# BASIC ELEMENTS

## Attorney-Client Privilege & Attorney Work-Product Doctrine

### Introduction
Below is a brief outline of the key elements of the attorney-client privilege and the attorney work-product doctrine, both of which often provide essential protection for providers’ confidential communications during discovery.

### Attorney-Client Privilege

- A communication.
- That was intended to be and is kept confidential.
- Between an attorney and client.
- Made for the purpose of obtaining or providing legal advice to the client.

### Avoiding Waiver – Avoid waiving the attorney-client privilege by utilizing the below safeguards:

- Do not forward or share privileged communications with third parties (including the government), employees who are not on a need-to-know basis, independent contractors, or advisors.
- Consider including only attorneys in or on communications intended to be privileged.
- Include a “PRIVILEGED AND CONFIDENTIAL” notice in the subject line or within the communication.
- Maintain privileged communication in a separate, secure file (whether electronic or paper).
- Compliance activities that are intended to be privileged, including investigations, should be directed and supervised by counsel.
- Carefully consider the use of the advice-of-counsel defense.

### Attorney Work-Product Doctrine

- Documents or materials (including, but not limited to, written statements, memoranda, fact chronologies, and mental impressions).
- Prepared by or at the direction of an attorney.
- In anticipation of litigation.

### Avoiding Waiver – The waiver-avoidance tips under the attorney-client privilege (listed above) are generally applicable to the work-product doctrine. Some states also permit disclosure to non-adversarial third parties, but confirm local laws prior to doing so.