

LEGAL UPDATE FOR IDAHO PHYSICIANS



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Idaho Medical Ass'n

(10.25)

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Overview

- Parental Rights in Medical Decision-Making Act
- Medical Ethics Defense Act
- Medical Freedom Act
- Report and Repayment Rule
- Compliance Program Guidance
- HIPAA and Data Security Rules
 - Reproductive Rights Rule
 - Substance Use Disorder Rule
- Info Blocking Rule
- Telephone Consumer Protection Act (TCPA)



- Artificial Intelligence (AI)
- Telehealth Cliff
- Anti-Discrimination Rules
- Employment issues
 - Contractor v. employee
 - Noncompetes
- IPACT and Idaho liens



Idaho Parental Rights in Medical Decision-Making Act



~~Attempts to modify the law failed at legislature, e.g.,~~

- ~~• Modified emergency exception~~
- ~~• SANE exams~~
- ~~• Pregnant and parenting minors~~
- ~~• Newborn drug screens~~
- ~~• Idaho Crisis and Suicide Hotline~~

Parental Consent Law: Parents

- Must have consent from parent to provide healthcare services to an unemancipated minor.
 - “Health care service” = service for diagnosis, screening, examination, prevention, treatment, cure, care, or relief of any physical or mental health condition, injury, illness, defect, disease.
 - “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.
- Parents can sue for damages, costs and fees.

(IC 32-1015)

Exceptions

- Blanket consent
- Court order
- Emergency exists, and care necessary—
 - To prevent death or imminent, irreparable physical injury, or
 - To avoid serious danger to life or health and cannot locate or contact parent after reasonable efforts.

(IC 32-1015)

Parental Consent Law: Access to Info

- Must give parents access to minor's health information, i.e., info collected or recorded in any form or medium, and personal facts about events or relationships that relates to:
 - Past, present, or future physical, mental, or behavioral health or condition of individual or member of individual's family;
 - Provision of health care services; or
 - Payment for health care services.
- Parents may sue for damages, costs and fees.

(IC 32-1015)

Exceptions

- Court order
- Parent is subject of an investigation for crime and law enforcement requests that info not be release to parent.
- Probably federal exceptions, e.g.,
 - Substance use disorder records
 - Title X care
 - HIPAA limits, e.g., minor subject to abuse and determine not in best interest to disclose to parent.

Medical Ethics Defense Act



Medical Ethics Defense Act: Prohibition

- Health care providers cannot be required to participate in or pay for a medical procedure, treatment, or service that violates such health care provider's conscience.

(IC 54-1304(1))

- “Health care provider” = any person, institution or payer who is authorized to participate in any way in any medical procedure, treatment, or service, *e.g.*, doctors, nurses, aides, APPs, MAs, techs, social workers, employees of hospital, clinic, nursing home or pharmacy, *etc.*
- “Conscience” = means the ethical, moral, or religious beliefs or principles held by any health care provider.

(IC 54-1303)

Medical Ethics Defense Act: Discrimination

- Cannot discriminate against a health care provider for exercising right of conscience.
(IC 54-1304(6))
 - "Discriminate" = any adverse action taken against, or any threat of adverse action communicated to, any health care provider as a result of exercising conscience rights, including but not limited to any penalty or disciplinary or retaliatory action, whether executed or threatened.
 - "Discriminate" ≠ negotiation or purchase of, or the refusal to use or purchase, insurance or medical procedures, treatments, or services by an individual or nongovernmental entity, nor does it include good faith efforts to reasonably accommodate conscientious objections of a health care provider.

(IC 54-1303)

Medical Ethics Defense Act: Exceptions

- EMTALA
- Protections under the Act don't apply if
 - an employee is unable to perform any essential function,
 - the employer cannot transfer the employee to a suitable alternative position for which the employee is qualified, and
 - the employer is otherwise unable to reasonably accommodate the employee without imposing an undue hardship on the employer.

(IC 54-1304(11)-(12))

Medical Ethics Defense Act: Disclosure to Employer

- A health care professional shall communicate to the health care professional's employer a conscience-based objection when it occurs or as soon as reasonably possible to allow an employer to make necessary staffing adjustments without delaying the provision of health care services.
- Employers may require an employee to disclose the employee's conscience-based objections at the time of hiring, but such disclosure shall not limit the rights protected by this chapter.
- Employer may require employee to provide conscience-based objections in writing.

(IC 54-1304(3))

Medical Ethics Defense Act: Whistleblowers

- Cannot discriminate in any manner against a health care provider because the provider:
 - Alleges or discloses a violation of the Act to the provider’s employer, the Attorney General, a state agency, OCR, or other federal agency charged with protecting the right of conscience;
 - Testifies or assists in a proceeding concerning a violation of the Act;
 - **Discloses information the provider reasonably believes evidences:**
 - **A violation of any law, rule, or regulation;**
 - **A violation of any ethical guidelines for care; or**
 - **Gross mismanagement, abuse of authority, practices that may put patients at risk, or endangers public health or safety.**

**Broader than
“conscience”
objections**

(IC 54-1305)

Medical Ethics Defense Act: Immunity

- No health care provider shall be civilly, criminally, or administratively liable for exercising the right of conscience.
- No health care institution shall be civilly, criminally, or administratively liable for the exercise of the right of conscience by a health care professional employed, contracted, or granted admitting privileges by the health care institution.

(IC 54-1304(3))

Medical Ethics Defense Act: Free Speech

- DHW, Board of Medicine, and other agency regulating the practice of medical care cannot take action against a provider for engaging in speech, expression or association that is protected by the First Amendment.

(IC 54-1306)

- **Applies to government entities.**

Medical Ethics Defense Act: Cause of Action

- Provider may sue for a violation of the Act and recover:
 - Injunctive relief (e.g., reinstatement, board certification, licensure, etc.);
 - Actual damages for injuries suffered; and
 - Reasonable costs and attorneys' fees.

