Perceptions of Information Blocking in 2023

Disclaimers

Please Note

- **The materials contained in this presentation may reference provisions contained in 45 CFR Parts 170 and 171.**

- While every effort has been made to ensure the accuracy of any restatement of those provisions, this presentation is not a legal document.

- The official program requirements are contained in the relevant laws and regulations. Please note that other Federal, state and local laws may also apply.

- This communication is produced and disseminated at U.S. taxpayer expense.

Purpose

- Provide insight into broad trends related to information blocking to ground ONC's and OIG's continued work.

- Present findings to support a shared understanding of information blocking activity.

- Each source of data provides a unique vantage and clear limitations.

Information Blocking Definition

45 CFR 171.103

(a) Information blocking means **a practice** that—

(1) **Except as required by law** or covered by an exception, is likely to **interfere with** access, exchange, or use of **electronic health information** (EHI); and

(2) If conducted **by a health information technology developer of certified health IT, health information network or health information exchange**, such developer, network or exchange **knows, or should know**, that such practice is likely to interfere with 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 the access, exchange, or use of EHI.

Elements of Information Blocking
❑ Not "required by law"
❑ Not covered by an exception
❑ Likely to "interfere with" access, exchange, or use
❑ Electronic health information (EHI)
❑ By a health IT developer of certified health IT, HIE/HIN, or health care provider (an information blocking "actor")
❑ Actor has requisite knowledge

Interfere with or *interference* means to prevent, materially discourage, or otherwise inhibit.

Information Blocking Claims: By the Numbers

The 21st Century Cures Act (Cures Act), signed into law by President Obama in December 2016, directed ONC to implement a standardized process for the public to report claims of possible information blocking. This Quick Stats page displays data on claims or suggestions of possible information blocking[1] ONC has received through the Report Information Blocking Portal since April 5, 2021 – the applicability date of the information blocking regulations.

To best understand and use the information provided, it will be important to keep the following in mind:

- Information provided about the perspectives of those submitting claims and the types of potential actors alleged to be information blocking is based solely on an ONC analyst's inference from the facts and allegations as presented by the claimant.
- Any claim ONC receives is simply an allegation or suggestion that information blocking has occurred. Logging a portal submission as a claim does not imply that an investigation has occurred or been started, or that any determination has been made as to whether information blocking has occurred.
- Where a claim alleges or suggests that conduct implicating the information blocking definition in 45 CFR 171.103 could possibly have occurred, any determination as to whether an information blocking actor's conduct met the information blocking definition or not would require a fact-based, case-by-case investigation and review against all elements of the information blocking definition. To learn more about the information blocking definition and all of its elements, https://healthit.gov/informationblocking is a good place to start. Resources available include fact sheets, recorded webinars, and frequently asked questions about the information blocking regulations.
- The Cures Act authorizes the HHS Office of Inspector General (OIG) to investigate any claim of information blocking.

[1] 42 U.S.C. § 300jj–52: Any information that is received by the National Coordinator in connection with a claim or suggestion of possible information blocking and that could reasonably be expected to facilitate identification of the source of the information—(A) shall not be disclosed by the National Coordinator except as may be necessary to carry out the purpose of this section; (B) shall be exempt from mandatory disclosure under section 552 of title 5, as provided by subsection (b)(3) of such section; And (C) may be used by the Inspector General or Federal Trade Commission for reporting purposes to the extent that such information could not reasonably be expected to facilitate identification of the source of such information.

Information Blocking Claims: By the Numbers

Information on submissions received through the Report Information Blocking Portal[2]

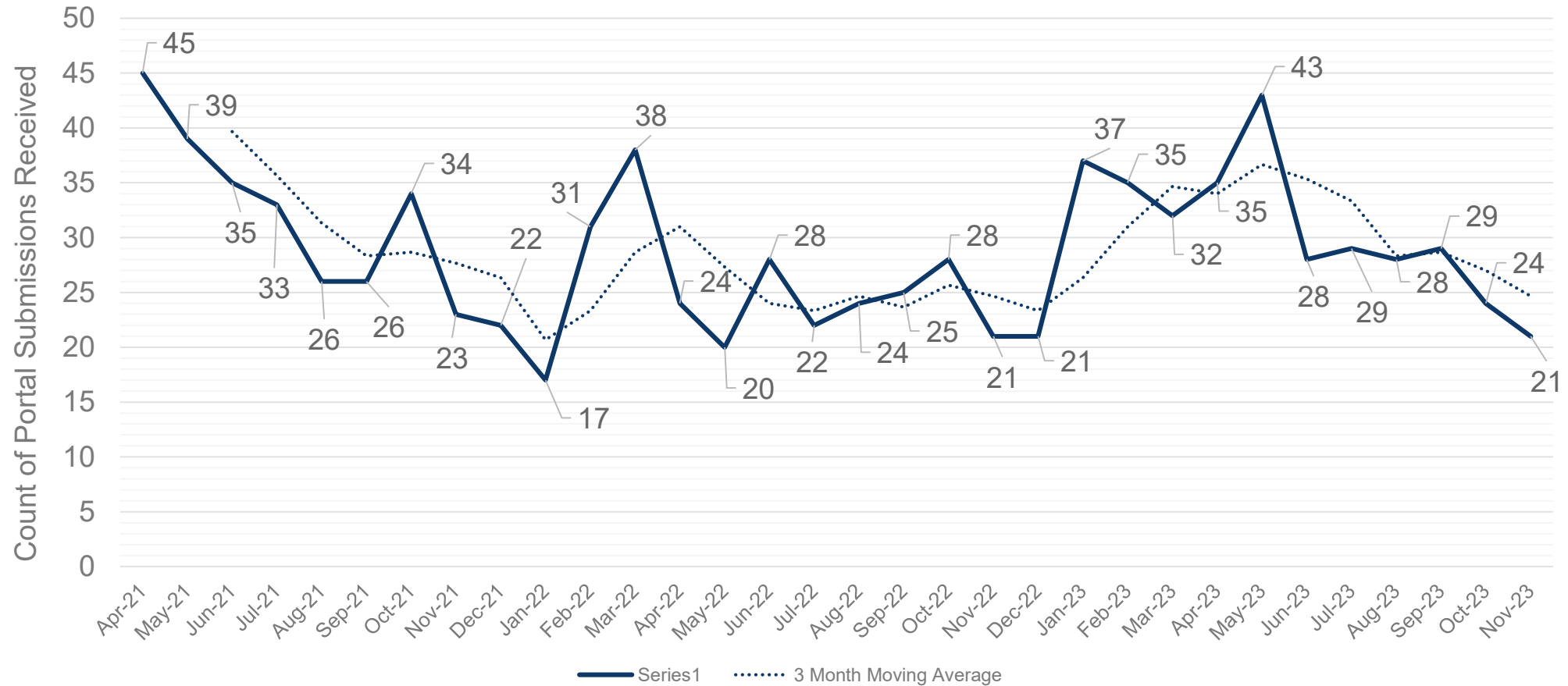|		
Total number of information blocking portal submissions received	923	
Total number of possible claims of information blocking	856	92.7%
Total number of submissions received that did not appear to be claims of potential information blocking[3]	67	7.3%

