

Report on Patient Privacy Volume 24, Number 5. May 09, 2024 OCR Finalizes Reproductive Care Regulation; Attestations, Privacy Policy Changes Required

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The HHS Office for Civil Rights (OCR) is seeking to prevent medical records from being used against patients who receive reproductive care in states where that care is legal, even those who reside where it is not. To that end, OCR has finalized its rule intended to prohibit the disclosure of protected health information (PHI) related to lawful reproductive health care.^[1]

“Since the Supreme Court overturned *Roe v. Wade*, we have heard from patients and providers, medical organizations and many more across the country on their worries about their ability to access health care and its impact on their privacy,” said OCR Director Melanie Fontes Rainer at an April 22 briefing on the rule.^[2]

“As a result, individuals may hesitate to interact with or seek care from providers, health plans, pharmacies, and related health applications out of fear that their data will be tracked and/or shared with state agencies, law enforcement, and others,” Fontes Rainer said. “No one should have to live in fear that their conversations with their doctor or that their medical claims data might be used to target or track them for seeking lawful reproductive health care.”

According to HHS, the rule:

- Prohibits the use or disclosure of PHI when it is sought to investigate or impose liability on individuals, health care providers or others who seek, obtain, provide, or facilitate reproductive health care that is lawful under the circumstances in which such health care is provided, or to identify persons for such activities.
- Requires a regulated health care provider, health plan, clearinghouse or their business associates, to obtain a signed attestation that certain requests for PHI potentially related to reproductive health care are not for these prohibited purposes.
- Requires regulated health care providers, health plans, and clearinghouses to modify their Notice of Privacy Practices to support reproductive health care privacy.

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