



Anti-Abortion Centers Handle Private Health Information—But Aren't Bound By HIPAA

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Introduction

Pregnant people—like all people—deserve to access medically accurate information from medically licensed providers, without worry of their private information being compromised. This isn't asking very much—these are basic standards of medical care. Unfortunately, however, many Anti-Abortion Centers (AACs) fail to meet even these basic standards.

AACs operate in intentionally mysterious ways—discerning which AACs are medically licensed is incredibly difficult to do, especially after lawsuits in [California](#) and [Texas](#) struck down ordinances seeking to hold AACs to basic measures of transparency and display whether they are medically licensed. Because counseling provided at AACs is often religiously based rather than scientifically based, this lacking transparency means that AACs pose many threats to pregnant people's physical and emotional health and wellbeing.

One of these threats stems from how AACs put pregnant people's private medical information at risk. Since [most AACs are not licensed medical centers](#), they are not covered by the privacy protections afforded under Health Insurance Portability and Accountability Act (HIPAA). Despite this, many unlicensed AACs and unlicensed individuals who work or volunteer at AACs still handle pregnant people's sensitive medical records. And because AACs do not have to publicly post whether they are medically licensed facilities, it is incredibly difficult for patients to know whether their protected health information (PHI) will actually remain protected. This raises alarm for those of us who care about quality medical care that is both medically sound and is private between doctors and patients.

This memo seeks to address these concerns by offering an overview of HIPAA, exploring how most AACs are not covered under HIPAA, and providing examples of instances in which AACs have been found to either violate medical privacy laws, or operate in ways that put medical privacy at serious risk.

What Is HIPAA?

HIPAA Is A Federal Law Passed In 1996 To Protect Patient Health Information (PHI). “The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a federal law that required the creation of national standards to protect sensitive patient health information from being disclosed without the patient's consent or knowledge. The US Department of Health and Human Services (HHS) issued the HIPAA Privacy Rule to implement the requirements of

HIPAA. The HIPAA Security Rule protects a subset of information covered by the Privacy Rule.” [\[Centers for Disease Control and Prevention, 9/14/18\]](#)

PHI That HIPAA Covers.

- Names or part of names
- Geographic identifiers
- Phone number details
- Details of Email addresses
- Medical record numbers
- Account details
- Vehicle license plate details
- Website URLs
- Fingerprints, retinal and voice prints
- Any other unique identifying characteristic
- Dates directly related to a person
- Fax number details
- Social Security details
- Health insurance beneficiary numbers
- Certificate or license numbers
- Device identifiers and serial numbers
- IP address details
- Complete face or any comparable photographic images

[\[The HIPAA Guide, 2021\]](#)

HHS Was Required To Adopt National Standards Due To The Administrative Simplification Provisions That Were Included In HIPAA. “To improve the efficiency and effectiveness of the health care system, the [Health Insurance Portability and Accountability Act of 1996 \(HIPAA\)](#), Public Law 104-191, included Administrative Simplification provisions that required HHS to adopt national standards for electronic health care transactions and code sets, unique health identifiers, and security. At the same time, Congress recognized that advances in electronic technology could erode the privacy of health information. Consequently, Congress incorporated into HIPAA provisions that mandated the adoption of Federal privacy protections for individually identifiable health information.” [\[U.S. Department of Health & Human Services, 5/17/21\]](#)

A Privacy Rule Was Published By HHS In 2000. “HHS published a final [Privacy Rule](#) in December 2000, which was later modified in August 2002. This Rule set national standards for the protection of individually identifiable health information by three types of covered entities: health plans, health care clearinghouses, and health care providers who conduct the standard health care transactions electronically. Compliance with the Privacy Rule was required as of April 14, 2003 (April 14, 2004, for small health plans).” [\[U.S. Department of Health & Human Services, 5/17/21\]](#)

A Security Rule Was Published By HHS In 2003. “HHS published a final [Security Rule](#) in February 2003. This Rule sets national standards for protecting the confidentiality, integrity, and availability of electronic protected health information. Compliance with the Security Rule was required as of April 20, 2005 (April 20, 2006 for small health plans).” [\[U.S. Department of Health & Human Services, 5/17/21\]](#)

