

# ANTI-CARE COPS

STATE SURVEILLANCE OF GENDER-  
AFFIRMING CARE

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## Executive Summary

- In a rapidly growing number of cases, prosecutors are weaponizing medical records to sue doctors and block access to gender-affirming care.
- Law enforcement is also expanding anti-care surveillance into non-medical records, including driver's license, occupational license, and voting databases.
- With no short-term hope for federal trans civil rights protections, state legislators, healthcare providers, and tech companies must act to protect gender-affirming care.

### I. Gender-Affirming Care Under Threat

Gender-affirming healthcare—medical care that aligns a person's body and their gender—is a literal lifeline for many transgender and nonbinary people.<sup>1</sup> But across the country, people are rapidly losing access to evidence-based and medically necessary care. Twenty-six anti-care states have restricted or banned gender-affirming care for young people, and ten have cut off care for many adults.<sup>2</sup> In January 2025, after President Trump ordered funding cuts for hospitals providing gender-affirming care to young people, some people even lost access to care in jurisdictions where it is protected under state and local law.<sup>3</sup>

Anti-care executive orders and legislation threaten medical providers with ruin if they provide gender-affirming care. They intimidate medical professionals and hospitals with threats of medical delicensure, fines and funding cuts, and even jail time.<sup>4</sup> Their primary effect is to shut down care entirely, making it impossible for people to get, help their children get, or to provide gender-

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<sup>1</sup> "USPATH Position Statement on Legislative and Executive Actions Regarding the Medical Care of Transgender Youth," United States Professional Association for Transgender Health, April 22, 2022, <https://www.wpath.org/media/cms/Documents/USPATH/2022/With%20Date%20Position%20Statement%20Anti%20Trans%20Leg%20USPATH%20Apr%202022%202022.pdf>. See also "Outlawing Trans Youth: State Legislatures and the Battle over Gender-Affirming Healthcare for Minors," *Harvard Law Review* 134, no. 6, April 2021, <https://harvardlawreview.org/print/vol-134/outlawing-trans-youth-state-legislatures-and-the-battle-over-gender-affirming-healthcare-for-minors/>. See also Derek S Day, John J Saunders, and Anu Matorin, "Gender Dysphoria and Suicidal Ideation: Clinical Observations from a Psychiatric Emergency Service," *Cureus* 11, no. 11, November 12, 2019: e6132, <https://doi.org/10.7759/cureus.6132>.

<sup>2</sup> Courts in at least two states have blocked these laws. "Map: Attacks on Gender-affirming Care by State," Human Rights Campaign, <https://www.hrc.org/resources/attacks-on-gender-affirming-care-by-state-map>. See also "Medicaid Coverage of Transgender-Related Care," Movement Advancement Project, accessed January 7, 2025, <https://www.lgbtmap.org/equality-maps/medicaid>.

<sup>3</sup> The order is currently enjoined. Jenna Portnoy and Salvatore Rizzo, "Judge Blocks Trump Order on Transgender Youth Health Care," *The Washington Post*, February 14, 2025, <https://www.washingtonpost.com/nation/2025/02/13/trump-transgender-health-care-youth-lawsuit/>. See also Amy Harmon, "Judge Blocks Trump Orders to Stop Funds for Trans Youth Health Providers," *The New York Times*, March 5, 2025, sec. U.S., <https://www.nytimes.com/2025/03/04/us/transgender-young-people-treatment.html>.

<sup>4</sup> Christy Mallory, Madeline G. Chin, and Justine C. Lee, "Legal Penalties for Physicians Providing Gender-Affirming Care," *JAMA* 329, no. 21 (June 6, 2023): 1821–22, <https://doi.org/10.1001/jama.2023.8232>.

affirming care. Where youth bans are in effect, patients lose access to puberty blockers, which give young people the gift of time.<sup>5</sup> One in three trans people live in poverty, but where Medicaid doesn't cover gender-affirming care, life-saving medication slips out of reach.<sup>6</sup>

When, despite these obstacles, individuals manage to obtain gender-affirming healthcare, state and federal investigators have begun to pounce. They weaponize patient data, as Texas did when it used medical and prescription records to charge three Texas doctors with violating the state's ban on gender-affirming care for teens.<sup>7</sup> They perform dragnet searches of state databases to identify many patients quickly—as Texas also did when it searched driver's licenses, state ID cards, learner's permits, election documents, and occupational licenses for individuals who changed their gender identification.<sup>8</sup> Investigations that weaponize individuals' digital messages and internet searches as evidence in anti-care prosecutions aren't far behind, given the roadmap drawn by abortion prosecutors.

