HEALTH PRIVACY IS UNDER ATTACK, BUT STATES CAN FIGHT BACK

Purl v. United States Department of Health and Human Services

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In June 2025, a Texas judge struck down the 2024 Reproductive Health Privacy Rule ("2024 Rule"),[1] a federal regulation that strengthened medical privacy for reproductive health care.[2] The decision is the latest in a series of threats to medical privacy by conservatives who want to weaponize health records against abortion patients, providers, and supporters. **Although the 2024 Rule is no longer in effect, it's critical for reproductive justice and medical privacy advocates to understand what it did – and how it was attacked – in order to build more robust protections at the state level.**

For 25 years, the Health Information Portability and Accountability Act ("HIPAA") has protected health information from certain disclosures. However, under HIPAA, health care providers are still permitted – though not required – to share some patient health information with law enforcement.[3] After *Roe v. Wade* was overturned, many states not only banned abortion, but also signaled their intention to enforce those bans by combing through patient data.[4] **Advocates and health care providers sounded the alarm about what it could mean for anti-abortion politicians to have access to sensitive health care data, including the increased risk of prosecution for both providers and patients.**[5] In response to these concerns, the Department of Health and Human Services ("HHS") promulgated the 2024 Rule as an expansion of HIPAA's basic privacy protections.

[1] HIPAA Privacy Rule To Support Reproductive Health Care Privacy, 89 Fed. Reg. 32976 (Apr. 26, 2024) (codified at 45 CFR §§ 160, 164), https://perma.cc/8EBA-EJLD.
[2] *Purl v. Department of Health & Hum. Servs*., No. 2:24-CV-228-Z, 2025 U.S. Dist. LEXIS 116234, at *2 (N.D. Tex. June 18, 2025).
[3] Health care providers must report certain information to state health agencies or law enforcement, such as suspected child abuse, according to their state's law. Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d–7(b), https://perma.cc/H652-XQS2 ("Nothing in this part shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, child abuse, birth, or death, public health surveillance, or public health investigation or intervention."). If/When/How offers state-specific fact sheets for health care providers on mandatory reporting related to pregnancy and abortion, and providers and advocates with specific reporting questions can reach out for assistance. If/When/How: Lawyering for Reproductive Justice, *Resources*, https://ifwhenhow.org/resources/; If/When/How: Lawyering for Reproductive Justice, *Request Technical Assistance and Training*, https://ifwhenhow.org/learn/technical-assistance/.
[4] *See, e.g.*, Abigail Ruhman, *Indiana attorney general pushes to disclose terminated pregnancy reports*, Louisville Public Media (Apr. 12, 2024), https://www.lpm.org/news/2024-04-12/indiana-attorney-general-pushes-to-disclose-terminated-pregnancy-reports.
[5] *See, e.g.*, If/When/How: Lawyering for Reproductive Justice, *If/When/How Explainer: Health Privacy Lawsuits Against the 2024 HHS Rule* (July 2025), https://ifwhenhow.org/wp-content/uploads/2025/07/2025-July-IfWhenHow-Explainer-Health-Privacy-Lawsuits-Against-the-2024-HHS-Rule.pdf; National Partnership for Women & Families, *Seventeen States Attack HIPAA and Reproductive Health Privacy* (Mar. 2025), https://nationalpartnership.org/report/attacks-on-repro-privacy/.

Specifically, the 2024 Rule:

- Prohibited disclosure of information about a patient's legal reproductive health care to law enforcement seeking to identify or criminalize someone in relation to that care.[6]
- Allowed health care providers to assume that reproductive care provided by another provider was legal, and that the relevant medical records are protected.[7]
- Required law enforcement seeking information about lawful reproductive health care to attest that it would not be used for a prohibited purpose, including criminalizing someone for providing or seeking that care.[8]
- Defined "public health" to mean population-level health activities, and clarified that public health disclosures must not include civil or criminal investigations related to reproductive health care.[9] Public health reporting is meant to provide state governments with data regarding the health of a community.[10]
- Defined "person," and dependent terms like "child" or "victim," to mean a born human, clarifying that the exceptions in HIPAA that allow disclosures related to crimes like child abuse do **not** apply to fetuses.[11]

After HHS finalized the 2024 Rule, Texas doctor Carmen Purl sued HHS to prevent its enforcement. Among other things, Purl claimed that the 2024 Rule prevented her from reporting child abuse. Specifically, Purl wanted to report young people accessing abortion and gender-affirming care and their parents.