(IC 54-1307)

- **Beware potential whistleblower claims in addition to conscience claims.**

Medical Ethics Defense Act: Religious Healthcare Provider

- Nothing in the Act shall impede the right of a religious health care provider to make employment, staffing, contracting, administrative, and admitting privilege decisions consistent with such health care provider's religious beliefs if such health care provider holds itself out to the public as religious and has internal operating policies or procedures that implement its religious purpose or mission.

(IC 54-1304(8))

Other Conscience Objections

- A provider who for ethical or professional reasons is unwilling to conform to the desires of the patient or the patient's surrogate decision-maker may withdraw from rendering care if:
 - they first make a good faith effort to assist the patient in obtaining the services of another provider who is willing to provide the care requested by the patient; and
 - Must still provide life-sustaining or comfort care if requested by patient or patient's surrogate unless it would be nonbeneficial care.

(IC 39-4513(2) and -4514(3))

<https://www.hhs.gov/conscience/your-protections-against-discrimination-based-on-conscience-and-religion/index.html>

Conscience and Religious Freedom

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Your Protections Against Discrimination Based on Conscience and Religion

- Remember other federal conscience objections, e.g.,
- 45 CFR part 88
 - Affordable Care Act § 1553
 - Church Amendments (abortion and sterilization)
 - Coates-Snowe Amendment (abortion training)
 - Others

Idaho Medical Freedom Act



- Rebranded and revised the Coronavirus Stop Act, IC 73-501 et seq.

Idaho Medical Freedom Act

- Generally, limits businesses and government entities from requiring “medical interventions” subject to limited exceptions.

(IC 73-503)

- "Medical intervention" = a medical procedure, treatment, device, drug, injection, medication, or medical action taken to diagnose, prevent, or cure a disease or alter the health or biological function of a person.

(IC 73-502)

- Appears to include vaccines, mask requirements, or other medical interventions introduced during the COVID-19 pandemic.

(See IC 73-503(9))

Idaho Medical Freedom Act: Prohibitions

- Businesses shall not refuse to provide any service, product, admission to a venue or transport to a person because that person has not received or used a medical intervention.
- Businesses shall not require a medical intervention as a term of employment unless:
 - The intervention is required by federal law ; or
 - The business receives Medicare or Medicaid funding.
- Government entities cannot require any person to receive or use a medical intervention as a condition of employment, benefits, or services unless:
 - The intervention is required by federal law; or
 - In the case of employment, the business receives Medicare or Medicaid funding.

(IC 73-503)

Idaho Medical Freedom Act: Prohibitions

- Businesses and government entities shall not provide different wages or benefits based on whether the employee received a medical intervention.
- Schools shall not mandate medical interventions for any person to attend school or be employed.
- State agencies shall not adopt any policy, administrative rule, or regulation that conflicts with the Act.
 - “State agency” is not defined.
- In a disease outbreak, cannot exclude a healthy person due to the person’s vaccination status.
 - “Healthy person” not defined.
 - “Exclude” not defined.

(IC 73-503)

Idaho Medical Freedom Act: Exemptions

- Exemptions: personal protective equipment, items, or clothing required by employers based on accepted industry standards or federal law.
- Exemptions do not apply to or include vaccines, mask requirements or other medical interventions introduced during the COVID-19 pandemic.

(IC 73-503(9))

Idaho Medical Freedom Act: Enforcement

- Attorney General or prosecuting attorney may sue for injunctive relief and recover attorneys' fees and costs.

(IC 73-503(9))

Employee v. Contractor



Employee v. Contractor

Some potential ramifications

- Federal and state wage claims.
- IRS tax liability
- Workers compensation
- Liability for person's misconduct
- Stark, Anti-Kickback and EKRA compliance
 - Rules differ for employee v. contractor
- HIPAA obligations
- Other?

Ensure personnel are properly classified as employees v. contractors

- State common law standards
- DOL standards
- IRS standards
- HIPAA “common law of agency”
- Other?

Employee v. Independent Contractor

DEPT OF LABOR

- Effective **3/11/24**, new rules for evaluating employees v. contractors for purposes of FLSA. (29 CFR part 795; 89 FR 1638)

The screenshot shows the U.S. Department of Labor website. The header includes the U.S. Department of Labor logo and navigation links for 'ABOUT US', 'CONTACT US', and 'ESPAÑOL'. A search bar is also present. Below the header, there is a navigation menu with categories: 'TOPICS', 'WORKER RIGHTS', 'FOR EMPLOYERS', 'RESOURCES', 'INTERPRETIVE GUIDANCE', 'STATE LAWS', and 'NEWS RELEASES'. The main content area displays the title 'Final Rule: Employee or Independent Contractor Classification Under the Fair Labor Standards Act, RIN 1235-AA43'. Below the title, there is a brief summary of the rule, stating that it is effective March 11, 2024, and revises the Department's guidance on how to analyze who is an employee or independent contractor under the Fair Labor Standards Act (FLSA).

IRS

- Existing rules for evaluating employees v. contractors for purposes of taxes.

(<https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>)

The screenshot shows the IRS website. The header includes the IRS logo and navigation links for 'Help', 'News', 'English', 'Charities & Nonprofits', and 'Tax Pros'. Below the header, there is a navigation menu with categories: 'File', 'Pay', 'Refunds', 'Credits & Deductions', and 'Forms & Instructions'. A search bar is also present. The main content area displays the title 'Independent contractor (self-employed) or employee?'. Below the title, there is a brief summary of the page, stating that it is critical that business owners correctly determine whether the individuals providing services are employees or independent contractors. The page also includes a 'Related' section with a link to 'Businesses with employees'.

Are You An Employee Or An Independent Contractor?



Indicators of an Employee

- Working for someone else's business
- Generally, can only earn more by working additional hours
- Typically uses the employer's materials, tools and equipment
- Typically works for one employer or may be prohibited from working for others
- Continuing or indefinite relationship with the employer
- Employer decides how and when the work will be performed
- Employer assigns the work to be performed

-OR-

Indicators of an Independent Contractor

- In business for themselves
- Can increase profit through business decisions
- Typically provides their own materials, tools and equipment and uses them to extend market reach
- Often works with multiple clients
- Temporary relationship until project completed
- Decides how and when they will perform the work
- Decides what work or projects they will take on



These are general concepts. All relevant facts about the work relationship should be considered as a whole, and the existence or absence of any particular fact does not require a particular outcome.