The best, most stable solution to these threats is to establish strong privacy protections and strong protections for transgender and nonbinary Americans at the federal level. But even lacking access to the levers of federal power, state legislators, healthcare providers, and tech companies can limit the risks to people receiving, aiding, or providing gender-affirming care. Investigations and prosecutions meant to stamp out gender-affirming care are ramping up. President Trump has made clear his intention to humiliate, endanger, and eliminate transgender and nonbinary people.<sup>9</sup> What follows is a call and a guide to fight back.

## II. Weaponizing Medical Records

### *Loose Lips Sink Scripts*

In May 2023, anti-care activists provided Texas Attorney General Ken Paxton with secretly filmed footage of a hospital employee describing gender-affirming care at Texas Dell Children's Hospital.<sup>10</sup>

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<sup>5</sup> Carly Guss and Catherine M. Gordon, "Pubertal Blockade and Subsequent Gender-affirming Therapy: True, True and Unrelated?," *JAMA Network Open* 5, no. 11 (November 1, 2022), <https://doi.org/10.1001/jamanetworkopen.2022.39763>.

<sup>6</sup> "U.S. Trans Survey 2022: Jobs & Housing," U.S. Transgender Survey (USTS), February 2024, <https://ustranssurvey.org/report/jobs-housing/>.

<sup>7</sup> "AG Ken Paxton Sues Third Doctor for Allegedly Providing Gender-Affirming Care to Minors," *Texas Public Radio*, November 8, 2024, sec. Government/Politics, <https://www.tpr.org/government-politics/2024-11-08/ag-ken-paxton-sues-third-doctor-for-allegedly-providing-gender-affirming-care-to-minors>.

<sup>8</sup> Katie McCreedy et al., "State Policies Regulating Law Enforcement Access to Prescription Drug Monitoring Program Testosterone Prescription Data," *JAMA* 332, no. 20 (November 26, 2024): 1754–57, <https://doi.org/10.1001/jama.2024.20035>. See also Samantha Riedel, "Ron DeSantis Ordered Florida Universities to Submit Data on Trans People," *Them*, January 19, 2023, <https://www.them.us/story/desantis-florida-universities-transgender-medical-data>.

<sup>9</sup> Orion Rummel, "'Horrible Discrimination': Federal Judges Say Trump's Anti-Trans Orders Are Rooted in Bias, Not Law," *The 19th*, February 21, 2025, <https://19thnews.org/2025/02/trump-anti-trans-executive-orders-animus/>.

<sup>10</sup> Eleanor Klibanoff, "Texas AG Ken Paxton Probing Austin Children's Hospital Following Video of Social Worker Discussing Transition-Related Care," *The Texas Tribune*, May 5, 2023, <https://www.texastribune.org/2023/05/05/ken-paxton-trans-care-investigation-dell-childrens/>.

Paxton opened an investigation into the hospital's "potentially illegal" activities.<sup>11</sup> Within hours, the hospital announced the resignation of all of its physicians providing gender-affirming care and canceled their patients' appointments.<sup>12</sup>

At around the same time, a former doctor at Texas Children's Hospital reactivated his electronic records account to illicitly access and leak trans teens' medical records.<sup>13</sup> Paxton opened another investigation into Texas hospitals providing gender-affirming care to youth.<sup>14</sup> Federal prosecutors indicted the doctor for allegedly obtaining records under false pretenses and leaking them "to cause malicious harm," but he faced no consequences: the Department of Justice moved to dismiss the case after President Trump's inauguration.<sup>15</sup>

When Texas's ban on teen care took effect, Paxton's investigations turned into lawsuits. In late 2024, the attorney general sued three Texas doctors for defying the ban, citing patients' prescription records, diagnoses, and reported biological sex.<sup>16</sup> By early 2025, he had forced these doctors to stop providing gender-affirming care in Texas; two doctors were forced to stop seeing patients entirely.<sup>17</sup>

