

1. Background

The Final Rule to modify the HIPAA Privacy Rule to support reproductive healthcare privacy went into effect on June 25, 2024, but the Office of Civil Rights did not enforce it until December 23, 2024. The new rule was in response to the U.S. Supreme Court overturning *Roe v. Wade* on June 24, 2022, in the decision in *Dobbs v. Jackson Women's Health Organization*.

The Final Rule intends to increase privacy protections by prohibiting covered entities or their business associates (such as Ciox, Datavant, MRO, Sharecare, etc.) from using or disclosing PHI potentially related to reproductive health in the scenarios below.

1. If the request is by:
 - a. Law enforcement,
 - b. A health oversight agency,
 - c. Subpoena or court order as part of a judicial or administrative process or
 - d. A coroner or medical examiner
2. If the protected health information is being used for:
 - a. Conducting a criminal, civil, or administrative investigation into any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care.
 - b. Imposing criminal, civil, or administrative liability on any person for seeking, obtaining, providing, or facilitating reproductive health care.
 - c. Identifying any person for above.

According to the reproductive health privacy rule, providers and their business associates are prohibited from disclosing health information potentially related to reproductive health unless they obtain an attestation from the requestor.

To reduce risk and prevent a potential HIPAA Privacy Violation, covered entities and release of information vendors have taken the stance that an attestation must accompany all requests for protected health information, regardless of whether the records contain reproductive health information. The requestor must sign an attestation to verify that they are not requesting the PHI for a prohibited purpose and acknowledge that criminal penalties may apply if this is untrue.

The approach is heavy-handed and unreasonable because:

1. Third-party HIPAA Authorizations and Individual Right of Access requests are treated similarly when the requests differ.
2. Not all requested PHI will contain any reproductive health information.
3. The Final Rule only states that attestation is needed for information potentially related to reproductive health.
4. If directed by the written request, covered entities and their business associates should redact or remove reproductive health information. However, this is highly unlikely because reviewing and redacting information in a patient's chart before disclosure will require significant staff training, additional labor, and increased costs for the provider or their business associates.

2. Individual Right of Access Exception

The Final Rule did not change an individual's or their personal representative's right to access information through a patient access request and direct it to a designated third party.

- Per HIPAA Rule 45 CFR §164.524, the individual or their personal representative "has a right of access to inspect and obtain a copy of protected health information about the individual...."
- Per Section 13405(e)(1) of the HITECH Act, the individual or their personal representative has the right to direct a covered entity to transmit an electronic copy of protected health information in an EHR directly to an entity or person designated by the individual, provided that such choice is clear, conspicuous, and specific.

The Individual Right of Access request issued through Arctrieval entirely complies with HIPAA 45 CFR §164.524.

- Per HIPAA Rule 45 CFR §164.524, only psychotherapy notes are excluded from an individual right of access request.
- The third paragraph in the release clearly states, "I hereby, specifically, authorize the release of any sensitive information including, but not limited to...reproductive health care services information...."

Requiring an individual or their personal representative to attest that they will potentially face criminal penalties for using their information in a prohibited manner is absurd.

