No. 23-20171

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DISABILITY RIGHTS TEXAS,

Plaintiff-Appellee

v.

ROY HOLLIS, in his official capacity as the Chief Executive Officer of Houston Behavioral Healthcare Hospital, LLC,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING APPELLEE AND URGING AFFIRMANCE

SAMUEL R. BAGENSTOS
General Counsel

MEGAN DIXON
CONSTANCE L. FOSTER
CHRISTINA MARIE BAKER
Attorneys
Department of Health & Human Services
200 Independence Ave., SW
Washington, D.C. 20201

KRISTEN CLARKE
Assistant Attorney General

ELIZABETH P. HECKER
BRANT S. LEVINE
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 616-4373
Brant.Levine@usdoj.gov

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INTEREST OF THE UNITED STATES

The United States has a substantial interest in protecting the rights of individuals with disabilities, including by eradicating abuse and neglect of such individuals in institutional settings. The Department of Justice, for example, enforces constitutional and statutory protections governing the treatment of persons with disabilities in institutional settings. See, *e.g.*, 42 U.S.C. 1997a. Likewise, the Department of Health and Human Services (HHS) implements and enforces other federal laws protecting the rights of individuals with disabilities in institutional

facilities and has promulgated regulations interpreting those laws. See, *e.g.*, 42 U.S.C. 10801 *et seq.*; 42 U.S.C. 15001 *et seq.*; 42 C.F.R. Pt. 51; 45 C.F.R. Pt. 1326.

Supplementing the federal government's efforts to protect the rights of persons with disabilities, Congress has funded a nationwide network of independent protection-and-advocacy organizations, empowering them to advocate, investigate, and litigate on behalf of individuals with disabilities. Because protection-and-advocacy organizations play a critical role in enforcing federal disability-rights laws, the United States has filed amicus briefs and statements of interests in several cases addressing the statutory rights of these organizations. See, *e.g.*, Amicus Br., *Michigan Protection and Advoc. Serv., Inc.* v. *Flint Cmty. Schs.*, 2016 WL 1545064 (6th Cir. Apr. 14, 2016) (No. 15-2573); Amicus Br., *State of Connecticut Office of Protection and Advoc. for Persons with Disabilities* v. *Hartford Bd. of Educ.*, 2006 WL 4470911 (2d Cir. June 2, 2006) (No. 05-1240); Statement of Interest, *Disability Rights Arkansas* v. *Graves*, 2021 WL 1138367 (E.D. Ark. Feb. 10, 2021) (No. 20-cv-01081).

The United States also has a substantial interest in protecting the privacy of individuals' personal health information. HHS enforces the Health Insurance Portability and Accountability Act (HIPAA) and has issued regulations implementing that law, which detail when disclosure of protected health

information is permitted. See 42 U.S.C. 1320d-1320d-9; 45 C.F.R. Pt. 164. The United States thus has a considerable interest in how HIPAA interacts with other federal laws that authorize protection-and-advocacy organizations to receive confidential health information when investigating abuse and neglect of persons with disabilities.

The United States files this brief under Federal Rule of Appellate Procedure 29(a).

STATEMENT OF THE ISSUE

When a protection-and-advocacy organization is investigating alleged abuse of a patient and invokes its statutory right to access that patient's video records, does HIPAA require the healthcare provider to withhold the video if the footage also shows other patients?

STATEMENT OF THE CASE

1. Statutory Background

a. The Protection And Advocacy Acts

Nearly 50 years ago, Congress passed landmark legislation to address widespread abuse and neglect of individuals with disabilities by the providers charged with their care. See Developmental Disabilities Assistance and Bill of Rights Act, Pub. L. No. 94-103, 89 Stat. 486 (1975). Since then, Congress has enacted several related laws, known as the Protection and Advocacy Acts, offering federal funding for States to establish independent protection-and-advocacy

systems to advocate, investigate, and litigate on behalf of individuals with disabilities. See Protection and Advocacy for Individuals with Mental Illness Act, Pub. L. No. 99-319, 100 Stat. 478 (1986) (42 U.S.C. 10801-10851); Protection and Advocacy for Individual Rights Act, Pub. L. No. 102-569, 106 Stat. 4344 (1992) (29 U.S.C. 794e); Developmental Disabilities Assistance and Bill of Rights Act, Pub. L. No. 106-402, 114 Stat. 1677 (2000) (42 U.S.C. 15041-15045).

