

Summary of Compliance Dates in the ONC Cures Act COVID-19 Interim Final Rule with Comment Period

On October 29, 2020, the United States Department of Health and Human Services Office of the National Coordinator for Health Information Technology (“ONC”) released an [interim final rule with comment period](#) (“IFC”) that delays compliance dates for information blocking and other health information technology (“IT”) requirements under the 21st Century Cures Act (“Cures Act”) due to the COVID-19 Public Health Emergency. ONC had implemented these requirements in a final rule issued on May 1, 2020 (“ONC Cures Act Final Rule”).¹ The IFC includes the following tables to summarize the new compliance dates for information blocking and other requirements introduced in the ONC Cures Act Final Rule:

Conditions and Maintenance of Certification Requirements Applicability and Compliance Dates (Table 1 in the IFC)

| Provision | Final Rule | Enforcement Discretion Announcement | Interim Final Rule with Comment Period |
|---|----------------------------------|--|--|
| Information Blocking Overall Applicability Date – (45 CFR part 171) ² | November 2, 2020 | N/A – No Change | April 5, 2021 |
| Condition of Certification (CoC) – Information Blocking – (§ 170.401) | November 2, 2020 | 3 months after the compliance timeframe | |
| CoC – Assurances – (§ 170.402(a)(1)) – Will not take any action that constitutes information blocking or actions that inhibit access, exchange, and use of electronic health information (EHI) | November 2, 2020 | 3 months after the compliance timeframe | |
| CoC – Assurances – (§ 170.402(a)(2) and (3), and (b)(1)) – Other | Effective date: June 30, 2020 | Enforcement discretion expired 3 months after the effective date of the final rule | |
| CoC – Communications – (§ 170.403) – Communications requirements, except for § 170.403(b)(1) where we removed the notice requirement for 2020 | Effective date: June 30, 2020 | Enforcement discretion expired 3 months after the effective date of the final rule | |
| CoC – API – (§ 170.404(b)(4)) – Compliance for current API criteria | November 2, 2020 | 3 months after the compliance timeframe | |

¹ See 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program Final Rule, 85 Fed. Reg. 25,642 (May 1, 2020).

² Note that for the Content and Manner Exception, in § 171.301(a), for the period before October 6, 2022, the definition of EHI is limited to, at a minimum, the data elements represented in the USCDI standard; and, for the period on and after Oct 6, 2022, EHI is defined as it is in § 171.102. These dates reflect the extension from May 2, 2022, which was the compliance date included in the ONC Cures Act Final Rule. These dates are discussed in more detail in section II.A.1 [of the IFC].

| Provision | Final Rule | Enforcement Discretion Announcement | Interim Final Rule with Comment Period |
|---|--|---|--|
| CoC – API – (§ 170.404(b)(3)) – Rollout of new standardized API functionality | May 2, 2022 | 3 months after the compliance timeframe | December 31, 2022 |
| CoC – Real World Testing – 2015 Edition health IT certification criteria with standards updates | May 2, 2022 | 3 months after the compliance timeframe | |
| CoC – Assurances – (§ 170.402(a)(4) and (b)(2)) -EHI Export Rollout | May 1, 2023 | 3 months after the compliance timeframe | December 31, 2023 |
| CoC – Communications – (§ 170.403(b)(1)) – Notice to all customers with which developer has contracts or agreements containing provisions that contravene Communications CoC | Annually beginning in calendar year 2020 | Notice can be made until March 31, 2021, for the 2020 calendar year | Begin annual cycle 1 year later CY 2021 |
| CoC – Initial Attestations – (§ 170.406) | April 1-30, 2021 attestation window for attestation period running June 30, 2020, through March 31, 2021 | Generally remains the same except for the initial attestation, which will now be accepted through July 30, 2021 | Begin annual cycle 1 year later CY 2022 |
| CoC – Real World Testing – (§ 170.405(b)(1) and (2)) Submit <i>initial</i> plan and <i>initial</i> results submission | Plan: December 15, 2020 Results: March 15, 2022 | Initial Plan: Initial RWT plans (i.e., 2021 RWT plans) may be submitted through March 15, 2021 Initial Results: Initial RWT results from the 2021 performance year may be submitted up through June 2022 | Begin annual cycle 1 year later Initial Plan: December 15, 2021 Initial Results: March 15, 2023 |

