

June 7, 2023

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue SW Washington, DC 20201

Submitted electronically via regulations.gov.

Re: HIPAA Privacy Rule to Support Reproductive Health Care Privacy (RIN 0945-AA20)

Dear Secretary Becerra:

On behalf of the Endocrine Society, thank you for the opportunity to provide comments on the Department of Health and Human Services' ("the Department") proposed rule entitled *HIPAA Privacy Rule to Support Reproductive Health Care Privacy*. Founded in 1916, the Endocrine Society is the world's oldest, largest, and most active organization devoted to hormone research and the clinical practice of endocrinology. The Society's membership of over 18,000 includes experts in research and clinical aspects of hormone health, including women's health and reproductive health. The Endocrine Society advocates for policies that expand access to reproductive health care and protect the sanctity of the patient-provider relationship. **We are pleased that this proposed rule will protect sensitive information related to reproductive health care and will ensure that patients and physicians may discuss the full range of health care needs and treatment without the threat of legal penalties.**

The following comments express the Endocrine Society's support for certain provisions of the proposed rule. We urge the Department to finalize the proposed rule as soon as possible to ensure that the Department can achieve its goal of strengthening patient-provider confidentiality.

Adding a Definition of Reproductive Health Care

If finalized, the proposed rule will add and define a new term, *reproductive health care*, as a subcategory of the existing term *health care*. Under this rule, reproductive healthcare would include services such as contraception, pregnancy-related care, fertility or infertility-related care, and any care provided in relation to the diagnosis and treatment of conditions related to the reproductive system.

For our members and the patients that they treat, reproductive health care is an essential part of a person's overall health and wellbeing, and we support the new term as proposed. Many of our members specialize in reproductive endocrinology and treat patients with specific reproductive issues such as infertility, pregnancy complications, and pregnancy loss. Some of our members also specialize in other fields of endocrinology and may use contraceptive medications to treat endocrinologic diseases. For example, endocrinologists often prescribe hormonal contraception to treat conditions such as endometriosis and polycystic ovarian syndrome (PCOS). The Endocrine Society applauds the Department for articulating and codifying a definition of health care that includes the many types of care, services, and supplies that comprise the full range of reproductive health care.

Adding a New Category of Prohibited Uses and Disclosures

The Department proposes to prohibit the use or disclosure of protected health information (PHI) for the purposes of:



- A criminal, civil, or administrative investigation into or proceeding against any person in connection with seeking, obtaining, providing, or facilitating reproductive health care, where such health care is lawful under the circumstances in which it is provided.
- The identification of any person for the purpose of initiating such investigations or proceedings.

The Endocrine Society supports prohibiting the use or disclosure of PHI for these purposes. Ensuring that our members can provide evidence-based reproductive health care to patients without the threat of criminal, civil, or administrative penalties is a top priority for the Endocrine Society. Considering the *Dobbs v. Jackson Women's Health Organization* decision, we understand and share the Department's interest in addressing patient-provider confidentiality as it relates to the full range of reproductive care. Members of the Endocrine Society who are reproductive endocrinologists are affected by this decision. They are concerned the Dobbs decision will affect their practices, including coverage and reimbursement for medical care, and their patients' ability to access essential reproductive care.

Systemic inequities in the healthcare system and society mean that some women, LGBTQ+ people, people of color, and people with low-income already struggle to access healthcare. Limiting access to and, in some cases, banning care impacts the lives, health, and wellbeing of all people, but especially people belonging to vulnerable communities. The Endocrine Society passionately believes *all* people should be able to access a full range of healthcare services and that they and their physicians or other qualified healthcare professionals should be able provide that care without government interference or fear of being punished. Consequently, prohibiting the use or disclosure of PHI for the purposes described in the proposed rule will protect access to care and the sacrosanctity of the patient-provider relationship.

Conclusion

Physicians and trained health professionals should be able to make medical decisions based on science and the circumstances of the individual patient, rather than politics, and without the fear of legal penalties. The Endocrine Society applauds the Department for taking steps to protect patient-provider confidentiality and expand access to reproductive health care, which is essential to the wellbeing of those that need it. The Endocrine Society believes that this proposed rule will help physicians, including our members, provide care to all the populations we serve. We encourage the Department to finalize the rule as soon as possible.

Thank you for considering our comments. If we can be of further assistance, please contact Judith Gertzog, Manager, Health Policy and Advocacy at jgertzog@endocrine.org.

Sincerely,

A handwritten signature in cursive script that reads "Ursula Kaiser".

Ursula Kaiser, MD
President
Endocrine Society