Christian Medical & Dental Associations®
Changing Hearts in Healthcare

June 16, 2023

Via Federal eRulemaking Portal

Secretary Xavier Becerra
U.S. Department of Health and Human Services, Office for Civil Rights
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue S.W.
Washington, DC 20201

Re: The Christian Medical & Dental Associations Comment **Opposing** the Proposed Rule to Modify the Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule") under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH).
RIN: 0945-AA20, Docket ID: HHS-OCR-2023-0006

Dear Secretary Becerra:

The Christian Medical & Dental Associations® (CMDA) founded in1931is the largest Christian membership organization comprised of healthcare professionals serving throughout the United States and overseas. We provide programs and services supporting its mission to "change hearts in healthcare." CMDA promotes positions and addresses policies on healthcare issues, and advocates on behalf of its members. We educate our membership on current issues of the day from a federal and state perspective. We coordinate with our network of Christian healthcare professionals for fellowship and professional growth, and we sponsor student ministries in medical and dental schools across the country. Our members provide excellent care for all patients from everything from cancer to the common cold.

Our overseas work is also far-reaching. We conduct short-term missions trips to medically underserved regions of the world and provide healthcare composed of medical, dental, and surgical teams. In addition, our overseas focus includes our Medical Education International (MEI) program. This short-term missions program provides academic teaching and clinical training upon requests from governments, healthcare professional training institutions, and hospitals while building relationships with local colleagues. We strive to model compassion and care to those in need. MEI serves primarily in low-and middle-income countries.

We respectfully submit comments regarding the Notice of Proposed Rulemaking (NPRM) titled "HIPAA Privacy Rule To Support Reproductive Health Care Privacy." We oppose the revisions of the HIPPA regulation and strongly urge the Department not to finalize this NPRM.

The language in this rule is unclear and confusing to both healthcare professionals and the general public. In the U.S. Department of Health and Human Services Plain Writing Act Compliance Report of 2022, the opening statement says, "For more than a decade, the Plain Writing Act of 2010 (Act) has required federal agencies to use clear government communication that the public can understand and use. Plain writing is critical in the context of healthcare and human services". It also states on the website, "We at HHS are committed to writing all of our documents, digital content, and communications in plain language to ensure you can easily understand."

We ask the Department to address this question; with the release of such vague and confusing language, why does HHS not apply this requirement to its own rule? In various places in the rule, the language is vague and unclear and is not "plain language." If this rule is enacted, there will be a chilling effect on healthcare professionals in terms of complying with authorities on investigations as "potentially related to reproductive health care" for fear of violating these onerous HIPAA regulations and the resulting legal and professional consequences such as losing their job and medical license, being fined, and even being imprisoned. This highly complex rule may very well put healthcare professionals in the position of choosing between violating these additional HIPAA standards and protecting the welfare of women and children in their care.

This NPRM makes stark and disturbing changes to generally understood HIPAA regulations, to the detriment of women and girls, and at the same time, putting healthcare professionals in an untenable position. The rule states that as the result of the Supreme Court's Dobbs decision, HHS believes "it may be necessary" to modify privacy standards related to requests for the use or disclosure of an individual's PHI related to reproductive health care because of the "potential" for such uses or disclosures "to undermine access to and the quality of health care generally." Specifically, HHS is concerned about "criminal, civil, or administrative investigations or proceedings that chill access to lawful health care and full communication between individuals and health care providers." As such, it issued the NPRM to "protect the trust between individuals and health care providers." Essentially saying that "reproductive health care" must be preserved at all costs.

The rule also seeks to change definitions, including how an unborn child is "defined'. This proposed rule would re-define an unborn baby as a "non-person" and will directly remove all HIPAA protections for an unborn child. These actions both de-values human life and the "new" definition is scientifically inaccurate.

Another definition change is to the term "reproductive health care," which is broadly described as "care, services, or supplies related to the reproductive health of the individual." This would cover not only abortion but also contraception, pregnancy, miscarriage, fertility treatments, and "gender transition" treatments, such as puberty blockers, cross-sex hormones, and transgender surgeries.

