

## RELEASE OF INFORMATION

- A. Health Insurance Portability and Accountability Act (HIPAA) Privacy Requirements and Protected Health Information (PHI)-Background
1. The Department of Corrections is a covered entity for the purposes of HIPAA. The covered entity status requires all offices (not just Health Services) to comply with HIPAA. This legal requirement includes, but is not limited to, Institutions, Community Corrections, General Counsel, Finance and Budget, Inspector General and Communications.
  2. The Department is also required to comply with the Health Information Technology for Economic and Clinical Health Act (HI-TECH) which was signed into law in February 2009. All Department references to HIPAA encompass HI-TECH.
  3. Business associates must comply with HIPAA as well.
  4. There are both civil and criminal penalties associated with violations of HIPAA.
  5. HIPAA states that PHI may only be used or disclosed as allowed by the HIPAA Privacy Rule.
  6. Protected Health Information (PHI), where used herein, refers to identifiable inmate or offender information that is created or received by the Department of Corrections, whether oral, recorded, transmitted, or maintained in any form or medium, that relates to the past, present or future physical or mental health or condition of an inmate or offender, the provision of health care to an inmate or offender, or the past, present, or future payment for the provision of health care to an inmate or offender and identifies an inmate or offender or there is a reasonable basis to believe the information can be used to identify an inmate or offender. Protected health information is health information that contains some or all of the following elements: name, address information, including the name of an inmate's institution and dorm, social security number, DC number, facial photograph, etc.
  7. To illustrate, PHI has two components:
    - a. Physical and/or mental health information (including substance abuse information) e.g., descriptions of a medical condition such as a diagnosis or diagnosis code, a procedure code, a prescription, a medical record, the record of a doctor's appointment.
    - b. Information about a specific, identifiable person, e.g., name, social security number, DC number, location, dorm, bunk, work camp.

8. PHI can be written, electronic, or verbal. PHI does not have to be in health services setting or file to be PHI. Health information can be recorded in other than the medical file and can be recorded in areas other than health services (e.g., medical conditions identified on disciplinary reports, drug treatment information, and psychological testing).
  9. Under HIPAA, there is a “Use” of PHI when a member of DC’s workforce assesses PHI in any medium. “Disclose” is when PHI is given to or accessed by another individual or entity outside of the DC workforce.
  10. Some of the provisions of the HIPAA Privacy Rule may differ from provisions of Florida Statutes (e.g. F.S. 381.004(3) (e) relating to HIV data). Generally, where HIPAA and state provisions differ, the more stringent provision regarding the privacy of an individual’s protected information controls.  
*Note:* If you are unsure which provision applies, refer the situation to the Health Services Administrator (HSA) for a decision before using or disclosing the information.
  11. Health records belong to the Department, even though the content of confidential information contained therein “belongs” to the patient. Only DC-approved forms shall be used in the health record with the exception of forms generated from non-DC facilities (e.g. doctor offices, hospitals, etc.). No information or format shall be overprinted on any form and no form shall be altered in any manner. It is essential that health care providers safeguard health records from wrongful disclosure, alteration, falsification, unlawful access or destruction.
  12. The provisions related to the maintenance of and access to the Department’s health records are found in Rule 33-401.701. Additionally, the hospital records of Reception and Medical Center Hospital (RMCH) are separately governed by their internal procedures in accordance with requirements for hospitals licensed under F.S. Chapter 395. The Department’s HIPAA privacy policy is set forth in Procedure Manual 102.006. The Department’s HIPAA security policy is set forth in Procedure Manual 206.010 (“Information Technology Security Relating to HIPAA”).
- B. Inmate’s Right to Access PHI [ref. 33-401.701, Fla. Admin. Code]
1. Requesting Access
    - a. Inmates have the right to inspect and obtain copies of protected health information about themselves in their designated record sets for as long as the department maintains the information.
    - b. An inmate desiring access to his or her own medical file shall submit a written request using DC6-236 to the Health Services Administrator (HSA) or his or her designee.

- c. The request to obtain copies of protected health information may be granted or denied, in whole or in part, in accordance with 33-401.701.

## 2. Reviewing the Request

- a. All requests shall be process in accordance with the timelines established in 33-401.701.
- b. Responses to all requests will be written in plain language on DC6-236.
- c. If the inmate request for accessing records is approved, an appointment and call out will be scheduled for the inmate to review the requested information.

## 3. Denying Access

- a. The Department may deny access to PHI based on the exceptions noted in 33-401.701(3)(c)-(d). All denials must be written in plain language on the DC6-236 and include all the elements required by 33-401.701(3)(f).
- b. Inmates may request a review of a denial except for the denial of:
  - 1) Psychotherapy Notes;
  - 2) Information compiled in reasonable anticipation of, or for use in, a civil, criminal or administrative action or proceeding;
  - 3) Information that is subject to the Clinical Laboratory Improvements Amendments of 1998, 42 U.S.C 263a, to the extent the provision of access to the inmate would be prohibited by law; or is exempt from the Clinical Laboratory Improvements Amendments of 1988, pursuant to 42 CFR 493.3.(a)(2);
  - 4) Information that was obtained from someone other than a health care provider under a promise of confidentiality, and the access requested would be reasonably likely to reveal the source of the information;
  - 5) Information that would jeopardize the health, safety, security, custody, or rehabilitation of the individual or of other inmates, or the safety of any officer, employee, or other person at the correctional institution or responsible for the transporting of the inmate.

## 4. Providing Access

- a. Before allowing any inmate to review PHI in a designated record set verify the inmate's identity using the inmate's DC picture ID.
- b. All psychotherapy notes and psychological testing information (orange folder) must be removed from the record prior to review.