Almost all States, including Texas, have designated a private nonprofit organization to run their protection-and-advocacy systems. See Substance Abuse and Mental Health Services Administration, *The Protection And Advocacy For Individuals With Mental Illness (PAIMI) Program Activities Report For Fiscal Years 2019 And 2020* 5 (June 28, 2022) (SAMHSA Report), available at https://perma.cc/C7P9-MJUQ; Tex. Gov. Exec. Order No. DB-33, 2 Tex. Reg. 3713 (1977). These protection-and-advocacy organizations have, among other accomplishments, "successfully investigated reports of abuse, particularly incidents involving serious injuries and deaths related to the inappropriate use of seclusion and restraint, and ensured enforcement of the United States Constitution, federal laws and regulations, and state statutes." SAMHSA Report 37.

The Protection and Advocacy Acts provide "express authority for [protection-and-advocacy organizations] to gain broad access to records, facilities, and residents to ensure that the Act's mandates can be effectively pursued."

Alabama Disabilities Advoc. Program v. *J.S. Tarwater Developmental Ctr.*, 97 F.3d 492, 497 (11th Cir. 1996). For example, protection-and-advocacy organizations "shall * * * have access to all records" of their clients who have authorized access. 42 U.S.C. 15043(a)(2)(I) and 10805(a)(4); see also 29 U.S.C. 794e(f)(2). HHS's regulations define "records" to include video footage and other information "obtained in the course of providing intake, assessment, evaluation, supportive and other services, including medical records." 42 C.F.R. 51.41(c); see also 45 C.F.R. 1326.25(b). Additionally, a protection-and-advocacy organization may access a person's records without that person's consent if the organization determines that probable cause exists to believe that the individual has been abused or neglected. See 42 U.S.C. 15043(a)(2)(I)(ii) and 10805(a)(4)(B); 29 U.S.C. 794e(f)(2). "Abuse" is defined to include "the use of bodily or chemical restraints on a[n] individual with mental illness which is not in compliance with Federal and State laws and regulations." 42 U.S.C. 10802(1)(D).

Finally, recognizing the sensitive nature of personal mental health records received from healthcare providers, Congress required protection-and-advocacy organizations to keep those records confidential to the same extent the healthcare provider itself is required to do so. 42 U.S.C. 10806(a); see also 45 C.F.R. 1326.21 and 1326.28; 42 C.F.R. 51.45.

b. HIPAA

The privacy of individuals' health records is governed by regulations issued by HHS under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). See 42 U.S.C. 1320d-1320d-9; 45 C.F.R. Pt. 164 (the Privacy Rule). The Privacy Rule precludes a "covered entity," such as a healthcare provider, from sharing "protected health information" unless the disclosure falls under one of HIPAA's permitted uses. 45 C.F.R. 164.512. Among these permitted uses is when another law requires disclosure. See 45 C.F.R. 164.512(a) (the required-by-law exception).

Under the required-by-law exception, a covered entity may disclose an individual's protected health information without that person's consent "to the extent that such * * * disclosure is required by law and the * * * disclosure complies with and is limited to the relevant requirements of such law." 45 C.F.R. 164.512(a)(1). The phrase "required by law" is defined to include "a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law." 45 C.F.R. 164.103. That definition includes, but is not limited to, "court orders" and "statutes or regulations that require the production of information." *Ibid.*

As HHS explained when it issued the Privacy Rule, the required-by-law exception permits disclosure of protected health information to protection-and-

advocacy organizations when the Protection and Advocacy Acts require disclosure: "the rules below will not impede the functioning of the existing Protection and Advocacy System." 65 Fed. Reg. 82,594 (Dec. 28, 2000). Later regulations also clarified that HIPAA "permits the disclosure of [an individual's] protected health information (PHI) without the authorization of the individual to a P&A system to the extent that such disclosure is required by law and the disclosure complies with the requirements of that law." 45 C.F.R. 1326.25(e). Finally, HHS has issued guidance confirming that "a covered entity cannot use the Privacy Rule as a reason not to comply with its other legal obligations" under the Protection and Advocacy Acts. HHS, FAQ 909, https://perma.cc/XSF9-EUJD (June 10, 2005) (explaining how the required-by-law exception applies to protection-and-advocacy organizations).