[2] From April 5, 2021 – November 30, 2023.
[3] Examples of submissions that did not appear to be claims of possible information blocking include general policy questions and submissions with a description field containing random text.
Link to Information Blocking Quick Stat Page: https://www.healthit.gov/data/quickstats/information-blocking-claims-numbers
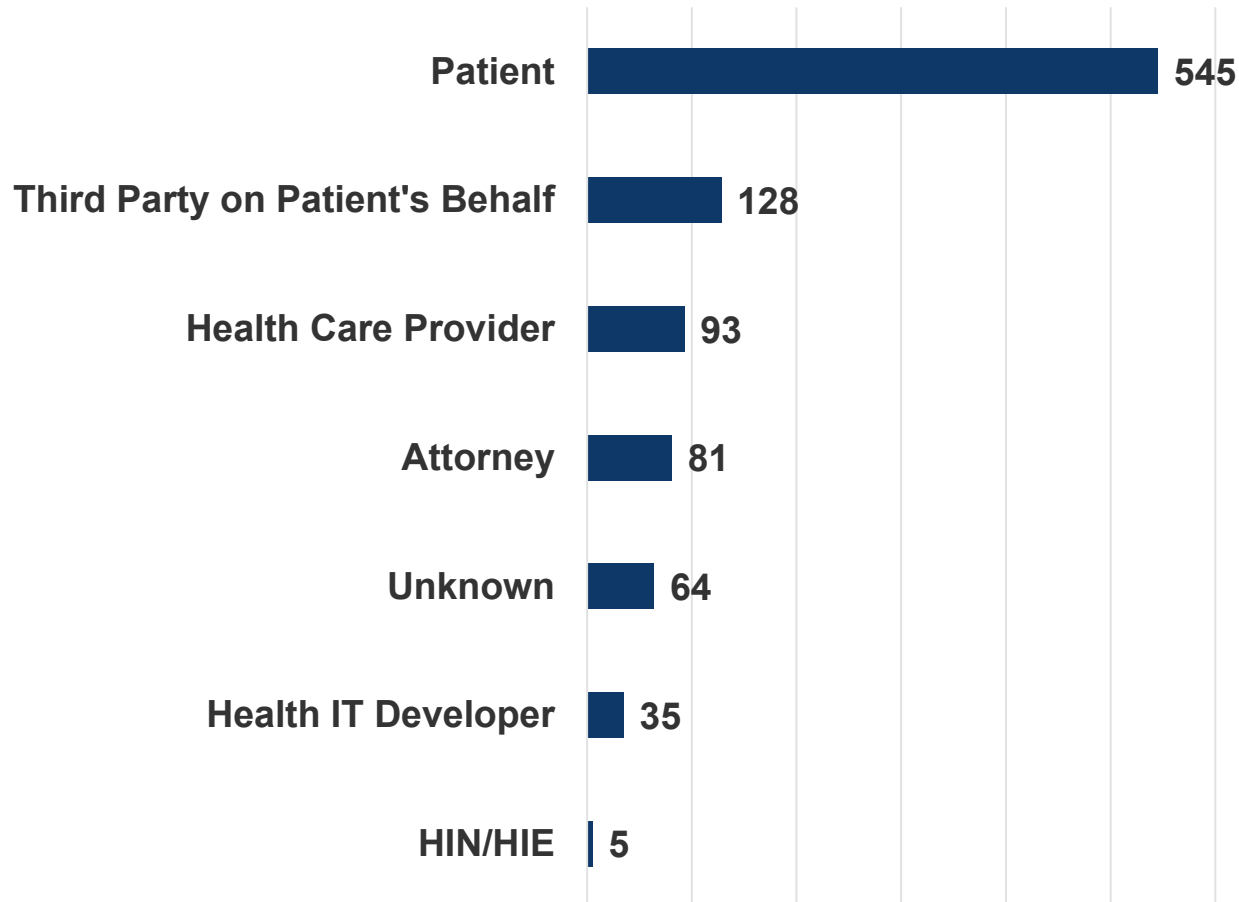
Information Blocking Claims: By the Numbers

Monthly Number of Information Blocking Portal Submissions Received
(starting April 5, 2021, and as of November 30, 2023)

Information Blocking Claims: By the Numbers

Claims Counts by Type of Claimant

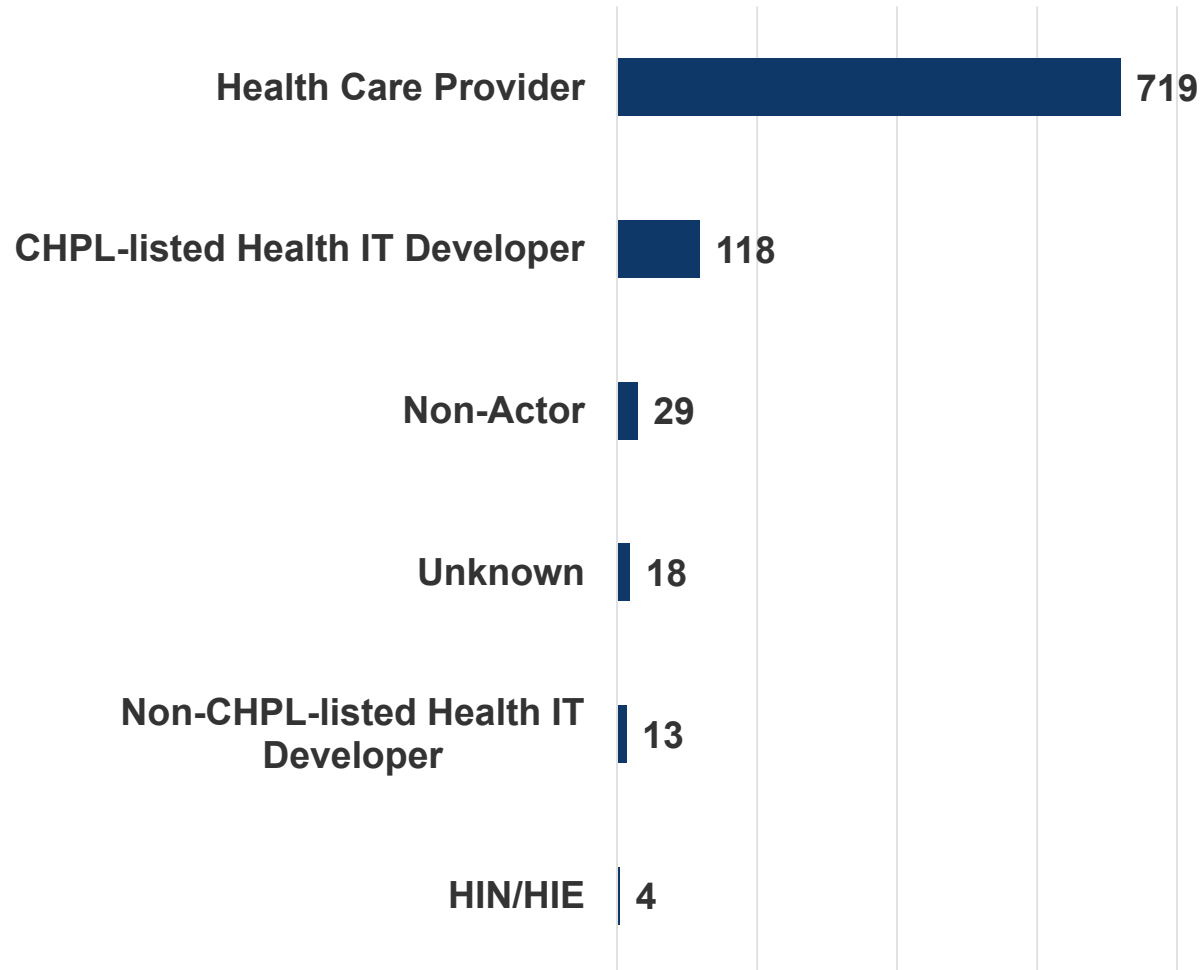| Type of Claimant	Count
Patient	545
Third Party on Patient's Behalf	128
Health Care Provider	93
Attorney	81
Unknown	64
Health IT Developer	35
HIN/HIE	5

"Type of Claimant" in this context categorizes the individual or entity that submitted the claim of possible information blocking. Within a given claim, the claimant may be identified by more than one category.

- "Patient" in this context means an individual who appears to be seeking or to have sought access to their electronic health information.
- The "Attorney" label is added to a claim in addition to one of the other types of claimant categories. For example, a claim submitted by someone describing themselves as an attorney on behalf of their client, who is a patient, would be counted in both the "Patient" and "Attorney" type of claimant categories.
- A "Health Care Provider" claimant is one who describes themselves as such in the claim, or who an analyst infers, based on what they state in the claim, could potentially meet the definition of health care provider in 45 CFR 171.102.
- A claim from a "Third Party on Patient's Behalf" is one that reads as having been submitted by someone other than the patient who is not presenting or describing themselves as an attorney. For example, a claim submitted by the parent of a patient on the patient's behalf would be counted in this category.
- A "Health IT Developer" claimant is one who describes themselves as such, or otherwise appears from what is stated in the claim to develop health information technology (as "health information technology" is defined in 42 U.S.C. 300jj(5)).
- "Unknown" means ONC analysts were not able to infer the type of claimant from the facts and allegations as presented in the claim.
- An HIN/HIE claimant is one who describes themselves as such in the claim, or who an analyst infers, based on what they state in the claim, could potentially meet the definition of a health information network or health information exchange in 45 CFR 171.102.

Information Blocking Claims: By the Numbers

Claims Counts by Potential Actor

Potential Actor	Count
Health Care Provider	719
CHPL-listed Health IT Developer	118
Non-Actor	29
Unknown	18
Non-CHPL-listed Health IT Developer	13
HIN/HIE	4

"Potential Actor" in this context refers to the individual(s) or entity/entities that the claimant alleges to be information blocking. To date, there is at least one (1) potential actor identified with each claim of possible information blocking that ONC has received.

- A potential "Health Care Provider" actor is an individual or entity who is described as such in the claim, or who an analyst infers, based on what the claimant states in the claim, could potentially meet the definition of health care provider in 45 CFR 171.102.
- "CHPL-listed Health IT Developer" means the claim alleges possible information blocking by a Health IT Developer of Certified Health IT that is listed in the "Developer" column of the Certified Health IT Product List.
- "Non-Actor" means that the individual(s) or entity/entities alleged by the claimant to be possibly information blocking does not appear to potentially fall within any of the defined categories of information blocking actors. One example of a "non-actor" would be a company described as providing internet services where there is no indication or suggestion that the company also does anything that could cause it to meet the definition of a HIN/HIE or "health IT developer of certified health IT" as defined in 45 CFR 171.102.
- "Unknown" means a particular type of potential actor could not be inferred from the facts and allegations as presented by the claimant.
- "Non-CHPL-listed Health IT Developer" means the claim identifies an entity that is not listed in the "Developer" column of the Certified Health IT Product List but the entity appears from the facts and allegations as presented by the claimant to develop or offer health information technology (as that term is defined in 42 U.S.C. 300jj(5)).
- A potential HIN/HIE actor is an entity that is described as such in the claim, or who an analyst infers, based on what the claimant states in the claim, could potentially meet the definition of a health information network or health information exchange in 45 CFR 171.102.

