



The Alliance for Hippocratic Medicine

The Alliance for Hippocratic Medicine submits these comments on behalf of the approximately 30,000 physicians who constitute the membership of our member organizations: The Coptic Medical Association, the Catholic Medical Association, the Christian Medical and Dental Association, the American College of Pediatricians and the American Association of Pro-Life Obstetricians and Gynecologists, all of whom adhere to the Hippocratic Oath.¹

The proposed rule amending the HIPAA act renders the duties and responsibilities of physicians incomprehensible, and makes it impossible for a physician to understand what is and is not required for compliance, especially in areas of mandatory reporting. But the most egregious result of implementing this egregious rule is to forbid physician involvement in prosecution of sex traffickers and abusers, even in cases where the physicians are mandatory reporters. The Reproductive Health Care Rule (164.502(a)(5)(iii)) overrides and makes literally incomprehensible our responsibilities as physicians who are mandatory reporters of abuse. No physician would be able to know what information is allowed or prohibited now in cases of rape, child abuse or any other abuse if it relates in any way to reproductive health information.

Coerced abortion is a crime in all 50 states. If a physician becomes aware of coerced abortion, she or he is prohibited now from releasing the very information which would be vital to the case.

Similarly, if a physician becomes aware of incest or rape because of a pregnancy in an early adolescent, the physician is a mandatory reporter of such cases in many states, but is now prohibited from providing the information which would prove essential to the case.

This is medically and legally incoherent, and places physicians at extreme risk of liability for failing to report as mandatory reporters or if they do report, places physicians at risk of being accused of a HIPAA violation.

The incoherence is illustrated at 164.512 (c.) (3) “based primarily on the provision of reproductive health care” Nowhere does HHS explain what they mean by “based primarily upon”. So clearly the physician treating a complication from an abortion in a 12 year old who was brought in by her 31 year old pimp is basing his or her mandatory report on a patient encounter “based primarily on” providing “reproductive health care”. And this proposed rule chills the reporting of any such criminal activity, protecting the pimps and rendering the prosecution of such criminal sexual abuse impossible.

The HHS explanation at 23538 is incoherent:

- ““The proposed provision is *intended to safeguard the privacy of individuals’ PHI against claims that uses and disclosures of that PHI are warranted* because the provision or facilitation of reproductive health care, in and of itself, may constitute abuse, neglect, or domestic violence. Similar to the discussion above in section IV.D.1 [pp. 23537-38], the Department also does not intend for this proposal to obstruct oversight related to professional conduct or similar legal proceedings for which PHI related to reproductive health care is needed.”

¹ <https://allianceforhippocraticmedicine.org/>



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This makes no sense at all and does not clarify what action a physician is supposed to take in the case of the 12 year old brought in by her 31 year old abuser.

And even if the Administration clarifies the utter confusion caused in the section mentioned above, there is a new requirement under 164.509 which sows even more confusion. The proposed rule asks the covered entity to disclose information which is “potentially related to reproductive health care”.

For an obgyn, everything that we do is “potentially related to reproductive health care”. Nowhere in the rule does the Administration define what they mean by “potentially related to”. What does that mean for obgyns who are mandatory reporters? The new rule is medically incoherent due to the fact that so many of the terms are vague and undefined. Rather than adding clarity this new rule adds equivocal terminology with the underlying chilling effect that physicians will be now unable to discern what is allowable and mandatory disclosure and what would constitute a HIPAA violation.

The end result of this confusion is that physicians and health care entities will end up refusing to provide information not only in cases of abuse but in any area that could possibly be construed by any lawyer as “potentially related to” reproductive health care.

This of course will render impotent state law reporting requirements regarding abortion complications, abortion provision, informed consent requirements, parental consent requirements, etc and it is not an unreasonable conjecture that this may be one of the main purposes of the Administration in proposing this new rule.

But one of the greatest harms that will take place is the inability to prosecute criminal sexual abuse including child sexual abuse due to the provisions in the RHC Rule which **OVERRIDE ALL OTHER PROVISIONS** authorizing the release of health information, such as:

Is the proposed disclosure “for a criminal, civil or administrative investigation into a proceeding against any person?” Clearly information about pregnancy is critically important to establishing the fact of child sexual abuse for a 12 year old brought in by her 31 year old abuser. Yet clearly the critical information that the physician would provide would be “for a criminal investigation” and thus be prohibited from release by the proposed rule.

