

LEGAL UPDATE



New Laws that Idaho Hospitals Need to Know

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Idaho Hospital Association

Convention

(10.24)

Disclaimer

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Overview

- Idaho Parental Consent Law
 - Consent
 - Access to Records
- Crisis Holds
- Abortions in EMTALA Cases
- Consent for Pelvic Exams
- Patient Visitation Law
- HIPAA, Data Privacy and Data Security
- Information Blocking Rule
- Medical Liens and Idaho Patient Act
- Noncompetes



Written Resources

- Stanger, *New Limits on Minor Consents in Idaho*, <https://www.hollandhart.com/new-limits-on-minor-consents-in-Idaho>
- Stanger, *Idaho's New Parental Consent Law: FAQs*, <https://www.hollandhart.com/idahos-new-parental-consent-law-faqs>
- Stanger, *Blanket Consents Under Idaho's New Minor Consent Law*, <https://www.hollandhart.com/blanket-consents-under-idahos-new-minor-consent-law>
- Stanger, *Idaho's New Parental Access Law v. HIPAA*, <https://www.hollandhart.com/idahos-new-parental-access-law-v-hipaa>
- Stanger, *Idaho's New Crisis Hold Law*, <https://www.hollandhart.com/idahos-new-crisis-hold-law>
- McCue, *Idaho's New Essential Caregiver Visitation Law*, <https://www.hollandhart.com/idahos-new-essential-caregiver-visitation-law>

Written Resources

- Stanger & McCue, *Supreme Court Restores the EMTALA Exception to Idaho's Abortion Ban for Now*, <https://www.hollandhart.com/supreme-court-restores-the-emptala-exception-to-idahos-abortion-ban-for-now>
- Stanger, *Court Vacates HIPAA Online Tracking Guidance*, <https://www.hollandhart.com/court-vacates-hipaa-on-line-tracking-guidance>
- Stanger, *Healthcare Providers: Beware New Information Blocking Rule*, <https://www.hollandhart.com/health-care-providers-beware-new-information-blocking-rule>
- Brautigam, *HHS Proposes Disincentives for Providers Who Violate the Information Blocking Rule*, <https://www.hollandhart.com/hhs-proposes-disincentives-for-providers-who-violate-the-information-blocking-rule>
- Stanger, *Idaho Medical Lien Statute: Important Changes*, <https://www.hollandhart.com/idaho-medical-lien-statute-important-changes>

To obtain resources...

- Contact me at:

208-409-7907

kcstanger@hollandhart.com

Minor Consent Law



Parent's Rights in Medical Decision-Making Act

Effective July 1, 2024:

- Must obtain parental consent to treat unemancipated minor with limited exceptions.
- Must allow parents to access unemancipated minor's records with limited exceptions.
- Parents may sue provider for violations and recover damages, costs and attorneys' fees.

(IC 32-1015)

Minor Consent (before 7/1/24)

EMANCIPATED MINORS

Minors are emancipated and may consent to own care if:

- Married or have been married. (See IC 16-2403, 18-604, and 66-402)
- Serving in active military. (See 18-604)
- Court order declaring emancipation. (See IC 16-2403)
- Maybe minor living on own and self supporting. (See IC 66-402(6) and 32-104)
- Not pregnancy. (See IC 18-602(d) and -609A)

UNEMANCIPATED MINORS

May consent to own care if:

- Sufficiently mature: contraceptives. (IC 18-604)
- Family planning under Title X programs. (42 CFR 59.10)
- Age 14: communicable diseases. (IC 39-3801)
- Age 14: admission to mental health facility. (IC 66-318(b))
- Age 16: treatment or rehab by physician for drug abuse. (IC 37-3102)

Parental Consent Law (effective 7/1/24)

- “An individual shall not furnish a health care service ... to a minor child without obtaining the prior consent of the minor child’s parent.”
 - “Health care service” = service for the diagnosis, screening, examination, prevention, treatment, cure, care, or relief of any physical or mental health condition, injury, illness, defect, disease.
 - “Minor child” = unemancipated person < 18.
 - “Parent” = biological or adoptive parent or an individual who has been granted exclusive right and authority over the welfare of a child under state law.
- Violation: parent may sue for damages, costs and fees.

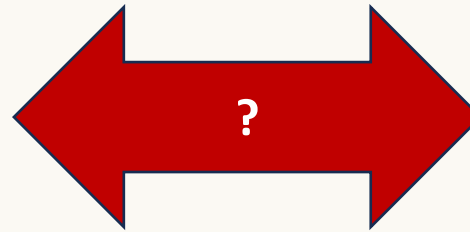
(IC 32-1015)

Parental Consent Law: Effect on Prior State Laws?

PRIOR STATE LAWS

Minors may consent to own care:

- Sufficiently mature: contraceptives
- Family planning under Title X programs
- Age 14: communicable diseases
- Age 14: admission to mental health facility
- Age 16: treatment or rehab by physician for drug abuse



PARENTAL CONSENT LAW

Must have parent consent to treat unemancipated minor with limited exceptions.

Parental Consent Law: Effect on Prior State Laws?

- IC 32-1015: “This section shall be construed in favor of a broad protection of parents’ fundamental right to make decisions concerning the furnishing of health care services to minor children.” (IC 32-1015(7))
- SB1329 Statement of Purpose: “[C]onsent for the furnishing of health care services to any person who is an unemancipated minor must be given or refused by the parent of such person.... [T]he Act is intended to supersede any current provisions of Idaho law that may otherwise conflict with the Act.” (<https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2024/legislation/S1329SOP.pdf>)
- Idaho courts often look to Statement of Purpose to determine legislative intent. (*Farmers Nat’l Bank v. Green River Dairy, LLC*, 155 Idaho 853, 860 at n.4 (2014))
- General principle: if there is conflict, later law preempts earlier conflicting law v. specific law preempts conflicting general law.
- ✓ ***Conservative approach: assume parental consent is needed unless exception in 32-1015 applies or until we receive further authoritative guidance.***

Parental Consent Law: Exceptions

- Minor is emancipated,
- “[A]s otherwise provided by court order.”

(IC 32-1015(3))

- “[A] health care provider may authorize or furnish a health care service without obtaining the informed consent of the minor child’s parent, if:
 - (a) A parent of the minor child has given blanket consent authorizing the health care provider to furnish the health care service; or
 - (b) The health care provider reasonably determines that a medical emergency exists and:
 - (i) Furnishing the health care service is necessary in order to prevent death or imminent, irreparable physical injury to the minor child; or
 - (ii) After a reasonably diligent effort, the health care provider cannot locate or contact a parent of the minor child and the minor child’s life or health would be seriously endangered by further delay in the furnishing of health care services.”

(IC 32-1015(4))

Parental Consent Law: “Blanket Consent”

- General rule: consent must be informed to be effective.
 - “Consent, or refusal to consent, for the furnishing of health care services shall be valid in all respects if the person giving or refusing the consent is sufficiently aware of pertinent facts respecting the need for, the nature of, and the significant risks ordinarily attendant upon such a person receiving such services, as to permit the giving or withholding of such consent to be a reasonably informed decision.” (IC 39-4506)
- Parental consent law: do not need informed consent of parent if have “blanket consent.” (IC 32-1015(4))
 - But not sure exactly what this means.

Parental Consent Law: Exceptions

If federal law authorizes minors to consent and preempts Idaho law, e.g.,

- EMTALA?
 - “A minor (child) can request an exam or treatment for an [emergency medical condition]. Hospital personnel should not delay the MSE by waiting for parental consent. If after screening the minor, it is determined that no EMC is present, the staff can wait for parental consent before proceeding with further examination and treatment.” (CMS SOM App. V, EMTALA Interpretive Guidelines).
- Title X programs?
 - “Title X projects may not require consent of parents or guardians for the provision of services to minors, nor can any Title X project staff notify a parent or guardian before or after a minor has requested and/or received Title X family planning services.” (42 CFR 59.10(b)).
 - *But see Deandra v. Becerra*, No. 23-10159 (5th Cir. 2024) (holding that Title X regs do not preempt Texas parental consent laws).
- Other?