Where To Find More Information

- **ONC Website Resources:** https://www.healthit.gov/

- **Information Blocking Resources (including fact sheets, FAQs, blogs, and webinars):** https://www.healthit.gov/topic/information-blocking

  - FAQs: https://www.healthit.gov/faqs

  - Blogs: https://www.healthit.gov/buzz-blog/category/information-blocking

  - Webinars: https://www.healthit.gov/topic/information-blocking

  - A report of potential information blocking can be submitted through the Report Information Blocking Portal: https://healthit.gov/report-info-blocking

- **Contact ONC:**

  - ONC Health IT Feedback and Inquiry Portal: https://www.healthit.gov/feedback

  - Twitter: @onc_healthIT

  - LinkedIn: https://www.linkedin.com/company/office-of-the-national-coordinator-for-health-information-technology

  - ONC Events: https://www.healthit.gov/newsroom/events

HealthIT.gov

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Hospital and HIO Survey on Information Blocking

Purpose

- Provide insight into broad trends related to information blocking to ground ONC's and OIG's continued work.

- Present findings to public in support of a shared understanding of information blocking activity.
    - Assess the prevalence of actions that stakeholders perceive to be information blocking
    - Identify trends in perceptions around information blocking by actor or entity type
    - Provide insight into the extent that information blocking creates friction in health information exchange

Data Source

- Survey of hospital leaders' perception of information blocking
  - AHA Annual Survey, 2021-2023
  - Approximately 50% of non-federal acute care hospitals responded
  - 2,412 hospitals in 2023

- Survey of health information organization leaders' perception of information blocking
  - 2015, 2019, 2023
  - Approximately 80% of known HIOs responded
  - 76 in 2023.

- These are survey data on perceptions of practices that may constitute information blocking

- Any determination of whether a given action *is* information blocking would depend on a facts-based investigation

Over or Under?

15% of hospital leaders said that healthcare providers sometimes or often engage in practices that may constitute information blocking.
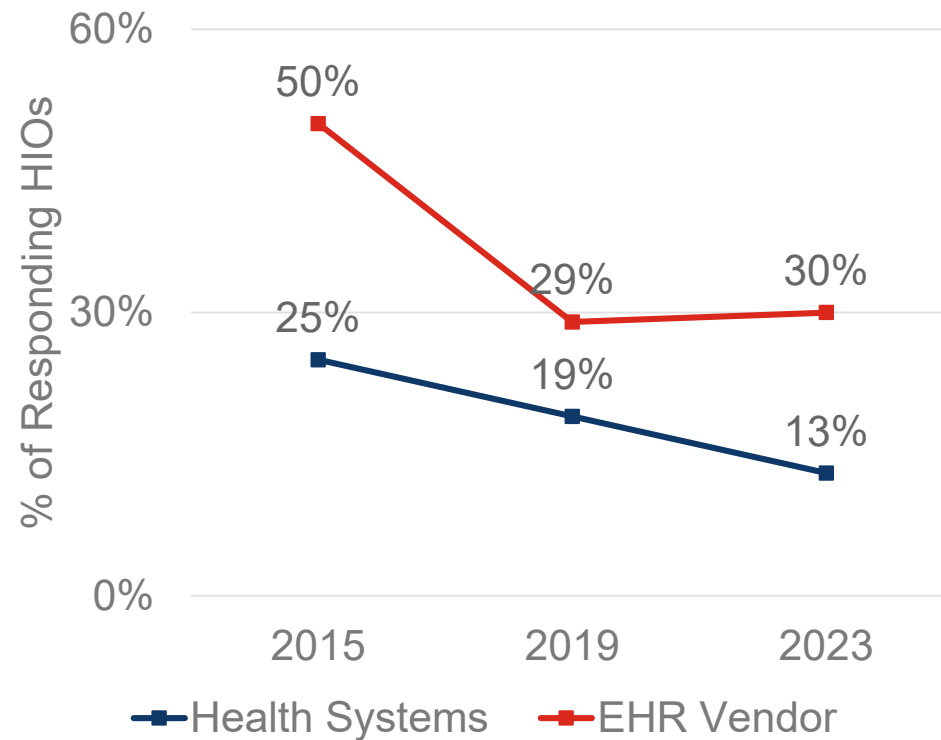
Trends over Time: Hospital Perspectives

Actor Sometimes or Often/Routinely Engaging in Information Blocking

% of Responding Hospitals

- 2021: 42%, 36%, 19%, 17%, 7%
- 2022: 33%, 22%, 20%, 12%, 6%
- 2023: 27%, 15%, 12%, 9%, 4%

- Healthcare Providers (n=6,127)
- State, regional, and/or local health information exchange (n=6,314)
- Developers of Certified Health IT (e.g. Enterprise EHR vendors) (n=6,486)
- National Networks (n=6,123)
- Any Actor (n=6,950)
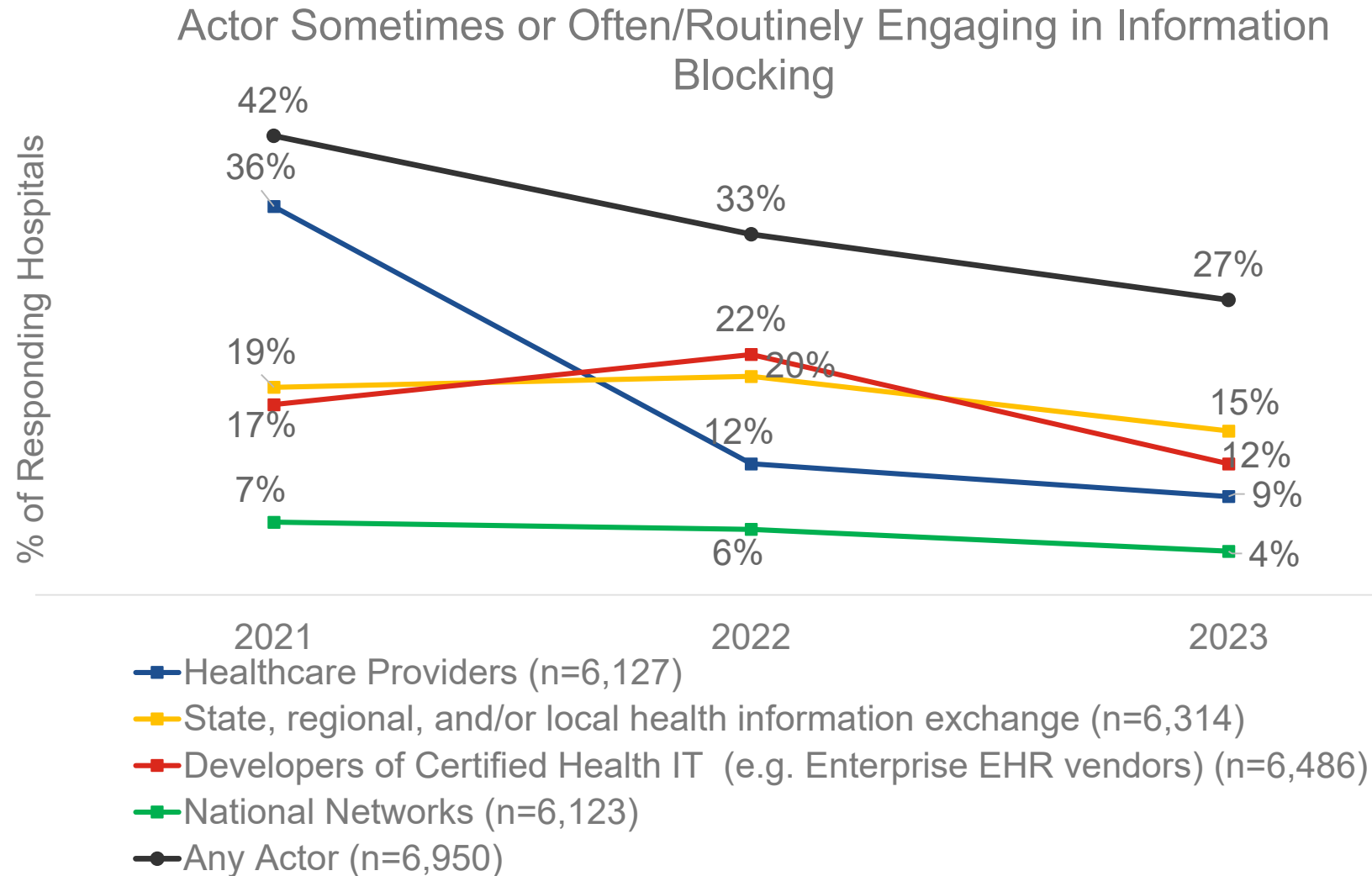
Trends over Time

