2026 IL App (1st) 250096
No. 1-25-0096
Opinion filed August 31, 2026

FIFTH DIVISION

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

DEBRA D. TOWNSEND, Individually and on Behalf of All Others Similarly Situated,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	
v.	)	No. 2019 CH 11849
THE ESTATES OF HYDE PARK, LLC.,	)	The Honorable Eve M. Reilly,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE ODEN JOHNSON delivered the judgment of the court, with opinion.
Presiding Justice Mitchell and Justice Wilson concurred in the judgment and opinion.
Justice Wilson also specially concurred, with opinion.

OPINION

¶ 1 On October 15, 2019, Debra Townsend, a nurse, filed a class action complaint against her former employer, defendant Estates of Hyde Park, a short-term rehabilitation and long-term care facility in Cook County. The complaint alleged numerous violations of the Biometric Information Privacy Act (Act) (740 ILCS 14/1 *et seq.* (West 2018)). On February 22, 2024, defendant moved for judgment on the pleadings, which the trial court denied on July 12, 2024. However, on December 19, 2024, over plaintiff's objection, the trial court granted defendant's

motion, pursuant to Illinois Supreme Court Rule 308 (eff. Oct. 1, 2019), which permits a party to apply to the appellate court for leave to appeal a legal question certified by the trial court.

¶ 2 On February 24, 2025, a different panel of the Appellate Court, First District, entered an order denying defendant's application for leave to appeal. On May 12, 2025, our supreme court entered an order, pursuant to its supervisory authority, instructing the Appellate Court, First District, to vacate its denial order. The supreme court further directed the appellate court to allow defendant's application and to consider the legal question certified by the trial court. On July 21, 2025, the panel that had entered the denial order entered a subsequent order vacating it. On January 2, 2026, the appeal was assigned to this panel for consideration and decision.

¶ 3 The question, submitted by defendant and certified by the trial court, asks:

> "Is fingerprint or scan of a hand information collected by a healthcare provider from its employees through its timekeeping system for purposes of complying with Illinois and/or Federal healthcare regulations 'information collected, used, or stored for health care treatment, payment, or operations under the federal Health Insurance Portability and Accountability Act of 1996 [(HIPAA) (Pub. L. No. 104-191, 110 Stat. 1936 (1996))]' 740 ILCS 14/10, such that it is carved out from the definition of 'biometric identifier' under the Illinois Biometric Information Privacy Act?"

At the heart of this question are payroll records resulting from a timekeeping system that collects biometric data. Defendant argues that, since it is required to later submit its payroll records to federal and state regulatory agencies, then its payroll records qualify as "health care" operations that are exempt from the Act. In denying defendant's motion for judgment on the pleadings, the trial court found defendant's argument unpersuasive. For the following reasons,

we are also unpersuaded and, consequently, answer the certified question in the negative: defendant's payroll records are not exempt from the Act. We will not rule on the judgment of the pleadings, as it is beyond the scope of this appeal, which is limited to the certified question.

¶ 4 BACKGROUND

¶ 5 Since this appeal comes to us at the pleadings stage, we accept as true all the well-pleaded facts in the complaint and all reasonable inferences that may be drawn from those facts, and we construe them in a way most favorable to plaintiff. *Bennett v. Chicago Title & Trust Co.*, 404 Ill. App. 3d 1088, 1094 (2010). No answer was filed by defendant, and no exhibits were attached to the complaint. We summarize below the facts alleged in the complaint.

¶ 6 Defendant Estates of Hyde Park, LLC is a short-term rehabilitation and long-term care facility in Cook County, where plaintiff Debra Townsend, a nurse, worked from April 2019 to September 2019. Handscans were used at the facility for timekeeping purposes.

¶ 7 When defendant hires an employee, the employee is enrolled in defendant's employee database, using a scan of the employee's hand. Defendant then uses its employee database to monitor the time worked by its employees. Defendant requires its employees, as a condition of employment, to have their hand scanned by a biometric timekeeping device. Employees are required to have their hands scanned "to clock-in and clock-out, recording their time worked." Plaintiff alleges that, "[w]hile many employers use conventional methods for tracking time worked (such as ID badges or punch clocks), Defendant's employees are required, as a condition of employment, to have their hand geometry scanned by a biometric timekeeping device."

