



A driving force for health equity

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June 16, 2023

The Honorable Xavier Becerra
Secretary
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable Melanie Fontes Rainer
Director
Office of Civil Rights
U.S. Department of Health & Human Services,
200 Independence Avenue, S.W.
Washington, D.C. 20201

Re: *Proposed Rule: HIPAA Privacy Rule, Reproductive Health Care Privacy*

Dear Secretary Becerra and Director Fontes Rainer,

On behalf of OCHIN, I appreciate the opportunity to provide comments on the Proposed Rule on *HIPAA Privacy Rule to Support Reproductive Health Care Privacy*. OCHIN is a national health information technology innovation and research network that serves nearly 2,000 community health care sites with 25,000 providers in over 40 states, serving more than 8 million patients. Our network includes federally qualified health centers (over 100), community health clinics, Ryan White HIV/AIDS Program Health Centers, school-based health clinics, Tribal health clinics, local public health agencies, and critical access hospitals.

OCHIN applauds the Office for Civil Rights' efforts to safeguard open and trust-based communications between patients and their clinicians which is essential to deliver high quality care while promoting patient safety. OCHIN also strongly supports efforts to establish clear, uniform national standards and requirements governing patient privacy as the proliferation of competing and varied state laws increases complexity and cost and potential liability that fall heaviest on providers in rural and underserved communities with the least resources to implement while weakening informed patient consent. Finally, the proposed rule will strengthen the patient-clinician relationship by safeguarding a patient's reasonable expectation of privacy for information about care that is lawful under the circumstances in which it is provided, but could be undermined by criminal, civil or administrative investigations.

For over two decades, OCHIN has supported interoperability, while championing patient privacy. OCHIN provides leading edge technology, data analytics, research, health IT workforce training and development, technical assistance, and additional operational support. In the OCHIN network clinical summaries have been securely exchanged 325+ million times across all 50 states. The OCHIN network is one of the largest health center-controlled networks in the country, providing unparalleled capabilities to securely exchange patient information. Our network's diverse patient population includes patients who are uninsured or publicly-insured and have limited access to health care – making the OCHIN network the

most comprehensive source on the health care and outcomes of patients facing significant structural inequality.

OCHIN and our network members know first-hand how providers in rural and underserved communities do not have access to the same level of resources as large health systems to implement different interoperability and privacy requirements that involve additional technology, workflows, technical assistance, and staff training that are compounded when states have laws and requirements that are in conflict. The latter drives legal liability, cost, and administrative burden while undermining patient safety and diverting scarce resources away from the delivery of patient care.

We welcome the clarifications and standardization outlined in this proposed rule. Broadly speaking, the proposed rule would modify existing HIPAA standards by prohibiting uses and disclosures of protected health information (PHI) for criminal, civil, or administrative investigations or proceedings against individuals, covered entities or their business associates or other persons for seeking, obtaining, providing, or facilitating reproductive healthcare that is lawful under the circumstances in which it is provided. This proposed rule would also 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.

For the above reasons, OCHIN strongly supports:

- The proposed restriction on certain uses and disclosures of protected health information (PHI) when a state lacks any substantial interest in seeking disclosure of PHI where a patient received health care that is lawful in the state it is provided or the health care services are protected, required, or authorized by Federal law.
- Preemption of state laws that would conflict with the proposed restriction where a state lacks substantial interest in seeking disclosure.
- Revision and clarification of a number of definitions including “person,” “reporting of disease or injury, birth or death,” “public health,” “surveillance, investigation, or intervention,” “reproductive health care” and “child abuse reporting.”
- Clarification that a regulated entity may not decline to recognize a person as a personal representative for the purposes of the Privacy Rule solely because they provide or facilitate reproductive health care for an individual.
- Requirement that, in certain circumstances, covered entities must first obtain an attestation that a requested use or disclosure is not for a prohibited purpose and the covered entity can rely upon the attestation when objectively reasonable.
- Modifications to the Notice of Patient Privacy (NPP) for protected health information (PHI) to inform individuals that their PHI may not be used or disclosed for a prohibited purpose.
- Requiring individualized requests and prohibiting bulk requests.

In addition to the foregoing, OCHIN urges the Agency to include the following modifications to strengthen standardization and consistent implementation of these proposed changes while protecting patient privacy:

- Include the definition of “reproductive healthcare” in the regulatory text as opposed to limiting it to the preamble as the latter does not have the same legally binding effect as regulatory text.

- Expand the protections afforded by proposed change to “highly sensitive PHI” in a way that protects patients from inappropriate use of their health information by law enforcement for reproductive healthcare, gender-affirmation, substance use disorder, and other types of care that may become criminalized.
- Develop a model attestation that can be used by covered entities that establishes compliance as to form and content of the attestation.
- Create additional subregulatory guidance and education for covered entities, patients, law enforcement and other government agencies on the final rule and allocate sufficient time thereafter to implement needed changes.

Finally, we urge OCR to provide sufficient time to test and implement these requirements and standards under real world conditions, while providing adequate resources and technical assistance for providers in underserved communities.

Please contact me at stollj@ochin.org if we can provide any additional information to support your efforts/if you have any questions/if we can be of further assistance.

Sincerely,

A handwritten signature in purple ink that reads "Jennifer Stoll".

Jennifer Stoll
Executive Vice President
External Affairs