MEDICAL NEWS

THE BUSINESS OF HEALTHCARE

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MEDISTAR AWARDS CELEBRATE EXCELLENCE

IN THE BUSINESS OF HEALTHCARE— VIRTUALLY BECAUSE OF COVID-19

By Sally McMahon

Judging is complete and the results are in. Our panel of expert judges has selected eight healthcare leaders as honorees. This year, because of COVID-19, we are profiling honorees in the December issue of *Medical News*, as well as celebrating the honorees online throughout the month. Honorees include:

The Aging Care Award: Hosparus Health Heart Connection Program

The Heart Connection program provides individuals—most of whom are age 65 and older who have advanced cardiac disease—with the tools to better manage their symptoms and delay disease progression, thereby significantly improving quality of life.

The Excellence in Education Award: Kentucky Office of Rural Health

The Kentucky Office of Rural Health works directly with clinicians, clinic and hospital administrators, policymakers and other stakeholders to improve the accessibility of healthcare services for the commonwealth's rural and underserved residents.

The Healthcare Advocacy Award: Steven Kniffley Jr., Spalding University

Within the healthcare setting, Steven Kniffley Jr. has advocated for increased culturally competent care for BIPOC (Black, Indigenous and People of Color) individuals. He has advocated for more education, training and service provision for the experience of racial trauma.

The Healthcare Innovation Award: Lucina Analytics

Lucina Analytics uses big data insights and advanced algorithms to identify and engage women who may be at risk for adverse outcomes during pregnancy. This innovative platform allows health plans, healthcare providers and community health workers to focus on care management that positively impacts both the quality and affordability of women's healthcare.

The Leadership in Healthcare Award:

Co-Honorees Neeli Bendapudi, PhD & Tom Miller, University of Louisville & UofL Health

Neeli Bendapudi, PhD, during her first year at UofL, along with Tom Miller, faced the pending closure of Jewish Hospital and the sale of KentuckyOne Health's Louisville-area assets. Despite the University's fragile financial position at the time, Bendapudi and Miller knew that acquiring KentuckyOne Health and Jewish Hospital was the right decision for the University and the community.

The Nurse of the Year Award: Cindy Lucchese, UofL Physicians

Cindy Lucchese developed and opened the state's first drive-thru COVID testing site. This involved ensuring a supply chain for testing materials, coordinating with multiple labs to get results and streamlining the process for both appointments and results with an on-line platform.

The Physician of the Year Award: Arif Nazir, MD, Signature HealthCARE

Arif Nazir, MD, is a practicing geriatrician, healthcare leader, researcher and an implementation champion. He finds practical solutions for solving care coordination gaps in geriatric care and on enhancing the engagement of physician leaders in the post-acute and long-term care (PALTC) setting.

Hosparus Health announces $24 million campaign to expand services.

Read more on page 6

Health Policy Panel explores federal priorities post-election.

Read more on page 7

UK Center of Excellence in Rural Health celebrates 30th anniversary.

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Information Blocking Rule

Steps healthcare providers can take to ensure internal policies don't violate the Rule.

By Dustyn Jones

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On May 1, 2020, the United States Office of the National Coordinator for Health Information Technology (ONC) issued a Final Rule prohibiting healthcare providers from engaging in what the ONC terms "information blocking."

Information Blocking Rule

The Information Blocking Rule prohibits healthcare providers from engaging in any practice that is "likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information (EHI)" when the healthcare provider "knows that such practice is unreasonable and is likely to interfere with access, exchange, or use of EHI."

The purpose of the rule is to support patients access to their EHI in a form convenient for patients and to prevent healthcare providers, health information exchanges and health information networks from engaging in practices that prevent access to a patient's health information by either the patient or the patient's healthcare providers.

