

Special Protections Relating to Protected Health Information and its Use/Disclosure Relating to Reproductive Healthcare

1. Important Terms

“*Reproductive Healthcare*” means healthcare that affects the health of an individual in all matters relating to the reproductive system and to its functions and processes.

“*Seeking, obtaining, providing, or facilitating reproductive healthcare*” includes, but is not limited to, expressing interest in, using, performing, furnishing, paying for, disseminating information about, arranging, insuring, administering, authorizing, providing coverage for, approving, counseling about, assisting or otherwise taking action to engage in reproductive healthcare; or attempting any of the same.

2. Purpose

The HIPAA privacy rule prohibits the Provider from using or disclosing a patient’s protected health information for any of the following referred to in this policy as a “*Prohibited Purpose Relating to Lawful Reproductive Healthcare*.”

- To investigate a person for the mere act of seeking, obtaining, providing or facilitating lawful reproductive healthcare.
- To impose liability on a person for the mere act of seeking, obtaining, providing or facilitating lawful reproductive healthcare.
- To identify a person in order to investigate or impose liability on them for the mere act of seeking, obtaining, providing or facilitating lawful reproductive healthcare.

The provider has adopted this policy in compliance with the HIPAA privacy rule to help ensure it does not use or disclose protected health information for a Prohibited Purpose Relating to Lawful Reproductive Healthcare.

3. Determining Whether a Use or Disclosure is for a Prohibited Purpose Relating to Lawful Reproductive Healthcare

Upon receipt of any request for the use or disclosure of protected health information which is not (a) pursuant to the patient’s signed written authorization or (b) for a treatment, payment or healthcare operations purpose, authorized staff will conduct a review of the request to determine if the request is for a health oversight activity, a judicial or administrative proceeding, law enforcement, or coroners and medical examiners. [If it is, the requestor must complete the attestation form attached to this policy.] OR [If it is, the staff member will review the health information requested to determine if it is potentially related to reproductive healthcare. If the health information is potentially related to reproductive healthcare, the requestor must complete the attestation form attached to this policy. When in doubt, staff should have the requestor complete the attestation form]

When an attestation form is required, staff should promptly provide it to the requestor to avoid delays in processing requests for protected health information. Where possible, such as responding to email requests, staff may email the requestor the attestation form, including the following message:

“Thank you for your recent request for health information. The HIPAA privacy rule prohibits us from using or disclosing health information that may potentially be related to reproductive healthcare for a health oversight activity, law enforcement, a judicial or administrative proceeding, or coroners and medical examiners unless the requestor completes a valid attestation form. The attached attestation form is required before we can respond to your request. Please complete the form in its entirety, sign, date, and return it to _____ . Should you have any questions, please contact _____ .”

If the request is not for health oversight activities, law enforcement, judicial or administrative proceedings or coroners or medical examiners, the authorized staff member may authorize the use or disclosure of the protected health information if use/disclosure is (a) otherwise allowed by Provider’s policies and applicable laws, including HIPAA and any state laws protecting the confidentiality of patient health information; and (b) the staff person has no reason to believe based on the information provided by the requestor that the protected health information is for a Prohibited Purpose Relating to Reproductive Healthcare. If the staff person is concerned a request may be for a Prohibited Purpose Relating to Reproductive Healthcare he or she should contact _____.

4. Review of Attestations & Requests Potentially for a Prohibited Purpose Relating to Reproductive Healthcare

Time is of the essence in responding to requests for health oversight activities, law enforcement, judicial and administrative proceedings, and coroners and medical examiners as often the request will provide a response deadline. To ensure the response deadline is not missed, staff should review all requests and attestation forms promptly.

a. Valid Attestation

If a requestor submits an attestation form because he/she is requesting the information for a health oversight activity, law enforcement, judicial or administrative proceeding, or coroners and medical examiners, the completed attestation form will be provided to _____ who will review it to determine whether the attestation is valid. An attestation is not valid if it:

- Is incomplete.
- Contains additional information not required or requested by the attestation form such as adding additional language to the attestation statement.
- Is combined with any other document except for documents supporting the attestation.
- Contains material information known to be false.

If the attestation form is not valid, _____ will notify the requestor.

b. Reliance on a Valid Attestation

If _____ determines the attestation is valid, _____ will review the information requested by the requestor and the attestation form to determine whether the attestation is objectively reasonable. When determining whether the attestation is objectively reasonable, _____ will review and consider the following:

- Who is requesting the information?
- The permission upon which the person is making the request.
- The information requested and its relationship to the purpose of the request.

If _____ has any concerns the attestation is not objectively reasonable legal counsel should be consulted. After consultation with legal counsel, if the decision has been made that the attestation is not objectively reasonable, the health information requested will not be provided and the requestor will be informed in writing. Attestations must continue to remain valid for the entirety of the period of time during which information pursuant to the attestation is being used or disclosed.

c. Attestations Relating to Unlawful Reproductive Healthcare

If the attestation states the request is to investigate, impose liability on or identify someone for investigation or liability for seeking, obtaining, providing or facilitating reproductive healthcare, _____ must also review the request to determine if the reproductive healthcare at issue was lawful in accordance with Section 5 below.