Parental Consent Law: FAQs

- *To whom does the consent law apply?*
 - Any individual who renders healthcare services to an unemancipated minor, not just licensed healthcare providers.
- *What about providers without direct treatment relationship, e.g., labs, pathology, radiology, etc.?*
 - The law applies to any individual who renders healthcare services, not just those with a direct treatment relationship.
 - Those with indirect treatment relationship may need to come up with way to obtain consent, e.g., ensure referring provider's consent is sufficiently broad to cover indirect treatment provider.

Parental Consent Law: FAQs

- *Must both parents consent?*
 - Probably not.
- *What if parents disagree?*
 - Probably may rely on consent of one parent but avoid getting in middle if you can.
- *What if parents refuse care?*
 - Parents generally have right to refuse care.
 - May report to CPS if refusal constitutes neglect.
- *Who are other persons with “exclusive authority” to consent?*
 - ~~– Foster parents?~~
 - ~~– Stepparents?~~
 - ~~– Grandparents?~~
 - ~~– Others?~~

Parental Consent Law: FAQs

- *May others consent if the parent is not available?*
 - IC 39-4504 identifies other surrogate decision-makers.
 - But IC 32-1015 does not contemplate others.
 - Safer to seek parental consent.
- *May a parent delegate authority to consent to others?*
 - Probably. This would seem to respect the parent's right to make decisions and would be consistent with the statute.
 - IC 39-4504(1) contemplates delegation of parental authority.
 - Be sure to document appropriate delegation.

Parental Consent Law: FAQs

- *What is required for a valid blanket consent?*
 - We don't know; this is a new concept.
 - Ensure it is broad enough to cover proposed services and beware performing services beyond those reasonably anticipated by the parent or services that are controversial, expensive, or extensive.
 - See sample at <https://www.hollandhart.com/blanket-consents-under-idahos-new-minor-consent-law>.
- *Must a blanket consent be written or may it be oral?*
 - Probably either, but written carries presumption of validity. See IC 39-4507.
- *How often must a blanket consent be obtained?*
 - We don't know, but should obtain new blanket consent if more than a few months have passed, circumstances changed, controversial care, etc.

Parental Consent Law: FAQs

- *What happens if we are rendering care to a minor in or from another state which allows minors to consent to their own care?*
 - Follow Idaho law if you are in Idaho.
- *For more info, google Idaho's New Parental Consent Law: FAQs,*
<https://www.hollandhart.com/idahos-new-parental-consent-law-faqs>

Parent's Right to Access Minor's Records



Confidentiality of Minor Records (before 7/1/24)

HIPAA

- If minor may consent to their own healthcare under state law, then...
 - Parent is not “personal representative.”
 - Parent has no right to access info.
 - Generally, need minor’s consent or authorization to disclose.
 - May deny access to avert serious threat of harm.

(45 CFR 164.502(g))

OTHER LAWS

- If minor aged 16+ seeks drug treatment or rehab, may not disclose to parent without minor’s consent. (IC 37-3102)
- If minor seeks care for substance use disorder, may not disclose the request for care to parents. (42 CFR 2.14(b)(2))
- If minor seeks family planning services under Title X, may not disclose to parents. (42 CFR 59.10(b))
- Others?

Parental Consent Law (effective 7/1/24)

- “No health care provider or governmental entity shall deny a minor child’s parent access to health information that is ... in such health care provider’s ... control.”
 - "Health info" = info or data, collected or recorded in any form or medium, and personal facts about events or relationships that relates to:
 - (i) Past, present, or future physical, mental, or behavioral health or condition of individual or member of individual’s family;
 - (ii) Provision of health care services to an individual; or
 - (iii) Payment for the provision of health care services to an individual.
- Violation: parent may sue for damages, costs and fees.

(IC 32-1015)

✓ *Likely applies to records created or info relating to treatment before 7/1/24.*

Parent's Access to Minor's Records: Exceptions

May deny parent access if:

- Minor is emancipated.

(See IC 32-1015(5))

- “Parent's access to the requested health info is prohibited by a court order”; or
- “[1] The parent is a subject of an investigation related to a crime committed against the child, and [2] a law enforcement officer requests that the information not be released to the parent.”

(IC 32-1015(6))

- Much narrower than threat of harm standard under HIPAA.

Parent's Access to Minor's Records: Exceptions

If a federal law preempts Idaho law and prohibits disclosure, e.g.,

- HIPAA? (45 CFR 164.502(g))
- Substance use disorder programs?
 - “Where state law requires parental consent to treatment, the fact of a minor's application for treatment may be communicated to the minor's parent, guardian, or other person authorized under state law to act on the minor's behalf only if: (i) The minor has given written consent to the disclosure ...; or (ii) The minor lacks the capacity to make a rational choice regarding such consent ...” (42 CFR 2.14(b)(2))
- Title X programs?
 - “Title X projects may not require consent of parents or guardians for the provision of services to minors, nor can any Title X project staff notify a parent or guardian before or after a minor has requested and/or received Title X family planning services.” (42 CFR 59.10(b))
 - *But see Deandra v. Becerra, No. 23-10159 (5th Cir. 2024) (holding that Title X regs do not preempt Texas parental consent laws).*
- Others?

HIPAA: Preemption

- HIPAA preempts contrary state law unless the state law is more stringent.

(45 CFR 160.203)

- “*More stringent* means, in the context of a comparison of a provision of State law and a standard ... adopted under [the HIPAA privacy rule], a State law that meets one or more of the following criteria:

...

(6)provides greater privacy protection for the individual who is the subject of the individually identifiable health information”

(45 CFR 160.202)

HIPAA: Disclosures to Personal Reps

- Under HIPAA, must treat personal rep as the patient.
 - Personal rep has right to access PHI.
 - “Personal rep” = person with authority to consent to care of patient under state law.
- Exception:
 - “Notwithstanding a State law or any requirement of this paragraph to the contrary, a covered entity may elect not to treat a person as the personal rep ... if:
 - (i) The covered entity has a reasonable belief that:
 - (A) The individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or
 - (B) Treating such person as the personal rep could endanger the individual; and
 - (ii) The covered entity, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual’s personal rep.”

(45 CFR 164.502(g))

HIPAA: Disclosures to Personal Reps

- “If ... by an applicable provision of State or other law ... a covered entity may disclose or provide access in accordance with [45 C.F.R.] § 164.524 to protected health info about an unemancipated minor to a parent, guardian, or other person acting in loco parentis....”

(45 CFR 164.502(g)(3)(ii)(A))

- Under 164.524, may deny patient and personal rep access under certain circumstances, e.g.,
 - PHI outside designated record set.
 - Psychotherapy notes.
 - PHI obtained under promise of confidentiality and disclosure would reveal source of info.
 - Licensed provider determines that disclosure is “reasonably likely to endanger the life or physical safety of the individual or other person”, subject to review.

(45 CFR 164.524)

Non-Custodial Parent Access

- “Notwithstanding any other provisions of law, access to records and information pertaining to a minor child including, but not limited to, medical, dental, health, and school or educational records, shall not be denied to a parent because the parent is not the child’s custodial parent.
- “[I]nformation concerning the minor child’s address shall be deleted from such records to a parent, if the custodial parent has advised the records custodian in writing to do so.”

(IC 32-717A)

Crisis Holds



Mental Holds and Crisis Holds

As legal matter, providers rarely need mental or crisis holds.

PATIENT IS COMPETENT

- Render care consistent with patient's consent or refusal unless patient refuses care and patient is gravely disabled/likely to injure self. (IC 39-4503)

PATIENT IS INCOMPETENT

- If emergent, render necessary care consistent with patient's advance directive while you seek surrogate consent. (EMTALA; IC 39-4504(1)(i))
- Surrogate may consent to or refuse care. (IC 39-4504(1))

Mental Holds v. Crisis Holds

MENTAL HOLD

- **Mentally ill**, i.e., “a condition resulting in a substantial disorder of thought, mood, perception, or orientation that grossly impairs judgment, behavior, or capacity to recognize and adapt to reality and requires care and treatment at a facility or through outpatient treatment.”
- Not neurological disorder, neurocognitive disorder, developmental disability, physical disability, or any medical disorder.

