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Proposed HIPAA Rule Would Protect Abortion PHI From Law Enforcement

By Nina Youngstrom

Proposed modifications to the HIPAA Privacy Rule would protect providers in states where abortion is legal from having to provide reproductive health care information when law enforcement agencies from states where abortion is illegal request it, an expert says. If finalized, the rule may offer some comfort to providers in a very fraught environment. More states are enacting abortion bans, and a federal judge in Texas on April 12 ruled that the Food and Drug Administration's 2000 approval of mifepristone—a drug used in medication abortions—wasn't valid, although a federal judge in Washington state decided differently the same day. Meanwhile, the Biden administration has asked the Supreme Court to hear an appeal of the Texas court decision.

According to the proposed HIPAA regulation, announced by the HHS Office for Civil Rights (OCR) on April 12, "regulated entities" (covered entities and business associates) would be prohibited from turning over their patients' protected health information (PHI) about reproductive health care, including abortion, to law enforcement in states where abortion is illegal if the reproductive health care was legal where it was provided, said attorney Randi Seigel, with Manatt, Phelps & Phillips LLP in New York City.^[1]

"Providers would be protected from being compelled to provide PHI that could be used in a criminal proceeding against them, the patients or others who were involved in facilitating access to reproductive health services," including abortion, she explained.

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