

Permissible purpose means a purpose for which a person is authorized, permitted, or required to access, exchange, or use electronic health information under applicable law.

Person is defined as it is in 45 CFR 160.103.

Practice means an act or omission by an actor.

Use means the ability for electronic health information, once accessed or exchanged, to be understood and acted upon.

§ 171.103 Information blocking.

(a) Information blocking means a practice that—

(1) Except as required by law or covered by an exception set forth in subpart B or subpart C of this part, is likely to interfere with access, exchange, or use of electronic health information; and

(2) If conducted by a health IT developer of certified health IT, health information network or health information exchange, such developer, network or exchange knows, or should know, that such practice is likely to interfere with access, exchange, or use of electronic health information; or

(3) If conducted by a health care provider, such provider knows that such practice is unreasonable and is likely to interfere with access, exchange, or use of electronic health information.

(b) For the period before October 6, 2022, electronic health information for the purposes of paragraph (a) of this section is limited to the electronic health information identified by the data elements represented in the USCDI standard adopted in § 170.213.

[85 FR 25955, May 1, 2020, as amended at 85 FR 70085, Nov. 4, 2020]

Subpart B—Exceptions That Involve Not Fulfilling Requests to Access, Exchange, or Use Electronic Health Information

§ 171.200 Availability and effect of exceptions.

A practice shall not be treated as information blocking if the actor satisfies an exception to the information blocking provision as set forth in this subpart B by meeting all applicable re-

quirements and conditions of the exception at all relevant times.

§ 171.201 Preventing harm exception—when will an actor's practice that is likely to interfere with the access, exchange, or use of electronic health information in order to prevent harm not be considered information blocking?

An actor's practice that is likely to interfere with the access, exchange, or use of electronic health information in order to prevent harm will not be considered information blocking when the practice meets the conditions in paragraphs (a) and (b) of this section, satisfies at least one condition from each of paragraphs (c), (d), and (f) of this section, and also meets the condition in paragraph (e) of this section when applicable.

(a) *Reasonable belief.* The actor engaging in the practice must hold a reasonable belief that the practice will substantially reduce a risk of harm to a patient or another natural person that would otherwise arise from the access, exchange, or use of electronic health information affected by the practice. For purposes of this section, "patient" means a natural person who is the subject of the electronic health information affected by the practice.

(b) *Practice breadth.* The practice must be no broader than necessary to substantially reduce the risk of harm that the practice is implemented to reduce.

(c) *Type of risk.* The risk of harm must:

(1) Be determined on an individualized basis in the exercise of professional judgment by a licensed health care professional who has a current or prior clinician-patient relationship with the patient whose electronic health information is affected by the determination; or

(2) Arise from data that is known or reasonably suspected to be misidentified or mismatched, corrupt due to technical failure, or erroneous for another reason.

(d) *Type of harm.* The type of harm must be one that could serve as grounds for a covered entity (as defined in § 160.103 of this title) to deny access (as the term "access" is used in part