HIOs: Entities Routinely Engaged in Information Blocking

Hospitals: Entities Routinely Engaged in Information Blocking
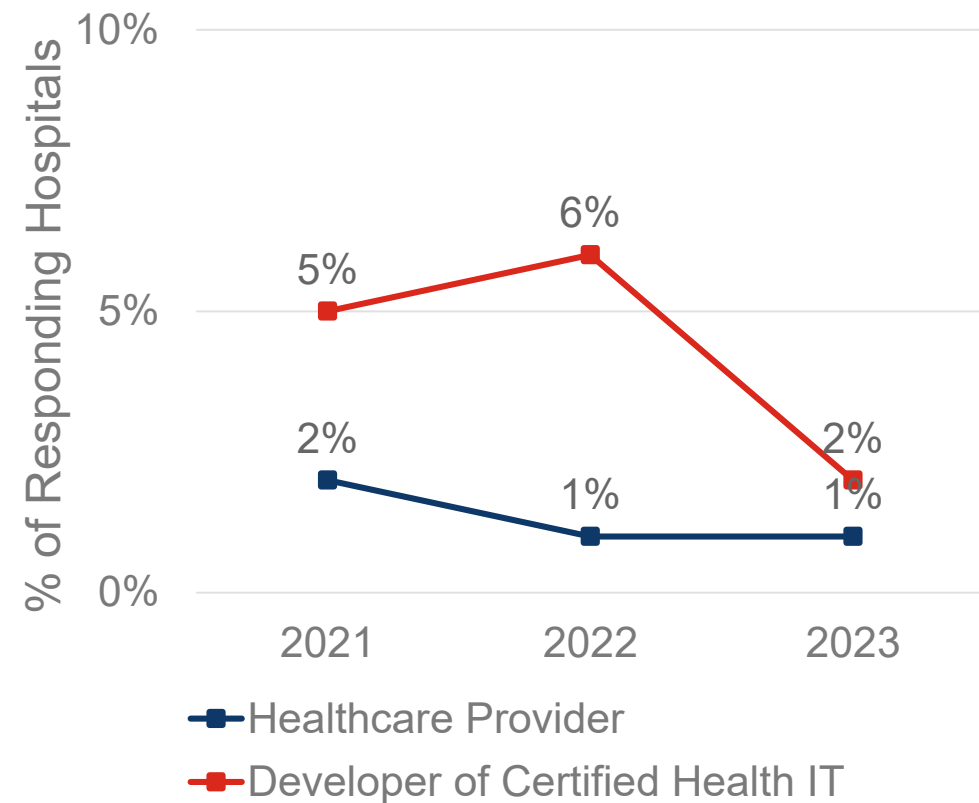
In 2023, HIOs that said that they did not observe any EHR developers or any health systems engaged in Information blocking on a prior question were coded here as "Never". That question was not asked in 2015 and there was no "none" option in 2019.

Trends over Time: HIOs

Decrease in Perceived Information Blocking Since Regulations Went into Effect April 2021
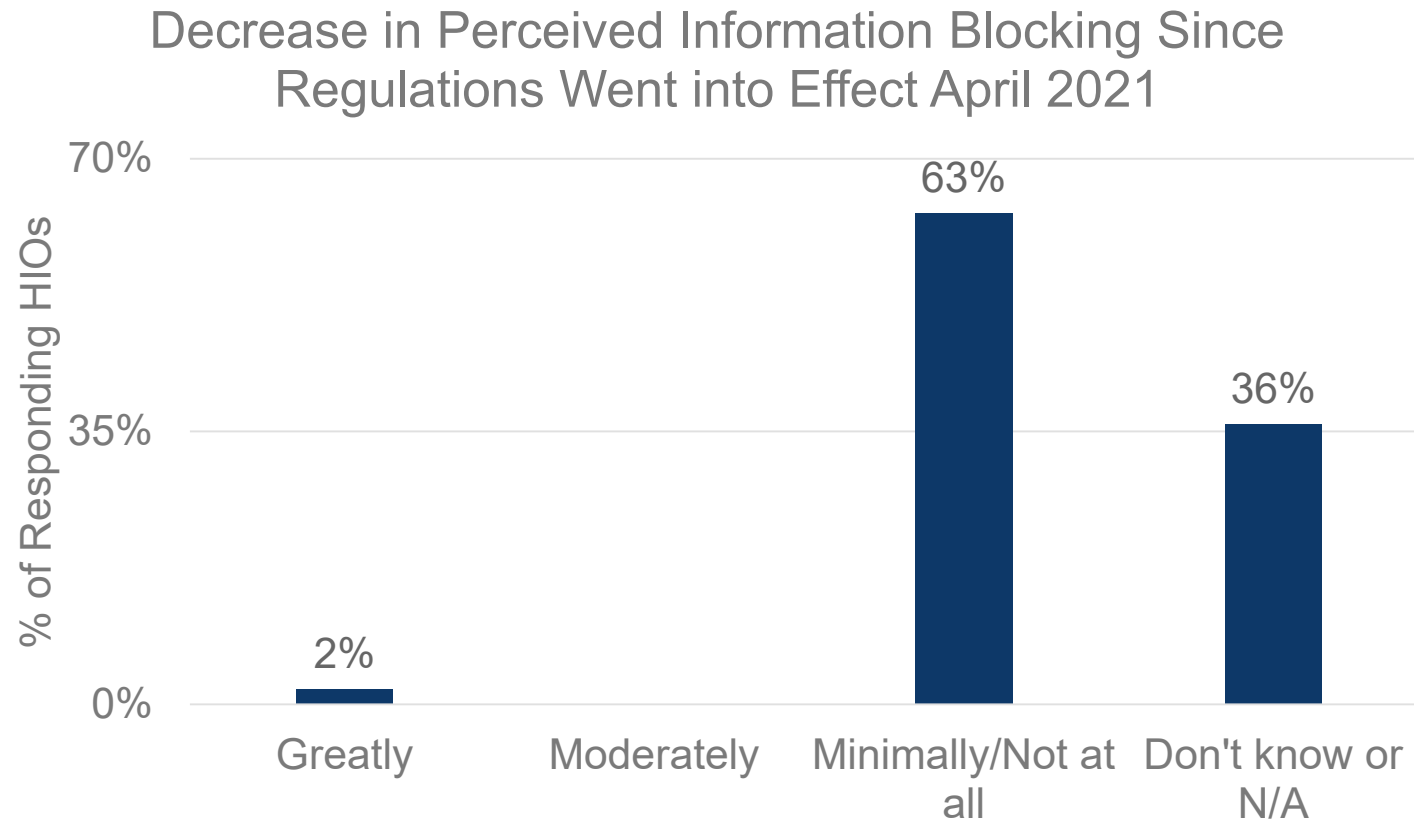
Trends over Time Summary

- Hospitals report a substantial decline in perceived information blocking since 2021, especially by other healthcare providers.

- HIOs report a substantial decline in perceived information blocking since 2015.

- But HIOs report substantially more perceived information blocking in 2023
  - 30% routinely observe perceived information blocking by developers of certified health IT.

  - 12% of hospitals sometimes or often/routinely observe perceived information blocking by developers of certified health IT, and just 2% routinely

- HIOs don't report decreases when asked directly

Over or Under?

10% of HIO leaders said that information blocking by health systems leads to a great amount of missing information.
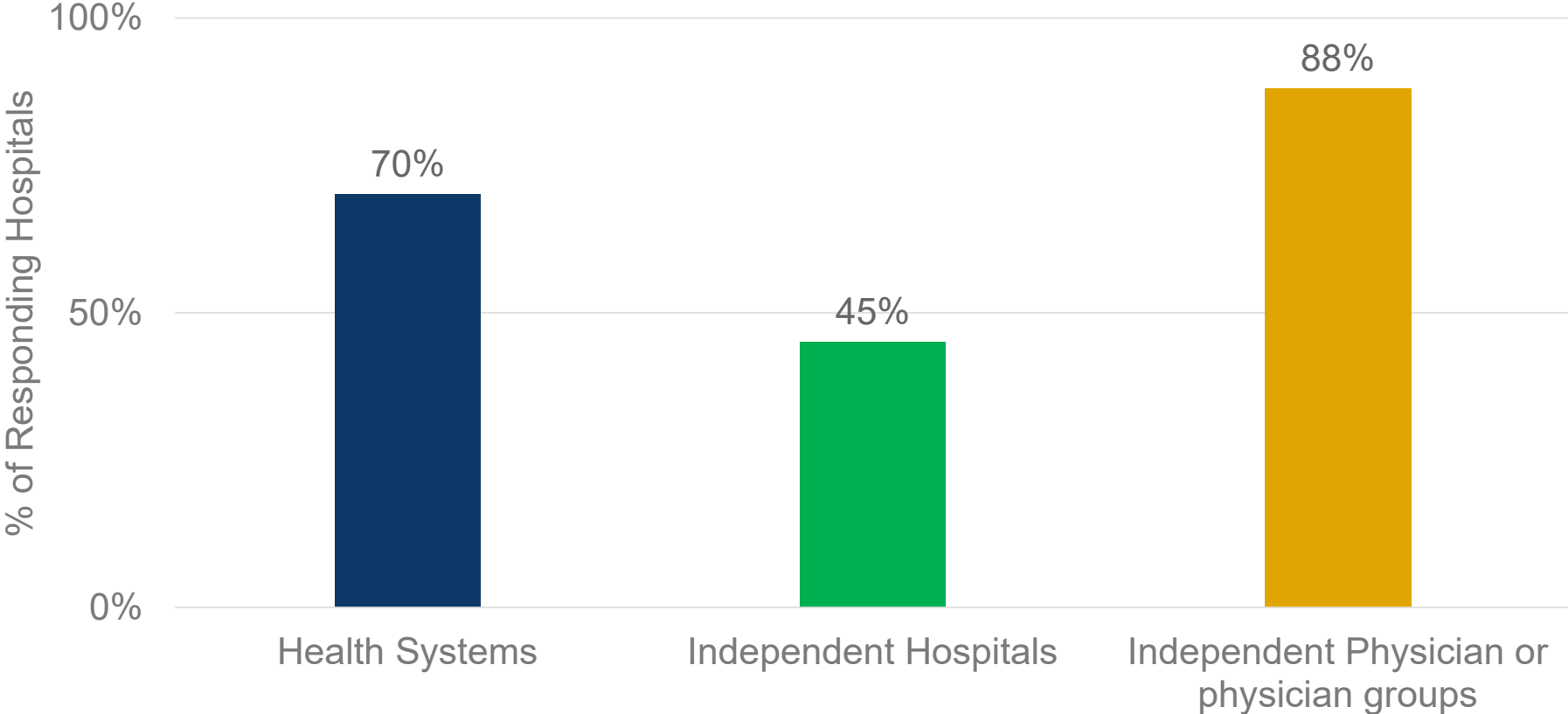
Extent in 2023: Hospital Perspective

