

HIPAA Privacy Rule Update on Reproductive Health Anticipated

The final update to the HIPAA Privacy Rule on reproductive health is anticipated to be issued soon by the Department of Health and Human Services (“HHS”).

HHS issued a Notice of Proposed Rulemaking on April 17, 2023 to solicit comments on its proposal to modify the Standards for Privacy of Individually Identifiable Health Information (“Privacy Rule”) under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH Act”). The comment period on the proposed update closed as of June 16, 2023.

If adopted, the proposed update would modify existing standards permitting uses and disclosures of protected health information (“PHI”) by prohibiting uses and disclosures of PHI about reproductive health care 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 health care that is lawful under the circumstances in which it is provided.

The update was originally prompted by an executive order from President Biden directing HHS to take actions to strengthen the protections under HIPAA for reproductive health information following the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*. Attached is a link to the Court’s decision: https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf. A copy of President’ Bidens’s executive order may be viewed

here:

<https://www.govinfo.gov/content/pkg/FR-2022-07-13/pdf/2022-15138.pdf>.

According to the HHS Notice, the proposed Privacy Rule will “strengthen privacy protections for individual’s PHI related to reproductive health care” in order to “avoid the circumstance where an existing provision of the Privacy Rule is used to request the use or disclosure of any individual’s PHI as a pretext for obtaining PHI related to reproductive health care for a non-health care purpose where such use or disclosure would be detrimental to any person. ”

To view the full HHS notice on the anticipated HIPAA Privacy Rule update, please click here: <https://www.federalregister.gov/documents/2023/04/17/2023-07517/hipaa-privacy-rule-to-support-reproductive-health-care-privacy>. For additional HHS commentary on the proposed Privacy Rule updates, please click here: <https://www.hhs.gov/hipaa/for-professionals/regulatory-initiatives/hipaa-reproductive-health-fact-sheet/index.html>.