

The year ahead in healthcare: forecasting legal and litigation trends

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The healthcare landscape shifted significantly in 2025. Federal and state regulatory initiatives, as well as developments in technology and continuation of long-term trends, such as ever-increasing health data breach litigation, have led to an indication that the legal elements of the healthcare industry and health litigation will be changed across several areas in the field.

Understanding these anticipated changes can aid health counsel and their clients to better navigate the field heading into the new year.

Medical malpractice

Tort reform has reshaped medical malpractice claims in multiple states, particularly as to limitations on recovery of non-economic damages. In 2025, Florida imposed a \$750,000 limit on non-economic medical malpractice cases, with certain exceptions. In California, the previously approved non-economic damages cap was increased to \$430,000, for injuries not resulting in death, and \$600,000 for wrongful death claims. These caps are subject to increase each year.

In Colorado, the \$300,000 non-economic damage cap will gradually increase to \$1.5 million over several years. Montana will similarly increase its non-economic damages cap to \$350,000 in 2026.

State medical malpractice tort reform packages also faced court challenges in 2025. An Ohio appellate court found that the statutory cap, reducing the plaintiff's trial-awarded non-economic recovery of \$2.2 million to \$965,527, was unconstitutional as applied to that particular plaintiff. (*Lyon v. Riverside Methodist Hospital*, 2025, Ohio Court of Appeals).

In contrast, a North Carolina appellate court upheld the state's cap on medical malpractice non-economic damages and approved the reduction of the plaintiff's non-economic damage award from \$7.5 million to \$656,730. (*Mohebali v. Hayes*, 2025, Court of Appeals of North Carolina)

While states are trending toward limiting damages in medical malpractice cases, the limits are generally increasing year-

over-year and higher average verdicts in malpractice claims are expected in 2026.

Telemedicine and interstate healthcare continue to raise issues regarding conflicting standards of care across state lines and licensing requirements. Telemedicine has continued in popularity in the years following the end of the COVID-19 pandemic.

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The practice has raised issues when providers located in one state are providing services to a patient located in another state and the two jurisdictions apply different standards of care or different licensing requirements. These issues are expected to persist into 2026 as telemedicine remains prevalent.

States are also expected to continue implementing protections against the use of AI in healthcare in 2026. For example, in late 2025, California passed a bill, AB 489, establishing a regulatory framework surrounding the use of AI chatbots that may mislead patients into believing they are interacting with a licensed healthcare provider. The law prohibits such use of AI in healthcare and requires those deploying AI to communicate with patients to ensure patients are not misled into believing they are communicating with an actual provider.

Healthcare employment law

When it comes to employment law in healthcare, the focus is on the prevention of workplace violence. For years, the healthcare industry has grappled with the issue of violence against health workers and patients. The problem is perhaps most prevalent in hospital settings with heavy patient volumes and high stress environments.

In June 2025, the American Hospital Association issued a report estimating that in 2023 hospitals spent over \$18 billion to prevent and remedy violent acts on hospital premises. Hospital violence is not only costly, but places patients and hospital staff at risk, creates an unhealthy environment, and erodes the sense of trust and safety all patients and staff should experience in the hospital setting. This has led to states passing laws intended to address workplace violence in healthcare.

Oregon is one such state that will implement new healthcare workplace violence prevention requirements in 2026. Oregon SB 537 will focus on requiring employee training in workplace violence prevention, designations of dangerous individuals, and ID requirements. Reducing workplace violence is also an area of priority for OSHA in 2026.

Health insurance litigation

In health insurance litigation, an increasing trend of lawsuits pertaining to insurers' use of AI or algorithms to determine coverage claims, is expected to grow significantly in 2026. Algorithms and AI are believed to be used increasingly by health insurers to help insurers process claims for coverage in a fraction of the time it would take a person to review each individual claim, but some insureds have filed suit, claiming the practice does not comply with the law.

