

PATHWAYS CMH

PROCEDURE TITLE: Pathways Court Order or Subpoena of a Court Order or Administrative Tribunal Procedure – Appendix 7 of Privacy Policy	CATEGORY: Recipient Rights
EFFECTIVE DATE: April 14, 2003	BOARD APPROVAL DATE: April 14, 2003
REVIEWED DATE: June 2013; July 11, 2014; May 5, 2015; April 22, 2016; April 15, 2017	REVISION(S) TO PROCEDURE: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
RESPONSIBLE PARTY/APPROVAL: Recipient Rights Supervisor or Designee/ Mary J. Swift, CEO	

PURPOSE:

To protect the rights of recipients.

PROCEDURES:

- A. When therapist/staff person receives a court order or subpoena either to appear or for records (ducestecum):
1. Order/Subpoena is given to clinical records/site designee.
 2. The therapist or staff person receives satisfactory assurance from the party seeking the information that reasonable efforts have been made by such party to insure that the individual who is the subject of the PHI that has been requested, has been given notice to that request.
 - a. That assurance must be a written statement demonstrating that the party requesting such information has made a good faith effort to provide written notice to the individual or that the individual's location is unknown and has mailed notice to the individuals last known address.
 - b. The notice should include sufficient information about the litigation or proceeding for which the PHI is requested to permit the individual to raise an objection to the court or Administrative Tribunal.
 - c. The time for the individual to raise objection to the court or administrative tribunal has elapsed, no objections were filed or all objections filed by the individual have been resolved by the court or tribunal.
 - d. The therapist/staff can assume notice has been received if they receive satisfactory assurance demonstrating that there has been a qualified protective order issued.
 3. Clinical records may notify Pathways' Legal Counsel that records are the subject of an order/subpoena.

4. Legal Counsel may be provided a copy of the order/subpoena and shall notify clinical records relative to whether the information must be disclosed under the Mental Health Code.
5. Notwithstanding a subpoena for duces tecum, client PHI is considered confidential will not be released without signed authorization.

B. Authorizations

1. Clinical records staff or site designee shall determine if there is a valid authorization in the record.
2. In the absence of a valid authorization, clinical records/site designee shall make a reasonable effort to notify the recipient that her/his record is generally considered privileged and that they should secure their own legal advice in that regard.
3. Since mental health records are confidential there must be an authorization signed by a party with authority to authorize prior to the release of records.

C. Asserting Privilege

1. If the client asserts privilege, Pathways' Legal Counsel shall notify the requesting party that privilege is asserted, assuming time permits.
2. In the event time does not permit notice to the requester, Pathways' Legal Counsel, subpoenaed staff person or clinical records/site designee shall communicate to the Court involved that privilege is asserted and shall appear at the time and place indicated in the event the subpoena is for production of the record at a specified Court hearing.
3. No records shall be disclosed or released.
4. Absent a valid release, the potential liability for releasing records outweighs any potential contempt hearing for not releasing the record.
5. Whenever a subpoena for records is received for any Court proceedings:
 - a. Pathways shall verify that the recipient and/or his/her attorney is notified of the same.
 - b. Pathways cannot give legal advice to a recipient regarding confidentiality or privilege and the recipient should be advised to seek the advice of an attorney.
 - c. Where the recipient cannot be located, or in the event she/he claims privilege, Pathways' Legal Counsel shall be made aware of the subpoena in a timely manner and shall direct a response to the subpoena consistent with this Protocol.

D. Subpoenas for Personal Appearances

1. The affected employee shall notify her/his supervisor who will in turn notify Pathways' Legal Counsel.
2. Decision to quash subpoena will be made on a case by case basis.

E. Home Based Charts

1. Signatures of all adults that are mentioned in the chart must be on file.
2. If you cannot get consent from all adults, you must black out names, diagnosis, and information pertinent to those who refuse to sign or for whom you cannot obtain consent before sending to the court.

F. Abuse/Neglect Cases

1. In abuse/neglect cases, if the Family Court has jurisdiction over minor children, and if Pathways has conducted a court-ordered examination, interview of course of treatment, any PHI relating thereto must be released upon receipt of a subpoena in that proceeding.
2. Court ordered treatment means that an examination, interview or course of treatment commences on and after date of the Court Order. A court cannot order a parent or child to receive any examination, interview, or course of treatment unless it has jurisdiction. (This excludes emergency mental health treatment or hospitalization).
3. The release of information pursuant to an order/subpoena applies only to the person or persons who have been ordered to receive any form of service and therefore equally applies to adults (parents) under the Subpoena Procedure for Adults.

G. For any questions concerning the interpretation of Policy and Procedure, refer to the Privacy Officer or Corporate Counsel.

H. For Co-Occurring Records go to the Co-Occurring Procedure.

REFERENCES:

Act 258 of the Public Acts of 1974, as amended (Michigan Mental Health Code) Sections 748, 748 (a), and 750.
45 CFR Part 164 section 512 (e)
42 CFR Part 2 Subpart E. section 261.