



Subpoena of Medical Records Policy

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Policy It is the policy of San Bernardino County Department of Behavioral Health (DBH) to ensure receipt, response, routing and/or processing of all subpoenas served on DBH staff for appearance or the Medical Records unit for record release is conducted in accordance with current laws, regulations and DBH and County requirements.

Purpose To provide instruction to the DBH workforce for administration and adherence to valid and properly served subpoenas.

Definition(s) **Administrative Request (exception):** This exception allows a covered entity to disclose protected health information for a law enforcement purpose to a law enforcement official in response to an “administrative request, including administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:

- The information sought is relevant and material to a legitimate law enforcement inquiry;
- The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
- De-identified information could not reasonably be used.

Affiant: The author of an affidavit, who swears to the truth and accuracy of the statements made in the affidavit which will be used as evidence in a court of law.

Authorization for Release of Protected Health Information: A Health Insurance Portability and Accountability Act (HIPAA) and 42 Code of Regulations (C.F.R.) Part 2 compliant authorization signed by the client or client’s legal representative, authorizing DBH to release the client’s information to a designated recipient. This form must be completed thoroughly with specified records to be shared, a designated time frame and expiration date, as well as a signature by the DBH client or legal representative. If the form is signed by a legal representative, proof from the court system designating legal representation must accompany the request.

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Subpoena of Medical Records Policy, Continued

Definition(s),
continued

Business Associate: An entity whom conducts the following on behalf of the covered entity where the provision of services named involves the disclosure of protected health information: creates, receives, maintains or transmits protected health information for a function or activity involving the use or disclosure of protected health information, including claims processing/administration, data analysis, data storage, utilization review, quality assurance, billing, benefit management, practice management, and repricing; provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation or financial services.

Confidentiality: The duty of anyone entrusted with protected health information or personally identifiable information to keep that information private.

Covered Entity (CE): Includes: 1) health care providers, 2) health plans, and 3) health care clearing houses who transmit any health information in electronic form in connection with a transaction covered by the Privacy and Security Rules.

Health Insurance Portability and Accountability Act (HIPAA): A federal law designed to improve portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and health care delivery, to promote the use of medical savings accounts, to improve access to long-term care services and coverage, to simplify the administration of health insurance, and for other purposes.

Protected Health Information (PHI): PHI is *individually identifiable health information* held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper or oral. Individually identifiable information is information, including demographic data, that relates to the individual's past, present or future physical or mental health or condition; the provision of health care to the individual; or the past, present, or future payment for the provision of health care to the individual, and identifies the individual or for which there is reasonable basis to believe it can be used to identify the individual. PHI excludes individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; in records described at 20 U.S.C. 1232g(a)(4)(B)(iv); in employment records held by a covered entity in its role as employer; and regarding a person who has been deceased for more than fifty (50) years.

Subpoena: A subpoena is a formal written order issued by a court, attorney, or administrative agency.

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Subpoena of Medical Records Policy, Continued

Subpoenas for Client Medical Records

Subpoenas requesting medical records must immediately be forwarded to DBH Medical Records at **850 E Foothill Blvd. Rialto CA 92376** or scanned to **DBH-MedicalRecords@dbh.sbcounty.gov**. The DBH Medical Records Supervisor serves as the department's Custodian of Records and is responsible for responding to all subpoenas for DBH client medical records.

Requirements for Validity

The following lists the elements required for a valid properly served subpoena:

- A subpoena for appearance to testify in a civil matter must be provided to the witness directly in person, not by US mail, email, or facsimile,
 - A subpoena served by email, mail, or fax is generally not considered valid unless the recipient has explicitly agreed in writing to accept service through those methods;
 - A subpoena for records must indicate the specific San Bernardino County DBH Clinic or DBH Custodian of Records;
 - Subpoena should clearly state what specific information is required along with the client's name and date of birth or social security number for proper identification;
 - Subpoena must be signed and dated;
 - Subpoenas to produce documents (Medical Records) shall be served no later than five (5) business days prior to hearing;
 - Subpoena must include the name and address of the court, the department where hearing will be held, and the date and the time of the proceedings;
 - The subpoena must specify the type of case that will be heard, either civil or criminal;
 - The case number and name of parties involved must be notated, and, for state administrative proceedings, an affidavit from an affiant (such as public defender, lawyer, etc.) is required to request testimony and/or personal attendance of a witness at a trial or a deposition.
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Subpoena Acceptance

Acceptance of a subpoena is confirmed when a DBH employee is personally served by a process server.