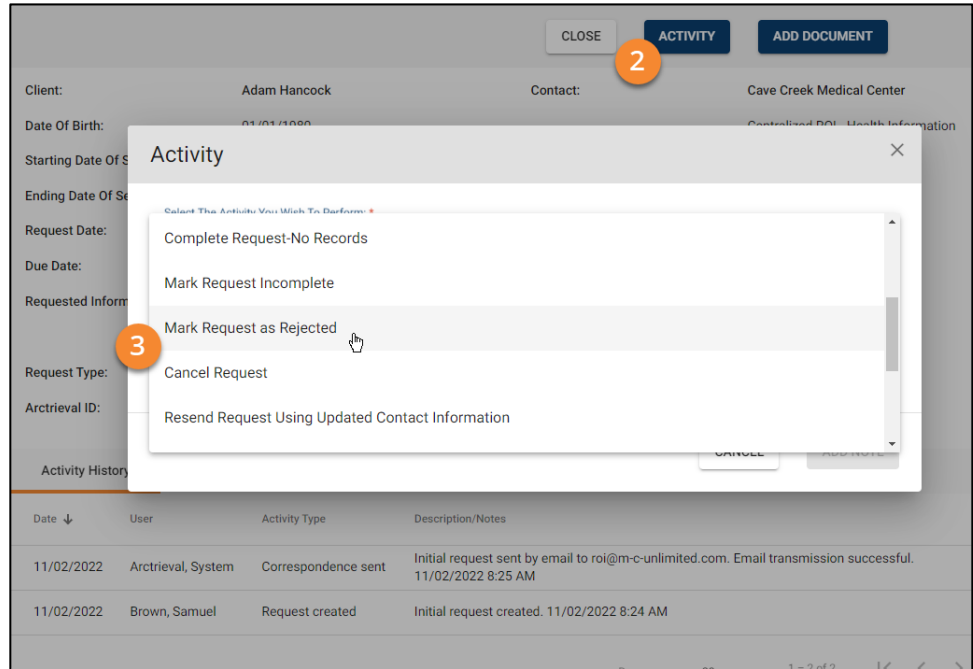
3. Position to Take with Providers Requiring an Attestation

- The Final Rule to support reproductive healthcare privacy did not change an individual's or their personal representative's right to access information. Ask the provider to show you where the modification altered any part of HIPAA Rule 45 CFR §164.524.
- The individual right of access request clearly requests and authorizes access to sensitive information, including reproductive health care services information.
- Requiring the individual or their personal representative to complete another form or provide an attestation is an unreasonable measure that impedes access to protected health information. The individual right of access request is clear, conspicuous, and specific.
- The attestation requirement only applies to protected health information requested by a third party using a third-party HIPAA Authorization, per HIPAA 45 CFR §164.508. The model attestation provided by the Department of Health and Human Services focuses on law enforcement and other agencies. The model attestation states, "Name of person(s) or specific identification of the class of persons to receive the requested PHI. (e.g., name of investigator and/or agency making the request):"

4. Responding to the Rejection for Existing Request—Quick Steps

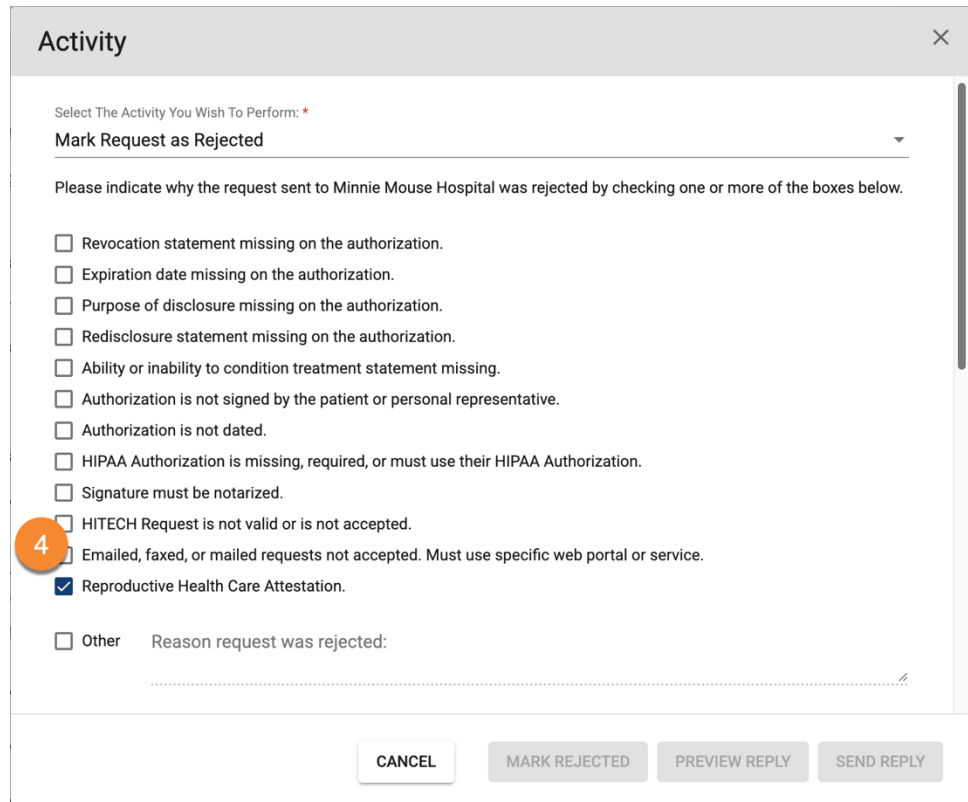
Arctrieval added an item to the rejected request process as part of a request activity. Below is a summary of the Mark Request as Rejected process in Arctrieval. The detailed guide is available at www.Arctrieval.com/support.

