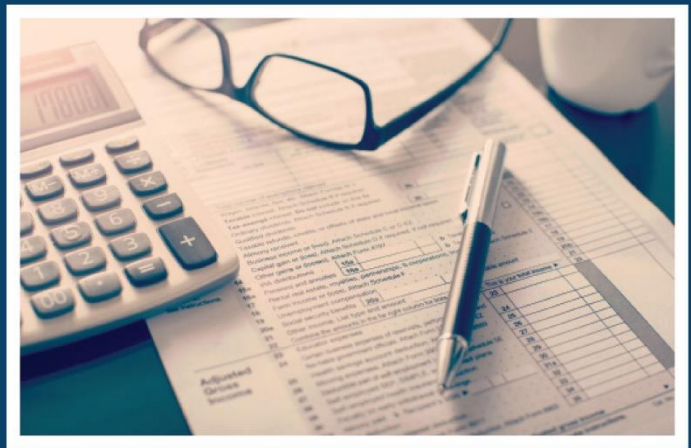


HIPAA PRIVACY RULE UPDATED – NEW ATTESTATION AND NOTICE REQUIREMENT

DECEMBER 2024



HHS Finalizes Rule to Strengthen Reproductive Health Care Privacy

The U.S. Department of Health and Human Services (HHS) has issued a [final rule](#) that strengthens the HIPAA Privacy Rule by prohibiting the disclosure of protected health information (PHI) related to lawful reproductive health care in certain situations. According to HHS, these new protections are necessary to protect access to and privacy of reproductive health care following the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*.

The HIPAA Privacy Rule sets strict limits on the use, disclosure and protection of PHI by health care providers, health plans, health care clearinghouses and their business associates (regulated entities). The Privacy Rule also allows regulated entities to use or disclose PHI for certain non-health-care purposes, including certain criminal, civil and administrative investigations and proceedings.

New Protections

The final rule prohibits regulated entities from using or disclosing PHI for the criminal, civil or administrative investigation of (or proceeding against) any person in connection with seeking, obtaining, providing or facilitating reproductive health care **where such health care is lawful under the circumstances in which it is provided**. It also prohibits the identification of any person for the purpose of initiating such an investigation or proceeding. This prohibition applies where a regulated entity reasonably determines that:

- The reproductive health care is **lawful under the law of the state** in which such health care is provided (and under the circumstances in which it is provided); or
- The reproductive health care is **protected, required or authorized by federal law**, including the U.S. Constitution, regardless of the state in which such health care is provided.

Moreover, when a regulated entity did not provide the reproductive health care at issue, the final rule prohibits the use or disclosure of PHI when the person making the request does not provide sufficient information to overcome a presumption of legality. For example, this presumption can be overcome if the person making the request provides information showing a substantial factual basis that the reproductive health care was unlawful under the circumstances in which it was provided.

KEY DATES

- **April 22, 2024:**
HHS releases the final rule.
- **Dec. 23, 2024:**
Regulated entities must comply with the final rule by this date, including new attestation requirement, except as noted below.
- **Feb. 16, 2026:**
Regulated entities must update their HIPAA notice of privacy practices by this date.

Attestation Requirement

Under the final rule, a regulated entity must obtain a **valid attestation** before it uses or discloses PHI potentially related to reproductive health care for certain purposes, such as health oversight activities, judicial and administrative proceedings, law enforcement purposes, or disclosures to coroners or medical examiners. The attestation is used to verify that the requested use or disclosure of PHI complies with the new privacy protections and is not for a prohibited purpose.

For an attestation to be valid, it must be a standalone document that includes certain information, such as a clear statement that the use or disclosure is not for a prohibited purpose. Regulated entities can use HHS' model attestation form when they receive requests for PHI potentially related to reproductive health care. The model form also includes instructions for its use. According to these instructions, a regulated entity may not rely on the attestation to disclose the requested PHI in certain circumstances, including if a reasonable, regulated entity in the same position would not believe the requestor's statement that the use or disclosure is not for a prohibited purpose.

The U.S. Department of Health and Human Services (HHS) has updated its [webpage](#) on reproductive health care privacy to provide additional resources, including a [HIPAA model attestation form](#), that covered entities and business associates may use to comply with new protections for reproductive health care privacy. These new privacy protections and attestation requirement become effective on **December 23, 2024**.

Notice of Privacy Practices

The final rule also requires regulated entities to **revise their notice of privacy practices** to support reproductive health care privacy and distribute the updated notice **by February 16, 2026**.

HHS provides [model privacy notices](#) for health care providers and health plans to use. It is expected that HHS will update its model notices to incorporate the new requirements

Regulated entities may also need to update their business associate agreements and HIPAA policies and procedures for the final rule's changes as well, depending on their terms.

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