

HIPAA Privacy Rule to Support Reproductive Health Care Privacy

June 2024

What does this regulation do, and why is it important?

- The Office for Civil Rights at the Department of Health and Human Services [finalized](#) the HIPAA Privacy Rule to Support Reproductive Health Care Privacy on April 26, 2024, in response to the threats to abortion access, health care privacy, and patient-provider trust that the *Dobbs v. Jackson Women’s Health Organization* decision unleashed. **The new final rule prohibits regulated entities from using or disclosing protected health information (PHI) for the purposes of conducting a criminal, civil, or administrative investigation into or imposing liability on anyone for the mere act of seeking, obtaining, providing, or facilitating lawful reproductive health care.**
- Pregnant people throughout the country live under the [spectrum of surveillance and criminalization](#) for their reproductive health decisions and pregnancy outcomes. Members of historically underserved and marginalized communities—and particularly low income, Black, and brown women—are [more likely](#) to be subjects of investigations and criminal proceedings related to reproductive health care.
- **This rulemaking should give patients greater assurance that their reproductive health information will remain confidential, better protect pregnant people who are forced to travel to receive care because of state abortion bans, and lessen the risk of patients being reported to law enforcement.**

When are HIPAA-covered entities prohibited from sharing reproductive health information?

- Against the backdrop of rising abortion and pregnancy criminalization, this rulemaking means that providers and other HIPAA-covered entities cannot disclose information about a patient’s reproductive health care if they received that care legally.
- **The prohibition on disclosures of PHI applies for reproductive health care when a patient receives care in a state where it is legal, when it is protected by federal law, or when it is presumed to be lawfully provided by someone other than a regulated entity that receives a request for PHI.**

- The “presumption of lawfulness” helps ensure that a provider in a state that bans abortion who receives a request for PHI is not required to make a determination about the lawfulness of any reproductive care that a patient received outside their practice.

Under what circumstances can reproductive health information be disclosed?

- **The final rule prohibits regulated entities from using or disclosing PHI potentially related to reproductive care without a valid, signed attestation that the disclosure is not for a legal proceeding against someone for accessing, providing, or facilitating lawful care.** This attestation is required for requests for PHI for health oversight activities, judicial and administrative proceedings, law enforcement purposes, and coroner and medical examiner disclosures.
- The regulation does not prevent disclosures of PHI to public health authorities for public health activities. This permission underscores the importance of striking an effective balance between ensuring patient privacy and confidentiality as well as facilitating appropriate information sharing to improve care coordination and health outcomes.

What does this rule mean for law enforcement access to reproductive health information?

- **The final rule only allows law enforcement officials to access PHI if they are not targeting someone for accessing, providing, or facilitating legal reproductive health care; if the disclosure is required by law; and if the disclosure meets all conditions of the Privacy Rule permission to use or disclose PHI as required by law.** This should give pregnant people who live in states that ban abortion greater protection to travel to receive the reproductive care they need and know that their PHI cannot be disclosed to authorities back home who may try to investigate them.
- The rulemaking also makes clear that PHI may be disclosed pursuant to an administrative request for which response is required by law, including an administrative subpoena or summons or a civil or authorized investigative demand.
- **Because disclosures to law enforcement are only prohibited for the expressed purpose of criminalizing patients for reproductive health care, [pregnancy criminalization](#) can still continue unabated, especially under the guise of addressing substance use during pregnancy.** Law enforcement officials could prosecute someone for their pregnancy outcome and circumvent the final rule’s prohibition by seeking records about a pregnant or postpartum patient’s substance use on the pretext of criminalizing them for the illicit use of substances.