(IC 66-317(11))

CRISIS HOLDS (Effective 10/1/24)

- **Neurocognitive disorder**, i.e., “decreased mental function due to a medical disease other than a psychiatric illness, including Alzheimer’s disease; frontotemporal lobar degeneration; Lewy body dementia; vascular dementia; traumatic brain injury; inappropriate use or abuse of substances or medications; infection with human immunodeficiency virus; Prion diseases; Parkinson’s disease; or Huntington’s disease.”
- Not decreased mental function due to substance abuse or medications.

(IC 56-2101 and 66-317(13))

Mental Holds v. Crisis Holds

MENTAL HOLD

- Purpose: transfer and/or hold resident at hospital for evaluation by DHW and, if necessary, initiation and pendency of commitment proceedings.

(IC 66-326)

- Long-term solution.

CRISIS HOLD

- Purpose: transfer and/or hold resident at hospital for short term to evaluate and address “acute crises due to an underlying medical condition.”

(IC 56-2105)

- Temporary response.

Crisis Holds (Effective 10/1/24)

- Police may detain and take person to hospital or hospital healthcare provider may detain person to receive medical care if:
 - Have reason to believe the person has a **neurocognitive disorder** and
 - The person is **“likely to injure themselves or others,”** i.e.,
 - Substantial risk that serious physical harm will be inflicted by the person upon himself/herself, or
 - Person lacks insight and unable or unwilling to comply with treatment such that person will, in reasonably near future, inflict serious physical harm on themselves or others.

Crisis Holds: Termination and Transfer

- Hospital may terminate a crisis hold at anytime, in which case the patient becomes a voluntary patient.

(IC 56-2104(4))

- Hospital may transfer a person in a crisis hold to another hospital that is willing to accept the transferred person for purposes of observation, diagnosis, evaluation, care, or treatment.

(IC 56-2104(8))

Crisis Holds: Notice to Family

- Upon taking a person into custody, a good faith effort shall be made to provide notice to the person's legal guardian, parent, spouse, or adult next of kin of the person's physical whereabouts and the reasons for taking the person into custody.

(IC 56-2104(7))

- If surrogate agrees to continued care, there is likely no need for continuing crisis hold unless need payor source.

Minors and Crisis Hold

- Not entirely clear whether or to what extent crisis hold would apply to minors.
 - Crisis hold v. shelter care under IC 16-2411.
 - Crisis hold v. Parental Rights in Medical Decision-Making
 - IC 32-1015 generally requires parental consent unless:
 - Blanket consent, or
 - Medical emergency and:
 - Necessary to prevent death or imminent, irreparable injury to minor child, or
 - Cannot locate parent and minor child's life or health would be seriously endangered.
- In case of minors, seek parental consent or court order.

Crisis Holds: Judicial Procedure

- Someone must seek court order for temporary hold within 24 hours.
- Court may order evaluation by hospital healthcare provider, e.g., physician or APP.
- If exam concludes person no longer meets criteria for crisis hold, person is treated as voluntary patient and may be released.
- If person meets criteria for protective hold, prosecutor files petition to continue hold pending protective placement.
- Hearing to determine stay.
- Court may order protective custody at hospital for observation, care and treatment **for up to 7 days**.

(IC 56-2105)

- *Hopefully, patient is stabilized and transferred before hospital ever gets to the hearing...*
- ***Crisis hold procedure may allow hospital to obtain payment from***
 - ✓ ***Patient***
 - ✓ ***Private payer***
 - ✓ ***Medicaid or DHW***

(IC 56-1907)

Crisis Holds: Judicial Procedure

But what happens at end of 7 days if patient is still not ready for discharge...?

- Obtain consent from patient or personal rep for continued hospital care?
- Return to facility?
- Transfer to another appropriate care setting?
- Other?

Patient or Surrogate Consent v. Mental or Crisis Hold

- If patient competent, rely on and document resident's consent/refusal unless patient fits criteria for mental or crisis hold.
- If patient is incompetent:
 - Provide needed emergent care consistent with patient's prior expressed wishes;
 - Seek consent from surrogate; and/or
 - Initiate:
 - Mental hold, if patient is mentally ill and either gravely disabled or likely to injure self or others.
 - Crisis hold if patient has neurocognitive disorder and is likely to injure self or others.

Crisis Hold: Payor Source

- Statute sets forth structure for payments:
 - Patient or patient's insurer
 - Medicaid
 - DHW

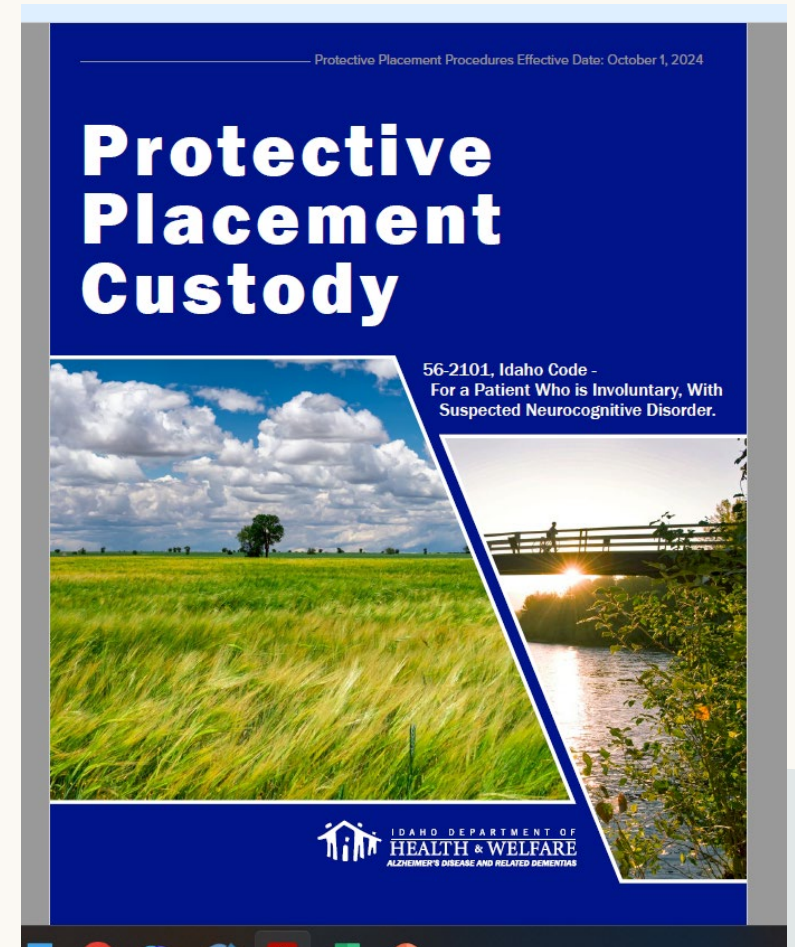
(IC 56-2107)

Crisis Holds: Reporting

- Must make quarterly reports re crisis holds beginning in 2025.
(IC 56-1906)
- Watch for additional guidance from DHW.

Crisis Hold: DHW Resources

- Contact Tiffany.Robb@dhw.Idaho.gov
 - Summary
 - Flow chart
 - Forms from Ada County Prosecutors
 - Training programs
 - Other?



Idaho Abortion Law and EMTALA



Idaho Abortion Law and EMTALA

- 2022: Dobbs overturns Roe v. Wade; Idaho abortion statutes spring to life.
 - 2022: Federal District Court of Idaho issues temporary injunction prohibiting abortion statute in EMTALA cases.
 - 2023: Idaho Supreme Court upholds Idaho abortion statute.
 - 2023: Idaho legislature amends abortion statute.
 - 2023 – 2024: 9th Circuit initial removes injunction then reinstates injunction.
 - 2024: Supreme Court grants review and temporarily removes ban.
 - **On June 27, 2024, the U.S. Supreme Court effectively reinstated the District Court of Idaho's temporary injunction prohibiting enforcement of Idaho's total abortion ban in EMTALA cases.** (*Moyle v. U.S.*, 603 U.S. ____ (2024), available at https://www.supremecourt.gov/opinions/23pdf/23-726_6jgm.pdf)
- ✓ *Stay tuned...*

Idaho Abortion Law: EMTALA Exception

- Preliminary injunction prohibits enforcement of Idaho's total abortion ban to the extent EMTALA applies, *i.e.*,
 1. Pregnant woman comes to hospital or hospital-based urgent care center seeking emergency care.
 2. Woman or child has an emergency medical condition.
 3. Abortion is necessary to stabilize the emergency medical condition.
 4. Pregnant woman is not or has not been admitted as inpatient or begun outpatient course of treatment.

