No. 25-1672

United States Court of Appeals for the First Circuit

DEBRA GOULART, individually and on behalf of all others similarly situated; MICHAEL GARBITT, individually and on behalf of all others similarly situated,

Plaintiffs-Appellants,

JANE DOE; JOHN DOE; JANET DOE,

Plaintiffs,

– v. –

CAPE COD HEALTHCARE, INC.,

Defendant-Appellee.

Appeal from the U.S. District Court for the District of Massachusetts, No. 25-cv-10445-RGS, Judge Richard G. Stearns

MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* AMERICAN HOSPITAL ASSOCIATION, HOSPITAL ASSOCIATION OF RHODE ISLAND, MAINE HOSPITAL ASSOCIATION, MASSACHUSETTS HEALTH AND HOSPITAL ASSOCIATION, AND NEW HAMPSHIRE HOSPITAL ASSOCIATION IN SUPPORT OF DEFENDANT-APPELLEE AND AFFIRMANCE

Rebekah B. Kcehowski (No. 1220828)
Katherine E. Eayre (No. 1221053)
JONES DAY
500 Grant Street, Suite 4500
Pittsburgh, PA 15219
(412) 391-3939
rbkcehowski@jonesday.com
keayre@jonesday.com

Counsel for Amici Curiae Hospital Associations

DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), *Amici Curiae* American Hospital Association, Hospital Association of Rhode Island, Maine Hospital Association, Massachusetts Health and Hospital Association, and New Hampshire Hospital Association, by their undersigned counsel, state that they are non-profit organizations that have issued no stock and have no parent corporations, and that no publicly held corporation has a 10% or greater ownership interest.

Dated: December 18, 2025

/s/ Rebekah B. Kcehowski
Rebekah B. Kcehowski
Counsel for Amici Curiae Hospital Associations

MOTION FOR LEAVE

Pursuant to Federal Rule of Appellate Procedure 29(a)(3), the American Hospital Association, the Hospital Association of Rhode Island, the Maine Hospital Association, the Massachusetts Health and Hospital Association, and the New Hampshire Hospital Association respectfully move for leave to file the accompanying brief as *amici curiae* in support of Defendant-Appellee and affirmance. *See* Fed. R. App. P. 29(a)(3) (motion for leave to file must state "the movant's interest" and "the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case"); *see also, e.g.*, *Neonatology Assocs., P.A. v. Commissioner*, 293 F.3d 128, 133 (3d Cir. 2002) (Alito, J.) (explaining that "Rule 29's criteria" should be "broadly interpreted" and that "it is preferable to err on the side of granting leave").[1]

I. *Amici curiae* hospital associations have a significant interest in this case.

The American Hospital Association ("AHA") represents nearly 5,000 hospitals, healthcare systems, and other healthcare organizations nationwide. Its members are committed to improving the health of the communities they serve, to safeguarding the privacy of their patients' medical records, and to helping ensure that accurate and reliable health information is available to all Americans. The AHA educates its members on healthcare issues and advocates on their behalf, so that the perspectives of

[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(2), counsel for *amici curiae* conferred with counsel for all parties. Counsel for Defendant-Appellee consented to the filing of *amici curiae*'s brief. Counsel for Plaintiffs-Appellants refused to consent unless *amici curiae* provided a copy of their privileged draft brief in advance of filing.

hospitals and health systems, along with the patients they serve, are considered in formulating health policy across the country. To that end, the AHA regularly files amicus briefs that have been accepted by federal courts at all levels.[2]

Like the AHA, the Hospital Association of Rhode Island, the Maine Hospital Association, the Massachusetts Health and Hospital Association, and the New Hampshire Hospital Association (collectively, "State Hospital Associations") support their member hospitals and other healthcare organizations through education and advocacy. Along with their members—all located within the First Circuit—the State Hospital Associations work to ensure access to comprehensive, high-quality healthcare and information, while protecting private health information. The State Hospital Associations also file amicus briefs that have been accepted by state and federal courts.[3]

---

[2] *See, e.g.*, Br. of *Amici Curiae* American Hospital Association et al. (Aug. 6, 2025), in *Berk v. Choy*, No. 24-440 (U.S.); Br. of American Hospital Association et al. as *Amici Curiae* (Feb. 28, 2025), in *AbbVie, Inc. v. Brown*, No. 24-1939 (4th Cir.), ECF No. 43; Br. of American Hospital Association et al. as *Amici Curiae* (Oct. 11, 2024), in *USA v. Idaho*, No. 23-35440 (9th Cir.), ECF No. 188; Br. of the American Hospital Association et al. as *Amici Curiae* (Oct. 29, 2024), in *American Health Care Ass'n v. Kennedy*, No. 2:24-CV-00114 (N.D. Tex.), ECF No. 67.

[3] *See, e.g.*, *Amici Curiae* Brief of 36 State Hospital Associations (May 13, 2020), in *California v. Texas*, No. 19-840 (U.S.) (including Maine Hospital Association, Massachusetts Health and Hospital Association, and New Hampshire Hospital Association); Br. of *Amici Curiae* Massachusetts Health and Hospital Association et al. (Mar. 13, 2024), in *Vita v. New England Baptist Hosp.*, No. SJC-13542 (Mass.); Br. of *Amici Curiae* the American Hospital Association et al. (Sept. 18, 2025), in *AbbVie Inc. v. Neronha*, No. 1:25-CV-00388 (D.R.I.), ECF No. 28 (including Hospital Association of Rhode Island).

The AHA and State Hospital Associations, as well as their members, have a significant interest in this case. *See* Fed. R. App. P. 29(a)(3)(A). Hospitals and health systems take seriously their obligation to safeguard the privacy of their patients' protected health information. At the same time, the provision of accurate and reliable non-private health information is an essential component of promoting public health and wellness. To provide such information, *amici curiae*'s members rely on various online tools and technologies, including those website analytics tools at issue in this case. These common online tools—used by website operators of all types, including the federal government—are now the target of thousands of groundless lawsuits against hospitals and others nationwide, including more than a dozen lawsuits within the First Circuit alone. These claims threaten to impose crippling statutory damages against America's hospitals, many of which are non-profit, often via barebones, copycat, or otherwise wholly inadequate allegations. *Amici curiae* thus have a specific and significant interest in a decision from this Court affirming the District Court's holding that conclusory complaint allegations fail to state a claim under the Electronic Communications Privacy Act ("ECPA").

II. *Amici curiae*'s brief is desirable, relevant to the disposition of this case, and timely filed.

The accompanying brief is desirable and relevant to the disposition of this case because it will aid in the Court's consideration of the crime-tort exception to the ECPA. *See* Fed. R. App. P. 29(a)(3)(B). Specifically, *amici curiae*—drawing from their extensive

experience in the healthcare industry—address two reasons why Plaintiffs-Appellants' complaint allegations fail to state a claim under the crime-tort exception. *First*, Plaintiffs-Appellants have failed to plausibly allege that Defendant-Appellee acted with the purpose of committing a crime or tort, as obvious alternative explanations (*i.e.*, non-criminal and non-tortious objectives) for its use of the at-issue technologies are reflected by allegations in the complaint and confirmed by widespread industry use. *Second*, Plaintiffs-Appellants have failed to state a plausible claim that the information allegedly disclosed constitutes protected health information under the Health Insurance Portability and Accountability Act ("HIPAA").

These issues have been raised by the parties and are directly relevant to the disposition of this appeal. *See, e.g.*, Br. of Appellee at 16-36 (arguing that the "district court correctly determined that the crime-tort exception does not apply to Plaintiffs' ECPA claim, because Plaintiffs failed to plead that CCHC used advertising technology for a criminal or tortious purpose"); Br. of Appellants at 26-29 (arguing that "Cape Cod's conduct violated … HIPAA's criminal liability provisions …, establishing the predicate for the crime-tort exception"). Moreover, *amici curiae*'s brief offers insights into these issues that are not merely duplicative of the parties' arguments. The AHA and State Hospital Associations, with their breadth of membership and experience, bring additional and unique perspectives, drawing from the broader context in the industry. *See, e.g.*, *Prairie Rivers Network v. Dynegy Midwest Gen., LLC*, 976 F.3d 761, 763 (7th Cir. 2020) (granting leave to file *amici curiae* briefs and describing ways in which

friend-of-the-court briefs contribute to an appeal, including by offering a different analytical approach to the legal issues, highlighting factual or legal nuances, explaining broader regulatory or commercial context, and providing practical perspectives on consequences). The attached brief is therefore desirable and will be of assistance to the Court. It is also timely filed and will not disrupt the parties' briefing schedule. *See* Fed. R. App. P. 29(a)(6).

* * *

For the foregoing reasons, the AHA and State Hospital Associations respectfully move for leave to file the accompanying brief in support of Defendant-Appellee and affirmance.