¶ 8 Plaintiff's complaint alleges that defendant violated the Act in numerous ways, such as failing to inform employees of the length of time that their scans would be stored and failing to provide a publicly available retention schedule and guidelines for destruction. Plaintiff alleges that defendant disclosed employee hand-scan data to at least one third-party vendor. In her putative class action complaint, filed October 15, 2019, plaintiff sought to bring her action on behalf of herself and also on behalf of other similarly situated individuals who worked for defendant and who had hand scans collected.

¶ 9 In its motion for judgment on the pleadings, defendant argued that the act of scanning an employee's hand for timekeeping purposes is excluded from the Act's protections, on the ground that the Act exempted from its protections "health care *** operations under [HIPAA]." 740 ILCS 14/10 (West 2018).

¶ 10 At the May 30, 2024, hearing on defendant's motion, defendant argued that it had to submit its "payroll-based records" to state and federal agencies, in order to qualify for federal government-funded health programs and to maintain its state license as a nursing home, and, thus, its payroll qualified as a health care operation under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. No. 104-191, 110 Stat. 1936 (1996)). In response, plaintiff argued that the fact that payroll records were sent to a regulator who might then use them in an audit was too tenuous a connection for them to qualify as health care operations under HIPAA. Plaintiff noted that every Cook County judge to address the issue had held that timekeeping was not a health care operation under HIPAA.

¶ 11 On July 5, 2024, the trial court denied defendant's motion for judgment on the pleadings. The trial court's order noted that there was a split among trial courts regarding the application of the Act to biometric timekeeping systems used in healthcare facilities. The trial

court noted that the Illinois Supreme Court's decision in *Mosby v. Ingalls Memorial Hospital*, 2023 IL 129081, was instructive but not dispositive, since *Mosby* involved medication dispersion rather than the timekeeping of staff. *Mosby* was the last decision issued by the Illinois Supreme Court regarding the Act's reach.

¶ 12 On December 19, 2024, the trial court granted defendant's motion for Illinois Supreme Court Rule 308 (eff. Oct. 1, 2019) certification. The trial court also directed that discovery, which had been stayed since defendant's first motion, would remain stayed pending the outcome of the interlocutory appeal. As noted above, on February 24, 2025, a panel of this court denied defendant's application for leave to appeal. On March 28, 2025, defendant petitioned for leave to appeal to the Illinois Supreme Court. On May 28, 2025, the supreme court denied defendant's petition for leave to appeal to the supreme court but entered a supervisory order directing the appellate court to vacate its order denying the interlocutory appeal. The appellate court was also directed to answer the question certified by the trial court. After thorough briefing, further motions to cite additional authority, and oral argument, we answer the certified question below.

¶ 13 ANALYSIS

¶ 14 A. Standard of Review

¶ 15 By definition, certified questions are solely questions of law, which are subject to *de novo* review. *Mosby*, 2023 IL 129081, ¶ 29. Questions of statutory construction are also questions of law and are also subject to *de novo* review. *Mosby*, 2023 IL 129081, ¶ 29. *De novo* review means that we owe no deference to the trial court's decision and that we stand in the same position as the trial court did. *People v. Morgan*, 2025 IL 130626, ¶¶ 21-22. We perform the same analysis that a trial court would. *People v. Harris*, 2022 IL App (1st) 192509, ¶ 19.

However, while we owe no deference to the trial court's opinion, we remain free to be persuaded by its logic and reasoning. *Eckhardt v. The Idea Factory, LLC*, 2021 IL App (1st) 210813, ¶ 15 (even when not binding, a decision may still carry persuasive authority).

¶ 16 The purpose of statutory construction is to give effect to the legislators' intent, and the best indication of their intent is the plain and ordinary meaning of the words that they chose to use. *Mosby*, 2023 IL 129081, ¶ 30. We construe the statute as a whole and do not view words or phrases in isolation but rather consider them in light of the statute's other relevant provisions. *Mosby*, 2023 IL 129081, ¶ 30.

