



TIPS FOR LAWYERS

HEALTH INSURANCE PORTABILITY & ACCOUNTABILITY ACT OF 1996 (HIPAA) QUALIFIED PROTECTIVE ORDERS

What is HIPAA and how does it help protect privacy?

The HIPAA Privacy Rule provides federal protections for individually identifiable health information held by covered entities and their business associates and gives patients an array of rights with respect to that information. The Privacy Rule is balanced so that it permits the disclosure of health information needed for patient care and other important purposes.

U.S. Department of Health & Human Services, *Understanding Health Information Privacy*
www.hhs.gov/ocr/privacy/hipaa/understanding/

Can covered entities (i.e. hospitals) “give away” private health information?

No. Under HIPAA, covered entities may only disclose individually identifiable health information when specifically required or authorized to do so.

What should I do if I want to use medical records or health care providers' testimony in court?

- Request a qualified protective order. This is required where the individual who is the subject of the protected information has not signed a release.
- 45 C.F.R. § 164.512(e) covers disclosure of individually identifiable health information in judicial proceedings. A covered entity (i.e. hospital) can disclose protected health information in response to a subpoena/discovery request if (1) the individual who is the subject of the protected health information receives notice (or reasonable efforts are made to give notice), and (2) a qualified protective order has been granted or requested.

What is a *qualified protective order?

A qualified protective order is a required “assurance” from a party requesting individually identifiable health information that allows a covered entity to provide the requested records in compliance with HIPAA regulations.

What is the effect of a qualified protective order?

A qualified protective order

- Prohibits a party seeking protected health information from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which the records are requested.
- Requires either the return of the protected health information to the records provider or the destruction of the protected health information at the conclusion of the litigation or the proceeding.
- Authorizes testimony regarding the records during the present proceedings.

Who can seek a qualified protective order?

Any party seeking individually identifiable health information protected by HIPAA may ask for a qualified protective order from the court or tribunal after requesting the records and providing notice to the covered entity (see Ex Parte Motion for Qualified Protective Order).

Parties may also agree to a qualified protective order and present it to the court or tribunal during the proceedings.

*See 45 C.F.R. §§ 164.512(3)(1)(iv) and 164.512(3)(1)(v)