The anti-care activists who produced evidence for the attorney general's investigations capitalized on two weaknesses: hospitals' inadequate privacy practices and their extensive record keeping. Unapproved outsiders were able to film a presentation on gender-affirming care. A doctor was able to talk his way into accessing a medical records system, and once in, he was able to access the records of patients he never treated. Those records were voluminous and damning in part because of state law (e.g., in Texas, prescriptions must include the prescribing doctor's name, not just a hospital name), and in part by choice (e.g., one doctor included patients' "preferred name, sex, and pronouns").<sup>18</sup>

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<sup>11</sup> "Paxton Announces Second Investigation into Texas Hospital for Potentially Unlawfully Performing 'Gender Transitioning' Procedures," Texas Office of the Attorney General, May 19, 2023, <https://www.texasattorneygeneral.gov/news/releases/paxton-announces-second-investigation-texas-hospital-potentially-unlawfully-performing-gender>.

<sup>12</sup> Eleanor Klibanoff and Alex Nguyen, "Austin Doctors Who Treated Trans Kids Leaving Dell Children's Clinic after AG Paxton Announces Investigation," The Texas Tribune, May 13, 2023, <https://www.texastribune.org/2023/05/13/austin-dell-childrens-gender-affirming/>.

<sup>13</sup> Vivian Ho, "DOJ Drops Case against Texas Doctor Who Shared Transgender Care Data," *Washington Post*, January 25, 2025, <https://www.washingtonpost.com/national-security/2025/01/25/justice-drops-case-eithan-haim-doctor/>.

<sup>14</sup> Klibanoff, "Investigating Second Children's Hospital."

<sup>15</sup> Ho, "DOJ Drops Case."

<sup>16</sup> See, for example, Pl.'s Verified Original Petition and Request for an Application for Temporary and Permanent Injunctions, *The State of Texas v. May C. Lau, M.D.*, No. 493-08026-2024 (Dist. Court of Collin Cnty., October 17, 2024).

<sup>17</sup> "Attorney General Ken Paxton Stops Texas Doctors Who Illegally Gave Children 'Gender Transition' Drugs from Practicing Medicine" (Office of the Texas Attorney General, February 4, 2025), <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-stops-texas-doctors-who-illegally-gave-children-gender-transition-drugs>. See also Jamie Stengle, "Texas Says This Doctor Illegally Treated Trans Youth. He Says He Followed the Law," *AP News*, updated February 27, 2025, sec. U.S. News, <https://apnews.com/article/transgender-health-texas-lawsuit-doctors-951fe220e9b694533bce38068278521f>.

<sup>18</sup> Pl.'s Verified Original Petition and Request for an Application for Temporary and Permanent Injunctions, *The State of Texas v. May C. Lau, M.D.*, No. 493-08026-2024 (Dist. Court of Collin Cnty., October 17, 2024).

### *Legal and Budgetary Pressure Unlocks Medical Records*

In other cases, anti-care prosecutors have forced the hand of gender-affirming care providers to make them yield their records. Vanderbilt University Medical Center in Tennessee gave medical records to Tennessee Attorney General Jonathan Skrmetti in 2023, claiming that it was compelled to provide the records as part of a medical billing fraud investigation.<sup>19</sup> Paxton tried a similar maneuver across state lines when he accused a Seattle hospital and a Georgia clinic of violating Texas consumer protection law, and issued administrative subpoenas for related medical records.<sup>20</sup> Paxton did not obtain the records, but he still won: while the Seattle hospital countersued, it ultimately agreed not to treat any Texas patients.<sup>21</sup> (The Georgia clinic refused to release patient records with no reported consequences.<sup>22</sup>) In Florida, governor Ron DeSantis demonstrated that financial pressure also unlocks medical records. He obtained medical records of Florida State university students who received gender-affirming care after having the state budgetary office—holder of the university’s purse strings—make the demand.<sup>23</sup>

### *Prescription Databases*

Prescription databases pose a unique threat to gender-affirming care. With support from the Drug Enforcement Association (“DEA”), all 50 states, the District of Columbia, and three U.S. territories maintain databases to track prescriptions for all controlled substances—including testosterone.<sup>24</sup> Most states also track noncontrolled “drugs of concern” in their databases, along with patient-

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<sup>19</sup> Associated Press, “Trans Patients Sue Hospital That Provided Their Records to Tennessee’s Attorney General,” NBC News, July 25, 2023, <https://www.nbcnews.com/nbc-out/news/trans-patients-sue-hospital-provided-records-tennessees-attorney-gener-rcna96319>.

