

The Merit-based Incentive Payment System (MIPS) Promoting Interoperability Prevention of Information Blocking Attestation: Making Sure EHR Information is Shared 2019 Performance Year

To prevent actions that block the exchange of health information, the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) and the Quality Payment Program final rule with comment period¹ require MIPS eligible clinicians to show that they have not knowingly and willfully limited or restricted the compatibility or interoperability of their certified electronic health record (EHR) technology. MIPS eligible clinicians show that they are meeting this requirement by attesting to three statements about how they implement and use certified EHR technology (CEHRT). Together, these three statements are referred to as the “**Prevention of Information Blocking Attestation.**”

Do I Have to Attest?

If you are a MIPS eligible clinician who reports on the Promoting Interoperability performance category you must attest to the prevention of information blocking attestation.

If you are reporting as a group, the prevention of information blocking attestation by the group applies to all MIPS eligible clinicians within the group. Therefore, if one MIPS eligible clinician in the group fails to meet the requirements of the Prevention of Information Blocking Attestation, then the whole group would fail to meet the requirement.


What Actions Are Required?

If you want to earn a score for the Promoting Interoperability performance category, you have to act in good faith when you implement and use your CEHRT to exchange electronic health information. This includes working with technology developers and others who build CEHRT to make sure the technology is used correctly and is connected (and enabled) to meet applicable standards and laws.

You must also ensure that your organizational policies and workflows are enabled and do not restrict the CEHRT’s functionality in any way. For example, if your CEHRT gives patients access to their electronic health information or exchanges information with other MIPS eligible clinicians, your practice must use these capabilities.

¹ Medicare Program; Merit-Based Incentive Payment System (MIPS) and Alternative Payment Model (APM) Incentive Under the Physician Fee Schedule, and Criteria for Physician-Focused Payment Models, 81 FR 77008 (Nov. 4, 2016).





We recognize that circumstances beyond a MIPS eligible clinician's control may limit the exchange or use of electronic health information. This is why the Prevention of Information Blocking Attestation focuses on whether you act in **good faith** to exchange electronic health information and your particular situation. This focus takes into account a MIPS eligible clinician's individual circumstances, such as:

- Your practice or organization size
- How much technology you have
- What your CEHRT can do

What the attestation does not do:

- Assume how much you know about technology
- Hold you responsible for outcomes you cannot reasonably influence or control

Statements to Which I Am Attesting

The Prevention of Information Blocking Attestation has three related statements that are based on section 106(b)(2) of the MACRA about how MIPS eligible clinicians implement and use CEHRT. When you attest to these three statements together, you are confirming that you have acted in good faith to:

- Support the appropriate exchange of electronic health information
- Not knowingly and willfully limit or restrict the compatibility or interoperability of the CEHRT

Here are the details about each of the three statements:

Statement 1: A MIPS eligible clinician must attest that they did not knowingly and willfully take action (such as to disable functionality) to limit or restrict the compatibility or interoperability of CEHRT.

Statement 1 requires MIPS eligible clinicians to demonstrate that they did not knowingly and willfully take action to limit or restrict the compatibility or interoperability of CEHRT. Statements 2 and 3 build on Statement 1, giving more details about what MIPS eligible clinicians have to do to comply with the statute's requirements. The details in Statements 2 and 3 can help you to:

- Understand what is required
- Comply
- Give an attestation that shows us you have complied

Statement 2: A MIPS eligible clinician must attest that they implemented technologies, standards, policies, practices, and agreements reasonably calculated to ensure, to the greatest extent practicable and permitted by law, that the CEHRT was, at all relevant times

1. **Connected in accordance with applicable law;**
2. **Compliant with all standards applicable to the exchange of information, including the standards, implementation specifications, and certification criteria adopted at 45 CFR Part 170;**
3. **Implemented in a manner that allowed for timely access by patients to their electronic health information (including the ability to view, download, and transmit this information); and**
4. **Implemented in a manner that allowed for the timely, secure, and trusted bi-directional exchange of structured electronic health information with other health care providers (as defined by 42 U.S.C. 300jj(3)), including unaffiliated providers, and with disparate CEHRT and health IT vendors.**

Statement 2 focuses on how you implement your CEHRT. By attesting to this statement, you are confirming that you acted in good faith to implement your CEHRT in a way that supported and did not restrict access to the exchange of electronic health information.

