



Other Permitted Disclosures of PHI That Potentially Relate to Reproductive Health Care

PHI that potentially relates to reproductive health care may be disclosed without a participant's authorization when: (1) specific requirements are satisfied; (2) the Health Plan receives a valid attestation, as described below; and (3) the Privacy Official provides prior approval. The HIPAA privacy rule and Health Plan's Privacy Use and Disclosure Procedures describe specific requirements that must be met before these types of disclosures may be made. Permitted are disclosures of PHI potentially related to reproductive health care—

- for judicial and administrative proceedings;
- for law-enforcement purposes;
- for public health activities;
- uses or disclosures required by law; and
- to coroners and medical examiners.

“Reproductive health care” means health care that affects the health of a participant in all matters related to the reproductive system and to its functions and processes. A valid attestation must: (1) be written in plain language; (2) contain all the content elements required by the HIPAA privacy rule; (3) not contain any additional content; (4) not be a compound attestation; (5) not contain materially false information (of which the Plan has actual knowledge); and (6) not be for a use or disclosure that is for a prohibited purpose, despite the language of the attestation (as a reasonable covered entity or Business Associate would determine). If, during the course of using or disclosing PHI that potentially relates to reproductive health care in reasonable reliance on a facially valid attestation, the Plan discovers information reasonably showing that any representation made in the attestation was materially false, leading to a use or disclosure for a prohibited purpose, then the Plan must cease the use or disclosure.

Prohibited Use and Disclosure of PHI

1. Prohibition on Sale of PHI. The Plan will not sell PHI in a manner not permitted by the privacy rule without the authorization of each applicable participant;

2. Prohibition Related to PHI That Constitutes Genetic Information. The Plan will not use or disclose genetic information for underwriting purposes;

3. Prohibition on Uses and Disclosure of PHI for Certain Activities Involving Reproductive Health Care. PHI disclosed to the Plan or the Company under a signed authorization that meets the requirements of the HIPAA privacy rule:

(a) The Health Plan will not use or disclose PHI for any of the following activities: (1) to conduct a criminal, civil, or administrative investigation into any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care; (2) to impose criminal, civil, or administrative liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care; or (3) to identify any person for the purposes describe above.

(b) This reproductive health care prohibition applies only when the Plan reasonably determines: (1) the reproductive health care is lawful under applicable state or federal law under the circumstances in which it was provided; or (2) the reproductive health care presumption applies. The Plan will presume that reproductive health care provided by another person is lawful unless: (1) the Plan has actual knowledge that the reproductive health care was not lawful; or (2) the Plan is supplied factual information by the person requesting the use or disclosure of PHI that demonstrates a substantial factual basis that the reproductive health care was not lawful under the specific circumstances in which it was provided.