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## Illinois Supreme Court Rules Favorably in Hospital BIPA Cases

In a unanimous opinion, yesterday the Illinois Supreme Court ruled a healthcare provider's collection of finger-scan information from its employees through an automated medicine cabinet is not "biometric information" as defined by Illinois' Biometric Information Privacy Act 740 ILCS 14/1 et seq. ("BIPA"), when such information is used for "treatment," "payment," or "health care operations" as defined by the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

In two separate cases, the plaintiffs argued that the exclusion only applied to the hospitals' patients' "biometric identifiers" and not the "biometric identifiers" of its nurse employees or other healthcare workers. The defendants maintained the nurses' finger scans were excluded from the definition of "biometric information" under Section 10 because such scans were "information captured from a patient in a health care setting or information collected, used, or stored for health care treatment, payment, or operations" under HIPAA. Under Section 10 of BIPA, a "biometric identifier" includes a retina, iris, fingerprint, and voiceprint, hand, or face scan but, among other things, excludes "information captured from a patient in a health care setting or information collected, used, or stored for health care treatment, payment, or operations" under HIPAA. The hospital defendants argued that the exemption for biometrics collected for "treatment," "payment" and "operations" applied to the collection of healthcare workers' biometrics, thus, BIPA did not apply.

Although the circuit court and the appellate court agreed with the plaintiffs, in yesterday's favorable ruling the Illinois Supreme Court reversed and found the plain language of Section 10 excludes both: (1) information captured by a patient (a particular source), as well as (2) information used for a particular purpose, specifically "treatment," "payment," or "health care operations" as defined by HIPAA, regardless of source. The Illinois Supreme Court explained that, in cases at hand, the nurses' biometric identifiers were collected, used, and stored to access medications for the purpose of patient treatment and therefore covered by BIPA's Section 10 exclusion.

Illinois Health and Hospital Association (IHA) has been diligently pursuing both judicial and legislative strategies to mitigate the negative impact of BIPA on hospitals, including filing an amicus brief in support in this case in both the circuit court and the Illinois Supreme Court. IHA is pleased with the outcome of our collective efforts to provide much-needed relief to hospitals with respect to BIPA. To access IHA's member communication on the Illinois Supreme Court decision, [click here](#). To read a copy of the Illinois Supreme Court's full decision [click here](#).

[Contact us](#) with questions.

## Register: Medicare Promoting Interoperability Program Free Webinar

The Centers for Medicare & Medicaid Services (CMS) is hosting a calendar year (CY) 2024 Medicare Promoting Interoperability Program for Eligible Hospitals and Critical Access Hospitals Overview webinar on Dec. 6 at 12-1 p.m. CT to discuss program requirements. The free webinar will also highlight new changes to the program beginning in CY 2024. [Click here](#) to register.

During this webinar, CMS subject matter experts will discuss the following:

- Program background;
- Key changes for CY 2024;
- CY 2024 reporting requirements;
- Objectives and measures for CY 2024; and
- Where to find additional resources and information.

CMS will answer questions at the end of the webinar as time permits.

#### Study: ED Intervention Reduces Adult Suicide Risk

Suicide is a leading cause of death in the United States and many people who die by suicide, visit an emergency department in the weeks or months before, making them critical places to reach people at risk. Addressing suicide risk in these fast-paced, urgent care settings is challenging, but research funded by the National Institute of Mental Health (NIMH) showed that it is possible to intervene and save lives.

[Click here](#) to learn more about the study, known as the Emergency Department Safety Assessment and Follow-Up Evaluation 2 (ED-SAFE 2). ED-SAFE is a randomized clinical trial designed to improve suicide risk screening and detection in emergency department settings. The trial differs from similar studies because routine clinical staff—rather than researchers—deliver the suicide risk intervention.

