

Judicial and administrative proceedings checklist

INSTRUCTIONS: The following is the text of 164.512 (e) (containing the requirements for disclosing protected health information for judicial and administrative proceedings).

Check off each element if disclosing PHI for these purposes or trying to determine if you need to use an authorization.

§ 164.512 Uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required.

(e) Standard: disclosures for judicial and administrative proceedings.

1. Permitted disclosures. A covered entity may disclose protected health information in the course of any judicial or administrative proceeding:
 - i. In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order; or
 - ii. In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if:
 - A. The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request; or
 - B. The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order that meets the requirements of paragraph (e)(1)(v) of this section.
 - iii. For the purposes of paragraph (e)(1)(ii)(A) of this section, a covered entity receives satisfactory assurances from a party seeking protecting health information if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:
 - A. The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address);
 - B. The notice included sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection to the court or administrative tribunal; and
 - C. The time for the individual to raise objections to the court or administrative tribunal has elapsed, and:
 1. No objections were filed; or
 2. All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.
 - iv. For the purposes of paragraph (e)(1)(ii)(B) of this section, a covered entity receives satisfactory assurances from a party seeking protected health information, if the covered entity receives from such party a written statement and accompanying documentation demonstrating that:
 - A. The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to

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- the court or administrative tribunal with jurisdiction over the dispute;
 - or
 - B. The party seeking the protected health information has requested a qualified protective order from such court or administrative tribunal.
 - v. For purposes of paragraph (e)(1) of this section, a qualified protective order means, with respect to protected health information requested under paragraph (e)(1)(ii) of this section, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:
 - A. Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and
 - B. Requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.
 - vi. Notwithstanding paragraph (e)(1)(ii) of this section, a covered entity may disclose protected health information in response to lawful process described in paragraph (e)(1)(ii) of this section without receiving satisfactory assurance under paragraph (e)(1)(ii)(A) or (B) of this section, if the covered entity makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of paragraph (e)(1)(iii) of this section or to seek a qualified protective order sufficient to meet the requirements of paragraph (e)(1)(iv) of this section.
2. Other uses and disclosures under this section. The provisions of this paragraph do not supersede other provisions of this section that otherwise permit or restrict uses or disclosures of protected health information.