



HEALTH INFORMATION AND DATA SHARING Fact Sheet

HIPAA Final Rule to Support Reproductive Health Care Privacy

HIPAA Final Rule

The 2022 Supreme Court decision in [Dobbs v. Jackson Women's Health Organization](#), which overturned longstanding precedent protecting a constitutional right to abortion, prompted the federal government to take regulatory action to increase protections for individuals seeking reproductive health care. In the absence of a federal right to abortion, [the ever-changing legal landscape varies state to state](#), leaving many individuals facing uncertainty about their rights and the privacy of their reproductive health records. The U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) issued a [Final Rule, effective June 25, 2024](#), to strengthen privacy protections under the Health Insurance Portability and Accountability Act (HIPAA) for protected health information (PHI) related to reproductive health care of an individual.

The Final Rule strengthens privacy protections but does not create a new category of sensitive PHI. Instead, it creates purpose-based limitations, barring uses and disclosures of PHI in certain non-health-care circumstances in which the information is likely to be used against individuals or health care professional seeking, obtaining, providing or facilitating reproductive health care.

Regulated entities must comply with the Final Rule by December 23, 2024.

Highlights of the HIPAA Final Rule to Support Reproductive Health Care Privacy

Prohibition on certain disclosures to investigate or prosecute reproductive care

The Final Rule prohibits the use or disclosure of PHI for certain non-health-care purposes, specifically to investigate or impose liability on a person for particular actions related to reproductive health care. Under the Final Rule, HIPAA covered entities and business associates may not use or disclose PHI:

- To conduct a criminal, civil, or administrative investigation into any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care;



- To impose criminal, civil, or administrative liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care; or
- To identify any person for any purpose described above.

The prohibition on disclosures of PHI applies only where the relevant activity is in connection with a person seeking, obtaining, providing or facilitating reproductive health care and a covered entity or business associate has reasonably determined (one or more of following):

- The reproductive health care is lawful under the law of the state in which such health care is provided under the circumstances in which it is provided.
- The reproductive health care is protected, required, or authorized by Federal law, including the United States Constitution, under the circumstances in which such health care is provided, regardless of the state in which it is provided.
- The reproductive health care was provided by a person other than the regulated entity that receives the request for PHI and the presumption described below applies.

Presumption of lawful care

Reproductive health care provided by someone other than the regulated entity is presumed lawful. In other words, a regulated entity that receives a request for PHI, for purposes prohibited by the Final Rule, does not need to make a determination regarding the lawfulness of prior reproductive health care provided by another entity. The presumption applies unless the covered entity or business associate has:

- Actual knowledge that the reproductive health care was not lawful under the circumstances in which it was provided, or
- Factual information supplied by the requester that demonstrates a substantial factual basis that the reproductive health care was not lawful under the specific circumstances in which it was provided.

Uses and disclosures requiring valid attestation

Covered entities and business associates that receive a request for PHI potentially related to reproductive health care must obtain a signed attestation from the requester verifying that the PHI will not be used or disclosed for one of the prohibited purposes described above. The attestation requirement applies when the request for PHI is for certain purposes permitted under the Privacy Rule including:

- Health oversight activities;
- Judicial and administrative proceedings;
- Law enforcement purposes; or
- Disclosures to coroners and medical examiners.

HHS indicates that it intends to provide model attestation language prior to the compliance date of the Final Rule.



Updated definitions

The Final Rule includes a revised definition of “person” and two new definitions, “reproductive health care” and “public health.” HHS intends for the definition of “reproductive health care” to be broad and provides a non-exclusive list of examples including care associated with contraception, preconception, pregnancy, assisted reproductive technology, and menopause. Under the new rule:

- **Person** means a natural person (meaning a human being who is born alive), trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.
- **Reproductive Health Care** means health care that affects the health of an individual in all matters relating to the reproductive system and to its functions and processes.
- **Public Health** as used in the terms “public health surveillance,” “public health investigation,” and “public health intervention,” means population-level activities to prevent disease in and promote the health of populations. Such activities include identifying, monitoring, preventing, or mitigating ongoing or prospective threats to the health or safety of a population, which may involve the collection of protected health information. The definition makes explicit that public health activities, long permitted under the Privacy Rule, do not include the prohibited uses and disclosures discussed above related to investigating or imposing liability on a person.


Considerations for Health Departments

The Final Rule incorporates new provisions and interpretations designed to prevent public health reporting and disclosure requirements from being used to circumvent the strengthened privacy protections for PHI related to reproductive health care. As noted above, the Final Rule incorporates a new definition of “public health,” which captures the idea that public health means population-level activities. HHS indicates those activities are distinct from efforts to impose civil or criminal liability on an individual, which are governed by separate statutory provisions outside public health.

Importantly, the definition of “public health” does not prevent disclosures of PHI from regulated entities to public health authorities for public health purposes that have long been permitted under HIPAA. In addition to permitted disclosures for public health purposes, the Final Rule does not prevent a regulated entity from complying with mandatory reporting requirements that apply to the reporting of PHI to public health authorities for public health purposes.

Where a disclosure is intended to prevent disease in or promote the health of populations, HHS does not require a public health authority to supply an attestation to a covered entity. However, the Final Rule makes clear that regulated entities are still responsible for assessing the purposes of a request for public health data and to reasonably determine whether they in fact involve individual investigation or enforcement purposes.

For additional discussion of the HIPAA Final Rule to Support Reproductive Health Care Privacy, see the [recording of the Network’s May 9, 2024 webinar](#).



This document was developed by Susan Fleurant, J.D., M.P.H., Staff Attorney, and Charles Curran, J.D., Deputy Director, Mid-States Region. This document is not an exhaustive review of the HIPAA Final Rule to Support Reproductive Health Care Privacy. Readers should review the Rule for more details related to the highlighted provisions as well as to others not covered herein. The Network for Public Health Law promotes public health through non-partisan educational resources and technical assistance. This document is provided for informational purposes only and does not constitute legal advice or legal representation. Neither provision of this document nor any communications with the Network for Public Health Law and its staff create an attorney-client relationship. For legal advice, please contact your attorney.

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