In analyzing data from almost 7,000 medical records, the researchers observed a significant change in suicide risk over the study phases. The likelihood of suicidal ideation, attempt, or behavior in the six months after an emergency visit was significantly lower during the maintenance phase compared to the baseline phase, reflecting a 30% decrease. These results showed that implementing best practices for suicide care, including universal screening and collaborative safety planning, and evaluating them on a continuous basis, effectively improved suicide-related outcomes following emergency discharge.

#### TJC: ED Boarding's Impact On Patient Care, Clinician Well-Being

Emergency department (ED) boarding is a long-standing yet increasingly common quality and safety issue. ED boarding is associated with delayed and missed care, medication errors, delirium, higher morbidity and in-hospital mortality, and longer hospital length of stay as well as poor patient satisfaction.

A new [study](#) from the December 2023 issue of The Joint Commission (TJC) Journal on Quality and Patient Safety conducted a survey of ED attending physicians, resident physicians, advanced practice providers and nurses to obtain their insights into the quality and safety of patient care delivered to ED boarding patients, as well as clinician safety and satisfaction related to ED boarding care.

A TJC [press release](#) said surveyed clinicians reported that boarding highly contributed to the perception of burnout, as well as high rates of perceived verbal and/or physical abuse from boarding patients. A focus group of 39 clinicians convened on the topic of boarding care identified six related themes:

- Clinicians perceived that ED boarding leads to increased patient safety events;
- Clinicians desired standardization for the boarding care process;
- Clinicians felt they lacked knowledge, resources and training to care for boarding patients;
- Clinicians desired proactive bed and resource planning for boarding patients;
- Clinicians advocated for improved communication among the team and to patients; and
- Clinicians identified a need for culture change regarding boarding care.

Possible solutions identified to improve care included standardization of care, proactive planning and culture change.

#### Illinois Opioid Settlements Initiative Website Launches

Illinois expects to receive more than \$1.3 billion in settlement monies by 2038, to be used in all parts of the state to abate the opioid crisis. The Illinois Attorney General, along with those of other states, sued prescription opioid distributors, manufacturers, and dispensers to seek recovery for their unfair and deceptive practices. These lawsuits led to numerous multistate settlement agreements. The [Illinois Opioid Settlements Initiative website](#) is an essential new tool for providers and the interested public.

The website will maintain up-to-date information from the Illinois Dept. of Human Services/Division of Substance Use Prevention and Recovery (DHS/SUPR) on the disbursement of the funds. DHS/SUPR seeks to ensure that approved abatement strategies and spending will support recovery in communities hardest hit by the opioid crisis and throughout the state. This new website aims to bring transparency to the spending of settlement funds, including settled lawsuits; grant funding awards; abatement approvals and available funding; and unallocated money in the Remediation Trust Fund. [Click here](#) for more information.

The Illinois Opioid Settlements Initiative website will also provide resources on implementing programs and services identified in the [State of Illinois Overdose Action Plan](#) and the [Illinois Opioid Allocation Agreement](#); the latter governs the approved uses of opioid settlement funding.

#### COVID-19 Information

Since the end of the COVID-19 Public Health Emergency on May 11, the Illinois Dept. of Public Health (IDPH) is releasing updated COVID-19 data every other week. [Click here](#) for the most recent hospitalization update. IDPH will continue to report the weekly number of people with COVID-19 admitted to hospitals from emergency departments, deaths and vaccinations, as well through the dashboard of the [Illinois Wastewater Surveillance System](#).

#### Briefly Noted

Overdose deaths increased in pregnant and postpartum women from early 2018 to late 2021, according to a recent National Institutes of Health and National Institute on Drug Abuse (NIDA) [study](#). Among those aged 35 to 44, overdose mortality more than tripled during this period. Over 60% of these pregnancy-associated overdose deaths occurred outside healthcare settings, though often in counties with available healthcare resources, such as emergency and obstetric care. The authors noted that while the findings suggest that treatment is available to pregnant women with substance use disorders, significant barriers – such as penalization, stigma, discrimination, and limited socioeconomic resources – may obstruct the path to care.

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