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

[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]


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]
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.”**
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.”

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

- 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 Breeched.”

- 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.”
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.

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