
Reproductive Health Care Privacy—What You Need to Know

- ▶ On April 22, 2024, the U.S. Department of Health and Human Services (HHS) Office for Civil Rights published a Final Rule modifying HIPAA regulations to prohibit the use and disclosure of protected health information (PHI) of lawful reproductive health care in certain circumstances.

The Rule applies to covered health care clinicians, health plans, or health care clearinghouses or their business associates that receive PHI requests.

- ▶ Further, the Rule finalized a new definition of reproductive health care—[click here to see update](#).
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What uses and disclosures of PHI are prohibited/permitted?

Prohibited Uses and Disclosures

- The Rule prohibits use and disclosure of PHI for purposes of
 - a) conducting a criminal, civil, or administrative investigation into, or imposing criminal, civil, or administrative liability on, any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care, where such health care is lawful under the circumstances in which it is provided; or
 - b) identifying any person for the purpose of conducting such investigation or imposing such liability.
- Use and disclosure of PHI for these purposes is prohibited under any of the following circumstances: The reproductive health care is lawful under the law of the state in which it is provided under the circumstances in which it is provided (*e.g., a resident travels to another state to receive lawful reproductive health care*).
- The reproductive health care is protected, required, or authorized by federal law, including the U.S. Constitution, regardless of the state in which it is provided (*e.g., contraception*).
- The reproductive health care was provided by someone other than the clinician receiving the request for PHI and the presumption below applies.

Permitted Uses and Disclosures

- The Rule permits use and disclosure of PHI when the PHI request is not made for any purpose that is prohibited.
- Further, other instances where PHI may be used/disclosed include
 - a clinician defending themselves in an investigation or proceeding related to professional misconduct or negligence where the alleged professional misconduct or negligence involved the provision of reproductive health care;
 - a covered clinician defending any person in a criminal, civil, or administrative proceeding where liability could be imposed on that person for providing reproductive health care; or
 - a covered clinician receives a request from an inspector general where the PHI is sought to conduct an audit for health oversight purposes.
- Clinicians may also use/disclose PHI if it is required by law. Under these circumstances, clinicians may only use or disclose information specifically requested according to the law and may not exceed use or disclosure beyond the law's requirements.
- Clinicians may also disclose PHI for law enforcement purposes (*e.g., to a law enforcement officer*); however, if the PHI request is not accompanied by a court order or a mandate enforceable in a court of law, the Rule would not permit the clinician from fulfilling the request.

For more information, please visit [HIPAA Privacy Rule and Disclosures of Information Relating to Reproductive Health Care](#).

Presumption

The reproductive health care provided by someone other than the clinician receiving the PHI request is presumed to be lawful *UNLESS* the clinician:

- a) Has actual knowledge that the reproductive health care was not lawful, or
- b) Receives factual information from the person making the request that demonstrates a substantial factual basis that the reproductive health care was not lawful.

Signed Attestation

Clinicians will also be required to obtain a signed attestation that the use/disclosure of PHI is not for a prohibited purpose. Sample language of this attestation requirement can be found [here](#).

Notice of Privacy Practices

The Rule also requires clinicians to revise Notice of Privacy Practices to align with new privacy regulations on reproductive health care by February 16, 2026. Sample language will be published by HHS before February 16, 2026.

Important Dates

- ▶ Effective Date: **June 25, 2024**
- ▶ Compliance Date: **December 23, 2024**, except for updates to Notice of Privacy Practices, which must be complied with by **February 16, 2026**

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