2. Factual And Procedural Background

a. Disability Rights Texas Investigates Alleged Abuse At Houston Behavioral

G.S., an individual with mental illness, alleges that he was abused while he was involuntarily confined at Houston Behavioral Healthcare Center's Psychiatric Intensive Care Unit in August 2021. ROA.250. G.S. alleges that staff at Houston Behavioral unlawfully restrained him and forcibly medicated him. ROA.250. After G.S. left the facility, he filed a complaint with Disability Rights Texas, the State's designated protection-and-advocacy organization. ROA.249.

As Texas's protection-and-advocacy organization, Disability Rights Texas was familiar with Houston Behavioral, having visited the facility dozens of times over the years. ROA.144. During these routine oversight visits, Disability Rights Texas was allowed unaccompanied access to Houston Behavioral's facilities, as required by the Protection and Advocacy Acts. ROA.144; see also 45 C.F.R. 1326.27. Representatives from Disability Rights Texas spoke to patients, saw the patients' names on whiteboards near their rooms, and observed group therapy sessions. ROA.143-144. Disability Rights Texas states that it previously has confirmed that Houston Behavioral abused other patients by involuntarily restraining and medicating them. ROA.143. Based on these past investigations and the allegations in G.S.'s complaint, Disability Rights Texas determined that probable cause existed to believe that G.S. may have been abused by staff at Houston Behavioral. ROA.143.

With G.S.'s consent, Disability Rights Texas requested his medical records from Houston Behavioral. ROA.250. Houston Behavioral produced those records, which documented that its staff had restrained and forcibly medicated G.S. ROA.143. Disability Rights Texas then requested video footage of this treatment to determine whether a psychiatric emergency justified G.S.'s restraint and forcible medication. ROA.143. Houston Behavioral, however, refused to produce the

video. ROA.250. Disability Rights Texas then sued Houston Behavioral to compel production. ROA.8.

b. The District Court Orders Houston Behavioral To Disclose G.S.'s Video Records To Disability Rights Texas

In their motions for summary judgment, the parties agreed that no factual disputes existed and that the only remaining question was a legal one: whether disclosure of the video footage was permitted under the Protection and Advocacy Acts and HIPAA. ROA.252. The district court answered that question affirmatively and ordered Houston Behavioral to produce the video. ROA.249-260.

First, the district court determined that the plain language of the Protection and Advocacy Acts allows protection-and-advocacy organizations to access confidential third-party information without those individuals' consent. ROA.252 (citing 42 U.S.C. 10805(a)(4)). Second, the court concluded that withholding the videos would "significantly hinder" Disability Rights Texas from fulfilling its statutory mandate to investigate abuse and neglect at facilities. ROA.253-254 (citing 42 U.S.C. 10801(b)). Third, the court determined that any risks of allowing disclosure of third-party information to protection-and-advocacy organizations were minimal given the significant duty of confidentiality imposed on those organizations. ROA.254 (citing 42 U.S.C. 10806(a)). Finally, the court rejected Houston Behavioral's HIPAA defense, pointing out that Houston Behavioral

"provides no authority other than [its] own statutory interpretation for the contention that HIPAA limits the ability of P&A systems to access protected information where investigating abuse." ROA.254.

SUMMARY OF THE ARGUMENT

Healthcare providers face no liability under HIPAA when they comply with the Protection and Advocacy Acts by providing confidential records to protection-and-advocacy organizations investigating abuse and neglect.

First, the Protection and Advocacy Acts mandate that protection-and-advocacy organizations receive "all records" of an individual where, as here, the individual has consented to disclosure or the organization has found probable cause to believe that the individual was abused. *All* means *all*, including records that contain confidential information about other patients. Other courts have uniformly relied on this textual approach to authorize broad access to confidential records.

Second, disclosure furthers a core purpose of the Protection and Advocacy Acts: eliminating abuse and neglect at institutional facilities that serve persons with disabilities. That congressional purpose is why the district court's disclosure order makes sense not just as a legal matter, but a practical one as well. Video records often provide the only real-time and impartial account of an incident. Especially when persons with mental illness are confined to a facility and may be

unable to advocate for themselves, videos often prove critical to investigating abuse and neglect.