(DCt Order; 42 USC 1395dd; 42 CFR 489.24; CMS, State Operations Manual Appendix V – Interpretive Guidelines – Responsibilities of Medicare Participating Hospitals in Emergency Cases (Rev. 7/19/19))

Total Abortion Ban: EMTALA Exception

Clearly document this in record!

- As defined by the federal District Court, abortion must be “necessary to avoid
 - “(i) ‘placing the health of’ a pregnant patient ‘in serious jeopardy’;
 - “(ii) a ‘serious impairment to bodily functions’ of the pregnant patient; or
 - “(iii) a ‘serious dysfunction of any bodily organ or part’ of the pregnant patient....”(DCt Order at p.39; see also 42 CFR 489.24(b))
- HHS: “[t]he course of treatment necessary to stabilize [an] emergency medical conditions is also under the purview of the physician or other qualified medical personnel. Stabilizing treatment could include medical and/or surgical interventions (e.g., methotrexate therapy, dilation and curettage (D&C), removal of one or both fallopian tubes, anti-hypertensive therapy, etc.).”

(CMS QSO-22-22 at p.4)

Pelvic Exams of Unconscious Patients



Pelvic Exams of Unconscious Patients

- **Effective 3/25/24**, a health care provider may not knowingly perform or authorize a student practicing under the provider's authority to perform a pelvic examination on a patient who is anesthetized or unconscious unless:
 - The patient or a person authorized to make health care decisions for the patient gave specific informed consent to the examination; or
 - The examination is necessary for diagnostic or treatment purposes.
- A health care provider who violates this law is subject to discipline from the provider's licensing board.

(IC 39-4517)

Sensitive Exams

Exams or invasive procedures for educational or training purposes require written informed consent, including breast, pelvic, prostate and rectal exams. (QSO 24-10-Hospitals)

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C2-21-16
Baltimore, Maryland 21244-1850



Center for Clinical Standards and Quality/Quality, Safety & Oversight Group

Ref: QSO-24-10-Hospitals

DATE: April 1, 2024
TO: State Survey Agency Directors
FROM: Directors, Quality, Safety & Oversight Group (QSOG) and Survey & Operations Group (SOG)
SUBJECT: Revisions and clarifications to Hospital Interpretive Guidelines for Informed Consent

Memorandum Summary

- Based on **increasing concerns about the absence of informed patient consent** prior to allowing practitioners or supervised medical, advanced practice provider, or other applicable students **to perform training- and education-related examinations outside the medically necessary procedure** (such as breast, pelvic, prostate, and rectal examinations), particularly on anesthetized patients, we are reinforcing hospitals' informed consent obligations.
- **Requirements related to informed consent for hospitals are found throughout the Hospital Conditions of Participation (CoPs):** the Patient's Rights CoP at 42 CFR 482.13(b)(2); the Medical Record Services CoP at 482.24(c)(4)(v); and the Surgical Services CoP at 482.51(b)(2).

Essential Caregiver Law



Essential Caregiver Law

- **Effective 7/1/24**, patient or resident has the right to in-person visitation from an essential caregiver while receiving assistance or health care services at a facility, even if other visitors are being excluded by the facility.

(IC 39-9803)

- “Essential caregiver” = a spouse, adult child, parent, guardian, conservator, health care agent, or surrogate decision-maker, or any other person identify the patient or surrogate decision-maker to visit the patient or resident at the facility.
 - Patient, resident, or surrogate decision-maker may revoke the designation of essential caregiver at any time.
 - Provider cannot limit the number of essential caregivers designated by patient or surrogate decision-makers.

(IC 39-9801)

Essential Caregiver Law

- Essential caregiver must follow safety and other protocols imposed by the facility.
- Facility may place reasonable restrictions as to where and when the essential caregiver may visit and the number of essential caregivers who may visit at the same time.
 - Reasonable restriction =
 - Is necessary to prevent the disruption of assistance or health care services to the patient or resident; and
 - Does not interfere with the patient's or resident's general right to visitation by essential caregivers.

(IC 39-9803(1))

- Prisoners and patients in the custody of a peace officer are subject to the visitation terms set by the custodial entity.

(IC 39-9803(3))

Essential Caregiver Law

If facility is restricting overall visitations, it shall at the time of intake or as soon as practicable:

- Notify a patient, resident, or surrogate decision-maker of the right to:
 - Designate essential caregivers; and
 - Remove individuals from the list of essential caregivers;
- Explain that an essential caregiver may be any person and is not required to be a formal caregiver;
- Provide an opportunity to designate essential caregivers;
- Provide the ability to restrict or remove any essential caregivers from any visitation list; and
- Accommodate a patient's, resident's, or surrogate decisionmaker's request to have essential caregivers visit within the prescribed limits.
- If the patient or resident is a minor or incapacitated, visitation requests must be approved by a person with legal authority to make decisions on behalf of the patient or resident, such as a parent, guardian, or conservator.

(IC 39-9803(2))

Patient Visitation Rights

- See also federal COPs, e.g.,
 - “A hospital [or CAH] must have written policies and procedures regarding the visitation rights of patients, including those setting forth any clinically necessary or reasonable restriction or limitation that the hospital may need to place on such rights and the reasons for the clinical restriction or limitation.”

(42 CFR 48213(h) and 45 CFR 485.635(f))

HIPAA and Patient Privacy



HIPAA Reproductive Rights Rule

Effective 6/25/24,

- Limits disclosure of PHI re reproductive health for civil, criminal or administrative action if reproductive health is legal.

(45 CFR 164.502(a)(5)(iii))

- Must obtain attestation before using or disclosing reproductive health PHI for:
 - Health oversight activities.
 - Judicial or administrative proceedings.
 - Law enforcement purposes.
 - Coroners or medical examiners.

(45 CFR 164.509)

- Modify notice of privacy practices by 2/16/26.

(45 CFR 164.520)

HIPAA Reproductive Rights: Model Attestation



Model Attestation for a Requested Use or Disclosure of Protected Health Information Potentially Related to Reproductive Health Care

When a HIPAA covered entity¹ or business associate² receives a request for protected health information (PHI)³ potentially related to reproductive health care,⁴ it must obtain a signed attestation that clearly states the requested use or disclosure is not for the prohibited purposes described below, where the request is for PHI for any of the following purposes:

- Health oversight activities⁵
- Judicial or administrative⁶ proceedings
- Law enforcement⁷
- Regarding decedents, disclosures to coroners and medical examiners⁸

Prohibited Purposes. Covered entities and their business associates may not use or disclose PHI for the following purposes:

- (1) To conduct a criminal, civil, or administrative investigation into any person for the mere act of seeking, obtaining, providing, or facilitating lawful reproductive health care.
- (2) To impose criminal, civil, or administrative liability on any person for the mere act of seeking, obtaining, providing, or facilitating lawful reproductive health care.
- (3) To identify any person for any purpose described in (1) or (2).⁹

The prohibition applies when the reproductive health care at issue (1) is lawful under the law of the state in which such health care is provided under the circumstances in which it is provided, (2) is protected, required, or authorized by Federal law, including the United States Constitution, under the circumstances in which such health care is provided, regardless of the state in which it is provided, or (3) is provided by another person and presumed lawful.¹⁰

Model Instructions

Information for the Person Requesting the PHI

- By signing this attestation, you are verifying that you are not requesting PHI for a prohibited purpose and acknowledging that criminal penalties may apply if untrue.¹¹
- You may not add content that is not required or combine this form with another document except where another document is needed to support your statement that the requested disclosure is not for a prohibited purpose.¹² For example, if the requested PHI is potentially related to reproductive health care that was provided by someone other than the covered entity or business associate from whom you are requesting the PHI, you may submit a document that supplies information that demonstrates a

Available at

<https://www.hhs.gov/sites/default/files/model-attestation.pdf>

Online Tracking Concerns

The Markup
(6/16/22)



The HIPAA Journal is the
and independe

[Become HIPAA Compliant »](#) [HIPAA News »](#) [HIPAA Compliance Checklist](#) [Latest HIPAA Updates »](#) [HIPAA Training »](#) [About Us »](#)

Mass General Brigham Settles 'Cookies Without Consent' Lawsuit for \$18.4 Million

Posted By Steve Alder on Jan 20, 2022

An \$18.4 million settlement has been approved that resolves a class action lawsuit against Mass General Brigham over the use of cookies, pixels, website analytics tools, and associated technologies on several websites without first obtaining the consent of website visitors.

