

United States Senate

WASHINGTON, DC 20510-0609

July 1, 2022

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

Dear Secretary Becerra:

Last week, the Supreme Court upended almost 50 years of legal precedent in its decision to overturn *Roe v. Wade*. The decision has created profound uncertainty for patients concerning their right to privacy when making the deeply personal decision to have an abortion. We write to urge the Department of Health and Human Services (HHS) to take immediate steps to protect the privacy of Americans receiving reproductive health care services by updating the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule following the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization (Dobbs)*.

When HIPAA was signed into law in 1996, *Roe v. Wade* had upheld the right to an abortion for over two decades. When the HIPAA Privacy Rule was issued in 2000, it would have been unimaginable that the Supreme Court would strip away this fundamental right more than 20 years later.

Over the years, HHS has issued new rules or guidance on security, enforcement, and other needs relating to HIPAA. We appreciate the steps HHS recently took to protect access to reproductive health care services, including the new Office for Civil Rights guidance clarifying how federal law and regulations protect individuals' private medical information relating to abortion and other sexual and reproductive health care and addressing the extent to which this information is protected on personal cell phones and tablets.¹ However, HHS has the authority to do more.

The Privacy Rule is meant to "define and limit the circumstances in which an individual's protected health information may be used or disclosed by covered entities."² We urge HHS to immediately begin the process to update the Privacy Rule, following all requirements under the *Administrative Procedure Act*, to clarify who is a covered entity and to limit when that entity can share information on abortion or other reproductive health services. Specifically, HHS should clarify that this information cannot be shared with law enforcement agencies who target individuals who have an abortion. HHS should also determine that Pregnancy Care Centers (also known as "Crisis Pregnancy Centers") are required to follow requirements of the Privacy Rule.

¹ <https://www.hhs.gov/about/news/2022/06/29/hhs-issues-guidance-to-protect-patient-privacy-in-wake-of-supreme-court-decision-on-roe.html>

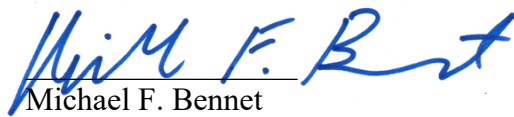
² <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>

The decision to start or expand a family is intensely personal and private. When patients speak with their providers about options for contraceptives, the progression of their pregnancy, or their choices to terminate a pregnancy, they expect those conversations to remain confidential. The individual liberty to make those decisions, and the conversations surrounding them, must be protected.

Following the Supreme Court's decision in *Dobbs*, millions of Americans have lost a fundamental constitutional right to make their own health and reproductive decisions. We must do all that we can to protect their fundamental right to privacy.

Thank you for your attention to this important issue.

Sincerely,



Michael F. Bennet
United States Senator



Catherine Cortez Masto
United States Senator