


CHECKLIST: **Information Blocking Rule Decision Tree** (Health Care Providers Actors)

A. PRIVACY EXCEPTION (permits full denial)

Q1. Precondition Not Satisfied: Is there a state or federal law that requires one or more preconditions to be satisfied for providing access, exchange, or use of EHI and such precondition has not been satisfied?

NO = Continue to **Q2: Denial of Individual Right of Access Consistent with HIPAA**

YES = the Practice is likely *permissible* and not Information Blocking.

 **Documentation Required:** Actor must either:

Document the Practice which would block EHI on a **case-by-case basis**, identifying the criteria used to determine when the applicable precondition would be satisfied, any criteria that were not met, and the reason why the criteria were not met.

-OR-

Conform the Practice which would block EHI to Actor’s written **organization-wide policies and procedures** that: (1) specify the criteria to be used to determine when a precondition under applicable federal or state law would be satisfied and, as applicable, the steps that Actor will take to satisfy the precondition; and (2) describe how such policies and procedures are implemented, *including* by providing workforce training.

*NOTE: A Practice which would block EHI must be **tailored** to the applicable precondition not satisfied in the federal or state law.*

NOTE: If a certain legal precondition relies on the provision of a signed consent or authorization from an Individual, and Actor has received a version of such a consent or authorization that does not satisfy all elements under applicable law, Actor must:

- a. Use reasonable efforts within its control to provide the Individual with a consent or authorization form that satisfies all required elements of the applicable law, or provide other reasonable assistance to the Individual to satisfy all required elements of the consent precondition under applicable law;*
- and*
- b. Not improperly encourage or induce the Individual to withhold the consent or authorization.*

NOTE: A Practice which would Block EHI must be implemented in a consistent and non-discriminatory manner. This means that Actor shall not:

- engage in any Practice in a different manner for similarly-situated requestors (e.g., Block EHI for one requestor, but not Block EHI for a different but similar requestor);*
- consider whether the requestor is or might be a future competitor of Actor; or*
- consider whether Actor can charge requestor a certain fee.*

NOTE: If an Actor’s activities are subject to multiple state laws which have inconsistent precondition requirements, Actor may adopt uniform privacy policies and procedures which adopt – across the board -- the more restrictive preconditions required under state law. Otherwise, the precondition required by the applicable state law must be applied to the specific Practice in each respective state.

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Q2. Denial of Right of Access consistent with HIPAA 45 CFR 164.524(a)(1). Is Actor denying the patient/personal representative access to his/her own EHI that is either “psychotherapy notes” (as defined by HIPAA) or “information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or hearing”?

YES = the Practice is likely *permissible* and not Information Blocking.

NO = Continue to Q3.

Q3. Denial of Right of Access Consistent with HIPAA 45 CFR 164.524(a)(2). Is Actor denying the patient/personal representative access to his/her own EHI that does not require review? (i.e., “Unreviewable Ground for Denial”)?

NOTE: Unreviewable Grounds for Denial apply to: (1) correctional institutions and inmate requests; (2) EHI that is collected as part of research; (3) EHI subject to the federal Privacy Act; (4) EHI was obtained from another third party under promise of confidentiality.

YES = the Practice is likely *permissible* and not Information Blocking.


NO = Continue to Q4.


Q4. Respecting Individual’s Request to Not Share EHI. Is Actor denying a request for EHI under an agreement to honor the patient/personal representative’s request to not share the EHI with certain third parties generally, or with the Requestor specifically?

NOTE: Actor is prohibited from improperly encouraging or inducing the individual/patient to request a restriction on access, exchange or use of his/her EHI.

NOTE: Actor must be implementing such Practice in a consistent and nondiscriminatory manner. This means that Actor shall not: (1) engage in any Practice in a different manner for similarly-situated requestors (e.g., Block EHI for one requestor, but not Block EHI for a different but similar requestor); (2) consider whether the requestor is or might be a future competitor of Actor; or (3) consider whether Actor can charge requestor a certain fee.

YES = the Practice is likely *permissible* and not Information Blocking.

 **Documentation Required:** Actor is required to document the request within a reasonable time period, and in accordance with its HIPAA policy governing “Right of Individuals to Request Restriction of Use and Disclosure of PHI.”

 **Documentation Required:** Actor may terminate an Individual’s request for a restriction to not provide such access, exchange, or use of the Individual’s EHI only if: (1) The Individual agrees to the termination in writing or requests the termination in writing; (2) The Individual orally agrees to the termination and the oral agreement is documented by Actor; or (3) Actor informs the Individual that it is terminating its agreement to not provide such access, exchange, or use of the Individual’s EHI except that such termination is: (i) Not effective to the extent prohibited by applicable federal or state law; and (ii) Only applicable to EHI created or received *after* Actor has so informed the individual of the termination.

NO = The Practice is not protected under the Privacy Exception.