<sup>20</sup> The Texas attorney general alleged that hospitals violated Texas’s Deceptive Trade Practices Act. See Pl. Seattle Children’s Hospital’s Special Appearance and Subject Thereto, Original Petition to Set Aside Civil Investigative Demands or in the Alternative, Request for Extension of Time to Respond and Request to Modify Demands, *Seattle Children’s Hospital v. Office of the Attorney General of the State of Texas*, No. D-1-GN-23-008855 (Dist. Court of Travis Cnty., December 7, 2023). See also Eleanor Klibanoff and William Melhado, “Texas Conservatives Test How Far They Can Extend Abortion and Gender-Transition Restrictions beyond State Lines,” *The Texas Tribune*, February 9, 2024, <https://www.texastribune.org/2024/02/09/texas-abortion-transgender-care-outside-state-borders/>. See also “Texas Appeals Court Upholds Rulings Blocking State from Investigating Trans Youth and Their Families,” *American Civil Liberties Union* (blog), March 29, 2024, <https://www.aclu.org/press-releases/152453>. See also QMED, “QueerMed Resolutely Opposes the Texas Attorney General’s Request for Patient Data,” QMED/QueerMed, January 29, 2024, <https://queermed.com/2024/01/queermed-resolutely-opposes-the-texas-attorney-generals-request-for-patient-data>. See also Jamie Stengle, “Seattle Children’s Reaches Settlement with Texas AG Ken Paxton,” *The Seattle Times*, April 23, 2024, <https://www.seattletimes.com/seattle-news/health/seattle-childrens-wont-turn-over-gender-affirming-care-records-to-tx/>.

<sup>21</sup> Texas Office of the Attorney General. “Medical Provider Agrees to Withdraw from Texas Instead of Complying with Investigation into ‘Gender Transition’ Treatments for Minors,” April 22, 2024, <https://www.texasattorneygeneral.gov/news/releases/medical-provider-agrees-withdraw-texas-instead-complying-investigation-gender-transition-treatments>.

<sup>22</sup> QMED, “QueerMed Resolutely Opposes the Texas Attorney General’s Request for Patient Data,” QMED/QueerMed, January 29, 2024, <https://queermed.com/2024/01/queermed-resolutely-opposes-the-texas-attorney-generals-request-for-patient-data>.

<sup>23</sup> Brendan Farrington, “DeSantis Seeks Details on Transgender University Students,” AP News, January 19, 2023, <https://apnews.com/article/ron-desantis-colleges-and-universities-race-ethnicity-florida-education-97d0b8aef2fc3a60733c8bd4080cc07b>. See also

<sup>24</sup> Jennifer D Oliva, “Expecting Medication Surveillance,” *FORDHAM LAW REVIEW* 93, no. 2 (2024), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=6116&context=flr>.

identifying, prescriber, and pharmacy data.<sup>25</sup> Prescription databases are armed with powerful analytic software, and, with the exception of three states, linked via a single electronic platform.<sup>26</sup> These capabilities may help states track and prevent the diversion of prescription opioids, but they can also track and control prescriptions for any controlled substances or “drugs of concern”—which could include puberty blockers in states that bar teen access to gender-affirming care.<sup>27</sup> In most states, that couldn’t be easier. A state agency that oversees a prescription database would only need to enact an administrative rule: that is, publish a formal statement that puberty blockers are now drugs of concern.<sup>28</sup> And while law enforcement users typically need a court’s permission or a connection to an “active investigation” to access prescription records (state requirements vary), that’s a low bar to clear in an anti-care state that investigates gender-affirming care as a crime.<sup>29</sup> At the federal level, DEA investigators have repeatedly attempted to sidestep states’ requirements for accessing their prescription databases, which is especially worrisome given President Trump’s interest in shutting down gender-affirming care.<sup>30</sup>

### III. Weaponizing Non-Medical Data

To date, anti-care investigations have relied primarily on medical records to enforce gender-affirming care bans, but abortion prosecutions provide an alarming roadmap for how prosecutors can weaponize emails, direct messages, and internet search histories. Nebraska prosecutors used Facebook messages to indict a mother who helped her seventeen-year-old daughter obtain an abortion; Mississippi prosecutors scoured a woman’s internet search history, finding queries about abortion-inducing medication; Indiana initiated a suit against another woman using her text messages about obtaining abortion medication.<sup>31</sup>

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<sup>25</sup> Oliva, “Expecting Medication Surveillance.”