Dated: December 18, 2025

Respectfully submitted,

/s/ Rebekah B. Kcehowski

Rebekah B. Kcehowski (No. 1220828)
Katherine E. Eayre (No. 1221053)
JONES DAY
500 Grant Street, Suite 4500
Pittsburgh, PA 15219
(412) 391-3939
rbkcehowski@jonesday.com
keayre@jonesday.com

Counsel for Amici Curiae Hospital Associations

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5); the type-style requirements of Fed. R. App. P. 32(a)(6); and the type-volume limitations of Fed. R. App. P. 27(d)(2) because it is proportionally spaced, has a typeface of 14-point Garamond font, and contains 1,170 words, excluding the parts exempted by Fed. R. App. P. 32(f).

Dated: December 18, 2025

/s/ Rebekah B. Kcehowski
Rebekah B. Kcehowski
Counsel for Amici Curiae Hospital Associations

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document on the Court's CM/ECF system, which will send a notification of such filing to counsel of record for all parties in this case.

Dated: December 18, 2025

/s/ Rebekah B. Kcehowski
Rebekah B. Kcehowski
Counsel for Amici Curiae Hospital Associations

No. 25-1672

United States Court of Appeals for the First Circuit

DEBRA GOULART, individually and on behalf of all others similarly situated;
MICHAEL GARBITT, individually and on behalf of all others similarly situated,

Plaintiffs-Appellants,

JANE DOE; JOHN DOE; JANET DOE,

Plaintiffs,

– v. –

CAPE COD HEALTHCARE, INC.,

Defendant-Appellee.

Appeal from the U.S. District Court for the District of Massachusetts,
No. 25-cv-10445-RGS, Judge Richard G. Stearns

BRIEF OF *AMICI CURIAE* AMERICAN HOSPITAL ASSOCIATION, HOSPITAL ASSOCIATION OF RHODE ISLAND, MAINE HOSPITAL ASSOCIATION, MASSACHUSETTS HEALTH AND HOSPITAL ASSOCIATION, AND NEW HAMPSHIRE HOSPITAL ASSOCIATION IN SUPPORT OF DEFENDANT-APPELLEE AND AFFIRMANCE

Rebekah B. Kcehowski (No. 1220828)
Katherine E. Eayre (No. 1221053)
JONES DAY
500 Grant Street, Suite 4500
Pittsburgh, PA 15219
(412) 391-3939
rbkcehowski@jonesday.com
keayre@jonesday.com

Counsel for Amici Curiae Hospital Associations

DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), *Amici Curiae* American Hospital Association, Hospital Association of Rhode Island, Maine Hospital Association, Massachusetts Health and Hospital Association, and New Hampshire Hospital Association, by their undersigned counsel, state that they are non-profit organizations that have issued no stock and have no parent corporations, and that no publicly held corporation has a 10% or greater ownership interest.

Dated: December 18, 2025

/s/ *Rebekah B. Kcehowski*
Rebekah B. Kcehowski
Counsel for Amici Curiae Hospital Associations

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

INTEREST OF *AMICI CURIAE*

The American Hospital Association ("AHA") represents nearly 5,000 hospitals, healthcare systems, and other healthcare organizations nationwide. Its members are committed to improving the health of the communities they serve, to safeguarding the privacy of their patients' medical records, and to helping ensure that accurate and reliable health information is available to all Americans. The AHA educates its members on healthcare issues and advocates on their behalf, so that the perspectives of hospitals and health systems, along with the patients they serve, are considered in formulating health policy across the country.

Like the AHA, the Hospital Association of Rhode Island, the Maine Hospital Association, the Massachusetts Health and Hospital Association, and the New Hampshire Hospital Association (collectively, "State Hospital Associations") support their member hospitals and other healthcare organizations through education and advocacy. Along with their members—all located within the First Circuit—the State Hospital Associations work to ensure access to comprehensive, high-quality healthcare and information, while protecting private health information.

The AHA and State Hospital Associations, as well as their members, have a significant interest in this case. Hospitals and health systems take seriously their obligation to safeguard the privacy of their patients' protected health information. At the same time, the provision of accurate and reliable non-private health information is an essential component of promoting public health and wellness. To provide such

information, *amici curiae*'s members rely on various online tools and technologies, including those analytics tools at issue in this case. These common online tools—used by website operators of all types, including the federal government—are now the target of thousands of groundless lawsuits against hospitals and others nationwide, including more than a dozen lawsuits within the First Circuit alone. These claims threaten to impose crippling statutory damages against America's hospitals, many of which are non-profit, often via barebones, copycat, or otherwise wholly inadequate allegations.

Amici curiae thus have a specific and significant interest in a decision from this Court affirming the District Court's holding that conclusory complaint allegations fail to state a claim under the Electronic Communications Privacy Act. The AHA and State Hospital Associations respectfully submit this brief to provide important and relevant context about the purpose and use of these online tools by hospitals across the country in support of Defendant-Appellee Cape Cod Healthcare, Inc. ("CCHC") and affirmance.[1]

[1] CCHC is a member of the AHA and the Massachusetts Health and Hospital Association. No counsel for a party authored this brief in whole or in part, and no party or its counsel contributed money intended to fund the preparation or submission of this brief. Further, no person other than *amici curiae* or their counsel contributed money intended to fund the preparation or submission of this brief. Fed. R. App. P. 29(a)(4)(E). This brief is filed upon the accompanying Motion for Leave to File. Fed. R. App. P. 29(a)(2).

INTRODUCTION

Hospitals and healthcare systems face widespread litigation challenging their use of common online tools. Across the country, plaintiffs are baselessly alleging violations of federal and state wiretap statutes and other privacy laws, apparently hoping that hospitals will simply pay up rather than defend their beneficial (and ordinary) uses of modern technology. Since 2022, more than 230 such cases have been filed nationwide targeting the healthcare industry alone.[2]

These putative class actions pose an existential threat to America's hospitals. Despite the meritless nature of the claims, and even though many individual plaintiffs have suffered no actual damages, they seek statutory damages potentially amounting to hundreds of millions of dollars.[3] Given this risk—along with mounting litigation and insurance costs and potential criminal penalties[4]—defendants face significant pressure to settle. It is therefore essential that courts hold plaintiffs to their burden under the law—especially at the pleadings stage. Many of the complaints in these cases rely on

---

[2] *See* Digital Wiretapping Litigation Map, https://www.fisherphillips.com/en/services/trending/us-privacy-hub/wiretapping-litigation-map.html [https://perma.cc/V5PT-VEUE] (last accessed December 16, 2025); *see also* Appellee's Br. at 7 n.1 (showing at least 17 cases targeting hospitals and healthcare systems in Massachusetts).

[3] *See* 18 U.S.C. § 2520(c)(2)(B) (providing for statutory damages of $10,000 *per violation*).

[4] *See* 18 U.S.C. § 2511(4)(a) (providing for fines and imprisonment up to five years); 42 U.S.C. § 1320d-6(b) (providing for fines up to $250,000 and imprisonment up to ten years).

boilerplate, copy-and-paste allegations that fail to plausibly state a claim under the crime-tort exception to the Electronic Communications Privacy Act ("ECPA") and should be dismissed outright. This is one such case, for at least two reasons.

First, Plaintiffs have failed to plausibly allege that CCHC acted with the purpose of committing a crime or tort, as the at-issue online technologies are widely used in the healthcare industry for critical, non-criminal and non-tortious objectives. These objectives include improving website functionality, disseminating accurate and reliable public health information, delivering high-quality and accessible health services, and ensuring community needs are met. Indeed, because the internet is a—if not the—primary source of healthcare information for many, the effective operation of provider websites and an in-depth understanding of how provider sites are used are critical. Such aims benefit providers, patients, and the public at large; they are more-than apparent from the complaint and industry context, and they are certainly not criminal or tortious. Plaintiffs thus cannot satisfy the ECPA's crime-tort exception. To hold otherwise threatens to criminalize standard online tools used by nearly every industry, especially healthcare providers across the country, and the federal government, too.

Second, Plaintiffs have failed to plead sufficient factual matter to state a plausible claim that the information allegedly disclosed constitutes protected health information ("PHI") under the Health Insurance Portability and Accountability Act ("HIPAA"). HIPAA and its implementing regulations carefully define PHI, and Plaintiffs' non-specific, conclusory allegations—like those in so many other copycat lawsuits filed

across the country—fail to satisfy that definition. Hospitals and health systems should not be subjected to costly litigation, including severe statutory damages and potential criminal penalties, based on such vague allegations. With no plausibly alleged sharing of PHI and concomitant violation of HIPAA, Plaintiffs' bid to invoke the crime-tort exception under the ECPA fails as a matter of law.

The District Court's order of dismissal should be affirmed.

ARGUMENT

I. Plaintiffs have failed to plausibly allege that CCHC acted with the purpose of committing a crime or tort, as the at-issue technologies are widely used in the healthcare industry for critical non-criminal, non-tortious objectives.

