

118TH CONGRESS
1ST SESSION

H. R. 459

To ensure the privacy of pregnancy termination or loss information under the HIPAA privacy regulations and the HITECH Act.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 2023

Ms. ESHOO (for herself and Ms. JACOBS) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To ensure the privacy of pregnancy termination or loss information under the HIPAA privacy regulations and the HITECH Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Secure Access For Es-
5 sential Reproductive Health Act of 2023” or the “SAFER
6 Health Act of 2023”.

1 **SEC. 2. ENSURING THE PRIVACY OF PREGNANCY TERMI-**
2 **NATION OR LOSS INFORMATION UNDER THE**
3 **HIPAA PRIVACY REGULATIONS AND THE**
4 **HITECH ACT.**

5 (a) IN GENERAL.—

6 (1) PROHIBITION ON DISCLOSURE.—Subject to
7 paragraph (2) and notwithstanding any provision
8 in regulations promulgated pursuant to section
9 264(c) of the Health Insurance Portability and Ac-
10 countability Act of 1996 (Public Law 104–191), a
11 covered entity or business associate of such entity
12 may not disclose pregnancy termination or loss in-
13 formation of an individual in Federal, State, local,
14 or tribal proceedings, including civil, criminal, ad-
15 ministrative, legislative, or other proceedings, with-
16 out the valid authorization of the individual made in
17 accordance with section 164.508 of title 45, Code of
18 Federal Regulations.

19 (2) EXCEPTIONS.—Paragraph (1) shall not
20 apply in the case of a disclosure of pregnancy termi-
21 nation or loss information of an individual by a cov-
22 ered entity or business associate of a covered entity
23 if—

24 (A) such information is necessary for use
25 in defense of a professional liability action or
26 proceeding against the covered entity or busi-

1 ness associate and such information is disclosed
2 by—

3 (i) the covered entity or business asso-
4 ciate to such covered entity's or business
5 associate's attorney or professional liability
6 insurer or insurer's agent; or

7 (ii) the authorized attorney of such
8 covered entity or business associate to a
9 court or body hearing such action or pro-
10 ceeding; or

11 (B) such information is necessary to—

12 (i) investigate physical harm to such
13 individual by another person directly relat-
14 ing to the loss or termination of the preg-
15 nancy; and

16 (ii) such individual is unable to pro-
17 vide consent due to death or incapacity.

18 (b) HITECH.—

19 (1) PRIVACY EXCEPTION.—The Secretary of
20 Health and Human Services shall revise section
21 171.202 of title 45, Code of Federal Regulations, to
22 clarify that an entity's practice of not fulfilling a re-
23 quest to access, exchange, or use electronic health
24 information in order to comply with subsection (a)
25 will not be considered information blocking (as de-

1 fined for purposes of such section) if such informa-
2 tion is pregnancy termination or loss information.

3 (2) GREATER SECURITY.—The Secretary of
4 Health and Human Services shall revise section
5 170.401 of title 45, Code of Federal Regulations, to
6 require that as a condition of certification (as de-
7 scribed in such section), a health IT developer (as so
8 described) shall implement practices that allow for
9 the segregation of data related to pregnancy termi-
10 nation or loss information to ensure compliance with
11 subsection (a).

12 (c) MODIFICATION OF STATE PREEMPTION EXCEP-
13 TIONS.—

14 (1) IN GENERAL.—The provisions of this sec-
15 tion shall preempt any State law to the extent such
16 law conflicts with or prevents application of this sec-
17 tion. Nothing in the preceding sentence shall be con-
18 strued to preempt a State law to the extent that
19 such law provides greater privacy protections for
20 pregnancy termination or loss information than pro-
21 vided under this section.

22 (2) MODIFICATION.—The Secretary of Health
23 and Human Services shall revise section 160.203 of
24 title 45, Code of Federal Regulations (or a successor
25 regulation), to ensure that no exception to the gen-

1 eral preemption rule stated in such section applies
2 with respect to pregnancy termination or loss infor-
3 mation other than the exception under the second
4 sentence of paragraph (1).

5 (d) OUTREACH.—The Secretary of Health and
6 Human Services shall conduct an outreach campaign to
7 covered entities and business associates of such entities
8 to ensure that such entities and associates are aware of
9 the requirements of this section and any changes to regu-
10 lations made pursuant to this section.

11 (e) PROCEDURE.—Any revisions to regulations re-
12 quired by application of this section shall be made by no-
13 tice in the Federal Register published not later than 3
14 months after the date of the enactment of this section as
15 an interim final rule. The Secretary of Health and Human
16 Services shall, after providing opportunity for public com-
17 ment, finalize any such interim final rule not later than
18 9 months after such interim final rule is published with
19 such modifications as the Secretary determines appro-
20 priate.

21 (f) DEFINITIONS.—In this section:

22 (1) HIPAA TERMS.—The terms “business asso-
23 ciate”, “covered entity”, and “protected health infor-
24 mation” have the meaning given such terms for pur-

1 poses of the regulations described in subsection
2 (a)(1).

3 (2) PREGNANCY TERMINATION OR LOSS INFOR-
4 MATION.—The term “pregnancy termination or loss
5 information” means protected health information of
6 an individual that relates to information that could
7 reveal having or seeking an abortion or care for
8 pregnancy loss, including without limitation, any re-
9 quest for or receipt of items, services, education,
10 counseling, or referrals relating to the termination
11 or loss of a pregnancy of such individual, including
12 abortion, miscarriage, stillbirth, and ectopic preg-
13 nancy.

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