¶ 17 When a statute's language is plain and unambiguous, we do not depart from it by reading into it exceptions, limits or conditions that the legislators did not state. *Mosby*, 2023 IL 129081, ¶ 31. However, in construing a statute, we consider the reason for the law, the problems that the legislators sought to remedy, the purposes they were trying to achieve, and the consequences if we construe the statute one way or another. *Mosby*, 2023 IL 129081, ¶ 31. In addition, each word in a statute is to be interpreted in such a way that it is given meaning and not rendered superfluous. *Mosby*, 2023 IL 129081, ¶ 36.

¶ 18 B. Legislative Purpose

¶ 19 The Act has a section conveniently titled "Legislative findings; intent," to tell readers what the legislators' purpose was, when they passed the Act in 2008. 740 ILCS 14/5 (West 2018); 740 ILCS 14/5 (West 2008). This section has remained unchanged by the legislature since the statute was enacted in 2008. The legislators observed that biometrics are unlike other unique identifiers, in that once they are compromised, "the individual has no recourse." 740 ILS 14/5(c) (West 2018). Further, "[t]he full ramifications of biometric technology are not fully known." 740 ILS 14/5(f) (West 2018). Based on these concerns, the legislators found that

the public welfare would best be served "by regulating the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers." 740 ILS 14/5(g) (West 2018).

¶ 20 In its reply brief, defendant argues that, because the question that it framed states "for purposes of," the primary purpose of the data is now beyond question and beyond this court's power to consider. However, one action may have many purposes and may have different purposes to different entities. That this may have been one of defendant's purposes does not relieve us of the duty of analyzing the intent of the statute and its related regulations.

¶ 21 C. Biometric Identifier

¶ 22 The Act explicitly defines the term " 'Biometric identifier' " to include a "scan of hand." 740 ILCS 14/10 (West 2018). Thus, there is no dispute that hand scans were generally meant to be included within the term " 'Biometric identifier.' " 740 ILCS 14/10 (West 2018).

¶ 23 However, section 10 of the Act exempts certain limited information from the "biometric identifier" category that would otherwise be included in it. 740 ILCS 14/10 (West 2018). Significant to this appeal, section 10 states: "Biometric identifiers do not include information captured from a patient in a health care setting or information collected, used, or stored for health care treatment, payment, or operations under [HIPAA]." 740 ILCS 14/10 (West 2018). In the case at bar, defendant argued to the trial court that its employee handscans were biometric information collected, used and stored "for health care *** operations." 740 ILCS 14/10 (West 2018). However, the exemption does not apply to *all* healthcare operations, but only to those healthcare operations "under [HIPAA]." 740 ILCS 14/10 (West 2018).

¶ 24 As we noted above, every word or phrase in a statute must be interpreted in a way that gives it meaning and does not render it superfluous. *Mosby*, 2023 IL 129081, ¶ 36. If the

legislators had intended the exemption to apply to all health care operations, they could have ended the exemption with the word "operations." Thus, the additional phrase "under [HIPAA]" is a limiting phrase carving out some operations from the exemption's reach.

¶ 25 In *Mosby*, our supreme court found that the exemption did apply to finger scans collected from nurses to access patient medicine. *Mosby*, 2023 IL 129081, ¶ 54. However, the supreme court ended its opinion with a strongly worded caveat that it was *not* construing the language at issue as a broad, categorical exemption for biometric identifiers taken from health care workers:

> "We are not construing the language at issue as a broad, categorical exclusion of biometric identifiers taken from health care workers. Here, the nurses' biometric information, as alleged in the complaints, was collected, used, and stored to access medications and medical supplies for patient health care treatment and is excluded from coverage under the Act because it is information, collected, used, or stored for health care treatment, payment, or operations under [HIPAA]." (Internal quotation marks omitted.) *Mosby*, 2023 IL 129081, ¶ 57.

