



ADMINISTRATIVE POLICIES
AND PROCEDURES
State of Tennessee
Department of Correction

Index #: 113.52

Page 1 of 9

Effective Date: March 15, 2016

Distribution: A

Supersedes: 113.52 (8/15/11)

Approved by: Derrick D. Schofield

Subject: RELEASE OF PROTECTED HEALTH INFORMATION

- I. AUTHORITY: TCA 4-3-603, TCA 4-3-606, TCA 10-7-504, TCA 63-11-213, TCA 68-11-304, TCA 68-10-113, 42 USC 290dd-3, 42 USC CFR Chapter 2, TCA 33-3-103, TCA 39-13-521, and TCA 41-24-117.
- II. PURPOSE: To ensure the confidentiality of inmates' protected health information either created or received by the Tennessee Department of Correction (TDOC).
- III. APPLICATION: TDOC and privately managed institutional and Central Office staff, contracted staff, vendors, volunteers, and inmates.
- IV. DEFINITIONS:
 - A. Health: For the purposes of this policy, "health" encompasses physical health and mental health.
 - B. Minimum Necessary: Limiting the provided information to the least amount required to accomplish the intended purpose of the use or disclosure.
 - C. Need to Know: A condition or situation in which the sharing of an inmate's protected health information is necessary or desirable for a specified workforce member to render services to that inmate. Such services may include, but are not limited to, provision of health care, transportation, continuity of care, program assignment, etc.
 - D. Protected Health Information: Any oral or recorded clinical data relating to the past, present, or future health or provision of health care to inmates.
 - E. Unauthorized Third Party: Any individual other than the inmate or his/her health care provider who has neither a legitimate "need to know" nor the inmate's written authorization to receive protected health information.
 - F. Workforce Member: Any person, whether paid or unpaid, authorized to work for or on behalf of the TDOC, including TDOC employees, contracted employees, temporary and part-time employees, vendors, and volunteers.
- V. POLICY: The protected health information of any inmate is confidential and shall only be used, shared, or disclosed in accordance with this policy.
- VI. PROCEDURES:
 - A. General:

| | | |
|--|----------------|-------------|
| Effective Date: March 15, 2016 | Index # 113.52 | Page 2 of 9 |
| Subject: RELEASE OF PROTECTED HEALTH INFORMATION | | |

1. The inmate's active health record is to be maintained separately from other volumes of the Inmate Institutional Record (IIR). The health record is Volume 3 of the IIR.
2. No workforce member shall discuss protected health information heard, viewed, or otherwise obtained during their duties with other staff, inmates, or any other individuals who have no need to know. Employees who misuse or make unauthorized disclosures of protected health information shall be subject to disciplinary action in accordance with Policy #305.01.
3. No information derived solely from the health record, TOMIS health services conversations, or from the provision of care shall be used to initiate or support disciplinary action against an inmate.

B. Access to Protected Health Information:

1. The health administrator or designee is the custodian of the health record (including substance use treatment and mental health records) and shall control access in order to protect the confidentiality of the information contained therein. The health administrator or designee shall also respond to inquiries regarding the disclosure or protection of inmate protected health information.
2. Access to an inmate's health records shall be limited to qualified health personnel involved in delivery or continuity of health services to or for the inmate. A list of position titles authorized to have access to the health record shall be included in each facility's *Health Services Unit Manual*.
3. Inmate Access to Health Records:
 - a. Inmates have a limited right of access to their own health records. Inmates desiring to review their own health records shall make a written request to the health administrator, which shall include the purpose of the review and the specific information requested. Arrangements shall be made by the health administrator for the specific information to be reviewed in the presence of a physician, mid-level provider, licensed nurse, or medical records clerk. Reviews shall be allowed no more frequently than once every 12 months, in accordance with Policy #512.01. A copy of the written request shall be placed in the health record.
 - b. If an inmate desires to have another individual present (including another inmate) during his/her review of their own health record, a completed CR-1885 shall be obtained prior to the review.
 - c. Prior to reviewing the health record with the inmate, the record shall be purged of all psychiatric/psychological materials, any materials received from outside sources, and any information that may jeopardize the safety of the inmate or the institution.

| | | |
|--|----------------|-------------|
| Effective Date: March 15, 2016 | Index # 113.52 | Page 3 of 9 |
| Subject: RELEASE OF PROTECTED HEALTH INFORMATION | | |

