

OIG Issues Final Rule on Information Blocking Enforcement

Richard P. Kusserow | September 2023

Civil Monetary Authority enforcement rule is now in effect

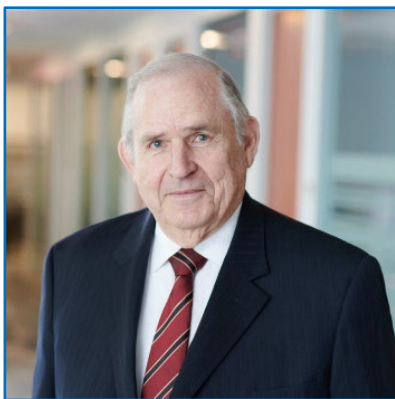
The Cures Act defines information blocking as “a practice that interferes with, prevents, or materially discourages access, exchange, or use of electronic health information,” except as required by law or covered by an exception defined by the Secretary of HHS. On September 1, 2023, the OIG enforcement Information Blocking Rule in the Federal Register using the Civil Monetary Penalty (CMP) became effective. The OIG and the Office of the National Coordinator for Health Information Technology (ONC) will begin enforcing statutory penalties associated with violations of the Information Blocking Rules.

CMP penalties will not be imposed for information blocking prior to the Final Rule effective date. However, penalties can now be levied against Information Blocking violators. Under the Final Rule, health information networks and exchanges (HINs/HIEs) and those entities that develop or offer certified health IT will be subject to CMPs of up to \$1 million per violation for information blocking. OIG stated that it would continue to focus on information-blocking allegations where there is a heightened risk to patients, providers, and health care programs, specifically, citing conduct that:

- Results in, is causing, or could potentially cause patient harm;
- Significantly impacts a provider’s ability to care for patients;
- Is of long duration;
- Could potentially cause financial loss to Federal health care programs or other government or private entities; or
- Is performed with actual knowledge.

When determining the penalties, OIG will consider the number of patients and providers affected, how long the information blocking persisted, and the harm resulting from such information blocking.

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About the Author

Richard P. Kusserow established Strategic Management Services, LLC, after retiring from being the DHHS Inspector General, and has assisted over 2,000 health care organizations and entities in developing, implementing and assessing compliance programs.