More specifically, Statement 2 asks you to confirm that you took reasonable steps to implement:

- Corresponding technologies
- Standards
- Policies
- Practices
- Agreements to enable the use of CEHRT and not restrict appropriate access to or use of your CEHRT's information


These are examples of actions that may restrict compatibility or interoperability:

- Implementing or configuring CEHRT so access to certain types of data elements or to the "structure" of the data is limited
- Implementing CEHRT in ways that limit the people or entities that can access and exchange information, or the types of technologies they can use

We do not expect you to have any special technical skills or to personally deal with the technical details of implementing your health IT. We also do not expect you to have direct knowledge of all the matters described in Statement 2.

We do expect that you take reasonable steps to ensure that you can attest that you meet the conditions described in Statement 2. To be clear, you should inform health IT developers, implementers, and others who are responsible for implementing and configuring your CEHRT of the requirements. Also, you should get adequate assurances from them that your CEHRT was connected:

- To meet the standards and laws that apply
- In a way that enables you to show you have not knowingly and willfully restricted its compatibility or interoperability



Statement 3: A MIPS eligible clinician must attest that they responded in good faith and in a timely manner to requests to retrieve or exchange electronic health information, including from patients, health care providers (as defined by 42 U.S.C. 300jj(3)), and other persons, regardless of the requestor's affiliation or technology vendor.

Statement 3 focuses on how you actually used CEHRT. By attesting to this statement, you are confirming that you acted in good faith to use your CEHRT to support the appropriate exchange and use of electronic health information. For example, you will need to take reasonable steps to respond to requests for access or exchange of information when it is appropriate, and not discriminate because of the requestor's affiliation, technology vendor, or other characteristics.

You can still attest to statement 3 if, in good faith, you restricted access to information for reasonable purposes, like to make security upgrades or keep patients safe. You also will not be responsible for restricting exchange or interoperability that you could not have reasonably controlled.

Here are three examples that show that even with good faith efforts, MIPS eligible clinicians may not be able to exchange certain information because of technical, legal, or other practical constraints that were unintentional or beyond their control. You should consider your unique circumstances, but these are examples that would not typically prevent you from attesting that you met the requirements:


Example 1: MIPS eligible clinicians act in good faith to disable functionality for system maintenance. It is unlikely that they would have knowingly and willfully limited or restricted the compatibility or interoperability of their CEHRT as long as they:

- Acted in good faith
- Did not disable functionality except for as long as necessary to ensure proper CEHRT maintenance
- Took reasonable steps to minimize the impact of such maintenance on the ability of patients and other health care providers to appropriately access and exchange information

This could happen if you schedule maintenance overnight and then respond to access and exchange requests after the maintenance is over and it is otherwise practical.

Example 2: MIPS eligible clinicians block access to CEHRT information because of security concerns. There might be circumstances where restricting access may be reasonable and necessary to protect the security of the CEHRT's information. It is unlikely to be a knowing and willful restriction of the CEHRT compatibility or interoperability if the restrictions were:

- Made in good faith
- In response to a bona fide threat
- Are necessary and reasonable
- Narrowly tailored to the identified threat



Example 3: MIPS eligible clinicians restrict access to a patient’s sensitive test results until the clinician who ordered the tests, or another designated health care professional, has reviewed and appropriately communicated the results to the patient. Keeping with the HIPAA Privacy Rule, the restriction does not apply to the patient or to anyone else to whom the patient has requested in writing to provide this information.

While it is likely that MIPS eligible clinicians are knowingly restricting interoperability, the restriction may be reasonable if the MIPS eligible clinicians reasonably believe, based on their relationship with their patient and their best clinical judgment, that the restriction is necessary to protect the patient’s health or well-being. As long as the restrictions imposed by the MIPS eligible clinicians were based on their patient’s best interests (rather than a general policy) and were not an excuse for restricting health information exchange, the MIPS eligible clinicians’ conduct is unlikely to be a knowing and willful restriction of the compatibility or interoperability of CEHRT.

Do I Have to Show Any Documentation to Attest?

You do not have to give us any documentation to show you have acted in good faith to:

- Implement and use your CEHRT to support the appropriate exchange of electronic health information
- Not block information

What Are the Other Promoting Interoperability Requirements?

In addition to the Prevention of Information Blocking Attestation, you have to meet these requirements to earn a score in the Promoting Interoperability performance category:

- Use CEHRT
- Submit a performance period
- Attest to work in good faith with an ONC direct review, if you get a request to assist in an ONC direct review
- Report the required measures from each of the objectives or claim their exclusion(s)

You can also choose to attest to work in good faith with an ONC–ACB surveillance of your health information technology if it is certified under the ONC Health IT Certification Program. You have this option if you get a request for surveillance.

Where Can I Learn More?

You can learn more about the requirements for MIPS and APMs on the CMS [Quality Payment Program website](#).