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## Information Blocking in the 21st Century Cures Act

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The 21<sup>st</sup> Century Cures Act (“Cures Act”) was enacted in December of 2016. Among other things, the Cures Act includes provisions to encourage the interoperability of electronic health records. Specifically, the Cures Act provides for civil penalties for those who engage in “information blocking”. The Cures Act defines “information blocking” broadly as a “practice that . . . is likely to interfere with, prevent, or materially discourage access, exchange or use of electronic health information” if that practice is known by a developer, exchange, network, or provider as being likely to “interfere with, prevent, or materially discourage the access, exchange, or use of electronic health information”. 42 U.S.C. §300jj-52(a). The penalty for vendors is up to \$1 million “per violation”.

The Office of the National Coordinator for Health IT is reported to be currently working on a draft rule on information blocking – which many hope will address a number of issues including guidance that: distinguishes between information blocking and technology implementation issues; provides for a standard for when a practice is “known” or should have been known; and describes how the “per violation” will be defined and applied. Although there has been some suggestion that the proposed rules will be released prior to the end of the year, the Director of the Office of the National Coordinator has not indicated when he thinks the proposed rule will be released.

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