

SECTION: ADMINISTRATIVE POLICIES AND PRACTICES

SUBJECT: Program Compliance Monitoring

ITEM: Subpoenas and Search Warrants

Purpose

To ensure compliance with federal regulation and state directives when responding to a subpoena or search warrant request for WIC employee, applicant or participant confidential information.

Policy

The local agency is required to adhere to the following procedures when presented with a request for WIC program confidential information via a legally executed subpoena or search warrant. The WIC local agency director is required to ensure that all local agency staff is knowledgeable of the approved procedures.

Authority

7 CFR 246.26 (i)
22 CCR 40793

Definitions

Subpoena - a written order issued by a court in response to a request by an attorney representing a party in a legal action. A subpoena can request information or that a witness appear in court or for a deposition. The subpoena will identify the individual or organization seeking the information and will designate a date by which the State agency or local agency must respond. A subpoena is not a court's ruling that the State agency or local agency must *release* the information requested. However, the State agency or local agency must *respond* to the subpoena. Failure to respond can result in legal consequences.

Search warrant - a written order issued by a court that permits an individual, such as a police investigator, to have access to a WIC participant's confidential information. The local agency must comply with the search warrant at the time it is served. Failure to comply may result in immediate arrest and incarceration.

Required Procedures

- I. Upon receipt of a **subpoena**, the local agency is required to immediately contact its legal counsel and the State agency regional staff.
 - A. If the subpoena is a request for WIC participant confidential information, the local agency will be advised to send a response letter to the requesting party. The State agency will provide the local agency with approved language for the letter.
 - B. If the subpoena is a request for a WIC local agency staff member to appear in court, the State agency will advise that the staff member appear at the time and place indicated on the subpoena.
 - C. If the subpoena is a request for a local agency staff member to appear in court *and* provide a participant's confidential information, the local agency is required to respond to the subpoena using the State agency approved letter discussed in "A" above and appear in court following the procedures in "B" above.
- II. Upon receipt of a **search warrant**, the local agency is required to:
 - A. carefully review the search warrant to identify the specific information to be disclosed and to verify that it is signed by a judge;
 - B. limit access to the information specified in the search warrant;
 - C. notify the State agency regional staff and the local agency legal representative; and
 - D. retain a copy of the search warrant.
- III. There is no legal obligation for the State or local agency to notify a program applicant or participant of any subpoena or search warrant received requesting that individual's confidential information.
- IV. The local agency is required to advise and consult with legal counsel if any formal complaint or notice of lawsuit by a program applicant or participant is received as a result of the local agency releasing confidential information in response to a subpoena or search warrant. If the confidential information is disclosed according to approved program policies, adverse action will not be taken against the local agency or its staff. The local agency must immediately notify the State agency of the complaint or notice of lawsuit.