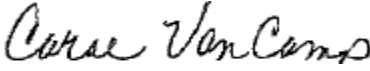
 <b>HAWAII HEALTH SYSTEMS</b> CORPORATION <i>"Quality Healthcare For All"</i>	<b>Department:</b>  <b>Quality Through Compliance</b>	<b>Policy No.:</b> <b>CMP 038A</b>
	<b>Issued by:</b> Audit and Compliance Committee	<b>Revision No.:</b>
<b>POLICY</b>	<b>Effective Date:</b> September 19, 2013	<b>Supersedes Policy:</b>
<b>Subject:</b>  <b>HIPAA Judicial and Administrative Proceedings Use and Disclosure</b>	<b>Approved by:</b>  HHSC Board of Directors By: Carol A. VanCamp Its: Secretary/Treasurer	<b>Page:</b> 1 of 10

Last Reviewed: August 27, 2013. Next Review: August 27, 2016

I. **PURPOSE:** This Policy establishes appropriate receipt, review and response to a court order, subpoena or discovery request for records containing protected health information for use in judicial or administrative proceedings.

II. **DEFINITIONS:**

Administrative Tribunal – A board, commission or tribunal (other than a court) having authority under Hawaii state or federal law to compel the production of protected health information.

Court – A state or federal court having the authority to compel the production of protected health information.

Discovery Request – A procedural means for compelling the adverse party to reveal facts or produce documents or records within its possession or control.

Law enforcement official – an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe who is empowered by law to:

- Investigate or conduct an official inquiry into a potential violation of law, or
- Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

Order – An order of a court or administrative tribunal.

Qualified Protective Order – An order of the court, an administrative tribunal, or a stipulation by the parties to the litigation or administrative proceeding that:

- Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested, and;
- Requires the return to HHSC facility or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.

Specialty Protected Health Information (PHI) – (See Attachment E for Denial of Release of Specialty Protected Health Information). The following health information is defined as specifically protected health information:

- Substance abuse records (drug and alcohol) which reflect treatment/management of substance abuse by a federally approved substance abuse program (42 CFR, Part 2).
- Psychotherapy notes (45 CFR 164.508(a)(2))

Subpoena – A form of discovery process in which a written command is issued requiring a witness to come to court to testify and/or produce records for use as evidence. See Attachment A for Denial of Subpoena form.

Statement of Appropriate Notice – (See Attachment B). A written statement attesting to all of the following:

- The party requesting the individual's protected health 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); HHSC requires some form of assurance of actual, timely notice to the individual or a court order.
- The notice included 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 hearing the proceeding;
- 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.

Statement of Qualified Protective Order – (See Attachment C). A written statement attesting to the following:

- The parties to the dispute giving rise to the request for the information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute, or;
- The party seeking the protected health information has requested a qualified protective order from such court or administrative tribunal.

Statement From Law Enforcement Officials – (See Attachment D). A written statement attesting to the following:

- The information sought is relevant and material to a legitimate law enforcement inquiry;
- The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought, and;
- De-identified information could not be reasonably used.

### III. POLICY:

- A. *General Policy*: Hawaii Health Systems Corporation (HHSC) will disclose an individual's protected health information as required by state and federal law governing disclosures for judicial or administrative proceedings. Prior to any release of protected health information (PHI), HHSC will verify the identity and authority of the requestor in accordance with the policy on Verification (CMP 0047). Disclosures may be required by:
1. An Order of a court or administrative tribunal, or;