- d. Psychiatric/psychological records shall not be reviewed with an inmate without consultation with the treating (or a knowledgeable) psychiatric/psychological professional. If the psychiatric/psychological professional believes that the content of the psychological records should not be released to the inmate (or that they should be released only in part or under special conditions due to the anticipated impact upon the inmate), the records (or any part thereof) may be withheld pending a court order to release them.
 - e. Paper copies of the health record shall not be released directly to the inmate, except by court order. Exception to this release shall be made only when an inmate is personally involved in a lawsuit directly involving medical issues that would require the use of his/her medical records, as verified by the TDOC General Counsel or Office of the Attorney General.
 - f. Upon submission of a completed and signed authorization form (CR-1885 or similar form) addressed to the TDOC, former inmates may receive or designate the release of their own health information to specific physicians, attorneys, or organizations or departments providing health services to the inmate.
4. Securing Protected Health Information: Any employee who possesses confidential information in his/her office shall lock office doors and/or filing cabinets that contain protected health information. No information of this nature shall be stored in general view in any location within the facility. An employee shall report any suspected tampering of files to his/her immediate supervisor.
- C. Release of Protected Health Information:
1. Any protected health information used or disclosed shall be the minimum necessary to accomplish the intended purpose of the disclosure.
 2. Disclosure of protected health information by any means (including face-to-face meeting, letter, telephone, or facsimile transmission (fax) pursuant to written authorization) shall be accomplished only after reasonable care has been exercised to ensure the identity of the recipient.
 3. Protected health information shall not be disclosed, verbally or in writing, to an unauthorized third party. This includes disclosure to non-medical staff; an inmate's family, friends, relatives, and associates; members of the media; elected officials; and private citizens.
 - a. No protected health information shall be publicly released other than as stated in Policies #103.04 and #512.01.
 - b. Emergency notification, as authorized by Policy #103.05, shall be made when an inmate has designated such individual(s) and provided current contact information to the TDOC.

| | | |
|--|----------------|-------------|
| Effective Date: March 15, 2016 | Index # 113.52 | Page 4 of 9 |
| Subject: RELEASE OF PROTECTED HEALTH INFORMATION | | |

4. An inmate may disclose protected health information about himself/herself as he/she chooses. When a request is received for an inmate's protected health information by an unauthorized third party, workforce members shall advise the third party to contact the inmate directly. The inmate's disclosure, even with written authorization, does not require the Department to release protected health information to an unauthorized third party.
5. Reasonable safeguards shall be in place to protect against the unintentional use and disclosure of protected health information. Safeguards may include the following: speaking quietly when discussing an inmate's condition when other inmates and non-medical personnel are nearby and avoiding the use of inmates' names in hallways, elevators, break rooms, etc.
6. Release of Protected Health Information with Written Authorization:
 - a. Inmate Request:
 - (1) If an inmate requests to release his/her protected health information, the inmate shall complete Authorization to Release Health Information, CR-1885, and a copy shall be placed in the health record.
 - (2) Upon receipt of the inmate's written authorization, information contained in his/her current or former TDOC health record may be released to an individual or agency that indicates a reasonable business need for the requested information. Such individuals or agencies may include but are not limited to: attorneys, qualified health professionals, and organizations or departments providing health services to inmates (e.g., health departments, veteran affairs, human services, or community programs, etc.).
 - (3) If the inmate is a minor, written authorization must be obtained from the next of kin or legal guardian. If the inmate has a conservator, the written authorization must be obtained from the conservator. Authorization for deceased inmates shall be obtained from the deceased's legal representative.
 - b. Release of HIV/AIDS Information: Information regarding the inmate's HIV/AIDS status shall not be released unless specifically requested on CR-1885 and signed by the inmate.
 - c. Psychiatric/Psychological Information:
 - (1) An authorization to release psychotherapy notes must be specific and executed separately from any other authorization for disclosure. An authorization for the release of psychotherapy notes cannot be made in conjunction with an authorization for release of any other protected health information.

| | | |
|--|----------------|-------------|
| Effective Date: March 15, 2016 | Index # 113.52 | Page 5 of 9 |
| Subject: RELEASE OF PROTECTED HEALTH INFORMATION | | |