1. Select the Request that was rejected.
2. Click the Activity button.
3. Select "Mark Request as Rejected" from the dropdown menu.



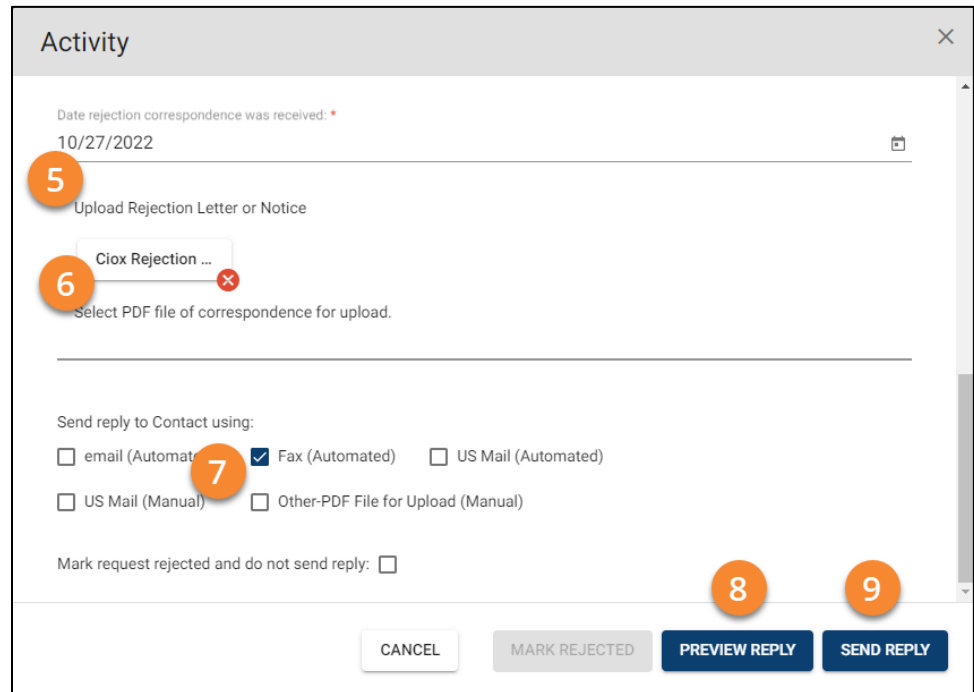
The screenshot shows the Arctrieval interface for a request. The 'Activity' button is highlighted with an orange circle and the number 2. A dropdown menu is open, showing options: 'Complete Request-No Records', 'Mark Request Incomplete', 'Mark Request as Rejected' (highlighted with an orange circle and the number 3), 'Cancel Request', and 'Resend Request Using Updated Contact Information'. The background shows client information for Adam Hancock and Cave Creek Medical Center.