The defendants in the case operate informational websites that provide information about the healthcare services they provide and the programs they operate. Those websites can be accessed by the general public and do not require visitors to register or create accounts.

The lawsuit was filed against Partners Healthcare System, now Mass General Brigham, by two plaintiffs – John Doe and Jane Doe – who alleged the websites contained third party analytics tools, cookies, and pixels that caused their web browsers to divulge information about their use of the Internet, and that the information was transferred and sold to third parties without their consent.

Pixel Hunt

Facebook Is Receiving Sensitive Medical Information from Hospital Websites

Anson Chan

Experts say some hospitals' use of an ad tracking tool may violate a federal law protecting health information

By [Todd Feathers](#), [Simon Fondrie-Teitler](#), [Angie Waller](#), and [Surya Mattu](#)

A tracking tool installed on many hospitals' websites has been collecting patients' sensitive health information—including details about their medical conditions, prescriptions, and doctor's appointments—and sending it to Facebook.

See our data here.

GitHub

The Markup tested the websites of [Newsweek's](#) top 100 hospitals in America. On 33 of them we found the tracker, called the Meta Pixel, sending Facebook a packet of data whenever a person clicked a button to schedule a doctor's appointment. The data is connected to an IP address—an identifier that's like a computer's mailing address and can generally be linked to a specific individual or household—creating an intimate receipt of the appointment request for Facebook.

A Third of Top Hospitals' Websites Sent Patient Data to

HIPAA & Online Tracking

<https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/hipaa-online-tracking/index.html>



About HHS Programs & Services Grants & Contracts Laws & Regulation

Health Information Privacy

HIPAA for Individuals

Filing a Complaint

HHS > HIPAA Home > For Professionals > Privacy > Guidance Materials > U

HIPAA for Professionals	
Regulatory Initiatives	
Privacy	+
Security	+
Breach Notification	+
Compliance & Enforcement	+
Special Topics	+
Patient Safety	+

Use of Online Tracking Technologies by HIPAA Covered Entities and Business Associates

On March 18, 2024, OCR updated this guidance to increase clarity for regulated entities and the public.

The Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) is issuing this Bulletin to

Use of tracking technologies on websites and mobile apps may violate HIPAA, e.g.,

- Cookies
- Web beacons
- Tracking pixels
- Session replay scripts
- Fingerprint scripts
- IP addresses
- Geolocations

1. Does the data contain individually identifiable info that relates to past, present, or future health, healthcare or payment?
2. If so, does HIPAA permit the use or disclosure without patient authorization?

HIPAA & Online Tracking

“On June 20, 2024, [a district court] issued an order declaring unlawful and vacating ... the guidance to the extent it provides that HIPAA obligations are triggered in ‘circumstances where an online technology connects (1) an individual’s IP address with (2) a visit to a[n] [unauthenticated public webpage] addressing specific health conditions or healthcare providers.’”
See Am. Hosp. Ass’n v. Becerra, 2024 WL 3075865 (N.D. Tex. June 20, 2024).

The screenshot shows the U.S. Department of Health and Human Services (HHS) website. At the top, the HHS logo and name are displayed, along with the tagline "Enhancing the health and well-being of all Americans". Below this is a navigation bar with links for "About HHS", "Programs & Services", "Grants & Contracts", and "Laws & Regulation". The main content area is titled "Health Information Privacy" and features two prominent buttons: "HIPAA for Individuals" and "Filing a Complaint". Below these buttons is a breadcrumb trail: "HHS > HIPAA Home > For Professionals > Privacy > Guidance Materials > U...". A table of contents is visible on the left side of the page, listing various topics with expandable plus signs:

HIPAA for Professionals	
Regulatory Initiatives	
Privacy	+
Security	+
Breach Notification	+
Compliance & Enforcement	+

Use of Online Tracking Technologies by HIPAA Covered Entities and Business Associates



Beware Private Lawsuits!

Litigation Trends for 2023: Surge in Web Tracking Class Actions

by: John C. Cleary, Pavel (Pasha) A. Sternberg, Catherine A. Green, Elizabeth M. Marden, Elizabeth (Liz) Harding, and Colin H. Black of Polsinelli PC - *Intelligence*

© Posted On Wednesday, January 18, 2023



RELATED PRACTICES & JURISDICTIONS

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Possible Theories

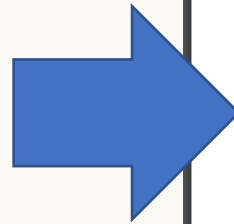
- Negligence per se based on violation of statute
- Unfair or deceptive trade practices acts
- Federal and state wire-tapping laws
- Negligent misrepresentation
- Invasion of privacy
- Breach of contract
- Others?

Discover More Public Notices >>

HIPAA and Telehealth

- OCR has emphasized privacy and security in telehealth
- In 10/22, OCR published guidance concerning HIPAA concerns in audio-only telehealth.
- On 8/9/23, relaxed security standards for telehealth platforms ended.
- In 10/23, OCR published guidance for providers and patients concerning privacy and security risks in telehealth.

(<https://www.hhs.gov/hipaa/for-professionals/special-topics/telehealth/index.html>)



Telehealth Privacy Tips for Providers



What are the data privacy and security risks in telehealth?

- Privacy risk** is when an individual lacks control over the collection, use, and sharing of their health data.
- Security risk** is when there is unauthorized access to an individual's health data during the collection, transmission, or storage.
- These risks can affect trust between the patient and provider and contribute negatively to adherence and continuity of care.



How do I fulfill privacy obligations during a telehealth session?

- Privacy and security risks** are present for in-person, remote monitoring, and virtual visits. Electronic transmission of data means greater privacy and security risks.
- Make sure you are up-to-date on security and protections requirements for [HIPAA compliance](#) and are aware of other [legal considerations](#).
- Providers have an **ethical obligation** to discuss privacy and security risks. These discussions can be part of a patient-centered care plan to help ensure confidentiality.



How do I communicate privacy protections to patients?

- Make privacy part of the workflow by confirming identities of everyone present at each telehealth session and communicate how any third-parties may be involved.
- Set up and communicate the below safeguards to your patients:**
 - Create unique user identification numbers
 - Use password protected platforms
 - Establish automatic logoff



How do I protect my own privacy and reduce risk of breaches?

- Health data breaches are costly and can involve investigations, notifying patients, and recovering data, so providers need to be familiar with their security features.
- Establish the below processes:**
 - Routinely review your telehealth privacy and security policies.
 - Schedule regular deletion of files on mobile devices.
 - Utilize data back-up and recovery processes in case of breach.
- Conduct a **security evaluation** from an independent party on your telehealth system to verify security features such as authentication, encryption, authorization, and data management.
- Check out more security [tips](#) from the Office of the National Coordinator for Health Information Technology.

HIPAA

Proposed Privacy Rule Changes

COMING
SOON

Proposed rule published 1/21/21; still waiting...

- Strengthens individual's right of access.
 - Individuals may take notes or use other personal devices to view and capture images of PHI.
 - Must respond to requests to access within 15 days instead of 30 days.
 - Must share info when directed by patient.
 - Additional limits to charges for producing PHI.
- Facilitates individualized care coordination.
- Clarifies the ability to disclose to avert threat of harm.
- Not required to obtain acknowledgment of Notice of Privacy Practices.
- Modifies content of Notice of Privacy Practices.

(86 FR 6446 (1/21/21))

Substance Use Disorder Records

New rule:

- Issued 2/8/24.
- Effective 4/16/24.
- **Enforced 2/16/26.**

(89 FR 12472)

Applies to:

- Federally assisted SUD programs.
- Recipients of SUD records from such a program.