<sup>26</sup> Marilyn Bulloch, “The Evolution of the PDMP,” *Pharmacy Times*, July 26, 2018, <https://www.pharmacytimes.com/view/the-evolution-of-the-pdmp>. See also “PMP InterConnect,” National Association of Boards of Pharmacy, accessed March 12, 2025, <https://nabp.pharmacy/members/programs-services/industry-information-networks/pmp-interconnect/>. See also Oliva, “Expecting Medication Surveillance.”

<sup>27</sup> “Senator Markey Calls on Biden Admin. to Lift Barriers to Testosterone, Expand Access to Gender-Affirming Hormone Therapy,” September 16, 2022, <https://www.markey.senate.gov/news/press-releases/senator-markey-calls-on-biden-admin-to-lift-barriers-to-testosterone-expand-access-to-gender-affirming-hormone-therapy>.

<sup>28</sup> “Overview of Prescription Drug Monitoring Programs (PDMPs)” (Prescription Drug Monitoring Program Training and Technical Assistance Center, Bureau of Justice Assistance, U.S. Department of Justice, February 2023), [https://www.pdmpassist.org/Content/Documents/pdf/resources/PDMPs\\_Overview\\_2023.pdf#page=4](https://www.pdmpassist.org/Content/Documents/pdf/resources/PDMPs_Overview_2023.pdf#page=4).

<sup>29</sup> “Call to Action and Issue Brief: Justice System Use of Prescription Drug Monitoring Programs” (U.S. Department of Justice, Bureau of Justice Assistance, Global Justice Information Sharing Initiative, January 2015), <https://bjia.ojp.gov/sites/g/files/xyckuh186/files/Publications/Global-JusticeSystemUsePDMPs.pdf>.

<sup>30</sup> Nathan Freed Wessler, “The Government Needs to Get a Warrant If It Wants Access to Our Private Health Information,” *American Civil Liberties Union* (blog), May 29, 2019, <https://www.aclu.org/news/privacy-technology/government-needs-get-warrant-if-it-wants-access>.

<sup>31</sup> Martin Kaste, “Nebraska Cops Used Facebook Messages to Investigate an Alleged Illegal Abortion,” *NPR*, August 12, 2022, <https://www.npr.org/2022/08/12/1117092169/nebraska-cops-used-facebook-messages-to-investigate-an-alleged-illegal-abortion>. See also Cynthia Conti-Cook and Kate Bertash, “Digital Surveillance Presents New Threats to Reproductive Freedoms,” *The Washington Post*, December 15, 2021, <https://www.washingtonpost.com/outlook/2021/12/15/digital-surveillance->



It's terrifyingly easy to search anyone's emails, texts, and internet search histories for evidence of gender-affirming care. With a keyword search warrant, police could compel Google and other search engines to identify every user searching for "puberty blockers," "transitioning," or other terms related to gender-affirming care in a given state, or even across the country. Additionally, school surveillance software monitors students' emails, texts, and internet search histories and has been mistargeted at LGBTQ+ content. Companies like Blocks, Gaggles and GoGuardian have all flagged students for writing about or searching the internet for LGBTQ+ themes.<sup>32</sup> Schools that use Blocks can even track students who attempt to view sites related to "sex education" or "advocacy organizations."<sup>33</sup> It's not easy for companies to stop tracking LGBTQ+ students while serving their primary purpose of blocking supposedly "dangerous" materials, either: after GoGuardian tried to stop outing LGBTQ+ students, it still flagged visitors to an "am I gay?" quiz because it contained the words "sex" and "sexual."<sup>34</sup> Given student surveillance companies' deferential policies on data sharing with law enforcement, there's every reason to think that prosecutors can and will weaponize their student data.<sup>35</sup>

Driver's license databases pose another potent threat. In December 2022, Texas's Ken Paxton requested data on all Texans who changed their gender on their driver's licenses.<sup>36</sup> The Texas Department of Public Safety quickly complied, searching driver's licenses, state ID cards, learner's permits, election documents, and occupational licenses to identify over 16,000 relevant records.<sup>37</sup> Eventually, the department stopped the search and declined to provide a list—but only because it would have been time-consuming to manually look up supporting documents to determine the reason for each change.<sup>38</sup>

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[reproductive-freedom/](https://www.nytimes.com/2015/04/01/magazine/purvi-patel-could-be-just-the-beginning.html). See also Emily Bazelon, "Purvi Patel Could Be Just the Beginning," *The New York Times*, April 1, 2015, <https://www.nytimes.com/2015/04/01/magazine/purvi-patel-could-be-just-the-beginning.html>.