Current HIPAA regulations allow for the disclosure of private health information for court and law enforcement purposes as well as in cases of child abuse or when there is a serious threat to another person's health or safety. The rule, in effect, would bar the disclosure from healthcare professionals of abortion-related private health information to a court or law enforcement and remove the ability of these authorities to investigate the abuse or neglect of children.

If a doctor suspects that a girl/woman is being coerced by her trafficker into getting an abortion or there was gender transition surgery performed illegally on a child, this proposed rule would **prevent that doctor from sharing these concerns with the proper authorities.**

Current HIPAA regulations allow for the disclosure of private health information to law enforcement in cases of child abuse or when there is a serious threat to another person's health or safety. So, the rule, in effect, would bar the disclosure from healthcare professionals of abortion-related private health information to a court or law enforcement and remove the ability of these authorities to investigate the abuse or neglect of children.

According to this rule, a medical professional cannot disclose protected health information (PHI) if the report of abuse is due to "reproductive health care." A minor, especially a young adolescent who comes to a medical office pregnant, usually triggers an automatic report of child abuse. It is required by state law. Every state has a mandatory reporting law. A key question we pose to the Department is how will the federal regulation interact with state mandatory reporting laws that are in every state? Will this regulation or mandatory reporting laws be preeminent? This scenario puts the health care professional in an impossible situation, i.e., either they risk violating HIPAA regulations or risk not fulfilling their obligation of reporting suspected abuse, which could put their patients' lives at risk.

This puts medical professionals in the precarious situation of being unable to cooperate or respond to an investigation of suspected abuse or neglect. If authorities question them, they cannot cooperate with the investigation since HIPAA regulations have silenced them. Mandatory reporters would be prohibited from reporting/disclosing for an investigation. This is clearly arbitrary and capricious.

HHS estimates that first-year costs alone attributed to the NPRM would be approximately $612 million, and much of the administrative cost/burden will fall on healthcare professionals. The costs are associated with covered entities "(1) creating an attestation form and handling requests for disclosures for which an attestation is required; (2) revising business associate agreements; (3) updating the Notice of Privacy Practices (NPP) and posting it online; (4) developing new or modified policies and procedures; (5) revising training programs for workforce members; and (6) requesting an exception from preemption of state law." There would be additional ongoing costs in subsequent years.

The required attestation, as described in the rule, will result in burdensome additional administrative work and cause potentially significant delays in the interchange of PHI between physicians and other healthcare professionals.

This will undoubtedly require that standards of care be adjusted to require attestation for reproductive PHI in more circumstances than required by this proposed rule. This arduous

additional administrative work and delay in care coordination will risk the delivery of optimum patient care and test the patient/physician relationship by potentially putting doctors and their patients at odds with one another.

Conclusion

HIPAA currently permits covered entities based on reasonable belief to disclose protected health information (PHI) about victims of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of abuse, neglect, or domestic violence.

The Administration is proposing changes in the name of personal privacy, but it would ultimately circumvent state laws, allowing for the exploitation of women and children and devaluing human life.

The proposed rule itself is confusing and vague and will put patients at greater risk. The changes in this rule are alarming and are a clear example of federal overreach. These policies attempt to circumvent state law and weaken protections of children and the vulnerable and diminish unborn human life. This could further enable child abuse and embolden human traffickers and other abusers to create safe harbors since they will not be held accountable for their criminal behavior if this rule is enacted.

The NPRM would preempt state law requiring the use or disclosure of PHI for reproductive healthcare; in effect, it would likely inhibit states' ability to investigate or enforce abortion laws or laws prohibiting minors from accessing gender transition drugs and surgeries.

This NPRM would likely inhibit state health departments' collection of health data and investigations and enforcement of health and safety regulations.

Finally, physicians must be able to practice medicine that is informed by their years of medical education, training, and experience, freely and without threat of punishment, harassment, or retribution. If one feels coerced in the workplace, it will likely deter a new generation of students from entering the medical profession if they fear their ability to practice medicine according to their ethics is not protected.

The U.S. healthcare system is already in a critical phase, and promulgating this onerous and unclear regulation will only contribute to a significant decrease in access to healthcare for the poor and the medically underserved. CMDA strongly urges the Administration and HHS to reconsider the finalization of this rule. Thank you.

Sincerely,
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