- (2) Psychiatric/psychological information may be released only to a physician, other mental health professionals, another health care or state/federal agency (including vocational rehabilitation and social security), or an attorney representing the inmate.
 - d. Substance Use: Confidentiality and/or release of substance use programming records shall be handled in accordance with Policy #513.07.
 - e. Research: The use of inmate health records for research purposes may be granted only under the provisions of Policy #114.02. Privately managed facilities shall submit research proposals to the Decision Support: Director of Research and Planning in the Central Office. Precautions shall be taken to disguise the identities of the subjects and/or the researcher must agree not to disclose the identity of inmate subjects and not to release any material that would have an intentional, direct, adverse effect on any inmate involved in the research project.
 - f. When forwarding any protected health information (including psychiatric/psychological information), a cover letter shall be attached indicating that the information being provided should not be directly provided to any other individual, including the inmate.
7. Release of Protected Health Information without Written Authorization: Protected health information may be released without a written authorization in the following circumstances:
- a. Executive Staff: Information shall be released to the Commissioner, Deputy Commissioners, Wardens, Directors of Clinical Services, Behavioral Health Services, Substance Use Programs, or their designees for the purpose of monitoring and evaluating the delivery of health services.
 - b. Investigations Unit: Information shall be released to the Investigations unit of the Office of Investigations and Compliance/investigators conducting an authorized investigation as established in Policy #107.02.
 - c. Health or Security Risk: Confidential information may be disclosed if the clinician determines that such disclosure is necessary to protect against a substantial risk of death, disease, or injury to self or others; or the inmate is a threat to the security of the institution and/or the community.
 - d. Workforce members and law enforcement: Correctional personnel who require access to protected health information for the purposes of transportation or transfer, discharge planning, probation and parole, classification, housing, job/class assignment, security of the institution, or to facilitate continuity of treatment, shall be provided a health summary report listing the inmate's major health problems and/or a copy of the inmate's Health Status Transfer Summary, CR-1895.

| | | |
|--|----------------|-------------|
| Effective Date: March 15, 2016 | Index # 113.52 | Page 6 of 9 |
| Subject: RELEASE OF PROTECTED HEALTH INFORMATION | | |

- e. Tennessee Board of Parole: Protected health Information shall be made available upon request of the Board of Parole as follows:
 - (1) The institutional parole officer shall contact the institutional health administrator for necessary health care summary information as needed for a parole hearing. The health services staff shall provide the Transfer/Discharge Health Summary, CR-1895, including any physical or mental health issues that are relevant to the supervision of the inmate while the inmate is on parole (e.g., medication regimens, behavioral problems, physical impairments, and infirmities). Emphasis should be placed on a "need to know" basis.
 - (2) Release of any protected health information shall require the inmate's written consent. (See Section VI.(C)(6) of this policy)

- f. Peer Review/Quality Assurance/Accreditation: Information shall be released to accrediting agencies such as ACA auditors, TDOC inspectors, and contract monitors as required by law. If there is uncertainty as to whether an individual or entity is authorized to review confidential information, the TDOC Legal Division shall be contacted.

- g. Outside Medical Providers/Hospitals/Ambulatory Providers:
 - (1) Protected health information may be released to an outside medical provider or facility requiring exchange of information for treatment purposes. Such individuals may include doctors, nurses, hospitals, laboratory technicians, etc.
 - (2) Protected health information may be released to treating physicians via telephone or e-mail during an emergency, but only after reasonable care has been exercised to ensure the identity of the recipient and the legitimacy of the request has been verified. Any release of health information shall be noted in the health record.
 - (3) When requesting medical information from outside medical providers/hospitals/ambulatory providers or other correctional agencies, the CR-1885 shall be completed and sent to the agency/provider from which the protected health information is being requested.

- h. Public Health Entities and Community Service Organizations:
 - (1) The minimum necessary protected health information may be released to public health entities (i.e., Tennessee Department of Health, Centers for Disease Control, etc.) that are legally authorized to receive such information for the purpose of preventing or controlling disease, injury, or disability, or for the purpose public health surveillance.

| | | |
|--|----------------|-------------|
| Effective Date: March 15, 2016 | Index # 113.52 | Page 7 of 9 |
| Subject: RELEASE OF PROTECTED HEALTH INFORMATION | | |

(2) Information may be released to a community hospital or treatment facility when the inmate is transferred to that facility for care. (See Policy #113.04)