Unlawful Disclosures of PHI Are One Of The Most Common HIPAA Abuses. “Impermissible Disclosures of PHI: An impermissible disclosure of PHI is a disclosure not permitted under the HIPAA Privacy Rule. This includes providing PHI to a third party without first obtaining consent from a patient and ‘disclosures’ when unencrypted portable electronic devices containing ePHI are stolen.” [\[The HIPAA Guide, 2021\]](#)

Why Are AACs Not Considered HIPAA Covered Entities?

Volunteers Or Lay People Who Work At AACs Are Not Subject To Abide By HIPAA Protocols, Since They Are Not Licensed Healthcare Providers

HIPAA Covered Entities Include Health Plans, Clearinghouses, Providers Who Submit HIPAA Transactions, And Business Associations That Engage With Covered Entities. [[Centers for Medicare & Medicaid Services, 7/2/21](#)]

HIPAA Transactions Are Electronically Exchanged Information Between Two Parties To Carry Out Activities Related To Health Care. “A transaction is an electronic exchange of information between two parties to carry out financial or administrative activities related to health care. For example, a health care provider will send a claim to a health plan to request payment for medical services.” [[Centers for Medicare & Medicaid Services, 3/2/21](#)]

AACs Generally Offer Free Services, Therefore, Their Provided Services Would Not Be Considered HIPAA Transactions. “Because CPCs generally lack medical licenses and offer their services free of charge, they are often exempt from federal and state regulations governing medical ethics and patient privacy, such as [HIPAA]. In addition, although some staff at CPCs dress in scrubs or white coats, they are typically volunteers without formal medical training who may fail to disclose if the CPC is not a licensed medical facility.” [[The Regulatory Review, 10/3/20](#)]

Health Plans, Providers, And Clearinghouses Are Covered By HIPAA. “Practically all health plans, healthcare clearinghouses, healthcare providers and endorsed sponsors of the Medicare prescription drug discount card are considered to be ‘HIPAA Covered Entities’ under the Act. Normally, these are entities that come into contact with PHI on a constant basis.” [[The HIPAA Guide, 2021](#)]

Most Employers Are Not Considered Covered Entities Under Current HIPAA Definition Standards, Even If They Maintain Employee Health Records. “Under the definition of HIPAA Covered Entities provided by HHS, most employers are not considered to be CEs, even if they maintain records of employees’ health information.” [[The HIPAA Guide, 2021](#)]

As Such, Non-Licensed AACs Fall Into This Category Of Non-HIPAA-Covered Employers Handling Health Records, Despite Trying To Portray The Opposite. “[AACs] strive to give the impression that they are clinical centers, offering legitimate medical services and advice, yet they are exempt from regulatory, licensure, and credentialing oversight that apply to health care facilities.” [[AMA Journal of Ethics, 3/2018](#)]

It Follows, Then, That The Lay Volunteers And Employees At AACs Are Similarly Not Covered By HIPAA, Despite Handling Confidential, Sensitive PHI. “Lay volunteers who are not licensed clinicians at CPCs often wear white coats and see women in exam rooms. ... Despite looking like legitimate clinics, most CPCs are not licensed, and their staff are not licensed medical professionals. CPCs that are not licensed medical clinics cannot legally be held to the privacy provisions of [HIPAA], which could lead to violations of client privacy.” [[AMA Journal of Ethics, 3/2018](#)]

This Reality Opens The Door For All Sorts Of Potential Privacy Abuses At AACs. “For example, client information might not be kept confidential, and information about pregnancy or

abortion intentions might be shared with people outside the clinic.” [\[AMA Journal of Ethics, 3/2018\]](#)

