

# UConn HEALTH

## Administrative Policy

### 2023-04 Information Blocking

<b>Title</b>	Information Blocking
<b>Policy Owner and Contact Information</b>	Office of Healthcare Compliance & Privacy (OHCP) ohcp@uchc.edu
<b>Campus Applicability</b>	All UConn Health campuses, including John Dempsey Hospital
<b>Applies to</b>	UConn Health Workforce
<b>Effective Date</b>	June 12, 2023

**PURPOSE:**

Information Blocking rules prohibit actions that interfere with access, use, and exchange of Electronic Health Information (EHI) in order to promote value-based healthcare through transparency and coordinated care among patients, healthcare providers, and others. This document establishes (i) UConn Health’s commitment to preventing and avoiding engagement in practices that constitute Information Blocking according to applicable federal regulations, and (ii) how UConn Health applies allowable exceptions and meets all conditions of such exceptions before engaging in a practice that may otherwise constitute Information Blocking.

**POLICY STATEMENT:**

1. UConn Health shall prohibit and avoid engagement in practices that constitute Information Blocking and shall engage in practices that otherwise constitute Information Blocking only after meeting all conditions justifying an exception as outlined in this Policy.
2. UConn Health shall make EHI electronically available to patients in a reasonable and permissible timeframe unless an allowable exception applies, and UConn Health shall further make EHI available upon request in electronic or other form and formats unless an allowable exception applies.
3. **Preventing Harm Exception.** UConn Health shall only undertake a practice likely to interfere with the Access, Exchange, or Use of EHI in order to prevent harm when the following conditions are met:
  - 3.1 Reasonable belief. UConn Health holds a reasonable belief that the practice will substantially reduce a risk of harm to a patient or another person that would otherwise arise from the Access, Exchange, or Use of EHI affected by the practice.
  - 3.2 Practice breadth. The practice is no broader than necessary to substantially reduce the risk of harm.
  - 3.3 Type of risk. The risk of harm:
    - (a) Has been 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 EHI is affected by the determination; or
    - (b) Has arisen from data that is known or reasonably suspected to be misidentified or mismatched, corrupt due to technical failure, or erroneous for another reason.
  - 3.4 Type of harm. The type of harm serves as grounds for denying Access in one of the following circumstances:

- (a) A licensed health care professional has determined, in the exercise of professional judgment, that the Access requested is reasonably likely to endanger the life or physical safety of the individual or another person, and the practice is likely to, or in fact does, interfere with the patient's Access, Exchange, or Use of the patient's own EHI or the practice is likely to, or in fact does, interfere with a legally permissible Access, Exchange, or Use of EHI, regardless of whether the risk of harm the practice is intended to reduce is consistent with Section 3.3: Type of Risk of this section; or
- (b) The PHI makes reference to another person (unless such other person is a Health Care Provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the Access requested is reasonably likely to cause substantial harm to such other person, and the practice is likely to, or in fact does, interfere with the patient's or their legal representative's Access to, Use or Exchange of information that references another person and the practice is implemented pursuant to an individualized determination of risk of harm consistent with Section 3.3(a) of this section; or
- (c) The request for Access is made by the individual's legal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of Access to such legal representative is reasonably likely to cause substantial harm to the individual or another person, and the practice is likely to, or in fact does, interfere with Access, Exchange, or Use of the patient's EHI by the legal representative and the practice is implemented pursuant to an individualized determination of risk of harm consistent with Section 3.3(a) of this section.

3.5 Right to request review. Where the risk of harm has been 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 EHI is affected by the determination, the individual has the right to have the denial reviewed by a licensed health care professional designated by UConn Health to act as a reviewing official and who did not participate in the original decision to deny, in accordance with UConn Health policy 2020-11: Patients' Right to Access Their PHI in a Designated Record Set.

3.6 Policy or specific determination. The practice is either consistent with:

- (a) a UConn Health written policy that is based on relevant clinical, technical, and other appropriate expertise, is implemented in a consistent and non-discriminatory manner, and meets all other applicable conditions; or
- (b) a determination based on facts and circumstances known or reasonably believed by UConn Health at the time of the determination and while the practice remains in use and based on expertise relevant to implementing the practice in a way that meets all other applicable conditions.