To state a claim based on the ECPA's crime-tort exception, Plaintiffs must plausibly allege that CCHC acted with "the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State." 18 U.S.C. § 2511(2)(d). The District Court correctly held that Plaintiffs failed to do so. *See* Appx0008-0010. Its reasoning was sound and continues to be bolstered by widespread healthcare industry use of these online technologies, which serve critical non-criminal, non-tortious objectives and are beneficial to providers, patients, and the public alike.

This Court has explained that, at the motion to dismiss stage, "assessing plausibility is 'a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" *Frith v. Whole Foods Mkt., Inc.*, 38 F.4th 263, 270 (1st Cir. 2022) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)). "If the factual

allegations in a complaint, stripped of conclusory legal allegations, raise no 'more than a sheer possibility that a defendant has acted unlawfully,' the complaint should be dismissed." *Id.* (citation omitted). That is true, for example, where there is an "obvious alternative explanation" for the defendant's alleged conduct—*i.e.*, where the defendant's actions are "just as much in line with" lawful conduct. *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 567 (2007)); *see id.* at 274-75 (affirming dismissal of discrimination claims because, given "context" and "[c]ommon sense," court "cannot infer racial discrimination based on factual allegations that are 'just as much in line with' the non-discriminatory explanation we have identified").

A. Plaintiffs' allegations support obvious alternative explanations for CCHC's use of online tools.

Plaintiffs ask the Court to infer that CCHC's motivation in using tools like Meta Pixel and Google Analytics on its website was to commit a crime or tort. Yet obvious alternative explanations abound, as reflected by allegations in the complaint and confirmed by widespread industry use. The District Court identified one explanation: "marketing and advertising." Appx0010. Specifically, Meta Pixel provides "website owners like [CCHC] with analytics about the ads they've placed on Facebook and Instagram and tools to target people who have visited their website." Appx0740-0812 (Second Amended Complaint or "SAC") ¶ 112. Other explanations are equally apparent, including: improving website functionality; disseminating accurate and reliable public health information; delivering high-quality and accessible health services;

and ensuring community needs are met. In particular, as alleged in the complaint, both Meta Pixel and Google Analytics provide data on website "traffic," allowing operators such as CCHC to "analyze a user's experience and activity on the website," to "decode key performance metrics," and to improve "functionality." *See* SAC ¶¶ 128, 131, 155.

These objectives are certainly not criminal or tortious. Nor are they even wholly commercial, given the context. Remember, CCHC is a "non-profit hospital system" that "provid[es] healthcare services for residents and visitors of Cape Cod." Appx0009; SAC ¶ 6. Consistent with its non-profit mission, it also offers "timely, informative and credible health news" to the public. *See* SAC ¶ 6 n.3 (incorporating CCHC's website).[5] And it endeavors, above all, to "help identify and respond to the needs of [its] community" and to "deliver the highest quality, accessible health services, which enhance the health of all Cape Cod residents and visitors." *Id.* CCHC thus relies on the at-issue technologies to achieve these important non-criminal and non-tortious objectives. As such, based on the allegations in the complaint, CCHC's actions are "just as much in line with" lawful conduct. *Frith*, 38 F.4th at 270, 275.

B. Use of online tools for non-criminal, non-tortious reasons is ubiquitous across industries with public-facing websites.

CCHC is far from alone in its use of online technologies, both in the healthcare industry and more broadly. This is evident by the sheer number of similar lawsuits filed

[5] Cape Cod Healthcare, "Get to Know Cape Cod Healthcare," https://www.capecodhealth.org/about/ [https://perma.cc/47QX-C2U4] (last accessed December 16, 2025).

to date, including more than 3,100 total and more than 230 in the healthcare industry, in particular. *See supra* n.2; *see also* SAC ¶ 134 (CCHC is "among the hospital systems" that have used these technologies). Indeed, the use of online third-party technologies, in one form or another, is ubiquitous across every industry with public-facing websites.[6] One recent report found that "[m]ore than nine-in-ten web pages include one or more third-parties"—specifically, 92% of nearly 17 million websites analyzed in June 2024.[7] Many websites use third-party domains for analytics and communications, with google-analytics.com included on 51% of web pages, and Meta's facebook.com included on 21%.[8]

---

[6] Even Plaintiffs' counsel acknowledges such use on their websites. *See* Keller Postman, "Privacy," https://www.kellerpostman.com/privacy-policy/ [https://perma.cc/8QVB-NWZU] (last accessed December 16, 2025) (explaining that "[w]e use cookies to improve website performance and generate data to give us a better understanding of how people engage with our website" and "outside vendors may help us analyze traffic on our site"); Ahmad, Zavitsanos & Mensing, "Privacy Policy," https://azalaw.com/privacy-policy/ [https://perma.cc/QT6X-3RHQ] (last accessed December 16, 2025) ("We use traffic log cookies to identify which pages are being used. This helps us analyze data about web page traffic and improve our website in order to tailor it to customer needs.").

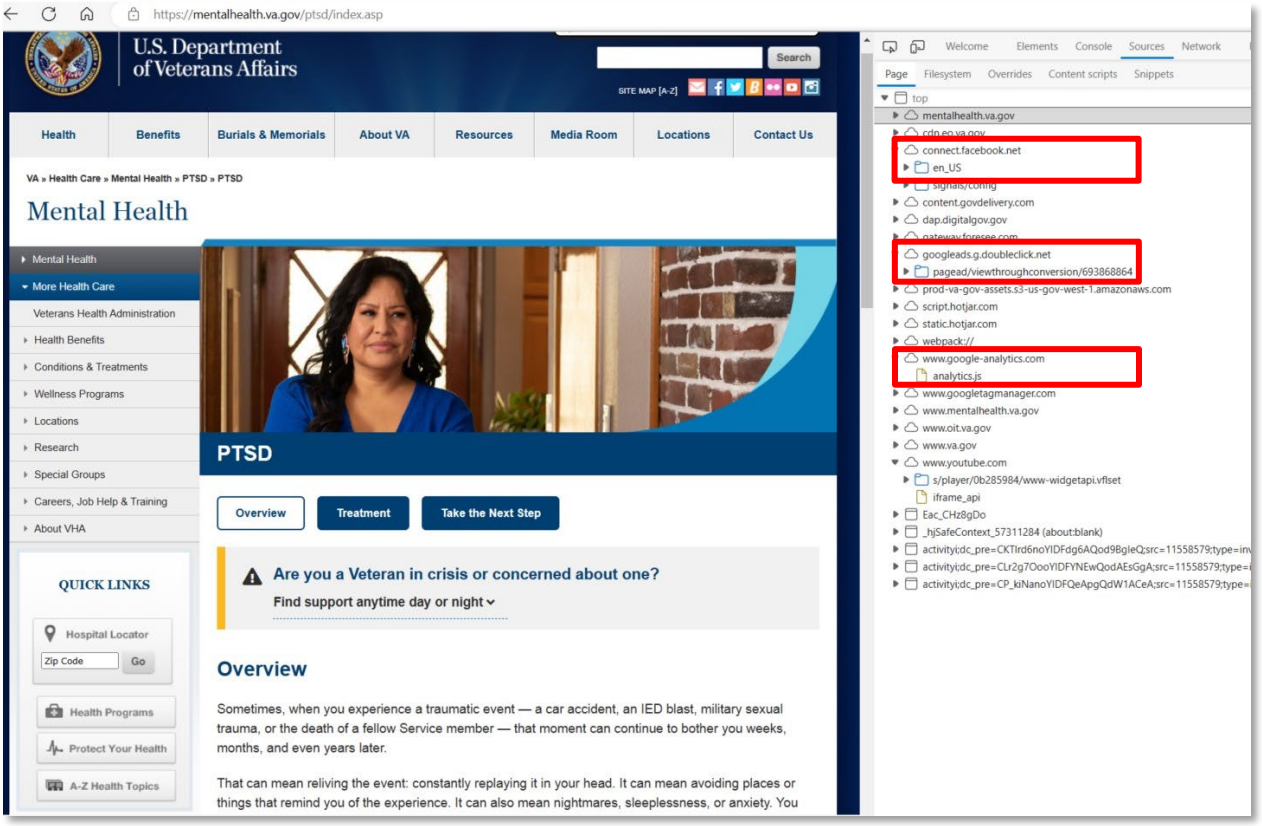
[7] HTTP Archive, 2024 Web Almanac, "Third Parties" (Nov. 21, 2024), https://almanac.httparchive.org/en/2024/third-parties [https://perma.cc/R63T-HURU]; *id*, "Methodology," https://almanac.httparchive.org/en/2024/methodology [https://perma.cc/7LSK-RJRK] (last accessed December 16, 2025).

[8] 2024 Web Almanac, "Third Parties," *supra* n.7; *see also* Office of Management and Budget Memorandum M-10-22, "Guidance for Online Use of Web Measurement and Customization Technologies" 1 (June 25, 2010), https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/memoranda_2010/m10-22.pdf [https://perma.cc/82VZ-ZUSP] ("In the private sector, it has become standard for commercial websites to use web measurement and customization technologies to engage with members of the public.").