AACs Regularly Misuse The Private Health Information Of Their Clients

Example 1: CareNet

CareNet’s Former President Proclaimed That It Was “Good News” For AACs That HIPAA Did Not Apply To Them When The Law First Went Into Effect “The good news for pregnancy centers is that most are not covered by these new federal requirements. If your pregnancy center is not a health care provider, the new HIPAA privacy rules should have no application to your procedures and practices. Moreover, even if your center offers limited medical services such as ultrasounds or STD testing, it may be exempt from the requirements of HIPAA so long as it does not engage in electronic transactions related to insurance claims and payments.” [\[At the Center, 10/2004\]](#)

- “Therefore, if your center is offering free medical services to patients without engaging in any electronic transmissions relating to health insurance claims, health insurance payments, or eligibility for health plans, it may not be subject to new HIPAA privacy requirements.” [\[At the Center, 10/2004\]](#)
- “If your center is a health care provider and is processing Medicaid claims for clients, it is most likely covered by the new HIPAA requirements. Whether your center’s patients pay for these medical services is not the controlling factor. Rather, what is relevant is whether your center is engaging in ‘standard electronic transactions.’ The new regulations define such transactions to include: ‘a request to obtain payment, and necessary accompanying information, from a health care provider to a health plan, for health care.’” [\[At the Center, 10/2004\]](#)

CareNet’s “Commitment of Care and Competence” Frames Its Privacy Provisions As “Optional” And Does Not Enforce Them “Some CPCs have adopted a ‘Commitment of Care and Competence’ statement that is provided by umbrella organizations, such as Heartbeat International and Care Net. This statement includes provisions on patient confidentiality and accurate clinical information; however, adoption of these guidelines is optional and adherence is not regulated or enforced.” [\[AMA Journal of Ethics, 3/2018\]](#)

CareNet Manual: Legal Privilege And Responsibility Of Confidentiality “Does Not Apply To Interactions Between Clients And Unlicensed Personnel At Non-Medical Centers.” “In most states, the conversations individuals have with their own medical professionals, attorneys, clergy, or licensed professional counselors are legally privileged and may not be disclosed, except in rare circumstances. While this legal privilege and responsibility does not apply to interactions between clients and unlicensed personnel at non-medical centers, all team members have an ethical obligation to keep promises of confidentiality made by the center to clients.” [\[CareNet, 2017\]](#)

CareNet’s Manual Notes That “Pregnancy Centers Are Not Legally Required To Be HIPAA Compliant.”

RELEASE OF CLIENT INFORMATION

A client requesting a copy of their own records or requesting that the record or any portion thereof be released to a third party shall make that request in writing, specifying what portion of the record is to be released, and when the permission to share the record expires, prior to center releasing any copy of the record. The center shall make a/an [healthcare privacy practices] authorization to release information form available to the client for this request and the center shall also accept any equivalent form from another agency, institution, or health care provider. Along with the written request, the center shall verify the client's identity by (a) requesting a copy of the client's government issued photo identification, and/or (b) comparing the signature on the written request with the client's signature on another form in the client's file. A copy of the authorization to release information form shall be maintained in the client's file.

Within the center, confidential client identifying information is shared only with persons who have a legitimate need to know. Personnel should not gossip about clients or their situations. Prayer requests should be general and should contain no client identifying information.

ICHOOSE ONE:

*MEDICAL CENTERS ONLY
To the extent applicable, this should be a HIPAA compliant document (note: pregnancy centers are not legally required to be HIPAA compliant unless they are billing for services electronically).*

[CareNet, 2017]

CareNet Medical Policy Says “You May Ask That We Limit How We Use Or Disclose Your PHI (Personal Health Information). We Will Consider Your Request, But We Are Not Legally Bound To Agree To Your Restriction.”

