

June 16, 2023

U.S. Department of Health and Human Services  
Office for Civil Rights  
Attention: HIPAA and Reproductive Health Care Privacy NPRM  
Hubert H. Humphrey Building, Room 509F  
200 Independence Avenue SW  
Washington, DC 20201

**RE: HIPAA Privacy Rule to Support Reproductive Health Care Privacy**

To Whom It May Concern:

The Primary Care Development Corporation appreciates the opportunity to comment on the Department of Health and Human Services (HHS) proposal to modify the “Privacy Rule,” which would bolster patient-provider confidentiality around reproductive health care 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 Act).

As background, PCDC is a national non-profit organization and Community Development Financial Institution (CDFI) founded and based in New York City. Our mission is to strengthen communities and build health equity through strategic capital investment, technical assistance and training, as well as policy and advocacy. Over the past three decades, PCDC has leveraged more than \$1.5 billion to finance over 249 primary care projects, with strategic community investments that have built the capacity to provide 4.7 million primary care visits annually, created or preserved nearly 20,000 jobs in low-income communities, and transformed more than 2.6 million square feet of space into fully functioning primary care and integrated behavioral health practices. Our staff have also trained and coached thousands of health workers to deliver superior patient-centered care. Over 30 years, PCDC’s work has impacted more than 62 million primary care patients across 45 states as well as the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa.

High-quality, integrated, patient-centered primary care saves lives, leads to better individual and community health, and is central to health equity. And sexual and reproductive health care are major components of primary care. Primary care providers directly provide and refer patients to the reproductive health care they need, including birth control, preconception care, counseling, and abortion services.

Women<sup>i</sup> see their primary care providers substantially more than men<sup>ii</sup>, especially during their reproductive years, and reproductive health care services, including those provided in primary care settings, are essential for the 72 million women of reproductive age in the US.<sup>iii</sup> In addition, nearly 25% of women will seek abortion care by the age of 45.<sup>iv</sup>

However, after the Supreme Court’s decision in *Dobbs v. Jackson* allowed for states to restrict access to reproductive and abortion services, 24 states have either instituted near-total bans on such care or instituted hurdles that make access nearly impossible.<sup>v</sup> As a result, many patients who live in these states have traveled to states with fewer or no restrictions to receive the care they are deprived of near their homes.

Privacy between medical providers and their patients has long been a hallmark of medical care and it serves many important purposes, chief among them that the assurance of confidentiality allows the patient to be fully transparent about his or her medical conditions and concerns.<sup>vi</sup> Congress recognized this important value when it enacted HIPAA in 1996, providing “unprecedented protection to medical privacy.”<sup>vii</sup> Other experts have noted further that “[h]ealth records contain highly-sensitive facts about individuals” and that “[u]nwarranted disclosures of these facts may lead to societal stigmatization and discrimination by employers, insurers, and others.”<sup>viii</sup>

After the *Dobbs* decision and subsequent enactment of restrictive abortion laws by many states, a further concern about patient privacy and medical records now exists – there is the potential that medical records could be used as the basis for criminal prosecution when women who live in states where abortion is banned seek abortions outside of their home states and then return home. While no state has yet banned adults from obtaining out-of-state abortions, various measures have been introduced in state legislatures that could penalize patients who do seek abortion care out of state as well as the providers from whom they seek that care.<sup>ix</sup> In addition, both Texas and Oklahoma’s abortion bans allow citizens to sue people who provide abortion care or help someone receive abortion care, and multiple states are considering different ways to penalize the actions of those who leave the state and then return after having obtained an abortion.<sup>x</sup>

These types of restrictions have already had harmful impacts on patients’ health and providers’ ability to provide the best medical care to their patients. In some states with strict abortion laws, providers are prohibited from talking to their patients about abortion care even in medical emergencies or when the patient’s life or health is at risk and an abortion is the necessary treatment.<sup>xi</sup>

Abortion bans and laws that attempt to interfere with patients leaving the state for care not only threaten patient health, but also pose an existential threat to reproductive health care access and to primary care access in general. The health care workforce is currently experiencing extreme burnout and many are leaving the field, including those who provide primary care and reproductive health care. There is already a projected shortage of 35,260 full-time primary care physicians by 2035.<sup>xii</sup> Further restrictions and fear of criminal prosecution can only hurt the recruitment and retention of health care providers, including primary care providers who provide integrated reproductive health services.