4. **Privacy Exception.** UConn Health shall only undertake a practice likely to interfere with the Access, Exchange, or Use of EHI in order to protect an individual's privacy when the following conditions are met:

4.1 Precondition not satisfied. State or Federal law, such as the HIPAA Privacy Rule, requires one or more preconditions for providing Access, Exchange, or Use of PHI that have not been satisfied and:

- (a) UConn Health's practice is tailored to the applicable precondition not satisfied, is implemented in a consistent and non-discriminatory manner, and either conforms to written UConn Health policies and procedures that specify the criteria to be used to determine when the precondition would be satisfied and the steps to take to satisfy the precondition or UConn Health has supporting case-by-case documentation identifying the criteria used to determine when the precondition would be satisfied, any criteria that were not met, and the reason why the criteria were not met; or

- (b) If the precondition relies on the provision of a consent or authorization from an individual and UConn Health has received a version of such a consent or authorization that does not satisfy all elements of the precondition required under applicable law, UConn Health has:
- Used reasonable efforts within its control to provide the individual with a consent or authorization form that satisfies all required elements of the precondition or has provided other reasonable assistance to the individual to satisfy all required elements of the precondition; and
  - Not improperly encouraged or induced the individual to withhold the consent or authorization.
- 4.2 Denial of an individual's request for his/her EHI consistent with 45 C.F.R. §164.524 Access of individuals to Protected Health Information. If an individual requests EHI under the right of Access provision of the HIPAA Privacy Rule, UConn Health shall adhere to applicable requirements. Refer to UConn Health policy 2020-11: Patients' Right to Access Their PHI in a Designated Record Set.
- 4.3 Respecting an individual's request not to share information. Unless otherwise required by law, UConn Health may elect not to provide Access, Exchange or Use of an individual's EHI if:
- (a) The individual requests such restriction without any improper encouragement or inducement by UConn Health;
  - (b) UConn Health documents the request within a reasonable time period;
  - (c) UConn Health's practice is implemented in a consistent and non-discriminatory manner; and
  - (d) UConn Health terminates an individual's request for such restriction only if:
    - The individual agrees to the termination in writing or requests it in writing;
    - The individual orally agrees to the termination and the oral agreement is documented by UConn Health; or
    - UConn Health informs the individual that it is terminating its agreement to the restriction except that such termination is not effective to the extent prohibited by applicable Federal or State law and only applicable to EHI created or received after UConn Health has so informed the individual of the termination.
5. **Security Exception.** UConn Health shall only undertake a practice likely to interfere with the Access, Exchange, or Use of EHI in order to protect the security of EHI when the following conditions are met:
- 5.1 The practice directly relates to safeguarding the confidentiality, integrity, and availability of EHI;
  - 5.2 The practice is tailored to the specific security risk being addressed;
  - 5.3 The practice is implemented in a consistent and non-discriminatory manner; and
  - 5.4 The practice either:
    - (a) Implements a written UConn Health security policy that has been prepared on the basis of, and is directly responsive to, security risks identified and assessed by or on behalf of UConn Health, aligns with one or more applicable consensus-based standards or best practice guidelines, and provides objective timeframes and other parameters for identifying, responding to, and addressing security incidents; or
    - (b) Does not implement a UConn Health security policy and UConn Health has made a determination in each case, based on the particularized facts and circumstances, that the practice is necessary to mitigate the security risk to EHI and there are no reasonable and appropriate alternatives to the practice that address the security risk that are less likely to interfere with, prevent, or materially discourage Access, Exchange, or Use of EHI.
6. **Infeasibility Exception.** UConn Health shall only undertake a practice of not fulfilling a request to Access, Exchange, or Use EHI due to the infeasibility of the request when the following conditions are met:
- 6.1 Conditions. One of the following:

