

These slides provide a brief educational summary, not an independent interpretation of the HIPAA Privacy Rule to Support Reproductive Health Care Privacy Final Rule.

HIPAA Privacy Rule to Support Reproductive Health Care Privacy Final Rule

Office for Civil Rights (OCR)
U.S. Department of Health and Human Services



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office for Civil Rights

Key Dates

- Published at the Federal Register on **April 26, 2024**.
- Effective date is **June 25, 2024**.
- **Compliance date**, the date persons subject to this regulation must comply with the applicable requirements of this final Rule, is **December 23, 2024**, except for the Notice of Privacy Practices.
- **Compliance date for the Notice of Privacy Practices** is **February 16, 2026**.

Definitions

- **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. But such activities do not include those with any of the following purposes:
 - (1) To conduct a criminal, civil, or administrative investigation into any person for the mere act of seeking, obtaining, providing, or facilitating health care.
 - (2) To impose criminal, civil, or administrative liability on any person for the mere act of seeking, obtaining, providing, or facilitating health care.
 - (3) To identify any person for any of the activities described at paragraphs (1) or (2) of this definition.
- **Reproductive Health Care** means health care, as defined in this section, that affects the health of an individual in all matters relating to the reproductive system and to its functions and processes. This definition shall not be construed to set forth a standard of care for or regulate what constitutes clinically appropriate reproductive health care.

Prohibition and Rule of Applicability

- **Prohibits** the use or disclosure of PHI for any of the following activities:
 - To conduct a criminal, civil, or administrative investigation into or impose 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.
 - The identification of any person for the purpose of conducting such investigation or imposing such liability.
- **Rule of Applicability:** The prohibition applies:
 - Where the relevant activity is in connection with any person seeking, obtaining, providing, or facilitating reproductive health care and
 - The regulated entity that received the request for PHI has reasonably determined that one or more of the following conditions exists:
 - 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 U.S. Constitution, under the circumstances in which such health care is provided, regardless of the state in which it is provided.
 - The Presumption (next slide) applies.

Presumption

- Reproductive health care provided by a person other than the regulated entity that receives the request for PHI is presumed lawful unless the regulated entity has any of the following:
 - Actual knowledge that the reproductive health care was not lawful under the circumstances in which it was provided.
 - Factual information supplied by the person requesting the PHI that demonstrates to the regulated entity a substantial factual basis that the reproductive health care was not lawful under the specific circumstances in which it was provided.

Attestation

- Regulated entities are required to obtain an attestation when it receives a request for PHI potentially related to reproductive health care to obtain an attestation from the requestor that the use or disclosure is not for a prohibited purpose. Applies when the request for PHI is for:
 - Health oversight activities
 - Judicial and administrative proceedings
 - Law enforcement purposes
 - Disclosures to coroners and medical examiners

Notice of Privacy Practices

- Covered entities are required to update their Notice of Privacy Practices (NPP) to reflect changes to both the HIPAA Privacy Rule and the Part 2 regulation (from a separate rulemaking).
- Compliance Date for NPP requirements aligns with Part 2 Final Rule compliance date: February 16, 2026.
- For more information on the 2024 Part 2 Final Rule, visit:
<https://www.federalregister.gov/documents/2024/02/16/2024-02544/confidentiality-of-substance-use-disorder-sud-patient-records> and <https://www.hhs.gov/hipaa/for-professionals/regulatory-initiatives/fact-sheet-42-cfr-part-2-final-rule/index.html>

Disclosures for law enforcement purposes pursuant to process and as otherwise required by law

- (ii) In compliance with and as limited by the relevant requirements of:
 - (A) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;
 - (B) A grand jury subpoena; or
 - (C) An administrative request for which response is required by law, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:
 - (1) The information sought is relevant and material to a legitimate law enforcement inquiry;
 - (2) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
 - (3) De-identified information could not reasonably be used.

45 CFR 164.512(f)(1)(ii)

Resources

- Resources
 - Final Rule: <https://www.federalregister.gov/documents/2024/04/26/2024-08503/hipaa-privacy-rule-to-support-reproductive-health-care-privacy>
 - Fact Sheet: <https://www.hhs.gov/hipaa/for-professionals/special-topics/reproductive-health/final-rule-fact-sheet/index.html>
 - Videos:
 - English: <https://www.youtube.com/watch?v=2YMBPdkCPqk>
 - Spanish: <https://www.youtube.com/watch?v=jSTuilZdIEg>

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