



June 13, 2023

Officers

- President
Doug Harley, DO, Akron
- Immediate Past President
Teresa Zryd, MD, Dayton
- President-Elect
Wayne Forde, MD, Cleveland
- Vice President
Kathleen Meehan-de la Cruz, MD, Norwalk
- Treasurer
Jaividhya Dasarathy, MD, Cleveland
- Speaker
Mary Krebs, MD, Dayton
- Vice Speaker
Roma Amin, MD, Columbus
- Executive Vice President
Kate Mahler, CAE, Columbus

Delegates

- AAFP Delegate
Sarah Sams, MD, Columbus
- AAFP Delegate
Elisabeth Righter, MD, Dayton
- AAFP Alternate Delegate
Michael Sevilla, MD, Salem
- AAFP Alternate Delegate
Mary Krebs, MD, Dayton
- OSMA Delegate
Julie Marcinek, DO, Columbus
- OSMA Alternate Delegate
John Sharma, MD, Van Wert

Regional Directors

- Central Region
Nate Overmire, DO, Mansfield
- East Central Region
Evan Howe, MD, Kent
- Northeast Region
Mark McLoney, MD, Cleveland
- Northwest Region
Mary Wonderly, MD, Fremont
- Southeast Region
Stephen Ulrich, MD, New Lexington
- Southwest Region
Manoj Singh, MD, West Chester
- West Central Region
Heidi Yount, MD, Arcanum

At-Large Directors

- Megan Early, DO, Columbus
- Katherine Davis, MD, Akron
- Kornelia Solymos, MD, Middleburg Hts
- Catherine Romanos, MD, Columbus

Residents

- Cody Klinker, MD, Columbus
- Jacob Brock, MD, Akron

Students

- Leah Parker, Columbus
- Jamie Pandey, Streetsboro

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 the Ohio Academy of Family Physicians (OAFP) representing nearly 5,000 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](#).

The OAFP applauds the Department of Health & Human Services (HHS) for undertaking rulemaking to uphold privacy standards for sensitive health information like reproductive health care. This proposed rule is aligned with [policy](#) and [advocacy](#) efforts of both the OAFP and our national organization, the American Academy of Family Physicians (AAFP) to protect the patient-physician relationship.

In effort to foster the sacred relationship forged between a patient and their personal physician, an individual's personal health information (PHI) must be protected, especially when the context for obtaining patient data is for non-healthcare purposes. The effect may result in criminal, civil, or administrative investigations, place a chill on access to lawful healthcare, and discourage full communication between individuals and health care professionals. **To strengthen privacy protections, the OAFP along with the AAFP, recommends HHS:**

- **Finalize the proposal to prohibit sharing reproductive health-related 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 healthcare 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.**

Officers

President
Doug Harley, DO, Akron

Immediate Past President
Teresa Zryd, MD, Dayton

President-Elect
Wayne Forde, MD, Cleveland

Vice President
Kathleen Meehan-de la Cruz, MD, Norwalk

Treasurer
Jaividhya Dasarathy, MD, Cleveland

Speaker
Mary Krebs, MD, Dayton

Vice Speaker
Roma Amin, MD, Columbus

Executive Vice President
Kate Mahler, CAE, Columbus

Delegates

AAFP Delegate
Sarah Sams, MD, Columbus

AAFP Delegate
Elisabeth Righter, MD, Dayton

AAFP Alternate Delegate
Michael Sevilla, MD, Salem

AAFP Alternate Delegate
Mary Krebs, MD, Dayton

OSMA Delegate
Julie Marcinek, DO, Columbus

OSMA Alternate Delegate
John Sharma, MD, Van Wert

Regional Directors

Central Region
Nate Overmire, DO, Mansfield

East Central Region
Evan Howe, MD, Kent

Northeast Region
Mark McLoney, MD, Cleveland

Northwest Region
Mary Wonderly, MD, Fremont

Southeast Region
Stephen Ulrich, MD, New Lexington

Southwest Region
Manoj Singh, MD, West Chester

West Central Region
Heidi Yount, MD, Arcanum

At-Large Directors

Megan Early, DO, Columbus

Katherine Davis, MD, Akron

Kornelia Solymos, MD, Middleburg Hts

Catherine Romanos, MD, Columbus

Residents

Cody Klinker, MD, Columbus

Jacob Brock, MD, Akron

Students

Leah Parker, Columbus

Jamie Pandey, Streetsboro

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.

The OAFP 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 ended longstanding federal protections afforded by *Roe v. Wade* and *Planned Parenthood v. Casey*, some states have levied, or currently seek to impose, criminal, civil, and/or administrative liability against individuals in connection with obtaining, providing, or facilitating certain reproductive healthcare services. 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 OAFP 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.

The OAFP agrees with HHS’ reasoning and applauds HHS for the agency’s commitment to upholding the patient-physician relationship. With this in mind, **the OAFP 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 healthcare for gender diverse



Officers

President
Doug Harley, DO, Akron
Immediate Past President
Teresa Zryd, MD, Dayton

President-Elect
Wayne Forde, MD, Cleveland

Vice President
Kathleen Meehan-de la Cruz, MD, Norwalk

Treasurer
Jaividhya Dasarathy, MD, Cleveland

Speaker
Mary Krebs, MD, Dayton

Vice Speaker
Roma Amin, MD, Columbus

Executive Vice President
Kate Mahler, CAE, Columbus

Delegates

AAFP Delegate
Sarah Sams, MD, Columbus

AAFP Delegate
Elisabeth Righter, MD, Dayton

AAFP Alternate Delegate
Michael Sevilla, MD, Salem

AAFP Alternate Delegate
Mary Krebs, MD, Dayton

OSMA Delegate
Julie Marcinek, DO, Columbus

OSMA Alternate Delegate
John Sharma, MD, Van Wert

Regional Directors

Central Region
Nate Overmire, DO, Mansfield

East Central Region
Evan Howe, MD, Kent

Northeast Region
Mark McLoney, MD, Cleveland

Northwest Region
Mary Wonderly, MD, Fremont

Southeast Region
Stephen Ulrich, MD, New Lexington

Southwest Region
Manoj Singh, MD, West Chester

West Central Region
Heidi Yount, MD, Arcanum

At-Large Directors

Megan Early, DO, Columbus

Katherine Davis, MD, Akron

Kornelia Solymos, MD, Middleburg Hts

Catherine Romanos, MD, Columbus

Residents

Cody Klinker, MD, Columbus

Jacob Brock, MD, Akron

Students

Leah Parker, Columbus

Jamie Pandey, Streetsboro

individuals just as they are for reproductive healthcare. Moreover, transgender and non-binary 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, non-binary, and gender diverse individuals, the OAFP is extremely concerned that PHI will be used to target patients, their families, and their physicians.

The OAFP 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. The OAFP 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 OAFP 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 de-identification of data when needed, and uphold patient consent and privacy requirements. **As such, the OAFP 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. The OAFP 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 the OAFP’s Executive Vice President, Kate Mahler, CAE.

Sincerely,

Doug Harley, DO, FAFAP
President