Non-Competition Clauses



Noncompetition Clauses

- ~~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 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))

FTC Warning Letter



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For Release

FTC Chairman Ferguson Issues Noncompete Warning Letters to Healthcare Employers and Staffing Companies

September 10, 2025 | [f](#) [X](#) [in](#)

Tags: [Competition](#) | [Bureau of Competition](#) | [Nonmerger](#) | [Health Care](#) | [Noncompete](#)

[Warning Letters](#)

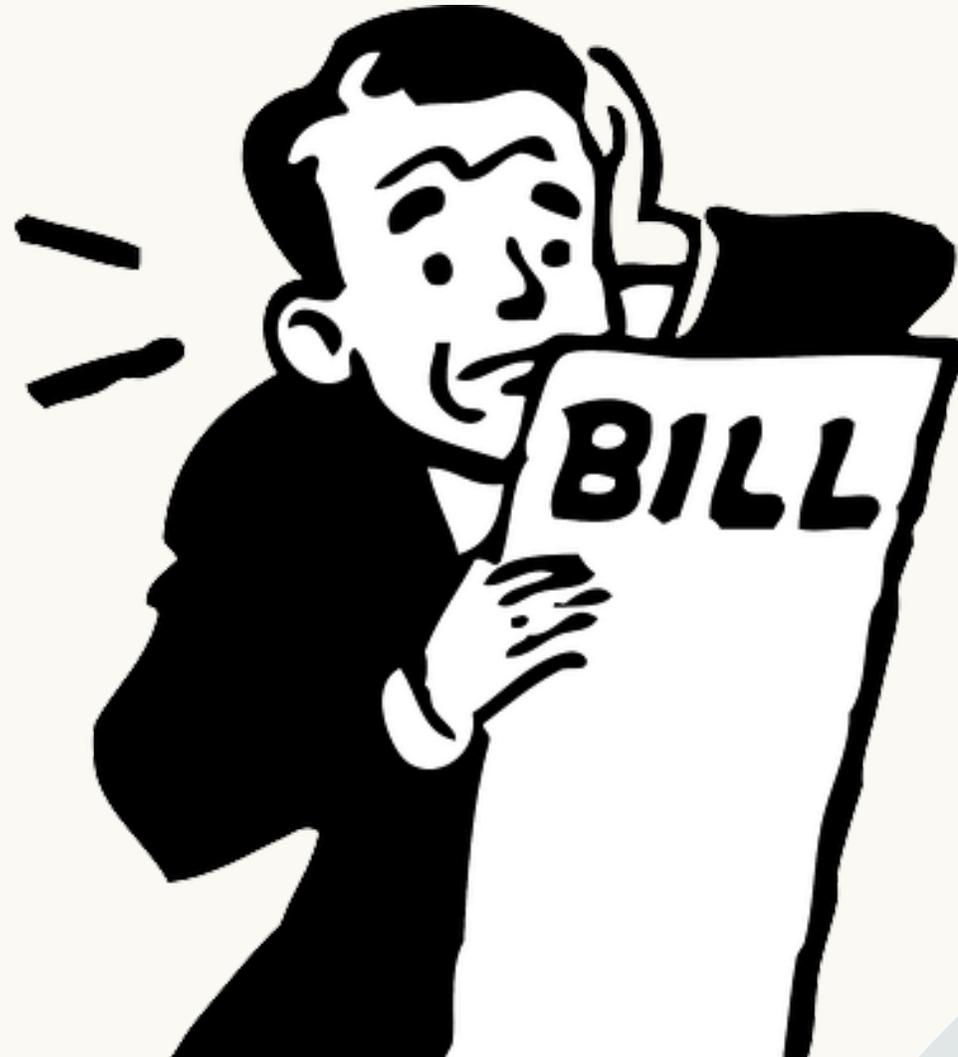
“The FTC is focusing resources on enforcing Section 5 of the FTC Act against unlawful noncompetes, particularly in the healthcare sector. Accordingly, I encourage you to conduct a comprehensive review of your employment agreements—including any noncompetes or other restrictive covenants—to ensure that they comply with applicable laws and are appropriately tailored to the circumstances. If your company is currently using noncompetes that are unfair or anticompetitive under the FTC Act, I strongly encourage you to discontinue them immediately and to notify relevant employees of the discontinuance.”

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:
 - Is supported by consideration.
 - Only restricts competition in the line of business conducted by the key employee while working for the employer,
 - Has a post-employment term of 18 months or less, and
 - Is restricted to the geographic areas in which the key employee provided services or had a significant presence or influence.
- If court finds a non-compete to be unreasonable, court shall limit or modify the agreement.

(IC 44-2701 *et seq.*; see also *Blaskiewicz v. Spine Inst.*, 171 Idaho 201 (2022))

Idaho Patient Act and Liens



Idaho Patient Act and Liens: 2024 Amendments

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—
 - Dring 90-day period after service, or
 - 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)

Idaho Patient Act and Liens

- Idaho Patient Act applies to medical liens.
 - Must submit charges to third-party payer.

(DeKlotz v. Montalbano, No.51326-23 (Idaho 8/19/25))

- If patient has a third-party payer, lien may only be filed “after all contracted billing adjustments for the services as ordinarily used with that third-party payer are made...”
 - Apparently prohibits using higher, non-contracted rates in lien situations.

(IC 45-702(2)(b))

Fraud and Abuse



- False Claims Act (FCA)
- Anti-Kickback Statute (AKS)
- Eliminating Kickbacks in Recovery Act (EKRA)
- Ethics in Patient Referrals Act (Stark)
- Civil Monetary Penalties Law (CMPL)
 - Inducements to program beneficiaries
 - Excluded Entities
- Idaho Fraud and Abuse Laws

False Claims Act

- Prohibits knowingly and improperly avoiding an obligation to pay or transmit money or property to the govt.

