

United States Senate
WASHINGTON, DC 20510

March 7, 2023

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

Dear Secretary Becerra,

On June 24, 2022, an activist majority of the Supreme Court overturned nearly 50 years of precedent in the case *Dobbs vs. Jackson Women's Health Organization*, taking away the constitutional rights of American women to make their own personal choices about their body, their health, and their family. Since then, 14 states have implemented near-total bans on abortion, with more likely to follow. In many of these same states, efforts are underway to investigate and punish those who seek and perform abortions, putting women at risk of having their personal health information exposed and used against them. To protect patients and providers, it is critical that the Department of Health and Human Services (HHS) immediately initiate the rulemaking process to augment privacy protections under the Health Insurance Portability and Accountability Act (HIPAA) regulations.

In 1996, HIPAA was signed into law. HHS issued corresponding privacy regulations (the "HIPAA Privacy Rule") in 2000, and has made several updates over the years. The goal of the Privacy Rule was to protect personal health information and provide guidance on when health information may or may not be shared without a patient's explicit consent. Overtime, these regulations have evolved and sought to keep pace with new challenges, including to recognize instances in which even stronger protections for particularly sensitive health information should be established.

The *Dobbs* decision has jeopardized access to reproductive health care and exposed the need for greater protections for women's personal health care information. In the immediate aftermath of the decision, we witnessed widespread confusion among health care providers regarding whether patient records are protected and uncertainty in cases where state and local law enforcement sought personal health information. It is imperative that HHS step in to ensure that privacy continues to be protected when patients seek the reproductive health care that they need, including abortion care. We applaud your efforts to clarify privacy protections, including the issuance of additional guidance on the HIPAA Privacy Rule, but there is a significant need for rulemaking to fully augment these protections. Specifically, we urge HHS to update the Privacy Rule to broadly restrict regulated entities from sharing individuals' reproductive health information without explicit consent, particularly regarding law enforcement, civil, or criminal proceedings premised on the provision of reproductive health care, including abortion care. In addition, we strongly encourage your department to prioritize education of covered entities,

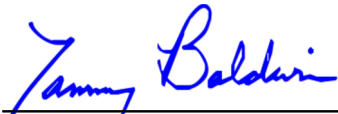
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including providers, to clarify existing protections under the Privacy Rule and any advancements or updates included as part of future rulemaking.

Right now in states across the country, many Americans are unable to make their own health care decisions. In this moment, we are in a crisis and women are faced with impossible decisions. We must take action and enhance the existing available protections under the Privacy Rule to reduce further harm.

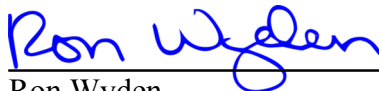
Sincerely,



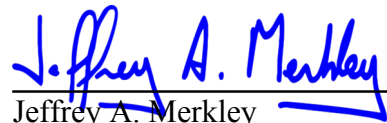
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