COMMUNITY MENTAL HEALTH AUTHORITY

ADMINISTRATIVE POLICY AND PROCEDURES MANUAL				
Chapter **Program Quality**	**Section** **HIPAA**	**Chapter** **05**	**Section** **03**	**Subject** **09**
Subject **Subpoena/Court Order**	**Authorization**		**Approved: 04/08/03** **Replaces: None**	

Updated: October 2024; Reviewed/No Update: October 2025

I. PURPOSE: To give Gogebic Community Mental Health Authority (GCMHA) staff guidance for action when they have received a court order or subpoena regarding a GCMHA recipient.

II. APPLICATION: All programs under the governance of GCMHA.

III. DEFINITIONS: None

IV. POLICY: Subject to certain restrictions, GCMHA may disclose protected health information (PHI) in the course of any judicial or administrative proceedings. There are additional protections to those individuals receiving substance abuse treatment; refer to policy 05-01-33 (42 C.F.R. Part 2).

V. PROCEDURE:

A. When a GCMHA employee receives a subpoena or a court order to either appear or to produce records, it should be forwarded to their Program Director.

B. The Program Director must receive satisfactory assurance from the party seeking the information that:

1. reasonable efforts to ensure that the recipient has been given notice of the request for information; or

2. reasonable efforts have been made to secure a qualified protective order.

C. Satisfactory assurance (in B.1 above) means receiving a written statement and accompanying documentation demonstrating that:

1. The party requesting the information has made a good faith attempt to provide written notice to the recipient, or, if the recipient's location is unknown, to mail a notice to the recipient's last known address;

2. The notice included sufficient information about the litigation or proceeding in which the PHI is requested to permit the recipient to raise an objection to the court or administrative tribunal; and

3. The time for the recipient to raise objections to the court or administrative tribunal has elapsed, and;

a) No objections were filed; or

b) All objections filed by the recipient have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.

4. For this section (C), satisfactory assurance can be met if GCMHA makes reasonable efforts to provide notice to the recipient in compliance with C.1, C.2 and C.3.

D. Satisfactory assurance (in B.2 above) means receiving a written statement and accompanying documentation demonstrating that:

1. The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or
2. The party seeking the PHI has requested a qualified protective order from such court or administrative tribunal

E. Although not required, an attempt should be made to secure from the recipient, a valid and complete Consent to Share Behavioral Health Information form.

F. Asserting Privilege.

1. If the client asserts privilege, GCMHA 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, GCMHA Legal Counsel, subpoenaed staff person or Program Director 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 Consent to Share Behavioral Health Information, the potential liability for releasing records outweighs any potential contempt hearing for not releasing the record.**

G. Subpoenas for Personal Appearances.

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

H. ADDITIONAL PROCEDURES FOR SUBSTANCE ABUSE RECORDS

1. If, upon receipt of the subpoena there is sufficient time, contact will be made the individual or entity issuing the subpoena, citing the federal regulations and explaining that, by law, no disclosure can be made until the standards have been complied with.
2. The subpoenaed record will be transported to the court in a sealed envelope marked "confidential."
3. Once an individual has been called and sworn as a witness in the proceedings, the subpoenaed individual will cite for the record, the applicable federal standards regulations (citation) governing disclosure to the court and will not disclose client information or respond to questions until so ordered by the court.
4. After complying with step 3, if the court orders the subpoenaed individual to respond to the questioning, the individual must state for the record their request to testify in chambers or after the courtroom has been cleared of all non-essential personnel. Should the Court refuse to honor the Federal regulations and refuse to hold the remainder of the hearing in chambers or only in front of essential personnel then the staff has done what is required by the regulations. The staff may then disclose information determined by them to be in the best interest of the client and the therapeutic relationship.

VI. REFERENCES AND LEGAL AUTHORITY: Act 258 of the Public Acts of 1974, as amended (Michigan Mental Health Code) Sections 748, 748 (a), and 750; 45 C.F.R. Part 164 section 512 (e); 42 C.F.R. Part 2 Subpart E. section 261.

VII. EXHIBITS: None