

# HIPAA & REPRODUCTIVE HEALTHCARE PRIVACY

## Overview:

- The United States Department of Health and Human Services (HHS) has the authority to modify the HIPAA privacy rule and has done so on several occasions including its latest modification in response to the SCOTUS decision in *Dobbs v. Jackson Women’s Health Organization*. In short, this modification creates a highly-protected subset of Protected Health Information (“PHI”) called Reproductive Health Information (“RHI”) designed to provide additional privacy protections relative to reproductive healthcare for women (the “RHI Final Rule”).
- RHI includes healthcare "that affects the health of an individual in all matters relating to the reproductive system and to its functions and processes." RHI will be interpreted broadly and includes, for example, contraceptive medications and devices, any care related to pregnancy or the prevention thereof, fertility/infertility care, medical treatment which affects the reproductive system, and any counseling related to these services.

## Who’s impacted by the RHI Final Rule?

- All medical practices and their business associates who maintain PHI which includes RHI, whether created by the medical practice or not.

## What if your patients’ records include RHI?

1. You cannot disclose RHI in connection with an investigation into any person for the mere act of seeking and/or obtaining legally rendered reproductive healthcare, or even to identify such person for this purpose. A patient can, however, authorize the disclosure of their RHI that would otherwise be prohibited.
2. You cannot disclose RHI for non-health purposes such as for: (i) health oversight activities (e.g., payer audits); (ii) judicial or administrative proceedings (e.g., court order, subpoena, government regulatory investigation, etc.); (iii) law enforcement activities; or (iv) requests from coroners and medical examiners, without first obtaining a signed and dated attestation from the requesting party which (i) affirms that the requested use or disclosure of PHI is not for a prohibited purpose, and (ii) includes a statement of notice of criminal penalties for persons who knowingly obtain or disclose individually identifiable health information in violation of HIPAA (the “RHI Attestation”). A model RHI Attestation form from HHS is attached.

## What are the deadlines for compliance?

December 23, 2024 .....RHI Final Rule including RHI Attestation

February 16, 2026 .....Updating your Notice of Privacy Practices to incorporate the added protections for RHI