

Comment On: HIPAA Privacy Rule To Support Reproductive Health Care Privacy May 2023

As the nation's premier federal advocacy organization advancing equitable national policy and actions aligned with the value framework of the Unitarian Universalist denomination, Unitarian Universalists for Social Justice (UUSJ) writes to express support for the Notice of Proposed Rulemaking (NPRM) recently issued by the U.S. Department of Health and Human Services' Office for Civil Rights to modify the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule to strengthen reproductive health care privacy.

The NPRM is critical to protecting access to reproductive care, including abortion. In the wake of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, it is vital that HHS/OCR, under its existing authority related to HIPAA implementation, take steps to better protect sensitive information related to reproductive health care and bolster patient-provider confidentiality.

For over fifty years, *Roe v. Wade* and later *Planned Parenthood v. Casey* protected the rights of women to privacy in the decision-making process with respect to reproductive health choices, as described by U.S. Supreme Court justices Breyer, Kagan and Sotomayor in their recent dissenting opinion in *Dobbs et.al.*:

Roe held, and Casey reaffirmed, that in the first stages of pregnancy, the government could not make that choice for women. The government could not control a woman's body or the course of a woman's life. It could not determine what the woman's future would be. Respecting a woman as an autonomous being, and granting her full equality, meant giving her substantial choice over this most personal and most consequential of all life decisions.

We are extremely concerned that a majority on the U.S. Supreme Court has rescinded a constitutional right and conferred it on the states where women could potentially be criminalized or incur civil penalties depending on their zip code. As such, the NPRM accurately notes that, "the threat that PHI will be obtained and used in such an investigation or proceeding is likely to chill individuals' willingness to seek lawful treatment or to provide full information to their health care providers when obtaining that treatment." We agree with the NPRM's expressed concerns about the impact of the *Dobbs* decision on the erosion of a confidential, safe environment that is necessary to quality health care and a functional health care system. When individuals live in fear that their PHI could be disclosed without their knowledge or consent for the purposes of investigating them for criminal, civil, or administrative wrongdoing, they are less likely to offer open, honest or transparent information about their conditions,

medical history, and current socioeconomic circumstances. The withholding of information from health professionals puts patients and their family in an untenable and dangerous situation. This is particularly true for women of color, who, as national data confirms, already experience disparities in every reproductive health measure (including contraceptive use, Pap tests, mammograms, maternal mortality, and unintended pregnancies, by race–ethnicity to inform health-equity strategies).

Additionally, health care providers may omit information about an individual's medical history or condition, leave gaps, or include inaccuracies when preparing the individual's medical records due to the implications of the new SCOTUS decision. Such omissions could obstruct the ability of subsequent health care providers from conducting an appropriate health assessment to reach a sound diagnosis and recommend the best course of action for the individual in the future. There may also be information intentionally withheld from an individual about potential reproductive health treatment options because of liability fears stemming from concerns about the level of privacy afforded to PHI.

Protecting women's health care privacy not only affirms the confidential relationship between a woman and her health care providers but also reinforces the inherent value of a woman as an independent, autonomous human being over her own body and life's decisions. We applaud the Administration's plans to move forward with proposed rule-making to preserve reproductive health privacy nationwide.

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