

## Compliance Office

401 Fifth Avenue, Suite 1220  
Seattle, WA 98104

206-263-8255 Fax 206-205-3945  
TTY Relay: 711

www.kingcounty.gov/health

## Attestation Instructions Regarding a Requested Use or Disclosure of Protected Health Information Potentially Related to Reproductive Health Care

Public Health Seattle & King County (PHSKC) is a HIPAA covered entity. When a HIPAA covered entity<sup>1</sup> or business associate<sup>2</sup> receives a request for protected health information (PHI)<sup>3</sup> potentially related to reproductive health care,<sup>4</sup> it must obtain a signed attestation. Reproductive health care includes any healthcare that affects an individual's reproductive system and its functions, including but not limited to, contraception, emergency contraception, pregnancy management, fertility and infertility diagnosis and treatment, diagnosis and treatment of conditions that affect the reproductive system, and gender-affirming treatment.

The attestation must clearly state the requested use or disclosure is not for the prohibited purposes described below, where the request is for PHI for any of the following purposes (examples are not meant to be limiting):

- Health oversight activities<sup>5</sup> (audits, compliance investigations, licensure or disciplinary action)
- Judicial or administrative<sup>6</sup> proceedings (court order, subpoena, state agency requests)
- Law enforcement<sup>7</sup> (investigations, warrant)
- Regarding decedents, disclosures to coroners and medical examiners<sup>8</sup> (autopsy, death investigation)

**Prohibited Purposes.** Covered entities and their business associates may not use or disclose PHI for the following purposes:

- (1) To conduct a criminal, civil, or administrative investigation into any person for the mere act of seeking, obtaining, providing, or facilitating lawful reproductive health care.
- (2) To impose criminal, civil, or administrative liability on any person for the mere act of seeking, obtaining, providing, or facilitating lawful reproductive health care.
- (3) To identify any person for any purpose described in (1) or (2).<sup>9</sup>

**The prohibition applies when** the reproductive health care at issue (1) is lawful under Washington state law<sup>10</sup> or the law of the state in which such health care is provided under the circumstances in which it is provided, (2) is protected, required, or authorized by Federal law, including the United States Constitution, under the circumstances in which such health care is provided, regardless of the state in which it is provided, or (3) is provided by another person and presumed lawful.<sup>11</sup>

---

<sup>1</sup> See 45 CFR 160.103 (definition of "Covered entity").

<sup>2</sup> See 45 CFR 160.103 (definition of "Business associate").

<sup>3</sup> See 45 CFR 160.103 (definition of "Protected health information").

<sup>4</sup> See 45 CFR 160.103 (definition of "Reproductive health care") and RCW 7.115.010(3) (definition of "Protected health care services").

<sup>5</sup> See 45 CFR 164.512(d).

<sup>6</sup> See 45 CFR 164.512(e).

<sup>7</sup> See 45 CFR 164.512(f).

<sup>8</sup> See 45 CFR 164.512(g)(1).

<sup>9</sup> See 45 CFR 164.502(a)(5)(iii)(A).

<sup>10</sup> See RCW 7.115.020(2)(b).

<sup>11</sup> See 45 CFR 164.502(a)(5)(iii)(B), (C). For more information on the presumption and when it applies, see 45 CFR 164.502(a)(5)(iii)(C).

# Attestation Instructions Regarding a Requested Use or Disclosure of Protected Health Information Potentially Related to Reproductive Health Care

## Information for the Person Requesting the PHI

- By signing the PHSKC Reproductive Health Care Request Attestation, you are verifying that you are not requesting PHI for a prohibited purpose and acknowledging that criminal penalties may apply if untrue.<sup>12</sup>
- You may not add content that is not required or combine the attestation form with another document except where another document is needed to support your statement that the requested disclosure is not for a prohibited purpose.<sup>13</sup> For example, if the requested PHI is potentially related to reproductive health care that was provided by someone other than the covered entity or business associate from whom you are requesting the PHI, you may submit a document that supplies information that demonstrates a substantial factual basis that the reproductive health care in question was unlawful in both Washington and the state in which it was provided under the specific circumstances in which it was provided.<sup>14</sup>

## Information for the Covered Entity or Business Associate

- You may not rely on the attestation to disclose the requested PHI if any of the following is true:
  - It is missing any required element or statement or contains other content that is not required.<sup>15</sup>
  - It is combined with other documents, except for documents provided to support the attestation.<sup>16</sup>
  - You know that material information in the attestation is false.<sup>17</sup>
  - A reasonable covered entity or business associate in the same position would not believe the requestor's statement that the use or disclosure is not for a prohibited purpose as described above.<sup>18</sup>
- If you later discover information that reasonably shows that any representation made in the attestation is materially false, leading to a use or disclosure for a prohibited purpose as described above, you must stop making the requested use or disclosure.<sup>19</sup>
- You may not make a disclosure if the reproductive health care was provided by a person other than yourself and the requestor indicates that the PHI requested is for a prohibited purpose as described above, unless the requestor supplies information that demonstrates a substantial factual basis that the reproductive health care was unlawful in both Washington and the state in which it was provided under the specific circumstances in which it was provided.<sup>20</sup>
- You must obtain a new attestation for each specific use or disclosure request.<sup>21</sup>
- You must maintain a written copy of the completed attestation and any relevant supporting documents.<sup>22</sup>

---

<sup>12</sup> See 42 U.S.C. 1320d-6.

<sup>13</sup> See 45 CFR 164.509(b)(3) and (c)(iv).

<sup>14</sup> See 45 CFR 164.502(a)(5)(iii)(B)(3), (C)(2).

<sup>15</sup> See 45 CFR 164.509(b)(2)(ii).

<sup>16</sup> See 45 CFR 164.509(b)(3).

<sup>17</sup> See 45 CFR 164.509(b)(2)(iv).

<sup>18</sup> See 45 CFR 164.509(b)(2)(v).

<sup>19</sup> See 45 CFR 164.509(d).

<sup>20</sup> See 45 CFR 164.502(a)(5)(iii)(B)(3), (C)(2).

<sup>21</sup> See 89 FR 32976, 33031.

<sup>22</sup> See 45 CFR 164.530(j).