



ADMINISTRATIVE POLICIES
AND PROCEDURES
State of Tennessee
Department of Correction

Index #: 113.52

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Effective Date: March 15, 2008

Distribution: A

Supersedes: 113.52 (11/15/04)

Approved by: George M. Little

Subject: RELEASE OF PROTECTED OFFENDER HEALTH INFORMATION

- I. AUTHORITY: TCA 43-603, TCA 43-606, 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 offenders' individually identifiable protected health information 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. Individually Identifiable: Health information that identifies or reasonably can be used to identify an offender.
 - C. Minimum Necessary: Limiting the provided information to the least amount required to accomplish the intended purpose of the use or disclosure.
 - D. Need to Know: A condition or situation in which the sharing of an offender's protected health information is necessary or desirable for a specified workforce member to render services to or on behalf of that offender. Such services may include, but are not limited to, provision of health care, transportation, continuity of care, program assignment, etc.
 - E. Protected Health Information: Any oral or recorded information relating to the past, present, or future health or provision of health care to current, former, or deceased offenders.
 - F. Unauthorized Third Party: Any individual other than the inmate or the health care provider creating the protected health information who has neither a legitimate "need to know" nor designation via written authorization by the offender as a recipient of the protected health information.
 - G. Workforce Member: Any person, whether paid or unpaid, authorized to work for or on behalf of TDOC, including TDOC employees, contracted employees, temporary and part-time employees, vendors, and volunteers.

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V. POLICY: The individually identifiable protected health information of current, former, or deceased inmates is confidential and shall be used, shared, or disclosed only in accordance with this policy.

VI. PROCEDURES:

A. General:

1. The 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. The health administrator or designee is the custodian of the health record.
3. No workforce member shall discuss protected health information heard, viewed, or otherwise obtained during their duties with other staff, inmates, or 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.
4. 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 authority shall control access to health (including substance abuse treatment and mental health records) in order to protect the confidentiality of the information contained therein. The *Health Services Unit Manual* shall include a list of the position titles of personnel authorized to have access to the health record.
2. Access to an offender's health records shall be limited to professional health personnel involved in delivery or continuity of health services to or for the offender.
3. Specific health information from the health record may be shared, on an individual basis, with workforce members with a need to know for the provision or continuity of an offender's health care, for health care operations, for program assignment purposes, or for the protection and safety of the offender, workforce members, other offenders, and the public.
4. 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. An employee shall report any suspected tampering of files to his/her immediate supervisor. Correspondence containing protected health information shall not be left in office mailboxes outside of regular office hours.

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C. Disclosures of Protected Health Information:

1. Any protected health information used or disclosed shall be the minimum necessary to accomplish the purpose of the disclosure.
2. Protected health information will not be disclosed, verbally or in writing, to an unauthorized third party. This includes disclosure to non-medical staff; an offender's family, friends, relatives, and associates; and 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, will be made when an offender has designated such individual(s) and provided current contact information to TDOC.
 - c. An offender may disclose protected health information about himself or herself as he or she chooses. When a request is received for protected health information by an unauthorized third party, workforce members will advise the third party to contact the offender directly.
3. 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 all research proposals to the Director of Policy, Planning, and Research in the TDOC 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.

D. Release of Protected Health Information with Authorization:

1. Information contained in a current or former TDOC inmate's health record may be released to a qualified health professional or agency providing services to or for the inmate. 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.
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.

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3. An Authorization to Release Health Information, CR-1885, shall be completed prior to the release of health information and a copy placed in the inmate's health record. An authorization for the release of psychotherapy notes cannot be made in conjunction with an authorization for release of any other protected health information. An authorization to release psychotherapy notes must be specific and must be executed separately from any other authorization for disclosure.
 4. 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.
 5. When forwarding written 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.
 6. Information regarding the inmate's HIV/AIDS status shall not be released unless this is specifically indicated for release on form CR-1885.
- E. Release of Protected Health Information without Authorization: Protected health information may be released without a written authorization in the following circumstances:
1. All medical and psychiatric/psychological records shall be released after receipt of a court order. Advisory: Any doubts of validity or scope of the court order should be resolved by contacting the TDOC Legal Division.
 2. 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, may be provided to workforce members, law enforcement, or other correctional personnel who require such 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.
 3. The pertinent contents or a summary of the health record shall be made available upon request of the Board of Probation and Parole.
 - a. Institutional parole officers shall contact the institutional health administrator for necessary health care summary information.
 - b. In the health summary and/or CR-1895 the health service staff shall include 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.
 - c. Release of any information related to substance abuse program participation shall require the inmate's written consent. (See Policy #113.95)

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4. Information shall be released to the Office of the Attorney General or attorneys (through the Defense Counsel Commission) who are representing TDOC employees who are being sued by an inmate.
5. Information shall be released to the Warden and the Directors of Health Services, Mental Health, and/or Substance Abuse Programs or their designees for the purpose of monitoring and evaluating the delivery of health services.
6. Pertinent information may be released to treating physicians via telephone or e-mail in an emergency situation but only after the legitimacy of the request has been verified. Any release of health information shall be noted in the health record.
7. 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)
8. 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 is a threat to the security of the institution and/or community.
9. Information shall be released to Internal Affairs investigator(s) conducting an authorized internal affairs investigation as established in Policy #107.02.
10. 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.
11. Information shall be released to ACA auditors, TDOC inspectors, contract monitors, and public health entities (i.e., Tennessee Department of Health, Centers for Disease Control, etc.) as required by law. If there is uncertainty as to whether an individual or entity is authorized to review confidential information, contact the TDOC Legal Division.

F. Reproduction of Documents:

When information from the health record is reproduced for release as described in Section VI.(D) and (E) above, the receiving party may be charged as described in Policy #216.01. Privately managed facilities shall charge according to TDOC approved corporate policies.

G. Inmate Access to Health Records:

1. 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 often than once every 12 months, per Policy #512.01.

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2. 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.
3. 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 which may jeopardize the safety of the inmate or the institution.
4. 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.
5. 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.

H. 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. Fax transmissions should only be used when the need for information is so immediate that the mail cannot be used.
3. CR-1885s that are transmitted by fax are acceptable if completed, signed, and witnessed.
4. Institutional health care staff shall ensure that the confidentiality of faxed material is protected. Fax transmissions should be received in the clinic, or when that is not possible, health care staff should arrange to be at the fax machine when receiving a transmission.
5. A fax transmission cover letter shall be used when transmitting health record information and shall include the following statement: "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."

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- I. Confidentiality and/or release of substance abuse programming records shall be handled in accordance with Policy #113.95.

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

- VIII. EXPIRATION DATE: March 15, 2011.



TENNESSEE DEPARTMENT OF CORRECTION
AUTHORIZATION FOR RELEASE OF HEALTH SERVICES INFORMATION

INSTITUTION

Inmate Name Please Print TDOC Number Sex

Social Security Number Date of Birth

I, (Inmate's Name) authorize (Name of Specific Program)

to release the information specified below to: (Name of specific person, including title, or organization)

for the following purpose:

This release authorization covers services received from to

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. Please release the following information (Check and specify all that apply): Health Record, Dental Record, Mental Health Assessments & Evaluations, Mental Health Records, Infectious Disease Records, Other (specify):

- This authorization expires six (6) months from the date of 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 Operational Support Services
Rachel Jackson Building
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 redisclose 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, a legally appointed conservator, guardian, or attorney-in-fact appointed pursuant to a durable power of attorney for healthcare must sign this authorization.

Signature of Inmate

Signature of Parent/Authorized Representative & Relationship

Witness

Date