- (a) Uncontrollable events. UConn Health cannot fulfill the request due to natural or human-made disaster, public health emergency, public safety incident, war, terrorist attack, civil insurrection, strike or other labor unrest, telecommunication or internet service interruption, or act of military, civil or regulatory authority;
- (b) Segmentation. UConn Health cannot fulfill the request because UConn Health cannot unambiguously segment the requested EHI from EHI that either cannot be made available due to an individual's performance, cannot be made available by law, or may be withheld in accordance with the Preventing Harm Exception.
- (c) Infeasible under the circumstances. UConn Health demonstrates, prior to responding to the request as required by this Policy, through a contemporaneous written record or other documentation, its consistent and non-discriminatory consideration of the following factors that led to its determination that complying with the request would be infeasible under the circumstances, and in determining whether the circumstances were infeasible, UConn Health has not considered whether the manner requested would have facilitated competition with UConn Health and whether the manner requested would have prevented UConn Health from charging a fee or resulted in a reduced fee:
  - The type of EHI and the purposes for which it may be needed;
  - The cost to UConn Health of complying with the request;
  - The financial and technical resources available to UConn Health;
  - Whether UConn Health's practice is non-discriminatory and UConn Health provides the same Access, Exchange, or Use of EHI to its companies or to its customers, suppliers, partners, and other persons with whom it has a business relationship;
  - Whether UConn Health owns or has control over a predominant technology, platform, Health Information Exchange, or Health Information Network through which EHI is Accessed or Exchanged; and
  - Why UConn Health was unable to provide Access, Exchange, or Use of EHI consistent with the Content and Manner Exception.

6.2 Responding to requests. If UConn Health does not fulfill a request for Access, Exchange, or Use due to infeasibility, UConn Health must, within ten (10) business days of receipt of the request, provide to the requestor in writing the reasons why the request is infeasible.

- 7. **Health IT Performance Exception.** UConn Health shall only undertake a practice implemented to maintain or improve health IT performance and that is likely to interfere with the Access, Exchange, or Use of EHI when one of the following conditions are met, as applicable to the particular practice and the reason for its implementation:

7.1 Maintenance and improvements to health IT. When UConn Health implements a practice that makes health IT under UConn Health's control temporarily unavailable, or temporarily degrades the performance of health IT, in order to perform maintenance or improvements to the health IT, the practice must be:

- (a) Implemented for a period of time no longer than necessary to complete the maintenance or improvements for which the health IT was made unavailable or the health IT's performance degraded;
- (b) Implemented in a consistent and non-discriminatory manner; and
- (c) If the unavailability or degradation is initiated by a health IT developer of certified health IT, Health Information Exchange, or Health Information Network, the unavailability or degradation, whether planned or unplanned, is consistent with applicable existing service level agreements.

7.2 Assured level of performance. UConn Health may take action against a third-party application that is negatively impacting the health IT's performance, provided that the practice is:

- (a) For a period of time no longer than necessary to resolve any negative impacts;
  - (b) Implemented in a consistent and non-discriminatory manner; and
  - (c) Consistent with existing service level agreements, where applicable.
- 7.3 Practices that prevent harm. If the unavailability of health IT for maintenance or improvements is initiated by UConn Health in response to risk of harm to a patient or another person, UConn Health does not need to satisfy the requirements of the Health IT Performance Exception but must comply with all requirements of the Preventing Harm Exception at all relevant times to qualify for an exception.
- 7.4 Security-related practices. If the unavailability of health IT for maintenance or improvements is initiated by UConn Health in response to a security risk to EHI, UConn Health does not need to satisfy the requirements of the Health IT Performance Exception but must comply with all requirements of the Security Exception at all relevant times to qualify for an exception.
8. **Content and Manner Exception.** UConn Health shall only undertake a practice of limiting the content of its response to or the manner in which it fulfills a request to Access, Exchange, or Use of EHI when the following conditions are met:
- 8.1 Content condition. Prior to May 2, 2022, requested EHI exceeds the EHI identified by the data elements represented in the USCDI V1 standard. On and after October 6, 2022, UConn Health must respond to a request to Access, Exchange, or Use EHI with EHI as defined in [§ 171.102](#).
- 8.2 Manner condition. UConn Health is technically unable to fulfill the request or cannot reach agreeable terms with the requestor to fulfill the request.
- (a) Manner requested. When UConn Health fulfills a request in any manner requested, any fees charged by UConn Health in relation to fulfilling the request are not required to satisfy the Fees Exception and any license of Interoperability Elements granted by UConn Health in relation to fulfilling the request is not required to satisfy the Licensing Exception.
  - (b) Alternative manner. If UConn Health does not fulfill a request in any manner requested because it is technically unable to fulfill the request or cannot reach agreeable terms with the requestor to fulfill the request, UConn Health shall fulfill the request in an alternative manner as follows:
    - Without unnecessary delay in the following order of priority:
      - using technology certified according to applicable regulation that is specified by the requestor,
      - using content and transport standards specified by the requestor and published by the Federal Government or a standards developing organization accredited by the American National Standards Institute,
      - using an alternative machine-readable format, including the means to interpret the EHI, agreed upon with the requestor.
    - Any fees charged by UConn Health in relation to fulfilling the request are required to satisfy the Fee Exception.
    - Any license of Interoperability Elements granted by UConn Health in relation to fulfilling the request is required to satisfy the License Exception.
9. **Fees Exception.** UConn Health shall only undertake a practice of charging fees, including fees that result in a reasonable profit margin, for Accessing, Exchanging, or Using EHI when the following conditions are met:
- 9.1 Basis for fees condition. The fees UConn Health charges must be:
- (a) The fees UConn Health charges must be:
    - Based on objective and verifiable criteria that are uniformly applied for all similarly situated classes of persons or entities and request;