Records may **not** be released without a court order or signed Authorization for Release of Protected Health Information (PHI) (COM001) by the client or authorized representative. If a court order or an authorization for release is not received, the release of medical or billing records or even acknowledgement that the person is or has been a client may constitute a breach of client PHI. See **Access and Amendment Policy** (COM0950) for details.

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Subpoena of Medical Records Policy, Continued

Subpoena Acceptance, continued

Supervisors and Managers have a duty to verify the credentials of a process server before discussing personal service of a subpoena for a DBH employee. Upon verification of the credentials, supervisors/managers may provide process servers the following information regarding a DBH employee:

- Office/clinic location
- Employment schedule

When a subpoena is presented to a DBH employee, the process server should be directed as follows:

If ...	Then ...
Medical records are requested of a former or current client	Direct the process server to serve DBH Medical Records at 850 E. Foothill Blvd, Rialto, CA, 92376.
Billing/fiscal records are requested of a former or current client	Direct the process server to serve the DBH Business Office at 303 E. Vanderbilt Way San Bernardino, CA 92415.
Both medical records and billing/fiscal records are requested	Direct the process server to serve DBH Medical Records at 850 E. Foothill Blvd Rialto CA 92376.
Appearance of a DBH employee is requested for a DBH related matter and a client's medical records are also included in the request	<p>The DBH employee must be personally served. Service should NOT be accepted on behalf of another DBH employee.</p> <p>Once the intended DBH employee has been served, the employee must immediately contact DBH Medical Records Unit regarding the requested medical records.</p>
Subpoena is for "Appearance Only"	<p>Direct the process server to the business address of the DBH employee.</p> <p>Note: The subpoena for "appearance only" must be personally served to the person named in the subpoena.</p>
Personal employee information (e.g., payroll records, employment history, credentialing, or licensing information, etc.) is requested	Direct the process server to County Personnel Office at 157 West Fifth Street, San Bernardino, CA, 92415.

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Subpoena of Medical Records Policy, Continued

Subpoena Acceptance, continued

If ...	Then ...
Department business records of any kind (other than medical or billing/fiscal records of a current or former DBH client)	Direct the process server to DBH Office of Compliance at, 303 E. Vanderbilt Way San Bernardino, CA 92415.
A former or current homeless client (individual without a home who uses a DBH facility address as their personal mailing address).	Direct the process server to serve DBH Medical Records at, 850 E. Foothill Blvd, Rialto, CA, 92376.

Note: DBH does not require client notification or authorization to comply with a grand jury subpoena (as opposed to a regular subpoena issued by an attorney).

Reproductive Health Attestation

If DBH or a contract provider receives a request for PHI related to reproductive health care for health care oversight activities, judicial or administrative proceedings, law enforcement purposes, or to coroners/medical examiners, a signed COM046 Attestation Regarding a Requested Use or Disclosure of Protected Health Information Potentially Related to Reproductive Health Care form (Attestation) must be obtained from the requestor attesting that the intended use or disclosure of the PHI is not for any of the following prohibited purposes:

- 1) To conduct a criminal, civil, or administrative investigation into any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care where such health care is lawful under the circumstances in which it was provided.
- 2) To impose criminal, civil, or administrative liability on any person for seeking, obtaining, providing, or facilitating lawful reproductive health care.
- 3) To identify any person for any purpose described in 1) and 2).

DBH shall require the attestation form for all information requests related to reproductive health PHI. The attestation form must be completed entirely, not missing any required element or statement or contain other or additional content that is not required. If other or additional information is included, the attestation will be considered invalid. The signed attestation shall be maintained in the client's medical record.

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Subpoena of Medical Records Policy, Continued

Reproductive Health Attestation,
continued

The attestation must be accompanied by a signed and valid Authorization for Release of Protected Health Information (PHI) Form (COM001) in the absence of a court order.

Note: All requests regarding reproductive health information are to be forwarded to the Medical Records Unit at (909) 421-9350 or DBH-MedicalRecords@dbh.sbcounty.gov for response and processing.

Subpoena Administration

Under no circumstances are DBH staff to confirm client status and/or provide any information to external parties regarding a client served through the DBH system of care, including those served by contract agencies. Inquiries from external parties are to be referred through the direct chain of command, with inclusion of the respective Deputy Director or Executive Manager and Senior Program Manager/s. In addition, all inquiries involving law enforcement should include reporting to Office of Compliance at, Compliance_Questions@dbh.sbcounty.gov and any external subpoenas, including Grand Jury requests, are to be referred to Medical Records Supervisor/Custodian of Records.