Third, healthcare providers cannot invoke HIPAA to avoid their obligations under the Protection and Advocacy Acts. Those two federal laws complement one another, striking an appropriate balance between patients' need to be protected from abuse while maintaining the confidentiality of their personal health information. Indeed, HHS—the agency charged with enforcing both laws—has issued repeated guidance over the years making clear that HIPAA allows healthcare facilities to disclose confidential records to protection-and-advocacy organizations. Not surprisingly, then, no court has ever adopted the legal argument Houston Behavioral advances here.

This Court should thus affirm the district court's order compelling Houston Behavioral to allow Disability Rights Texas access to the video.

ARGUMENT

THE DISTRICT COURT CORRECTLY ORDERED DISCLOSURE OF A VIDEO THAT MAY SHOW A PATIENT BEING ABUSED AT HOUSTON BEHAVIORAL'S PSYCHIATRIC FACILITY

A. The Text Of The Protection And Advocacy Acts Requires Disclosure Of The Video

In empowering protection-and-advocacy organizations to investigate abuse and neglect, Congress chose "quite broad" language, allowing the organizations access to "all records of . . . any individual." *Center for Legal Advoc.* v.

Hammons, 323 F.3d 1262, 1270 (10th Cir. 2003) (quoting 42 U.S.C. 10805(a)(4)(A)) (ellipses in *Hammons*). This statutory language provides the foundation for this Court's analysis: "In statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself." *Food Mktg. Inst.* v. *Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019).

Here, the text of the laws requires facilities like Houston Behavioral to produce "*all* records of— * * * *any* individual." 42 U.S.C. 15043(a)(2)(I) (emphasis added); see also 29 U.S.C. 794e. The ordinary meanings of "all" and "any" underscore Congress's intent that the statutes apply broadly. In fact, this Court has held that when a civil rights statute provides for access to "all records," courts should not fashion exceptions: "All means all." *Kennedy* v. *Lynd*, 306 F.2d 222, 230 (5th Cir. 1962).

Applying these principles, courts have routinely compelled production of confidential health information to protection-and-advocacy organizations under the Protection and Advocacy Acts. For example, based on the "plain language" of one of these statutes, then-Judge Alito compelled a healthcare facility to produce records of a peer review inquiry into the death of a patient. See *Pennsylvania Prot. & Advoc., Inc.* v. *Houstoun*, 228 F.3d 423, 427 (3d Cir. 2000). Although these records included confidential information that did not pertain exclusively to the

patient, Judge Alito explained that the Protection and Advocacy Acts' reference to all records "*of* any individual" includes documents that "show [a] connection or association" with that individual. *Ibid.* (emphasis added); see also *Protection & Advoc. for Persons with Disabilities, Conn.* v. *Mental Health & Addiction Servs.*, 448 F.3d 119, 125 (2d Cir. 2006) (Sotomayor, J.) (agreeing with Judge Alito's analysis). For the same reasons, Disability Rights Texas is entitled to the video record here because it pertains to G.S. even if it also shows other individuals.

Other courts, too, have pointed to the text of the Protection and Advocacy Acts when compelling production of confidential information. See, *e.g.*, *Connecticut Off. of Prot. & Advoc. for Persons with Disabilities* v. *Hartford Bd. of Educ.*, 464 F.3d 229, 245 (2d Cir. 2006) (Sotomayor, J.) (students' names and contact information for their parents or guardians); *Hammons*, 323 F.3d at 1270 (quality assurance records); *Disability Rts. Texas* v. *Bishop*, 615 F. Supp. 3d 454, 464 (N.D. Tex. 2022) (jail video footage of detainee's forcible restraint); *Disability Rts. New York* v. *Wise*, 171 F. Supp. 3d 54, 61 (N.D.N.Y. 2016) (draft documents, handwritten notes, electronic files, photographs, and video records).

Acknowledging this case law, Houston Behavioral does not contest that the video of G.S. qualifies as a record under the Protection and Advocacy Acts. Brief of Appellant (HB Br.) 11. In fact, Houston Behavioral agrees that "the P&A Acts allow for [Disability Rights Texas] access to video footage of G.S., alone." HB Br.

