Recommended Elements of Legal Hold (LH) Process

*DRAFT Checklist for actions from initiation of Legal Hold thru designation of the authority to manage outputs (Release of Information) from the system*

*From HL7 RMES Meeting February 15, 2016, Reich, Versaggi, Gelzer*

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|  | Elements are recommended for identification and recording as components of LH (not necessarily in order) | NOTES |
| 1. | What event or finding triggered the consideration of LH |  |
| 2. | When Legal Hold first considered |  |
| 3. | When LH actually launched/applied |  |
| 4. | What is the scope of LH |  |
| 5. | What are the actions undertaken under LH (communications, system(s) actions, notifications, etc.) |  |
| 6. | What are the information forms, sources, and locations to which LH intended to apply? |  |
| 7. | Who is the authority managing LH activities |  |
| 8. | Who is notified (all relevant custodians) |  |
| 9. | When notice sent |  |
| 10. | What notification was sent? |  |
| 11. | What is the current list of "presumptive custodians" list at a given time (can expand and contract over time). |  |
| 12. | What is the current list of “presumptive custodians” who have confirmed custodianship , confirmed non-custodianship |  |
| 13. | What is the current list of confirmed custodians who have acknowledged receipt and affirmed understanding of the LH notification |  |
| 14. | Who is the authority managing the Release of Information activities? |  |
| 15. |  |  |
| 16. |  |  |
| 17. |  |  |
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Resources:

1. Sample Litigation Hold Notice <http://www.americanbar.org/content/dam/aba/events/real_property_trust_estate/symposia/2008/jt3braun1.authcheckdam.pdf>
2. Sample Litigation Hold Notice

<http://www.stoel.com/files/litigation_hold.pdf>

**EHR Function Requirements in support of Legal Hold**

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|  | EHR System Functions Supporting Legal Hold | Notes |
| 1. | Task Management |  |
| 1a. | Task assignments |  |
| 1b. | Tasks completed (who, when) |  |
| 1c. | Tasks remaining |  |
| 1d. | Task completion deadlines, prompts |  |
| 1e. | Others? |  |
| 2. | Communications management list (communicate what with whom) |  |
| 3. |  |  |
|  |  |  |
| Question  A. | (What other functions, in addition to managing task lists, does the system itself have to do to manage existing information deemed by the org itself to be a reasonable representation of "relevant" ) |  |
| A-1 |  |  |
| A-2 |  |  |
| A-3 |  |  |
|  |  |  |
| Question  B. | (How many of Question A are "covered" by other system requirements <ex: preservation of system configurations, renderings of information, preservation of data, and so on are taken care of by back-up functions for disaster preparedness?) |  |
| B-1 |  |  |
| B-2 |  |  |
| B-3 |  |  |
|  |  |  |
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|  | Record Management Requirements: |  |
|  | Examples: PRESERVATION SUPPORT |  |
| a. | Suspend archive or destruction |  |
| b. | "Special" access restrictions both for VIEW and UPDATE |  |
| c. | "Special" audit preservation (audit functions and logs preserved unchanged.) |  |
| d. | Primary data sources (devices) data preservation |  |
| e. | Preservation of state of configurations of systems (including source system and accessory systems such as CDS) |  |
| f. | Preservation of system renderings (screen views, printouts, graphs) used for clinical decisions |  |
| g. | Permit means for view-only access by counsel (and ?risk management personnel?) that are somehow protected from inclusion in discovery? |  |
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