

Responding to Records Requests: What To Do

As a medical or mental health provider in DC, you may have a patient who is a victim of a crime. During a criminal prosecution, the offender's attorney, prosecutor, or Crime Victim's Compensation Program (CVCP) may try to obtain your patient's records from you. While many criminal division hearings in DC are postponed due to COVID-19, some are being held remotely. CVCP is processing applications remotely.

While this document provides information about how to respond to such requests, it is not intended as legal advice. Please consult with your in-house counsel.

1. SUBPOENAS

What is a subpoena?

A subpoena is an order from a court that requires a person to provide information, documents, or testimony as part of a legal proceeding. To be valid, a subpoena for a victim's personal or confidential information in a criminal matter in DC must be issued by the DC Superior Court or the United States District Court for the District of Columbia and signed by a judge. If the subpoena comes from the defendant's lawyer or the prosecutor, it is not a valid subpoena and you are not compelled to provide the records.

What should I do if I receive a subpoena in a criminal case in DC?

As soon as possible, and in the most expeditious manner, you should notify the patient whose records are sought and ask if they object to you releasing their records or information. Crime victims have a right to know about the subpoena and to ask the court to modify or quash (cancel) the subpoena before you produce the patient's personal and confidential information. It is critical to notify the patient as soon as possible so that they know about the subpoena and have an opportunity to object before you release the records. Please ensure that you have a system set up to monitor any physical mail that your office receives if you are working remotely, as there may be a limited time to respond or seek to quash the subpoena.

What if the patient wants to object?

If the patient wants to object to a subpoena, do not release their records before giving the patient time to file a motion with the court. While the DC

courthouse is currently closed, individuals are still able to file emergency motions with the court. More information is available at <https://www.dccourts.gov/coronavirus>.

Individuals may also contact the Criminal Division Clerk's Office at 202-879-1373 or via email at CriminalCaseManagement@dcsc.gov for questions.

The court will ultimately decide what records, if any, must be produced, and will notify you. A provider is also able to file an objection with the court; consult your in-house counsel about your options for doing so.

What if the subpoena is not from the court?

Subpoenas in DC criminal cases that are issued by attorneys, self-represented parties, or other parties for your client's personal or confidential information are not valid. If the subpoena was not issued by a DC Superior Court judge or a US District Court for the District of Columbia judge, consult your in-house counsel to ensure the subpoena complies with the rules of the jurisdiction from which it came. Regardless of whether a subpoena is valid, please notify your patient that you received a request for their records.

What if the subpoena is for a civil case or came from out of state?

Notify the patient whose records are sought. Because civil and out-of-state subpoenas have different requirements, consult your in-house counsel.

How should I respond to a subpoena, once I have determined that it is proper and the patient does not object?

Crime victims have a right to privacy. Information produced in response to a subpoena may be available to any member of the public, including the offender. Talk to the patient and your in-house counsel to help determine what parts of the record are applicable to the request.

2. REQUESTS FROM THE DC CRIME VICTIMS COMPENSATION PROGRAM (CVCP)

What is CVCP?

CVCP is a program that compensates DC crime victims for certain expenses related to the crime.

Why would I receive a request from CVCP?

CVCP requires proof of expenses. With the crime victim's consent, CVCP may request such proof, including proof of treatment, from providers.

What is required before I can release information to CVCP?

As with most requests for patient information, requests from the CVCP should be accompanied by a release form signed by the person whose records are sought.

What should I do if I receive a CVCP request?

As soon as possible, and in the most expeditious manner, you should notify the patient whose records are sought, ask if they object to you providing the requested information to CVCP, and confirm that they signed the release form you received. If you have questions for CVCP, you can contact them at 202-879-4216 or via email at CVCPOffice@dcsc.gov.

What if the patient wants to object?

If the patient wants to object to a request from the CVCP, they must do so with CVCP. CVCP requires proof of expenses, so a patient's objection to the release of records would likely result in their being denied compensation.

How should I respond to a request from CVCP, once the patient confirms that they consent?

CVCP only requires proof of treatment, including dates and costs. It does not require any portion of a patient's records. You need only provide what is necessary to confirm proof of treatment: confirmation of the treatment(s) the patient received, the date(s) they received treatment, and the cost(s) of treatment.

3. LEGAL HELP

Where can I get additional help?

For urgent subpoena matters related to requests for client or crime victim compensation records in a criminal case, contact NVRDC at 202-742-1727,

Contact your legal counsel for more information.

The contents of this material are for general informational purposes only and are not intended to constitute as legal advice. Please contact DCCADV's Policy Team at (202) 299-1181 for further information.

DCCADV is grateful to the Network for Victim Recovery DC who identified the challenges programs in DC serving survivors of crime face when they receive subpoenas or requests for records. Their work to help organizations remain compliant with the Violence Against Women Act, Family Violence Prevention Services Act, Victims of Crime Act, and Court mandates lead the development of this document.

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