**NOTICE OF CENTER PRIVACY PRACTICES
[MEDICAL] (page 2)**

[PLACE LOGO HERE IN HEADER]	
<p>3. How You May Have Access to Your Protected Health Information. The following is a description of the steps you may take to access or to otherwise control disposition of your PHI:</p> <ul style="list-style-type: none"> To request restrictions on uses/disclosures: You may ask that we limit how we use or disclose your PHI. We will consider your request, but we are not legally bound to agree to the restriction. To the extent that we do agree to such restrictions, we will abide by such restrictions except in emergency situations. We cannot agree to limit uses/disclosures that are required by law. <i>[OPTIONAL: (Center Name) and its personnel hold a religious and/or moral objection to abortion. Therefore, in accordance with our constitutionally protected Right of Conscience, we do not send PHI directly to abortion providers, even upon request.]</i> 	<p><i>Only for centers that refuse to release center records to abortion providers as a matter of conscience. Care Net does not recommend this as a best practice but respects the decision of individual centers to refrain from cooperation with a medical provider. Centers taking this position should have board approval for adopting it and should understand that</i></p>

[CareNet, 2017]

Confidentiality Is So Unimportant To CareNet That They Consider Ordinance To Ensure Client Confidentiality An “Attack Campaign.” [CareNet, 2017]

- Under “State Level Attack Campaigns”, CareNet Lists New York City Ordinance That “Contains New Confidentiality Procedures And Opportunity For The Client To Seek Damages If They Are Breached.”

STATE LEVEL ATTACK CAMPAIGNS

NEW YORK

2011	<p><i>Legislation:</i> New York City enacted an ordinance, based on model legislation from NARAL Pro-Choice New York, which forced certain speech on pregnancy centers and similar entities just because of their viewpoint on abortion. This bill appears to be the most sweeping of all bills to date. It requires a disclaimer statement not only in the waiting room and website (the ordinance specifies the exact size and of the disclaimer), but also in every “advertisement.” It also contains new confidentiality procedures and opportunity for a client to seek damages if these are breached. Finally it includes extensive guidelines about penalties for violations and detailed procedures for how the City will handle and penalize a lack of compliance. In July of 2011, a federal district court judge issued a preliminary injunction, preventing enforcement of the measure, which is being challenged in court on First Amendment grounds.</p>
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[CareNet, 2017]

- CareNet Listed Ordinance Requiring AACs To Tell Client That Information And Services They Receive Do Not Constitute A Doctor-Patient Relationship And That The Client Should Consult With A Health Care Provider Before Proceeding With A Course Of Action On Her Pregnancy As An “Attack Campaign.”

STATE LEVEL ATTACK CAMPAIGNS

MARYLAND

2009 Legislation: Montgomery County, Maryland enacted an ordinance called "Required Disclaimers for Certain Pregnancy Resource Centers." This measure required life-affirming pregnancy centers, via staff assisting the client, to issue a disclaimer at first contact, in a manner that the client understands, and in English and Spanish. The disclaimer was to communicate that information and services the client receives at the center do not establish a doctor-patient relationship and that the client should consult with a health care provider before proceeding with a course of action regarding her pregnancy. Before the ordinance was approved in February of 2010, it was amended to exempt medical facilities; however, it was broadened to affect not only pregnancy centers but other organizations or individuals providing limited pregnancy center services. The ordinance was challenged in court on constitutional grounds and was overturned. A pregnancy center challenged the ordinance in court on constitutional grounds in *Centro Tepeyac v. Montgomery County* and the ordinance was struck down. The county appealed to a three judge panel of the Fourth Circuit Court of Appeals, which decided the case in favor of the pregnancy centers on June 27, 2012. The county then appealed their ruling to the full Fourth Circuit Court of Appeals, which, on July 3, 2013, ruled that the county can force pregnancy centers to post the disclaimers in the ordinance, because of a compelling governmental interest. The pregnancy center could appeal this case to the U.S. Supreme Court. Accessed online July 15, 2013 via <http://www.ca4.uscourts.gov/opinions/Published/111314.p.pdf>.

[[CareNet, 2017](#)]

Example 2: Texas Pregnancy Care Network (TPCN)

In A Rare Instance Of AAC Oversight, Texas’s A2A Contracted Organization, TPCN, Was Found To Have A Documented History of Patient Privacy Violations.

Total TPCN Subcontractor Violations Dec 2015 - May 2019	
Type Of Violations	Total
Facility Violations*:	48
Patient Privacy Violations:	6

[Texas Pregnancy Care Network Annual Reports To HHSC Dec 2015 – May 2019]