

SUBJECT: SUBPOENAS, WARRANTS, AND OTHER LEGAL DOCUMENTS THAT REQUEST DISCLOSURE/ RELEASE OF HEALTH RECORDS PROCEDURE	PROCEDURE #701-07 POLICY #701
ORGANIZATION-WIDE PROCEDURE	PAGE: 1 OF: 6
APPROVED BY: EXECUTIVE MANAGEMENT TEAM	EFFECTIVE: 1993
PROCEDURE OWNER: ANTHC OFFICE OF LEGAL AFFAIRS & SCF RISK MANAGER	LAST REVIEWED: 9/19/2022

1. Purpose:

- 1.1. To describe the process for staff working at Alaska Native Medical Center (ANMC) regarding the receipt of judge-signed court orders, judge-signed search warrants, depositions, and judge-signed subpoenas for disclosure/release of patient medical records. (Note: All legal requests that are personal and not related to employment must be served during non-duty hours and off the accredited campus).
- 1.2. This procedure is intended to ensure compliance with the Health Insurance Portability & Accountability Act (HIPAA), the Federal Privacy Act, 42 C.F.R. Part 2, and all applicable statutes or regulations ensuring protected health information is disclosed under appropriate authorization by law or written patient authorization.

2. Scope:

- 2.1. All organizational components of the Alaska Native Medical Center (ANMC) accredited campus defined as its staff, residents, non-physician interns, students, volunteers, and contractors as described in and established by Alaska State Statute.

3. Procedure:

- 3.1. ANMC Staff Responsibilities.
 - 3.1.1. Staff working at ANMC shall refer the server of legal documents to the appropriate department as described in 3.1.2., below. Documents that must be forwarded include, but are not limited to, documents that require release of protected health information (PHI), medical records, or lab specimens. Staff shall also refer the server to the ANTHC Office of Legal Affairs or SCF Quality Assurance Department for any legal documents for any employment-related matter. This includes, but is

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not limited to, an order to appear in court, before any other tribunal, or for deposition. Such documents include:

- 3.1.1.1. judge-signed subpoenas;
 - 3.1.1.2. judge-signed court orders;
 - 3.1.1.3. judge-signed search warrants; or
 - 3.1.1.4. deposition notices.
- 3.1.2. Staff should advise all law enforcement officers to connect directly with ANTHC’s Office of Legal Affairs or the SCF Quality Assurance Department.
- 3.1.2.1. ANTHC staff should advise law enforcement officers to send all legal documents to subpoenas@anthc.org, the email inbox designated by the ANTHC Office of Legal Affairs to receive communication from law enforcement.
 - 3.1.2.2. SCF staff should advise law enforcement officers to send all legal documents to the SCF Quality Assurance Department by way of certified mail, process server, or delivered directly from law enforcement to 4501 Diplomacy Dr. Anchorage, Alaska 99508 ATTN: Risk Management.
- 3.2. Staff shall immediately refer the server of the document to the ANTHC Office of Legal Affairs during the hours of 8 a.m. to 5 p.m.
- 3.2.1. On the rare occasion that a document must be processed immediately before the next business day, staff shall refer the server of the document to the Nursing House Supervisor or the SCF Quality Assurance Department at any time.

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- 3.2.1.1. The Nursing House Supervisor may provide PHI, medical records, or other sensitive information only when they have a judge-signed subpoena, judge-signed court order, or judge-signed warrant, or a valid, signed authorization from the owner of the sensitive information. (See Checklist for Disclosure of Documents Containing Protected Health Information, attached).
- 3.2.2. Staff may not contact the agency or attorney requesting the legal document or appear without first consulting either the ANTHC Office of Legal Affairs or the SCF Quality Assurance Department.
- 3.2.3. All questions regarding release of health records should be directed to the ANMC Director of Health Information Services, its designee, or the applicable Corporate Compliance Department.
- 3.3. Release of Specimens. Requests for the release of specimens should be directed to the ANMC Laboratory Department (ANMC Lab).
 - 3.3.1. ANMC Lab staff may fulfill subpoenas from the Medical Examiner’s Office so long as the subpoena is complete and the signature is valid.
 - 3.3.1.1. ANMC Lab staff should forward any subpoenas from the State Medical Examiner’s Office to the ANTHC Office of Legal Affairs to be logged.
 - 3.3.2. ANMC Lab staff should seek permission from the ANTHC Office of Legal Affairs during normal business hours to fulfill the requests of any subpoena, warrant, court order, or other legal document that does not come from the State Medical Examiner’s Office. If the request is received outside of business hours, staff should page the Nursing House Supervisor for approval.