- Reasonably related to UConn Health’s costs of providing the type of Access, Exchange, or Use of EHI to, or at the request of, the person or entity to whom the fee is charged;
- Reasonably allocated among all similarly situated persons or entities to whom the technology or service is supplied, or for whom the technology is supported; and
- Based on costs not otherwise recovered for the same instance of service to a provider and third party.

(b) The fees UConn Health charges must not be based on:

- Whether the requestor or other person is a competitor, potential competitor, or will be using the EHI in a way that facilitates competition with UConn Health;
- Sales, profit, revenue, or other value that the requestor or other persons derive or may derive from the Access, Exchange, or Use of the EHI;
- Costs UConn Health incurred due to the health IT being designed or implemented in a non-standard way, unless the requestor agreed to the fee associated with the non-standard design or implementation to Access, Exchange, or Use the EHI;
- Costs associated with intangible assets others than the actual development or acquisition costs of such assets;
- Opportunity costs unrelated to the Access, Exchange, or Use of the EHI; or
- Any costs that led to the creation of intellectual property, if UConn Health charged a royalty for the intellectual property pursuant to the Licensing Exception and that royalty included the development costs for creation of the intellectual property.

9.2 Excluded fees condition. This exception does not apply to:

- (a) A fee prohibited by the HIPAA Privacy Rule;
- (b) A fee based in any part on the electronic Access of an individual’s EHI by the individual, the individual’s legal representative, or another person or entity designated by the individual;
- (c) A fee to perform an export of EHI via the capability of health IT certified for the purposes of switching health IT or to provide patients their EHI; and
- (d) A fee to export or convert data from an EHR technology that was not agreed to in writing at the time the technology was acquired.

9.3 Compliance with the Conditions of Certification condition. When UConn Health acts in the capacity of a health IT developer subject to the Conditions of Certification, UConn Health must comply will all requirements of such conditions for all practices and at all relevant times.

**10. Licensing Exception.** UConn Health shall only undertake a practice to license Interoperability Elements for EHI Access, Exchange, or Use when the following conditions are met:

10.1 Negotiating a license conditions. Upon receiving a request to license an Interoperability Element for the Access, Exchange, or Use of EHI, UConn Health shall:

- (a) Begin license negotiations with the requestor within ten (10) business days from receipt of the request; and
- (b) Negotiate a license with the requestor, subject to the Licensing conditions below, within thirty (30) business days from receipt of the request.

10.2 Licensing conditions. The license provided for the Interoperability Element(s) needed to Access, Exchange, Use EHI shall meet the following conditions:

- (a) Scope of rights. The license must provide all rights necessary to enable the Access, Exchange, or Use of EHI and achieve the intended Access, Exchange, or Use of EHI via the Interoperability Elements.

