



June 15, 2023

U.S. Department of Health and Human Services

Office for Civil Rights

Hubert H. Humphrey Building, Room 509F

200 Independence Avenue, SW

Washington, DC 20201

RE: Notice of Proposed Rulemaking - HIPAA and Reproductive Health Care Privacy: Docket ID number HHS–OCR–0945–AA20

On behalf of the American Psychological Association Services, Inc. (APA), we are writing to offer public comments on the Notice of Proposed Rulemaking on HIPAA and Reproductive Health Care Privacy. APA is the nation's largest scientific and professional nonprofit organization representing the discipline and profession of psychology, as well as over 146,000 members and affiliates who are clinicians, researchers, educators, consultants, and students in psychological science. APA supports HHS's proposed modifications to HIPAA to provide additional protections for those involved in reproductive health services, especially patient-provider confidentiality.

The critical importance of maintaining the privacy of information relating to abortion and other sexual and reproductive health care has been reaffirmed by this very agency in their guidance on Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule and Disclosures of Information Relating to Reproductive Health Care from June 2022. including that "disclosures to law enforcement officials are narrowly tailored to protect the individual's privacy and support their access to health services. APA Services thank HHS for recognizing that more needed to be done to protect patient-provider confidentiality.

Since June 2022, when the U.S. Supreme Court issued its decision to overturn *Roe v. Wade*, many states have proposed, enacted, or resurrected a range of laws to prohibit, significantly restrict, or protect reproductive rights and health care. Given the value of psychology to health care decision-making and concerns about these new legal and regulatory requirements impacting professional practice, APA issued a resolution affirming the need for confidentiality and ethical practice in reproductive health care. The Resolution is informed by APA's Ethics Code, APA policy on reproductive health, and human rights.

HHS is asking to modify HIPAA to "prohibit a regulated entity from using or disclosing an individual's PHI for the purpose of conducting a criminal, civil, or administrative investigation into or proceeding against the individual, a health care provider, or other person in connection with seeking, obtaining, providing, or facilitating reproductive health care that: (1) is provided outside of the state where the investigation or proceeding is authorized and such health care is lawful in the state in which it is provided; (2) is protected, required, or authorized by Federal law, regardless of the state in which such health care is provided; or (3) is provided in the state in which the investigation or proceeding is authorized and that is permitted by the law of

that state.” Confidentiality is central to health care, particularly the practice of psychology. The very nature of psychological treatment stems from the ability to have an open and honest dialogue with patients. Recent legislation either proposed or enacted across states raises serious ethical considerations for practicing psychologists in the post-Dobbs environment. APA’s Ethics Code provides that psychologists have a primary obligation to protect confidential information. Psychologists may disclose confidential information only with the appropriate consent of the patient absent a specific legal mandate or legal permission for a valid purpose.ⁱ

Psychologists must be able to speak freely with their patients, and patients must know they have confidentiality when speaking with their psychologists, a concept recognized by U.S. Attorney General Merrick B. Garland in asserting that, despite the U.S. Supreme Court’s overturning of *Roe v. Wade*, “under fundamental First Amendment principles, individuals must remain free to inform and counsel each other about the reproductive care that is available in other states”. The public benefits from confirmation that psychologists do not share information provided to them in confidence in their role as psychologists aside from information they have a duty to report, clearly disclosed in their consent form. Protecting sensitive health information is paramount in maintaining a positive patient-provider relationship.

We have heard from psychologists who have expressed concern about their ability to provide care that can be misconstrued as criminal activity in states that have restricted or banned access to reproductive health services. The proposed modifications would help alleviate that stress while strengthening the patient-client confidentiality that is needed for psychological treatment. We applaud HHS for recognizing the challenging situation the Dobbs decision created for health care professionals and the patients that they serve. Thank you again for the opportunity to comment on this proposed rule. Please contact Stefanie Reeves at sreeves@apa.org if you have any questions or need additional assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kath B McGuire', with a long horizontal flourish extending to the right.

Katherine B. McGuire

Chief Advocacy Officer

ⁱ <https://www.apa.org/ethics/code>