This trend is not limited to private healthcare organizations, either. Throughout the relevant time period in this case, the federal government has used the same online technologies as CCHC across its many government websites, including on web pages operated by agencies that are themselves healthcare providers or other covered entities under HIPAA. *Amicus curiae* AHA recently pointed out as much in its successful lawsuit against the U.S. Department of Health and Human Services ("HHS"), which challenged HHS's December 2022 guidance that improperly attempted to restrict the use of third-party technologies on healthcare provider websites.[9] Web browser and inspection source tools revealed that the same at-issue third-party tools allegedly used by CCHC here were present on multiple federal covered entity websites, including on Veterans Health Administration ("VHA") web pages describing specific health conditions or symptoms. One of many possible examples—excerpted below—is the VHA's web

[9] *See Am. Hosp. Ass'n v. Becerra*, No. 4:23-cv-01110 (N.D. Tex.), ECF No. 1 (Complaint, dated Nov. 2, 2023), ¶¶ 9-11 (detailing various federal covered entity websites using Google Analytics and Meta Pixel, including the Veterans Health Administration, the Centers for Medicare and Medicaid Services' Medicare.gov website, and the Department of Defense's Military Health System web pages discussing specific health conditions and providers). Similarly, *amicus curiae* Massachusetts Health and Hospital Association recently pointed out the same with respect to multiple Massachusetts government websites. *See* Br. of *Amici Curiae* Massachusetts Health and Hospital Association et al., 2024 WL 1170039, at *30-31 (Mar. 13, 2024), in *Vita v. New England Baptist Hosp.*, No. SJC-13542 (Mass.).

page titled "Mental Health," describing the symptoms of post-traumatic stress disorder and pointing veterans to treatment resources:[10]

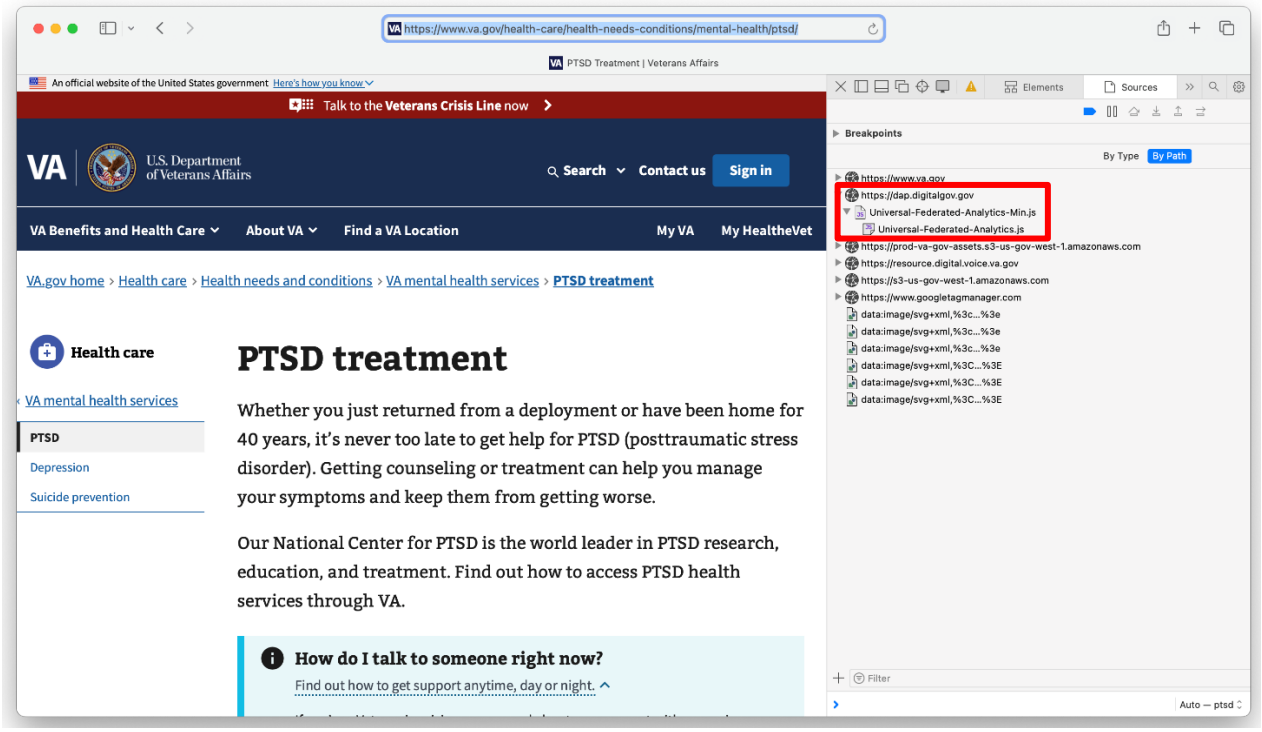


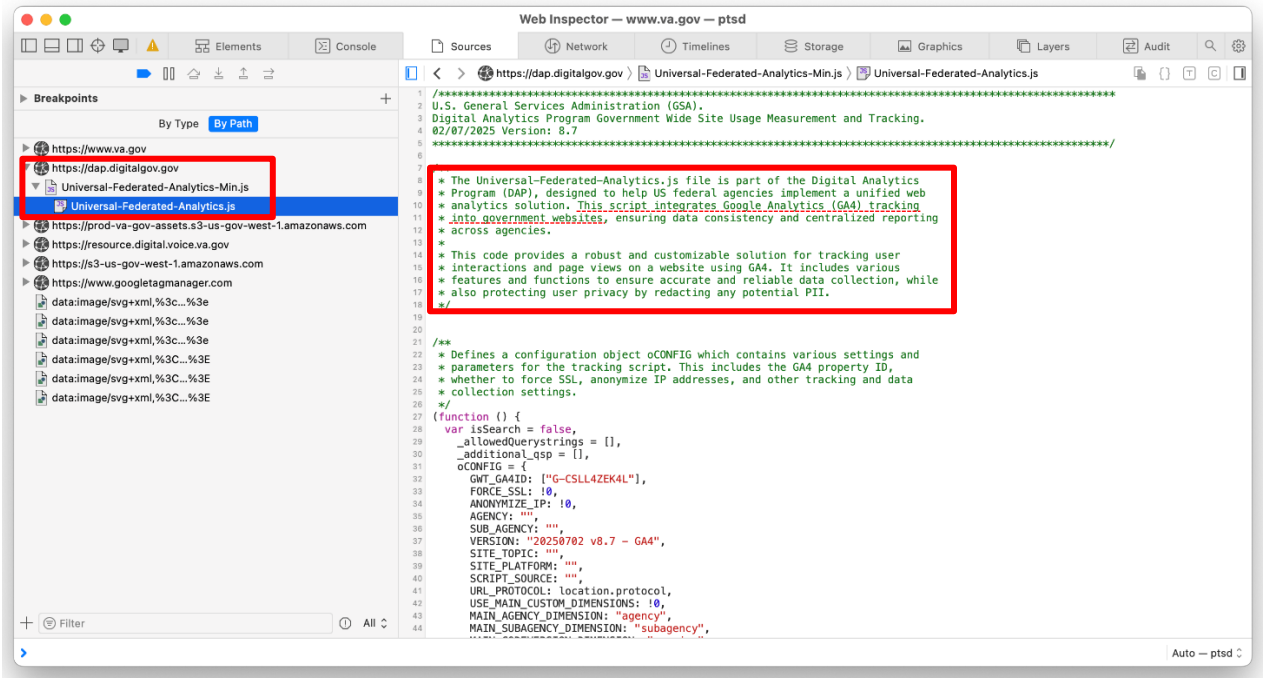
VHA still uses these technologies on its website today, with upgrades to the web pages and tools used—including a script that expressly states that it "integrates Google Analytics (GA4) tracking into government websites":[11]

---

[10] AHA Complaint, *supra* n.9, ¶ 9 (screenshot of Department of Veterans Affairs, "Mental Health," mentalhealth.va.gov/ptsd/index.asp (last visited Oct. 31, 2023) (red boxes added for emphasis)); *see also Gent v. Cuna Mut. Ins. Soc'y*, 611 F.3d 79, 84 n.5 (1st Cir. 2010) (taking judicial notice of information on government website).