10. So the only remaining question is whether the video ceases to be a record of G.S.'s under the Protection and Advocacy Acts simply because it is also a record of other individuals. The answer is no.

Contrary to Houston Behavioral's suggestion (HB Br. 10), nothing in the Protection and Advocacy Acts requires a healthcare facility to withhold or even redact an individual's records under these circumstances. See *Wise*, 171 F. Supp. 3d at 59 ("The statutes make clear that P & A systems * * * are entitled to all records of subject individuals, and give no indication that investigative agencies should redact or withhold portions of their reports."). Houston Behavioral's argument otherwise contradicts the "fundamental principle of statutory interpretation that 'absent provisions cannot be supplied by the courts.'" *Rotkiske* v. *Klemm*, 140 S. Ct. 355, 360-361 (2019) (alteration omitted) (quoting A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 94 (2012)). Congress could have restricted protection-and-advocacy organizations from accessing records that included other patients' confidential health information, but it did not. Instead, Congress required that these organizations keep those records confidential. See 42 U.S.C. 10806(a).

Because the Protection and Advocacy Acts impose "an especially significant duty of confidentiality" on protection-and-advocacy organizations, courts have refused to allow entities to withhold records based on purported privacy concerns.

Disability Rts. Wis. v. *State of Wisconsin Dep't of Pub. Instruction*, 463 F.3d 719, 728 (7th Cir. 2006). There, the Seventh Circuit compelled a school to produce confidential information about students to a protection-and-advocacy organization without the consent of those students or their guardians. *Ibid.* In doing so, the court rejected the school's "illusory concern for privacy," explaining that the Protection and Advocacy Acts "impose[] a specific duty of confidentiality upon the [protection-and-advocacy] agencies in the context of mental health records obtained from a provider of mental health services." *Id.* at 729-730. Houston Behavioral's privacy arguments are just as illusory given the confidentiality requirements in the Protection and Advocacy Acts and their implementing regulations. See 42 U.S.C. 10806(a); 45 C.F.R. 1326.21. As in *Disability Rights Wisconsin*, "this case at bottom involves a confidential exchange of information." 463 F.3d at 729.

In sum, the district court correctly held that the text of the Protection and Advocacy Acts requires Houston Behavioral to produce the video.

B. The Purpose Of The Protection And Advocacy Acts Supports Disclosure Of The Video

As the district court also correctly ruled, "the purpose of the P&A Acts necessitates [Disability Rights Texas]'s access to relevant evidence, including video evidence, even where other individuals' privacy rights may be implicated." ROA.253. This ruling properly follows the principle of statutory construction that

courts should "interpret the relevant words not in a vacuum, but with reference to the statutory context, 'structure, history, and purpose.'" *Abramski* v. *United States*, 573 U.S. 169, 179 (2014) (quoting *Maracich* v. *Spears*, 570 U.S. 48, 76 (2013)).

The purpose, history, and structure of the Protection and Advocacy Acts reinforces the need for broad disclosure. Congress, for example, found that "individuals with mental illness are vulnerable to abuse and serious injury," and it provided federal funding "to assist States to establish and operate a protection and advocacy system for individuals with mental illness which will * * * investigate incidents of abuse and neglect." 42 U.S.C. 10801(a)(1) and (b)(2)(B). By empowering protection-and-advocacy organizations with broad authority to access facilities' records, "Congress gave substance to its intent." *Alabama Disabilities Advoc. Program* v. *J.S. Tarwater Developmental Ctr.*, 97 F.3d 492, 497 (11th Cir. 1996); see also S. Rep. No. 109, 99th Cong. 1st Sess. 10 (1985) ("It is the intent of the Committee that [protection-and-advocacy organizations] have the fullest possible access to client records with appropriate authorization.").