4. Select the Reproductive Health Care Attestation reason.



The screenshot shows the 'Activity' form with the 'Mark Request as Rejected' option selected. Below the selection, there is a list of reasons for rejection with checkboxes. The 'Reproductive Health Care Attestation' option is checked, highlighted with an orange circle and the number 4. Other options include 'Revocation statement missing on the authorization', 'Expiration date missing on the authorization', 'Purpose of disclosure missing on the authorization', 'Redisclosure statement missing on the authorization', 'Ability or inability to condition treatment statement missing', 'Authorization is not signed by the patient or personal representative', 'Authorization is not dated', 'HIPAA Authorization is missing, required, or must use their HIPAA Authorization', 'Signature must be notarized', 'HITECH Request is not valid or is not accepted', 'Emailed, faxed, or mailed requests not accepted. Must use specific web portal or service.', and 'Other'. At the bottom, there are buttons for 'CANCEL', 'MARK REJECTED', 'PREVIEW REPLY', and 'SEND REPLY'.

5. Scroll down and enter the date of the rejection letter.
6. Click the Choose a File button to upload a PDF of the rejection letter.
7. Select one or more delivery methods.
8. Click the Preview Reply button to review the document before sending it.
9. Click the Send Reply button to send the rejection letter to the Contact.



The screenshot shows a web form titled "Activity" with a close button (X) in the top right corner. The form contains the following elements:

- A text field labeled "Date rejection correspondence was received:" with the date "10/27/2022" entered. A calendar icon is on the right. Callout 5 points to this field.
- A section titled "Upload Rejection Letter or Notice" containing a "Choose a File" button (labeled "Ciox Rejection ...") with a red 'x' icon. Callout 6 points to this button.
- A text label "Select PDF file of correspondence for upload." below the file selection area.
- A section titled "Send reply to Contact using:" with four checkboxes: "email (Automated)", "Fax (Automated)" (which is checked), "US Mail (Automated)", and "US Mail (Manual)". Callout 7 points to the "Fax (Automated)" checkbox.
- A checkbox labeled "Other-PDF File for Upload (Manual)".
- A checkbox labeled "Mark request rejected and do not send reply:".
- A bottom bar with four buttons: "CANCEL", "MARK REJECTED", "PREVIEW REPLY", and "SEND REPLY". Callout 8 points to the "PREVIEW REPLY" button and callout 9 points to the "SEND REPLY" button.

5. New Requests—HIPAA Reproductive Health Rule Exception Template

Arctriever added a HIPAA Reproductive Health Rule Exception document template to all accounts on December 26, 2024, and is available for use. The document is automatically enabled for all accounts but must be selected when sending a request, as shown in the image.

Please note that the HIPAA Rules Right Of Access document differs from the HIPAA Reproductive Health Rule Exception.

Send New Request

Starting Date of Service: *

Ending Date of Service: *

1/9/2025

Additional Information or Instructions for Cover Letter:

Optional System Generated Document for Request:

☒ HIPAA Rules Right Of Access

☒ HIPAA Reproductive Health Rule Exception

☐ HIPAA Reproductive Health Rule Attestation

☐ Custodian Of Records Declaration

☐ Patient Financial Account Verification

CANCEL

SAVE AS DRAFT

PREVIEW REQUEST

SEND REQUEST

6. New Requests—HIPAA Reproductive Health Rule Attestation—Client Signature



While not the recommended best practice, Arctrieval added an Attestation Regarding a Requested Use or Disclosure of Protected Health Information Potentially Related to Reproductive Health Care for very difficult providers. While the attestation is unnecessary for an individual right of access request, it may be the most expeditious method to get the necessary records.

Arctrieval added the HIPAA Reproductive Health Rule Attestation—Client Signature document template to all accounts on January 9, 2025, and is available for use. The document is automatically enabled for all accounts but must be selected when sending a request, as shown in the image.

The Client or Personal Representative signs the attestation because they are issuing the request. The model attestation from the Department of Health and Human Services clearly states that the attestation must be signed by the person making the request.