[11] Department of Veterans Affairs, "PTSD Treatment," https://www.va.gov/health-care/health-needs-conditions/mental-health/ptsd/ (last accessed December 9, 2025) (red boxes and underlining added for emphasis).


https://www.va.gov/health-care/health-needs-conditions/mental-health/ptsd/
PTSD Treatment | Veterans Affairs
An official website of the United States government
Talk to the Veterans Crisis Line now
VA
U.S. Department of Veterans Affairs
Search
Contact us
Sign in
VA Benefits and Health Care
About VA
Find a VA Location
My VA
My HealtheVet
VA.gov home > Health care > Health needs and conditions > VA mental health services > PTSD treatment
Health care
VA mental health services
PTSD
Depression
Suicide prevention
PTSD treatment
Whether you just returned from a deployment or have been home for 40 years, it's never too late to get help for PTSD (posttraumatic stress disorder). Getting counseling or treatment can help you manage your symptoms and keep them from getting worse.
Our National Center for PTSD is the world leader in PTSD research, education, and treatment. Find out how to access PTSD health services through VA.
How do I talk to someone right now?
Find out how to get support anytime, day or night.
Elements
Sources
Breakpoints
By Type
By Path
https://www.va.gov
https://dap.digitalgov.gov
Universal-Federated-Analytics-Min.js
Universal-Federated-Analytics.js
https://prod-va-gov-assets.s3-us-gov-west-1.amazonaws.com
https://resource.digital.voice.va.gov
https://s3-us-gov-west-1.amazonaws.com
https://www.googletagmanager.com
Filter
Auto — ptsd


Web Inspector — www.va.gov — ptsd
Elements
Console
Sources
Network
Timelines
Storage
Graphics
Layers
Audit
https://dap.digitalgov.gov
Universal-Federated-Analytics-Min.js
Universal-Federated-Analytics.js
Breakpoints
By Type
By Path
https://www.va.gov
https://dap.digitalgov.gov
Universal-Federated-Analytics-Min.js
Universal-Federated-Analytics.js
https://prod-va-gov-assets.s3-us-gov-west-1.amazonaws.com
https://resource.digital.voice.va.gov
https://s3-us-gov-west-1.amazonaws.com
https://www.googletagmanager.com
U.S. General Services Administration (GSA).
Digital Analytics Program Government Wide Site Usage Measurement and Tracking.
02/07/2025 Version: 8.7
* The Universal-Federated-Analytics.js file is part of the Digital Analytics
* Program (DAP), designed to help US federal agencies implement a unified web
* analytics solution. This script integrates Google Analytics (GA4) tracking
* into government websites, ensuring data consistency and centralized reporting
* across agencies.
* This code provides a robust and customizable solution for tracking user
* interactions and page views on a website using GA4. It includes various
* features and functions to ensure accurate and reliable data collection, while
* also protecting user privacy by redacting any potential PII.
* Defines a configuration object oCONFIG which contains various settings and
* parameters for the tracking script. This includes the GA4 property ID,
* whether to force SSL, anonymize IP addresses, and other tracking and data
* collection settings.
(function () {
var isSearch = false,
_allowedQuerystrings = [],
_additional_qsp = [],
oCONFIG = {
GWT_GA4ID: ["G-CSLL4ZEK4L"],
FORCE_SSL: !0,
ANONYMIZE_IP: !0,
AGENCY: "",
SUB_AGENCY: "",
VERSION: "20250702 v8.7 - GA4",
SITE_TOPIC: "",
SITE_PLATFORM: "",
SCRIPT_SOURCE: "",
URL_PROTOCOL: location.protocol,
USE_MAIN_CUSTOM_DIMENSIONS: !0,
MAIN_AGENCY_DIMENSION: "agency",
MAIN_SUBAGENCY_DIMENSION: "subagency",
Filter
All
Auto — ptsd

So, too, do many other federal covered entity web pages, such as: the National Institutes of Health Clinical Center page listing doctors and their specialties;[12] the Office of Personnel Management's Federal Employees Health Benefits Program page providing health plan information for each state;[13] and the Centers for Medicare and Medicaid Services' page concerning end-stage renal disease.[14]

In fact, the federal government now mandates that Google Analytics be deployed on *all* public-facing agency websites through the General Service Administration's ("GSA") Digital Analytics Program ("DAP").[15] This includes "sites that are primarily intended for public users," as well as "sign-in pages that serve as the entry point to

---

[12] National Institutes of Health Clinical Center, "Meet Our Doctors," https://www.cc.nih.gov/meet-our-doctors (last accessed December 9, 2025) (using "Universal-Federated-Analytics.js" script integrating Google Analytics).

[13] Office of Personnel Management, Federal Employees Health Benefits Program, "FEHB Plan Information for 2026," https://www.opm.gov/healthcare-insurance/healthcare/plan-information/plans/ (last accessed December 9, 2025) (using "Universal-Federated-Analytics.js" script integrating Google Analytics).

[14] Centers for Medicare and Medicaid Services, "End-Stage Renal Disease," https://www.medicare.gov/basics/end-stage-renal-disease (last accessed December 9, 2025) (using "Universal-Federated-Analytics.js" script integrating Google Analytics).

[15] Office of Management and Budget Memorandum M-23-22, "Delivering a Digital-First Public Experience" 16 (Sept. 22, 2023), https://www.whitehouse.gov/wp-content/uploads/2023/09/M-23-22-Delivering-a-Digital-First-Public-Experience.pdf [https://perma.cc/M4RZ-VEPV]; *see also* GSA, Understanding the Digital Analytics Program, "Overview," https://digital.gov/guides/dap#content-start [https://perma.cc/TGV2-D23A] (last accessed December 16, 2025) ("DAP uses Google Analytics 360 to measure traffic and engagement across thousands of federal government websites and apps, reporting analytics under a single federal-wide shared account. Google Analytics 360 is the paid, enterprise version of Google Analytics 4 (GA4).").

authenticated content."[16] The reasoning and non-criminal, non-tortious objectives of using the online tools are plain: Just like CCHC and healthcare providers across the country, "[a]ll federal agencies can use DAP to better understand user behavior and improve their public-facing websites and digital services, which will make it easier for the public to access the information and services that they count on each and every day."[17]

Notably, the government uses the at-issue technologies to collect and analyze these data about website visits and use, making the data available to the public through a dashboard at analytics.usa.gov that shows "how the public interacts with federal websites."[18] For example, the dashboard for the Department of Veterans Affairs website shows the number of active users, their locations and languages, and the top pages visited and files downloaded for a given period:[19]

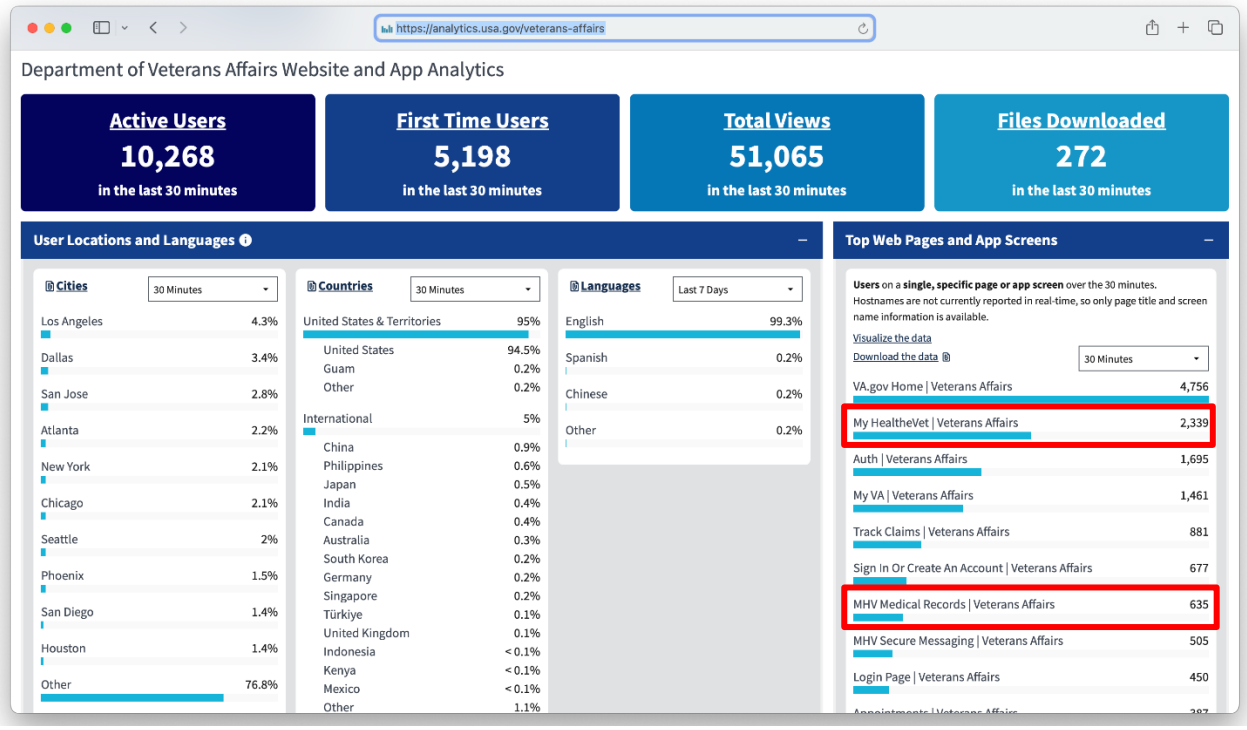
---

[16] GSA, Understanding the Digital Analytics Program, "Get Started with DAP," https://digital.gov/guides/dap/get-started-with-dap#content-start [https://perma.cc/CVY5-XZFV] (last accessed December 16, 2025).

