

Legal News for Your Business

FROM CHARLOTTE, NORTH CAROLINA'S

Litigation, Employment, Healthcare & Tax Law

PREMIER BOUTIQUE LAW FIRM  GARDNER | SKELTON

HEALTH CARE PROVIDER ALERT

Information Blocking Rule

The Information Blocking Final Rule went into effect in April of 2021, requiring healthcare providers to provide and share information upon the legitimate request of a patient or other healthcare provider without unreasonable delay.

What do healthcare providers need to know about information blocking?

The Information Blocking Final Rule is request driven—it has everything to do with responding to a patient's request (or request on behalf of the patient) for information.

Information blocking happens when a healthcare provider refuses to share patient data upon request, or otherwise engages in behavior that interferes with the sharing of that healthcare information. Information blocking does not supersede HIPAA.

Examples of information blocking can include:

- When the provider refuses to share information with a non-affiliated healthcare provider
- When the provider is able to complete a same-day information share but takes longer
- When the provider charges a patient or a non-affiliated healthcare provider for access to information
- When the provider uses a nonstandard or unusual health IT system that is likely to slow down communication with external providers

What are exceptions to the information blocking rule?

The Information Blocking Final Rule provides space for eight exceptions:

Exceptions that involve not fulfilling requests to access, exchange or use Electronic Health Information (EHI)

1. Preventing harm
2. Privacy
3. Security

4. Infeasibility
5. Health IT performance

Exceptions that involve procedures for fulfilling requests to access, exchange, or use EHI

1. Content and manner
2. Fees
3. Licensing

More guidance on these exceptions is provided on the [website of the Office of the National Coordinator for Health Information Technology](#) (ONC).

The ONC is enforcing these new rules on a case-by-case basis. Whether your company's practices are in compliance is something you should determine with your IT and legal teams.

What kinds of changes should healthcare providers make to comply with the new rules?

Healthcare providers should already have policies and procedures in place for the release of patient data. Those policies should be carefully reviewed to ensure compliance with the information blocking rule. The policies should spell out how and when the provider will share information, when it will refuse to share information in accordance with the exceptions to the information blocking rule, and how these decisions will be documented.

This is a big change in the world of healthcare information, so every provider should take care to review its policies and procedures with its legal and IT teams.

Additionally, providers should be in communication with their EMR company and other vendors that play a role in patient access to ensure a seamless transition to compliance under the new law.

Contact **Heather Skelton** and **John Gibson** if you have a question about the new information blocking rule or your company's patient data policies.

HEALTH CARE PROVIDER ALERT

Telemedicine after COVID-19

Telemedicine in the United States has exploded over the last year because of the COVID-19 pandemic. A [survey found](#) that more than 60% of Americans had used telehealth, compared to a year earlier when just under 20% had.

This has largely been due to federal policy changes, including non-penalties for HIPAA

violations during telehealth visits and the Centers for Medicare & Medicaid Services (CMS) reimbursing providers for telemedicine.

CMS announced that it would permanently cover dozens of telemedicine services that it had initially made available because of the pandemic. This means that the enormous expansion over the past year in telemedicine will become a permanent fixture of the healthcare industry. But while many types of telemedicine popularized by the pandemic are here to stay, many others will go back to the pre-pandemic status quo.

Which types of services will CMS cover post pandemic?

Following the conclusion of the public health emergency (PHE), CMS will continue to cover medical services including, but not limited to:

- Office visits
- Mental health therapy
- Substance abuse treatment
- Nutritional support
- Obesity management
- Diabetes management
- End-Stage Renal Disease (ESRD) treatment choices
- Transition care management

Which types of services will CMS stop covering after the pandemic?

Following the conclusion of the PHE, CMS will no longer cover medical services including, but not limited to:

- Speech therapy
- Physical therapy
- Psychological and neuropsychological testing evaluation services
- Emergency department visits
- Critical care
- Nursing care
- Gait training therapy
- Oral function therapy
- Audiometry
- Tinnitus assessment
- Swallowing evaluation
- Eye exam
- Neuromuscular reeducation
- Under radiation treatment management

This is not an exhaustive list. Guidance is available online from CMS, where a full spreadsheet of services is available [for download](#). This is all also subject to change, due to a number of factors including how long the pandemic lasts, advances in technology, and congressional or executive action.

Contact [Heather Skelton](#) and [John Gibson](#) if you have a question about your telehealth services and Medicare.

GENERAL BUSINESS ALERT

ARPA's COBRA Subsidy Rule

The American Rescue Plan Act of 2021 (ARPA) requires employers to subsidize 100 percent of the cost of premiums for COBRA continuation for eligible employees and their dependents from April 1, 2021 through September 30, 2021. Since ARPA was signed into law, the U.S. Department of Labor (DOL) issued additional guidance to help employers navigate the murky waters ahead. Here are the major takeaways, with one deadline quickly approaching.

Who is eligible to receive the COBRA subsidy?

Employees who are terminated (other than for cause) or who see their hours involuntarily reduced, or who voluntarily reduce their hours out of COVID-related safety concerns.

Before the pandemic, eligible former employees had a 60-day election period to enroll in COBRA coverage. Under ARPA, that 60-day period will not start until the pandemic is declared over. This means that eligible former employees who declined or dropped COBRA coverage but are still within the 18-month COBRA coverage period can elect to obtain COBRA coverage and receive the subsidy during the six-month period.

Employees who quit are not eligible for the COBRA subsidy.

Who pays for the COBRA subsidy?

The employer is responsible for paying for the COBRA coverage during the six-month period specified by ARPA. In turn, the employer will receive a tax credit to apply toward the terminated employee's payroll taxes.

What should employers do to comply with the law?

ARPA requires employers to notify their eligible employees and former employees about the change in COBRA coverage. Every employer should determine who should receive the notices, what they should say, and when they need to be delivered. Employees eligible for COBRA before April 1, 2021 must receive a notice from the employer by May 31; employees eligible after April 1 should be notified within 60 days.

Employers have to communicate about the COBRA subsidy in clear, easy-to-

understand language to their eligible current and former employees. The Department of Labor has [model forms available](#) for employers to use for this very purpose.

Contact **Nicole Gardner** or **Erin Ball** if you have a question about the new COBRA subsidy or your company's employee benefits plans.



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FIRM NEWS

Gardner Skelton Welcomes



Jamie Land

Jamie Land is from Manning, South Carolina. He graduated from East Carolina University in 2019 where he double majored in Political Science and Communication. He is a rising 3L at the University of South Carolina School of Law. He has experience working in employment litigation but is looking forward to learning more about each of Garner Skelton's practice areas. When he's not in class or at the office, Jamie enjoys going to the gym.



Steffie Rosene

Steffie Rosene is from Birmingham, Alabama. She graduated from Auburn University with a B.S. in Health Services Administration. She is a rising 3L at the University of Alabama School of Law. She is passionate about health care law, and has a particular interest in transactional work. Steffie is looking forward to working closely with our healthcare team and seeing the ins and outs of the healthcare industry in Charlotte. When she's not learning about the law, Steffie enjoys running.



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