

# LEGAL UPDATE 2025

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EXPLORE  
HEALTHCARE SUMMIT

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## Legal Disclaimer

The material presented herein is for informational purposes only and not for the purpose of providing legal advice. The principles addressed are general in nature, as liability may vary in due to the jurisdiction, state, and facts present in different circumstances. Attendance at this presentation does not create an attorney-client relationship between Rodolf & Todd, Dewberry & Hubbard, and the attendee. You should contact an attorney to obtain advice with respect to any particular issue or concern.

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## OKLAHOMA LEGISLATIVE UPDATE



Recent Legislative Changes  
Pending Legislative Changes

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2024 Legislative Changes

**Senate Bill 1740**

April 22, 2024, Senate Bill 1740 was passed and went into effect on the Governor's signature. It provides immunity from civil damages to first responders and other "Good Samaritans" administering an emergency opioid antagonist in good faith.

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2024 Legislative Changes

**Health Information Exchange**

**House Bill 3556** amends the health information exchange statute by striking the word "shall" and replacing it with "may" to clarify that providers are not required under state law to submit protected health information to the health information exchange.

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2024 Legislative Changes

**Prior Authorization**

The Ensuring Transparency in Prior Authorization Act, House Bill 3190, establishes timeframes and procedures for obtaining prior authorizations from insurance companies for medical services. It took effect January 1, 2025, and was unanimously passed by both chambers. Specifically, the act requires insurance companies to:

- Employ licensed medical professionals to make determinations that deny care;
- Update authorization systems;
- Publish prior authorization requirements online; and
- Honor prior authorizations for at least 45 days, or 6 months in the case of chronic conditions.

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2025 Pending Legislation

[Senate Bill 1065](#) caps noneconomic-damages awards at \$500,000. The bill allows unlimited awards for quantifiable economic damages, which can total millions, such as medical expenses and lifelong loss of income. The bill's language does not apply to actions brought under the Governmental Tort Claims Act or actions for wrongful death brought pursuant to Section 7 of Article XXIII of the Oklahoma Constitution, which states that damages cannot be capped in wrongful-death cases.

Furthermore, the cap would not apply in cases involving "reckless disregard for the rights of others, gross negligence, fraud, or intentional or malicious conduct."

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2025 Pending Legislation

[Senate Bill 883](#) modifies the standards used to calculate injury in a civil case. The measure provides that evidence shall be presented to the court to show the reasonable value of the treatment provided to the injured party instead of the amount billed to the injured party. The amount shall be limited to the amounts actually necessary to satisfy the financial obligation for medical services or treatment rendered to the plaintiff that have been incurred but not yet satisfied. Such standards shall also apply to necessary future treatment of the injured party. Additionally, if the reimbursement rate allowed by any health insurance covering the injured party or any public or government-sponsored health care cannot be determined for any aspect of necessary future treatment of the injured party not yet incurred, the court shall use the Medicare reimbursement rate.

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2025 Pending Legislation

[Senate Bill 109](#) Provides for insurance coverage for clinical genetic testing for an inherited gene mutation for individuals with a personal or family history of cancer and evidence-based cancer imaging for individuals with an increased risk of cancer

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2025 Pending Legislation

[Senate Bill 665](#), Freedom of conscience; creating the Medical Ethics Defense Act; granting certain rights and protections to certain medical practitioners, healthcare institutions, or healthcare payers

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2025 Pending Legislation

HB 1008, as introduced, prohibits performing or attempting to perform an abortion except in a case where it is necessary to preserve the life of a pregnant woman. The person performing the abortion or attempting to do so must prioritize preserving the life of both the pregnant woman and the baby. If the birth of the baby is judged to be a threat to the pregnant person's life, then an abortion may be performed. The measure removes the definition of medical emergency from the statute.

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2025 Pending Legislation

HB 1687, creates the Uniform Health Care Decisions Act of 2025, which provides that an individual is presumed to have the capacity to make or revoke a health care decision, instruction, and the power of attorney unless a court finds the individual lacks this capacity or the presumption is rebutted.

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Pending Legislation

HB 2298 allows a qualified Advanced Practice Registered Nurse (APRN) to apply to the Oklahoma Board of Nursing for the authority to prescribe and order independent of supervision. The application for independent prescriptive authority will include the provisions specified in the measure. The measure requires a licensed practitioner to carry malpractice insurance. The Oklahoma Board of Nursing must promulgate rules governing advertising of health care services by APRNs.

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Recent Litigation and Legal Trends



Recent Verdicts

Discovery and Use of Secure Messages and Text Messages

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Recent Verdicts and Trends

Since Covid, the general public is less trusting of the Health Care Community.

As a result, Juries have been less likely to give Health Care Providers the benefit of the doubt.

This has resulted in more Plaintiff verdicts than were seen before Covid.

This has also resulted in higher verdicts than were seen before Covid.

