

Comparison of the Vermont Shield Law and the HIPAA Privacy Rule for Reproductive Health Care

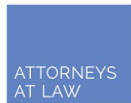
The Vermont Shield Law and the HIPAA Privacy Rule to Support Reproductive Health Care create purpose-based prohibitions on the use of information related to Reproductive Health Care (RHC) when the information may be used in a legal proceeding against a patient or a provider. Under both laws, RHC is only treated differently from all other PHI when the information related to RHC may be used for a prohibited purpose in legal proceedings.

Covered entities and business associates (CE) will need to identify requests for records that may implicate a prohibited purpose and, before disclosing the RHC, either

- obtain a patient authorization to disclose the RHC; or
- receive a valid attestation from the requestor, **and** a court order that compels the disclosure of the RHC.

Issue	VT Shield Law 18 VSA §1881(c)	HIPAA 45 CFR § 164.502
Prohibition	Prohibits disclosure of RHC for use in legal proceedings without patient authorization unless the disclosure is required by law or compelled by a court order.	Prohibits disclosure of RHC for use in legal proceedings without patient authorization unless the requestor provides an attestation that information will not be used against patient or provider
Compliance Date	May 10, 2023	December 23, 2024
Definition of Reproductive Health Care VT legally protected health care activity includes reproductive health care and gender-affirming care ¹	RHC means all supplies, care, and services of a medical, behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic, preventative, rehabilitative, or supportive nature, including medication, <i>relating to pregnancy, contraception, assisted reproduction, pregnancy loss management, or the termination of a pregnancy.</i>	RHC means health care that affects the health of an individual <i>in all matters relating to the reproductive system and to its functions and processes.</i> This definition shall not be construed to set forth a standard of care for or regulate what constitutes clinically appropriate reproductive health care. 45 CFR 160.103
Restriction on disclosure	Prohibits disclosure of RHC for use in a civil or criminal action or probate, administrative, or legislative proceeding unless the disclosure of RHC is (1) authorized by the patient; (2) required by federal or Vermont law; or (3) compelled by a court order.	Prohibits disclosure of RHC to be used to conduct an investigation or to impose criminal, civil, or administrative liability for the mere act of seeking, obtaining, providing, or facilitating RHC when the CE determines that the RHC is lawful under state and/or Federal law *
Process to permit disclosure	Court Order	Attestation

¹ Under Vermont law, the same protections apply to gender-affirming health care services, which 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.



without patient authorization (Court order and an Attestation)	A CE may not disclose RHC without a court order compelling disclosure based on a court's determination that good cause exists to require disclosure of the RHC (unless the disclosure is authorized by the patient or disclosure is required by law).	A CE must receive a valid attestation from the person requesting the disclosure of RHC attesting that the RHC will not be used for a prohibited purpose, and the CE must believe that the attestation is not false. HHS Model Attestation Form: https://www.hhs.gov/sites/default/files/model-attestation.pdf
Disclosures required by law	For disclosures that are required by law, a court order or a patient authorization is not required.	Disclosures that are required by law must be supported by an attestation that the RHC will not be used for a prohibited purpose.

*For subpoenas for medical records, HIPAA requires that subpoenas be supported by evidence that the requestor made reasonable efforts to notify the patient to provide an opportunity to object to the disclosure. 45 CFR § 164.512(e). And the Vermont patient privilege statute requires a judge to sign a subpoena or order the disclosure of medical records. 12 VSA § 1612.

New Notice of Privacy Practice (NPP) Requirements, Compliance Date February 16, 2026

The NPP must describe other laws that are more stringent than HIPAA in regards to the use or disclosure of PHI, such as 42 CFR Part 2 and the Vermont Shield Laws, and the permitted or required uses and disclosures of affected information.

The NPP must include:

- a description, and at least one example, of the uses and disclosures of RHC that are prohibited by the rule;
- a description, and at least one example, of the types of uses and disclosures that require an attestation;
- a statement providing notice that PHI that is disclosed may be subject to redisclosure by the recipient and no longer protected by HIPAA.

If the covered entity creates or receives Part 2 records the NPP must include

- a statement that the covered entity may not disclose Part 2 information in civil, criminal, administrative, or legislative proceedings without consent or a court order after notice and an opportunity to be heard.
- if the covered entity intends to use Part 2 information for fundraising, the individual must first be provided a clear and conspicuous opportunity to opt-out of fundraising communications.

A covered entity's participation in an Organized Health Care Arrangement (OHCA) does not remove any of the covered entity's obligations in relation to Part 2 or any corresponding patient rights.