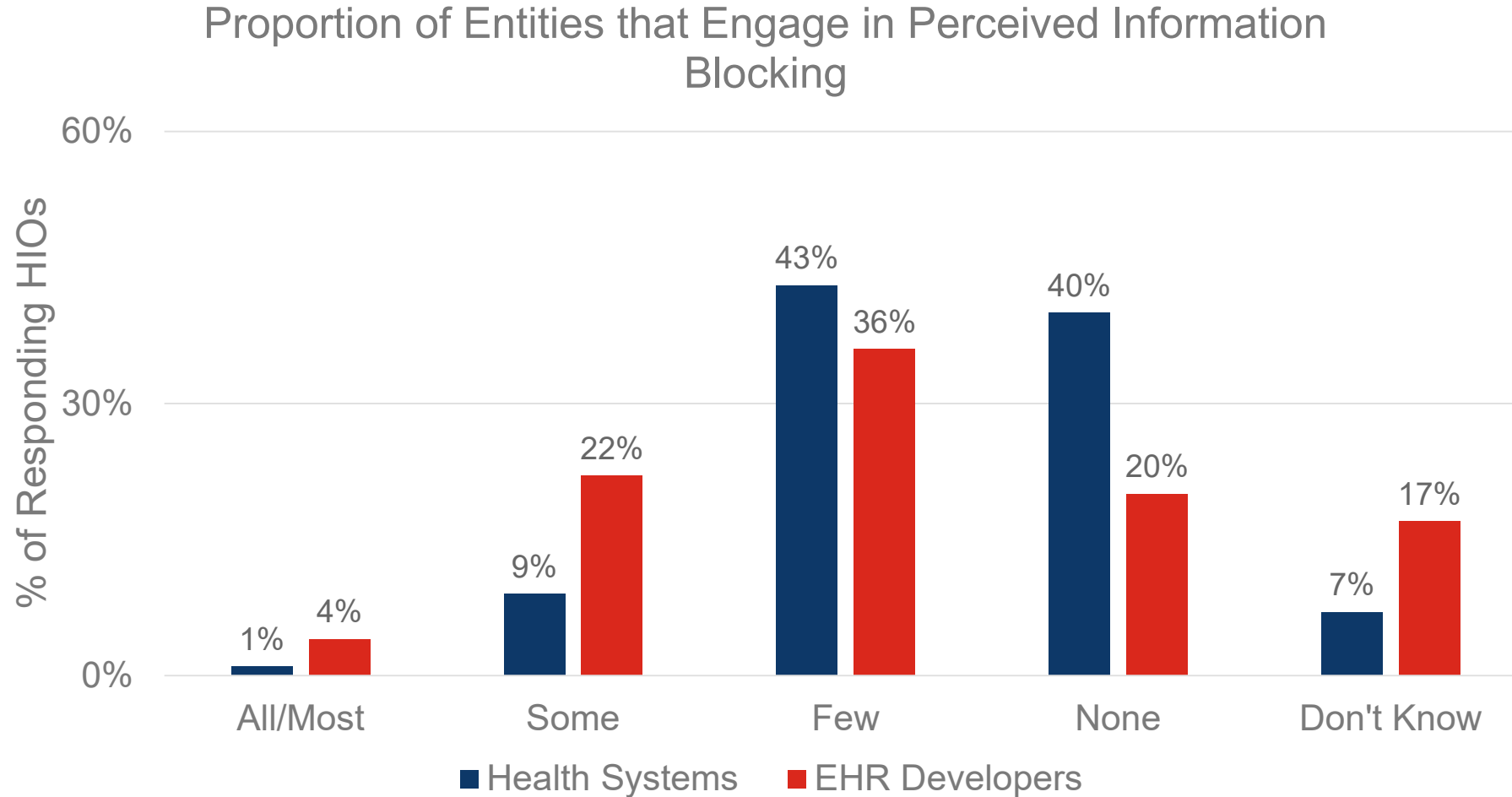Frequency of Observing Perceived Information Blocking
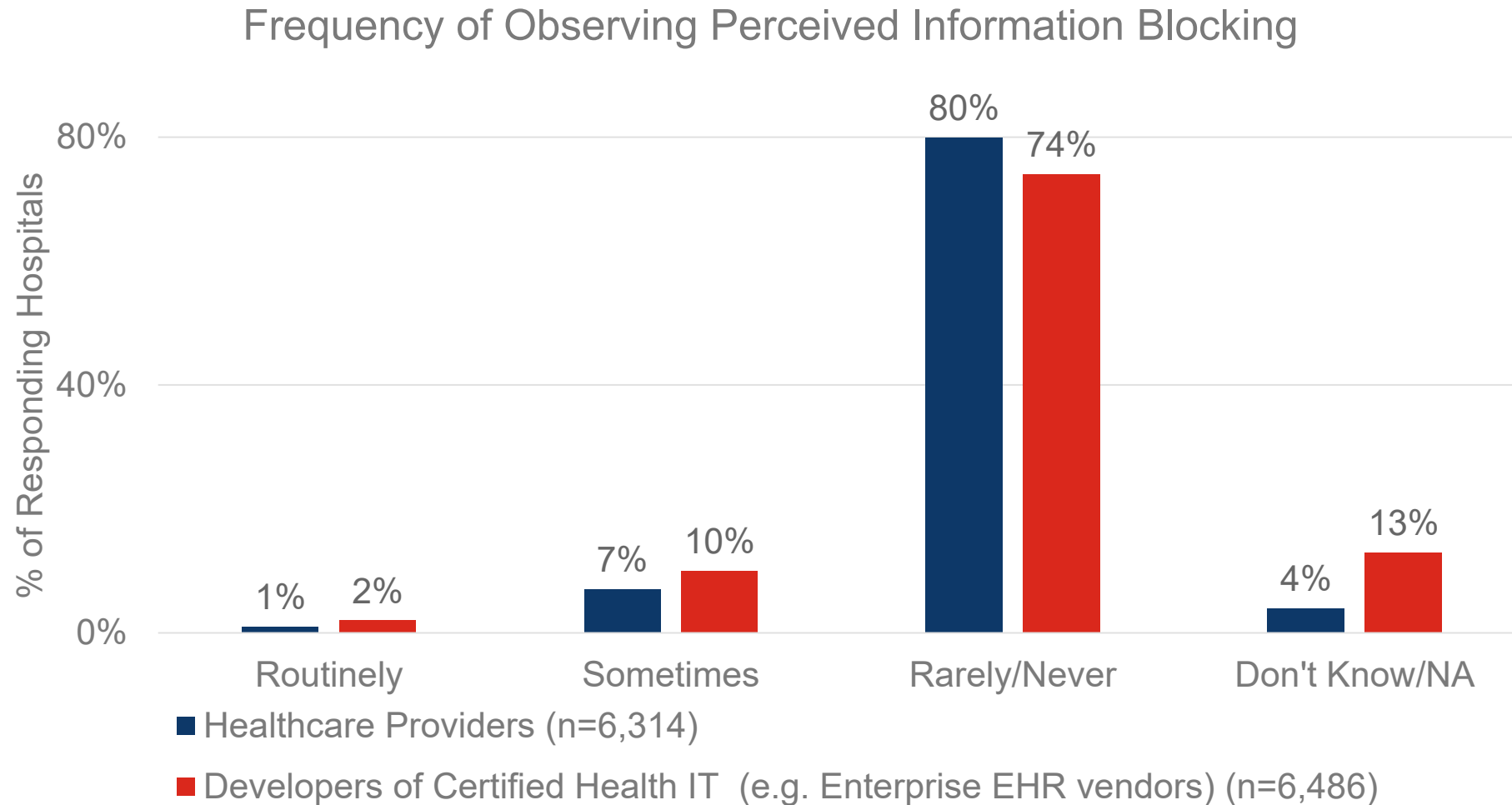
Extent in 2023: Hospital Perspective
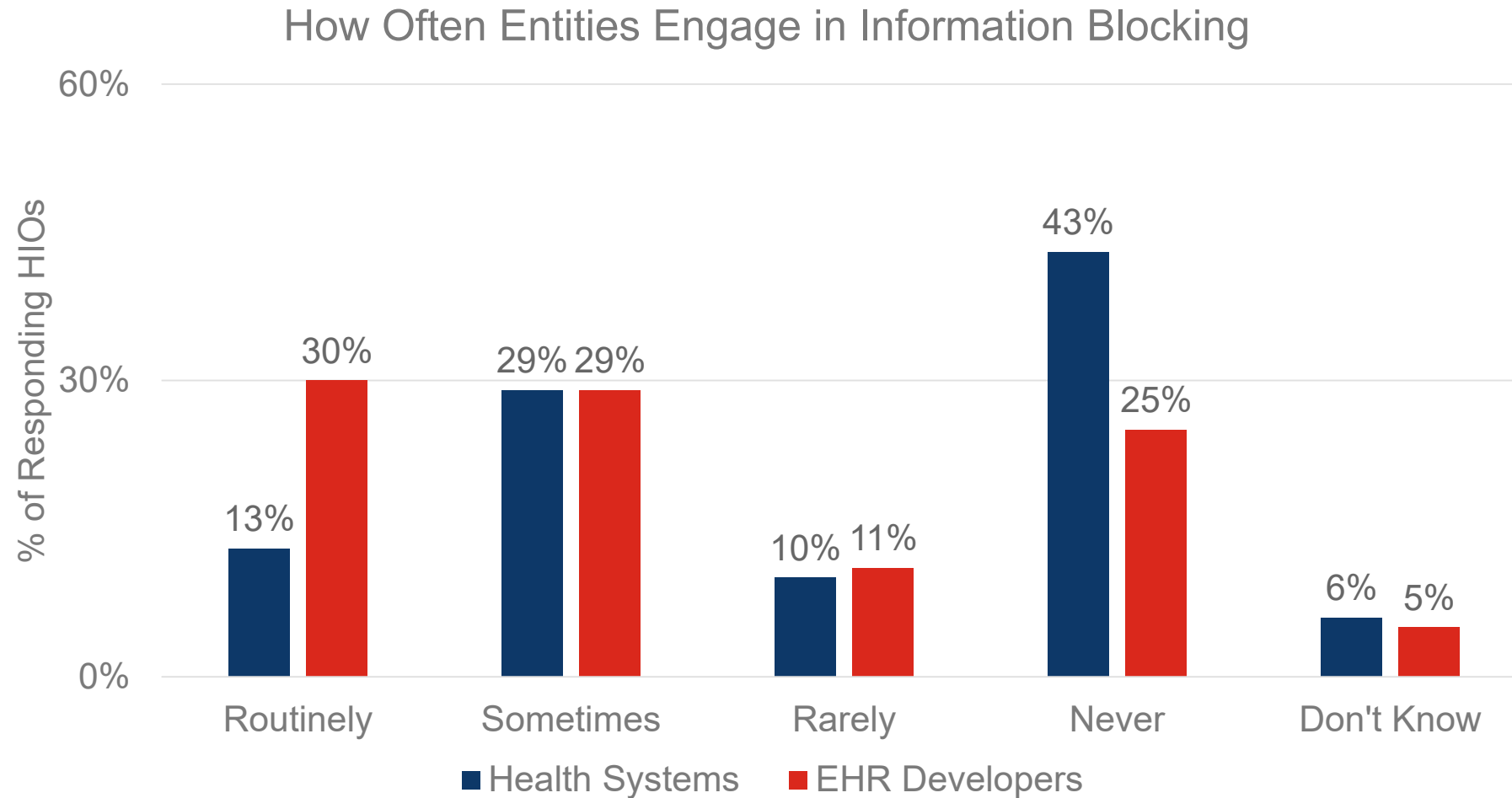
Percent of Hospitals that Perceived Different Healthcare Provider
Types Engaged Information Blocking (n=373)