This Court has heeded this congressional intent when interpretating the Protection and Advocacy Acts. See *Mississippi Prot. & Advoc. Sys., Inc.* v. *Cotten*, 929 F.2d 1054, 1059 (5th Cir. 1991). There, this Court considered restrictions imposed by a state mental health facility on a protection-and-advocacy organization's ability to meet with non-client patients, including a requirement that

the organization provide advanced notice to the facility of whom they wanted to interview and why. *Id.* at 1056. And if any unauthorized visits occurred, patients would be "counseled" by staff at the facility. *Id.* at 1056-1057. Holding that these restrictions could not be applied to protection-and advocacy organizations, the Court observed that the facility's "ability to cower and intimidate many if not most of its mentally [disabled] patients is potent and pervasive." *Id.* at 1057. This intimidation could chill patients from meaningfully engaging with the protection and advocacy organizations designed to protect them, rendering the entire system "comatose if not moribund." *Id.* at 1059.

So too here. Withholding the video of G.S.'s treatment "would significantly hinder [Disability Rights Texas] from fulfilling its federal mandate," as the district court concluded. ROA.254. Videos "are often the only records that accurately capture everything that happens during an incident of abuse or neglect," providing a "contemporaneous and truly unbiased record of an incident." ROA.145-146. That is because when emergencies arise, medical staff are focused on patients, not paperwork. ROA.146. Likewise, when staff do prepare records, they sometimes leave out information that may cast them or their facility in a negative light. ROA.146. In fact, Disability Rights Texas states that it has documented several incidents where written records documented compliance with all laws, but video

footage clearly showed abuse. ROA.146. Withholding this critical evidence would thus frustrate the purpose of the Protection and Advocacy Acts.

Protection-and-advocacy organizations by their very nature must review sensitive personal information of other patients if they are to fulfill their congressional mandate. Indeed, Congress entrusted protection-and-advocacy organizations with "broad access to records, facilities, and residents to ensure that the Act's mandates can be effectively pursued." *J.S. Tarwater Developmental Ctr.*, 97 F.3d at 497; see also *Wise*, 171 F. Supp. 3d at 60 ("Clearly, the purpose of the statutes weighs in favor of robust disclosure."). Put simply, Congress designed the Protection and Advocacy Acts "to establish and equip a specialized agency to look out for individuals with mental illness," and improperly withholding records "defeats that very important goal." *Disability Rts. Wis.*, 463 F.3d at 729.

In sum, the district court correctly determined that allowing Disability Rights Texas to access the video furthers a core purpose of the Protection and Advocacy Acts: ensuring that those organizations can effectively investigate alleged abuse of a vulnerable person with a disability at a healthcare facility.

C. Houston Behavioral Faces No Liability Under HIPAA For Disclosing The Video

Houston Behavioral argues that even if the Protection and Advocacy Acts require disclosure of the video, producing it without the consent of all persons in it "is a clear violation of HIPAA." HB Br. 12. It is not. To be sure, the video

qualifies as protected health information, and HIPAA generally restricts disclosure of that information. See 45 C.F.R. 164.502(a). But like many rules, there are exceptions. See 45 C.F.R. 164.502(a)(1). And here, one of those exceptions is directly on point: disclosure is permitted when another law requires it. See 45 C.F.R. 164.502(a)(1)(vi) and 164.512(a).[1]

Under the required-by-law exception, healthcare providers like Houston Behavioral may disclose an individual's protected health information without that person's consent "to the extent that such * * * disclosure is required by law and the * * * disclosure complies with and is limited to the relevant requirements of such law." 45 C.F.R. 164.512(a)(1). The definition of "required by law" sweeps broadly and includes "a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law." 45 C.F.R. 164.103. Here, as detailed above, the Protection and Advocacy Acts require full disclosure of the video. This disclosure would also be limited by the law's requirement that Disability Rights Texas keep the video confidential to

[1] In limited circumstances, the HIPAA Privacy Rule prohibits disclosure of protected health information even if another law may authorize it, but none of those explicit prohibitions apply here. See 45 C.F.R. 164.502(a)(5) (prohibiting the sale of protected health information and the disclosure of genetic information for underwriting purposes); see also 88 Fed. Reg. 23,506 (Apr. 17, 2023) (proposing to amend Section 164.512 to prohibit certain reproductive-health related disclosures, even when required by law in some circumstances).

the same extent that Houston Behavioral itself is required to do. 42 U.S.C. 10806(a); see also 45 C.F.R. 1326.21.

HHS's longstanding interpretation of the required-by-law exception reinforces the conclusion that healthcare providers face no liability under HIPAA when they comply with a protection-and-advocacy organization's request for access under the Protection and Advocacy Acts. This interpretation is reflected in three different agency actions over the past 20 years.

