers to move into and remain in APMs. The proposal would result in MSSP physicians being disproportionately penalized for information blocking, creating a disincentive for physicians to join ACOs and unnecessarily deny Medicare beneficiaries access to the additional services that come from being part of an MSSP ACO.

Thank you in advance for your consideration of these comments. Please do not hesitate to reach out to me if you have questions or the Partnership to Empower Physician-Led Care (PEPC) can be a resource to you. I can be reached at kristen@physiciansforvalue.org or 202-640-5942.



Sincerely,

Kristen McGovern
Executive Director