Send New Request

Starting Date of Service: *

Ending Date of Service: *

2/4/2025

Additional Information or Instructions for Cover Letter:

Optional System Generated Document for Request:

☒ HIPAA Rules Right Of Access

☐ HIPAA Reproductive Health Rule Exception

☒ HIPAA Reproductive Health Rule Attestation - Client Signature

☐ HIPAA Reproductive Health Rule Attestation - User Signature

☐ Custodian Of Records Declaration

CANCEL

SAVE AS DRAFT

PREVIEW REQUEST

SEND REQUEST

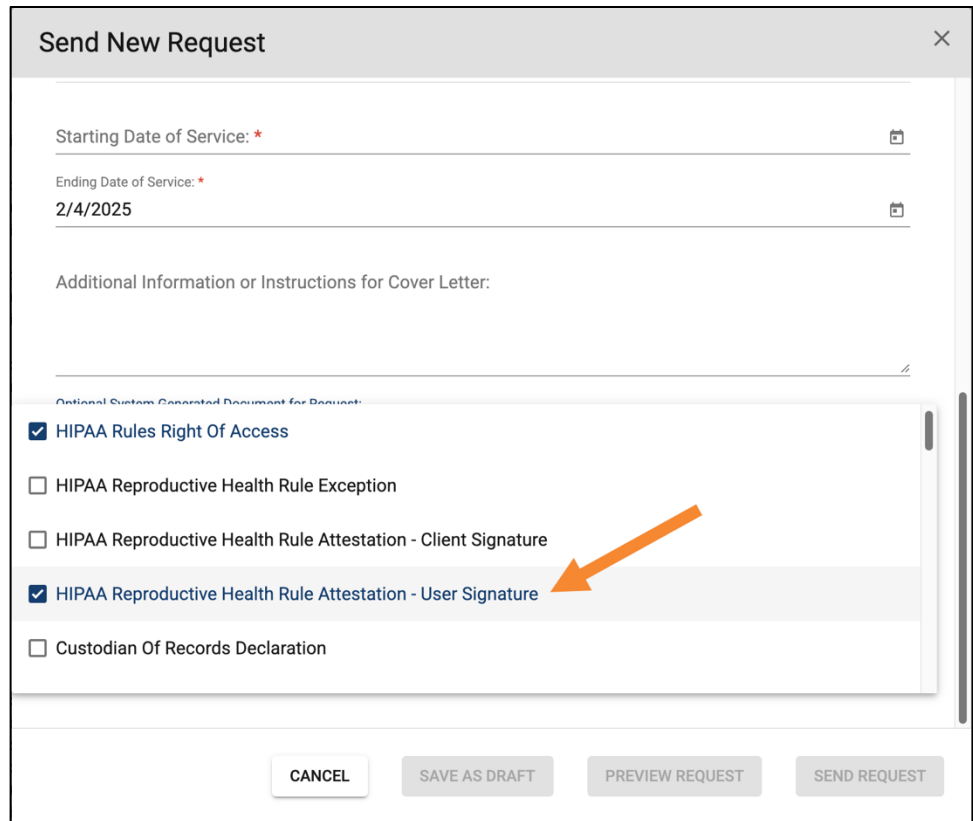
7. New Requests—HIPAA Reproductive Health Rule Attestation—User Signature

Unfortunately, some providers find the exception document or an attestation signed by the client or the personal representative insufficient. These providers fail to recognize the difference between an individual right of access request and a third-party request, insisting that the attestation be signed by a firm representative even though the firm is not requesting the records.

Arctrieval added the HIPAA Reproductive Health Rule Attestation—User Signature document template to all accounts on

January 27, 2025, and is available for use. The document is automatically enabled for all accounts but must be selected when sending a request, as shown in the image.

If the HIPAA Reproductive Health Rule Attestation—User Signature document template is not at the top of the document list, scroll down to find it. Your Arctrieval account administrator can reorder the document template so it appears at the top.