Aligns 42 CFR part 2 with HIPAA.

- HIPAA enforcement applies to Part 2 violations.
- Allows single consent for uses or disclosures for treatment, payment or healthcare operations.
- HIPAA-covered entities and business associates receiving SUD info under consent may use or disclose consistent with HIPAA.
- Must provide HIPAA-like notice of privacy practices (NPP) and update HIPAA NPP.

(42 CFR part 2)

Data Security



Consider impact on:

- Patient safety.
- Ability to function without data or with compromised data.
- Inability to bill.
- Damage to IT infrastructure.
- FTC or state law violations.
- Lawsuits.
- Bad press.

Cyberattack on Mountain View Hospital still ongoing after two weeks

Published at 9:00 am, June 10, 2023 | Updated at 9:13 am, June 10, 2023



Logan Ram

Change Healthcare cyberattack fallout continues

Change Healthcare, part of Optum, suffered a cyberattack in late February.



☰ CNN politics SCOTUS Congress Facts First 2024 Elections

Cyberattack forces Idaho hospital to send ambulances elsewhere



HHS Strategy Paper

<https://aspr.hhs.gov/cyber/Documents/Health-Care-Sector-Cybersecurity-Dec2023-508.pdf>



On 12/6/23, HHS published strategy for strengthening cybersecurity for healthcare industry.

1. Establish voluntary cybersecurity performance goals.
2. Provide resources to incentivize and implement cybersecurity practices.
3. **Greater enforcement and accountability.**
 - **Cybersecurity requirements for hospitals through Medicare/Medicaid.**
 - **Update HIPAA Security Rule to include new cybersecurity rule requirements.**
 - **Increase civil penalties.**
 - **Increase resources for audits and investigation.**
4. HHS to provide one-stop shop for healthcare cybersecurity resources.

HIPAA Penalties for Cyberlapses



U.S. Department of
Health and Human Services

Enhancing the health and well-being of all Americans

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[Home](#) > [About](#) > [News](#) > [HHS Office for Civil Rights Settles HIPAA Security Rule Failures for \\$950,000](#)

[News](#)[Blog](#)[HHS Live](#)[Podcasts](#)[Media Guidelines for HHS
Employees](#)

FOR IMMEDIATE RELEASE

July 1, 2024

**Health system paid
\$950,000 for HIPAA
security violations
following
ransomware attack.**

media@hhs.gov

**HHS Office for Civil Rights Settles HIPAA Security Rule
Failures for \$950,000**

& Hart

HPH Cybersecurity Gateway

<https://hphcyber.hhs.gov/>



**Welcome to
Health & Human Services**

HPH Cybersecurity Gateway

Connecting the Healthcare and Public Health (HPH) Sector with specialized healthcare specific cybersecurity information & resources from across the U.S. Department of Health and Human Services and other federal agencies.

**A NOTE
FROM
HHS**

- ✓ **HPH**
- ✓ **Cybersecurity**
- ✓ **Performance**
- ✓ **Goals**



**Questions?
Contact Us!**

FTC Enforcement of Privacy and Security

FTC is using FTCA § 5 to go after entities for data security breaches.

- Bars unfair and deceptive trade practices, e.g.,
 - Mislead consumers re security practices.
 - Misusing info or causing harm to consumers.

(<https://www.ftc.gov/news-events/topics/protecting-consumer-privacy-security/privacy-security-enforcement>)

- [Monument, Inc., U.S. v.](#) (June 7, 2024)
- [Facebook, Inc., In the Matter of](#) (June 7, 2024)
- [Blackbaud, Inc.](#) (May 20, 2024)
- [InMarket Media, LLC](#) (May 1, 2024)
- [Ring, LLC](#) (April 23, 2024)
- [Cerebral, Inc. and Kyle Robertson, U.S. v.](#) (April 15, 2024)
- [X-Mode Social, Inc.](#) (April 11, 2024)
- [Rite Aid Corporation, FTC v.](#) (March 8, 2024)
- [Global Tel Link Corporation](#) (February 23, 2024)
- [Avast](#) (February 22, 2024)
- [FTC v Kochava, Inc.](#) (February 5, 2024)
- [Epic Games, In the Matter of](#) (January 10, 2024)
- [CafePress, In the Matter of](#) (January 10, 2024)
- [TruthFinder, LLC, FTC v.](#) (October 11, 2023)
- [1Health.io/Vitagene, In the Matter of](#) (September 7, 2023)
- [Edmodo, LLC, U.S. v.](#) (August 28, 2023)
- [Vivint Smart Home, Inc.](#) (August 23, 2023)
- [Amazon.com \(Alexa\), U.S. v.](#) (July 21, 2023)
- [BetterHelp, Inc., In the Matter of](#) (July 14, 2023)
- [Easy Healthcare Corporation, U.S. v.](#) (June 26, 2023)



ABOUT THE FTC

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Protecting Consumer Privacy and Security

FTC POLICY WORK

PRIVACY AND SECURITY ENFORCEMENT

FINANCIAL PROTECTION

KIDS' PRIVACY

Privacy and Security Enforcement

PRIVACY AND SECURITY ENFORCEMENT

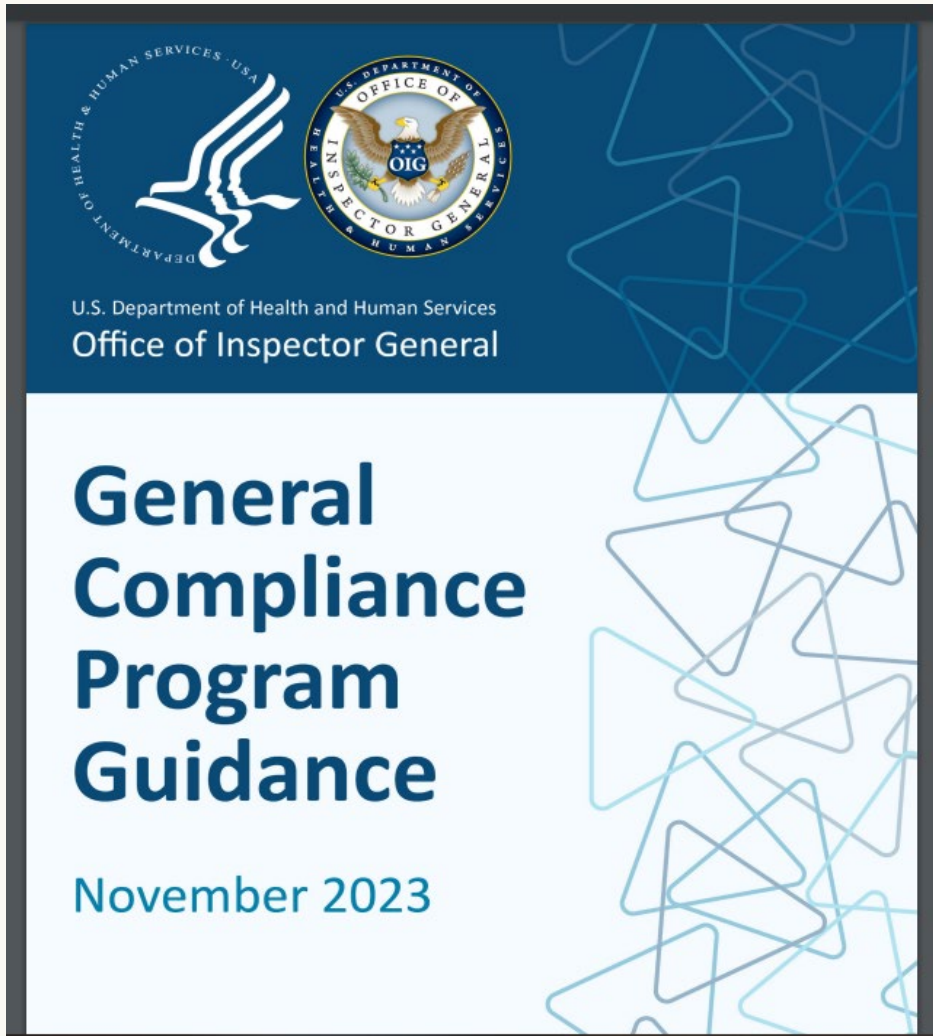
When companies tell consumers they will safeguard their personal information, the FTC can and does take law enforcement action to make sure that companies live up these promises. The FTC has brought legal actions against organizations that have violated consumers' privacy rights, or misled them by failing to maintain security for sensitive

“When companies tell consumers they will safeguard their personal information, the FTC can and does take law enforcement action to make sure that companies live up these promises. The FTC has brought legal actions against organizations that have violated consumers’ privacy rights, or misled them by failing to maintain security for sensitive consumer information...”