(31 USC 3729(a)(1)(G))

- “Obligation” = means a duty to repay the govt arising from statute or contract or “retention of any overpayment.”

(31 USC 3729(b)(3))

- Statute of limitations:
 - 6 years from false claim or failure to pay, or
 - 3 years from the time the govt knew about it, but no more than 10 years from false claim.

(31 USC 3731)

Penalties

- Up to \$24,947* per violation.
 - *Each overpayment constitutes a separate violation.*
- 3x damages incurred by govt.
- Costs of litigation.
- *Qui tam* lawsuit.

(31 USC 3729; 45 CFR 102.3*)

CMS Report and Repay Rule

In December 2024, CMS modified the report and repay rule:

- A person who has received an overpayment must report and return the overpayment by the later of either:
 - The date any corresponding cost report is due, if applicable, or
 - The date which is 60 days after the date on which the overpayment was “identified”, i.e., the person
 - has actual knowledge of the info; or
 - acts in deliberate ignorance of the truth or falsity of the information.
- 60-day reporting period suspended for up to 180 days during timely, good faith investigation.

(42 CFR 401.305; see 89 FR 98553 (12/9/24))

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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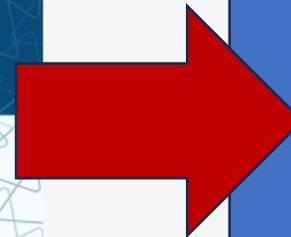
General Compliance Program Guidance

The General Compliance Program Guidance (GCPG) is a reference guide for the health care compliance community and other health care stakeholders. The GCPG provides information about relevant Federal laws, compliance program infrastructure, OIG resources, and other information useful to understanding health care compliance.

The GCPG is voluntary guidance that discusses general compliance risks and compliance programs. The GCPG is not binding on any individual or entity. Of note, OIG uses the word “should” in the GCPG to present voluntary, nonbinding 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

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



According to
OIG website,
industry-specific
guides are
expected in
2025 for:

- Hospital
- Clinical Labs

Compliance Guidance

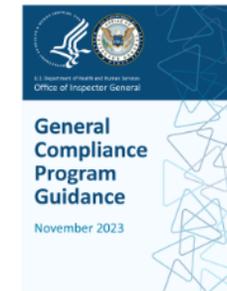
Below are OIG's existing CPGs and supplemental CPGs, available for use as an ongoing resource to help identify risk areas in particular industry segments as we develop new ICPGs. Existing CPGs will be archived but still available on our website when new ICPGs are issued.

The CPGs are listed below.

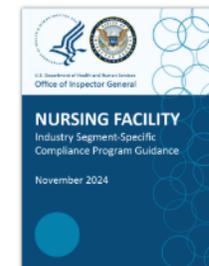
Industry Segment-Specific Compliance Program Guidance (ICPG)

- GENERAL COMPLIANCE PROGRAM GUIDANCE
- Nursing Facility
- Medicare Advantage
- Hospital
- Clinical Laboratory
- Pharmaceutical Manufacturer
- Hospice

GCPG



ICPGs



HIPAA and Patient Privacy



HIPAA ~~Reproductive Health Rule~~

- ~~• If reproductive healthcare is legal, covered entities may not disclose reproductive healthcare PHI for purposes of criminal, civil or administrative liability or investigation.
(45 CFR 502(a)(5))~~
- ~~• Must obtain attestation from persons seeking reproductive healthcare PHI.
(45 CFR 509)~~

- Texas federal district court enjoined enforcement. (*Purl v. HHS*, No. 2:24-cv-00228-Z (N.D. Tex., June 18, 2025)).
- Trump administration did not challenge court decision.

HIPAA

Disclosures per Administrative Requests

- HIPAA allows disclosures for certain law enforcement requests, including but not limited to:
 - “(C) An administrative request for which response is required by law, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:
 - “(1) The information sought is relevant and material to a legitimate law enforcement inquiry;
 - “(2) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
 - “(3) De-identified information could not reasonably be used.”

(45 CFR 164.512(f)(1)(C))

- ✓ *Clarifies that “administrative request” exception only applies if the response is required by law, not just because the agent requests the info.*

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: 42 CFR part 2



New 42 CFR part 2:

- Effective 4/16/24.
 - **Enforced 2/16/26.**
- (89 FR 12472)

- **SUD Programs:**

- Generally, may not disclose SUD records without consent.
 - May obtain single consent for treatment, payment and healthcare operations.
- Consent forms must satisfy requirements.
- If disclose SUD records, send copy of consent + notice of Part 2 duties.
- Execute agreements with qualified service organizations.
- Secure SUD records.
- Provide notice of patient rights.
- Update and provide notice of privacy practices.

- **Recipients of SUD records:**

- Maintain confidentiality of SUD info received.
- Do not redisclose unless allowed by Part 2.
- Secure SUD records.

(42 CFR part 2)

42 CFR Part 2 Federally Assisted “SUD Program”

| Individual or Entity; <u>Not</u> General Medical Facility | General Medical Facility | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | Identified Unit | Medical Personnel or Staff |
| <ol style="list-style-type: none"> 1. Holds itself out as providing SUD diagnosis, treatment, or referral for treatment, <i>and</i> 2. Provides SUD diagnosis, treatment, or referral for treatment | <ol style="list-style-type: none"> 1. Holds itself out as providing SUD diagnosis, treatment, or referral for treatment, <i>and</i> 2. Provides SUD diagnosis, treatment, or referral for treatment | <ol style="list-style-type: none"> 1. Primary function is to provide SUD diagnosis, treatment or referral for treatment, <i>and</i> 2. Identified as such providers |

Beware: 42 CFR part 2 also applies to most recipients of SUD records

Substance Use Disorder Records: Enforcement



- HIPAA penalties and enforcement applies to Part 2:
 - Criminal penalties of up to \$250,000 and 10 years in prison.
 - Civil penalties of \$141 to \$2,134,831 per violation.
 - Must self-report breaches.
 - On 8/27/25, Sec. Kennedy delegated enforcement of Part 2 to OCR.
 - Complaints and investigations.
 - Settlements and agreements.
 - Civil penalties.
- (90 FR 41833)
- May signal greater enforcement.

