



**Program: All Colorado Coalition for the Homeless (CCH) programs**

**Policy Number: 180-113**

**Subject: Subpoenas, Discovery Requests, Judicial and/or Administrative Proceedings**

Effective Date: 09/01/2020
<p>Approved: <u>Mandy May</u> Chief Quality and Information Officer</p> <p><u>Andrew Frailey Afanashev</u>                      <u>Greg Keefe</u> Privacy Officer Signature                      Security Officer Signature</p>
<p><b>Description:</b></p> <p>CCH will review subpoenas, discovery requests and requests made in the course of any judicial or administrative proceedings to determine if such disclosure is appropriate.</p> <p>Pursuant to HIPAA Rules Section 164.512 Reviewer: Privacy Officer</p>

**Policy:**

CCH may disclose protected health information (PHI) in the course of any judicial or administrative proceeding, in response to an order of a court or administrative tribunal (but only that PHI for which disclosure is expressly authorized), and, under certain conditions, in response to a subpoena, discovery request or other lawful process. Workforce members must direct all subpoenas, and other requests for disclosures for purposes of legal proceedings, to the Privacy Officer who may consult CCH legal counsel.

**Procedure:**

**Receipt of Subpoena**

- All subpoenas for any and all workforce members must be hand served to the CCH Privacy Officer or their designee. If the subpoena is served directly to the workforce member being called to testify, that workforce member is responsible for providing the subpoena to the CCH Privacy Officer. The workforce member is not to sign anything other than a delivery slip when accepting the subpoena.
- Process servers attempting to deliver subpoenas anywhere but to the CCH Privacy Officer or directly to the person named in the subpoena will be redirected to deliver the subpoena to the CCH Privacy Officer at 2062 Stout Street, Denver, CO 8025. This includes any attempted delivery after normal business hours of 7:30 AM to 3:30 PM Monday through Friday.
- Workforce members will not provide personal phone numbers or addresses to process servers but may confirm work location and work hours of another workforce member.

- **If a subpoena is for a medical record request or addressed to Colorado Coalition for the Homeless or the Custodian of Records**, the subpoenas must be hand served to the Health Information Manager (HIM Manager) who is the custodian of record. Process servers will be directed to the HIM Manager and no workforce member other than the HIM Manager (or their designee) will accept the subpoena.
- If a subpoena is served for a matter unrelated to CCH, the subpoena must be served directly to the involved workforce member.

### **Proper Service**

- CCH will respond only to legally and properly served subpoenas. Subpoenas that are sent by regular mail, electronic mail, or fax are, in most instances, not properly served. In any instance that a subpoena is not properly served, or is suspected of not being properly served, the CCH Privacy Officer must be notified immediately and be given the subpoena.
- Subpoenas for testimony must be served no later than 48 hours before the time for appearance set out in the subpoena. If the subpoena is received outside of this time requirement, the issuer of the subpoena will be notified that CCH is unable to comply.
- Subpoenas for deposition must be served no later than 7 days before compliance is required. If the subpoena is received outside of this time requirement, the issuer of the subpoena will be notified that CCH is unable to comply.
- Subpoenas for the production of documents must be served no later than 14 days before compliance is required. If the subpoena is received outside of this time requirement, the issuer of the subpoena will be notified that CCH is unable to comply. If it is an expedited hearing, then the subpoena must be delivered as soon as possible, and CCH will make reasonable effort to respond to the subpoena.
- Subpoenas in general must be accompanied by the appropriate release of information (ROI) form due to the privileged nature of CCH's business.
- If a workforce member chooses to accept a subpoena without receiving proper service or without making prior arrangements with the CCH Privacy Officer, the workforce member may be held responsible for all costs associated with his or her appearance.
- A workforce member may not produce medical records or any other materials even if a subpoena directed to the workforce member purports to require them to produce records. All records requests must be submitted to the HIM Manager.

### **Form and Contents**

Every subpoena must be issued either (1) by the clerk of the court in which the case is docketed or (2) an attorney who has entered an appearance in the case.

The subpoena must:

- State the court from which it issued;
- State the title of the action, the parties to the action, the court in which it is pending, and its case number;
- Command CCH to do one or both of the following at a specified time and place: (1) attend and testify at a deposition, hearing, or trial or (2) produce documents/records belonging to CCH;
- Identify the party and the party's attorney, if any, who is serving the subpoena;
- Identify contact information of the attorneys for each of the parties and of each party who has appeared in the action without an attorney;
- State the method for recording the testimony if the subpoena commands attendance at a deposition; and
- If a subpoena for privileged records does not include a signed authorization or court order permitting the privileged records to be produced by means of subpoena, the subpoenaed person shall not appear to testify and shall not disclose any of the privileged records to the party who issued the subpoena.

### **Processing of the Subpoena**

- The CCH Privacy Officer will evaluate the subpoena for required form and content as well as for any missing elements, such as the need for an ROI.
- The CCH Privacy Officer will notify the named workforce member, their supervisor, the department director, and the Chief Quality and Information Officer via email when a subpoena is served and immediately scan the subpoena into the corresponding patient chart.
- The department director will evaluate the case along with the named workforce member and discuss any concerns with giving testimony with the CCH Privacy Officer.
- The CCH Privacy Officer will notify the requesting attorney of any deficiencies in the subpoena and provide a notice of fee letter. If the subpoena requires legal consultation, the CCH Privacy Officer or Chief Quality and Information Officer will make those arrangements with CCH general counsel.

### **Response to a Subpoena**

- All subpoenas must have the proper ROI signed by the patient or patient's guardian. If the request is for medical records, records will not be shared without a written ROI or court order. If it is for testimony, no information will be shared with any attorney until CCH receives an ROI or court order.
- When no ROI is provided and witness testimony has been subpoenaed, CCH workforce member(s) will attend the hearing; however workforce member must disclose on the stand that the information is privileged and CCH has not received indication that the patient has waived their right to privilege. Once the judge orders the release of information or the patient gives verbal consent, the CCH workforce member may testify.
- Workforce members may not take any document to court with them other than a print out of service dates unless otherwise instructed to do so by the CCH Privacy Officer. Workforce members are encouraged not to bring cell phones or other repositories of information to court.
- If the subpoena is for medical records and requires an affidavit or certificate of authenticity to be completed and returned, the Custodian of Records (CCH's Health Information Manager) will be the one to complete and sign the document and return it with the records. No other workforce member is authorized to complete it.
- All records will be released in compliance with CCH internal policies and state and federal regulations.

### **Quashing**

While CCH can request that the court quash a subpoena, there are very limited circumstances when a quash will be granted and CCH may be required to show up for the hearing even though a request has been made.

- If a workforce member can show an undue hardship, including the loss of daily wage, and CCH has not received satisfactory confirmation from the requesting attorney that CCH will receive reimbursement for the workforce member's time, CCH can move to quash.
- If CCH can show that losing a workforce member for testimony will negatively impact patients who are fragile and CCH is unable to find adequate replacements to ensure the appropriate treatment, CCH can move to quash.

If CCH receives a subpoena without the proper waiver of privilege and the information is related to 42 CFR Part 2 information (Confidentiality of Substance Use disorder), CCH can move to quash the subpoena.