



STATE OF ALABAMA DEPARTMENT OF  
**PUBLIC HEALTH**

Donald E. Williamson, MD  
State Health Officer

MEMORANDUM

TO: ADPH Office Managers/Records Clerks

THROUGH: Donald E. Williamson, M.D.  
State Health Officer *DEW*

FROM: P. Brian Hale *PBH*  
General Counsel

DATE: October 1, 2015

SUBJECT: Employee Responsibilities in Responding to Legal Documents

The purpose of this document is to provide guidance to employees so they can take appropriate action once they receive legal documents. For the purposes of this memorandum, legal documents include, but are not limited to: summons, subpoenas, authorizations to release records, public records requests, and claim notices.

All legal documents concerning medical records, health care facilities, and disease outbreaks must be scanned into the Department's E-HIPAA Log on the same day that the office receives the document. Offices that do not have access to the E-HIPAA Log must fax all legal documents to the Office of General Counsel ("Legal") at (334) 206-5874 on the same day the office receives the document. If legal documents are received after business hours, please add them to the E-HIPAA Log or fax them to Legal on the next business day. In addition, all legal documents served at the county/area level should be delivered to the area administrator.

If any Department employee erroneously accepts service of a legal document, the employee must contact Legal immediately by calling (334) 206-5209. The employee must also fax the document to (334) 206-5874. The fax cover sheet must indicate the name of the employee that originally received the document and the date the document was received.

Any certified mail received by the Department should be delivered to the addressee immediately and the addressee should immediately open the certified mail. When the addressee determines that he/she has received a legal document, he/she should immediately notify the county/area administrator, or bureau designee, and Legal.

## SUBPOENAS

A **subpoena** is an order from a court for a person to appear or produce documents. Subpoenas to produce documents are also referred to as a "Subpoena Duces Tecum." There are penalties associated with failure to comply with a subpoena. Courts have the discretion to find a person in contempt of Court or to issue fines for failure to comply with a subpoena. The employee may also receive a "Notice of Intent to Serve a Subpoena." This document is a 15-day notice that a properly authorized subpoena may be forthcoming. The employee must notify the county/area administrator or bureau designee and Legal once he/she receives a subpoena or "Notice of Intent to Serve a Subpoena."

Service of subpoenas related to the Department in its official capacity for medical records, health care facility records, and disease outbreak information must be scanned into the E-HIPAA Log. Offices that do not have access to the E-HIPAA Log must fax the subpoena to Legal at (334) 206-5874. A "Notice of Intent to Serve a Subpoena" must also be faxed to Legal. Legal will review each subpoena to determine if it complies with the requirements of HIPAA for patient confidentiality. If it does not comply, Legal will contact the employee and ask that he/she send a letter which states that the subpoena does not comply with HIPAA. (See Attachment 1.) The Department will withhold further action until it receives the necessary information to produce the records.

If Legal determines that the information may be released, the employee must review the records for the following information before he/she releases the records:

- 1) If the record contains sexually transmitted disease (STD), tuberculosis (TB), or any other notifiable disease (ND) information, the employee must redact those portions of the patient's records. When providing the redacted copy to the individual/entity requesting the information, attach a letter informing the recipient that information has been redacted in accordance with Code of Ala. 1975, §22-11A-2 (*See page 4 for instructions on redacting records.*) (See Attachment 2.)
- 2) If the information sought contains **only STD, TB, or ND records**, contact Legal immediately.

Once the employee has received permission from Legal to release the records and has completed a review of the records, the employee may release the information. Please use the attached cover letter to send with the records. (See Attachment 3.) In addition, the employee must document the release of information in the patient's file and in the E-HIPAA log. If there are any questions about subpoenas, please contact Sancha Howard in Legal at (334) 206-5209.

### **AUTHORIZATIONS FOR THE RELEASE OF INFORMATION**

An **authorization** is a signed document by an individual that requests a copy of their medical record for themselves or a third party. An individual may use the Department's CHR-6 form to authorize release of information. If a CHR-6 is completed, the requested information may be released; however, **psycho therapy notes must not be released**. If an authorization is from a separate provider or entity, that authorization must be entered into the E-HIPAA log or faxed to Legal so the validity of the release can be determined.

### **RE-RELEASE OF INFORMATION**

Information received from other health care providers should be treated as confidential using the same guidelines as the records created by the Department. It may be appropriate to "re-release" medical records<sup>1</sup> received from other providers as long as the information received from the other provider was received in the normal course of business and was or could be relied upon by the Department to render clinical services. If a legal document instructs the Department to release the patient's entire record, this means all records despite whether they were generated by the Department or another provider. If a legal document instructs the release of all records created by the Department in the course of treating the patient, then only Department records should be sent. If the situation is unclear, staff should ask Legal for clarification. Information received from other health facilities should be treated as confidential using the same guidelines as the records created by the Department.

All uses and disclosures of protected health information (PHI) must be in accordance with the Department's HIPAA Privacy and Security Policy which requires that the information being released is the minimum necessary.

### **VERIFICATION OF IDENTITY OR AUTHORITY**

In all circumstances, the employee must verify the identity of the person to whom PHI is being disclosed, if the person's identity is not known to the employee.

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<sup>1</sup> Note: This represents a change in policy brought about by the application of HIPAA, specifically 42 CFR §164.501(1) (I) and (2). The Department of Health and Human Services now interprets "medical records" to include records originally generated by other providers as long as the record is considered a medical record and is or could be relied upon to render medical care.