This basically gives child molesters and sex abusers a free pass as it obstructs the ability of the criminal justice system from accessing the information necessary to prosecute these abusers.

Further facilitating child sex abuse is the part of the rule which prohibits disclosure “in connection with seeking, obtaining, providing or facilitating reproductive health care.” So the pimp who tries unsuccessfully to abort one of his herd and brings her in in septic shock will not get prosecuted, because the physicians now will be unable to report his criminal activity because the activity was done “in connection with seeking, obtaining, providing or facilitating reproductive health care.”

And lest there be any confusion, the term “reproductive health care” is defined in 160.103 as “care services or supplies related to the reproductive health of the individual.” HHS says this “applies broadly” and includes but is not limited to:

- Care or services “in connection with an individual’s reproductive health”



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- “medical, surgical, counselling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.”
- “all health care that could be furnished to address reproductive health”
- “types of care, services or supplies used for the diagnosis and treatment of conditions related to the reproductive system”
- “miscarriage management, molar or ectopic pregnancy treatment, pregnancy termination, pregnancy screening, products related to pregnancy or prenatal care, and similar or related care.”
- “health care related to reproductive organs, regardless of whether the health care is related to an individual’s pregnancy or **whether the individual is of reproductive age.**”

The 12 year old girl we treat for sepsis from the botched abortion done by her 31 year old pimp does not benefit from this rule. The one who benefits from this rule is the 31 year old abuser, as this rule impedes prosecution for sex traffickers and abusers, and provides no benefit for those abused. This rule ties the hands of obgyns and any physician or health professional by forbidding their participation in the prosecutions of sex traffickers and abusers.

Here is another area where the rule contradicts the rule of law in almost all states. Forced or coerced abortion is illegal in almost all states. Yet the rule says this at 164.502 (a)(5)(iii)(B)

“seeking, obtaining, providing or facilitating” includes but is not limited to “expressing interest in, inducing, using, performing, furnishing, praying for, disseminating information about, arranging, insuring, assisting or otherwise taking action to engage in reproductive health care; or attempting any of the same”

“inducing” is defined in the dictionary as “succeed in persuading or influencing to do something.”

So this rule as written PROHIBITS medical professionals from complying with subpoenas seeking information on whether or not someone was coerced into getting an abortion. As a medical professional I would be unable to testify that this 12 year old girl had a botched abortion performed on her by her 31 year old abuser. And it appears that the promulgator of this rule was ignorant of how this rule would actually apply in real medical situations.

This kind of sloppy imprecise rulemaking is shocking in its broad implications which do not seem to be considered at all by the administrative rule makers.

Regardless of whether the practical application of this rule were even considered by the administrative rule makers, clearly the application of this rule protects sex traffickers, abusers and those who would force abortion on women, and allows them to escape prosecution for these crimes.

See also 164.502(a)(5)(iii)(D) where the rule states that “any use or disclosure” that is “otherwise permitted by this subpart” is “prohibit[ed]” if the “use or disclosure” is “primarily for the purpose of



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investigating or imposing liability on any person for the mere act of seeking, obtaining, providing or facilitating reproductive health care”

By not defining the words “primarily” or “mere act” this wording directly prohibits any disclosure that would otherwise be permitted under the HIPAA Privacy Rule. This means that any health professional who treats abuse, forced abortion, trafficking or any other criminal activity will be unable to provide the critically important testimony necessary to prosecute these criminals.

As a physician who has worked in my county as child sexual abuse examiner, I can personally also testify that such a rule will be a disaster for children who are being sexually abused and for women being trafficked. This rule benefits only the criminal sexual assault perpetrators and does not benefit the children or women being abused or trafficked.

It is appalling that such a rule was ever promulgated apparently without consideration of what would be the impact on the women and children being abused and trafficked.

The Alliance for Hippocratic Medicine requests retraction of the entire proposed rule.

Respectfully submitted,

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Chair of the Board of Directors

Alliance for Hippocratic Medicine.