

**CHECKLIST FOR DISCLOSURE OF DOCUMENTS CONTAINING  
PROTECTED HEALTH INFORMATION  
Subpoena, Court Order, Warrant**

Request Received Date: \_\_\_\_\_.

Checklist Completion Date: \_\_\_\_\_.

<b>Subpoena for Documents Containing PHI or to Appear in Court with Documents Containing PHI</b>
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**\* ANTHC cannot disclose documents containing PHI based upon a subpoena UNLESS it qualifies as a court order. To qualify, all boxes must be checked, unless otherwise indicated.**

**\* If the subpoena does not meet the requirements below, promptly forward it to Legal and DO NOT provide the records until Legal has approved the disclosure.**

**\* If the subpoena requests witness testimony instead of records or testimony beyond that about records, promptly forward it to Legal.**

- Check one of the following:
  - If the subpoena is from an Alaska State Court (e.g., Alaska Superior Court or Alaska District Court), it was served in person or by registered/certified mail;
  - If the subpoena is from the U.S. District Court, it was served in person; or
  - If the subpoena was sent by fax or e-mail, Risk or Legal has verified that service was accepted by the following person: \_\_\_\_\_.

***Service by fax or e-mail is generally NOT sufficient. See Alaska R. Civ. P. 45(c); Alaska R. Crim. P. 17(d); Fed. R. Civ. P. 45(b); Fed. R. Crim. P. 17(d).***

- Accompanied by either (1) the patient's signed, written authorization to release the requested records or (2) a court order authorizing the release of the requested records that is signed by a judge or a magistrate (not a court clerk or an attorney). *See* 5 U.S.C. § 552a(b); Checklist for Court Order for Disclosure of PHI.
- The records requested are NOT records covered by 42 C.F.R. Part 2 (substance use disorder patient records), which may not be disclosed pursuant to a subpoena alone, but requires a court order meeting Part 2's requirements (*see* Checklist for Disclosure of 42 C.F.R. Part 2 Records).
- If the patient's records to be disclosed include "psychotherapy notes," the subpoena must **specifically** say that psychotherapy notes are to be disclosed. 45 C.F.R. §§ 164.508(a)(2)(ii), 164.512(a)(2) & 164.512(e)(1)(i).
- ANTHC has verified that the patient's provider/counselor does not object to disclosure of the psychotherapy notes.

- ANTHC has disclosed only the information requested by the subpoena, and only the minimum amount of information necessary to comply with the subpoena. *See* 45 C.F.R. §§ 164.502(b) & 164.512(e)(1)(i).
- If the subpoena requests someone to appear in court with the medical records, ANTHC has contacted the party that issued the subpoena and offered to produce the records and a declaration of certified records pursuant to Evidence Rule 902(11) instead of sending someone personally to appear in court. *See* Fed. R. Evid. 902(11); Alaska R. Evid. 902(11).
- If an in-person court appearance is required, ANTHC has requested reimbursement of witness fees and, if necessary, travel expenses and per diem (if not earlier provided). *See* 28 U.S.C. § 1821; Alaska R. Admin. P. 7.

**Court Order for Disclosure of Documents Containing PHI**  
**45 C.F.R. § 164.512(e)(1)(i)**

**\*All boxes must be checked, unless otherwise indicated.**

**\* This section applies ONLY to court orders, not subpoenas.**

**\* If a court order does not meet the requirements below, promptly forward the court order to Legal for review and DO NOT provide the records until Legal has approved the disclosure.**

- Signed by a judge or magistrate (not by a court clerk or an attorney). *See* 5 U.S.C. § 552a(b).
- The records requested are NOT covered by 42 C.F.R. Part 2 (substance use disorder patient records) which requires specific elements for a valid court order (*see* Checklist for Disclosure of 42 C.F.R. Part 2 Records).
- ANTHC has disclosed only the information expressly stated in the court order, and only the minimum amount of information necessary to comply with the court order. *See* 45 C.F.R. §§ 164.502(b) & 164.512(e)(1)(i).
- If the patient's records to be disclosed include "psychotherapy notes," the order must **specifically** say that psychotherapy notes are to be disclosed. 45 C.F.R. §§ 164.508(a)(2)(ii), 164.512(a)(2) & 164.512(e)(1)(i). "Psychotherapy notes" should be located in a separate section of the chart. They are defined as:

Notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and **that are separated from the rest of the individual's medical record.** [This] excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date. 45 C.F.R. § 164.501.

**Warrant for Documents Containing PHI**  
**45 C.F.R. § 164.512(f)(1)(ii)**

**\*All boxes must be checked, unless otherwise indicated. If a warrant does not meet the requirements below, promptly forward the warrant for legal review and DO NOT provide the records until Legal has approved disclosure.**

- Signed by a judge or magistrate. *See* 5 U.S.C. § 552a(b).
- The records requested are NOT records covered by 42 C.F.R. Part 2 (substance use disorder patient records), which may not be disclosed pursuant to a warrant alone, but requires a court order meeting Part 2's requirements (*see* Checklist for Disclosure of 42 C.F.R. Part 2 Records).
- If the patient's records to be disclosed include "psychotherapy notes," the warrant must **specifically** say that psychotherapy notes are to be disclosed. 45 C.F.R. §§ 164.508(a)(2)(ii), 164.512(a)(2) & 164.512(e)(1)(i).
  - ANTHC has verified that the patient's provider/counselor does not object to disclosure of the psychotherapy notes.
- ANTHC has disclosed only the information expressly stated in the warrant, and only the minimum amount of information necessary to comply with the warrant. *See* 45 C.F.R. §§ 164.502(b) & 164.512(e)(1)(i).