Send New Request

Starting Date of Service: *

Ending Date of Service: *
2/4/2025

Additional Information or Instructions for Cover Letter:

Optional System Generated Document for Request:

- ☒ HIPAA Rules Right Of Access
- ☐ HIPAA Reproductive Health Rule Exception
- ☐ HIPAA Reproductive Health Rule Attestation - Client Signature
- ☒ HIPAA Reproductive Health Rule Attestation - User Signature
- ☐ Custodian Of Records Declaration

CANCEL SAVE AS DRAFT PREVIEW REQUEST SEND REQUEST



The User's signature must be in the user profile for the attestation to work. If the User's signature is not in their profile, then the signature portion of the attestation will be blank.

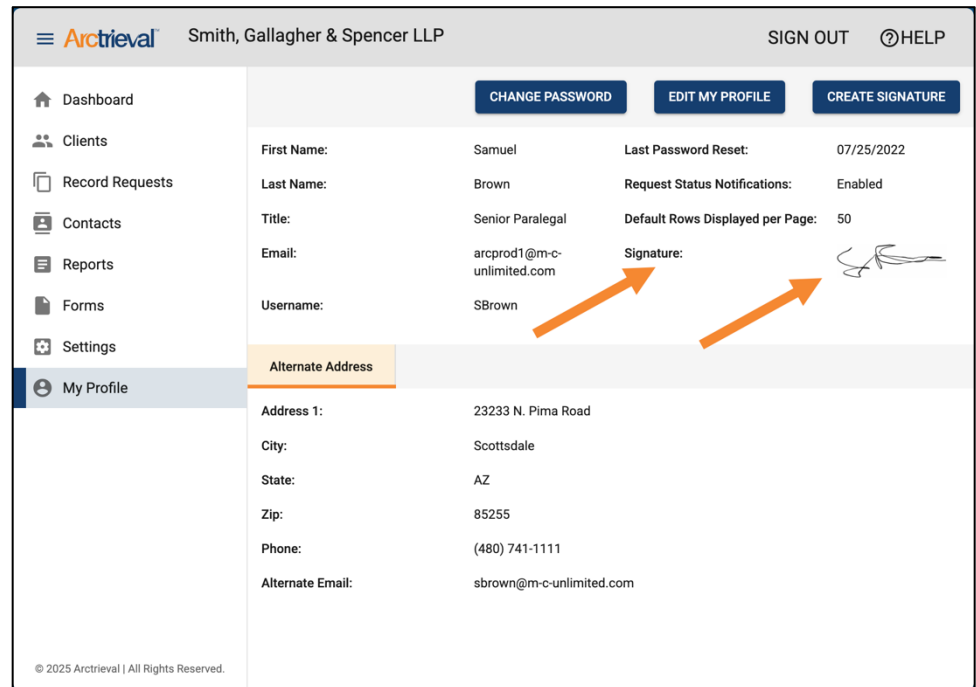
8. Automatic Inclusion in New Requests

User signatures are either added by your Arctrieval account administrator or by individual users through the My Profile option in the left-hand menu. If a user's signature is present in their account, it will be displayed on the My Profile page shown in the image.

If the User's signature is absent, it can be added in one of two ways.

