

# Legislative Brief

## HIPAA – Disclosures of Personal Health Information



### Can a covered entity disclose PHI in response to a subpoena or discovery request that is not accompanied by a court order?

Yes, if the covered entity has received satisfactory assurance that reasonable efforts have been made to:

- ensure the individual who is the subject of the PHI has been given **notice** of the request **OR**
- secure a **qualified protective order**.<sup>1</sup>

Alternatively, the covered entity makes reasonable efforts to provide notice to the individual or seek a qualified protective order on its own.

#### Situation 1: Notice to the individual

A covered entity will have received satisfactory assurance that reasonable efforts were made to ensure the individual has been given notice of the PHI request if it has a written statement and documentation that:

- The requesting party made a good faith attempt to provide written notice to the individual (or mailed the notice to the individual's last known address) **AND**
- The notice included sufficient information regarding the litigation or proceeding to let the individual raise an objection to the court **AND**
- The time for the individual to raise an objection has lapsed **and** no objections were filed or the objections have been resolved in a manner that is consistent with the requested disclosures.

The written statement can be included in the subpoena itself or provided separately.

#### Situation 2: Qualified protective order

A "qualified protective order" is a court order or stipulation by the parties that:

- prohibits the parties from using or disclosing PHI for any reason other than the litigation proceeding for which it was requested **and**
- requires the return or destruction of the PHI (including copies) at the end of the litigation or proceeding.

A covered entity will have received satisfactory assurance that reasonable efforts have been made to secure a qualified protective order if it has a written statement and documentation that:

- the parties have agreed to a qualified protective order and presented it to the court **OR**
- the party seeking the PHI has requested a qualified protective order from the court.

*This Benefit Management Solutions Inc. Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.*

<sup>1</sup> See 45 C.F.R. § 164.512(e)(1)(ii).