If _____ determines not enough information has been provided by the requestor to overcome a presumption that the reproductive healthcare was lawful, _____ should notify the requestor that it has not overcome the presumption that the reproductive healthcare was lawful and the requested information will not be provided. The requestor should also be informed that he/she may submit additional information for review and where such additional information should be sent. Upon receipt of any additional information, _____ will review to determine if the presumption of lawfulness is rebutted. If it has been, the information may be released. If it is not, the request will not be approved.

d. Refusals to Submit Attestation Form or Supporting Evidence

If a requestor refuses to complete an attestation when requested if the health information requested has not already been reviewed to determine if it is potentially related to reproductive healthcare, it will be reviewed by _____, and if any of the health information is determined to be potentially related to reproductive healthcare, the authorized staff member must notify the requestor that no information will be provided until the attestation is completed. Staff should consider responding in writing as follows:

“Thank you for your recent request for health information. The HIPAA privacy rule prohibits us from using or disclosing health information that may potentially be related to reproductive healthcare for a health oversight activity, law enforcement, judicial or administrative proceeding, or coroners and medical examiners unless the requestor completes a valid

attestation form. The enclosed attestation form was previously provided to you. You have indicated you will not complete the form but continue to request the information. Unless we have the completed form, we are unable to fulfill your request. Should you have additional questions, please contact _____. “

If the requestor has used a legal process, such as a subpoena or search warrant, to request information and has not completed an attestation, legal counsel should be contacted immediately to assist the Provider in responding to the requestor.

5. Determining Whether Reproductive Healthcare Was Lawful

For any request for the use or disclosure of protected health information which is to investigate or impose liability on someone for the mere act of seeking, obtaining, providing or facilitating reproductive healthcare or to identify someone for either purpose, the Provider will not release the information if the reproductive healthcare was lawful as it would constitute a Prohibited Purpose Relating to Reproductive Healthcare. To determine if the reproductive healthcare at issue was lawful, the Provider will not rely on assertions made by the requestor. Instead, the Provider will conduct its own analysis as follows:

The decision of whether reproductive healthcare was lawful will be made by _____. If the reproductive healthcare was provided by Provider, then _____ will review the reproductive healthcare in light of the state laws Provider is subject to. If the reproductive healthcare was lawful under state law, it is considered lawful, and the information requested will not be provided. If the reproductive healthcare was not lawful in the state, but it was authorized by a federal law, including the United States Constitution, the reproductive healthcare will be considered lawful, and the information will not be provided. _____ should consult with legal counsel if questions arise over whether the care provided was lawful. Additionally, if _____ believes the reproductive healthcare was not lawful, _____ should notify legal counsel for assistance in responding to the request and addressing potential compliance issues associated with the care.

If the Provider did not provide the reproductive healthcare at issue, _____ must presume the reproductive healthcare was lawfully provided unless the requestor can demonstrate a substantial factual basis that the reproductive healthcare was not lawful. _____ will notify the requestor that it will not approve the request unless the requestor can provide substantial factual information to support the reproductive healthcare was not lawful.

Upon receipt of the information provided, _____ should consult with legal counsel for help in determining if the requestor has met the burden of showing a substantial factual basis that the reproductive healthcare was not lawful. If it has, the information will be provided. If the requestor has not, the requestor will be notified the information will not be provided. Where possible, the requestor will be notified in writing which may include the following:

“Thank you for your request inquiry. After review, we have determined there is not enough factual information to rebut the presumption that the reproductive healthcare at issue was lawful. Therefore, we will not be processing your request. If you have any questions, please contact _____.”

If a lawful process, such as a subpoena, has been issued that Provider will not comply with because the reproductive healthcare is considered lawful, _____ should contact legal counsel for assistance in responding to the request.

6. Updates to Notice of Privacy Practices

Provider's Notice of Privacy Practices will be updated on or before February 16, 2026, to include a description and at least one example of the types of Prohibited Purposes Relating to Lawful Reproductive Healthcare as well as a description and at least one example of the types of uses and disclosures for which an attestation is required.

7. Questions

Questions regarding the implementation of this policy should be referred to _____ or _____.

SAMPLE

Model Attestation Regarding a Requested Use or Disclosure of Protected Health Information Potentially Related to Reproductive Healthcare

The entire form must be completed for the attestation to be valid.

Name of person(s) or specific identification of the class of persons to receive the requested PHI.
<i>e.g., name of investigator and/or agency making the request</i>
Name or other specific identification of the person or class of persons from whom you are requesting the use or disclosure.
<i>e.g., name of the covered entity or business associate that maintains the PHI and/or name of their workforce member who handles requests for PHI</i>
Description of specific PHI requested, including name(s) of individual(s), if practicable, or a description of the class of individuals, whose protected health information you are requesting.
<i>e.g., visit summary for [name of individual] on [date]; list of individuals who obtained [name of prescription medication] between [date range]</i>

I attest that the use or disclosure of PHI that I am requesting is not for a purpose prohibited by the HIPAA Privacy Rule at 45 CFR 164.502(a)(5)(iii) because of one of the following (check one box):

- The purpose of the use or disclosure of protected health information is **not** to investigate or impose liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive healthcare or to identify any person for such purposes.
- The purpose of the use or disclosure of protected health information **is** to investigate or impose liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive healthcare, or to identify any person for such purposes, but the reproductive healthcare at issue was **not lawful** under the circumstances in which it was provided.

I understand that I may be subject to criminal penalties pursuant to 42 U.S.C. 1320d-6 if I knowingly and in violation of HIPAA obtain individually identifiable health information relating to an individual or disclose individually identifiable health information to another person.

Signature of the person requesting the PHI

Date _____

If you have signed as a representative of the person requesting PHI, provide a description of your authority to act for that person.
