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| SUBPOENA, SEARCH WARRANTS AND COURT HEARINGS | | | | NO. 676 | |
| IF A SUBPOENA IS RECEIVED:   1. Identify the type of subpoena in order to determine whether additional legal processes such as a court order are needed before records can be produced (i.e. subpoena ad testificandum, a request for witnesses to appear only vs. subpoena duces tecum, a request for witnesses to appear and bring specified documents and other tangible things). 2. Read the record or part thereof specified. Be sure that it is complete and signatures and initials are identifiable and that sheets are marked with the respondent's name and record number. 3. Notify the Administrator and the attending physician and/or physicians of the service of the subpoena: a memo of this notification should be made a part of the resident's record. 4. Check the subpoena for request of additional documents or x-ray films and after obtaining the additional documents, keep them with the medical record. 5. Copies of the medical record are to be submitted unless ordered otherwise. When original records are ordered by the Court, see if copies will suffice and if not (rare), the health care facility should prepare and retain a copy. If not indicated in the subpoena, contact the attorney who issued the subpoena and determine what parts of the record will be needed and whether they intend to introduce it into evidence so that necessary copies can be made. Advise that they will be requested to pay the cost of copies and shipping, when needed. 6. Consult with the health care facility's attorney as to whether to move to quash the subpoena if compliance seems unreasonable, difficult, or uncertain. 7. Consult the health care facility's attorney if there is some question as to the validity of the subpoena, i.e. not signed by clerk or does not bear the court seal or is not signed by presiding officer or administrative agency issuing the subpoena.   IF A SEARCH WARRANT IS RECEIVED:   1. Check the search warrant to make sure that it is complete. Consult the health care facility's attorney if there is some question as to the validity of the search warrant, i.e. not signed by clerk or does not bear the court seal or is not signed by presiding officer or administrative agency issuing the search warrant. | | | | | |
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| 1. Notify the Administrator of the service of the search warrant. 2. If the search warrant is for a specific resident, have the Administrator, social worker or nurse go with the officer to explain the process to the resident. Have that staff member stay with the resident throughout the process. 3. If the resident has a guardian or POA, they must be notified before beginning the search process. They should be contacted by the Administrator or their designee. 4. If the search warrant is for any the Winning Wheels property, the Administrator or their designee will stay with the officer throughout the process. 5. The facility should maintain a record of item(s) taken during the search process.   IF YOU ARE CALLED AS A WITNESS AT A TRIAL, HEARING OR DEPOSITION:   1. Do not give possession of the original record unless instructed to do so by the judge. A serving subpoena does not entitle the attorney of the plaintiff to see the record prior to the time and place designated in the subpoena. 2. Do not permit examination of the record prior to its identification. 3. Do not leave the original record in Court unless it is in the possession of the judge, the clerk of the court or the court reporter and/or a receipt for the record has been obtained. 4. Comply with instructions given by the court. 5. Direct your testimony to the identification of the record and refrain from giving opinion as to the quality of care recorded in the documents. Unless you are qualified (i.e. licensed staff with direct knowledge of the facts expressed in the record), if pressed by an attorney for expression of opinion, state that you are not qualified to answer the question. 6. Be sure that you understand clearly questions that are put to you before you answer it. 7. Answer the questions directly and simply and volunteer nothing beyond what is asked. | | | | | |
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