2015 Edition Certification Criteria Cures Update (Table 2 in the IFC)

| Certification Criteria | Reference | 2015 Edition Cures Update – Timing | Impact on CMS Promoting Interoperability (PI) Programs |
|---|-----------------|--|---|
| Transitions of Care | § 170.315(b)(1) | Update to adopted USCDI/C-CDA companion guide by December 31, 2022 | PI Measures: <ul style="list-style-type: none"> • Support Electronic Referral Loops by Sending Health Information • Support Electronic Referral Loops by Receiving and Incorporating Health Information |
| Clinical information reconciliation and incorporation | § 170.315(b)(2) | Update to adopted USCDI/C-CDA companion guide by December 31, 2022 | PI Measures: <ul style="list-style-type: none"> • Support Electronic Referral Loops by Receiving and Incorporating Health Information |

| Certification Criteria | Reference | 2015 Edition Cures Update – Timing | Impact on CMS Promoting Interoperability (PI) Programs |
|--|------------------|--|--|
| Electronic prescribing | § 170.315(b)(3) | Update to adopted NCPDP SCRIPT standard version 2017071 by December 31, 2022 | PI Measures: <ul style="list-style-type: none"> • e-Prescribing • Query of PDMP |
| Data Export | § 170.315(b)(6) | ONC-ACBs may only issue certificates for this criterion for the period before December 31, 2023 | Removed from 2015 Edition Base EHR definition effective date of the final rule (60 days after publication) |
| Security tags -summary of care – send | § 170.315(b)(7) | Document, section, and entry (data element) level; or Document level for the period before December 31, 2022 | |
| Security tags -summary of care – receive | § 170.315(b)(8) | Document, section, and entry (data element) level; or | |
| | | Document level for the period before December 31, 2022 | |
| Care plan | § 170.315(b)(9) | Update to C-CDA companion guide referenced in § 170.205(a)(4) and § 170.205(a)(5) by December 31, 2022 | |
| EHI export | § 170.315(b)(10) | Certify to new criterion by December 31, 2023 | |
| Clinical quality measures (CQMs) – report | § 170.315(c)(3) | Update to CMS QRDA Category I/IIIIG by December 31, 2022 | PI Programs |
| Auditable events and tamper-resistance | § 170.315(d)(2) | Update to ASTM 2147-18 standard by December 31, 2022 | |
| Audit report(s) | § 170.315(d)(3) | Update to ASTM 2147-18 standard by December 31, 2022 | |
| Auditing actions on health information | § 170.315(d)(10) | Update to ASTM 2147-18 standard by December 31, 2022 | |
| View, Download, and Transmit to 3rd Party | § 170.315(e)(1) | Update to USCDI referenced in § 170.213 and C-CDA companion guide referenced in § 170.205(a)(4) and § 170.205(a)(5) by December 31, 2022 | PI Measure: Provide Patients Electronic Access to Their Health Information |
| Transmission to public health agencies – electronic case reporting | § 170.315(f)(5) | Update to USCDI referenced in § 170.213 by December 31, 2022 | PI Measure: Electronic Case Reporting |
| Consolidated CDA creation performance | § 170.315(g)(6) | Update to USCDI referenced in § 170.213 and C-CDA companion guide referenced in § 170.205(a)(4) and § 170.205(a)(5) by December 31, 2022 | |
| Application Access – Data Category Request | § 170.315(g)(8) | ONC-ACBs may only issue certificates for this criterion for the period before December 31, 2022 | PI Measure: Provide Patients Electronic Access to Their Health Information |

| Certification Criteria | Reference | 2015 Edition Cures Update – Timing | Impact on CMS Promoting Interoperability (PI) Programs |
|--|------------------|--|---|
| Application Access – All Data Request | § 170.315(g)(9) | Update to USCDI referenced in § 170.213 and C-CDA companion guide referenced in § 170.205(a)(4) and § 170.205(a)(5) by December 31, 2022 | PI Measure: Provide Patients Electronic Access to Their Health Information |
| Standardized API for patient and population services | § 170.315(g)(10) | Certify to new criterion by December 31, 2022 | Added to the 2015 Edition Base EHR definition PI Measure: Provide Patients Electronic Access to Their Health Information |