2. A Subpoena or other discovery request.
- B. *Order of a Court or Administrative Tribunal:* HHSC will disclose information (including Specially Protected Information) as required by the order of a court or administrative tribunal. HHSC will release only the protected health information expressly authorized by the order. Unless the order directs otherwise, the information will be delivered sealed to the clerk of the court. See Attachment C for “Statement of Qualified Protective Order.”
- C. *Subpoena or Other Discovery Request:*
1. Civil Proceedings: HHSC will disclose protected health information (other than Specially Protected Information) in response to a subpoena or other discovery request only if it is accompanied by:
    - a) An order of a court or administrative tribunal requiring the disclosure,
    - b) A valid authorization signed by the individual or individual’s legal representative,
    - c) A Statement of Appropriate Notice meeting the requirements set forth above, or;
    - d) A Statement of Qualified Protective Order meeting the requirements set forth above.
    - e) See Attachment A for form used when a subpoena is denied.
    - f) NOTE: Specially Protected Information will not be disclosed except pursuant to a) or b) above. See Attachment E for form used when release of specially protected health information is denied.
  2. Criminal Proceedings and Law Enforcement Investigations: Where the subpoena or other discovery request originates from:
    - a) Law Enforcement Officials (including prosecutors): HHSC will disclose protected health information (other than Specially Protected Information) to a law enforcement official or prosecutor in compliance with and as limited by the relevant requirements of:
      - i. A court order or court ordered warrant, or a subpoena or summons issued by a judicial officer,
      - ii. A grand jury subpoena, or;
      - iii. An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law; provided that the request contains or is accompanied by a statement from law enforcement officials meeting the requirements set forth above, such as Attachment D.
    - b) Others (including public defenders and defense counsel): HHSC will disclose protected health information (other than Specially Protected Information) only if it is accompanied by:
      - i. An order of a court or administrative tribunal requiring the disclosure,
      - ii. A valid authorization for the disclosure, signed by the individual or individual’s legal representative,
      - iii. A statement of Qualified Protective Order meeting the requirements set forth above.
    - c) Attachment D will be used when law enforcement requests information.
  3. Health Oversight Investigations:
    - a) HHSC will disclose protected health information (other than Specially Protected Information) to a health oversight agency in response to a subpoena or other discovery request for oversight activities authorized by law (CMP 0037 - Uses and Disclosures for Health Oversight Activities).
    - b) HHSC may disclose, but is not required to disclose, protected health information in response to a subpoena or discovery request without a Statement of Appropriate Notice or Statement of Qualified Protective Order if HHSC makes

reasonable efforts to provide notice or obtain a qualified protective order in accordance with the above requirements. It is not the policy of HHSC to undertake to provide notice or to seek a protective order.

D. *Individual's Right to Object:*

1. An individual has the right to object to the release of his/her protected health information in response to a discovery request. An objection is raised by the filing of a motion to quash or a motion for protective order with the court or tribunal conducting the proceeding. In the absence of such a motion, HHSC will honor the discovery request, if it otherwise complies with this Policy.
2. Except as required by a court order, HHSC will not release protected health information when presented with written notification that a motion to quash or a motion for protective order has been filed with the court. Release will be held until HHSC receives satisfactory assurances from the party requesting the release that all objections have been resolved by the court or administrative tribunal and release of the protected health information is consistent with such resolution. A Statement of Appropriate Notice meeting the requirements set forth above will be sufficient to assure that objections have been resolved, unless HHSC has reason to believe the statement is incorrect.

E. *Specially Protected Health Information (PHI):*

1. Specialty Protected Health Information will be released by HHSC only with:
  - a) The written authorization of the individual or his or her legal representative specifically authorizing such release. Refer to CMP 029A for specific requirements.
  - b) An order of the court or administrative tribunal specifically compelling such release, except a court order for release of records containing information about substance abuse treatment must also meet the following requirements:
    - i. Civil Cases:
      - Fictitious Name given
      - Provision for notice and hearing to the patient and the program
      - Provision for in camera review of records in Judge's chambers
      - A provision showing "good cause"
      - A provision limiting the order to essential facts and people only, and
      - A provision providing that any records be sealed.
    - ii. Criminal Cases:
      - Fictitious Name given
      - Provision for notice to the program only
      - Provision for the program to be heard/contest
      - Provision for in camera review of records in Judge's chambers
      - Provision detailing presence of "serious crime", protection of public safety
2. When Specially Protected Health Information is contained in the record and cannot be redacted in whole, the entire record will be withheld, and the requesting party will be notified of HHSC's inability to respond to the request due to the confidentiality protections required for the information. However, HHSC may disclose the existence and location of the information if required by the discovery request.
3. Attachment E shall be used when the release of specially protected health information is denied.

- F. *Resolution of Questions:* Questions regarding the validity of a request for production of records by court order, subpoena, discovery request or administrative request will be referred to legal counsel or risk management.
- G. *Accounting of Disclosures:* An accounting of any disclosures or releases of protected health information under this policy will be made as directed by the HHSC policy on Accounting for Disclosures (CMP 0040).
- H. HHSC facilities will develop procedures to address:
  - 1. Receipt of Judicial or Administrative Requests
  - 2. Evaluation related to a court order, subpoena, or other discovery request.
  - 3. Preparation of Records
  - 4. Submission of records, charges, and logging
- I. In addition to those procedures in H) above, HHSC facilities will implement procedures to operationalize this Policy.

**IV. APPLICABILITY:** This Policy applies to all HHSC facilities.

**V. REFERENCE:** Standards for Privacy of Identifiable Health Information (HIPAA), 45 CFR, Subtitle A, Subchapter C, Sections 164.508(a)(2) and 164.512 (d)(e)(f); 42 CFR, Chapter I, Part 2, Subpart E, Confidentiality of Alcohol and Drug Abuse Patient Records.