In the case at bar, if we interpret these payroll handscans to be excluded as well, it is hard to imagine what, if anything, would be left to be covered under the Act, and the exemption would become the "broad, categorical exclusion of biometric identifiers taken from health care workers" that our supreme court warned against. *Mosby*, 2023 IL 129081, ¶ 57. Defendant's "hail-Mary-pass" argument at the end of its brief that employers still could not market or sell their employees' data does little to alter this conclusion.

¶ 26 Where the legislators wanted to create blanket exclusions for certain sectors of the workforce, they expressly provided for it. For example, the Act does not apply either to

financial institutions subject to Title V of the federal Gramm-Leach-Bliley Act (Pub. L. No. 106-102, 113 Stat. 1338 (1999)) or to employees, contractors, or subcontractors of local government or the State. 740 ILCS 14/25(c), (e) (West 2018). No such blanket exclusion exists for health care, and the *Mosby* court was clear that it did not intend to read one into an act where none existed. *Mosby*, 2023 IL 129081, ¶ 57.

¶ 27 The trial court found, and we agree, that HIPAA regulations' definition of "health care *** under [HIPAA]" (740 ILCS 14/10 (West 2018)) is specific to the health care of an individual, as opposed to a system. Our supreme court turned to HIPAA regulations to define health care under HIPAA (*Mosby*, 2023 IL 129081, ¶ 49), and the trial court followed its lead and did the same. See *Mosby*, 2023 IL 129081, ¶ 52 ("the legislature was directing readers to HIPAA to discern the meaning of" health care operations). HIPAA regulations define "Health care" as follows:

> "*Health care* means care, services, or supplies *related to the health of an individual*. *Health care* includes, but is not limited to, the following:
>
> (1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, *of an individual* or that affects the structure or function *of the body*; and
>
> (2) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription." (Emphases added and in original.) 45 C.F.R. § 160.103 (eff. Mar. 24, 2026).

The above regulation was quoted by our supreme court when defining the reach of health care under HIPAA. *Mosby*, 2023 IL 129081, ¶ 49. While the finger scans in *Mosby* for "dispensing"

a patient's medicine fit squarely in paragraph (2) above (*Mosby*, 2023 IL 129081, ¶ 49 (noting the applicability of this paragraph)), we see nothing in the above definition to cover employee tracking. The definition above clearly states that "[h]ealth care" means care "related to the health of an individual," just as the trial court found. (Emphasis omitted.) 45 C.F.R. § 160.103 (2026).

¶ 28 HIPAA's definition of "Health care operations" does not help defendant either. HIPAA regulations state: "*Health care operations* means any of the following activities of the covered entity to the extent that the activities are related to covered functions ***." (Emphasis in original.) 45 C.F.R. § 164.501 (2013). Defendant argues that "the following activities" include "auditing functions, including fraud." 45 C.F.R. § 164.501 (2013). However, defendant's argument overlooks the fact that the listed activities qualify only "to the extent that the activities are related to covered functions." 45 C.F.R. § 164.501 (2013). "Covered functions" is a term of art that is specifically defined in the regulations. (Emphasis omitted.) 45 C.F.R. § 164.103 (2013). "Covered functions means those functions of a covered entity the performance of which makes the entity a health plan, health care provider, or health care clearinghouse." (Emphasis omitted.) 45 C.F.R. § 164.103 (2013). As the trial court concluded, and we agree, employee timekeeping is not the type of function, the performance of which makes defendant a health care provider. Timekeeping is not intrinsic to healthcare; it is part of a myriad number of businesses and employers with no relation to healthcare.

¶ 29 Defendant directs our attention to the issue of the Federal Register that added the term "covered functions." Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. 82462, 82489 (Dec. 28, 2000). Page 82489 states:

> "We add a new term 'covered functions,' as a shorthand way of expressing and referring to the functions that the entities covered by section 1172(a) of the Act perform. Section 1171 defines the terms 'health plan', 'health care provider', and 'health care clearinghouse' in functional terms. Thus, a 'health plan' is an individual or group plan 'that provides, or pays the cost of, medical care * * *', a 'health care provider' 'furnish[es] health care services or supplies,' and a 'health care clearinghouse' is an entity 'that processes or facilitates the processing of * * * data elements of health information * * *'. Covered functions, therefore, are the activities that any such entity engages in that are directly related to operating as a health plan, health care provider, or health care clearinghouse; *that is, they are the functions that make it a health plan, health care provider, or health care clearinghouse.*" (Emphasis added.) Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. at 82489.