- (b) Reasonable royalty. If UConn Health charges a royalty for the use of the Interoperability Elements, the royalty must be reasonable and comply with the following requirements:
- The royalty must be non-discriminatory.
  - The royalty must be based solely on the independent value of UConn Health's technology to the licensee's products, not on any strategic value stemming from UConn Health's control over essential means of Accessing, Exchanging, or Using EHI.
  - If UConn Health has licensed the Interoperability Element through a standards developing organization in accordance with such organization's policies regarding the licensing of standards-essential technologies on terms consistent with those in this exception, UConn Health may charge a royalty that is consistent with such policies.
  - UConn Health may not charge a royalty for intellectual property if UConn Health recovered any development costs pursuant to the Fees Exception that led to the creation of intellectual property.
- (c) Non-discriminatory terms. The terms (including royalty terms) on which UConn Health licenses and otherwise provides the Interoperability Elements must be non-discriminatory and comply with the following requirements:
- The terms must be based on objective and verifiable criteria that are uniformly applied for all similarly situated classes of persons and requests.
  - The terms must not be based in any part on whether the requestor or other person is a competitor, potential competitor, or will be using EHI obtained via the Interoperability Elements in a way that facilitates competition with UConn Health or on the revenue or other value the requestor may derive from Access, Exchange, or Use of EHI obtained via the Interoperability Elements.
- (d) Collateral terms. UConn Health must not require the licensee or its agents or contractors to do, or to agree to do, any of the following:
- Not compete with UConn Health in any product, service, or market.
  - Deal exclusively with UConn Health in any product, service, or market.
  - Obtain additional licenses, products, or services that are not related to or can be unbundled from the requested Interoperability Elements.
  - License, grant, assign, or transfer to UConn Health any intellectual property of the licensee.
  - Pay a fee of any kind whatsoever, except as a permitted reasonable royalty, unless the practice meets the requirements of the Fees Exception.
- (e) Non-disclosure agreement. UConn Health may require a reasonable non-disclosure agreement that is no broader than necessary to prevent unauthorized disclosure of UConn Health's trade secrets, provided the agreement states with particularity all information UConn Health claims as trade secrets and such information meets the definition of a trade secret under applicable law.
- 10.3 Additional conditions relating to the provision of Interoperability Elements. To the extent applicable, UConn Health shall not engage in any practice that has any of the following purposes or effects:
- (a) Impeding the efficient use of the Interoperability Elements to Access, Exchange, or Use EHI or any permissible purpose.
  - (b) Impeding the efficient development, distribution, deployment, or use of an interoperable product or service for which there is actual or potential demand.

- (c) Degrading the performance or interoperability of the licensee's products or services, unless necessary to improve UConn Health's technology and after affording the licensee a reasonable opportunity to update its technology to maintain interoperability.
11. To ensure all relevant conditions of an allowable exception apply, Workforce Members shall directly contact the Office of the General Counsel and/or the Office of Healthcare Compliance & Privacy for advice and guidance when considering UConn Health's engagement in a new, not previously reviewed, practice that may interfere with Access, Exchange, or Use of EHI.

**DEFINITIONS:**

**Access:** Ability or means necessary to make Electronic Health Information (EHI) available for Exchange or Use.

**Designated Record Set:** A group of records maintained by or for a covered entity that may include patient medical and billing records; the enrollment, payment, claims, adjudication, and cases or medical management record systems maintained by or for a health plan; or information used in whole or in part to make care-related decisions.

**Electronic Health Information (EHI):** Electronic Protected Health Information (ePHI) to the extent that it would be included in UConn Health's Designated Record Set, regardless of whether the group of records are used or maintained by UConn Health. EHI does not include:

- Psychotherapy Notes; or
- Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.

**Electronic Protected Health Information (ePHI):** Any Protected Health Information that is produced, saved, transferred or received in an electronic form, including payment information or demographic information collected from an individual.

**Exchange:** Ability for EHI to be transmitted between and among different technologies, systems, platforms, or networks.

**Health Care Provider:** The individual or entity that receives any payment or payments for health care items or services provided.

