



## A New Way to Breach HIPAA

On April 26, 2024, the Department of Health and Human Services (“HHS”) published a final rule (“Rule”) to amend the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) Privacy Rule to provide new protections for reproductive health information given its ultra-sensitive nature. The Rule went into effect on June 25, 2024.

### Background

The Rule requires a group health plan (*i.e.*, Covered Entity) or a plan’s Business Associate (collectively “regulated entities”), that receive a request for protected health information (“PHI”) *potentially related* to reproductive health care (“rPHI”), to obtain a signed attestation (“Attestation”) from the requesting entity/individual stating that the use or disclosure is not for a prohibited purpose. The compliance date for the Rule is set for December 23, 2024.

### Attestation Requirement

HHS released a model Attestation, which includes background information and instructions for both the individual requesting the rPHI and the regulated entity. The form can be accessed here: <https://www.hhs.gov/sites/default/files/model-attestation.pdf>

Failure to obtain a signed Attestation where required, or if any part of the Attestation is deemed insufficient, on or after December 23, 2024, will be deemed an *automatic* HIPAA breach.

### Other Considerations

In addition to the Attestation requirement, the Rule will require modifications to existing HIPAA documents, such as: notices, policies and procedures, training materials, risk assessments, and business associate agreements. All updates should be implemented by December 23, 2024, as well, except for the Notice of Privacy Practices, which is set for a later date.

### Next Steps

In the post-*Dobbs* era, HHS is continually seeking to strengthen reproductive health care privacy. Covered entities should stay informed and seek counsel to ensure their policies regarding the treatment of rPHI are compliant with the Rule.

The content herein is provided for educational and informational purposes only and does not contain legal advice. Please contact our office if you have any questions regarding the new HIPAA Rule, or if you need assistance with updating your HIPAA documents, including existing Business Associate Agreements.

Dated: August 29, 2024



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