



Attestation Regarding a Requested Use or Disclosure of PHI 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 person(s) to receive the requested PHI

(e.g., name of the investigator and/or agency making the request)

Blank area for entering the name of the person(s) to receive the requested PHI.

Name or other specific identification of the person or class of persons from whom you are requesting the use or disclosure

(e.g., name of the covered entity or business associate that maintains PHI and/or name of their workforce member who handles requests for PHI)

Blank area for entering the name or other specific identification of the person or class of persons from whom you are requesting the use or disclosure.

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

(e.g., visit summary for [name of individual] on [date]; list of individuals who obtained [name of prescription medication] between [date range])

Patient Name:

Date of Birth:

Blank area for describing the specific PHI requested, including patient name and date of birth.

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 health care 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 health care, or to identify any person for such purposes, but the reproductive health care 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.

SIGN

Signature of Person Requesting 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:



Instructions: Attestation for a Requested Use or Disclosure of Protected Health Information Potentially Related to Reproductive Health Care

In April 2024, the Office for Civil Rights issued a Final Rule titled “HIPAA Privacy Rule to Support Reproductive Health Care Privacy” amending HIPAA regulations and prohibiting the disclosure of protected health information related to lawful reproductive health care in certain circumstances. Pursuant to 45 CFR 164.509, when a HIPAA covered entity¹ or business associate² receives a request for protected health information (PHI)³ potentially related to reproductive health care,⁴ it must obtain a signed attestation that clearly states the requested use or disclosure is not for the prohibited purposes described below, where the request is for PHI for any of the following purposes:

- Health oversight activities⁵
- Judicial or administrative⁶ proceedings
- Law enforcement⁷
- Regarding decedents, disclosures to coroners and medical examiners⁸

Please Note: While 45 CFR 164.512 permits uses and disclosures for the above purposes without an individual’s authorization or an opportunity for the individual to agree or object, 45 CFR 164.512 does not exempt disclosures: for health oversight activities; for judicial or administrative proceedings; for law enforcement purposes; or, about decedents to coroners and medical examiners, from providing an attestation under the amended HIPAA regulations for reproductive privacy at 45 CFR 164.509.⁹

Prohibited Purposes. Covered entities and their business associates may not use or disclose PHI for 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 lawful reproductive health care.
- (2) To impose criminal, civil, or administrative liability on any person for the mere act of seeking, obtaining, providing, or facilitating lawful reproductive health care.
- (3) To identify any person for any purpose described in (1) or (2).¹⁰

The prohibition applies when the reproductive health care at issue (1) is lawful under the law of the state in which such health care is provided under the circumstances in which it is provided, (2) 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, or (3) is provided by another person and presumed lawful.¹¹

Information for the Person Requesting the PHI

- By signing this attestation, you are verifying that you are not requesting PHI for a prohibited purpose and acknowledging that criminal penalties may apply if untrue.¹²
- You may not add content that is not required or combine this form with another document except where another document is needed to support your statement that the requested disclosure is not for a prohibited purpose.¹³ For example, if the requested PHI is potentially related to reproductive health care that was provided by someone other than the covered entity or business associate from whom you are requesting the PHI, you may submit a document that supplies information that demonstrates a substantial factual basis that the reproductive health care in question was not lawful under the specific circumstances in which it was provided.¹⁴

- The covered entity or business associate may not rely on the attestation to disclose the requested PHI if any of the following is true:
 - It is missing any required element or statement or contains other content that is not required.¹⁵
 - It is combined with other documents, except for documents provided to support the attestation.¹⁶
 - The covered entity or business associate knows that material information in the attestation is false.¹⁷
 - A reasonable covered entity or business associate in the same position would not believe the requestor’s statement that the use or disclosure is not for a prohibited purpose as described above.¹⁸
- If the covered entity or business associate later discovers information that reasonably shows that any representation made in the attestation is materially false, leading to a use or disclosure for a prohibited purpose as described above, the covered entity or business associate must stop making the requested use or disclosure.¹⁹
- The covered entity or business associate may not make a disclosure if the reproductive health care was provided by a person other than the covered entity and the requestor indicates that the PHI requested is for a prohibited purpose as described above, unless the requestor supplies information that demonstrates a substantial factual basis that the reproductive health care was not lawful under the specific circumstances in which it was provided.²⁰
- You must provide a new attestation for each specific use or disclosure request.²¹ A single attestation will not be sufficient to permit multiple uses or disclosures (e.g. a later request regarding the same patient will require a new attestation).²²

¹ See 45 CFR 160.103 (definition of “Covered entity”).

² See 45 CFR 160.103 (definition of “Business associate”).

³ See 45 CFR 160.103 (definition of “Protected health information”).

⁴ See 45 CFR 160.103 (definition of “Reproductive health care”).

⁵ See 45 CFR 164.512(d).

⁶ See 45 CFR 164.512(e).

⁷ See 45 CFR 164.512(f).

⁸ See 45 CFR 164.512(g)(1).

⁹ See 89 Fed. Reg. 32976, 33029 (April 26, 2024) (“The Department is adopting the proposed requirement that an attestation be obtained where a request is made under the Privacy Rule permissions at 45 CFR 164.512(d) (disclosures for health oversight activities), (e) (disclosures for judicial and administrative proceedings), (f) (disclosures for law enforcement purposes), or (g)(1) (disclosures about decedents to coroners and medical examiners)”).

¹⁰ See 45 CFR 164.502(a)(5)(iii)(A).

¹¹ See 45 CFR 164.502(a)(5)(iii)(B), (C). For more information on the presumption and when it applies, see 45 CFR 164.502(a)(5)(iii)(C).

¹² See 42 U.S.C. 1320d–6.

¹³ See 45 CFR 164.509(b)(3) and (c)(iv).

¹⁴ See 45 CFR 164.502(a)(5)(iii)(B)(3), (C)(2).

¹⁵ See 45 CFR 164.509(b)(2)(ii).

¹⁶ See 45 CFR 164.509(b)(3).

¹⁷ See 45 CFR 164.509(b)(2)(iv).

¹⁸ See 45 CFR 164.509(b)(2)(v).

¹⁹ See 45 CFR 164.509(d).

²⁰ See 45 CFR 164.502(a)(5)(iii)(B)(3), (C)(2).

²¹ See 89 Fed. Reg. 32976, 33031 (April 26, 2024).

²² See 89 Fed. Reg. 32976, 33036 (April 26, 2024) (“This requirement is unlike the authorization, where generally, when a regulated entity receives a valid authorization, they may continue to use or disclose PHI to the person requesting the use or disclosure of PHI pursuant to that authorization after the initial disclosure, provided that such subsequent uses and disclosures are valid and related to that authorization.”).