

# **ST. CLAIR COUNTY COMMUNITY MENTAL HEALTH AUTHORITY**

## **ADMINISTRATIVE PROCEDURE**

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### **I. APPLICATION:**

- ☐ SCCCMHA Board
- ☐ SCCCMHA Providers & Subcontractors
- ☒ Direct-Operated Programs
- ☐ Community Agency Contractors
- ☐ Residential Programs
- ☐ Specialized Foster Care

### **II. PURPOSE STATEMENT:**

St. Clair County Community Mental Health Authority (SCCCMHA) shall ensure confidential information (verbal or written) is released upon the service of a court order or subpoena with the consent of the recipient/recipient's guardian, as applicable.

### **III. DEFINITIONS:**

- A. Attorney: Means an individual licensed to practice law in the State of Michigan.
- B. Consent: Means a written agreement executed by a recipient, a minor recipient's parent, a recipient's legal representative with authority to execute a consent, or a full or limited guardian authorized under the Estates and Protected Individuals Code, Public Act 386 of 1995, MCL 700.1101 to 700.8206, with the authority to consent, or a verbal agreement of a recipient that is witnessed and documented by an individual other than the individual providing treatment.
- C. Court: Means the Probate Court or the Court with responsibility with regard to mental health matters for the county in which an individual resides.
- D. Court Order: Means a written order signed by a judge summarizing a decision of a Court.
- E. Privileged Communication: Means a communication made to a psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of a patient, or to another person while the other person is participating in the examination, diagnosis, or treatment or a communication made privileged under other applicable state or federal law.
- F. Subpoena: Means a formal written order that requires a person to appear before a court or other legal proceeding, and testify, or produce documentation.

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#### IV. STANDARDS:

- A. A recipient's record is comprised of all the information pertinent to the services provided to a recipient that is documented and/or discovered by direct-operated staff members/volunteers or the staff members/volunteers of the contracted providers of SCCCMHA. Contract providers may hold any or all portions of a recipient's record on behalf of SCCCMHA for the purposes of providing services to a recipient or subsequent to the termination of services to a recipient.
- B. Confidential information regarding recipients of SCCCMHA services must be released upon service of a valid court order or subpoena signed by a judge for production of records or testimony issued by a court of record, unless the information is privileged by law. Privileged communications shall not be disclosed by order of a subpoena of a court of record or of the legislature unless disclosure is permitted under a release of information due to an express waiver of privilege or due to other conditions that, by law, permit or require disclosure.
- C. Confidential information shall be released only as specifically described in a court order/subpoena. A list shall be maintained in the recipient's record indicating the documents released, to whom the documents were released, and the date on which the release was completed.
- D. The Chief Operating Officer shall be provided with the original court order/subpoena requesting the release of a recipient's record.
- E. A copy of the court order/subpoena requesting a release of a recipient's record shall be placed in the recipient's record.
- F. The Chief Operating Officer shall be provided with a copy of the court order/subpoena requesting the testimony of a staff member/volunteer regarding a recipient's record.
- G. A copy of the court order/subpoena requesting the testimony of a staff member/volunteer regarding a recipient's record shall be placed in the recipient's record.

#### V. PROCEDURES:

##### **Process Server/Court/Attorney**

1. Serves a subpoena to the Chief Operating Officer via facsimile, mail, e-mail, or in-person at a minimum of two (2) calendar days prior to the date the witness is expected to provide testimony in court, or within 14 calendar days prior to the date the witness is expected to provide testimony and documents in court.

##### **Chief Operating Officer/Designee**

2. Receives subpoena from process server/court/attorney, and signs the subpoena if served in-person.

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### **Supervisor/Designee**

3. Receives subpoena from process server/court/attorney, and signs the subpoena if served in-person.
4. Calls Chief Operating Officer/Designee within two (2) hours of receipt of subpoena.
5. Forwards subpoena via encrypted e-mail to the Chief Operating Officer/Designee within four (4) hours of receipt of the subpoena.

### **Chief Operating Officer**

6. Reviews the subpoena and determines the validity of the request.
7. Completes one of the following:
  - a. Request for Records:
    - (1) Notifies the Medical Records Technician of receipt of a subpoena and directs the Medical Records Technician to follow SCCCMHA policy, Release of Case Records.
    - (2) Sends the original subpoena to a Scanning Technician for inclusion in the recipient's case record.
  - b. Request for Testimony:
    - (1) Notifies the staff member/volunteer of the receipt of the subpoena and hearing date.
    - (2) Makes a copy of the subpoena.
    - (3) Sends the copy of the subpoena to a Scanning Technician for inclusion in the recipient's case record.
    - (4) Sends the original subpoena to the staff member/volunteer.

### **Subpoenaed Staff Member/Volunteer**

8. Attends a hearing as ordered.
9. Completes one of the following:
  - a. Provides testimony at the court hearing, if written consent was obtained prior to the court hearing.
  - b. Notifies the Court of the absence of consent and inability to testify without a court order to do so.
    - (1) Addresses the Court and seeks confirmation from the Judge as follows: "Respectfully, Your Honor, I have not obtained the written consent of the interested party/the interested party's guardian. Absent their consent, are you ordering me to testify at this court hearing regarding the interested party's record?"

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**Court/Judge**

10. Orders staff member/volunteer to testify in court.

**Subpoenaed Staff Member/Volunteer**

11. Answers the questions posed by the judge and attorneys.

12. Completes a Contact note to document the time of their testimony.

**Court/Judge**

13. Does not order staff member/volunteer to testify in court.

**Subpoenaed Staff Member/Volunteer**

14. Addresses the Court, and requests to be excused from the court hearing as follows: “Respectfully, Your Honor, may I be excused?”

**Court/Judge**

15. Excuses staff member/volunteer from testifying in court.

**Chief Operating Officer**

3. Contacts attorney/prosecutor and advises of staff availability on the court date. Arranges telephone standby if subpoena indicates 9:00 a.m. appearance time. Advises attorney he/she will need to be telephoned and will be able to be at the court in a few minutes.

**VI. REFERENCES:**

A. Estates and Protected Individuals Code, Public Act 386 of 1998

B. Michigan Court Rules of 1985, Revised on June 30, 2023, sections 2.302, 2.305, 2.310, 2.314, 2.506(C)

C. Michigan Mental Health Code, Public Act 258 of 1974, sections 330.1100a, 330.1400, 330.1500, 330.1600, 330.1700, 330.1748, 330.1748(a)

D. Michigan Department of Health and Human Services Administrative Rules, R 330.7051

E. Michigan Revised Judicature Act of 1961, Public Act 236 of 1961

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VII. EXHIBITS:

None Available

VIII. REVISION HISTORY:

Dates issued 01/93, 04/96, 06/98, 07/00, 06/02, 06/04, 06/06, 06/08, 06/10, 05/12, 09/13, 09/14, 09/15, 09/16, 09/17, 09/18, 07/20, 09/21, 09/22.