HIPAA and SUD Rules: Notice of Privacy Practices

- Reproductive Health Rule: modified NPP requirements to accommodate SUD Rule changes.
- SUD Rule: Covered entities creating or maintaining SUD records subject to Part 2 must provide the notice to the patient as required by 42 CFR 2.22.
 - Uses and disclosures.
 - Patient rights.
 - Covered entities' duties.
- Other covered entities must update their NPP.
(45 CFR 164.520(a)(2))
- Must comply by **2/16/26**.

- **Check applicable regs when drafting updated NPP.**
- **Watch for new NPP requirements when final HIPAA rules are published.**
- **OCR plans to publish model NPP.**

NPP v. Website Privacy Terms

HIPAA NOTICE OF PRIVACY PRACTICES

- Usually prepared by privacy officer or compliance.
- Must contain required terms.
- Describes permissible uses and disclosures.
- Prohibits others.



WEBSITE PRIVACY TERMS

- Often prepared by marketing, website developer or IT without considering HIPAA implications.
- May purportedly allow uses or disclosures that are not permitted by HIPAA.

HIPAA and Data Security



Recent HIPAA Resolutions

<https://www.hhs.gov/hipaa/newsroom/index.html>

Security Rule breaches make up majority of HIPAA settlements and have highest dollar values

| Date | Conduct | Resolution |
|----------|-----------------------------------------------------------------------------------------|-------------|
| 4/17/25 | Hospital hit with ransomware attack + improper access. | \$25,000 |
| 4/4/25 | Radiology group data subject to unauthorized access. | \$350,000 |
| 3/21/25 | Business associate's PHI exposed to webcrawlers on internet. | \$227,816 |
| 2/20/25 | Eyeglasses company hacked. | \$1,500,000 |
| 1/15/25 | Neurosurgery group hit with ransomware attack. | \$10,000 |
| 1/14/25 | Medical supply company data breached following phishing scheme. | \$3,000,000 |
| 1/8/25 | Business associate's PHI deleted by unauthorized third party. | \$337,750 |
| 1/7/25 | Business associate hit with ransomware attack. | \$80,000 |
| 12/10/24 | Health care clearinghouse data available through Google search. | \$250,000 |
| 10/31/24 | Ambulance services hit with ransomware attack. | \$90,000 |
| 10/31/24 | Plastic surgeons hit with ransomware attack. | \$500,000 |
| 10/17/24 | Dentist office failed to provide timely access to records. | \$70,000 |
| 10/3/24 | Hospital hit with ransomware attack. | \$240,000 |
| 9/26/24 | Eye and Skin Center hit with ransomware attack | \$250,000 |
| 8/1/24 | EMS provider failed to provide timely access to records. | \$115,200 |
| 7/1/24 | Health system hit with ransomware attack. | \$950,000 |
| 4/1/24 | Essex Residential Care failed to provide personal rep timely access to records. | \$100,000 |
| 3/29/24 | Phoenix Healthcare failed to provide personal representatives timely access to records. | \$35,000 |

https://ocrportal.hhs.gov/ocr/breach/breach_report.jsf

Of the 749 cases currently under investigation by the OCR, 95%+ are due to “Hacking/IT Incident”

Cases Currently Under Investigation

This page lists all breaches reported within the last 24 months that are currently under investigation by the Office for Civil Rights.

[Show Advanced Options](#)

| Breach Report Results | | | | | | | |
|-----------------------|----------------------------------------------------------------------------------------------------------|-------|---------------------|----------------------|------------------------|--------------------------------|----------------------------------|
| Expand All | Name of Covered Entity | State | Covered Entity Type | Individuals Affected | Breach Submission Date | Type of Breach | Location of Breached Information |
| > | City of St. Joseph, MO Health Department | MO | Healthcare Provider | 11538 | 09/22/2025 | Hacking/IT Incident | Network Server |
| > | UNC Hospitals | NC | Healthcare Provider | 6377 | 09/19/2025 | Hacking/IT Incident | Email |
| > | People Encouraging People | MD | Healthcare Provider | 13083 | 09/19/2025 | Hacking/IT Incident | Network Server |
| > | The University of North Carolina at Chapel Hill - School of Medicine | NC | Healthcare Provider | 799 | 09/19/2025 | Hacking/IT Incident | Email |
| > | Health & Palliative Services of the Treasure Coast, Inc d/b/a Treasure Coast Hospice (“Treasure Health”) | FL | Healthcare Provider | 13234 | 09/19/2025 | Unauthorized Access/Disclosure | Email |
| > | Sturgis Hospital | MI | Health Plan | 77771 | 09/18/2025 | Hacking/IT Incident | Network Server |
| > | Sturgis Hospital | MI | Healthcare Provider | 77771 | 09/18/2025 | Hacking/IT Incident | Network Server |

Costs of Data Breach

Plaintiff's lawyers
fishing for cases

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SEARCH



Average cost of data breach in healthcare industry: \$7.42 million

- Detection and investigation
- System and infrastructure recovery
- Lost revenue
- Regulatory penalties
- Legal fees
- Damage control, e.g., notification, credit monitoring, communication, etc.
- Settlements
- Payments to bad actors

POSTED ON JUNE 13, 2023 CONSUMER PRIVACY & DATA BREACHES

Idaho Falls Community Hospital and Mountain View Hospital Data Breach Investigation





U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office for Civil Rights

April 17, 2025

HHS Office for Civil Rights Settles HIPAA Ransomware Cybersecurity Investigation with Public Hospital

Settlement marks OCR's 11th ransomware enforcement action and 7th enforcement action in OCR's Risk Analysis Initiative

“OCR recommends that health care providers, health plans, ... and business associates that are covered by HIPAA take the following steps to mitigate or prevent cyber-threats:

- Identify where ePHI is located in the organization, including how ePHI enters, flows through, and leaves the organization’s information systems.
- Integrate risk analysis and risk management into the organization’s business processes.
- Ensure that audit controls are in place to record and examine information system activity.
- Implement regular reviews of information system activity.
- Utilize mechanisms to authenticate information to ensure only authorized users are accessing ePHI.
- Encrypt ePHI in transit and at rest to guard against unauthorized access to ePHI when appropriate.
- Incorporate lessons learned from incidents into the organization’s overall security management process.
- Provide workforce members with regular HIPAA training that is specific to the organization and to the workforce members’ respective job duties.”

