



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

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

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).⁹

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.¹⁰

Model Instructions

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.¹¹
- 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.¹² 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

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 45 CFR 164.502(a)(5)(iii)(A).

¹⁰ 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).

¹¹ See 42 U.S.C. 1320d–6.

¹² See 45 CFR 164.509(b)(3) and (c)(iv).

substantial factual basis that the reproductive health care in question was not lawful under the specific circumstances in which it was provided.¹³

Information for the Covered Entity or Business Associate

- You 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.¹⁴
 - It is combined with other documents, except for documents provided to support the attestation.¹⁵
 - You know that material information in the attestation is false.¹⁶
 - 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.¹⁷
- If you later discover 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, you must stop making the requested use or disclosure.¹⁸
- You may not make a disclosure if the reproductive health care was provided by a person other than yourself 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.¹⁹
- You must obtain a new attestation for each specific use or disclosure request.²⁰
- You must maintain a written copy of the completed attestation and any relevant supporting documents.²¹

Additional HHS Guidance and References

<https://www.hhs.gov/hipaa/for-professionals/special-topics/reproductive-health/index.html>

<https://www.hhs.gov/hipaa/for-professionals/special-topics/reproductive-health/final-rule-fact-sheet/index.html>

¹³ See 45 CFR 164.502(a)(5)(iii)(B)(3), (C)(2).

¹⁴ See 45 CFR 164.509(b)(2)(ii).

¹⁵ See 45 CFR 164.509(b)(3).

¹⁶ See 45 CFR 164.509(b)(2)(iv).

¹⁷ See 45 CFR 164.509(b)(2)(v).

¹⁸ See 45 CFR 164.509(d).

¹⁹ See 45 CFR 164.502(a)(5)(iii)(B)(3), (C)(2).

²⁰ See 89 FR 32976, 33031.

²¹ See 45 CFR 164.530(j).