

North Carolina Infant-Toddler Program Procedural Guidance

Reference: Procedural Safeguards Policy

Request for Information re: Subpoena

Introduction

The Infant-Toddler Program (ITP) shall ensure the effective implementation of procedural safeguards to govern confidentiality and privacy of information of the families served when ITP records are requested.

This document is intended to provide guidance on how to respond to a subpoena/court order.

Definitions

Subpoena is a legal document summoning of witnesses or the submission of evidence, as records or documents, before a court or other deliberative body.

Procedures

1. Fax or deliver the subpoena/court order directly to the CDSA Director as soon as possible. If the Director is not available, contact the team leader.
2. If the subpoena/court order is related to unusual circumstances requiring consultation with the EI Section Program Director, the CDSA Director (or his or her designee) will immediately fax the subpoena or court order to the EI Section office (919-870-4834). The CDSA Manager or EI Section Program Director will be in contact with the CDSA Director (or his/her designee) to discuss the unusual circumstances and any desired follow up. One example of an unusual circumstance might be a custody case in which a family member or attorney has specifically requested testimony from a CDSA employee to support his/her case, outside the documented medical record.
3. The person who receives the subpoena or court order should contact his or her supervisor. The supervisor in consultation with the Director will determine the level of support necessary for the employee, which may range from accompanying the person to Court to providing resource information and answering questions.
4. The EISC should ensure a complete and accurate file/record. The EISC should complete any notes that the EISC has started or draft any notes with information that the EISC has recently obtained but has not yet entered into the record/file. The EISC needs to be sure that he or she can honestly state that no changes in the record were made after receiving the subpoena or court order.

5. For subpoenas, the Director determines who (Director, Supervisor, EISC) should call the attorney named on the subpoena to:
 - Discuss the subpoena or court order and determine whether an alternative rather than going to Court is possible.
 - If the record has been subpoenaed, offer notarized copies of the record instead **with parental consent**.
 - *If the parent does not give consent or is unavailable to give consent, inform the attorney that CDSA records are confidential, and record cannot be divulged unless the judge so orders.** Subpoenas signed by an attorney do not constitute a court order.
 - Inform the attorney that the CDSA representative will request that the court record be sealed.
6. The CDSA director may send a letter to the attorney, per the standard format attached.
7. If the CDSA staff person must appear in Court, they will bring a notarized copy of record, if the record has been subpoenaed. If the record has not been subpoenaed the CDSA staff person may bring notes with him that they have reviewed with the CDSA director, but these notes may be included in the Court evidence. **Prior to releasing any written information or testifying, the CDSA staff person must inform the judge that he or she can not comply unless ordered to do so by the Judge and that as our records are confidential, request that the information be sealed. For example, the staff may say:**
 - In response to the subpoena received by staff of the Children’s Developmental Services Agency in (county of primary CDSA office) NC, the Children’s Developmental Services Agency requests that information in the record of (child’s name) be sealed. This information is considered confidential information under the federal Family Educational Rights and Privacy Act (FERPA) and Health Insurance Portability and Accountability Act (HIPAA). Pursuant to guidance from the North Carolina Department of Health and Human Services, Division of Child and Family Well Being, Early Intervention Section, this information is prohibited from disclosure and cannot be divulged unless ordered by the court.
8. EISC contacts with Supervisors, Assistant Director, or Director should be recorded in service notes. The note should only contain information related to agency procedures, e.g., “Informed Director that Subpoena was served”, “Forwarded Subpoena to Director”, “Reviewed agency guidance on court testimony with Jane Doe, Supervisor”.
9. Email should not be used to communicate with supervisors and/or EI Section office staff regarding content of subpoenas and/or contacts from attorneys.

*“Client information may be disclosed without the consent of the client in response to a court order.” See 10A N.C.A.C. 69.0505

Special Note:

Subpoenas by Fax – If an individual is subpoenaed by fax and is not or will not be present in the office on the day the subpoena is received, then the person retrieving the fax from the machine should immediately:

1. Give or fax the subpoena to Director.
2. Notify the employee of the subpoena.
3. Notify the employee's supervisor of the subpoena.

Notification can occur via phone (voicemail), face to face or via email.

Access to Confidential Information by Child Protective Services (CPS) Without a Consent or Subpoena

CPS may request information from CDSAs and/or contract program representatives regarding current and previously enrolled children in our program pursuant to § 7B-302 (Assessment by director (CPS); access to confidential information; notification of person making the report.). This can be done without consent or subpoena due to the urgency of health and safety and overrides the need for a release of information to CPS. An example of this includes communicating with the local Department of Social Services-Child Protective Services DSS-CPS regarding reports of abuse or neglect or reporting to the local Health Director that a client has a communicable disease or is in violation of control measures. In performing any duties related to the assessment of the report or the provision or arrangement for protective services, the director (CPS) may consult with any public or private agencies or individuals, including the available State or local law enforcement officers, who shall assist in the assessment and evaluation of the seriousness of any report of abuse, neglect, or dependency when requested by the director (CPS). The director (CPS) or the director's representative may make a written request for any information or reports, whether or not confidential, that may in the director's (CPS) opinion be relevant to the assessment or provision of protective services. Upon the director's (CPS) or the director's representative's request and unless protected by the attorney-client privilege, any G.S. 7B-302 public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If CPS requests information without consent or subpoena, ask the nature of the request. If they are gathering information for matters of health and safety pursuant to 7B-302(e) then it is an acceptable reason to release information without consent or subpoena.

Ask the CPS Director or Designee for this request in writing on appropriate government letterhead to include the information requested, or if the request is to disclose PHI to someone acting on behalf of CPS Director, a written statement on appropriate government letterhead that the person is acting on CPS Director's behalf on government agency letterhead including the information requested.

Exception: Presentation of the public official's badge or other credentials/proof of government status, if request is made in person or the request is of such urgency that a written request is not feasible.

Documentation

Any request made pursuant to law § 7B-302 and this policy shall be documented in the relevant client's record the same day the request occurs. The documentation shall include:

- The requester's name, department, and position and reason for the request.
- The name and position of the individual who received the request, if different from the individual documenting;

- The date, time, and method of the request and required follow-up (e.g. CPS written request, notifying supervisor, gathering and sending requested information, notifying parent/unless notification puts an individual at risk)
- File CPS written request in child's chart and document information released on the child's Accounting and Disclosure Log.

The documentation should not include subjective information. Questions regarding documentation requirements should be directed to the CDSA Director or CDSA Systems Director, as applicable.

For more information on 7B-302 see:

https://www.ncleg.gov/enactedlegislation/statutes/pdf/bysection/chapter_7b/gs_7b-302.pdf

References:

[General Statutes \(G.S.\) § 7B-302](#)

[The North Carolina Infant Toddler Program Procedural Safeguards Policy](#)

["Required by Law" Disclosures of PHI to DSS: G.S. 7B-302 and 7B-3100](#)