

Exceptions to CURES Act Information Blocking

Utilizing these exceptions will be a rare exercise for most healthcare facilities.

There are eight exceptions to consider.

You must have a policy in place detailing how you will use these exceptions

Prevention of Harm

Must hold a reasonable belief that withholding or delaying access will reduce harm to physical safety or loss of life. Emotional harm is not a consideration. Must be implemented on an INDIVIDUAL basis and not considered by test/diagnosis or provider preference.

Security Exception

You may withhold or delay access to information if there is a risk to the confidentiality, integrity, or availability of your systems/data. Must be tailored to a specific risk.

Content and Manner Exception

- Content: Until October 6, 2022 you may use the USCDI data elements for release of information. On and after 10/6/22, you must use the elements defined in §171.102.
- Manner: You may need to fulfill a request in an alternative manner when:
 - •Technically unable to fulfill the request in any manner requested; or
 - •Cannot reach agreeable terms with the requestor to fulfill the request.

Health IT Performance

You may take reasonable and necessary measures to make health IT temporarily unavailable or to degrade the health IT's performance for the benefit of the overall performance of the health IT, provided certain conditions are met. You are permitted to delay access to information only for the time period to achieve maintenance improvements.

Privacy Exception

You may withhold or delay access to information IF there is a federal or state regulation which requires patient authorization. You are only permitted to withhold the information until authorization is received. If only part of the information is subject to the exception, you must release the information that is not covered by the exception while we satisfy the authorization requirement.

Infeasibility Exception

- Uncontrollable events: You may withhold or delay access due to natural or man-made disaster, public health emergency, public safety incident, act of war, terrorism, civil insurrection, strike, internet service interruption, or act of military, civil, or regulatory activity
- Segmentation: You may withhold or delay access if you are unable to unambiguously segment the requested information.

You must provide written notice to the requestor within 10 days of receipt of the request with the reason why the request is infeasible.

Licensing Exception and Fees Exception

- Licensing: If a license is required, you have 20 days to start the negotiation process and 30 days to complete the process.
- Fees: You are permitted to charge fees. Keep in mind, if you are a HIPAA covered entity, you are only permitted to charge actual cost and are limited by HIPAA. You also need to consider state regulations on permissible fees.