[6] American Medical Association, *HIPAA Privacy Rule to Support Reproductive Health Care Privacy AMA Drafted Summary of Regulatory Changes in Final Rule* at 1 (April 26, 2024), https://web.archive.org/web/20250121023240/https://www.ama-assn.org/system/files/summary-regulatory-changes-final-rule-reproductive-health-information.pdf.
[7] *Id.* at 2. However, a provider's assumption must be genuine – they "cannot assume that health care provided by another was lawful, if they had actual knowledge or were provided factual information by the requester that demonstrates the RHC was not lawfully provided." *Id.*
[8] *Id.* at 2-3.
[9] *Id.* at 1.
[10] *See* 45 CFR § 164.512(b)(1) ("A [HIPAA-]covered entity may use or disclose protected health information … to: A public health authority … for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions."). For example, disease reporting may help a government understand where or how communicable diseases are spreading.
[11] *See* American Medical Association at 1; HIPAA Privacy Rule to Support Reproductive Health Care Privacy, 89 Fed. Reg. at 32997-98 ("Under this final rule, a regulated entity would continue to be permitted to disclose PHI about an individual who the covered entity reasonably believes is a victim of child abuse or neglect … or a victim of abuse, neglect, or domestic violence … to a government authority … where the individual meets the clarified definition of person. The Privacy Rule permission concerning serious and imminent threats applies to threats to a person, consistent with the definition as clarified by this final rule…."

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If/When/How submitted an amicus brief[12] in this case, where we made clear that young people should have the autonomy to access abortion and gender-affirming care, and that supportive parents should not be punished for helping them access it. Moreover, our brief made clear that the 2024 Rule did not actually prevent Purl from making a report on anything she deemed abusive conduct, even if it did involve lawful reproductive health care.[13] In June 2025, known anti-abortion judge Matthew Kacsmaryk ruled in Purl's favor and vacated the 2024 Rule, meaning it is not in effect.[14]

Understanding Judge Kacsmaryk's reasoning illustrates what's now at stake:

Judge Kacsmaryk said the 2024 Rule unlawfully limits state child abuse reporting laws.
The 2024 Rule ensured health care providers had to keep reproductive health records private except in certain circumstances like child abuse reporting.[15] In his decision, Kacsmaryk reads the 2024 Rule as limiting reporting because health care providers have to take additional steps to preserve privacy if their report concerns lawful reproductive health care.[16]

Kacsmaryk also falsely says that the 2024 Rule encroaches on a state's ability to define what child abuse is.[17] In particular, he finds that states can define child abuse to include lawful reproductive health care (including abortion and gender-affirming care) if they wish.[18]

WHAT DOES THIS MEAN?

States were already allowed to define child abuse for themselves, but the decision invites states to expand those definitions to explicitly include lawful reproductive health care. Notably, some states were already making similar moves before Kacsmaryk's decision. For example, in 2022, Texas Governor Greg Abbott encouraged professionals like teachers and health care providers to report parents who helped their children access gender-affirming care as child abusers.[19]

WHAT THIS DOESN'T MEAN:

This does not mean that professionals in any state must report lawful reproductive health care as child abuse. State child abuse laws only require the limited disclosure of a minor's private health information when a health care provider believes that a minor actually experienced child abuse.

[12] Brief for If/When/How: Lawyering for Reproductive Justice et al. as Amici Curiae Supporting Defendants, *Purl v. Department of Health & Hum. Servs.*, No. 2:24-cv-00228 (N.D. Tex. Oct. 21, 2024).
[13] *Purl v. Department of Health & Hum. Servs*., No. 2:24-cv-00228 (N.D. Tex. Oct. 21, 2024). Seventeen conservative-led states also sued HHS over the 2024 Rule in separate cases, explicitly arguing that it prevented them from engaging in anti-abortion law enforcement. See National Partnership for Women & Families, *Seventeen States Attack HIPAA and Reproductive Health Privacy* (March 2025), https://perma.cc/RN8R-MM88.
[14] *Purl*, 2025 U.S. Dist. LEXIS 116234, at *1.
[15] HIPAA Privacy Rule to Support Reproductive Health Care Privacy, 89 Fed. Reg. at 32978, 32998 ("Under this final rule, a regulated entity would continue to be permitted to disclose PHI about an individual who the covered entity reasonably believes is a victim of child abuse or neglect, … or a victim of abuse, neglect, or domestic violence, … to a government authority … where the individual meets the clarified definition of person.").
[16] *Purl*, 2025 U.S. Dist. LEXIS 116234, at *26-28.
[17] *Id*. at *27.
[18] *Id*. at *27-28.
[19] Jo Yurcaba, *Texas governor calls on citizens to report parents of transgender kids for abuse*, NBC News (Feb. 23, 2022), https://perma.cc/F35K-VF3V

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Judge Kacsmaryk said HHS cannot define either "person" or "public health." The 2024 Rule defined "person" as a born person, consistent with other federal law.[20] Despite that consistency, Kacsmaryk says that HHS does not have the authority to redefine "person" to exclude fetuses.[21]

Additionally, every state requires – and HIPAA permits – public health reporting for things like births and communicable diseases.[22] Kacsmaryk says that HHS cannot define "public health" reporting to exclude criminal investigations of people for accessing lawful reproductive care.[23]

WHAT DOES THIS MEAN?

