



**POLICY INFORMATION**

**Policy Title:** Use or Disclosure of PHI Potentially Related to Reproductive Health Care - Attestations

**Departmental Owner:** Chief Compliance, Audit, and Privacy Officer

**Version Effective Date:** 02/01/2025

**Last Reviewed:** 02/01/2025

**SCOPE**

This policy applies to the following individuals and/or groups:

- All of the below categories
- All Employees  CT Employees  NY Employees  Remote Employees  Contractors  Volunteers  Students/Interns  Vendors

This policy applies to all above listed Nuvance Health workforce members including but not limited to the following locations:

- All of the below entities
- Nuvance Health Systems
- Danbury Hospital (including New Milford Hospital Campus)  Health Quest Systems, Inc. “(HQSI)”  Western Connecticut Home Care, Inc (“WCHN”)
- Northern Dutchess Hospital  Health Quest Home Care, Inc  Western Connecticut Health Network Physician Hospital Organization ACO, Inc.
- Norwalk Hospital  Hudson Valley Cardiovascular Practice, P.C. (aka The Heart Center) (“HVCP”)  Western Connecticut Home Care, Inc
- Putnam Hospital  Other HQSI-affiliated Entities Not Listed  Other WCHN-affiliated Entities Not Listed
- Sharon Hospital  Nuvance Health Medical Practices (NHMP PC, NHMP CT, ENYMS & HVCP)
- Vassar Brothers Medical Center

**POLICY STATEMENT/PURPOSE**

The purpose of this policy is to ensure that Nuvance Health complies with “HIPAA Privacy Rule Final Rule to Support Reproductive Health Care Privacy”<sup>1</sup> and the "Model Attestation for a Requested Use or Disclosure of Protected Health Information Potentially Related to Reproductive Health Care"<sup>2</sup> as provided by the U.S. Department of Health and Human Services (HHS).

This policy outlines the procedures for obtaining and verifying attestations for requests potentially involving PHI related to reproductive health care to protect the privacy of Nuvance Health patients and prevent unauthorized use or disclosure.

**DEFINITIONS**

**Covered Individual:** This term refers to all Nuvance Health workforce members, business affiliates, and agents. Workforce members shall include any of the following individuals at Nuvance Health: Members of the Nuvance Health Board and the boards of any Nuvance Health related entity; President/Chief Executive Officer; administrators; managers, officers; employees, affiliates; medical staff members; appointees; volunteers; personnel; interns; students, trainees, and

<sup>1</sup> See HIPAA Privacy Rule To Support Reproductive Health Care Privacy ([Federal Register :: HIPAA Privacy Rule To Support Reproductive Health Care Privacy](https://www.federalregister.gov/documents/2020/01/27/2020-01844/hipaa-privacy-rule-to-support-reproductive-health-care-privacy))

<sup>2</sup> See Model Attestation for a Requested Use or Disclosure of Protected Health Information Potentially Related to Reproductive Health Care (<https://www.hhs.gov/sites/default/files/model-attestation.pdf>)

any individual whose conduct is under direct control of Nuvance Health whether or not they are paid by Nuvance Health. Business Affiliates shall include any non-workforce member, contractor, independent contractor, vendor, person, subcontractor or third-party, who or that, in acting on behalf of Nuvance Health: (i) delivers, furnishes, prescribes, directs, orders, authorizes, or otherwise provides Federal healthcare program items and services; (ii) performs billing or coding functions; (iii) contributes to Nuvance Health's entitlement to payment under Federal healthcare programs; and (iv) is affected by one or more of Nuvance Health's risk areas through the Business Affiliate's interaction with, or performance of their role, functions, and responsibilities or provision of contracted services at Nuvance Health. Agents include individuals or entities that have entered into an agency relationship with Nuvance Health. Agents fall under the category of either Workforce Member or Business Affiliate depending on their role, functions, and responsibilities.

**Protected Health Information (PHI):** Any information, including demographic data, that relates to the individual's past, present, or future physical or mental health or condition, the provision of health care to the individual, or the past, present, or future payment for the provision of health care to the individual, and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual.

