

# PROVIDER'S GUIDE TO THE 21<sup>ST</sup> CENTURY CURES ACT

## *Issue 2: EHI & Information Blocking Exceptions*



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# WHAT CONSTITUTES EHI?

The latest definition of electronic health information



## EVOLUTION OF EHI

Under the 21st Century Cures Act, the definition of electronic health information has grown to encompass a much wider range of patient data.

Failure to provide requested EHI to patients or third party requestors can lead to violation penalties if it fits within the Cures Act definition.

## BEFORE OCT. 6, 2022

From 4/5/21 to 10/5/22, EHI was limited to the data elements in USCDI v1.

## AFTER OCT. 6, 2022

From 10/6/22 onward, EHI is any ePHI under HIPAA included in a designated record set (DRS).

## What is the USCDI?

The United States Core Data for Interoperability, or USCDI, is a health data standardization system that attributes specific health data elements to broad data classes.

### Data Element

The most granular level at which data is represented.

### Data Class

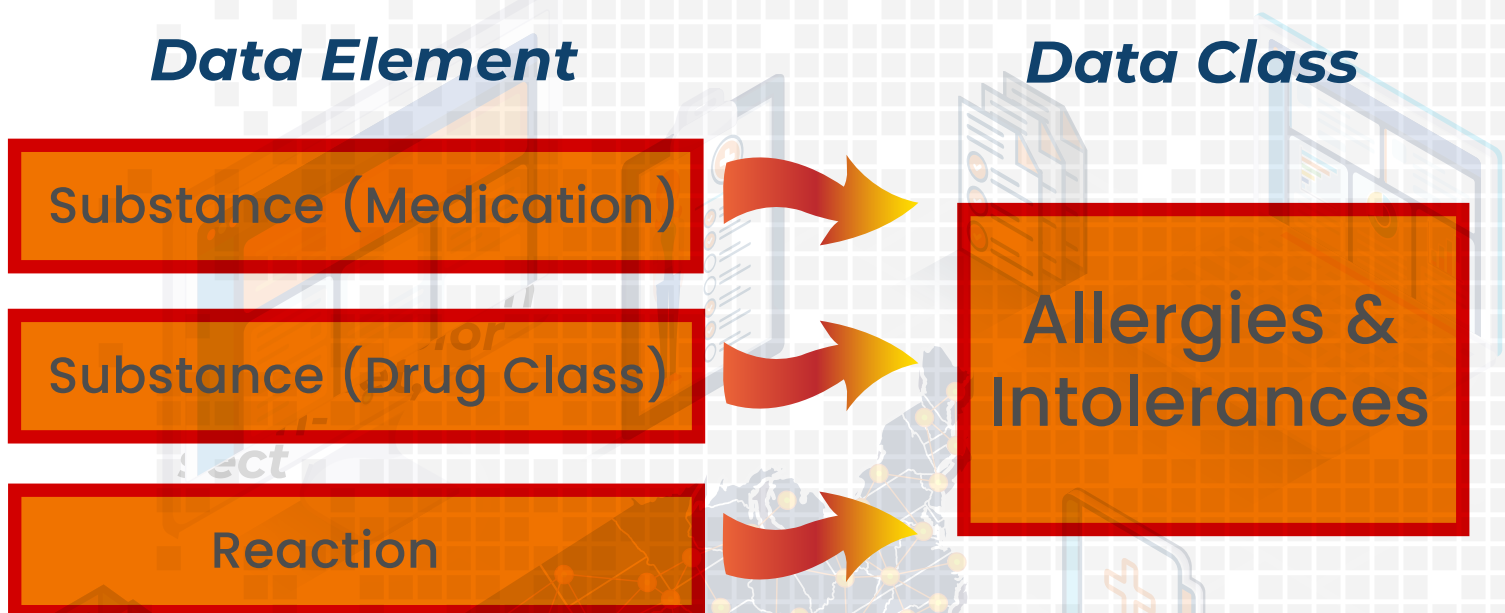
Data element collections grouped by theme or use case.

The information presented throughout this Cures Act series is for educational purposes only, and it does not constitute legal advice.

## The United States Core Data for Interoperability

Imagine for a moment that the USCDI is like the animal kingdom. While toucans, flamingos, and ostriches are very unique animals, they all fit into the same larger group. In this context, each animal would be a data element and the animal group would be a data class.

Next, let's look at an example from the USCDI.



### USCDI After October 6, 2022

While the scope of EHI has expanded beyond the bounds of the USCDI, the Interoperability Standards Advisory (ISA) is still working on updating the USCDI per submissions and comments from industry leaders.

The next iteration of these data sets, USCDI V4, is set to be released in January 2023 on [healthit.gov](https://healthit.gov)

### What is a Designated Record Set?

On October 6, 2022, the definition of EHI expanded to encompass all ePHI in a HIPAA DRS. But what is a DRS? Simply put, this covers all data used to make decisions about a patients' care.

The HIPAA definition of DRS includes groups of records maintained by or for covered entities such as medical records, billing records, and any other records used to make informed decisions about patient care.

The Cures Act requires you to release these records when requested to prevent information blocking.



### What is Information Blocking?

Information blocking is any practice that will likely interfere with, prevent, or discourage access, exchange, and use of EHI.

Access

Exchange

Use

The ability to make EHI available for exchange or use.

The ability for EHI to be transmitted between systems, platforms, networks, and other technologies.

The ability for EHI to be understood and acted upon after being accessed or exchanged.



# BLOCKING EXCEPTIONS

*Organizations can still refuse to release some records*

## What are the information blocking exceptions?

There are 8 categorical exceptions to the information blocking provision, which fit into 2 larger groups.

### Exceptions that involve fulfilling PHI requests

#### Preventing Harm

If releasing PHI may cause significant physical harm to the patient or other persons, blocking access to that information can be justified.

#### Privacy

HIPAA supersedes the Cures Act information blocking provisions. Providers are not required to use or disclose PHI if doing so would be prohibited under state or federal privacy laws.

#### Security

Blocking access to PHI can be justified if there is a security issue that makes transmitting EHI a significant risk for patient privacy.

#### Infeasibility

Providers can decline access in cases where they do not have and cannot obtain the necessary technological capabilities, legal rights, or other means to release PHI.

#### Health IT Performance

While health IT systems are offline for maintenance, providers may take reasonable and necessary measures to make PHI temporarily unavailable.

### Exceptions that involve fulfillment procedures

#### Licensing

Actors may charge reasonable royalties to earn returns on investments made to develop, maintain, and update their innovations.

#### Fees

Actors may charge fees related to services and technologies that enhance interoperability. They may not protect manipulative rent seeking practices, opportunistic fees, or other exclusionary practices that block information.

#### Content and Manner

Providers and other actors have flexibility concerning the type of EHI content and the manner of transmission requested.