External parties may include the following:

- Attorneys;
- Private investigators, and/or
- Law enforcement.

The following table describes roles and responsibilities when a subpoena is received:

Role	Responsibilities
Medical Records Office	Once the subpoena has been accepted: <ul style="list-style-type: none"> • Enter the information onto the subpoena log; • Ensure the subpoena contains all elements listed in Requirements for Validity section above; • Locate and obtain the medical record as needed; • Only provide information requested on the subpoena. If request is for “any and all records”, call to clarify what is being requested, and • Make sure there is a signed Authorization for Release of (PHI) (COM001) from the client before releasing medical record.

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Subpoena of Medical Records Policy, Continued

Subpoena Administration,
continued

DBH Providers	<p>Email/fax copy of subpoena to Medical Records the day subpoena is received:</p> <ul style="list-style-type: none"> • Call Medical Records and advise the subpoena has been sent and confirm receipt; • Await guidance prior to taking action, and • Appear in court, as required.
Chief Compliance Officer	<p>Chief Compliance Officer shall if needed:</p> <ul style="list-style-type: none"> • Contact County Counsel for guidance as and forward the subpoena to County Counsel via: <ul style="list-style-type: none"> ○ Scan/Email (preferred); or ○ Interoffice Mail Code (0140), addressed to Deputy Counsel assigned to the DBH-Department receiving the subpoena. <p>If advised by Counsel claim that the records are “privileged” and should not be released without a court order.</p>
Medical Records Supervisor/Custodian of Record Designee	<ul style="list-style-type: none"> • Prepare a copy of the medical record for the court. • Provide information described in the subpoena by the required date. • Verify authorization to release PHI or proof of service stating the client has been notified of the subpoena and informed of the right to object to the court order. • Advise court if DBH has no records that fit the description provided in the subpoena. • Appear in court as summoned to: <ul style="list-style-type: none"> ○ Provide records not accompanied by signed Authorization for Release of PHI (COM001) as ordered by the court; ○ Certify records are authentic, or ○ Request an “in camera” review. • Transportation of medical records to court must be in a locked bag and can only be conducted by the Medical Records Supervisor/Custodian of Records or Chief Compliance Officer approved Designee.

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Subpoena of Medical Records Policy, Continued

Subpoena Administration,
continued

Note: If the subpoena is for **both** medical records and billing records, the subpoena will be accepted by Medical Records and once their responsibilities have been met, they will forward to the Business Office within five (5) days of receipt. On high profile, complex, or highly sensitive cases prior to release, Consult with Chief Compliance Officer

Subpoena for Appearance

The following table provides instruction for a DBH employee who has been subpoenaed to appear and testify in court:

Role	Responsibilities
DBH employee's immediate supervisor	<p>Employee provides the subpoena to the immediate supervisor who will then:</p> <ul style="list-style-type: none"> • Review the service date on the subpoena to determine the date of appearance; <ul style="list-style-type: none"> ○ A subpoena should be served at least five (5) days prior to date information is required to be submitted. • Make two (2) copies of the Subpoena; • Provide one (1) copy to employee and retain the second copy. • Forward the original to the DBH Office of Compliance and "cc" Medical Records. • If subpoena is for DBH (the Department) or the County, forward to the Chief Compliance Officer-Office of Compliance.
Office of Compliance	<p>If subpoena is for DBH (the Department) or the County:</p> <ul style="list-style-type: none"> • Notify Director's Executive Secretary; • Provide a copy of the Subpoena to County Counsel, and <ul style="list-style-type: none"> ○ Scan/ Email (preferred) • Notify Risk Management.

Important Note: DBH employees **shall not** accept service of a subpoena on behalf of another individual (unless by the direct Supervisor in absence of employee) as it obligates the subpoenaed person to appear.

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Subpoena of Medical Records Policy, Continued

Court Appearance

The following table describes the role and responsibilities of DBH providers in court:

Role	Responsibilities
DBH Providers	<p>Use the script in Attachment A if called to testify in court and wait for the judge's order.</p> <ul style="list-style-type: none"> • Ensure responses pertaining to client information are only provided if ordered by the judge; • Keep responses brief and concise, answering only what is asked (e.g., yes/no answers); • Do not volunteer any information which is not requested or known; • Contact the office of Compliance regarding guidance or general questions as they relate to testifying in court, and • Contact Medical Records at, (909) 421-9350 if arrangements need to be made to review records in advance of the hearing. <p>Note: Do not take any records to court.</p>

Cost Protocol

Costs incurred by the County related to an employee providing testimony under a subpoena must be reimbursed to the County. County employees providing such testimony must request the fee for testifying and turn the reimbursement over to the County. The following section provides details on the fee and cost protocol for Department of Behavioral Health (DBH) employees.