**Reproductive Health Care:** Reproductive health care means health care, as defined in this section, 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. (See 45 CFR 160.103)

**Attestation:** A formal statement verifying that the requested use or disclosure of PHI is not for prohibited purposes as defined by HIPAA and HHS guidelines.

Regulated entities are required to obtain an attestation when it receives a request for PHI **potentially related to reproductive health care** to obtain an attestation from the requestor that the use or disclosure is not for a prohibited purpose. Applies when the request for PHI is for:

- Health oversight activities
- Judicial and administrative proceedings
- Law enforcement purposes
- Disclosures to coroners and medical examiners

*See HIPAA Glossary for further details*

## POLICY

When any Nuvance Health Covered Individual receives a request from a third-party for the use and disclosure of protected health information (PHI) for which an authorization or opportunity to agree or object is not required as outlined under 45 CFR 164.512 and potentially related to reproductive health care<sup>3</sup>, a signed attestation must be obtained that clearly states 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:

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

- Health oversight activities<sup>4</sup>
- Judicial or administrative proceedings<sup>5</sup>
- Law enforcement<sup>6</sup>
- Regarding decedents, disclosures to coroners and medical examiners<sup>7</sup>

An attestation is not required in instances where the request is accompanied by a validly signed authorization to release PHI.

**For Connecticut residents**, the signed authorization must include the authorization to release reproductive health information.

**Prohibited Purposes.** Nuvance Health may not use or disclose PHI without a validly executed authorization to release PHI potentially related to reproductive health care 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>8</sup>

**The prohibition applies** when the reproductive health care at issue:

- (1) is lawful under 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>9</sup>

<sup>4</sup> See 45 CFR 164.512(d).

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

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

<sup>7</sup> See 45 CFR 164.512(g)(1).

<sup>8</sup> See 45 CFR 164.502(a)(5)(iii)(A).

<sup>9</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).

## PROCEDURE

### Receiving Requests:

- Upon receiving a request for PHI potentially related to reproductive health care from a (i) health oversight agency for oversight activities authorized by law; (ii) court or administrative tribunal in any judicial or administrative proceeding; (iii) law enforcement official, or (iv) a coroner or medical examiner, a Nuvance Health Information Management (HIM) leader, or other appropriately designated Covered Individual, must review the request to determine if it falls under the scope of this policy.
- Where the request is not accompanied by a validly signed authorization to release PHI and is seeking reproductive health care information, an attestation must be obtained for each specific use or disclosure request.<sup>10</sup>

### Requesting Attestation:

- If the request is determined to be within scope, the party requesting use or disclosure must be provided with the instructions and model attestation form (*see Appendix A: Model Attestation Regarding a Requested Use or Disclosure of Protected Health Information Potentially Related to Reproductive Health Care*)
- The party requesting use or disclosure must provide a completed and signed attestation form, verifying that the PHI will not be used for prohibited purposes.

### Verification:

- The attestation form must be reviewed by the Nuvance Health HIM leader or appropriately designated staff member to ensure it is fully completed and signed.
- Nuvance Health may request additional documentation to support the attestation if necessary.
- Nuvance Health must 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>11</sup>
  - It is combined with other documents, except for documents provided to support the attestation.<sup>12</sup>
  - The material information in the attestation is known to be false.<sup>13</sup>
  - A reasonable Covered Individual in a similar position would not believe the requestor's statement that the use or disclosure is not for a prohibited purpose as described above.<sup>14</sup>
- If Nuvance Health later discovers 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, Nuvance Health will immediately stop making the requested use or disclosure.<sup>15</sup>

<sup>10</sup> See 89 FR 32976, 33031.

<sup>11</sup> See 45 CFR 164.509(b)(2)(ii).

<sup>12</sup> See 45 CFR 164.509(b)(3).

<sup>13</sup> See 45 CFR 164.509(b)(2)(iv).

<sup>14</sup> See 45 CFR 164.509(b)(2)(v).

<sup>15</sup> See 45 CFR 164.509(d).

- Nuvance Health must not make the disclosure if the reproductive health care was provided by person or entity other than Nuvance Health 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 not lawful under the specific circumstances in which it was provided.<sup>16</sup>

### Approval or Denial:

- If the attestation is verified and the request is deemed legitimate, the PHI may be disclosed as requested.
- If the attestation is incomplete, unverified, or if there is suspicion of prohibited use, the request must be denied, and Nuvance Health must inform the requestor of the denial and the reasons for it.

