

ST. CLAIR COUNTY COMMUNITY MENTAL HEALTH AUTHORITY

ADMINISTRATIVE PROCEDURE

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WRITTEN BY Vic Amato	REVISED BY Joy Vittone		AUTHORIZED BY Telly Delor	

I. APPLICATION:

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

II. PURPOSE STATEMENT:

St. Clair County Community Mental Health (SCCCMH) must ensure confidential information (verbal or written) is released upon the service of a court order or subpoena with the consent of the recipient or 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 discovered by direct-operated staff members and volunteers or the staff members and volunteers of the contracted providers of SCCCMH. Contract providers may hold any or all portions of a recipient's record on behalf of SCCCMH 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 SCCCMH 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 must 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 must be released only as specifically described in a court order or subpoena. A list must 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 must be provided with any original court order or subpoena requesting the release of a recipient's record.
- E. A copy of any court order or subpoena requesting a release of a recipient's record must be placed in the recipient's record.
- F. The Chief Operating Officer must be provided with a copy of any court order or subpoena requesting the testimony of a staff member or volunteer regarding a recipient's record.
- G. A copy of any court order or subpoena requesting the testimony of a staff member or volunteer regarding a recipient's record must 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 only 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/Court Liaison

3. Receives subpoena from process server/court/attorney via facsimile, mail, e-mail, or in-person 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 email 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. Contacts attorney, if legal advice is needed, to permit attorney's timely response to Court no later than 10 days after service of the subpoena, when necessary.
7. Contacts attorney or prosecutor and advises of staff availability on the court date. Arranges telephone standby if subpoena indicates 9:00 a.m. appearance time. Advises attorney that staff will need to be telephoned and will be able to be at the court within a few minutes.
8. 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 SCCCMH [Administrative Procedure #03-002-0030, Release of Case Record Information](#).
 - (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 or volunteer of the receipt of the subpoena and hearing date.
 - (2) Sends the copy of the subpoena to a Scanning Technician for inclusion in the recipient's case record.
 - (3) Sends the subpoena to the staff member or volunteer. If it was served in-person, the original subpoena is sent to the staff member or volunteer.

Subpoenaed Staff Member/Subpoenaed Volunteer

9. Attends a hearing as ordered.
10. Completes one of the following:
 - a. Provides testimony at the court hearing if written consent was obtained prior to the court hearing. Form [#0380 Authorization for Release of Information for Staff Testimony](#) should be used for

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this purpose.

- 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/interested party’s guardian. Absent their consent, are you ordering me to testify at this court hearing regarding the interested party’s record?”

Court/Judge

11. Orders staff member or volunteer to testify in court.

Subpoenaed Staff Member/Subpoenaed Volunteer

12. Answers the questions posed by the judge and attorneys.
13. Completes a Contact note in the electronic health record of the recipient to document the time of the testimony.

OR

Court/Judge

14. Does not order staff member or volunteer to testify in court.

Subpoenaed Staff Member/Subpoenaed Volunteer

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

Court/Judge

16. Excuses staff member or volunteer from testifying in court.

VI. REFERENCES:

- A. Estates and Protected Individuals Code, Public Act 386 of 1998
- B. Michigan Court Rules of 1985, Updated on April 26, 2024, 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)

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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

F. [#0380 Authorization for Release of Information for Staff Testimony](#)

VII. EXHIBITS:

N/A

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, 9/23.