[17] Understanding the Digital Analytics Program, "Overview," *supra* n.15.

[18] Understanding the Digital Analytics Program, "Get Started with DAP," *supra* n.16.

[19] Department of Veterans Affairs Website and App Analytics, https://analytics.usa.gov/veterans-affairs (last accessed December 9, 2025) (red boxes added for emphasis); *see also id.*, https://perma.cc/YE6D-N47C (last accessed December 16, 2025).

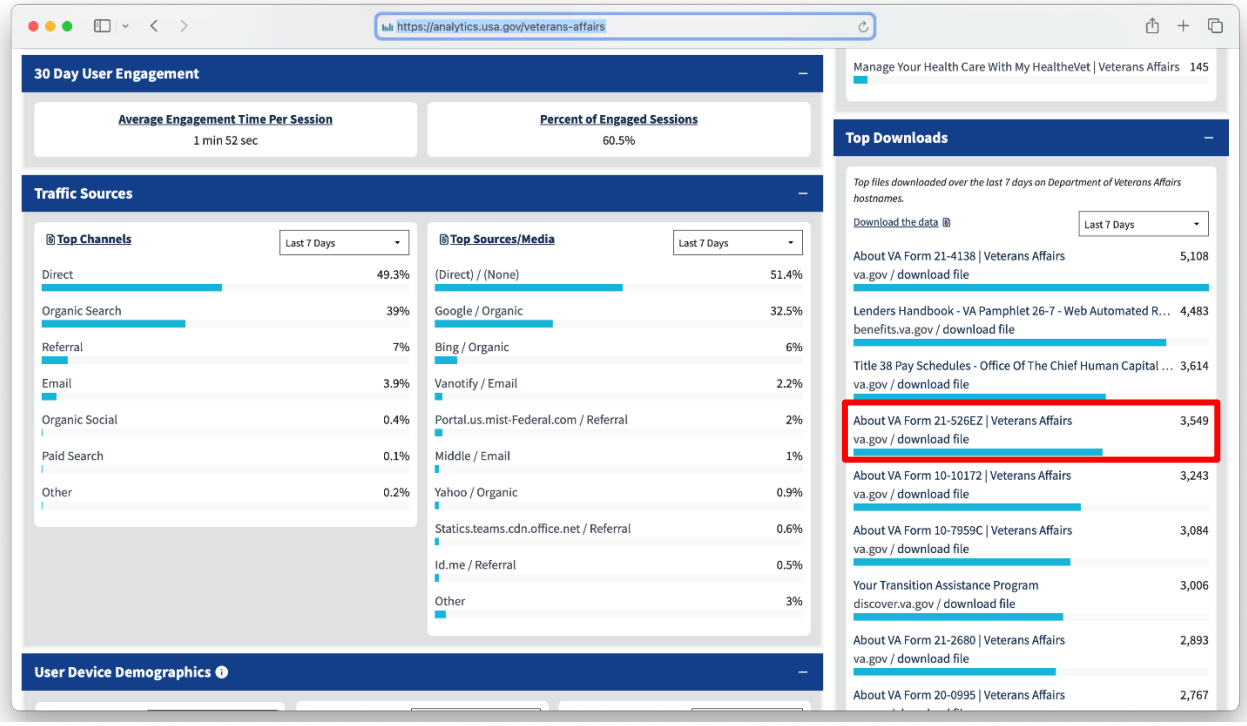


This dashboard reveals, as highlighted in the red boxes above, that the government is using analytics tools to capture the frequency with which users visited "My HealtheVet"—VA.gov's "new health portal for managing your health care online"[20]—as well as "MHV Medical Records"—a page within the My HealtheVet portal allowing users to "find, review, print, and download each part of your VA medical records."[21] It also shows that the government is using these tools to capture one of the top downloads as "VA Form 21-526EZ"—the form "to apply for VA disability

[20] Department of Veterans Affairs, "My HealtheVet on VA.gov: What to Know," https://www.va.gov/resources/my-healthevet-on-vagov-what-to-know/ [https://perma.cc/US9M-DKE2] (last accessed December 16, 2025).

[21] Department of Veterans Affairs, "Review Medical Records Online," https://www.va.gov/health-care/review-medical-records/ [https://perma.cc/JFF4-UTE3] (last accessed December 16, 2025).

compensation (pay) and related benefits" for "an illness or injury that was caused by … active military service":[22]

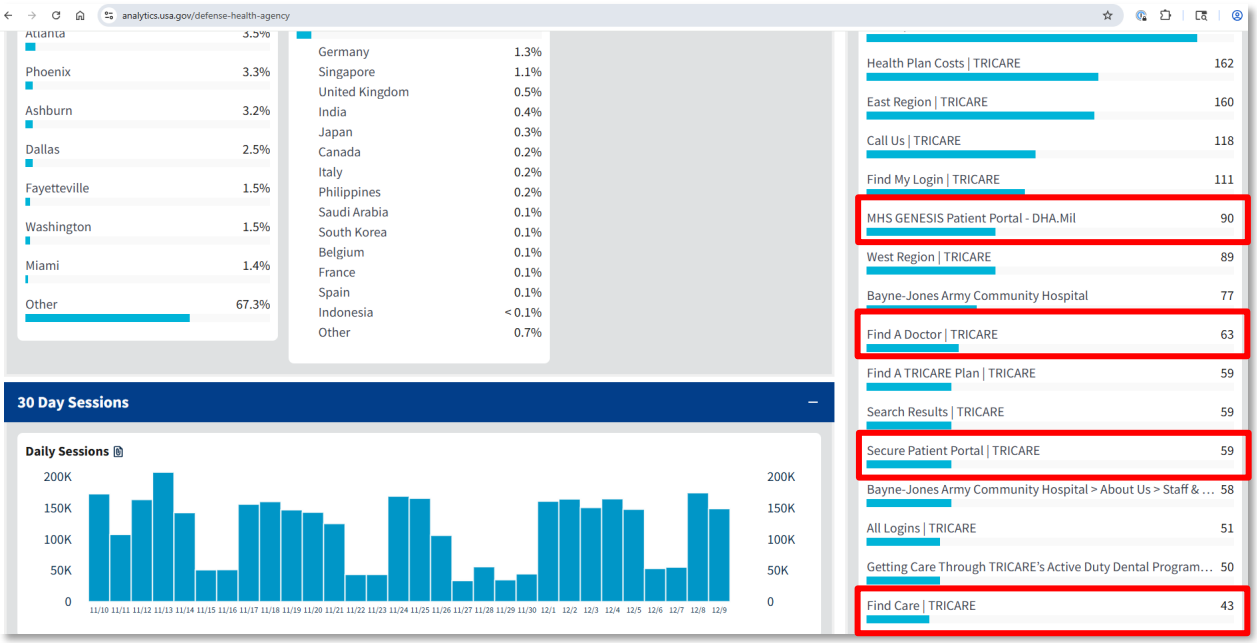


Through the government's use of these digital analytics tools across more than 500 federal government domains, similar data are available for the U.S. Department of Defense's Defense Health Agency—the entity that operates TRICARE, the uniformed services healthcare program for active duty service members and their families.[23] These

[22] Department of Veterans Affairs Website and App Analytics, *supra* n.19 (red box added for emphasis); Department of Veterans Affairs, "About VA Form 21-526EZ," https://www.va.gov/find-forms/about-form-21-526ez/ [https://perma.cc/9LEB-KXUF] (last accessed December 16, 2025).

[23] Defense Health Agency, "About the Agency," https://dha.mil/About-DHA [https://perma.cc/W3VE-MEYX] (last accessed December 16, 2025); Defense Health Agency, TRICARE, "Plans," https://tricare.mil/Plans/New [https://perma.cc/H4LN-4QER] (last accessed December 16, 2025).

tools record visitors to, among other healthcare provider websites, the government's "MHS Genesis Patient Portal – DHA.mil," the "Secure Patient Portal | TRICARE," as well as TRICARE's "Find A Doctor" and "Find Care" web pages, as indicated in the red boxes below:[24]



Many other examples exist of the government's deployment and use of these online technologies across its websites.[25] These examples demonstrate not only the specific types of web pages deploying the common online technologies at issue in this

[24] Defense Health Agency Website and App Analytics, https://analytics.usa.gov/defense-health-agency (last accessed December 9, 2025) (red boxes added for emphasis); *see also id.*, https://perma.cc/6X2C-S4NQ (last accessed December 16, 2025).