Applying the definition above, payroll records and timekeeping are not the functions that make defendant a health care provider.

¶ 30 If we had any doubt, which we do not, that doubt is erased by the very next line in the Federal Register: "The term 'covered functions' is *not* intended to include various support functions, such as computer support, *payroll* and other office support, and similar support functions, although we recognize that these support functions must occur in order for the entity to carry out its health care functions." (Emphases added.) Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. at 82489. Thus, per the quote above, the payroll records that defendant must submit to various government agencies are *not* part of defendant's covered functions, although they "must occur in order for [defendant] to carry out its health

care functions." Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. at 82489.

¶ 31 There is another problem with defendant's argument that plaintiff notes in her brief. Our analysis above is premised on the assumption that the data generated from defendant's biometric timekeeping device is the same data that is then used to generate the payroll reports sent to federal and state regulatory agencies. However, at this stage, all we have in front of us are plaintiff's allegations in her complaint, and there are no such allegations in her complaint. Thus, even if we were persuaded by defendant's argument, which we are not, we still could not rule in its favor at this early stage of the litigation, without any evidentiary support for this missing link in defendant's argument. *Cline v. Marion Rehabilitation & Nursing Center, LLC*, 2025 IL App (5th) 240784-U, ¶¶ 34-37 (evidentiary support was needed to show that the biometric data was the same data submitted in audits and reports); *Verity v. Herrin Rehabilitation & Nursing Center, LLC*, 2025 IL App (5th) 240785-U, ¶¶ 37-38.

¶ 32 A close reading of the pertinent regulations and *Mosby* requires us to answer the certified question in the negative and find that the Act does not exempt the handscans used by defendant for timekeeping. One of the many problems with defendant's argument is that it creates an all-encompassing exemption regarding healthcare workers and, thus, categorically eliminates protections for them, in direct contravention of the supreme court's warning in *Mosby*.

¶ 33 CONCLUSION

¶ 34 For the foregoing reasons, we answer the question in the negative and remand for further proceedings consistent with this opinion.

¶ 35 Certified question answered; cause remanded.

¶ 36 JUSTICE WILSON, specially concurring:

¶ 37 I concur in the court's opinion and join its holding. I write separately to emphasize the narrow scope of the Biometric Information Privacy Act's (Act) (740 ILCS 14/1 *et seq.* (West 2018)) health care exemption and to emphasize the patient-specific linkage that HIPAA requires. The statutory text and structure, reinforced by controlling precedent, foreclose any reading that would convert general workforce timekeeping into HIPAA "health care operations," and thus exempt it from the Act.

¶ 38 The Act exempts biometric identifiers only when "collected, used, or stored for health care treatment, payment, or operations under [HIPAA]" (740 ILCS 14/10 (West 2018)), which, by HIPAA's design, centers on care "related to the health of an individual" and thus demands a patient-specific focus. HIPAA expressly excludes employment records maintained by a covered entity in its role as employer. Biometric timekeeping, attendance, and payroll data are employment records, not PHI, and therefore are outside HIPAA's regulatory scope and outside the Act's exemption.

¶ 39 HIPAA protects protected health information (PHI), which is individually identifiable health information created or used in connection with a patient's medical care; by contrast, employment records—even when held by a hospital—are excluded from PHI. Biometric scans used solely to clock employees in or out, verify attendance, allocate hours, or administer payroll do not concern the care of any individual patient and are not PHI.

¶ 40 HIPAA's "health care operations," as defined in 45 C.F.R. § 164.501 (2013), include compliance, quality assessment, auditing, and business-management activities only insofar as those activities involve or depend upon PHI tied to identifiable patients; they do not convert general workforce management into HIPAA operations when no patient-specific information

is involved. The statute's structure confirms that HIPAA's operational allowances exist to facilitate the lawful handling of PHI, not to broadly exempt employment-related biometric collection from state biometric privacy laws.