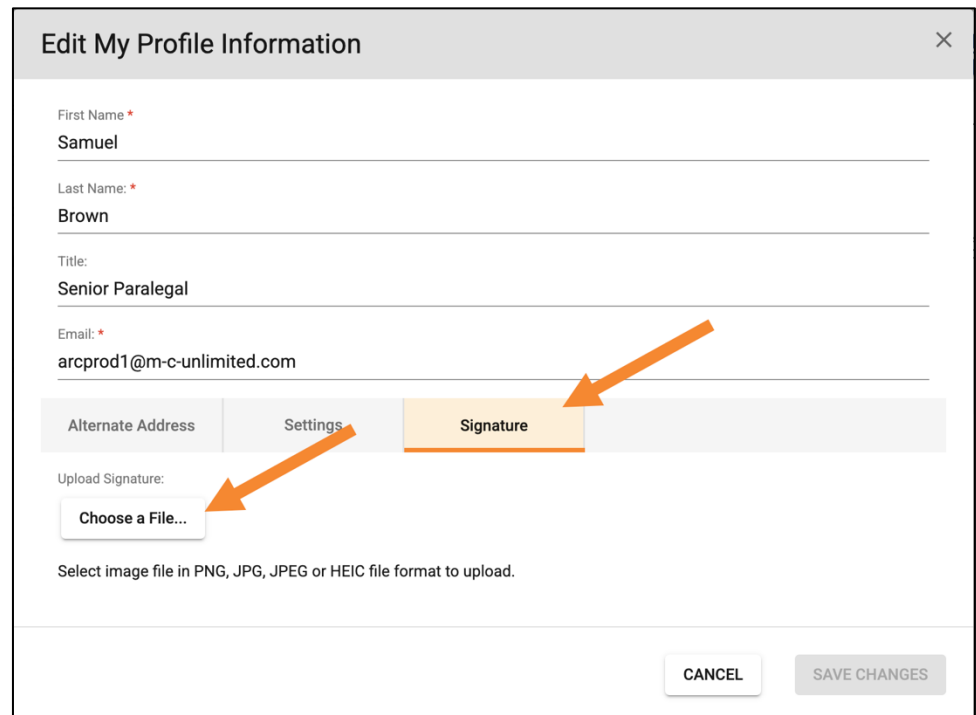
First, click the Create Signature button to send a link to your email address. You can access this link on a mobile or touch-screen-enabled device, and you can allow Arctrieval to capture a digital image of your signature.

The second is to click Edit My Profile and upload an image file of your signature, as shown in the image. Then, click Choose a File... to select the file.



The screenshot shows the Arctrieval user interface for the 'My Profile' page. The user is Samuel Brown, a Senior Paralegal at Smith, Gallagher & Spencer LLP. The page includes a sidebar with navigation options: Dashboard, Clients, Record Requests, Contacts, Reports, Forms, Settings, and My Profile (selected). The main content area displays personal information, contact details, and a signature. Two orange arrows point to the 'Signature' field and the 'CREATE SIGNATURE' button.

Field	Value
First Name	Samuel
Last Name	Brown
Title	Senior Paralegal
Email	arcprod1@m-c-unlimited.com
Username	SBrown
Last Password Reset	07/25/2022
Request Status Notifications	Enabled
Default Rows Displayed per Page	50
Signature	[Handwritten Signature]



The screenshot shows the 'Edit My Profile Information' modal. The modal contains fields for First Name, Last Name, Title, and Email. Below these fields are three tabs: 'Alternate Address', 'Settings', and 'Signature'. The 'Signature' tab is selected, and an orange arrow points to the 'Choose a File...' button.

First Name *
Samuel

Last Name: *
Brown

Title:
Senior Paralegal

Email: *
arcprod1@m-c-unlimited.com

Alternate Address | Settings | **Signature**

Upload Signature:
Choose a File...