[25] U.S. Federal Government Website and App Analytics, https://analytics.usa.gov [https://perma.cc/B72M-4PWH] (last accessed December 16, 2025) (identifying close to 100 federal agencies and subagencies using Google Analytics to monitor website use as part of the DAP).

case—including healthcare provider sites—but also the non-criminal, non-tortious ways these website operators, including the federal government and its providers or other HIPAA-covered entities, are using these tools and resulting data to "understand how people find, access, and use [ ] services online."[26]

C. Healthcare providers rely on online tools for the same non-criminal, non-tortious reasons as CCHC.

These tools are so commonly used, particularly in the healthcare space, for the same good reasons that CCHC, and the federal government, and other website operators use the tools. Hospitals and health systems endeavor to provide their patients and the public with access to high-quality healthcare services, as well as to reliable and accurate healthcare information, which are critical components of promoting public health and wellness.[27] Much of this good work now occurs online. In recent years, the most frequently used vehicle for obtaining healthcare information is the internet.

---

[26] U.S. Federal Government Website and App Analytics, "About," https://analytics.usa.gov/about [https://perma.cc/K4NF-E3K6] (last accessed December 17, 2025) ("The data come from a unified Google Analytics account for U.S. federal government agencies known as the Digital Analytics Program. This program helps government agencies understand how people find, access, and use government services online.").

[27] *See* Office for Civil Rights, "Understanding Some of HIPAA's Permitted Uses and Disclosures" (Feb. 12, 2016), https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/permitted-uses/index.html [https://perma.cc/L9HP-QELT] ("Information is essential fuel for the engine of health care. … The capability for relevant players in the health care system—including the patient—to be able to quickly and easily access needed information to make decisions, and to provide the right care at the right time, is fundamental to achieving the goals of health reform.").

According to a March 2023 report by the National Quality Forum, "[a]pproximately 74 percent of surveyed Americans use search engines to start their patient journey."[28] But oftentimes online health information "can be disconcerting, confusing, and even misleading."[29] Since "[m]isinformation … thrives in the absence of easily accessible, credible information," the former U.S. Surgeon General has urged healthcare providers, as "highly trusted" sources, to "[u]se technology and media platforms to share accurate health information with the public."[30] In the same vein, the National Quality Forum has maintained that "[t]o improve health outcomes, health sources have a responsibility to … actively shar[e] high quality health information in ways that build engagement and develop personal health literacy."[31]

Hospitals and health systems take this responsibility very seriously, and they rely on online technologies to do so. Just like CCHC, healthcare providers use analytics and communications tools to disseminate accurate public health information—thereby

---

[28] National Quality Forum, Issue Brief, "Improving the Accessibility of High Quality Online Health Information" 1 (Mar. 14, 2023), https://digitalassets.jointcommission.org/api/public/content/3d1292b3b3274af2a30a37f9ed77d6c1?v=79f44b77 [https://perma.cc/E5VY-6LND].

[29] *Id.*

[30] Vivek H. Murthy, "Confronting Health Misinformation: The U.S. Surgeon General's Advisory on Building A Healthy Information Environment" 5, 10 (2021), https://www.hhs.gov/sites/default/files/surgeon-general-misinformation-advisory.pdf [https://perma.cc/4S76-67AR]; *see also id.* at 2 ("Health misinformation is a serious threat to public health. It can cause confusion, sow mistrust, harm people's health, and undermine public health efforts.").

[31] National Quality Forum, Issue Brief, *supra* n.28, at 10.

combating misinformation—and to achieve related non-criminal, non-tortious objectives, including:

Improving website functionality. "If a website is not usable—if its features or design irritates, confuses, or frustrates users in their quest to perform desired operations—many users will simply access another site that better meets their needs."[32] To avoid inadvertently turning away individuals seeking healthcare or health-related information, providers continuously aim to improve the functionality of their websites by using analytics tools.[33] Such tools convert users' interactions with web pages into critical data, including showing how much time users spend on particular pages, their navigation flow paths between pages, and the bounce rates (*i.e.*, the ratio of users who exit without visiting a second page).[34] This information can reveal areas where users found the content clear and engaging, or conversely, where they found it difficult to navigate and confusing. Healthcare providers can then take necessary actions to

---

[32] James J. Cappel & Zhenyu Huang, Journal of Computer Information Systems, "A Usability Analysis of Company Websites" 117 (Fall 2007).

[33] *See, e.g.*, National Institutes of Health Clinical Center, "Privacy and Disclaimer Policy," https://www.cc.nih.gov/disclaimers#Privacy [https://perma.cc/VWT3-WS2K] (last accessed December 16, 2025) ("The NIH Clinical Center uses certain information from visitors to its website to improve the online services we provide."); *see also* Office of Management and Budget Memorandum M-23-22, *supra* n.15, at 16 (instructing agencies to "enhance the functionality of their websites and digital services through data-driven decision-making," including "using web analytics to understand user flows and behavior" and "optimizing web pages and content for performance").

[34] Patrick Cheong-Iao Pang et al., Informatics, "A Method for Analyzing Navigation Flows of Health Website Users Seeking Complex Health Information with Google Analytics" 2, 5, 11 (Oct. 20, 2023).

improve the usability of their websites and optimize their online presence—all with the aim of providing accessible healthcare services and information.

Ensuring community needs are met. Analytics tools also provide key data about user demographics and the types and frequency of web pages visited.[35] This information can show the level and concentrations of community concern on specific health questions (*e.g.*, how many users in a particular geographic area viewed information about measles, or hypertension, or dementia, or addiction treatments, and so on). Using these data, hospitals and health systems can more effectively allocate their scarce resources to ensure community needs are met, both virtually and in person.[36] This includes, for example, providing additional online content to address users' questions, or providing additional staffing to deliver high-quality treatment and care in a particular geographic area or practice.

Delivering accessible health services. Relatedly, analytics and communications tools offer valuable insights into the effectiveness of outreach efforts to underserved members of the community, including through social media. Such data allow healthcare providers to understand the types of information sought by and

---

[35] *Id.* 2-3.

[36] *See, e.g.*, Department of Veterans Affairs, "Privacy, Policies, and Legal Information," https://www.va.gov/privacy-policy/ [https://perma.cc/652P-BFMB] (last accessed December 16, 2025) (using data "to learn about how locations on our site are being used" and "what information is of most and least interest" in order to "make VA.gov sites more useful to visitors").

demographics of individuals who engage with health information through various different channels.[37] In addition, these online tools can provide translation technologies that help non-English speakers access vital healthcare information on hospitals' web pages. Using these technologies, providers can tailor future communications with the goal of delivering accessible healthcare services and information to all community members.[38]

In short, online technologies allow hospitals and health systems across the country, including federal government providers and CCHC, among others, to achieve numerous non-criminal, non-tortious objectives. This is readily apparent from the complaint and confirmed by industry context. For that reason, the challenged conduct in this case is "just as much in line with" lawful conduct, and the District Court's dismissal should stand. *Frith*, 38 F.4th at 270.

---

[37] *See* Office of Management and Budget Memorandum M-23-22, *supra* n.15, at 24 (urging agencies to "determine the channels that are most appropriate for the intended customer or user group(s), considering the accessibility, language, and technology needs of that audience").

[38] *See, e.g.*, Cape Cod Healthcare, "Website Privacy Policy," https://www.capecodhealth.org/about/policies-notices/website-privacy-policy/ [https://perma.cc/6XNK-BBHS] (last accessed December 16, 2025) (explaining use of data to "[t]ailor the content we display through the Website and in our communications, including any content that we believe may be of interest to you").

II. Allowing Plaintiffs' insufficient allegations regarding PHI to survive a motion to dismiss would expose the healthcare industry to costly suits without basis under HIPAA.

Plaintiffs' attempt to invoke the ECPA's crime-tort exception fails for an independent reason that applies to many of these copy-and-paste lawsuits filed against healthcare providers. Plaintiffs' argument that CCHC disclosed their PHI in violation of HIPAA, thereby triggering liability under the ECPA, rests on a faulty premise—namely, that the information shared was indeed PHI, as defined by HIPAA and its implementing regulations. Plaintiffs have failed to allege specific, non-conclusory facts to state a plausible claim regarding PHI. Hospitals and health systems should not be subjected to costly litigation based on such vague allegations.

For the healthcare industry, HIPAA "strikes a balance," assuring that "individuals' health information is properly protected," while at the same time "allowing the flow of health information needed to provide and promote high quality health care and to protect the public's health and well being."[39] To that end, both the statute and its implementing regulations carefully define the type of health information that must be protected from disclosure. PHI means "individually identifiable health information" ("IIHI") that meets certain criteria. 45 C.F.R. § 160.103. IIHI, in turn, means information that (1) "relates to the past, present, or future physical or mental health or

[39] Office for Civil Rights, "Summary of the HIPAA Privacy Rule" (Mar. 14, 2025), https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html [https://perma.cc/B964-NP9Z].

condition of *an individual*, the provision of health care to *an individual*, or the past, present, or future payment for the provision of health care to *an individual*," and (2) "identifies *the individual*" or "with respect to which there is a reasonable basis to believe that the information can be used to identify *the individual*." 42 U.S.C. § 1320d(6) (emphases added); 45 C.F.R. § 160.103. In other words, to be classified as IIHI, "information must satisfy *both* the 'relates to' clause *and* the 'identifies' clause." *Am. Hosp. Ass'n v. Becerra*, 738 F. Supp. 3d 780, 801 (N.D. Tex. 2024).

