

## Judicial and Administrative Proceedings

### Introduction

This paper provides guidance on uses and disclosures of protected health information (PHI) for judicial and administrative proceedings. These are referred to collectively as legal proceedings. A covered entity (CE) or its business associate (BA) may use or disclose PHI for legal proceedings regardless of whether it is party to those proceedings, provided the applicable requirements of the Health Insurance Portability and Accountability Act (HIPAA) Rules are met.

### Definitions

Business Associate (BA): A person or entity that performs certain functions or activities that involve the use or disclosure of protected health information on behalf of, or provides services to, a covered entity.

Covered Entity (CE): A health plan or a health care provider who transmits any health information in electronic form in connection with a standard transaction.

Disclosure: The release, transfer, provision of access to, or divulging in any other manner of PHI outside the entity holding the information.

Protected Health Information (PHI): Individually identifiable health information transmitted or maintained by electronic or any other form or medium. PHI excludes individually identifiable health information in employment records held by a covered entity in its role as employer.

Qualified Protective Order: An order by a court or an administrative tribunal, or a stipulation by the parties to the court or administrative proceeding, that:

1. Prohibits the parties from using or disclosing the PHI for any purpose other than the litigation or proceeding for which such information was requested; and
2. Requires the return to the CE or destruction of the PHI (including all copies made) at the end of the litigation or proceeding.

Use: With respect to PHI, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.



## Discussion

A CE or BA may disclose a patient's PHI during the course of a legal proceeding in response to:

1. An order of a court or administrative tribunal so long as the disclosure only includes the PHI authorized by the order
2. A subpoena, discovery request, or other lawful process, not accompanied by a court or administrative order, if the requestor provides to the CE or BA that efforts have been made to:
  - a. Notify the individual of the request; or
  - b. Obtain a qualified protective order.

### Notifying the Individual of the Request

The requestor should provide the CE or BA with written documentation that it has made a good faith attempt to notify the individual of the request. The notification should include enough information about the purpose of the request to allow the individual to make an informed decision regarding whether or not to object to the court/administrative tribunal. If the individual does file an objection, the disclosure or request for information must not violate the resolution of the objection. If no objection is filed, the documentation should show the deadline for the objection has passed without action.

### Obtaining a Qualified Protective Order

To obtain a Qualified Protective Order, the requestor must pursue either of two avenues. First, the requestor may provide the CE or BA with documentation that the parties involved in the dispute have agreed to it, and have presented it to the court or administrative tribunal overseeing the dispute. Second, the requestor may provide the CE or BA with documentation that a qualified protective order has been requested from the overseeing court or administrative tribunal.

Please note, however, if the requestor is unable to provide documentation, a CE or BA may disclose PHI in response to a subpoena, discovery request, etc., not accompanied by a court or administrative order, if the CE or BA itself, makes reasonable efforts to provide notice to the individual or to seek a qualified protective order.

## Resources/ References

45 CFR 164.512(e), Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule

Department of Defense (DoD) 6025.18-R, "DoD Health Information Privacy Regulation," January 24, 2003 (or successor issuance), Section C7.5

