

***Privacy in a Post-Dobbs World: The HIPAA
Privacy Rule and Reproductive Health Care***

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The HIPAA Privacy Rule

Generally HIPAA regulated entities cannot use or disclose protected health information (PHI) without an individual's signed authorization.



HOWEVER the Privacy Rule PERMITS (does not require) PHI disclosure about an individual in certain specific circumstances relating to:

Disclosures required by law

Disclosures for law enforcement purposes

Disclosures to prevent or lessen a serious threat to health or safety

Proposed Rulemaking

- Prohibit use/disclosure of PHI by a regulated entity if certain criteria is met and the disclosure is for:
 - A criminal, civil, or administrative investigation into or proceeding against any person in connection with seeking, obtaining, providing or facilitating reproductive health care; or
 - The identification of any person for the purpose of initiating such investigations/proceedings.
- Attestations required

Health Data Privacy



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Proposed Rulemaking

The investigation or proceeding must be in connection with any person seeking, obtaining, providing, or facilitating reproductive health care:

Outside of the state where the investigation or proceeding is authorized and where such health care is lawful in the state in which it is provided; or

That is protected, required or authorized by Federal law, regardless of the state in which such health care is provided; or

In the state in which the investigation or proceeding is authorized and that is permitted by the law of that state.

Additional Considerations

Gender affirming care

Scope of prohibited disclosures

Individuals who request their own PHI

Strength of attestation requirements