

EVMS MEDICAL GROUP

POLICY: Subpoena

DATE: 3/2003

CATEGORY: MEDICAL RECORD RELEASE OF INFORMATION

**REVIEWED/
REVISED:
04/2013**

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POLICY: Medical information and records may be released pursuant to a valid subpoena. A valid subpoena is one issued by a Virginia court or a federal court and contains the following information:

1. The court or agency that issued the subpoena.
2. The style of the case, including the court where the action is pending and the action's case number.
3. The names of the parties to the lawsuit.
4. The name of the party issuing the subpoena.
5. What is requested (i.e. medical records, testimony or both).
6. The date by which a response must be made.
7. The seal of the court or the signature of the clerk.
8. The following notice to providers must be in bold face capital letters in the body of the subpoena:

NOTICE TO HEALTH CARE ENTITIES:

A COPY OF THIS SUBPOENA DUCES TECUM HAS BEEN PROVIDED TO THE INDIVIDUAL WHOSE HEALTH RECORDS ARE BEING REQUESTED OR HIS COUNSEL. YOU OR THAT INDIVIDUAL HAS THE RIGHT TO FILE A MOTION TO QUASH (OBJECT TO) THE ATTACHED SUBPOENA. IF YOU ELECT TO FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION WITHIN 15 DAYS OF THE DATE OF THIS SUBPOENA. YOU MUST NOT RESPOND TO THIS SUBPOENA UNTIL YOU HAVE RECEIVED WRITTEN CERTIFICATION FROM THE PARTY ON WHOSE BEHALF THE SUBPOENA WAS ISSUED THAT THE TIME FOR FILING A MOTION TO QUASH HAS ELAPSED AND THAT: NO MOTION TO QUASH WAS FILED; OR ANY MOTION TO QUASH HAS BEEN RESOLVED BY THE COURT OR THE ADMINISTRATIVE AGENCY AND THE DISCLOSURES SOUGHT ARE CONSISTENT WITH SUCH RESOLUTION.

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Procedure (cont'd.)

IF YOU RECEIVE NOTICE THAT THE INDIVIDUAL WHOSE HEALTH RECORDS ARE BEING REQUESTED HAS FILED A MOTION TO QUASH THIS SUBPOENA, OR IF YOU FILE A MOTION TO QUASH THIS SUBPOENA, YOU MUST SEND THE HEALTH RECORDS ONLY TO THE CLERK OF THE COURT OR ADMINISTRATIVE AGENCY THAT ISSUED THE SUBPOENA OR IN WHICH THE ACTION IS PENDING AS SHOWN ON THE SUBPOENA USING THE FOLLOWING PROCEDURE:

PLACE THE HEALTH RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED ENVELOPE A COVER LETTER TO THE CLERK OF COURT OR ADMINISTRATIVE AGENCY WHICH STATES THAT CONFIDENTIAL HEALTH RECORDS ARE ENCLOSED AND ARE TO BE HELD UNDER SEAL PENDING A RULING ON THE MOTION TO QUASH THE SUBPOENA. THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT OR ADMINISTRATIVE AGENCY.

EXCEPTION: A subpoena is not sufficient for the release of medical information of a patient whose medical record contains information regarding:

- human immune deficiency virus (HIV) testing, or any mention of it, or
- alcohol and drug abuse treatment, or
- psychiatric treatment.

If a subpoena is received and the medical record contains any of the above information, see **Release of Psychiatric Information, Release of Alcohol and Drug Abuse Treatment Information and Release of AIDS Information** contained in the Privacy Manual.

Only subpoenas issued by Virginia courts and federal courts will be honored. If a subpoena is received that was issued by any other court, contact the EVMS Risk Management Office and the EVMS Medical Group Privacy Office immediately and prior to release of the information.

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PROCEDURE: Upon Receipt of a Subpoena

1. Verify that the subpoena is made out to EVMS, EVMS Medical Group and/or an EVMS Medical Group physician to produce copies of medical records (subpoena duces tecum). If the subpoena is for the testimony of an EVMS Medical Group provider, the subpoena shall be given to the provider.

2. Send copies of the subpoena to the EVMS Medical Group Privacy Office.

3. Review the medical record thoroughly for ANY mention of:

- alcohol and drug abuse treatment
- HIV testing
- psychiatric treatment
- statement by the physician that in his opinion the review of the records by the

patient would be injurious to the patient's health or well-being. If there is such a statement in the record the physician should be asked if s/he will be filing a Motion to Quash.

If any of the above are present in the medical record, see **Release of Psychiatric Information, Release of Alcohol and Drug Abuse Treatment Information and Release of AIDS Information** policies contained the Privacy Manual.

4. Do not respond to a subpoena duces tecum until you have received certification that:

- No motion to quash has been filed within fifteen days of the date of the request or attorney-issued subpoena, or
- All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought are consistent with such resolution.

5. When certification is received, furnish copies of the records designated in the subpoena by the return date on the subpoena or five days after receipt of certification, whichever is later.

6. If you have actual receipt of a notice that a Motion to Quash has been filed, the records should be placed in a securely sealed envelope and sent to the clerk of court or administrative agency issuing the subpoena or in whose court or administrative agency the action is pending. See notice in boldface capital letters above.

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7. The subpoena and all documentation relating to the disposition of this request must be retained in the record.

- EHR: the subpoena and documentation of information sent must be scanned into the Legal folder in the EHR.
- Paper Charts: copies of the subpoena and documentation of information sent must be placed in the chart.

NOTE: The subpoena may compel the attendance of the record custodian at either a deposition or trial in order to “authenticate” the medical record. The Medical Record Technician or her/his designee shall comply with such request. EVMS may send copies of a medical record in lieu of attendance at a deposition or trial provided all parties consent. Contact the requesting attorney to obtain consent. Document such consent by noting the following information on the subpoena:

- Your name;
- The identity of the person with whom you spoke;
- That person’s position;
- The date and time of the conversation;
- That consent was or was not obtained.

If the attorney does not consent, notify the EVMS Risk Management Office.

The provisions above have no application to subpoenas issued by a duly authorized administrative agency conducting an investigation, audit, review or proceedings regarding a health care entity’s conduct.

SUBPOENA – OFFICE OF CIVIL RIGHTS

The Secretary of Health and Human Services has delegated to the Office of Civil Rights the authority to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or compliance review for failure to comply with the Health Insurance Portability and Accountability Act of 1996 standards and requirements related to the privacy of individually identifiable health information at 45 CFR parts 160 and 164.

EVMS Medical Group will comply with valid subpoenas from the Office of Civil Rights.

PROCEDURE:

- Accept the subpoena but do not engage in conversation with the agent.
- Contact your supervisor and the Privacy Officer of EVMS Medical Group immediately.
- The EVMS Medical Group attorney should be summoned.

An attorney should always be present before anything is said. Professional counsel will be involved in all communications from this point.