<sup>32</sup> Todd Feathers and Dhruv Mehrotra, "Inside America's School Internet Censorship Machine," *Wired*, December 3, 2023, <https://www.wired.com/story/inside-americas-school-internet-censorship-machine/>. See also Mark Keierleber, "An Inside Look at Spy Tech Used on Students During Remote Classes — and Beyond," *The 74 Million*, September 14, 2021, <https://www.the74million.org/article/gaggle-spy-tech-minneapolis-students-remote-learning/>.

<sup>33</sup> "Teacher Dashboard User Guide" (Blocks, March 2024), <https://blocks.net/wp-content/uploads/2024/03/Teacher-Dashboard-User-Guide.pdf#page=166>.

<sup>34</sup> Dave Maass, Daly Barnett, and Jason Kelley, "GoGuardian: A Red Flag Machine By Design," Electronic Frontier Foundation, accessed January 8, 2025, <https://redflagmachine.org/research>.

<sup>35</sup> See, for example: "Product Privacy Policy," GoGuardian, accessed February 16, 2025, <https://www.goguardian.com/policies/product-privacy>; "Student Privacy Policy," Securly, accessed February 16, 2025, <https://www.securly.com/students-privacy>; "Privacy Policy" (Bark, February 23, 2024), <https://www.bark.us/privacy/>.

<sup>36</sup> Molly Hennessy-Fiske, "Texas Attorney General's Office Sought State Data on Transgender Texans," *Washington Post*, December 30, 2022, <https://www.washingtonpost.com/nation/2022/12/14/texas-transgender-data-paxton/>.

<sup>37</sup> Hennessy-Fiske, "Texas Sought State Data."

<sup>38</sup> Hennessy-Fiske, "Texas Sought State Data."

#### IV. What States Can Do to Deter Gender-Affirming Care Prosecutions

##### *Data Minimization*

The best way to ensure privacy around gender-affirming care is not to track it in the first place. This is challenging in a healthcare setting, amid federal and state record keeping laws.<sup>39</sup> But there is a strong model for healthcare privacy—abortion. In 2025, New York allowed doctors to prescribe abortion medication under their practices' names (rather than individually) for patients in states that criminalize abortion care.<sup>40</sup> States could easily replicate this measure for gender-affirming care providers.

Similarly, states can stop storing people's gender history in public databases. Texas officials searched state driver's licenses, state ID cards, learner's permits, election documents, and occupational licenses for changes in gender. States could keep only the most recent gender selected by residents, deleting historical gender entries and evidence of a change. More radically, states could cease tracking gender in many of these records altogether, subject to federal requirements.

##### *Data Segmentation*

The doctor who stole and leaked patient records from Texas Children's Hospital appears to have had wide-ranging access to patient records. For criminalized forms of health care—such as gender-affirming care and abortion—hospitals should segment their databases to prevent anyone but the direct care team from gaining access. A New York bill would require that electronic health record systems segregate gender-affirming care data from the rest of a patient's record.<sup>41</sup> In a similar vein, Maryland law already segregates abortion-related data from the rest of a patient's record, and in most cases requires the patient's consent to share those records.<sup>42</sup>

##### *Strengthening State Health Privacy Laws*

The Health Insurance Portability and Accountability Act ("HIPAA"), the U.S.'s primary federal health privacy law, alarmingly allows healthcare providers to give law enforcement our most sensitive health data without a warrant.<sup>43</sup> This can leave pro-care hospitals defenseless against law enforcement surveillance of gender-affirming care. Pro-care states should raise the floor set by HIPAA with additional privacy protections. Following California's model for abortion-related medical records, they can bar healthcare providers, healthcare plan administrators, pharmacists, and others in possession of gender-affirming care records from sharing them with law enforcement for

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<sup>39</sup> See, for example, Steve Alder, "HIPAA Exceptions - Updated for 2025," *The HIPAA Journal* (blog), January 8, 2025, <https://www.hipaajournal.com/hipaa-exceptions/>.