¶ 41 The Illinois Supreme Court in *Mosby v. Ingalls Memorial Hospital*, 2023 IL 129081, held that employee biometrics may fall within the Act's exemption only when the biometric capture is functionally and documentarily tied to HIPAA-defined purposes—for example, using biometrics to access a named patient's medications or clinical records—rejecting any blanket, industry-wide exemption. *Mosby* confirms that general employee administration cannot trigger the Act's exemption, absent a demonstrable linkage to identifiable patient PHI in HIPAA-defined treatment, payment, or operations. Statutory or regulatory mandates to track staffing ratios or hours do not transform workforce biometric collection into HIPAA operations unless the reporting itself requires identifiable patient PHI; workforce-level reporting remains an employment function and does not escape the Act.

¶ 42 As indicated above, the core health care activities of "Treatment," "Payment," and "Health Care Operations" are limited to the activities listed in the definition of "health care operations" at 45 C.F.R. § 164.501 (2013). As further explicitly stated in the regulation:

> "The HIPAA Privacy Rule establishes a foundation of Federal protection for personal health information, carefully balanced to avoid creating unnecessary barriers to the delivery of quality health care. As such, the Rule generally prohibits a covered entity from using or disclosing protected health information unless authorized by patients, except where this prohibition would result in unnecessary interference with access to quality health care or with certain other important public benefits or national priorities. Ready access to treatment and efficient payment for health care, both of which require

> use and disclosure of protected health information, are essential to the effective operation of the health care system. In addition, certain health care operations—such as administrative, financial, legal, and quality improvement activities—conducted by or for health care providers and health plans, are essential to support treatment and payment. Many individuals expect that their health information will be used and disclosed as necessary to treat them, bill for treatment, and, to some extent, operate the covered entity's health care business. To avoid interfering with an individual's access to quality health care or the efficient payment for such health care, the Privacy Rule permits a covered entity to use and disclose protected health information, with certain limits and protections, for treatment, payment, and health care operations activities." *Uses and Disclosures for Treatment, Payment, and Health Care Operations*, U.S. Dep't of Health and Hum. Services (rev. Apr. 3, 2003), https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/disclosures-treatment-payment-health-care-operations/index.html [https://perma.cc/A97C-37SV] (HHS's discussion of 45 C.F.R. § 164.506).

¶ 43 With that guidance, biometric authentication to access patient-specific medications—such as a nurse's fingerprint unlocking a dispensing cabinet for an identified patient, with the event recorded in controlled-substance logs tied to that patient—qualifies as HIPAA-regulated activity. Biometric access to a specific patient's electronic health record, where the authentication event forms part of the PHI audit trail, falls within HIPAA-defined operations. Fingerprint activation of a medication-administration workstation, enabling wristband scanning and documentation in an identified patient's medication administration record, is patient-linked and within HIPAA. Biometric access control to restricted clinical areas housing

identifiable patient records or treatment materials, with logs used for PHI-related compliance, constitutes HIPAA operations. Fingerprint scanning embedded in the controlled-substance chain of custody for a specific patient prescription is a HIPAA-regulated use.

¶ 44 The governing rule is narrow and administrable: the Act's health-care exemption applies when, and only when, the biometric collection is used for HIPAA-defined treatment, payment, or health-care operations and is tied to the PHI of identifiable patients; biometric timekeeping and generalized workforce administration remain subject to the Act's notice, consent, retention, and security obligations. Defendants argue that they collect subject biometric data as part of their statutory or regulatory mandates to track staffing compliance. Whether that conduct qualifies as an Act exemption will be determined through the litigation process. However, the certified question, as presented, makes no provision for the patient-specific linkage that HIPAA requires and thus must be answered in the negative.

¶ 45 I therefore respectfully concur.

Townsend v. Estates of Hyde Park, LLC, **2026 IL App (1st) 250096**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 2019-CH-11849; the Hon. Eve M. Reilly, Judge, presiding.
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