Extent in 2023: HIO Perspective

Proportion of Entities that Engage in Perceived Information Blocking

Extent in 2023: HIO Perspective

How Often Entities Engage in Information Blocking

HIOs that said that they did not observe any EHR developers or any health systems engaged in Information blocking on a prior question were coded here as "Never".

Extent in 2023: HIOs

Extent Information Blocking Results in Missing Information or Difficulty Providing Services
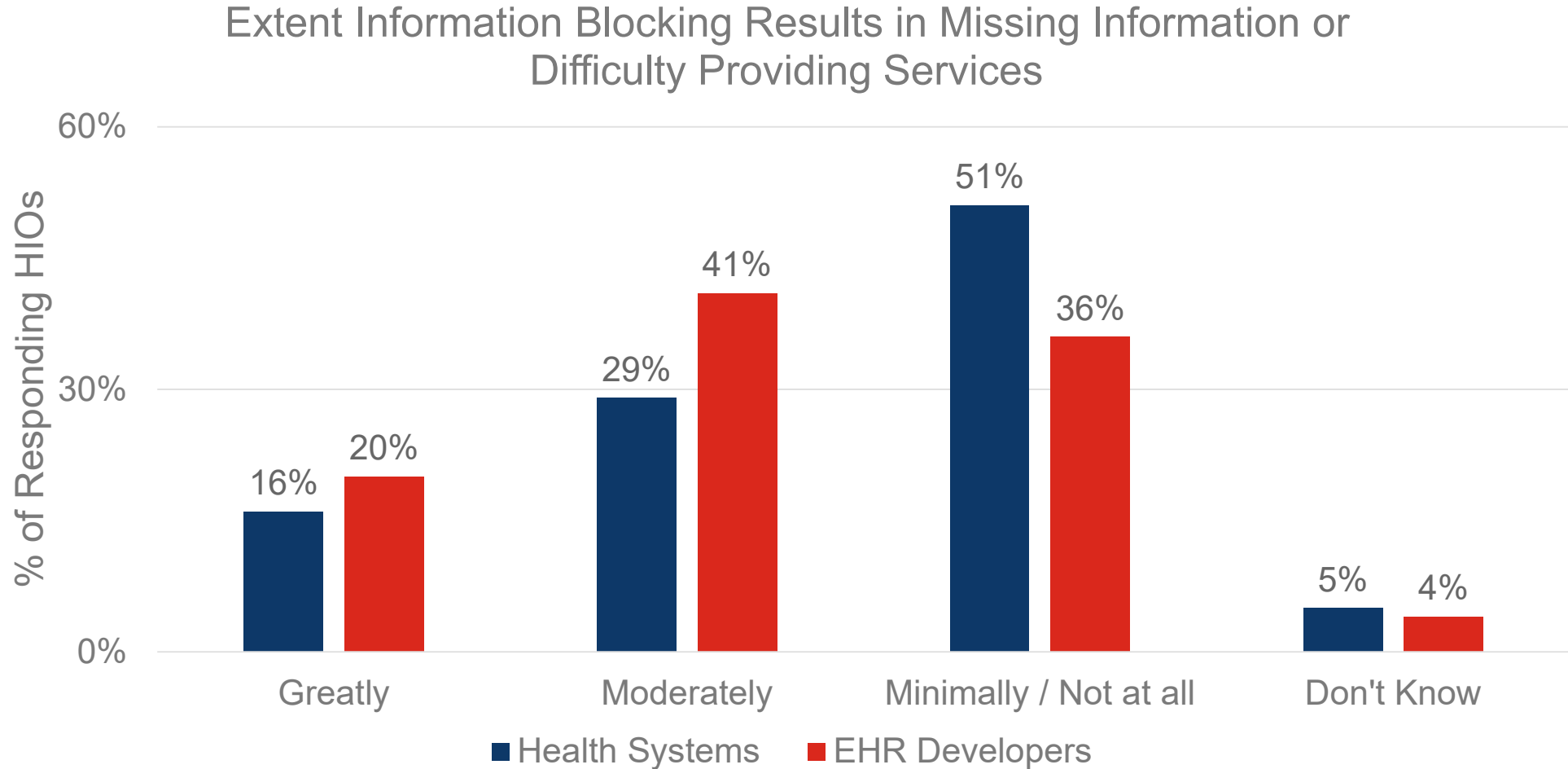
HIOs were asked about the extent that information blocking by Health Systems resulted in missing information and the extent that information blocking by EHR developers resulted in difficulty providing HIE services. HIOs that said that they did not observe any EHR Developers or any health systems engaged in Information blocking on a prior question were coded here as "Minimally/Not at all".