### HOW TO REDACT

- 1) After reviewing the requested record and determining that it contains information that may *not* be released, the custodian of records shall make a copy of all pages containing the *restricted* information.
- 2) The custodian of records shall then color over the restricted information on the reproduced copy with a black marking pen in a neat manner.
- 3) The custodian of records shall then reproduce a copy of this page, which shall be the page that is released to the requester.
- 4) The custodian of records shall then dispose of the first copy by shredding or placing in a shredder bin.

### CHARGES FOR COPIES OF MEDICAL RECORDS

Copies should be provided in accordance with the fee schedule for the county in which the release of information is provided. If records must be retrieved, the requester will pay the retrieval cost. (See Attachment 4.)

### RECORDS RELEASED BY FACSIMILE TRANSMITTAL

Records should only be faxed when mailing would not meet the immediate needs of patient care. Faxing is to be discouraged in situations where time is not of the essence, but it is permissible. The confirmation of the fax should be reviewed to verify the records were sent to the correct fax number. **Bureau of Communicable Disease policy forbids faxing of STD information.**

Attachment 1

Date

Name

Address Line 1

Address Line 2

Address Line 3

Dear XXX:

Subject: (Insert the name of the patient)

We have received your subpoena for medical records on our patient(s):

Federal privacy rules adopted under the Health Insurance Portability and Accountability Act (HIPAA) require the completion of one of the following items before the Department releases the records of the patient(s):

- (1) Signed Authorization to Release Records from patient; or
- (2) HIPAA compliant subpoena under *42 C.F.R. 164.512 (e)(1)(ii)*.

Please send your response to our address above. We are withholding action until we receive appropriate assurances from you. If you have any questions, please contact the Department's Office of General Counsel at (334) 206-5209.

Sincerely,

Name

XXX County Health Department

Attachment 2

Date

Name

Address Line 1

Address Line 2

Address Line 3

Dear XXX:

Subject: (Insert the name of the patient)

Enclosed are the documents you requested in the above styled matter. Under the Code of Alabama, § 22-11A-2, the Department is prohibited from releasing certain medical information, even in response to a subpoena. Portions of the documents have been redacted in order to comply with these statutory restrictions.

If you have any questions or concerns regarding this response to your subpoena, please contact the Department's Office of General Counsel at (334) 206-5209.

Sincerely,

Name

XXX County Health Department

Attachment 3

Date

Name  
Address Line 1  
Address Line 2  
Address Line 3

Dear XXX:

Subject: (Insert the name of the patient)

Enclosed are the documents you requested for (insert name of the patient). These records are confidential and shall not be reused or disclosed to any other person or entity for any purpose other than the pending litigation or proceeding or except as required by law.

Please contact the Department's Office of General Counsel at (334) 206-5209 if you have any questions or concerns.

Sincerely,

Name  
XX County Health Department

Attachment 4

420-1-5-.04 Open Records.

(1) State level records

(a) All public records of the State Board of Health are available for public inspection during business hours. Requests to obtain records may be made electronically, by mail, telephone or in person. Minutes of Committee meetings, forms and other records routinely requested by the public may be obtained at a cost of a \$5.00 retrieval fee plus \$1.00 per page for the first 25 pages and \$.50 for every page thereafter unless otherwise provided by law or rule. This charge may be waived in the case of requests by governmental agencies or indigent persons.

(b) Medical or clinic records, notifiable disease records, records of epidemiological investigations, investigative records of the Bureau of Health Provider Standards or records that are proprietary by statute, case law, rule or custom are not "public records" per se and are not open to the public inspection. Release of records by subpoena in civil or criminal actions are governed by individual statutes or court rules.

(2) County level records

(a) Public records in the possession of county health departments may be obtained in the same manner as state level records. Charges for such records will be assessed in conformity with local fee legislation/schedules.

(b) Medical or clinic records, notifiable disease records, records of epidemiological investigations, or records that are proprietary by statutory, case law, rule or custom are not "public records" per se and are not open to the public inspection. Release of records by subpoena in civil or criminal actions are governed by individual statutes or court rules.

(c) In counties where there is **no fee legislation and no fee schedules**, such records may be obtained as provided for in (1)(a) above.

(3) Charge for response to subpoenas - In accordance with Rule 45(a)(3)(c) Alabama Rules of Civil Procedure, a reasonable charge may be requested for response to subpoenas at both the state and county levels. Such records shall be obtained at a cost of a \$5.00 retrieval fee plus \$1.00 per page for the first 25 pages and \$.50 for every page thereafter unless otherwise provided by law or rule.

(4) Nothing in the rule is intended to require that information defined by 45 CFR, Parts 160 and 164 as "protected health information" (PHI) or that information otherwise protected as confidential by rule or statute, be made available to the public. All questions as to whether a particular document or class of information is public or confidential should be referred to the Office of General Counsel.

**Author:** P. Brian Hale

**Statutory Authority:** Code of Ala. 1975, §§13A-14-2, 22-2-2(6), 41-22-4.

**History:** Filed July 20, 1990. **Amended:** Filed January 15, 2003; effective February 19, 2003. **Amended:** Filed April 21, 2004; effective May 26, 2004. **Amended:** Filed December 17, 2009; effective January 21, 2009.