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3.3.2.1. The Nursing House Supervisor should follow the same verification protocol as outlined above in section 3.2.1.1.1.

3.4. Court Appearances.

3.4.1. All staff at ANMC who have an Intergovernmental Personnel Agreement (IPA) or a Memorandum of Agreement (MOA) will follow federal regulations which prohibit any federal employee from appearing in court or attending a deposition in a work-related matter without prior written approval from the Director, Alaska Area Native Health Service, its designee, or the applicable Corporate Compliance Department.

3.4.2. Staff at ANMC are not allowed to serve as expert witnesses.

3.4.3. All questions regarding court appearances or attendance at depositions should be directed to either the ANTHC Office of Legal Affairs or the SCF Quality Assurance Department.

3.4.4. Staff working at ANMC are not allowed to receive payment for court appearances or attending depositions.

3.4.5. Any payment received for legal appearances shall be forwarded to ANTHC or SCF, as appropriate.

3.5. Processing Legal Requests.

3.5.1. Either the ANTHC Office of Legal Affairs or the SCF Quality Assurance Department will determine if the employee who is the subject of the legal request is an ANTHC or SCF employee.

3.5.1.1. If the employee is an SCF employee, the legal request will be forwarded to the SCF Quality Assurance Department.

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3.5.1.2. If the employee is an ANTHC employee, the legal request will be forwarded to the ANTHC Office of Legal Affairs.

3.5.2. The ANTHC Office of Legal Affairs and the SCF Quality Assurance Department will maintain separate logs of all judge-signed subpoenas, judge-signed court orders, deposition notices, judge-signed search warrants, and other legal documents received within ANMC.

3.5.2.1. The ANMC Health Information Services will provide an accounting of disclosures for legal requests upon demand.

3.5.3. The ANTHC Office of Legal Affairs or the SCF Quality Assurance Department will notify the employee and their supervisor of the legal request and any necessary requirements.

3.5.3.1. For employees with IPA or MOA agreements, approval from the US Government is required, as per section 3.2.5.

3.5.3.2. The ANTHC Office of Legal Affairs or the SCF Quality Assurance Department will notify the employee and their supervisor when the approval is granted.

References:

- 1) Health Insurance Portability & Accountability Act (HIPAA), <https://www.hhs.gov/hipaa/for-professionals/index.html>
- 2) Privacy Act, <https://www.hhs.gov/foia/privacy/index.html#:~:text=The%20Privacy%20Act%20of%201974,other%20identifying%20number%20or%20symbol>
- 3) 42 C.F.R. Part 2, <https://www.ecfr.gov/current/title-42/chapter-I/subchapter-A/part-2>

Related P&Ps:

- 1) Blood Drawing for Chemical Testing Consent, Refusal, and Administration Procedure #701-10C
- 2) Physical Arrest of an Individual at ANMC Procedure #701-18

