

HIPAA Compliance Checklist – Subpoena

When a Subpoena or Order is used to request production of records use track 1) or 2) below, depending on the type of document used.

- 1) **Court Order or Subpoena Signed by Judge** 45 CFR 164.512(e)(1)(i) An order or subpoena signed by a judge of a court or administrative tribunal requires no further assurances or notification to the individual. The signature can be a stamp of the judge's signature. Workers' Compensation Appeals Board subpoenas are always signed by a judge. Civil subpoenas are usually signed by an attorney.

Or...

- 2) **Subpoena or Discovery Request Signed by Attorney** 45 CFR 164.512(e)(ii) Further assurance is necessary by either track **A** or **B** below:

- A. NOTICE** 45 CFR 164.512(e)(ii)(A). Notice can be satisfied by proof of service of either **i**) a Notice To Consumer form or **ii**) Declaration:

- i. Proof of service** showing that the individual (or his/her attorney) was served a copy of the subpoena or discovery request and a reasonable time to object has expired. A **Notice To Consumer** document under CCP 1985.3 satisfies this requirement. "Reasonable time" to object is not defined by the HIPAA code.

Or...

- ii. Declaration** 45 CFR 164.512(e)(iii). A declaration by the requesting party showing 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. The declaration must establish:

- 45 CFR 164.512(e)(iii)(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), and;
- 45 CFR 164.512(e)(1)(iii)(B). The notice includes 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;
- 45 CFR 164.512(e)(1)(iii)(B). The **time** for the individual to raise objections to the court or administrative tribunal has **elapsed**, and;
- No objections** were filed; or 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.

Or...

- B. QUALIFIED PROTECTIVE ORDER** 45 CFR 164.512(e)(1)(ii)(B) There is a separate check sheet for qualified protective orders.

Go to <http://www.defensepro.com/whitepapers/hipaa.html> for additional information