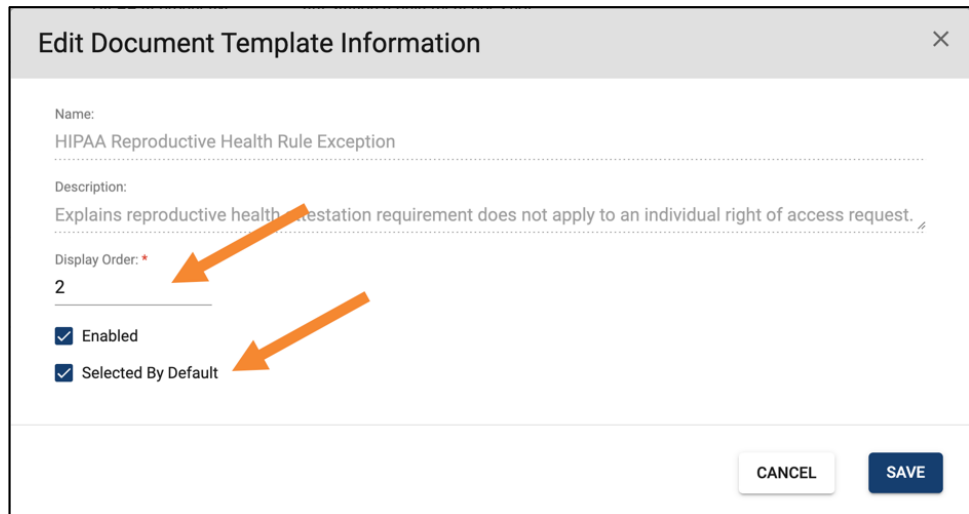
Select image file in PNG, JPG, JPEG or HEIC file format to upload.

CANCEL SAVE CHANGES

9. Automatic Inclusion in New Requests

The Arctrieval Account Administrator can adjust the Document Template Settings to automatically send the HIPAA Reproductive Health Rule Exception or HIPAA Reproductive Health Rule Attestation with every new request. Here are the steps.

1. Click on Settings in the left-hand menu.
2. Click the Document Templates tab in the menu bar at the top. Depending on your screen size and resolution, you may need to use the arrow indicator to scroll to the right if you do not see the Document Templates tab.
3. In the Search box, enter "HIPAA" to display the HIPAA-related document templates.
4. Click the Edit button in the row for the HIPAA Reproductive Health Rule Exception or HIPAA Reproductive Health Rule Attestation.
5. In the Edit Document Template Information dialog box, check the box next to Selected By Default, as shown in the image.
6. We also recommend changing the value in the document's Display Order to "2" or "3" so that the HIPAA-related documents are shown next to each other.



Edit Document Template Information [X]

Name:
HIPAA Reproductive Health Rule Exception

Description:
Explains reproductive health attestation requirement does not apply to an individual right of access request.

Display Order: *
2

☒ Enabled

☒ Selected By Default

CANCEL SAVE

10. Model Rejection Response Letter

A model response letter is below if you must create correspondence outside the Arctrieval system.

Date

Facility Name

Address

City, State Zip

Dear Custodian of Records,

We received your correspondence dated **correspondence_date** regarding a reproductive health attestation for our client, **client name**, who has a date of birth **MM/DD/YYYY**, per the Final Rule HIPAA Privacy Rule to Support Reproductive Health Care Privacy.

Client name's request was issued per HIPAA 45 CFR §164.524, and the requested attestation is not required for the following reasons.

- The Final Rule to support reproductive healthcare privacy did not change an individual's or their personal representative's right to access information. Please review the final rule; you will see no changes to HIPAA Rule 45 CFR §164.524. Here is a link to the Final Rule:
<https://www.federalregister.gov/d/2024-08503>
- The individual or their personal representative clearly requests and authorizes access to sensitive information, including information about reproductive health care services.
- Per HIPAA Rule 45 CFR §164.524, only psychotherapy notes are expressly excluded from an individual right of access request. Therefore, reproductive health information is included with all other protected health information subject to a patient access request.
- Requiring the individual or their personal representative to complete an attestation is an unreasonable measure that impedes access to protected health information. The individual right of access request is clear, conspicuous, and specific.

Modifications to the HIPAA Privacy Rule can sometimes be confusing. This information is provided as educational material to assist in reviewing processes and educating staff on the reproductive health information disclosure requirements regarding patient access requests.

We hereby redeliver the individual right of access request for immediate processing to avoid a formal complaint to the Office of Civil Rights for the potential HIPAA Privacy Rule violation.

Please contact our office if you have any questions. We will be happy to assist you.

Sincerely yours,

Your Name

Firm Name