<sup>40</sup> A.B. A2145, 2025-2026 Leg. Sess. (N.Y. 2025).

<sup>41</sup> A.B. A2145, 2025-2026 Leg. Sess. (N.Y. 2025).

<sup>42</sup> H.B. 812, 2023 Leg., Reg. Sess. (Md. 2023) (enacted) (codified as amended at Md. Gen. Provis. § 4-333, Md Health. Gen. § 19-103, 4-301, 4-302.3, 4-302.5, 4-305, 4-310, Md. Insurance § 15-857, 31-116).

<sup>43</sup> "When Does the Privacy Rule Allow Covered Entities to Disclose Information to Law Enforcement," U.S. Department of Health and Human Services, accessed February 26, 2025, <https://www.hhs.gov/hipaa/for-professionals/faq/505/what-does-the-privacy-rule-allow-covered-entities-to-disclose-to-law-enforcement-officials/index.html>.



the purpose of enforcing anti-care laws.<sup>44</sup> Because anti-care states are claiming billing and consumer fraud to unlock access to medical records, pro-care states can also bar medical record sharing with law enforcement to enforce *any* law (consumer fraud, etc.) that is being enforced to interfere with individuals' access to gender-affirming care.<sup>45</sup> While such protections may not fend off federal investigations, they could go a long way to block state and local surveillance of gender-affirming care.

Gender-affirming care is also endangered by the fact that many medical records aren't even covered by HIPAA to begin with. A growing number of health apps and telemedicine platforms are completely outside the scope of the law. States should close the loophole, holding anyone in possession of medical data—from app companies to employers—to the same standard. When people turn to an app or telemedicine, their health deserves exactly the same protections as patients in more traditional medical facilities.<sup>46</sup> States can build on models from California, Washington, and New York, which already go beyond HIPAA in barring medical data sharing.<sup>47</sup>

Beyond health privacy laws, trans-supportive states can enact shield laws, protecting providers from extraterritorial liability for gender-affirming care. Such shield laws not only protect providers, but ensure access to care for patients in health care deserts without local providers. At least seventeen states and Washington, D.C. now protect providers of gender-affirming care by preserving medical licenses; banning cooperation with out-of-state prosecutions; blocking extradition; barring medical data disclosure; and protecting practitioners from civil judgements.<sup>48</sup> As sweeping as these safeguards seem, they remain largely untested in the courts, with Texas and Louisiana actively challenging New York State's abortion shield law as this report goes to publication.<sup>49</sup>

### *General Privacy Laws*

While people seeking and providing gender-affirming care face a heightened risk of hostile surveillance and persecution, the same privacy threats impact far more Americans, including

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<sup>44</sup> CAL. CIV. CODE, Div. 1, Ch. 2.6 (2024).

<sup>45</sup> CAL. CIV. CODE, Div. 1, Ch. 2.6 (2024).

<sup>46</sup> "HIPAA Administrative Simplification" (March 2013: U.S. Department of Health & Human Services), accessed February 26, 2025, <https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/administrative/combined/hipaa-simplification-201303.pdf>.

<sup>47</sup> CAL. CIV. CODE, Div. 1, Ch. 2.6 (2024). WASH. REV. CODE § 19.373 (2023). S.B. S929, 2025-2026 Leg. Sess. (N.Y. 2025).

<sup>48</sup> "State Shield Laws: Protections for Abortion and Gender-Affirming Care Providers," KFF, September 2024, <https://www.kff.org/other/state-indicator/shield-laws/>.

<sup>49</sup> In December 2024, Texas sued a New York doctor for allegedly providing telemedicine abortion support to a Texas patient; in February 2025, a Texas judge ordered that the doctor to pay over a fine of \$100,000. In January 2025, Louisiana initiated a similar lawsuit. "Attorney General Ken Paxton Sues Activist New York Doctor for Illegally Providing Abortion Drugs Across State Lines" (Office of the Texas Attorney General, December 13, 2024), <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-sues-activist-new-york-doctor-illegally-providing-abortion-drugs-across>. See also Anthony Izaguirre and Jamie Stengle, "Texas Judge Fines New York Doctor for Prescribing Abortion Pills to a Woman near Dallas," *AP News*, February 13, 2025, <https://apnews.com/article/abortion-new-york-louisiana-b9d6a0c821fc444a609cf5cde70efaaa>. See also Pam Belluck and Emily Cochrane, "New York Doctor Indicted in Louisiana for Sending Abortion Pills There," *The New York Times*, January 31, 2025, <https://www.nytimes.com/2025/01/31/health/abortion-louisiana-new-york-prosecution-shield-law.html>.