<https://www.healthit.gov/topic/privacy-security-and-hipaa/security-risk-assessment-tool>

In September 2025, HHS published updated Security Assessment Tool



TOPICS ▾ BLOG NEWS ▾ DATA

HealthIT.gov > Topics > Privacy, Security, and HIPAA > Security Risk Assessment Tool

Privacy, Security, and HIPAA ▾

Educational Videos

Security Risk Assessment Tool ▾

Security Risk Assessment Videos

Top 10 Myths of Security Risk Analysis

HIPAA Basics >

Privacy & Security Resources & Tools >

Model Privacy Notice (MPN)

How APIs in Health Care can Support Access to Health Information: Learning Module

Patient Consent and Interoperability

Security Risk Assessment Tool

The Health Insurance Portability and Accountability Act (HIPAA) Security Rule requires that covered entities and its business associates conduct a risk assessment of their healthcare organization. A risk assessment helps your organization ensure it is compliant with HIPAA's **administrative, physical, and technical safeguards**. A risk assessment also helps reveal areas where your organization's protected health information (PHI) could be at risk. To learn more about the assessment process and how it benefits your organization, visit the [Office for Civil Rights' official guidance](#).

What is the Security Risk Assessment Tool (SRA Tool)?

The Office of the National Coordinator for Health Information Technology (ONC), in collaboration with the HHS Office for Civil Rights (OCR), developed a downloadable Security Risk Assessment (SRA) Tool to help guide you through the process. The tool is designed to help healthcare providers conduct a security risk assessment as required by the HIPAA Security Rule. The target audience of this tool is medium and small providers; thus, use of this tool may not be appropriate for larger organizations.

SRA Tool for Windows

The SRA Tool is a desktop application that walks users through the security risk assessment process using a simple, wizard-based approach. Users are guided through multiple-choice

Need Help?

Please leave any questions, comments, or feedback about the SRA Tool using our [Health IT Feedback Form](#). This includes any trouble in using the tool or problems/bugs with the application itself. Also, please feel free to leave any suggestions on how we could improve the tool in the future.

You may also leave a message with our Help Desk by contacting [734-302-4717](tel:734-302-4717) or sending email to SRAHelpDesk@Altarum.org.

[Submit Questions Or Feedback](#)

SRA Webinars



<https://www.hhs.gov/hipaa/for-professionals/security/guidance/guidance-risk-analysis/index.html>

Health Information Privacy



HIPAA for Individuals

Filing a Complaint

HIPAA for Professionals

Newsroom

[HHS](#) > [HIPAA Home](#) > [For Professionals](#) > [The Security Rule](#) > [Security Rule Guidance Material](#) > Guidance on Risk Analysis

HIPAA for Professionals

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Guidance on Risk Analysis

The Office of the National Coordinator for Health Information Technology (ONC), in collaboration with the HHS Office for Civil Rights (OCR), developed the [HIPAA Security Risk Assessment \(SRA\) Tool](#). The tool's features make it useful in assisting small and medium-sized health care practices and business associates in complying with the Health Insurance Portability and Accountability Act (HIPAA) Security Rule.

HIPAA Proposed Security Rule Changes



Proposed rule published 1/6/25.

- Significantly revamps and strengthens cybersecurity requirements.
 - Administrative safeguards
 - Physical safeguards
 - Technical safeguards.
- All standards are required; no addressable standards.
- On annual basis, covered entities and business associates must review and update inventory, risk analysis, plans, policies, etc.
- In addition to usual BAA requirements, business associates must report activation of contingency plan.

(90 FR 901).

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>)

- [Apitor](#) (October 1, 2025)
- [Iconic Hearts Holdings, Inc., U.S. v.](#) (September 29, 2025)
- [Disney](#) (September 5, 2025)
- [Pornhub/Mindgeek/Aylo](#) (September 3, 2025)
- [Support King, LLC \(SpyFone.com\), In the Matter of](#) (July 18, 2025)
- [Roca Labs, Inc.](#) (July 9, 2025)
- [GoDaddy Inc., et al., In the Matter of](#) (May 21, 2025)
- [Facebook, Inc., In the Matter of](#) (May 2, 2025)
- [Avast](#) (February 24, 2025)
- [Aqua Finance](#) (February 19, 2025)
- [Cognosphere, LLC, U.S. v.](#) (January 17, 2025)
- [General Motors LLC., et al., In the Matter of](#) (January 16, 2025)
- [Snap, Inc., U.S. v.](#) (January 16, 2025)
- [Mobilewalla, Inc., In the Matter of](#) (January 14, 2025)
- [Intellivision, In the Matter of](#) (January 13, 2025)
- [Vivint Smart Home, Inc.](#) (December 5, 2024)
- [Gravy Analytics, Inc., In the Matter of](#) (December 3, 2024)
- [Marriott International, Inc. and Starwood Hotels & Resorts Worldwide, LLC, In the Matter of](#) (October 9, 2024)
- [1Health.io/Vitagene, In the Matter of](#) (September 9, 2024)
- [Verkada Inc., U.S. v.](#) (August 30, 2024)

Information Blocking Rule



Ino Blocking Rule: Increased Enforcement?



U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES

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“HHS will take an active enforcement stance against health care entities that restrict patients’ engagement in their care by blocking the access, exchange, and use of electronic health information.”



