

CONCERNED
WOMEN *for* AMERICA

June 16, 2023

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

RE: “HIPAA Privacy Rule To Support Reproductive Health Care Privacy”

Dear Secretary Becerra:

On behalf of the hundreds of thousands of members and supporters of Concerned Women for America, I write in strong opposition to the proposal to reduce protections for women’s safety in the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

This proposal directs inappropriate and unnecessary changes to HIPAA, the law governing privacy standards for personal healthcare information. It is evident that the primary intent of the proposal is to expand abortion access. Unfortunately, the proposal pursues this agenda in a manner that removes important guardrails that protect the health and safety of women.

The proposal undertakes various redefinitions that fail to serve HIPAA’s purpose to protect patient privacy. Foremost, the proposal would redefine the word “person” to only mean someone who has been born alive. This redefinition would exclude unborn children from the protections of HIPAA. Our laws ought to reflect that the unborn are as much patients under a medical professional’s care as the mother. The proposal fails to have even this most basic regard for the sanctity of human life.

The proposal would also broaden the scope of the definition for “reproductive health care” beyond abortion. Despite the proposal’s clear motivation to advance abortion access, the proposed redefinition is written broadly enough to also advance access to irreversible and harmful interventions like puberty blockers, hormones, and surgeries to look like the opposite sex. This could create a back door to escape prosecution for irreversible harms committed against minors.

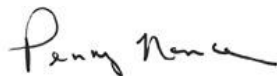
The proposal would also make it harder for appropriate disclosures to law enforcement. Under HIPAA, personal health information may be disclosed when there is a court order to provide the information to law enforcement. The proposal prohibits disclosure to law enforcement when the disclosure is used to enforce the safety of women under pro-life state laws that rightfully criminalize facilitation of abortion.

While making disclosure harder for law enforcement, the proposal makes disclosure easier for abusers who seek to obtain a patient's personal health information. Under HIPAA, a personal representative of a patient may be able to obtain health information otherwise prohibited from disclosure. There is a "reasonable belief" exception that allows a healthcare provider to refuse disclosure to a personal representative when there is concern that a situation may involve abuse or some other circumstance where disclosure would be contrary to a patient's wellbeing. The proposal limits the "reasonable belief" exception by excluding facilitation of abortion and any other "reproductive health care" encompassed within the new, broadened redefinition.

HIPAA also allows sharing information about abuse, neglect, or domestic violence with government authorities. But the proposal would prohibit disclosure if the concern at issue involves reproductive health so redefined. These policies would expose a patient's vulnerability by allowing abusers to access the private health information of those who they are hurting and would prohibit the ability to detect crimes like child abuse.

The proposal prioritizes the abortion agenda over the needs of patients in protecting their healthcare information. For the sake of the safety of vulnerable women, girls, and the unborn, we oppose this proposal.

Sincerely,

A handwritten signature in black ink that reads "Penny Nance". The signature is written in a cursive, flowing style.

Penny Young Nance
CEO and President
Concerned Women for America