

Final HIPAA Rules for Reproductive Healthcare

June 1, 2024

Quick Facts

- In April 2024, the Department of Health and Human Services (HHS) Office for Civil Rights (OCR) released final rules to support the privacy of reproductive healthcare.
- The Final Rule prohibits disclosure of protected health information (PHI) for certain purposes connected with criminal investigations.
- Changes to a covered entity's Notice of Privacy Practices (NPP) are required.
- The effective date of the Final Rule is December 23, 2024.

Background

The Department of Health and Human Services (HHS) Office for Civil Rights (OCR) released final rules updating the Health Insurance Portability and Accountability Act (HIPAA) to support privacy for reproductive healthcare. A corresponding [fact sheet](#) was published on the OCR website on April 26, 2024. In the Final Rules, the OCR states that the Final Rule compliance date will be 240 days after publication of the Final Rule, which will be December 23, 2024, with additional time to provide an updated Notice of Privacy Practices.

The Final Rule is one of many actions taken by the Biden Administration and HHS to protect access to and privacy of reproductive healthcare. These new rules are intended to protect access to reproductive healthcare following the Supreme Court's decision in [Dobbs v. Jackson Women's Health Organization](#), which has led to restrictions on reproductive rights in many states. The Final Rule also supports President Biden's Executive Orders (EOs) on protecting access to reproductive healthcare, which intend to protect information related to reproductive healthcare and to promote confidentiality.

To see EPIC's previous guidance on this topic, review these alerts and articles on our [Compliance Insights](#) page:

- [OCR Proposed Privacy Rule for Reproductive Health](#)
- [Departments Release Updated Guidance for Contraception Coverage](#)
- [What Is the Impact of the Roe v. Wade Reversal?](#)

Prohibition

The Final Rule prohibits the use or disclosure of protected health information (PHI) by a HIPAA-covered entity or business associate 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 healthcare, where such healthcare 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.

The above rule applies when the reproductive healthcare being administered is lawful under the state law in which it is being administered, or the reproductive healthcare is permissible under Federal law. The Final Rule permits covered entities or business associates to use or disclose PHI for purposes otherwise permitted under the Privacy Rule where the request for the use or disclosure of PHI is **not** made to investigate or impose liability on any person for the mere act of seeking, obtaining, providing or facilitating reproductive healthcare.

Presumption

The Final Rule presumes that the reproductive healthcare being administered is lawful under the circumstances in which it was provided unless one of the following conditions is met:

- The covered entity or business associate has actual knowledge that the reproductive healthcare was not lawful under the circumstances in which it was provided.
- The covered entity or business associate receives factual information from the person making the request for the use or disclosure of PHI that demonstrates a substantial factual basis that the reproductive healthcare was not lawful under the circumstances in which it was provided.

Attestation Requirement

The Final Rule requires a covered entity or business associate to obtain a signed attestation that the use or disclosure of requested PHI is not for a prohibited purpose. This attestation requirement applies when the requested PHI is used or disclosed for any of the following scenarios:

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

OCR intends to publish model attestation language before the Final Rule compliance date.

Notice of Privacy Practices

The Final Rule requires covered entities to revise their HIPAA NPPs to address these new rules and address new requirements related to substance use disorders as stated in the [Notice of Proposed Rulemaking for the Confidentiality of Substance Use Disorder \(SUD\) Patient Records \(“Part 2 NPRM”\)](#). The NPP compliance deadline is February 16, 2026.

Disclosures to Law Enforcement

The Privacy Rule permits the use or disclosure of PHI without an individual’s authorization only where such use or disclosure is expressly permitted or required by the Privacy Rule, such as disclosures to law enforcement in specific circumstances. Covered entities and business associates are only permitted to disclose PHI for law enforcement purposes when they are required to do so by law and all applicable conditions are met. Accordingly, under the Final Rule, such disclosure is only permitted where all three of the following conditions are met:

- The disclosure is not subject to the prohibition.

- The disclosure is required by law.
- The disclosure meets all applicable conditions of the Privacy Rule permission to use or disclose PHI as required by law.

Summary

The Final Rule is one of many actions taken by the Biden Administration and HHS to protect reproductive healthcare access and privacy.

Individuals who believe a HIPAA-covered entity or business associate has violated their rights may [file a complaint with OCR](#).

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