▶ **BLOG POSTS**

▶ **PUBLIC EVENTS**

OIG General Compliance Program Guidance



- “With increasing numbers of cybersecurity attacks aimed at HIPAA-regulated entities of all sizes, compliance with Privacy, Security, and Breach Notification Rule requirements should be a top compliance priority and included in all risk assessments.”

(<https://oig.hhs.gov/documents/compliance-guidance/1135/HHS-OIG-GCPG-2023.pdf#page=10>)

Information Blocking Rule



Info Blocking Rule

- Applies to “actors”
 - Healthcare providers.
 - Developers or offerors of certified health IT.
 - Not providers who develop their own IT.
 - Health info network/exchange.

(45 CFR 171.101)

- Prohibits info blocking, i.e., practice that is likely to interfere with access, exchange, or use of electronic health info, and
- Provider: knows practice is unreasonable and likely to interfere.
- Developer/HIN/HIE: knows or should know practice is likely to interfere.

(45 CFR 171.103)

Info Blocking Rule Penalties

DEVELOPERS, HIN, HIE

- Complaints to OIG
 - <https://inquiry.healthit.gov/support/plugins/servlet/desk/portal/6>
 - OIG Hotline
- **Civil monetary penalties of up to \$1,000,000 per violation**

(42 CFR 1003.1420)

HEALTHCARE PROVIDERS

- Final rule issued 6/24/24:
 - **Hospitals: loss of status as meaningful user of EHR**
 - **Providers: loss of status as meaningful user under MIPS**
 - **ACOs: ineligible to participate.**
 - **Loss of federal payments.**

Info Blocking Rule Examples

INFO BLOCKING

- Refusing to timely respond to requests.
- Charging excessive fees.
- Imposing unreasonable administrative hurdles.
- Imposing unreasonable contract terms, e.g., EHR agreements, BAAs, etc.
- Implementing health IT in nonstandard ways that increase the burden.
- Failing to make lab tests immediately available to patient.
- Others?

NOT INFO BLOCKING

- Action required by law.
 - HIPAA, 42 CFR part 2, state privacy laws, etc.
 - Laws require conditions before disclosure and condition not satisfied, e.g., patient consent.
- Action is reasonable under the circumstances.
- Action fits within regulatory exception.

Info Blocking Rule Examples

“It would likely be considered an interference for purposes of info blocking if a health care provider established an organizational policy that, for example, imposed delays on the release of lab results for any period of time in order to allow an ordering clinician to review the results or in order to personally inform the patient of the results before a patient can electronically access such results (see also 85 FR 25842 specifying that such a practice does not qualify for the “Preventing Harm” Exception).

“To further illustrate, it also would likely be considered an interference:

- where a delay in providing access, exchange, or use occurs after a patient logs in to a patient portal to access EHI that a health care provider has (including, for example, lab results) and such EHI is not available—for any period of time—through the portal.
- where a delay occurs in providing a patient’s EHI via an API to an app that the patient has authorized to receive their EHI.”

(HHS Info Blocking FAQs, <https://www.healthit.gov/faqs>).

Compliance Programs



OIG General Compliance Program Guidance

<https://oig.hhs.gov/compliance/general-compliance-program-guidance/>



U.S. Department of Health and Human Services
Office of Inspector General



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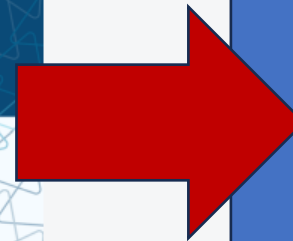
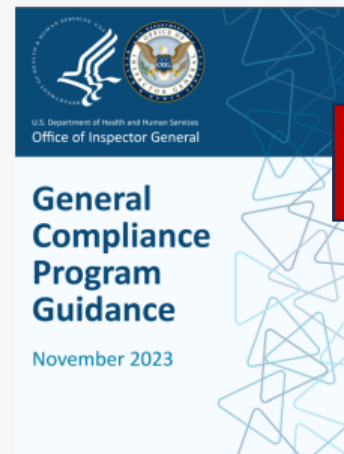
General Compliance Program Guidance

The General Compliance Program Guidance (GCPG) is a reference guide for the health

Watch for industry-specific guidance.

You may download the guidance in whole, or access individual sections below.

[Download Complete Guidance](#)

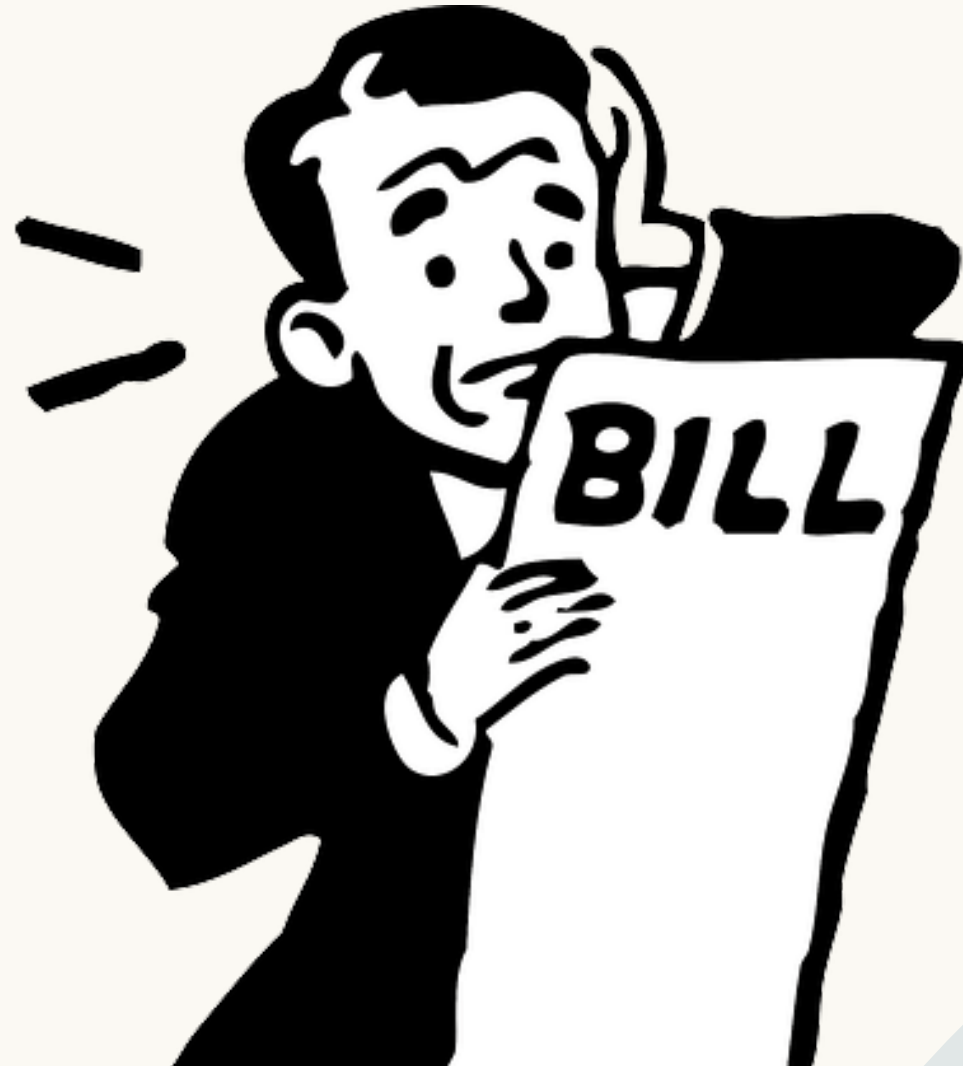


OIG focuses on key statutes, e.g.,

1. Anti-Kickback Statute
2. Physician Self-Referral Law (Stark)
3. False Claims Act
4. Civil Monetary Penalty Authorities
 - Beneficiary Inducements
 - Information Blocking
 - Exclusion Authority
5. HIPAA Privacy and Security Rules

Individual Sections

Idaho Patient Act and Liens

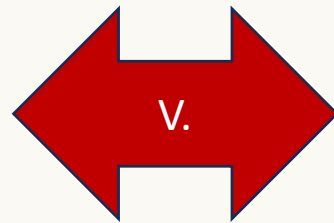


Idaho Patient Act v. Liens (before 3/28/24)

IDAHO MEDICAL LIEN LAW

- Allows healthcare provider to file a lien against recovery by tortfeasor.
- To perfect lien, must file **within 90 days of discharge** or last date of service or discharge.

