



## Responding to Legal Requests for Records That Are Potentially Related to Reproductive Health Care

**Purpose:** To provide guidance to staff who receive requests for patient records to help them identify records that may be released routinely upon request and records that are subject to additional protections because they potentially relate to reproductive health care (RHC) This guidance is intended to ensure compliance with the HIPAA Privacy Rule for Reproductive Health Care 45 CFR § 164.502, the Vermont Shield Law 18 VSA § 1881(c), and the Vermont Patient Privilege statute 12 VSA § 1612.

For each Type of Request listed below, records should not be released until each numbered requirement listed under Authorization Needed is confirmed. If a request for records is denied, in whole or in part, designated staff or legal counsel should communicate to the requestor the reason that some or all the records may not be disclosed due to the failure to satisfy the applicable requirement(s). Subpoenas, court orders, and government requests for records should not be ignored.

**\*Attestation** means the requestor must complete an attestation confirming that the records that are potentially related to RHC are not being sought for a prohibited purpose.

<https://www.hhs.gov/sites/default/files/model-attestation.pdf>

**\*\*Court order** means an order or subpoena signed by a judge issued by a Vermont State Court or Federal Court. Out-of-state court orders and subpoenas are not effective in Vermont without the approval of a Vermont State Court that issues an interstate subpoena or court order.

Type of Request	Purpose	Authorization Needed
Routine request for records (with or without RHC)	Treatment, payment, or health care operations (TPO)	Disclose records requested for TPO in the ordinary course of business
Any request for records with authorization signed by the patient or patient representative (with or without RHC)	Patient directed request for records	1. Confirm that authorization is HIPAA compliant 2. Determine if patient signature appears authentic
Attorney Letter (private attorney) (with or without RHC)	Attorney seeking to obtain records for legal proceeding	1. Letter must include patient authorization or court order**



## Responding to Legal Requests for Records That Are Potentially Related to Reproductive Health Care

Subpoenas		
Out-of-State Subpoena (with or without RHC)	Attorney from another state seeking medical records for a legal proceeding in another state	<ol style="list-style-type: none"> <li>1. Subpoena must be properly served unless there is an agreement to waive formal service</li> <li>2. Out-of-State subpoena must be supported by a court order**</li> <li>3. Letter must include attestation* if records are potentially related to RHC</li> <li>4. Subpoena must include evidence that requestor provided affected patient with notice and an opportunity to object to disclosure</li> <li>5. Court order must include determination that good cause exists to require disclosure of information related to RHC</li> <li>6. Confirm validity of court order** with leader or legal counsel</li> </ol>
Subpoena for records without RHC	Attorney seeks records for legal proceeding in Vermont	<ol style="list-style-type: none"> <li>1. Subpoena must be properly served unless there is an agreement to waive formal service</li> <li>2. Subpoena must include evidence that requestor provided affected patient with notice and an opportunity to object to disclosure</li> <li>3. Subpoena must be signed by a judge or be supported by a court order**</li> <li>4. Confirm validity of subpoena and court order** with leader or legal counsel</li> </ol>
Subpoena for records that potentially relate to RHC	Attorney seeks records for legal proceeding in Vermont	<ol style="list-style-type: none"> <li>1. Subpoena must be properly served unless there is an agreement to waive formal service</li> <li>2. Subpoena must include attestation* from requestor</li> <li>3. Subpoena must include evidence that requestor provided patient with notice and an opportunity to object to disclosure</li> <li>4. Subpoena must be supported by a court order**</li> <li>5. Court order must include determination that good cause exists to require disclosure of information related to legally protected health information</li> <li>6. Confirm adequacy of attestation and court order with leader or legal counsel</li> </ol>



**Responding to Legal Requests for Records  
That Are Potentially Related to Reproductive Health Care**

<b>Court Orders</b>		
Court Order** for records that do not relate to RHC	Legal proceeding	Disclose records in accordance with organizational policy or review court order with leader or legal counsel.
Court Order** for records that potentially relate to RHC	Legal proceedings	<ol style="list-style-type: none"> <li>1. Court order must include determination that good cause exists to require disclosure of information related to legally protected health information</li> <li>2. Requestor must provide attestation*</li> <li>3. Confirm adequacy of court order and attestation with leader or legal counsel</li> </ol>
<b>Government Agency Requests for Records</b>		
In-person verbal request without a search warrant or subpoena, or letter from government agency requesting records.	<p>Health care oversight by Division of Licensing and Protection, Office of Professional Regulation, Board of Medical Practice</p> <p>Abuse and neglect investigations by Adult Protective Services, Dept. for Children and Families, Disability Rights VT</p> <p>Medical Examiner</p>	<ol style="list-style-type: none"> <li>1. In-person, obtain business card, or employer ID card from the investigator</li> <li>2. Confirm authority to access or obtain records by referring to organizational policy, or by contacting leader or legal counsel</li> <li>3. Disclose records unless they are potentially related to RHC</li> <li>4. Obtain attestation* if records are potentially related to RHC</li> </ol> <p>Note: In general, law enforcement may only obtain records with patient authorization, search warrant, or other court order</p>
Search warrant	Criminal investigation	<ol style="list-style-type: none"> <li>1. Request copy of search warrant</li> <li>2. Request to call legal counsel immediately</li> <li>3. Do not attempt to prevent investigator from entering property or securing area to be searched</li> </ol> <p>Inform legal counsel if records are potentially related to RHC so that legal counsel may ask for attestation* and address court order requirements</p>



**Responding to Legal Requests for Records  
That Are Potentially Related to Reproductive Health Care**

Civil Investigative Demand	Civil investigation	<ol style="list-style-type: none"> <li>1. Confirm agency has authority to obtain requested records</li> <li>2. Review with legal counsel</li> <li>3. Disclose records unless they are potentially related RHC</li> <li>4. If records are potentially related to RHC, legal counsel may obtain attestation* from requestor</li> </ol>
----------------------------	---------------------	--

<sup>i</sup> Vermont law: Reproductive Health Care means all supplies, care, and services, of a medical, behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic, preventative, rehabilitative, or supportive nature, including medication, relating to pregnancy, contraception, assisted reproduction, pregnancy loss management, or the termination of a pregnancy.

HIPAA: Reproductive Health Care means health care that affects the health of an individual in all matters relating to the reproductive system and to its functions and processes. This definition shall not be construed to set forth a standard of care for or regulate what constitutes clinically appropriate reproductive health care.

Gender affirming care: This guidance may be used for requests for records related to gender affirming care, but the federal attestation\* requirement does not apply to records related to gender affirming care.

Vermont law: Gender affirming care means all supplies, care, and services of a medical, behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic, preventative, rehabilitative, or supportive nature, including medication, relating to the treatment of gender dysphoria and gender incongruence