FOR IMMEDIATE RELEASE
September 3, 2025

Contact: HHS Press Office

202-690-6343

[Submit a Request for Comment](#)

HHS Announces Crackdown on Health Data Blocking

WASHINGTON--Today, the U.S. Department of Health and Human Services (HHS) announced that Secretary Robert F. Kennedy, Jr. has directed HHS to increase resources dedicated to curbing the harmful practice of information blocking. HHS will take an active enforcement stance against health care entities that restrict patients’ engagement in their care by blocking the access, exchange, and use of electronic health information.

The 21st Century Cures Act of 2016 authorized the Office of the Assistant Secretary for Technology Policy/Office of the National Coordinator for Health IT (ASTP/ONC) and HHS Office of Inspector General (OIG) to take enforcement actions to hold those who block patient information accountable and to prevent future violations. As a result, ASTP/ONC, the principal federal entity charged with coordination of nationwide efforts to implement and use the most advanced health information

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 unless
 - Action is required by law, or
 - Exception applies, and
- Provider: knows practice is unreasonable and likely to interfere, or
- 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

- Hospitals: loss of status as meaningful user of EHR
- Providers: loss of status as meaningful user under MIPS
- ACOs: ineligible to participate.
(42 CFR 1003.700-.720)
- Loss of federal payments.

<https://www.healthit.gov/topic/information-blocking>

 Official Website of the Assistant Secretary for Technology Policy/Office of the National Coordinator for Health IT



[TOPICS](#) ▾ [BLOG](#) [NEWS](#) ▾ [DATA](#) [ABOUT ASTP](#) ▾



[HealthIT.gov](#) > [Topics](#) > [Information Blocking](#)

Information Blocking

Most clinical information is digitized, accessible, and shareable thanks to several technology and policy advances making interoperable, electronic health record systems widely available. In 2016, the 21st Century Cures Act (Cures Act) made sharing electronic health information the expected norm in health care and authorized the Secretary of Health and Human Services (HHS) to identify "reasonable and necessary activities that do not constitute information blocking." Information blocking exceptions are identified in 45 CFR Part 171. [Learn more](#) about laws, regulations, and policies related to information blocking.



Telephone Consumer Protection Act (TCPA)



Telephone Consumer Protection Act (TCPA)

Generally prohibits:

- Using automatic phone dialing system (“robo-call”) to call a hospital emergency line or guest room, cell phone, or other line if recipient is charged for call.
- Robo-calling or using pre-recorded voice to deliver message unless:
 - Emergency,
 - Have prior written consent,
 - Have consent if made by tax-exempt nonprofit organization, or
 - “health care” message by HIPAA-covered entity or business associate.

(47 USC 227; 47 CFR 64.1200)

Penalties

- Recipient of more than 1 call within prior 12-month period may sue for:
 - Actual damages or \$500 per call, whichever is greater.
- State AGs may sue.

(47 USC 227)

TCPA: Healthcare Message Exception

- Exception only applies to three types of calls by a healthcare provider or its business associates without a patient's prior authorization:
 - calls to describe a health-related product or service that is provided by the covered entity making the communication;
 - calls for treatment of the individual (e.g., appointment reminder; prescription refill reminders; etc.); and
 - calls for case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual.
- **For healthcare calls, must limit to no more than 1 call per day up to 3 calls per week.**
(47 CFR 64.1200; <https://www.ftc.gov/business-guidance/resources/complying-telemarketing-sales-rule#healthcare>)

Telephone Consumer Protection Act (TCPA)

Effective **4/11/26** (delayed from 4/11/25):

- Consumers may revoke consent to robocalls and robotexts “in any reasonable manner”, including:
 - Through text message, email, phone calls, conversation, social media, etc.
 - Using words such as stop, quit, end, revoke, opt out, cancel, or unsubscribe.
- Callers must honor do-not-call and revocation requests “as soon as practicable”
 - No later than 10 business days after the request.
- Text-senders may send one text message in response to a revocation request confirming or clarifying the scope of the request within five minutes.

(47 CFR 64.1200; <https://public-inspection.federalregister.gov/2024-23605.pdf>; 89 FR 15756)

Telehealth



Telehealth: Medicare Coverage

- Medicare will no longer pay for certain telehealth services after **9/30/25**, e.g.,
 - Most telehealth services delivered in patient's home.
 - Hospital at home program
 - Audio-only services for non-behavioral health.
 - Physical therapists and occupational therapist telehealth services.
 - Services outside rural area.
- Some services are set to expire **12/31/25**, e.g.,
 - Entities eligible to serve as distant site providers.
 - Prescription of controlled substances

(See <https://www.cms.gov/medicare/coverage/telehealth> and <https://www.cms.gov/files/document/mln901705-telehealth-services.pdf>)

- **Check your telehealth services and billing for services.**
- **States and private payers may have other requirements.**



Telehealth: Risk Areas

Beware—

- Laws governing provision of telehealth, e.g.,
 - Idaho Virtual Care Access Act, IC 54-5701 et seq.
 - Law of state in which patient is located.
- Licensure and scope of practice rules.
- Prescribing.
- Corporate practice of medicine.
- Billing.
- HIPAA and patient privacy.
- Malpractice insurance coverage.
- Others?

Non-Discrimination Rules

They are still in effect...



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.**
(45 CFR part 92; 89 FR 37522)
- **Rehabilitation Act § 504**
 - **HHS issued new rules on 5/9/24.**
(45 CFR part 84; 89 FR 40066)
- State discrimination laws

RISKS

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

Anti-Discrimination Laws

DISABILITIES

- Must provide reasonable accommodation to ensure effective communication and accessibility.
 - **Accessibility**
 - **Auxiliary aids**
 - **Modifications to policies or processes**
- 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

- Recipients of federal financial assistance (HHS money) may not discriminate on the basis of race, color, national origin, sex*, age and disability.

(45 CFR part 92)

- Federal court stayed rules re gender identity and sexual orientation.