(IC 45-701 *et seq.*)



IDAHO PATIENT ACT

- Cannot engage in extraordinary collection actions (including filing a lien) **until 60 days after:**
 - Submitting claims to payers.
 - Providing consolidated statement of services.
 - Providing final notice.

(IC 48-301 *et seq.*)

Idaho Patient Act v. Liens (effective 3/28/24)

IDAHO LIEN LAW

- If patient has no third-party payor: file lien w/in 90 days of discharge or last service.
- If patient has third party-payor: file lien within 30 days after the payor pays.

(IC 45-702)

IDAHO PATIENT ACT

- IPACT does not prohibit provider from filing a lien within the timelines permitted by IC 45-701 *et seq.*

(IC 48-303)

Non-Discrimination Rules



Anti-Discrimination Laws

LAWS

- Civil Rights Act Title VI
- Americans with Disability Act
- Age Discrimination Act
- **Affordable Care Act § 1557**
 - **HHS issued new rules on 5/6/24.**
 - **Effective 7/5/24**

(45 CFR part 92; 89 FR 37522)
- **Rehabilitation Act § 504**
 - **HHS issued new rules on 5/9/24.**
 - **Effective 7/8/24**

(45 CFR part 84; 89 FR 40066)
- State discrimination laws

Apply if receive federal
money, e.g., participate in
Medicare/Medicaid

RISKS

- Persons with disabilities
- Persons with limited English proficiency
- Sex discrimination
- Physical access
- Websites
- Facilities and equipment
- Service animals
 - Dogs and mini-horses
 - Not emotional support animals

Anti-Discrimination Laws

DISABILITIES

- Must provide reasonable accommodation to ensure effective communication and accessibility.
 - **Auxiliary aids**
 - **Modifications**
- Includes person with patient.
- May not charge patient.
- May not rely on person accompanying patient.

LIMITED ENGLISH

- Must provide meaningful access
 - **Interpreter**
 - **Translate key documents**
- Includes person with patient.
- May not charge patient.
- May not require patient to bring own interpreter.
- May not rely on person accompanying patient.

New 1557 Rule

By 7/5/24

- Provide meaningful access, e.g., interpreters and translators; auxiliary aids, facility accessibility, information technology, telehealth.
- Equal access on basis of sex.

By 11/2/24

- If have 15+ employees, designate 1557 Coordinator.
- Publish Notice of Nondiscrimination.

By 5/1/25

- Don't discriminate in decision support tools (e.g., AI).
- Train employees.

By 7/5/25

- Implement written policies and procedures.
- Publish Notice of Availability of Services. (45 CFR part 92)

New Rehab Act Rule

By 7/8/24

- Cannot discriminate based on disability, i.e., must provide meaningful access to persons with disability, e.g., facility accessibility, interpreters, auxiliary aids, service animals, etc.
- Newly purchased or leased medical diagnostic equipment (MDE) must meet accessibility standards.
- At least 1 or 10% of MDE must meet Standards for Accessible MDE.

By 5/11/26

- If have 15+ employees, must ensure web content and mobile apps comply with Web Content Accessibility Guidelines (WCAG) unless fundamental alteration or undue burden.

By 7/8/26

- At least one exam table and weight scale must meet Standards for Accessible MDE.

By 5/10/27.

- All recipients must ensure web content and mobile apps comply with WCAG.

(45 CFR part 92)

Provider Resources

<https://www.hhs.gov/civil-rights/for-providers/resources-covered-entities/index.html>

Civil Rights

Information for Individuals

Filing a Complaint

Information for Providers

[HHS](#) > [Civil Rights Home](#) > [For Providers](#) > Resources for Covered Entities

Civil Rights for Providers of Health Care and Human Services

Provider Obligations

Civil Rights Clearance for Medicare Provider Applicants

Compliance & Enforcement

Training

Resources for Covered Entities

Pursuant to decisions by various district courts regarding the 2024 Final Rule implementing Section 1557, entitled Nondiscrimination in Health

Programs and Activities, 89 Fed. Reg. 27,522 (May 6, 2024) ("2024 Final Rule"), provisions are stayed or enjoined as indicated below.

- Sample policies and procedures
 - *Effective communication*
 - *Grievance*
 - *Language access*
 - *Nondiscrimination policy*
 - *Reasonable modification*
- Sample notices
 - *Availability of language assistance and auxiliary aids*
 - *Notice of nondiscrimination*

Non-Competition Clauses



FTC Rule

- FTC rule: effective **9/4/24**
 - It is unfair method of competition to enter or enforce a post-termination non-compete against workers or senior executives.
 - Subject to limitations.
 - Employer must provide notice to workers otherwise covered by non-compete that it will not be enforced.

(16 CFR 910)

- On 7/23/24, federal court in Pennsylvania upheld the FTC rule. (*ATS Tree Services, LLC v. FTC*, No. 24-1743 (E.D. Pa. 2024))
- **On 8/20/24, federal court in Texas struck down the rule and enjoined the FTC from enforcing it.** (*Ryan LLC v. FTC*, CV 3:24-CV-00986E (N.D. Tex. 2024))

✓ *Stay tuned....*

Non-Competes in Idaho

- Non-competes for “key employees” or “key contractors” are enforceable if reasonable in duration, geographic area, and type of employment or line of business.
- Such a non-compete agreement is presumptively valid if:
 - It only restricts competition in the line of business conducted by the key employee while working for the employer,
 - It has a post-employment term of 18 months or less, and
 - It is restricted to the geographic areas in which the key employee provided services or had a significant presence or influence.
- A non-compete for more than 18 months post-employment requires additional consideration.
- If court finds a non-compete to be unreasonable, court shall limit or modify the agreement.

(IC 44-2701 et seq.)

Additional Resources



HTTPS://WWW.HOLLAND HART.COM/HEALTHCARE

Free content:

- Recorded webinars
- Client alerts
- White papers
- Other

The screenshot shows the Holland & Hart website's Healthcare section. At the top, the navigation bar includes the firm's logo, "People", "Capabilities", and a search bar with the text "Search by keyword". Below the navigation is a dark banner with the word "Healthcare" in large white letters. Underneath the banner is a secondary navigation bar with links for "Overview", "Expertise", "People", and "News and Insights". The main content area is titled "Areas of Focus" and features three circular icons with corresponding text: a computer monitor icon for "WEBINAR RECORDINGS" (with a sub-link to health law recordings), an open book icon for "PUBLICATIONS" (with a sub-link to health law publications), and a caduceus icon for "IDAHO PATIENT ACT TIMELINE". To the right of this section are two rectangular buttons labeled "Mergers and Acquisitions" and "Real Estate". Further down, there is a section for "Primary Contacts" which includes a portrait of Kim Stanger and a list of legal services such as mergers, acquisitions, and government investigations. The Holland & Hart logo is repeated at the bottom right of the page.

Mergers and Acquisitions

Real Estate



WEBINAR RECORDINGS

Click here to get access to our health law webinar recordings



PUBLICATIONS

Click here to get access to our health law publications and more on our Health Law blog



IDAHO PATIENT ACT TIMELINE

Legal advice.

and highly regulated. In an ultra-
l issues so they can focus on

back Statute, HIPAA,
g; mergers, acquisitions, and joint
; government investigations and
ax; employee benefits; and
our healthcare clients face that we

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Questions?



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