All or nothing verdicts

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Recent Verdicts and Trends

In the last 2 years, 9 medical malpractice cases were tried to Jury Verdict.

4 resulted in Defense Verdicts  
5 resulted in Plaintiff Verdicts

The Juries awarded Verdicts of:

- \$300,000 – temporary vision loss from cataract surgery
- \$9,375,000 – death of an elderly nursing home patient
- \$10,000,000 – death of a college student
- \$15,000,000 – patient dropped from OR table during transfer
- \$15,000,00 – negligent cyst removal resulting in permanent tracheostomy in a pediatric patient and credentialing

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Recent Verdicts and Trends

2 of the 5 cases resulted in punitive damage awards of \$500,000 and \$30,000,000

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Recent Verdicts and Trends

**TAKE AWAYS:**

Dropping the patient is an obvious outlier and essentially a never event.

Juries are more forgiving when a patient develops a known complication that was disclosed and explained to the patient and clearly documented.

Juries are less forgiving when there is a delay in care that results in injury or death.

Juries are less forgiving when there is a lack of or inadequate documentation.

Testifying to your normal practice is not good enough – Juries want Proof!

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Recent Verdicts and Trends

**TAKE AWAYS:**

Juries are less forgiving when all reasonable diagnoses are not ruled out regardless of the standard of care.

- If it is a possible diagnosis, Juries expect Health Care Providers to address it.
- If you do not, you need to document why.
- Juries will not give the benefit of the doubt.

Juries have high expectations of their Health Care Providers and won't hesitate to return an excessive verdict even without finding punitive conduct.

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Recent Verdicts and Trends

**Communications Outside the Medical Record**

All forms and methods of communication about a patient are discoverable.

This includes:

- Text messages on personal cells
- Emails
- Voicemails

You must ASSUME you will be required to produce any communication with the patient or another Health Care Provider if it relates to the patient.

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Recent Verdicts and Trends

Courts are no longer relying on a Defendant to identify and produce any discoverable communications.

Courts are beginning to Order Health Care Providers to submit their cell phones for forensic inspection where all responsive text messages are extracted.

These extracted messages are then reviewed by the Court or Attorneys to determine any discoverable text messages.

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Recent Verdicts and Trends

In April 2024, an Oklahoma County Judge issued a spoliation instruction against a physician after deeming a TigerText conversation which autodeleted after 10 days to be a required part of the medical record, mandating preservation for 6 years

The Physician argued that TigerText with its set autodeletion function was purchased and managed by the hospital, so he had no control over the autodeletion of messages within the system, nor was the standard autodeletion in bad faith because it was to guard against disclosure of PHI. He also likened TigerText to hallway conversations and phone calls.

Plaintiff argued the deleted TigerText messages are medical records that the hospital and physicians were legally obligated to retain.

Defendants filed a Petition with the Oklahoma Supreme Court which was subsequently denied in September 2024.

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Recent Verdicts and Trends

**Takeaway:**

All conversations had via secure messaging systems need to be reflected in the medical records

Documentation should include that you used a secure messaging system, who you consulted with, and the nature of the conversation

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Recent Verdicts and Trends

**CAUSES FOR CONCERN**

Invasion of Privacy

Inconvenience

- 24-48 hours without your cell phone

Highlights if a Health Care Provider did not voluntarily produce all responsive texts.

Process for extraction, review and production is still developing.

We expect the production of text messages will continue to evolve as more Courts Order their production.

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Federal Changes  
To HIPAA

Reproductive  
Rights & HIPAA

Substance Use  
Disorder & HIPAA

Expected Changes  
to HIPAA in 2025

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Reproductive Rights  
and HIPAA

The Political Impact of *Dobbs v. Jackson  
Women's Health Organization* on Health  
Care Providers

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Reproductive Rights  
and HIPAA

The Health Care Insurance Portability and  
Accountability Act ("HIPAA") was enacted in 1996.

Although there have been several updates, there  
were 2 major updates in 2024 addressing:

- Reproductive Rights
- Substance Use Disorders

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In June 2022, Dobbs v. Jackson Women's Health Organization overturned Roe v. Wade, removing the federal right to an abortion and giving authority to the States to determine the legality of abortions.

- Fall Out


This is the reason for the recent changes to HIPAA.

These recent changes increased the protections and safeguards for Reproductive PHI ("RPHI") by limiting the circumstances under which an individuals' RPHI can be used for non-healthcare related purposes.

The changes were enacted June 2024 with compliance by December 2024

- Texas has challenged these new rules and the outcome will likely impact the disclosure of RPHI.

Politics and Health Care

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Reproductive Health Care is any health care that affects the health of an individual in all matters relating to the reproductive system and to its functions and processes including:

- Contraception, including emergency contraception
- Preconception screening and counseling
- Pregnancy and pregnancy-related conditions and complications including pregnancy termination
- Fertility and infertility diagnosis and treatment
- Diagnosis and treatment of conditions that affect the reproductive system
  - menopause, endometriosis, post partum care

What is Reproductive Health Care?