Extent in 2023: HIOs

Often/Routinely observed information blocking behaviors by Other Entities
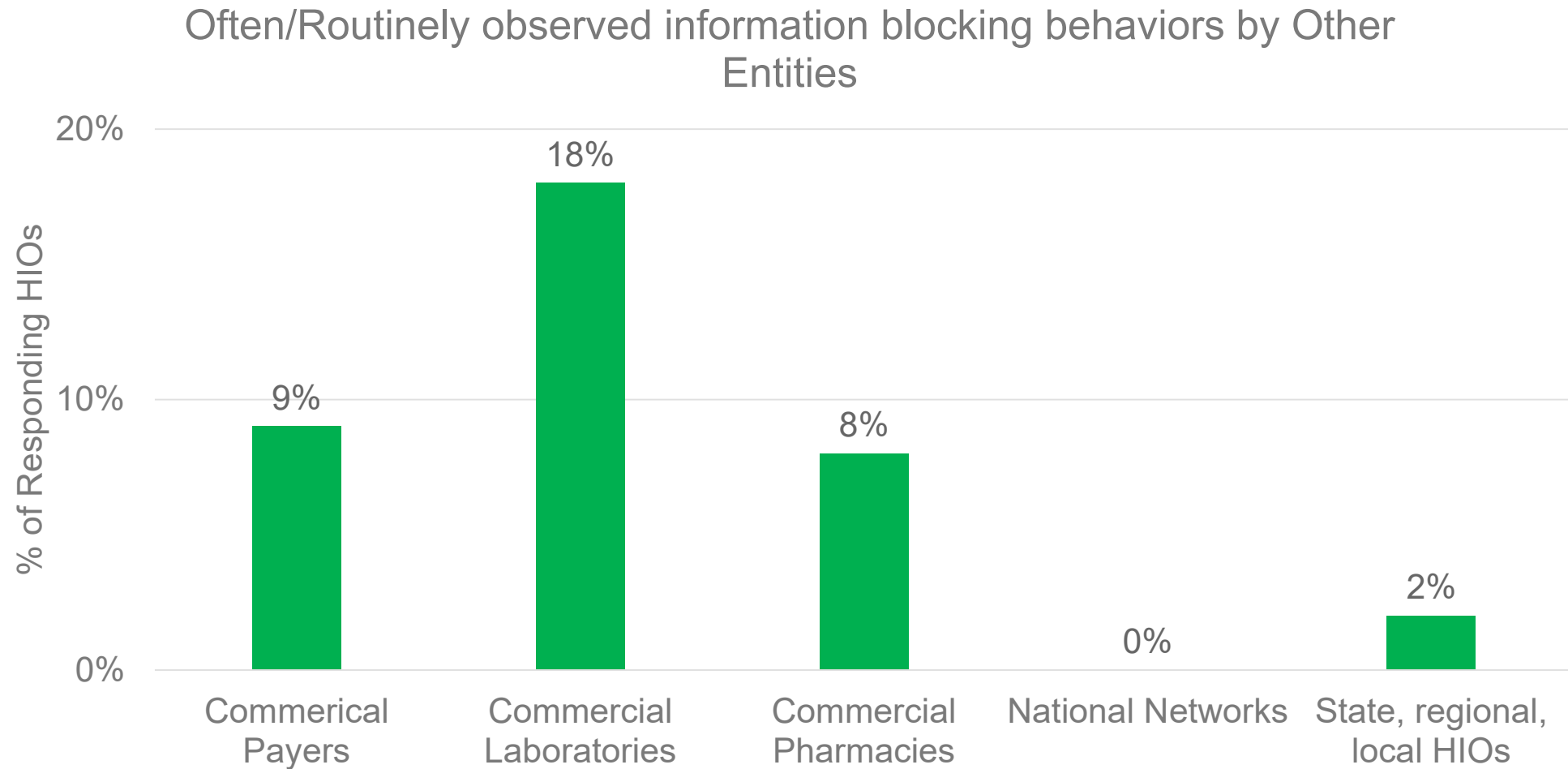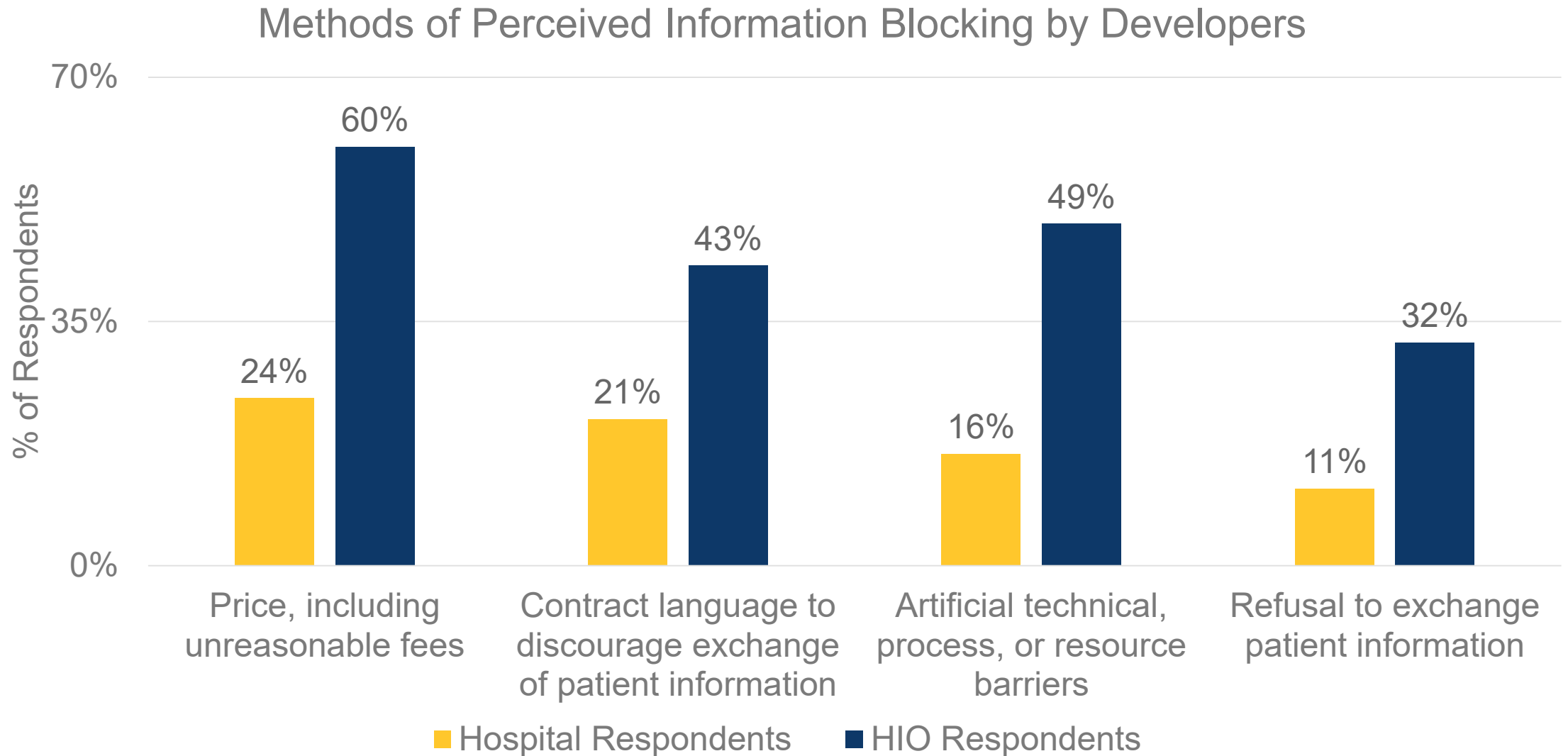
Extent in 2023 Summary

- 80% of hospitals reported that information blocking rarely or never observing information blocking.

- HIOs indicated that relatively few EHR developers of health systems engaged in information blocking
  - But indicated that those that did engage in IB did so relatively often