- i. Coroners/Medical Examiners/Funeral Directors: Protected health information may be disclosed to coroners, medical examiners, and funeral directors for the purpose of identifying a deceased person, determining the cause of death, or other duties as required by law.
- j. Legal Requests: Protected health information may be disclosed upon receipt of a court order, subpoena, or a litigation discovery request. Advisory: Any doubts of validity or scope of the court order should be addressed by contacting the TDOC Legal Division.
- k. Office of the Attorney General: Information shall be released to the Office of the Attorney General or to attorneys (through the Defense Counsel Commission) who represent TDOC employees being sued by an inmate.
- l. Conservator or Legal Guardian: Information may be released to an inmate's conservator, or to a minor inmate's legal guardian, upon written request by the conservator or guardian, or court-appointed guardian ad litem, or attorney.

D. Facsimile Transmission of Health Records

- 1. Institutions may transmit health record information via fax. All the preceding items in this policy apply regarding confidentiality, release, and access to health record information.
- 2. A fax transmission cover letter shall be used when transmitting health record information and shall include a confidentiality statement such as the following: "This facsimile contains protected health information and is intended only for the recipient(s) to whom it is addressed. This information is disclosed from confidential records protected by state and federal law. The recipient(s) are prohibited from making further disclosure of this information without the specific written consent of the subject individual."
- 3. Institutional health care staff shall ensure that the confidentiality of faxed material is protected so that only intended recipients have access to such protected health information.
- 4. CR-1885s transmitted by fax are acceptable if completed, signed, and witnessed.
- 5. Fax transmissions should only be used when the need for information is so immediate that the mail cannot be used.

E. Reproduction of Documents: When information from the health record is reproduced for release as described in Sections VI.(C)(5) and VI.(C)(6) above, the receiving party may be charged as described in Policy #216.01. Privately managed facilities may charge for the reproduction of health records according to TDOC approved corporate policies.

VII. ACA STANDARDS: 4-4098, 4-4099, 4-4396, 4-4413, 4-4414, and 4-4415.

VIII. EXPIRATION DATE: March 15, 2019.



TENNESSEE DEPARTMENT OF CORRECTION
AUTHORIZATION FOR RELEASE OF HEALTH SERVICES INFORMATION

INSTITUTION

INMATE NAME (PRINTED): TDOC NUMBER:
SOCIAL SECURITY NUMBER: DATE OF BIRTH GENDER

I hereby authorize (NAME OF PROVIDER/FACILITY) to release the information indicated below to the Tennessee Department of Correction (TDOC) regarding my clinical treatment.

TDOC Facility Name/Community Supervision Office:
Facility Address:
Phone Number: Fax Number:

I hereby authorize the Tennessee Department of Correction to release clinical information to the persons/entities indicated below for:
Name: Relationship to Inmate:
Address:
Address 2:
Phone Number: Fax Number:

Please release the following information (Check "✓" all that apply):

- Health Record Infectious Disease Record Dental Record Behavioral Health Record Psychotherapy Notes
Substance Use Diagnosis/Treatment Other: Dates: thru

Note: An authorization for the release of psychotherapy notes cannot be made in conjunction with an authorization for the release of any other confidential health information. An authorization to release psychotherapy notes must be executed separately from any other authorization for disclosure.

Purpose of the disclosure:

- This authorization expires six (6) months from the date of the signature below and covers only information created prior to that date. I understand that I may retract this authorization at any time, in writing, to the attention of TDOC Division of Records Management, 2nd Floor, 320 Sixth Avenue North, Nashville, TN 37243-0465.
I understand that any release, which was made prior to a retraction hereof, and based on this signed authorization, will not constitute a breach of my privacy rights.
I understand that this authorization is necessary to release information that is deemed private and confidential by law (health records, TCA 10-7-504, mental health records, TCA 33-3-103).
I understand that a provider may not condition treatment on whether or not I sign this authorization.
Although the recipient should obtain my authorization before releasing my private information, I understand that if the recipient chooses to re-disclose this information, TDOC cannot ensure its protection by privacy laws.

The subject of the information must sign this authorization. If the subject is under 18 years of age, it must be signed by a parent or legally appointed guardian. If the subject is not legally competent to sign, or is unable to sign, Authorized Representative (a legally appointed conservator, guardian, or attorney-in-fact appointed pursuant to a durable power of attorney for healthcare) must sign this authorization.

Offender Signature Date Signature of Parent (if minor) or Authorized Representative Date
Witness Signature Date