The ONC provides the following examples of practices that constitute information blocking, which may be standard operational policy for many healthcare entities:

– A health system's internal policies or procedures that require staff to obtain an individual's written consent before sharing any of a patient's EHI with unaffiliated providers for treatment purposes even though obtaining an individual's consent is not required by state or federal law.
– A health system incorrectly claims that the HIPAA rules or other legal requirements preclude it from exchanging EHI with unaffiliated providers.
– A health system implements locally hosted electronic health records (EHR) technology. The technology developer provides the health system with the capability to automatically publish its production endpoints (i.e., the internet servers that an app must "call" and interact with to request and exchange patient data). The health system chooses not to enable this capability, however, and provides the production endpoint information only to apps it specifically approves. This prevents other applications – and the patients who use them – from accessing data that should be made readily accessible.
– Although an EHR developer's patient portal offers the capability for patients to directly transmit or request for direct transmission of their EHI to a third party, the developer's healthcare provider customers choose not to enable this capability.
– A healthcare provider has the capability to provide same-day access to EHI in a form and format requested by a patient or a patient's healthcare provider but takes several days to respond.

Exceptions to the Rule

The Information Blocking Rule provides five exceptions that identify when a healthcare provider may deny access to EHI.

1. The provider may deny access to EHI "to prevent harm to a patient" or "protect patient safety." This exception may apply to practices that prevent "corrupted or inaccurate EHI being recorded or incorporated in a patient's EHR." For example, "occasionally, a clinician or other user of health IT is presented with EHI that, due to a failure of the technology, is either entirely incorrect or contains inaccurate information. At other times, EHI could become corrupted."
2. The Information Blocking Rule permits practices that are reasonable and necessary to protect the privacy of an individual's EHI. This second exception was structured with distinct "sub-exceptions," which closely mirror privacy practices that are recognized under state and federal privacy laws.
3. The Information Blocking Rule permits practices that are reasonable and necessary to promote the security of EHI. This exception recognizes that "robust security precautions are critical to promoting patients' and other stakeholders' trust and confidence that EHI will be collected, used, and shared in a manner that protects individuals' privacy and complies with applicable legal requirements." However, not all security practices qualify for the exception.
4. The Information Blocking Rule permits an actor to decline to provide access, exchange, or use of EHI in a manner that is infeasible. This exception recognizes that "legitimate, practical challenges beyond an actor's control may limit its ability to comply with requests for access, exchange, or use."
5. The Information Blocking Rule permits practices that are implemented to maintain or improve health IT performance. This exception applies most obviously to health information technology entities and permits them to take IT offline for a temporary time to perform maintenance and improvements.

The Information Blocking Rule also provides a few additional exceptions regarding an actor's ability to limit the information provided in a response to a request for EHI. Of interest to healthcare providers is the exception related to the content and manner of an actor's response to a request for information.

Ensuring Compliance

Healthcare providers grappling with compliance should start with focus on the following operational policies and procedures:

– **Ensure that EHI is available without delay.**
– **Update patient access policies.** Policies that comply with HIPAA may not necessarily also comply with the Information Blocking Rule. HIPAA permits providers to exchange PHI for certain purposes, the Information Blocking Rule requires them to do so unless an exception applies.
– **Review existing business associate agreements.** Providers should review their business associate agreements and other contracts that concern exchange of EHI to determine whether they contain provisions that could violate the Information Blocking Rule.
– **Implement policies requiring a proactive response to requests for EHI.** The ONC indicates it expects "good faith efforts" to work through challenges to enable requestors to obtain EHI "as quickly and efficiently as possible."
– **Conduct a security risk assessment.** Providers must ensure they have adequate security standards to satisfy HIPAA but not overly-onerous security standards that violate the Information Blocking Rule.
– **Review fees associated with access to EHI.** Fees charged to patients for accessing their own EHI are "inherently suspect," but are permitted when compliant with the HIPAA patient access rules.

— Dustyn Jones is an attorney in Stites & Harbison's Lexington office where she is a member of the Insurance Regulatory Compliance and Healthcare Service Groups.

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