

COMPLIANCE ALERT

OCR Issues Model Attestation on Reproductive Healthcare; First Stage of Compliance Required by December 23

September 11, 2024

Action Required:

- Employers and plan sponsors should discuss these new compliance requirements with their broker and review and update all applicable HIPAA policies to remain in compliance.
- Most of the new compliance “to do” items are required to be in place by December 23, 2024
- The final “to do” item—updating and issuing a revised HIPAA Privacy Notice— is required by February 16, 2026.

The U.S. Department of Health and Human Services’ Office of Civil Rights (OCR) recently published a [model attestation](#) to assist plan sponsors in complying with a recently-issued [final regulation](#) (“Final Rule”) designed to support reproductive healthcare privacy (see our eAlert on the Final Rule [here](#)). Among other requirements, the Final Rule included a requirement that covered entities and business associates must obtain a written attestation that protected health information (PHI) is not being used or disclosed for a prohibited purpose related to reproductive healthcare before it can be used or disclosed in certain circumstances, including judicial and administrative proceedings, health oversight activities and law enforcement purposes.

Additionally, the Final Rule required all covered entities to update their HIPAA Notices of Privacy Practices and Policies and Procedures Manuals, and receive new training related to reproductive healthcare.

What Should Employers and Plan Sponsors Do Next?

Given that compliance with most of the Final Rule’s new obligations is required by December 23, 2024, covered entities, including plan sponsors and administrators of group health plans subject to HIPAA, should act quickly, and should discuss these requirements with their trusted advisors, including their Account Management Team at Corporate Synergies. Your Account Manager at Corporate Synergies can provide your organization with the updated HIPAA policies and training necessary for compliance with these requirements. ■

↓ Full Explanation Follows ↓

OCR Issues Model Attestation on Reproductive Healthcare; First Stage of Compliance Required by December 23

On April 26, 2024, the U.S. Department of Health and Human Services' Office of Civil Rights (OCR) issued a [final regulation](#) ("Final Rule") designed to support reproductive healthcare privacy (see our eAlert [here](#)). The Final Rule was issued in response to the U.S. Supreme Court's ruling in [Dobbs v. Jackson Women's Health Organization](#) (see our eAlert [here](#)), which overturned Roe v. Wade and concluded that states may restrict or ban abortion. To assist with complying with these rules, OCR recently published a [model attestation](#) form that can be used by plan sponsors prior to the use or disclosure of protected health information (PHI) that could be related to reproductive healthcare in certain circumstances protected by the Final Rule, including:

- Health oversight activities;
- Judicial and administrative proceedings;
- Law enforcement purposes; and
- Disclosures to coroners and medical examiners to identify deceased persons or determine cause of death.

In such circumstances, covered entities and their business associates cannot use or disclose PHI for the following purposes (each, a "Prohibited Purpose"):

- (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).

What is the Impact of the Updated Requirements?

The Final Rule modified the HIPAA Privacy Rule to better ensure privacy of PHI in reproductive healthcare matters. The updates include the new attestation requirement, updates to the HIPAA Notice of Privacy Practices and Policy and Procedures Manual, and updates to HIPAA training. These new requirements of the Final Rule were designed to ensure that the HIPAA Privacy Rule's standards for healthcare are upheld and that plan participants can get the healthcare they need without the threat of adverse action.

How Do These Updated Requirements Ensure Greater Healthcare Privacy?

The Final Rule expressly prohibits the use or disclosure of PHI by a covered healthcare provider, health plan, or healthcare clearinghouse—or their business associate ("Regulated Entities")—for any Prohibited Purpose, such as conducting any investigation into any person for the mere act of seeking, obtaining, providing or facilitating lawful reproductive healthcare.

Under the Final Rule, any Regulated Entity is required to obtain a signed attestation indicating that the information being requested is not being used for any Prohibit Purpose. The new attestation is subject to certain restrictions in terms of how it is written and distributed:

- The attestation is required to be written in plain English and it cannot contain more or less than what the applicable [regulations](#) provide.
- The attestation requires a description of the names of any individual or class of individuals whose information is being requested, the name of who the information is being requested from, the names of anyone who will be receiving the requested information, an explicit statement that this requested information will not be for a Prohibited Purpose, any legal recourse that the requesting party would be subject to for not following proper procedures or misrepresenting the proposed use, and the signature of the requesting party along with the date.
- The attestation can be completed electronically but cannot be provided with other documents in an effort to ensure delivery.
- HHS has published a model attestation with instructions for use which can be found on their website ([here](#)). This model attestation fills all relevant requirements set forth by HHS.

What Other Updates are Required?

The Final Rule also requires employers to update their HIPAA Policies and Procedures Manual, their Notice of Privacy Practices and requires updated HIPAA training.

- The HIPAA Policies and Procedures Manual will need to be changed to reflect the new procedures for handling requests for reproductive healthcare-related PHI and patient rights that come with it.
- The HIPAA Notice of Privacy Practices will need to be changed to reflect the new practices in place to protect the reproductive healthcare-related PHI of plan participants.
- Updated HIPAA training will be required for Regulated Entities to ensure that all PHI handlers and Privacy Officers are properly trained in how to handle these requests and ensure that the proper procedures are being followed.

When are these Updates Required?

HIPAA Regulated Entities must make these compliance updates to HIPAA policies and training by December 23, 2024.¹ The final compliance requirement—to update and issue a revised HIPAA Privacy Notice—is due by February 16, 2026.

What Should Employers and Plan Sponsors do Next?

Given that compliance with most of the Final Rule's new obligations is required by the end of 2024, covered entities, including plan sponsors and plan administrators of group health plans responsible for HIPAA compliance, should act quickly, and should discuss these requirements with their trusted advisors, including their Account Management Team at Corporate Synergies. Your Account Manager at Corporate Synergies can provide your organization with the updated HIPAA polices and training necessary for compliance with these requirements. ■

**If you have any additional questions,
please call your Corporate Synergies
Account Manager or 866.CSG.1719.**

1. Please note that our initial E-Alert on this development inadvertently indicated that this deadline was December 22, 2024 instead of December 23, 2024. This E-Alert has been updated accordingly.