**VI. ATTACHMENTS:** Attachment A - Denial of Subpoena  
Attachment B - Statement of Appropriate Notice  
Attachment C - Statement of Qualified Protective Order  
Attachment D - Statement from Law Enforcement Official  
Attachment E - Denial of Release of Specially Protected Health Information

**Attachment A**  
**HAWAII HEALTH SYSTEMS CORPORATION**

**Denial of Subpoena**

Date

Re:       vs.  
Case #:

We received your request for production of health records of \_\_\_\_\_ dated \_\_\_\_\_  
\_\_\_\_\_. In accordance with the provisions of 45 CFR section 164.512 (e), we may disclose  
protected health information in response to a subpoena or discovery request only if we receive a written  
statement and accompanying documentation providing satisfactory assurances that:

- a. The party seeking the protected health information has made reasonable efforts to ensure that the individual who is the subject of the requested information has been given notice of the request in accordance with 164.512(e)(iii), or
- b. The party seeking the protected health information has made reasonable efforts to secure a qualified protective order in accordance with 164.512(e)(iv) and (v).
- c. The request from the law enforcement official is in compliance with 164.512(f)(1)(ii)(C).

In order to respond to your subpoena we are requesting that you provide us with:

- a. An order of the court or administrative tribunal,
- b. A valid authorization signed by the individual whose records are being sought, or his/her legal representative,
- c. The completion of the accompanying Statement of Appropriate Notice and a copy of the notice, or
- d. The completion of the accompanying Statement of Protective Court Order and a copy of the protective order.
- e. Law Enforcement – The completion of the accompanying Statement from Law Enforcement officials.

We will act on the subpoena once we have received the appropriate documents. If you have any questions, please contact me at (808) XXX-XXXX.

Sincerely,

Health Information Management Staff  
Title

**Attachment B**

**HAWAII HEALTH SYSTEMS CORPORATION  
Statement of Appropriate Notice**

I declare under penalty of perjury that all of the following have been completed:

1. Either:
  - a. *[Initial here:]* \_\_\_\_\_ I have provided written notice to the individual who is the subject of the protected health information that is requested that I am requesting the information. A copy of the notice is enclosed. It was provided to the individual on *[date:]* \_\_\_\_\_ by *[describe method, e.g., personal service:]* \_\_\_\_\_.
  - b. *[Initial here:]* \_\_\_\_\_ I have made a good faith attempt to provide written notice to the individual who is the subject of the protected health information that is requested or, if the individual's location is unknown, to mail a notice to the individual's last known address, by *[Describe efforts to provide notice:]* \_\_\_\_\_  
\_\_\_\_\_. A copy of the notice is enclosed.
2. The notice included 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
3. The time for the individual to raise objections to the court or administrative tribunal has elapsed, and
  - a. No objections were filed, or
  - b. 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.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

**Attachment C**

**HAWAII HEALTH SYSTEMS CORPORATION**

**Statement of Qualified Protective Order**

A Qualified Protective Order is an order of the court, an administrative tribunal, or a stipulation by the parties to the litigation or administrative proceeding that:

- a. Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested, and
- b. Requires the return to Hawaii Health Systems Corporation or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.

I declare under penalty of perjury that one of the following has been completed (please initial one):

\_\_\_\_\_ The parties to the dispute giving rise to the request for the information have agreed to a qualified protective order covering all of the health information requested, and have presented it to the court or administrative tribunal with jurisdiction over the dispute, (a copy of the order is enclosed) or

\_\_\_\_\_ The undersigned has requested a qualified protective order from such court or administrative tribunal. A copy of the petition is enclosed.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name



**Attachment D**

**HAWAII HEALTH SYSTEMS CORPORATION**

**Statement from Law Enforcement Official**

Date

Re:            vs.  
Case #:

I represent that:

1.     The protected health information requested is relevant and material to a legitimate law enforcement inquiry;
2.     The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought, and
3.     De-identified information could not be reasonably used.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Department/Organization

**Attachment E**

**HAWAII HEALTH SYSTEMS CORPORATION  
Denial of Release of Specially Protected Health Information**

Date

Re: vs.

Case #:

The information sought under the above referenced subpoena is subject to restrictions under federal law on the release of health information.

*[Describe the general nature and location of the Specially Protected Information, e.g., information relating to developmental disability contained in the individual's hospital medical record: **This may be required in order to enable the requesting party to seek the necessary court order for discovery.]***

In order to respond to your subpoena we require:

- a. An order of a court of competent jurisdiction ordering the release of the information requested, or
- b. A valid authorization signed by the individual whose records are being sought, or his/her legal representative.

Sincerely,

Health Information Management Staff  
Title