



June 1, 2023

The Honorable Xavier Becerra
United States Secretary
Department of Health and Human Services
200 Independence Ave SW
Washington, DC 20201

Re: RIN Number 0945–AA20; HIPAA Privacy Rule to Support Reproductive Health Care Privacy

Dear Secretary Becerra:

On behalf of Michigan Academy of Family Physicians (MAFP) representing 4,300 family physicians and medical students across the state, I write in response to the notice of proposed rulemaking, “HIPAA Privacy Rule To Support Reproductive Health Care Privacy,” as published in the April 17, 2023 [Federal Register](#).

MAFP applauds HHS for undertaking rulemaking to uphold privacy standards for sensitive health information like reproductive health care. This proposed rule is aligned with the American Academy of Family Physicians’ (AAFP) [policy](#) and its [advocacy](#) efforts to protect the patient-physician relationship. To minimize the onus on clinicians and sufficiently disincentivize inappropriate patient information requests and use by law enforcement and other state agencies, the MAFP, along with the AAFP, recommends HHS:

- Finalize the proposal to prohibit sharing reproductive health-related protected health information (PHI) for criminal, civil, or administrative investigations against any person in connection with lawfully provided reproductive health services, as well as to require an attestation affirming any such requests are not for prohibited purposes prior to sharing PHI with entities who may be conducting or connected to criminal, civil, or administrative investigations,
- Expand this proposal to other types of “highly sensitive PHI,” specifically sexual health and gender-affirming care or other health services supporting gender diverse individuals,
- Work with electronic health record (EHR) vendors to modernize the functionality of healthcare data management platforms to comply with this proposed rule without cost to the physician or their practice,
- Include examples of reproductive health care in the regulatory text to ensure clear and consistent understanding of the applicability of this rule,
- Make resources available with publication of the final rule to assist physicians and other clinicians in understanding their rights and how to respond to contradictions between state laws and this proposed rule, and
- Make information widely available about a patient’s rights regarding requesting and sharing their PHI with other entities and how to report inappropriate attempts of coercion to use or access their PHI.

As proposed, this rule would apply in situations where reproductive care is provided under the Emergency Medical Treatment and Labor Act (EMTALA), even when the care is otherwise prohibited in the state. It would also provide protections for physicians providing reproductive care for patients who have traveled across state lines, regardless of whether such care is allowed under the patient's state laws or any other states' laws so long as it is lawful in the location where the patient receives care.

MAFP strongly urges HHS to finalize this rule of applicability as proposed.

Following the Supreme Court [decision](#) in *Dobbs v. Jackson Women's Health Organization*, which struck down longstanding protections afforded by *Roe v. Wade* and *Planned Parenthood v. Casey*, some states have imposed criminal, civil, and/or administrative liability against individuals in connection with obtaining, providing, or facilitating certain reproductive healthcare services, including an abortion. HHS, in accordance with the Federal Trade Commission (FTC) and the Department of Defense (DOD), has determined that reproductive health information is particularly sensitive and requires heightened protections.

The MAFP strongly agrees with this determination and supports heightened protections for reproductive health information. Reproductive care is highly personal and private for many patients. Without appropriate protections, patients may refrain from sharing their full health history with their primary care physician, including in emergency situations, out of fear of inappropriate use or disclosure of their PHI. This could result in an incomplete health assessment and inappropriate diagnoses, which could lead to worsening of health outcomes and exacerbation of health disparities.

MAFP agrees with HHS' reasoning and applauds HHS for the agency's commitment to upholding the patient-physician relationship. With this in mind, MAFP supports expanding this proposal to other types of "highly sensitive PHI," specifically sexual health and gender-affirming care or other health services supporting gender diverse individuals. Many states are criminalizing the provision of health care for gender diverse individuals just as they are for reproductive health care. Moreover, transgender and nonbinary people often experience a variety of barriers to healthcare, including overt discrimination, inadequate health insurance coverage, and legislative interference in the physician-patient relationship. Without appropriate protections for gender-affirming care and other types of care for transgender, nonbinary, and gender diverse individuals, the MAFP is extremely concerned that PHI will be used to target patients, their families, and their physicians.

MAFP acknowledges that, despite the limited scope established by the purpose-based prohibition, the required attestation, as described in the proposal, may result in some additional administrative work and/or slight delays in the appropriate exchange of PHI between physicians and other healthcare clinicians. MAFP also acknowledges that standards of care may be adjusted to require an attestation for reproductive PHI in more circumstances than required by this proposed rule. However, this additional administrative work and potential delay in care coordination is a minimal and calculated risk that will preserve the trusting, and in many cases lifesaving, patient-physician relationships. Patients must be able to depend on their physicians to help them make critical decisions about their personal health. Further, physicians must be able to practice medicine that is informed by their years of medical education, training, experience and the available evidence, freely and without threat of punishment, harassment or retribution.

Finally, not all electronic systems offer this ability to distinguish between "types" of PHI and implementation of this proposal would require an update to EHR systems. The MAFP remains concerned about the feasibility and functionality of EHRs and other platforms to improve data sharing while protecting

patient privacy. Modernization of current widely available technology is needed to ensure physicians and their practices can segment appropriate data elements, ensure timely and effective deidentification of data when needed, and uphold patient consent and privacy requirements. As such, MAFP urges HHS to work with EHR vendors to modernize the functionality of healthcare data management platforms to comply with this proposed rule without cost to the physician or their practice.

Thank you for the opportunity to provide these comments. MAFP is committed to upholding patient privacy and protecting the patient-physician relationship, and we look forward to working with your agency to do so.

Should you have any questions, please contact Karlene Ketola, Chief Executive Officer at kketola@mafp.com.

Sincerely,

A handwritten signature in black ink, reading "Glenn V. Dregansky" with a stylized flourish at the end.

Glenn V. Dregansky, DO, FAAFP
President