Here, Plaintiffs have failed to plead sufficient factual matter to state a plausible claim that the information allegedly disclosed by CCHC constitutes IIHI. To start, the complaint contains countless conclusory allegations that merely recite the term PHI and its synonyms. *See, e.g.*, SAC ¶ 4 ("protected health information"), ¶ 13 ("medical information" and "personally identifiable information"), ¶ 25 ("personal healthcare information"), ¶¶ 98, 155 ("PII/PHI"). Those legal conclusions must be disregarded. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."); *Waleyko v. Phelan*, 146 F.4th 89, 95 (1st Cir. 2025) ("[W]e do not accept a complaint's bald assertions and unsubstantiated conclusions." (cleaned up)).

The complaint also contains dozens of vague allegations regarding unnamed "patients" and generic uses of the at-issue technologies. *See, e.g.*, SAC ¶¶ 3, 25, 98, 135, 155. This is unsurprising given the copy-and-paste nature of the complaint, which Plaintiffs' counsel has recycled in several cases, even forgetting in this case to change a

reference to a different hospital when copying and pasting the allegations into their complaint against CCHC.[40] Courts have frowned upon this practice, and rightfully so, given that it enables plaintiffs' lawyers to quickly generate countless complaints against defendants with very little specificity.[41] In any event, Plaintiffs' generic allegations must be disregarded here. "On a motion to dismiss a putative class action complaint, the Court may only consider the allegations of the named plaintiffs, and not the generalized allegations of unnamed plaintiffs or putative class members." *Tatum v. Chrysler Grp. LLC*, 2012 WL 6026868, at *4 (D.N.J. Dec. 3, 2012); *cf. Pruell v. Caritas Christi*, 678 F.3d 10, 14 (1st Cir. 2012) ("Class actions are useful to remedy widespread wrongs, but such lawsuits still require at the outset a viable named plaintiff with a plausible claim.").

What remains are three paragraphs with sparse allegations about the two named Plaintiffs. *See* SAC ¶¶ 11-13. Plaintiff Debra Goulart allegedly "researched medication, knee replacement recovery, and cancer screening procedures" and "would use the patient portal to check lab results for biopsies and bone density tests." SAC ¶ 11.

---

[40] *Compare* complaint in this matter, Appx0740-0812, *with* nearly identical complaint in *Doe v. Emerson Hospital*, No. 1:25-CV-13631 (D. Mass.), ECF No. 1-1, at 179-258. Plaintiffs' counsel forgot to change a reference to "www.emersonhospital.org" when copying and pasting the allegations into their complaint against CCHC. *See* SAC ¶ 126; Emerson Compl. ¶ 132; *see also* Appx0445-0446 (Plaintiffs' counsel declaring that they represent "putative classes in Massachusetts state and federal court against hospitals," including CCHC and Emerson).

[41] *See Licea v. Caraway Home Inc.*, 655 F. Supp. 3d 954, 964 (C.D. Cal. 2023) (While "it is far easier and cheaper to copy and paste a complaint over and over again," "there is a point at which all reasonable people should agree the practice has gone too far.").

Plaintiff Michael Garbitt is said to have "research[ed] treatments available from Defendant, including through his PCP and cardiologist" and "used the portal to review information about tests that he underwent at Cape Cod Hospital relating to his heart." SAC ¶ 12. According to Plaintiffs, CCHC "installed tracking technologies across its [unidentified] webpages that caused the [unspecified] medical information Plaintiffs entered on those webpages, their [unspecified] personally identifiable information including their IP Addresses and Browser Fingerprints, and Plaintiffs' [unspecified] interactions with Defendant's [unspecified] webpages, to be transmitted to third party advertisers without their consent." SAC ¶ 13. Plaintiffs allege none of this with specificity—leaving the Court to speculate as to what particular portions of Plaintiffs' claimed research and interactions were supposedly shared, with whom, and how.

Accordingly, these Plaintiff-focused allegations do not plausibly show that the information supposedly disclosed constitutes IIHI—*i.e.*, that it both identified an individual and related to the individual's health condition. With respect to the first prong, Plaintiffs allege that CCHC disclosed their "IP Addresses and Browser Fingerprints." SAC ¶ 13. But, based on the Plaintiffs' own allegations in the complaint, this information is insufficient to identify Plaintiffs, as opposed to the devices they used. Indeed, the complaint plainly states that "an IP address is a numerical identifier that identifies each computer connected to the internet." *Id.* ¶ 57 (emphasis added). And, according to the complaint, a "browser-fingerprint is information collected about a computing device that can be used to identify the specific device." *Id.* ¶ 81 (emphasis

added). But merely identifying a computer or device does not identify an individual user, as a device could be shared by many different people (*e.g.*, in an office, a family home, a public library, or an apartment building). Courts have found as much,[42] and the allegations here make that clear.

Even if that information could somehow identify Plaintiffs, they allege nothing to establish that, as allegedly shared, it was apparent to the recipient that the information relates to Plaintiffs' *own health conditions*, a necessary element to claim IIHI was disclosed. *Amicus curiae* AHA's recent lawsuit against HHS is instructive here. *See supra* 9 & n.9; *Am. Hosp. Ass'n v. Becerra*, 738 F. Supp. 3d 780 (N.D. Tex. 2024). The court vacated HHS guidance that sought to "shoehorn additional information into the IIHI definition," "including circumstances where an online technology connects (1) an individual's IP address with (2) a visit to [an unauthenticated web page] addressing specific health conditions or healthcare providers." *Id.* at 789, 807. In rejecting that such a scenario constitutes IIHI, the court explained, "Without knowing information that's never received—*i.e.*, the visitor's subjective motive—the resulting metadata could never identify that individual's PHI. Simply put, **Identity** (Person A) + **Query** (Condition B) ≠ **IIHI** (Person A has Condition B)." *Id.* at 803. That is so because the

[42] *See, e.g.*, *Smith v. Facebook, Inc.*, 262 F. Supp. 3d 943, 948 n.3, 954-55 (N.D. Cal. 2017) (noting that "IP addresses can be shared among several users"), *aff'd* 745 F. App'x 8, 9 (9th Cir. 2018) ("The data show only that Plaintiffs searched and viewed publicly available health information that cannot, in and of itself, reveal details of an individual's health status or medical history.").

information allegedly shared provides no indication whatsoever to the recipient whether the person using the device is a potential patient, a friend or relative of that patient, just a curious online visitor, or someone else entirely (*e.g.*, a researcher preparing an amicus brief). In this case, Plaintiffs allege only vaguely that "medical information" was shared, not specifically their patient status, nor any information about Plaintiffs from within the secure patient portal. SAC ¶ 13. That is insufficient to satisfy the second prong of the IIHI definition, as the *American Hospital Association v. Becerra* decision recognizes.

Having failed to plead sufficient facts to state a plausible claim that the information allegedly disclosed by CCHC constitutes PHI under HIPAA, Plaintiff cannot state a claim under the crime-tort exception to the ECPA.[43] The District Court's decision should be affirmed. More is required to substantiate actual sharing of IIHI. To hold otherwise would only incentivize the proliferation of costly—yet meritless—suits against hospitals and health systems nationwide. *See supra* 3.

CONCLUSION

For the foregoing reasons, *amici curiae* respectfully ask this Court to affirm the decision of the District Court dismissing Plaintiffs' complaint.

[43] *See Rand v. Eyemart Express*, LLC, 2025 WL 1519726, at *5 (N.D. Tex. May 27, 2025) (dismissing ECPA claim because "plaintiffs have failed to plead facts to plausibly establish that any PHI was shared with Meta," and "because no facts support a violation of HIPAA, the crime-tort exception does not apply").

Dated: December 18, 2025

Respectfully submitted,

/s/ Rebekah B. Kcehowski

Rebekah B. Kcehowski (No. 1220828)
Katherine E. Eayre (No. 1221053)
JONES DAY
500 Grant Street, Suite 4500
Pittsburgh, PA 15219
(412) 391-3939
rbkcehowski@jonesday.com
keayre@jonesday.com

Counsel for Amici Curiae Hospital Associations

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5); the type-style requirements of Fed. R. App. P. 32(a)(6); and the type-volume limitations of Fed. R. App. P. 29(a)(5) and 32(a)(7) because it is proportionally spaced, has a typeface of 14-point Garamond font, and contains 6,014 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

Dated: December 18, 2025

/s/ Rebekah B. Kcehowski
Rebekah B. Kcehowski
Counsel for Amici Curiae Hospital Associations

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document on the Court's CM/ECF system, which will send a notification of such filing to counsel of record for all parties in this case.

Dated: December 18, 2025

/s/ Rebekah B. Kcehowski
Rebekah B. Kcehowski
Counsel for Amici Curiae Hospital Associations