First, when HHS issued the HIPAA Privacy Rule in 2000, the agency stated that HIPAA "will not impede the functioning of the existing Protection and Advocacy System," explaining that covered entities may disclose protected health information without a patient's consent when the disclosure complies with the Protection and Advocacy Acts. 65 Fed. Reg. 82,462-01, 82,594 (Dec. 28, 2000).

Second, to avoid the scenario here, HHS posted guidance on its website warning that a covered entity cannot use the HIPAA Privacy Rule to avoid complying with the Protection and Advocacy Acts. HHS, FAQ 909, https://perma.cc/XSF9-EUJD (June 10, 2005). That guidance confirms that "a covered entity may disclose [protected health information] as required by the [Protection and Advocacy Acts] to [protection-and-advocacy organizations] requesting access to such records in carrying out their protection and advocacy functions under these Acts." *Ibid.*

Third, HHS codified its guidance in a regulation implementing one of the Protection and Advocacy Acts. See 45 C.F.R. 1326.25(e); 80 Fed. Reg. 44,796-01 (July 27, 2015) (citing the website guidance when issuing the regulation). This regulation reiterates that the "Privacy Rule permits the disclosure of protected health information (PHI) without the authorization of the individual to a P&A system to the extent that such disclosure is required by law and the disclosure complies with the requirements of that law." 45 C.F.R. 1326.25(e).

Consistent with this guidance, courts have uniformly held that HIPAA does not preclude disclosure of third-party health information to protection-and-advocacy organizations where, as here, such organizations have found probable cause to believe that abuse has occurred. See *Disability Rts. Tex.*, 615 F. Supp. 3d at 470 (holding that HIPAA allows disclosure to a protection-and-advocacy organization of videos showing treatment); *Protection & Advoc. Sys., Inc.* v. *Freudenthal*, 412 F. Supp. 2d 1211, 1212 (D. Wyo. 2006) (holding that HIPAA does not bar a protection-and-advocacy organization from obtaining medical records required to be disclosed under the Protection and Advocacy Acts); *Ohio Legal Rts. Serv.* v. *Buckeye Ranch, Inc.*, 365 F. Supp. 2d 877, 891-892 (S.D. Ohio 2005) (holding that disclosures of personal health records to protection-and-advocacy organizations are covered under HIPAA's required-by-law exception). This situation is no different.

As the above cases demonstrate, HIPAA and the Protection and Advocacy Acts should be read in harmony as coordinate federal laws. Indeed, this Court has instructed that "[w]hen confronted with two Acts of Congress allegedly touching on the same topic, [courts are] not at 'liberty to pick and choose among congressional enactments' and must instead strive 'to give effect to both.'" *Abdallah* v. *Mesa Air Grp., Inc.*, 79 F.4th 420, 432 (5th Cir. 2023) (second alteration in original) (quoting *Epic Sys. Corp.* v. *Lewis*, 138 S. Ct. 1612, 1624 (2018)). That is exactly what the district court did here.

In sum, Houston Behavioral faces no liability under HIPAA for complying with the Protection and Advocacy Acts' requirement to provide Disability Rights Texas with access to the requested video.

CONCLUSION

This Court should affirm the district court's decision.

Respectfully submitted,

SAMUEL R. BAGENSTOS
General Counsel

MEGAN DIXON
CONSTANCE L. FOSTER
CHRISTINA MARIE BAKER
Attorneys
Department of Health & Human Services
200 Independence Ave., SW
Washington, D.C. 20201

KRISTEN CLARKE
Assistant Attorney General

s/ Brant S. Levine
ELIZABETH P. HECKER
BRANT S. LEVINE
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 616-4373
Brant.Levine@usdoj.gov

CERTIFICATE OF COMPLIANCE

I certify, pursuant to Federal Rule of Appellate Procedure 32(g):

1. This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 29(a)(5) because, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), the brief contains 4,506 words.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because the brief has been prepared in a proportionally spaced typeface using Microsoft Office Word for Microsoft 365 in Times New Roman, 14-point font.

s/ Brant S. Levine
BRANT S. LEVINE
Attorney

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