- Overall
  - The majority (61%) of HIOs reported that information blocking by EHR developers greatly or moderately created difficulty in providing services
  - And 45% said IB by health systems resulted in great or moderate missing data
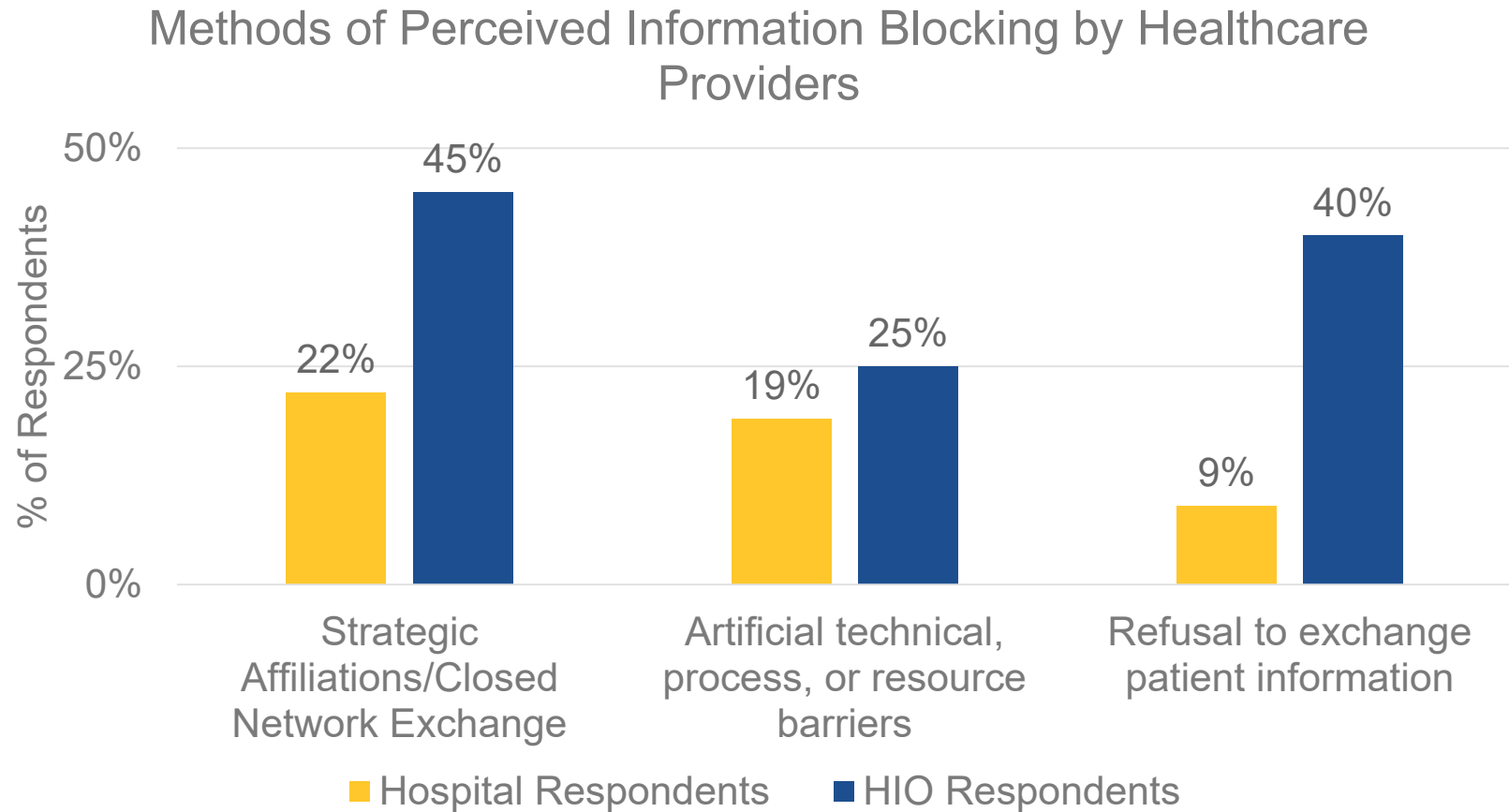
Over or Under?

40% of HIO leaders said that EHR developers use price or unreasonable fees to engage in perceived information blocking.

Methods in 2023

Methods of Perceived Information Blocking by Developers

Methods in 2023

Methods of Perceived Information Blocking by Healthcare Providers

Hospitals were asked about "Strategic Affiliations" while HIOs were askeda bout "Closed Network Exchange"

Methods in 2023 Summary

- Again, HIOs perceived more information blocking across methods

- Both hospitals and HIOs reported that **unreasonable fees** were the most common method of information blocking by health IT developers.

- Both hospitals and HIOs reported that strategic affiliations or closed exchange were the most common method of information blocking by healthcare providers.

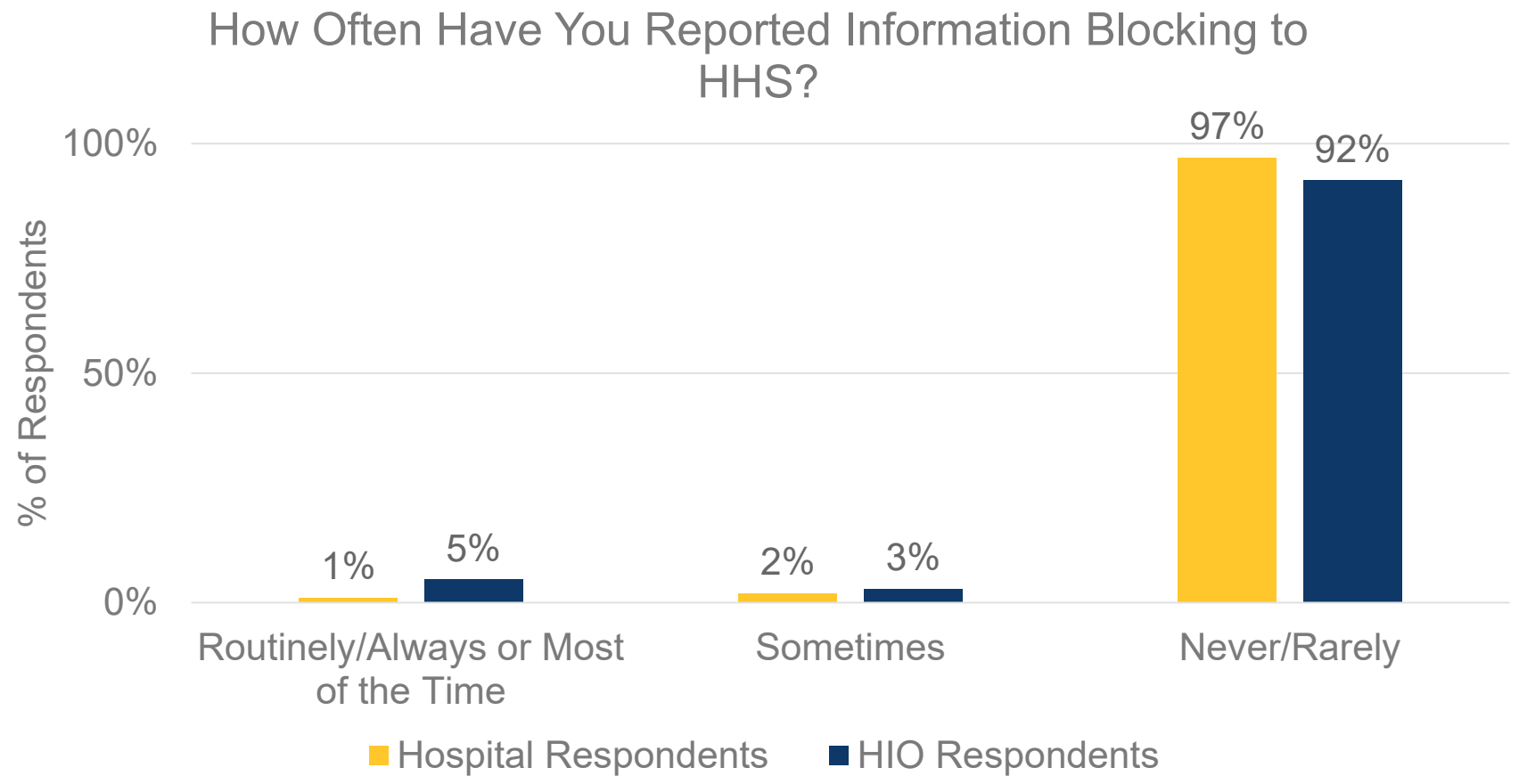- Substantial information blocking by all included methods.

Over or Under?

10% of Hospital leaders that said they had experienced information blocking in the past year had reported it to HHS.

Reporting Frequency in 2023

How Often Have You Reported Information Blocking to HHS?

Note: Limited to those that reported having experienced information blocking. Hospitals could respond "Routinely" while HIOs could respond "Always" or "Most of the Time".

Summary

- In 2023,
  - The largest proportion of hospitals indicated observing perceived IB by HIOs (15%) and developers of certified health IT (12%)

  - The largest proportion of HIOs indicated observing perceived IB by EHR developers (30%)

- Most complaints (predominantly from patients) are about providers

Summary

- 2 years after the applicability of information blocking, HIOs and hospitals both report lower levels of information blocking than in prior years.

- In aggregate, practices that may constitute information blocking remain substantially prevalent.
  - 27% of hospitals indicated sometimes or routinely observing an actor engaging in information blocking in 2023
  - 30% of HIOs indicated routinely observing EHR developers engaging in information blocking.

- Overall, fewer hospitals indicated observing perceived information blocking than HIOs in 2023.

Summary

- Both hospitals and HIOs indicated that:

  - EHR developers most often used price to engage in perceived information blocking

  - Healthcare providers used selective strategic affiliations or closed exchange to engage in perceived information blocking.

  - But many methods were reasonably prevalent

- Few hospitals or HIOs routinely reported information blocking.

  - Claims predominantly from patients and more often discuss providers

Audience Questions

1. Have you observed changes in behaviors that may constitute information blocking since 2021?

2. How would you explain the higher levels of information blocking reported by HIOs compared to hospitals?

3. Why do you think few hospitals and HIOs report information blocking?

Patient Access Pain Points

- www.patientrecordscorecard.com

- www.carinalliance.com
  - "Best Practice Recommendations for Patient Access Integration Deployment"

Best Practice Recommendations

- Improving the Knowledge Base
- Improving App Registration
- Improve Sandbox Testing
- Improve Product Configuration and Release Management
- Improve Technical Infrastructure
- Improving Integration and Onboarding
- Improve Ongoing Support & Maintenance