Kacsmaryk's assertion that HHS cannot define "person" to exclude a fetus signals that conservatives want to expand their fight to treat a fetus as though it were a child. Specifically, they want to treat a fetus as a child for the purpose of punitive legal systems, like the family policing system, that are often allowed to access medical records. This decision is a signal that conservatives wish to continue to reserve and expand their ability to punish pregnant people for actions taken during their pregnancy, like substance use. Additionally, Kacsmaryk's ruling on "public health" invites conservative states to invade medical privacy by broadening reporting laws.

WHAT THIS DOESN'T MEAN:

The decision does not create new rights for fetuses beyond what may already exist under the law, nor does it authorize the federal or state governments to create those rights. The decision also does not change the meaning of public health in current law. States should not view this decision as justification for using public health reporting as a means to monitor for crimes. Any use of public health reporting as a way to monitor potential criminal activity distorts public health as a concept and undermines public trust.

[20] HIPAA Privacy Rule to Support Reproductive Health Care Privacy, 89 Fed. Reg. at 32997.
[21] *Purl*, 2025 U.S. Dist. LEXIS 116234, at *37-40.
[22] *See* Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. § 164.512(b)(1) (2000), https://perma.cc/QG4K-3E8G (allowing disclosures of patient information for "public health activities and purposes").
[23] *Purl*, 2025 U.S. Dist. LEXIS 116234, at *41-45.

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Kacsmaryk said HHS cannot selectively protect abortion and gender-affirming care records. Kacsmaryk says that HIPAA doesn't explicitly allow HHS to selectively protect any subset of public health information.[24] He dismisses the long-standing special protections for psychotherapy notes as the "only example" of selective protection for a certain type of care.[25] He also says that because reproductive health care is "politically charged" and "politically favored" HHS needed explicit Congressional authority to specially protect it.[26]

WHAT DOES THIS MEAN?

Kacsmaryk is creating new standards - and applying existing ones incorrectly - in order to drain federal agencies of the power to make and enforce rules around anything "politically charged." That term could apply to nearly anything worth regulating, including any form of stigmatized health care. However, his ruling that HHS can't regulate "politically favored" health care without explicit Congressional language is only binding in his district.

WHAT THIS DOESN'T MEAN:

There is nothing in Kacsmaryk's decision preventing agencies from rulemaking about anything "politically charged" or "politically favored," except in his district.

[24] *Id*. at *46.

[25] *Id*. at *55 ("HIPAA has no history of weaponization to achieve protections for politically favored medical procedures—psychotherapy notes notwithstanding.")

[26] *Id*. at *47-55 ("HHS lacked clear delegated authority to fashion special protections for medical information produced by politically favored medical procedures.")

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No one should have to fear criminalization when seeking medical care. Kacsmaryk's decision makes it easier for conservative states to investigate and criminalize the health care providers and supporters who help young people access abortions and gender-affirming care. We should all be concerned that policymakers are trying to gain access to our health care information. The state should never be able to needlessly sift through our health care documents and surveil our choices about our own bodies.

Most states have their own medical privacy laws, and many are enacting laws that protect reproductive health information.[27] But states can do more to combat the rapid rise of anti-abortion policies that threaten everyone's medical privacy.

Read our joint brief with the Center for Reproductive Rights and the National Partnership for Women & Families to better understand what states can do in the current landscape to protect our reproductive health information.

[27] Center on Reproductive Health, Law, and Policy, UCLA Law, *Shield Laws for Reproductive and Gender-Affirming Health Care: A State Law Guide* (Oct. 2025), *see also* Office of Governor Wes Moore, Press Release, *Governor Moore Signs Historic Reproductive Freedom Legislation, Protects Women's Reproductive Rights In Maryland* (May 3, 2023), https://governor.maryland.gov/news/press/pages/governor-moore-signs-historic-reproductive-freedom-legislation,-protects-women%E2%80%99s-reproductive-rights-in-maryland.aspx; Brandon Richards, Planned Parenthood Affiliates of California, *Planned Parenthood Affiliates of California Statement on Historic Bill Package Protecting and Expanding Sexual and Reproductive Health Care* (Aug. 31, 2022), https://www.plannedparenthoodaction.org/planned-parenthood-affiliates-california/media/ppac-statement-historic-bill-package-protecting-and-expanding.