



STATE OF NEW YORK  
**UNIFIED COURT SYSTEM**  
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**JONATHAN LIPPMAN**  
Chief Administrative Judge

**MEMORANDUM**

**JOSEPH J. TRAFICANTI, JR.**  
Deputy Chief Administrative Judge

Director  
Office of Court Drug Treatment Programs

**TO:** Drug Treatment Court Judges  
Drug Treatment Court Coordinators

**FROM:** Office of Court Drug Treatment Programs

**DATE:** August 5, 2003

**SUBJECT:** HIPAA

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To further clarify our position concerning the treatment providers' responsibility for obtaining HIPAA-compliant consents or authorizations from their clients, we recommend that in the future your courts' linkage agreements with their providers include the following language:

The Provider acknowledges that it is a "covered entity", as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As such, the Provider understands that it may be required to obtain HIPAA-compliant authorizations or consents from its clients enrolled in the Court sufficient to permit its disclosure of protected health information concerning those clients upon request to the Court.

Notwithstanding this language, as discussed in our July 25, 2003 memorandum regarding the impact of HIPAA's privacy regulations on drug treatment court operations, a Court may nevertheless decide to issue a standing or individualized HIPAA Order exempting the provider from having to obtain the otherwise necessary authorization or consent from its drug-court referred client(s) prior to disclosing protected health information concerning such client(s) to the drug court.

To explain the effect of these HIPAA Orders to the providers, the Office of Court Drug Treatment Programs has developed a notice entitled Notice to Treatment and Other Health Care Providers Regarding Court Order To Disclose Protected Health Information. We recommend that a copy of the Notice, which is attached to this memorandum, be sent, along with the HIPAA Order, to the treatment or other health care provider to whom the HIPAA Order is being sent.

**NOTICE**  
**TO TREATMENT OR OTHER HEALTH CARE PROVIDERS REGARDING**  
**COURT ORDER TO DISCLOSE PROTECTED HEALTH INFORMATION**

In order to fulfill its mission, the \_\_\_\_\_ relies on up-  
[name of drug treatment court]

to-date information from you concerning the health of its participants (your clients), including their progress in substance abuse treatment. Although such information is considered to be "protected health information" (as defined under the privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA")), which requires you to obtain appropriate HIPAA-compliant consents or authorizations from your clients prior to disclosing the requested information to this drug treatment court, the attached HIPAA order will permit you to do so without obtaining such a consent or authorization.

45 C.F.R. 164.512(e)(1) of HIPAA's privacy regulations creates an exception to the general requirement that a HIPAA-compliant consent or authorization form be in place prior to the disclosure of any protected health information. The exception provides that no consent or authorization is needed if protected health information is disclosed "in the course of any judicial or administrative proceeding . . . in response to an order of a court or administrative tribunal." The attached order has been executed in order to place such disclosures by your treatment program or health care organization squarely within this exception.

*Please note that this order does not alter your current obligations regarding compliance with applicable federal confidentiality laws and regulations.*

If you have any questions concerning this notice or the attached Order please call Linda Baldwin of the Office of Court Drug Treatment Programs at (914) 682-3221.