protesters and undocumented immigrants. General privacy protections will benefit all of us, especially those facing the most acute surveillance risk, including gender-affirming care patients. States should put the onus on data collectors to obtain consumers' opt-in consent before collecting any data that is not strictly necessary; they should also give individuals broad abilities to see and delete data collected about them.<sup>50</sup> California's Consumer Privacy Act has similar provisions, though it does put the burden on Californians to opt out of data collection.<sup>51</sup>

None of these suggested laws replace the need for federal protections for gender-affirming care. Ideally, federal legislators would enshrine protections for gender-affirming care in law and close or limit the law enforcement loophole of HIPAA, which allows prosecutors too-easy access healthcare records.<sup>52</sup> They would strengthen federal privacy legislation for medical records by requiring that app companies and other third parties who hold Americans' healthcare data guard that data just as carefully as healthcare providers are required to.<sup>53</sup> On a more general privacy front, they would close the third-party loophole to the Fourth Amendment, which allows prosecutors to weaponize data that Americans living in the present day cannot help but share with their internet and phone providers, banks and credit card companies, and other third parties.<sup>54</sup>

## **V. What Hospitals, Schools, and Tech Companies Must Do**

Hospitals, schools, and tech companies should not wait for state legislators to act. They must scrutinize their data collection to minimize the information that can be weaponized against gender-affirming care. Healthcare providers must tighten access to records documenting the provision of gender-affirming care, cutting off avenues for illicit access and leaks. They should segment patient data, ensuring that only gender-affirming care providers have ready access to patient records about gender-affirming care. Providers should scrutinize the retention of historical records: in Florida, the state university system produced gender-affirming care records going back six years, exposing former patients long after they concluded treatment.

Schools similarly must act to prevent the data they collect in the name of student safety from putting those same teens in harm's way. Schools are especially vulnerable to this sort of threat, given the number of students who rely on school-provided devices as a digital lifeline. They should suspend the use of any student surveillance software, including content monitoring and filtering technology, that could reveal students who are transitioning. Short of that, they should insist that companies provide independent evidence that they meet these privacy standards.

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<sup>50</sup> See, for example, S.B. S4276, 2025-2026 Leg. Sess. (N.Y. 2025).

<sup>51</sup> CAL. CIV. CODE § 1798.100-199 (2020).

<sup>52</sup> Alder, "HIPAA Exceptions."

<sup>53</sup> Alder, "HIPAA Exceptions."

<sup>54</sup> Michael W. Price, "Rethinking Privacy: Fourth Amendment 'Papers' and the Third-Party Doctrine," *Journal of National Security Law & Policy* 8, no. 2 (June 29, 2015), <https://jnslp.com/2015/06/29/rethinking-privacy-fourth-amendment-papers-and-the-third-party-doctrine/>.

Transition-tracking apps, which allow users to track their personal transition histories, must build (or rebuild) their products from the ground up to adhere to privacy-by-design principles: they should not collect identifying or potentially compromising data unless it is absolutely necessary to provide services; they should not store it longer than necessary to provide those services; and they certainly shouldn't share or sell that data with third parties.

## **VI. Conclusion**

Americans—all Americans—are rapidly losing access to critical healthcare. Over half of states ban or restrict gender-affirming care. Over twenty states ban abortion.<sup>55</sup> Help is not on the way from Congress or the Oval Office. Privacy protections will not restore or replace these fundamental rights to life-saving healthcare. Right now, however, they are the best path forward for protecting people who need or provide threatened and criminalized healthcare. State legislators, hospitals, tech companies, schools, and anyone else in a position to protect weaponizable health data must act now to block prosecutors who would shut down gender-affirming care.

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<sup>55</sup> Bans in Montana and Wyoming are currently blocked. Allison McCann and Amy Schoenfeld Walker, "Tracking Abortion Bans Across the Country," *The New York Times*, May 24, 2022, sec. U.S., <https://www.nytimes.com/interactive/2024/us/abortion-laws-roe-v-wade.html>.



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