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The Final Rule added a new prohibition under the general rules for uses and disclosures of RPHI.

A Health Care Provider may not use or disclose records related or potentially related to RPHI when the purpose is:

- To conduct a criminal, civil, or administrative investigation into or impose criminal, civil, or administrative liability on any person for seeking, obtaining, providing, or facilitating reproductive health care, where such health care is lawful under the circumstances in which it is provided.
- To identify any person for the purpose of conducting such investigation or imposing such liability.
- The Final Rule presumes reproductive health care was lawful.

Changes to General Rules for Uses and Disclosures

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### Applying the Prohibition and Presumption

The prohibition from disclosure applies if the Health Care Provider has reasonably determined that one or more of the following conditions exists:

- The reproductive health care was lawful in the State in which it was provided and under the circumstances in which it is provided.
  - For example, if a resident of one state traveled to another state to receive reproductive health care, such as an abortion, that is lawful in the state where such health care was provided.
- The reproductive health care is protected, required, authorized by Federal law, or the U.S. Constitution, regardless of the state in which such health care is provided.
  - For example, if use of the reproductive health care, such as contraception, is protected by the Constitution.

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When a Health Care Provider receives a request for RPHI, the Health Care Provider must verify whether the request is made for a prohibited purpose.

If the request is for a prohibited purpose, the RPHI may not be disclosed.

If the request is for an accepted purpose, i.e., healthcare, legal, coroner etc., then a signed Written Attestation Form must be obtained from the requestor stating the disclosure is not for a prohibited purpose under HIPAA.

### Determining Whether Prohibition Applies

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### Practical Challenges

Confusing guidance makes training employees difficult especially in a high turnover position

Inconsistent application of the Final Rule due to confusion and a lack of knowledge

Failure to comply with the Final Rule including the Attestation Requirement which results in an unlawful production of RPHI

Federal and legal ramifications of non-compliance or violation including fines

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## Substance Use Disorders and HIPAA

Better Aligning HIPAA and Part 2

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### Part 2 Protections: What They Are & Why They Matter

Federal law provides confidentiality protections for people who seek treatment for Substance Use Disorders (SUD") which are commonly referred to together as "Part 2." Part 2 is limited to records for treatment of substance use disorder ("SUD"), whereas HIPAA applies to all protected health information.

The National Survey of Drug Use and Health consistently shows that concerns about confidentiality and privacy are two of the three major issues for people who need help but do not enter treatment.

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### Part 2 And HIPAA

The protections in Part 2 exist separately from HIPAA, and Part 2 required greater protections and restrictions on uses and disclosures for SUD records.

This impeded care, and providers struggled with how to meet the different requirements under both laws.

On February 8, 2024, the Final Rule was approved to better align Part 2 and HIPAA Regulations. Full compliance is required by February 16, 2026.

The changes to Part 2 are intended to promote sharing information among providers, improve care while maintaining privacy, and allow patients greater access to their own records.

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### Relaxed Regulations

Single patient consent for all future uses, disclosures, and redisclosures of SUD

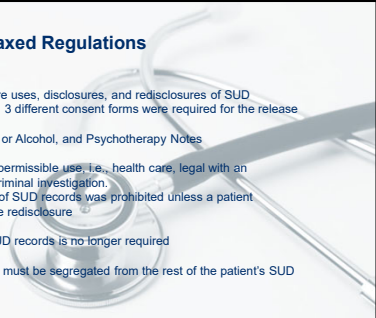
- Previously, in Oklahoma, 3 different consent forms were required for the release of SUD records
  - Mental Health, Drug or Alcohol, and Psychotherapy Notes

Redisclosure is permitted if for a permissible use, i.e., health care, legal with an authorization or Court Order, or criminal investigation

- Previously, redisclosure of SUD records was prohibited unless a patient specifically consented to the redisclosure

Segregation of General Part 2 SUD records is no longer required

However, SUD Counseling Notes must be segregated from the rest of the patient's SUD and medical records



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### Breaches, Complaints, Enforcement And Penalties

The HIPAA Breach Notification Rules now apply to Part 2 breaches of unsecured Part 2 SUD records

Patients will be able to obtain an accounting of disclosures of their SUD records for 3 years

Part 2 breaches will be subject to the same potential civil and criminal penalties as for HIPAA violations

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### Expected Changes to HIPAA

2025

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Health Care Providers will be required to allow patients to inspect their records in person, take notes, capture images, and receive full documentation within 15 days

The 2025 HIPAA Security Rule updates represent a major overhaul, introducing stricter controls on and strengthening cybersecurity, risk management, and electronic PHI protection including:

- Identifying PHI security threats
- Policies to restore impacted data within 72 hours
- Annual security audits
- Encrypting all PHI at rest and in transmit and multifactor identification to ensure confidentiality

Expected Changes to HIPAA

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Questions?

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