Fees and Costs

The table below explains fees and costs the County is entitled to be paid when complying with a subpoena.

If...	Then...
DBH furnishes copies of subpoenaed records	<p>DBH is entitled to be paid reasonable costs incurred by the subpoenaing person or entity. DBH charges a flat rate of fifteen dollars (\$15) for this service. The check shall be addressed to County of San Bernardino. Medical Records Staff or Clinic Staff may receive the check and once logged and a receipt is provided, staff will forward the check to the Business Office.</p> <p>Note: Payment may be requested simultaneously with delivery of the records.</p>

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Subpoena of Medical Records Policy, Continued

Fees and Costs, continued

Important Note: It is the practice of DBH not to transport or make available requested records for copying to another entity. DBH Medical Records shall handle all medical, billing and/or Department records to maintain the confidentiality of protected health information.

Witness Fees and Mileage

DBH employees who are subpoenaed to appear in court are entitled to a witness fee and mileage incurred for attendance and testimony, regardless of whether the employee demands payment. This benefit excludes DBH contracted employees.

Witness fees and mileage do not have to be claimed until the date of appearance. However, fees and mileage must be submitted prior to testimony or production of records. These are usually claimed by completing the reverse side of the subpoena as follows:

If the...	Then the...
Reverse side of the subpoena does not allow claiming of fees and mileage,	Person accepting the service will ask the process server how fees and mileage are claimed.
Process server is unable to advise on fees and mileage,	Subpoenaed person will contact the attorney listed on the subpoena to determine how these are claimed.

Note: Please refer to the appropriate Memorandum of Understanding (MOU) regarding witness leave regulations.

Processing Witness Fees

When witness fees and mileage are paid, the procedure below will be followed to process the payment:

Stage	Description
1	The DBH employee: <ul style="list-style-type: none"> Endorses the check, and Gives it to the staff member designated in their office to receive payments.
2	The designated staff member: <ul style="list-style-type: none"> Receives and deposits the fees, and Forwards a copy of the receipt and validated bank deposit to DBH- Auditing, or another applicable department.

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Subpoena of Medical Records Policy, Continued

**Processing
Witness Fees,
continued**

3	<p>The DBH employee:</p> <ul style="list-style-type: none"> • Completes the DBH Travel Request and Travel Expense Report for mileage incurred, if applicable (please see SAP Travel and Employee Reimbursement Instructions located in DBH internal Forms and Manuals – Fiscal forms for further details); • Obtains supervisor approval, and • Submits the SAP to Fiscal Services.
4	<p>Fiscal Services:</p> <ul style="list-style-type: none"> • Reviews and verifies the SAP information; • Calculates the reimbursement amount, and • Approves reimbursement issuance to the DBH employee.

**Non-work-
related
subpoenas**

Government Code 68093 provides for witness fees and mileage when personal attendance is required regarding matters not related to County employment. Staff must consult their current Memorandum of Understanding (MOU) for appropriate witness fee provisions.

**Related Policy,
Procedure, and
Form**

DBH Standard Practice Manual and Departmental Forms:

- Authorization for Release of Protected Health Information (PHI) (COM001)
- Authorization to Release PHI (COM0912)
- Authorization to Release Protected Health Information (PHI) Procedure (COM0912-1)
- Attestation Regarding a Requested Use or Disclosure of Protected Health Information Potentially Related to Reproductive Healthcare (COM046)
- Access and Amendment Policy (COM0950)

Internal DBH Forms & Manuals – Fiscal Forms:

- DBH Travel and Expense
- DBH SAP Travel and Employee Reimbursement Instructions

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Reference(s) California Code of Civil Procedure, Section 1985.3
California Evidence Code, Section 1560-1567
California Government Code, Sections 68093 and 68096.1
California Code of Federal Regulations Title 45, Sections 164.501 and 164.512
California Code of Federal Regulations, Section 164.512(f)(1)(ii)(C)
County of San Bernardino - Subpoenaing of Employees (No. 07-11)
County of San Bernardino (2023) Consolidated Memorandum of Understanding, 2023-2027.
County of San Bernardino (2021-2024) Memorandum of Understanding Between California Nurses Association, Nurses Unit & Per Diem Nurses Unit and County of San Bernardino.
Consolidated Memorandum of Understanding (MOU), Leave Provisions Article, Section 12, "Witness Leave"
Welfare and Institutions Code – WIC 5328
