The American College of Radiology provides the following only as general information. Readers should not construe this educational resource to provide specific legal advice on their individual practice matters. This information is subject to change depending on future rules and/or clarifications.

Do radiologists, interventional radiologists, nuclear medicine physicians, and radiation oncologists meet the information blocking provision’s “provider” actor definition?

Yes, the provider definition includes physicians and non-physician-practitioners, among many other types of individuals and entities. Please see this document for more information.

Most of the public discussion in the radiology domain has centered around patient-level access... Is the information blocking provision primarily focused on patient-level access?

Provider-to-patient sharing is just one of many relevant scenarios. The provision applies to the full range of legally permissible access, exchange, or use of EHI, including provider-to-provider and vendor-to-provider scenarios.

Congress intended for the information blocking provision to deter inappropriate barriers to exchange, and particularly anticompetitive behaviors by providers, vendors, and networks. It is generally anticipated that many reports to HHS investigators of information blocking in the future would be situations in which providers were delayed or denied access to EHI by competing providers, networks, or vendors.

Are radiology providers required to purchase new technologies or technological services, such as patient portals, to comply with information blocking?

The information blocking provision does not require new technology purchases of any kind. Radiology providers may not always have the technological capabilities to satisfy certain requests for access, exchange, or use of EHI. Actors should familiarize themselves with the conditions of the eight exceptions—the infeasibility and content/manner exceptions are especially relevant to this question.

Do radiology providers need to provide patients with immediate access to radiology data, such as reports, on patient portals?

According to an HHS clarification on a FAQ website updated on Jan. 15, 2021, there is no requirement under the information blocking rules to proactively make available any EHI to patients or others who have not requested the EHI. The concept of a “request” in the context of information blocking is ambiguous and likely to be clarified by HHS. Any delay in the release or availability of EHI in response to a request for legally permissible access, exchange, or use of EHI could implicate the provision. Therefore, it is key for radiology providers to ensure timely and appropriate responses to requests.
It should be noted that implicating the provision does not mean information blocking occurred. The provider-specific statutory definition of information blocking requires that the provider knows the practice is both unreasonable and a likely interference to access, exchange, or use of EHI. The HHS has offered information on “likely interferences;” however, in lieu of enforcement rules and relevant guidance, there are still open questions about what it means for a provider to know that a practice is unreasonable.

Additionally, the idea of an explicit timeframe (such as that used for HIPAA PHI requests under the Right to Access) is not currently present in the information blocking provision. The rules also do not require expedited patient care nor exchange of unfinalized notes-in-progress.

Finally, we note that portals are not a mandatory mechanism for providing access, exchange, and use of EHI. The content/manner exception is most relevant to this component of the question. Insisting that a patient only access, exchange, or use EHI from the provider’s patient portal instead of in the manner requested by the patient could potentially implicate the provision.

**Would patient-level summaries of EHI, such as translations of radiology reports for patients, suffice?**

Providing the patient with only a summary of their EHI (such as a translated, patient-friendly summary of findings) instead of appropriately responding to the request for access, exchange, and/or use of EHI could implicate the provision. The provision does not forbid providing patient-friendly summaries of EHI in addition to the EHI itself. However, the provider is not obligated by the information blocking rules to create patient-friendly translations of EHI.

As mentioned previously, if the provider is focused on portal-enabled access as the only mechanism of access, the provision could be implicated if the patient requested the EHI via some other means (for example, a third-party mobile app), and portal-enabled formats may or may not limit the recipient’s use of the EHI. Therefore, actors should understand the conditions of the eight exceptions (including the exceptions for infeasibility and content/manner) to respond to requests appropriately, even if they believe they are covered by robust technological approaches to sharing EHI.

Also, patient-level access is not the only consideration covered by the information blocking provision. For example, patient portals may not necessarily be helpful when responding to requests for EHI from other health care providers.

**My institution’s administration is requiring proactive release of EHI, including radiology reports, to patients as soon as they are technically able to be released, even if unrequested by the patient. This is causing severe patient confusion and administrative burdens for our referring clinicians. Why are they taking this approach?**

Institutions may have varying interpretations due to the complex and incomplete nature of the provision’s regulatory implementation. HHS has struggled to complete implementation in a timely manner and to promulgate clear enforcement rules. Additionally, HHS has not developed compliance
guidance for provider audiences, and has been reluctant to timely and sufficiently address questions and concerns from stakeholders. This has led to widespread issues for providers in understanding the provision in practical, real-world terms.

Depending on future enforcement rulemakings, some providers may be subject to one of the two non-provider actor definitions (i.e., developer of certified health IT or health information network/exchange). These non-provider actors have a different definition of “information blocking” that does not require the actors’ knowledge of unreasonableness. Additionally, non-provider actors are at risk of civil monetary penalties if found by investigators to be information blocking while acting in their capacity as a developer or network/exchange.

**Can the HHS-defined exception for preventing harm be used with respect to ethical concerns around patient confusion, Internet-misinformed care decisions, and mental health?**

Generally, no. The substantial harm standard required for this exception relies on the same types of harm that serve as grounds for reviewable denial of an individual’s right of access under the HIPAA Privacy Rule. It also requires an individualized determination.

If, for example, an individual patient or the patient’s referring provider indicated that a particular finding could lead to the patient physically harming themselves or someone else, and all conditions of the exception were met, the preventing harm exception could be used. However, the exception could not be invoked for scenarios in which individualized determinations were not made, or if the harm concerns were limited to mental health problems, confusion, anxiety, or concerns of misinformed care decision-making.

**Are radiology health IT vendors and medical device manufacturers subject to the information blocking provision?**

Any entity that develops or offers health IT products certified under the ONC health IT certification program could potentially meet the “developer of certified health IT” actor definition. If so, that entity would be subject to the information blocking rules across their full portfolio, even if the product at the root of the information blocking claim was not itself ONC-certified. Developers of certified products are searchable on [ONC’s Certified Health IT Product List](https://www.healthit.gov/fundamentals/health-it-fundamentals/health-it-certification정보). It is also conceivable that vendors of radiology IT systems or services could meet the health information network/exchange actor definition. See the [HHS document on actor definitions](https://www.hhs.gov/).  

**My practice has encountered information blocking by another actor. How do I report it?**

While information blocking complaints are currently being collected by HHS [here](https://www.hhs.gov/), it is unclear how these reported complaints are being used without the availability of enforcement rules to guide regulatory investigations and levying of disincentives.