(*Tennessee v. Bercerra*, No. 6:24-cv-211-JDK (E.D. Tex 2024))

Specific requirements re:

- Coordinator and grievance procedure
- Policies and procedures
- Training employees
- Notice of nondiscrimination
- Notice of availability of language assistance
- Persons with limited English proficiency
- Persons with disabilities
- Equal access on the basis of sex*
- Facility accessibility
- Info and communication technology access
- Patient care decision support tools

New Rehab Act Rule

- Recipients of federal financial assistance (HHS money) may not discriminate on the basis of disability.
- “Disability” construed very broadly.
(45 CFR part 92)

Specific requirements re:

- Notice and signage requirements.
- Communication (e.g., auxiliary aids, interpreters)
- Facility accessibility
- Service animals
- **Medical treatment (e.g., devaluing worth of disabled persons)**
- **Mobility devices**
- **Medical diagnostic equipment**
- **Kiosks**
- **Web and mobile apps**

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 10% but no less than one (1) 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)

Artificial Intelligence (AI)



Artificial Intelligence in Healthcare

Rapidly developing area of the law; watch for federal and state regulation.

Common uses in healthcare

- Imaging
- Clinical decision support tools
- Research
- Virtual assistant for transcription, administration, or practice management
- Others?

Concerns

- Bias or discrimination
- “Garbage in, garbage out” → incorrect results
- Lack of transparency in algorithms, i.e., “black box” results
- Data privacy
- Others?

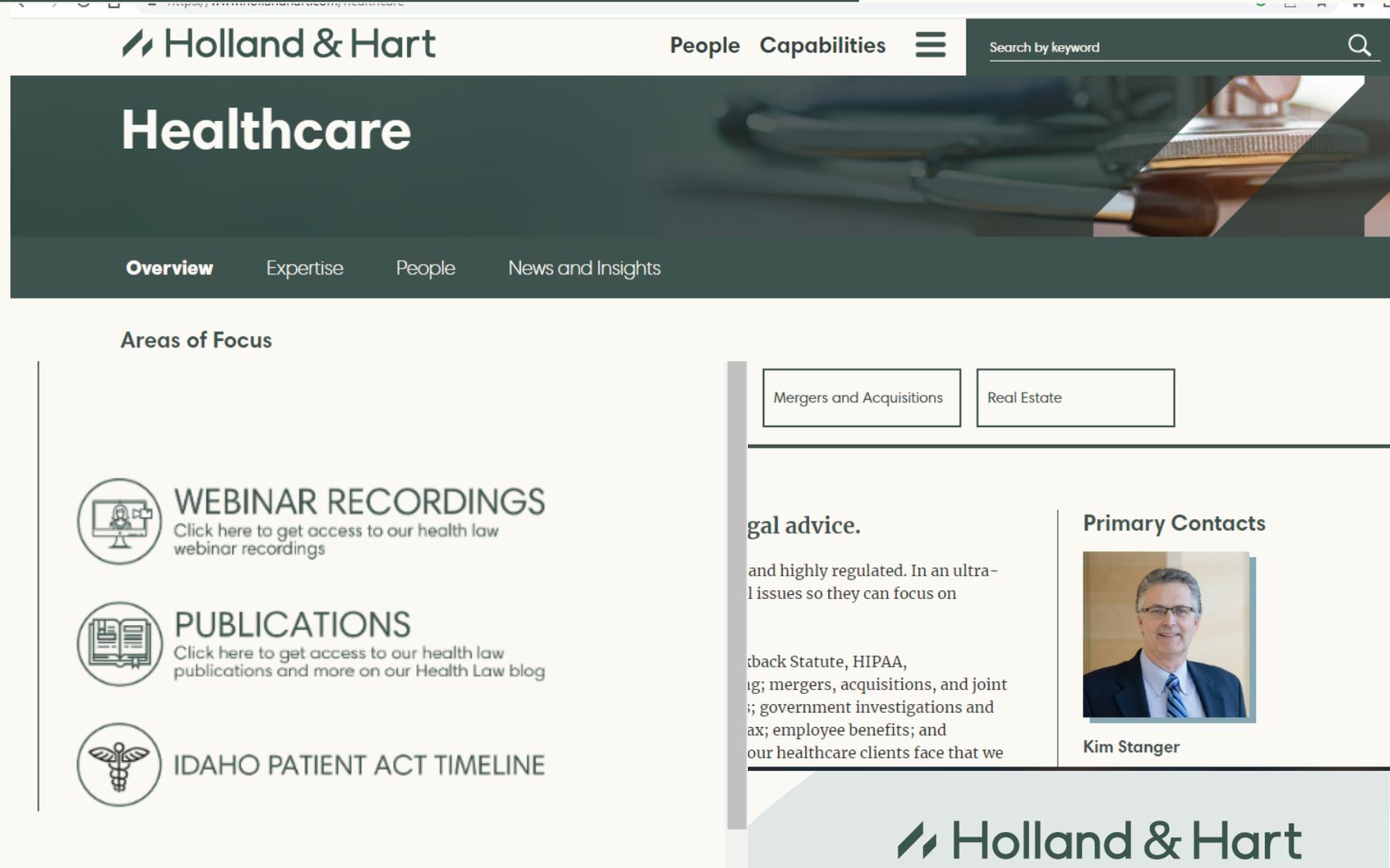
Additional Resources



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. The header includes the firm's logo, navigation links for 'People' and 'Capabilities', and a search bar. The main heading is 'Healthcare', with sub-navigation for 'Overview', 'Expertise', 'People', and 'News and Insights'. The 'Areas of Focus' section lists 'Mergers and Acquisitions' and 'Real Estate'. Below this, three key content areas are highlighted: 'WEBINAR RECORDINGS' (with a computer icon), 'PUBLICATIONS' (with a book icon), and 'IDAHO PATIENT ACT TIMELINE' (with a caduceus icon). A 'Primary Contacts' section features a photo of Kim Stanger. The footer displays the Holland & Hart logo.

Holland & Hart

People Capabilities

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IDAHO PATIENT ACT TIMELINE

gal 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

Primary Contacts



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