For all these reasons, PCDC supports CMS’s changes to the “privacy rule” under HIPAA and the HITECH Act. Because of the uncertainty surrounding some patient care, these rule changes are necessary to protect both patients and providers from any criminal or civil charges for seeking and providing reproductive care that is lawful under the circumstances in which it is provided.

Once again, PCDC thanks CMS for the opportunity to provide these comments on the changes to the “privacy rule” under HIPAA and the HITECH Act. We encourage HHS to adopt policies most likely to decrease barriers to and ensure patient privacy in all aspects of primary care services, including sexual and reproductive health care.

We would be happy to follow up on any of these key points if more information would be useful – feel free to reach out to our Director of Policy, Jordan Goldberg, at [jgoldberg@pcdc.org](mailto:jgoldberg@pcdc.org) or (212) 437-3947, for any further information.

Sincerely,

Louise Cohen  
Chief Executive Officer  
Primary Care Development Corporation

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<sup>i</sup> In addition to women, other individuals who do not identify as women, including transgender men and some non-binary people, may also have the capacity to become pregnant and need access to comprehensive reproductive health care, including contraception.

<sup>ii</sup> Centers for Disease Control and Prevention, National Center for Health Statistics, Press Release, *New Study Profiles Women’s Use of Health Care: Women more likely than men to visit the doctor; more likely to have annual exams*, July 26, 2001, available at <https://www.cdc.gov/nchs/pressroom/01news/newstudy.htm>.

<sup>iii</sup> Guttmacher Institute, Fact Sheet, *Contraception Use in the United States*, May 2021, available at <https://www.guttmacher.org/fact-sheet/contraceptive-use-united-states>.

<sup>iv</sup> Guttmacher Institute, News Release, *Abortion Is a Common Experience for U.S. Women, Despite Dramatic Declines in Rates*, October 19, 2017, available at <https://www.guttmacher.org/news-release/2017/abortion-common-experience-us-women-despite-dramatic-declines-rates>

<sup>v</sup> Guttmacher Institute, *Six Months Post-Roe, 24 US States Have Banned Abortion or are Likely to Do So*, January 10, 2023, available at <https://www.guttmacher.org/2023/01/six-months-post-roe-24-us-states-have-banned-abortion-or-are-likely-to-do-so-roundup>

<sup>vi</sup> See Ralph Ruebner, Leslie Ann Reis, *Hippocrates to Hipaa: A Foundation for A Federal Physician-Patient Privilege*, 77 Temp. L. Rev. 505, 508 (2004).

<sup>vii</sup> *Id.*

<sup>viii</sup> James G. Hodge, Jr., *The Intersection of Federal Health Information Privacy and State Administrative Law: The Protection of Individual Health Data and Workers’ Compensation*, 51 Admin. L. Rev. 117, 120 (1999).

<sup>ix</sup> See e.g., Devon Cole, *Health care providers sue Idaho AG over new guidance limiting out-of-state abortion referrals*, CNN, April 5, 2023, <https://www.cnn.com/2023/04/05/politics/idaho-abortion-out-of-state-planned-parenthood/index.html>.

<sup>x</sup> Ashley Lopez, *Prescribing abortion pills online or mailing them in Texas can now land you in jail*, NPR, December 6, 2021, available at <https://www.npr.org/sections/health-shots/2021/12/06/1060160624/prescribing-abortion-pills-online-or-mailing-them-in-texas-can-now-land-you-in-jail>; Caroline Kitchener & Devlin Barrett, *Antiabortion lawmakers want to block patients from crossing state lines*, Washington Post, June 30, 2022, <https://www.washingtonpost.com/politics/2022/06/29/abortion-state-lines/>.

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<sup>xi</sup> Selena Simmons-Duffin, 3 abortion bans in Texas leave doctors ‘talking in code’ to pregnant patients, NPR, March 1, 2023, <https://www.npr.org/sections/health-shots/2023/03/01/1158364163/3-abortion-bans-in-texas-leave-doctors-talking-in-code-to-pregnant-patients>.

<sup>xii</sup> HRSA, Fact Sheet, *Primary Care Workforce: Projections 2020-2035*, November 2022, available at <https://bhw.hrsa.gov/sites/default/files/bureau-health-workforce/Primary-Care-Projections-Factsheet.pdf>