### Documentation:

- All requests, attestations, and related documentation must be retained in accordance with the Nuvance Health's record retention policy.<sup>17</sup>

### Training:

- All relevant staff must be trained on this policy and procedure to ensure compliance and understanding of the requirements.

### Questions:

- Covered Individuals are highly encouraged to contact the Office of Corporate Compliance or their legal services liaison with any questions or concerns regarding an attestation they have received.

## ENFORCEMENT

All Covered Individuals whose responsibilities are affected by this policy are expected to be familiar with the basic procedures and responsibilities created by this policy. Failure to comply with this policy and related procedure may result in remedial and/or disciplinary action, up to and including termination of any employment or other relationship.

## REFERENCES

- Health Insurance Portability and Accountability Act (HIPAA), 45 CFR Parts 160 and 164
- HIPAA Privacy Rule to Support Reproductive Health Care Privacy<sup>18</sup>
- HHS Model Attestation for a Requested Use or Disclosure of Protected Health Information Potentially Related to Reproductive Health Care<sup>19</sup>

<sup>16</sup> See 45 CFR 164.502(a)(5)(iii)(B)(3), (C)(2).

<sup>17</sup> See 45 CFR 164.530(j).

<sup>18</sup> See HIPAA Privacy Rule to Support Reproductive Health Care Privacy; <https://www.federalregister.gov/documents/2024/04/26/2024-08503/hipaa-privacy-rule-to-support-reproductive-health-care-privacy#footnote-264-p33005>

<sup>19</sup> See Model Attestation for a Requested Use or Disclosure of Protected Health Information Potentially Related to Reproductive Health Care <https://www.hhs.gov/sites/default/files/model-attestation.pdf>

APPROVAL

Signed by:

*Jared B Gaynor*

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**Signature**

1/31/2025

**Date**

## APPENDIX A: MODEL ATTESTATION 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 this attestation, you are verifying that you are not requesting PHI for a prohibited purpose and acknowledging that criminal penalties may apply if untrue<sup>20</sup>.

You may not add content that is not required or combine this 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>21</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 not lawful under the specific circumstances in which it was provided<sup>22</sup>.

<sup>20</sup> See 42 U.S.C. 1320d-6.

<sup>21</sup> See 45 CFR 164.509(b)(3) and (c)(iv).

<sup>22</sup> See 45 CFR 164.502(a)(5)(iii)(B)(3), (C)(2).



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

*The entire form must be completed for the attestation to be valid.*

Name of person(s) or specific identification of the class of persons to receive the requested PHI.
<i>e.g., name of investigator and/or agency making the request</i>
Name or other specific identification of the person or class of persons from whom you are requesting the use or disclosure.
<i>e.g., name of covered entity or business associate that maintains the PHI and/or name of their workforce member who handles requests for PHI</i>
Description of specific PHI requested, including name(s) of individual(s), if practicable, or a description of the class of individuals, whose protected health information you are requesting.
<i>e.g., visit summary for [name of individual] on [date]; list of individuals who obtained [name of prescription medication] between [date range]</i>

I attest that the use or disclosure of PHI that I am requesting is not for a purpose prohibited by the HIPAA Privacy Rule at 45 CFR 164.502(a)(5)(iii) because of one of the following (check one box):

- The purpose of the use or disclosure of protected health information is **not** to investigate or impose liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care or to identify any person for such purposes.
- The purpose of the use or disclosure of protected health information **is** to investigate or impose liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care, or to identify any person for such purposes, but the reproductive health care at issue was **not lawful** under the circumstances in which it was provided.

I understand that I may be subject to criminal penalties pursuant to 42 U.S.C. 1320d-6 if I knowingly and in violation of HIPAA obtain individually identifiable health information relating to an individual or disclose individually identifiable health information to another person.

*Signature of the person requesting the PHI*

\_\_\_\_\_ Date \_\_\_\_\_

*If you have signed as a representative of the person requesting PHI, provide a description of your authority to act for that person.*

\_\_\_\_\_