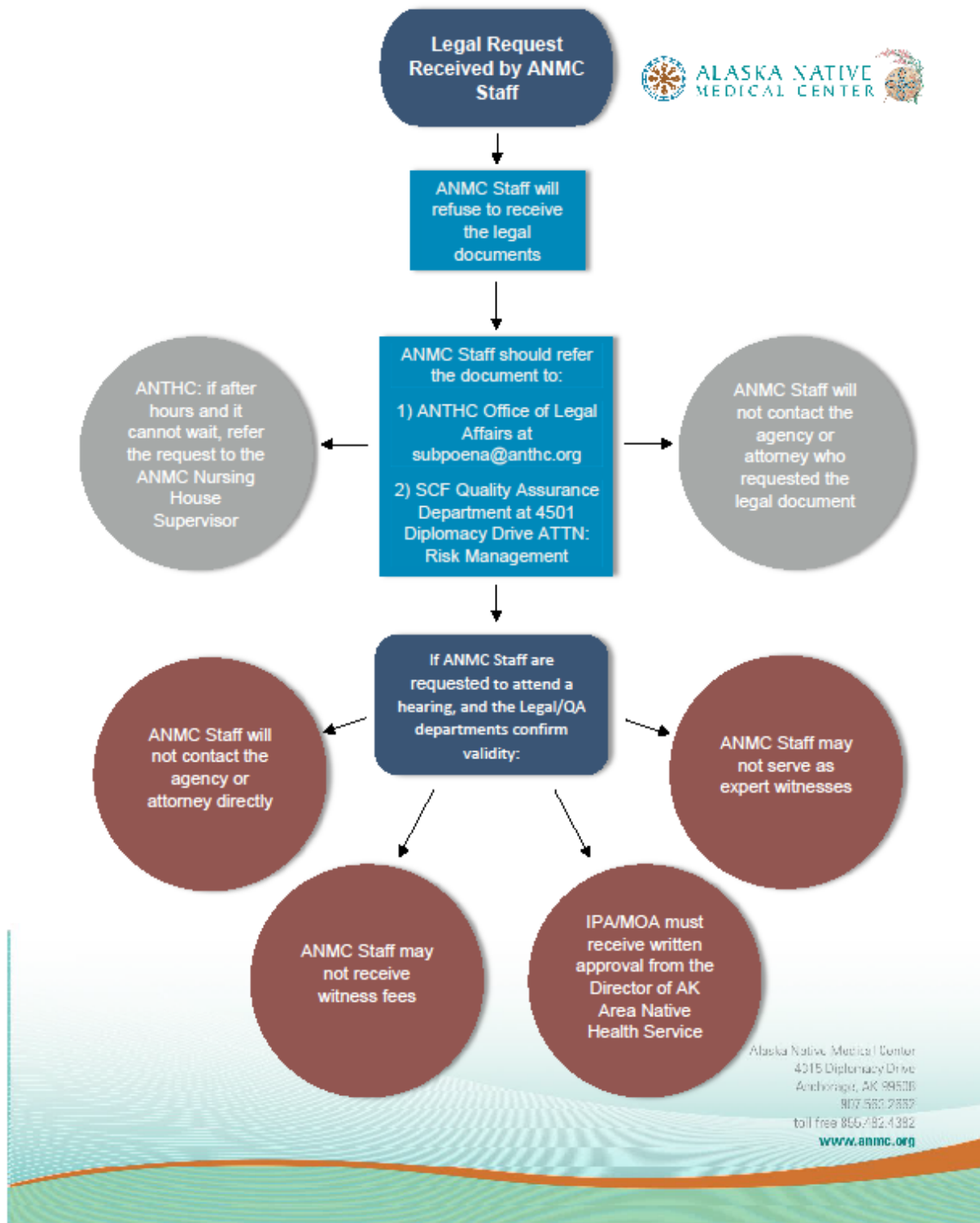
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- 3) Privacy and Security of Protected Health Information Policy #1001
- 4) Health Insurance Portability and Accountability Act (HIPAA) and the Privacy Act of 1974 Adopted by ANMC as it Applies to Release of Protected Health Information (PHI) from the Health Record Procedure #1001-01C
- 5) Disclosure of Health Information to Law Enforcement Procedure #1001-03
- 6) Access, Use, and Disclosure of Decedent Health Information Policy #1007

Attachments:

- 1) Legal Request Workflow
- 2) Checklist for Disclosure of Document Containing Protected Health Information

Attachment 1, Legal Request Workflow



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

Request Received Date: _____.

Checklist Completion Date: _____.

Subpoena for Documents Containing PHI or to Appear in Court with Documents Containing PHI
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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.

Attachment 2, Checklist for Disclosure of Document Containing Protected Health Information

- 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.

<p style="text-align: center;">Court Order for Disclosure of Documents Containing PHI 45 C.F.R. § 164.512(e)(1)(i)</p>
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***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).