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Class action lawsuits filed against health insurers for denying claims using algorithms and AI in the Medicare and Medicaid context are well-publicized, and CMS (Centers for Medicare & Medicaid Services) has issued guidance on this issue. Less clear though is the state of the law regarding the use of algorithms and AI to process claims for private health plans. Federal oversight of private health plans is limited, unlike the Medicare and Medicaid context. Lawsuits for claim denials using algorithms in private health insurance have been filed in recent years and are working their way through the courts.

It is possible that substantive rulings in one or more of these matters will be issued in 2026, which will influence whether additional suits will be filed. Regardless, it is expected that legal challenges to the use of AI and algorithms in health insurance will be filed with greater frequency this year as the technology continues to develop.

Another area of health plan litigation expected to grow in 2026 pertains to prior authorization disputes. At the federal level,

CMS has issued its Prior Authorization Final Rule (CMS-0057-F), which imposes a streamlined, electronic process for insurers participating in certain federal health insurance programs to process prior authorization requests from insureds. The Final Rule also imposes tighter deadlines to comply with prior authorization requests and pushes transparency in the prior authorization process.

Many provisions of the Final Rule have gone into effect this year. Many insurers have also pledged to increase transparency into their prior authorization process. The push for a streamlined prior authorization process at the federal level is trickling down to state legislatures as well.

It is anticipated that class action lawsuits challenging website tracking practices by healthcare organizations will grow in prevalence in 2026.

Most states already have statutory frameworks regarding prior authorizations for private health plans within their states, but some states have recently amended these frameworks to impose tighter response deadlines for insurers. For example, Vermont (2023 VT H 766) and Virginia (2024 VA H 2099) amended their prior authorization laws to shorten the response timeframe for insurers. These laws went into effect recently and are anticipated to result in additional litigation as insurers push to comply with stricter prior authorization mandates.

Healthcare cyber litigation

The explosion of hacking incidents targeting healthcare organizations in the past decade has grown year over year. Hackers understand the monetary value of protected health information, making healthcare organizations attractive targets for bad cyber actors.

Hacking has become the leading cause of healthcare data breaches. In 2025, HHS investigated and reached settlements with numerous healthcare organizations related to hacking incidents and the providers' alleged failure to protect protected health information.

In January 2025, a hack into the systems of a medical equipment supplier and distributor potentially exposed the protected health information of over 100,000 individuals. (See HHS Resolution Agreement, January 14, 2025, available at: <https://bit.ly/4r5eL4x>).

In March 2025, a radiology facility's communications system was breached, resulting in unauthorized access to protected health information by third parties. (See HHS Resolution Agreement, April 4, 2025, available at: <https://bit.ly/4brF0xJ>).

In July 2025, it was disclosed that hackers targeted a geriatric services provider, exposing patient health information and

disseminating the information on the dark web. (See HHS Resolution Agreement, July 7, 2025, available at: <https://bit.ly/3NTNhAr>).

These incidents represent only a small sample of large hacking incidents targeting healthcare organizations in 2025. It is expected that hackers will continue targeting healthcare entities in 2026, which often result not only in HHS investigations, but also class action lawsuits from patients whose information was purportedly exposed.

In addition, 2025 featured certain unique legal outcomes that may result in additional lawsuits this year. For example, in early 2025, as reported by The HIPAA Journal, Blue Shield of California disclosed to HHS that from 2021 through 2024, it had configured its website and portal to utilize a tracking algorithm to track how members used its site.

Unfortunately, according to the HIPAA Journal article, the insurer purportedly opted in to a setting that allowed the company employing the tracking technology to share this data through advertisements, which was an unauthorized disclosure impacting over 4.7 million users during those three years. (See

“Blue Shield of California Announces Impermissible Disclosure of PHI to Google Ads: 4.7 Million Affected,” Steve Alder, HIPAA Journal (Apr. 24, 2025), available at: <https://bit.ly/4sMyZSg>).

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Conclusion

With all of the changes upcoming in the healthcare field in 2026, providers, patients, and their counsel should arm themselves with as much information as possible to ensure compliance on the front-end and a plan to navigate litigation should the need arise.

Understanding the trends that have brought the industry to this point from last year can also aid in anticipating where healthcare litigation is moving throughout 2026 and beyond.

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