**Health Information Exchange/Health Information Network:** An individual or entity that determines, controls, or has the discretion to administer any requirement, policy, or agreement that permits, enables, or required the use of any technology or services for Access, Exchange, or Use of EHI:

- (1) Among more than two unaffiliated individuals or entities (other than the individual or entity to which this definition might apply) that are enabled to Exchange with each other; and
- (2) That is for treatment, payment, or health care operations purposes regardless of whether such individuals or entities are subject to the requirements of 45 CFR parts 160 and 164.

**Health Information Technology:** Hardware, software, integrated technologies or related licenses, intellectual property, upgrades, or packaged solutions sold as services that are designated for or support the use by health care entities or patients for the electronic creation, maintenance, Access, or Exchange of health information.

**Health IT Developer of Certified Health IT:** An individual or entity, other than a Health Care Provider that self-developed health IT for its own use, that develops or offers Health Information Technology and which has, at the time it engages in a practice that is the subject of an Information Blocking claim, one or more Health IT Modules certified under a program for the voluntary certification of Health Information

Technology that is kept or recognized by the National Coordinator pursuant to 42 U.S.C. 300jj-11(c)(5) (ONC Health IT Certification Program).

**Information Blocking:** A practice that:

- (1) Except as required by law or covered by an exception set forth in this Policy, is likely to interfere with Access, Exchange, or Use of EHI; and
- (2) If conducted by a Health Information Technology Developer, Health Information Exchange or Health Information Network, such developer, exchange, or network knows, or should know, that such practice is likely to interfere with, prevent, or materially discourage Access, Exchange, or Use of EHI; or
- (3) If conducted by a Health Care Provider, such provider knows that such practice is unreasonable and is likely to interfere with, prevent, or materially discourage Access, Exchange, or Use of EHI.

**Interoperability Element:** Hardware, software, integrated technologies or related licenses, technical information, privileges, rights, intellectual property, upgrades, or services that:

- (1) May be necessary to Access, Exchange, or Use of EHI; and
- (2) Is/Are controlled by the Actor, which includes the ability to confer all rights and authorizations necessary to use the element to enable the Access, Exchange, or Use of EHI.

**Protected Health Information (PHI):** Any information, including payment information, whether oral or recorded, transmitted, or retained in any form or medium, including demographic information collected from an individual, that:

- Is created or received by UConn Health;
- Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
- Identifies the individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Protected Health Information excludes information in education records covered by the Family Educational Right and Privacy Act (FERPA), records described in 20 USC 1232g(a)(4)(B)(iv), employment records held by UConn Health in its role as an employer, or healthcare records related to individuals who have been deceased for more than 50 years.

**Use:** Ability for EHI, once Accessed or Exchanged, to be understood and acted upon.

**REFERENCES:**

45 CFR §§170 and 171 (Health IT Standards, Implementation Specifications and Certification Criteria and Information Blocking)

45 C.F.R. § 164.524 (HIPAA Privacy Rule)

Conn. Gen. Stat. § 19a-904d Health information blocking. Penalty. (2015)

**PROCEDURES/FORMS:**

None.

**RELATED POLICIES:**

2023-06: HIPAA Patient Rights

**ENFORCEMENT:**

Violations of this policy or associated procedures may result in appropriate disciplinary measures in accordance with University By-Laws, General Rules of Conduct for All University Employees, applicable collective bargaining agreements, the University of Connecticut Student Code, other applicable University Policies, or as outlined in any procedures document related to this policy.

**APPROVAL:**

Bruce Liang (Signed)  
Bruce Liang  
Interim Chief Executive Officer, UConn Health  
Executive Vice President for Health Affairs

6/10/2023  
Date

Elle Box (Signed)  
Elle Box  
Chief Healthcare Compliance & Privacy Officer  
Administrative Policy Committee Co-Chair

6/7/2023  
Date

Janel Simpson (Signed)  
Janel Simpson  
Chief Administrative Officer  
Administrative Policy Committee Co-Chair

6/7/2023  
Date

**POLICY HISTORY:**

**New Policy Approved:** 06/23

**Reviewed Without Changes:**

**Revised:**