



Health Information Management Bulletin

Quality Assurance Unit

County of Los Angeles – Department of Mental Health

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November 03, 2022

No. 22-01

ACCEPTANCE OF SUBPOENAS REQUESTING PROTECTED HEALTH INFORMATION (PHI)

This Bulletin provides updated guidance to Directly-Operated (DO) providers on the acceptance of subpoenas requesting protected health information (PHI). This updated guidance is effective as of the date of this Bulletin.

Effective September 29, 2022, Senate Bill 184 amended Welfare and Institutions Code section 5328 by adding subsection (a) (27) which states that information and records shall be disclosed “to parties to a judicial or administrative proceeding as permitted by law, and who satisfy the requirements under Part 164 (commencing with Section 164.512(e)) of Subchapter C of Subtitle A of Title 45 of the Code of Federal Regulations, except that this paragraph shall not be construed to affect any rights or privileges provided under the law of any party or nonparty.” DMH interprets this amendment to more closely align State law with the Health Insurance Portability and Accountability Act (HIPAA) to allow the disclosure of records **without client authorization** in response to a subpoena, discovery request, or other lawful processes that are not accompanied by an order of a court or administrative tribunal **if** the person serving the subpoena can demonstrate that they gave notice to the person whose records are being sought, and the person whose records are being sought had a chance to object to the subpoena in court and did not file an objection.

Before accepting subpoenas, DO providers must verify the validity of the subpoena using the following items to be checked. If the subpoena cannot be validated (except for missing fees), the serving party should be informed that the subpoena is not acceptable and of the specific deficiency that makes it unacceptable.

Items to be checked:

- Issuing authority. A subpoena can be issued only by
 - State or federal court
 - Administrative agency
 - Attorney for either party to the action
- Date and time for response
 - Must provide a reasonable time for response; DMH has interpreted this to mean at least five business days for a response
- Signature
 - Signed by an attorney, judge, clerk of the court, or official of an administrative agency
 - Typewritten or electronic signature acceptable (e.g., /s/ John Doe)
- Affidavit or Declaration included
 - An affidavit or declaration is required with a subpoena for a State administrative proceeding when personal attendance is being called for at trial or when personal attendance is being called for at a deposition to give testimony.
 - The person accepting the subpoena has no responsibility for evaluating the accuracy of the affidavit or declaration
- Notice to Consumer (**New Requirement**)
 - The subpoenaing party is required to notify the client that their records are being subpoenaed. There must be evidence that the subpoenaing party
 - served or caused to be served on the client a copy of the subpoena duces tecum
 - provided an affidavit to the client supporting the issuance of the subpoena
 - provided notice to the client of their rights regarding the subpoena
 - The subpoenaing party must serve the above requirements on the client
 - Not less than 10 days prior to the date for production specified in the subpoena duces tecum

- At least five days prior to service upon the custodian of records

Once the subpoena has been validated, providers must then take the following steps:

- Record the date and time received, amount of money received, if any, and sign the cover page of the documents received
- Email a copy of the subpoena including all attachments and a copy of the check to SubpoenaMedRec@dmh.lacounty.gov as soon as possible but in no case later than the end of the business day
- Send all original documents including the check with fees paid via interoffice mail to
Health Information Management
510 S. Vermont Avenue, 17th floor
Los Angeles CA 90020

Once received, the Health Information Management (HIM) Team will complete the processing of the subpoena including determining whether an objection to production of the records has been filed. The provider should not make this determination.

Type of Service

Except as specified below, all subpoenas must be delivered in person. A copy of the subpoena is acceptable [California Code of Civil Procedure 1987(a), 2020.220 (b)(1)].

- Criminal Proceedings – A subpoena may be delivered in person or by mail. The time of service officially starts when the staff assigned to accepting subpoenas acknowledges receipt of the subpoena to the sender.
- Adjudicative Proceedings before a California State Government Agency – A subpoena may be delivered in person or by certified mail return receipt requested.

Accepting a Subpoena

Providers must only accept subpoenas that are addressed to that provider or to a staff member of that provider who is ordered to appear in court on a case involving one of the staff member's past or present clients.

Subpoenas addressed to DMH must not be accepted and must be served at:

Health Information Management
510 S. Vermont Ave, 17th floor
Los Angeles, CA 90020

Subpoenas that name DMH or the County of Los Angeles as the "Defendant/Respondent" must be served at:

Board of Supervisors
500 W. Temple Street, 3rd Floor
Los Angeles, CA 90012

If Directly-Operated providers have any questions related to this Bulletin, please contact the HIM Subpoena team at SubpoenaMedRec@dmh.lacounty.gov.

cc: DMH Executive Management
DMH Administration Managers
DMH QA Liaisons
Legal Entity Executive Management

DMH Clinical Operations Managers
DMH Quality, Outcomes & Training Division
DMH CIOB Managers
Legal Entity QA contacts