- c. The record will be reviewed in a secure area in the presence of medical record staff or the HSA.
- d. When an inmate accesses health records, his/her name must be recorded on a DC4-534- *Health Care Information Request Record* and filed in the inmate's record under the pink divider (Consents/Refusals).
- e. No information can be copied or removed from the record by the inmate at the time of the review. There must be a written request on DC6-236 submitted by the inmate to obtain any copies. The written request for copies can be included in the written request for access.
- f. Inmates will receive DC4-542A- *Inmate Payment Agreement For Copy Of Protected Health Information* acknowledging his/her request.
- g. Copies of medical records shall be provided only when payment has been received for costs assessed in accordance with Rule 33-601.901(2) and 33-401.701(3)(i) unless approved in writing by the Privacy Officer or the Office of the General Counsel.
- h. No exceptions to charges outlined above will be made for indigent inmates or offenders, indigent inmates will be required to pay for copies.
- i. If the inmate requests copies for a medical malpractice (Section 766.204, F.S.), copies will be provided once a DC4-542C- *Protected Health Information Copying Services Agreement For Inmate Account Withdrawal Or Lien* has been completed and will be in accordance with rule 33-501.302, F.A.C.

C. Inmate's Right to Request Restrictions [ref. 33-401.701, Fla. Admin. Code]

1. An inmate has the right to request that the department restrict the uses and disclosures of the inmate's protected information to carry out treatment, payment, health care operations, and other allowable activities in accordance with 33-401.701.
2. Inmate must make requests for restrictions on DC6-236 and provide a reason to support the requested restriction.
3. The HSA will process the request in accordance with 33-401.701(4) including a plainly written response on the inmate's DC6-236.
4. If the Department agrees to a restriction, it must be documented on the DC4-536 *Protected Health Information Restriction Information* and placed in the inmate's record under the pink divider (Consents/Refusals).
5. The Department and all business associates shall honor restrictions accepted by the Department unless the inmate needs emergency treatment and the information is relevant to that treatment. In this event, the Department shall request that the health care provider not use or disclose the information any further.

D. Inmate's Right to Request Confidential Communications [ref. 33-401.701, Fla. Admin. Code]

1. An inmate has the right to request that the department communicate with him or her by alternative means or at alternative locations. Requests must be written on DC6-236.
2. The HSA will review the request and determine if the Department has the capability to reasonably accommodate the method of contact without jeopardizing the security or operations of the institution.
3. The HSA shall consult with the Privacy Officer regarding confidential communication to determine the appropriate response.
4. The HSA will provide a plainly written response to the request on the DC6-236 within thirty (30) days.
5. The request and notification of denial or acceptance must be retained under the dark green divider (Misc Corres/Outside Info-Corres) of the inmate's record for a minimum of six years from the date of the Department's notification.

E. Inmate's Right to Amend PHI [ref. 33-401.701, Fla. Admin. Code]

1. An inmate has the right to request that the Department amend PHI in his designated record set for as long as the Department maintains the record.
2. Inmates shall make requests for amendments in writing on DC6-236 and provide a reason to support the requested amendment.
3. The HSA will review and grant or deny the request in accordance with the timelines and procedures outlined in 33-401.701(6).
4. The HSA will also document the request and response on DC4-701-*Chronological Record of Health Care*.

F. Inmate's Right to an Accounting of Disclosures [ref. 33-401.701, Fla. Admin. Code]

1. An inmate has the right to request that the Department provide an accounting of disclosure of PHI.
2. Inmates must make requests for an accounting of disclosure on DC6-236.
3. The HSA will process the request in accordance with 33-401.701(7) including a plainly written response on the inmate's DC6-236.

4. The HSA will document the request and response on DC4-701- *Chronological Record of Health Care*.

G. Inmate Directed Disclosure of PHI [ref. 33-401.701, Fla. Admin. Code]

1. An inmate has the right to authorize another person (excluding other inmates) to access their PHI.
2. Authorization requests will be made on DC4-711B- *Consent and Authorization for Use and Disclosure, Inspection and Release of Confidential Information* in accordance with 33-401.701(10). The Department will also honor a HIPAA compliant release from another governmental agency, as well as, the Universal Patient Authorization Form for Full Disclosure of Health Information for Treatment and Quality Care (AHCA FC4200-005). The Office of General Counsel will provide assist the Privacy Officer in determining if requests meet legal sufficiency.
3. Authorizations requesting information shall be honored for the dates noted on the executed DC4-711B. If the authorization does not specify an end date, the authorization will be valid for ninety (90) days from the date of signature.
4. All DC4-711B will be maintained in the medical record as specified in HSB 15.12.03.
5. Authorization requests will be honored if the end date on the DC4-711B exceeds the inmate's release (including death).
6. Authorization requests for incompetent or incapacitated inmates are addressed in 33-401.701(10)(i). The Office of General Counsel will assist the Privacy Officer in determining if requests meet legal sufficiency.
7. Authorization requests for deceased inmates should be directed to the Inactive Medical Records Unit at Statewide Records Retention Center.
8. Authorization requests for deceased inmates are addressed in 33-401.701(10)(h), except for the separate hospital file at RMC which is addressed in 33-401.701(10)(j).
9. The names of authorized non-DC individuals and agencies that receive health information about an inmate must be recorded on DC4-534.

H. Use and Disclose of PHI [ref. 33-401.701, Fla. Admin. Code]

1. Definitions of Use and Disclose

- a. **Use**- refers to, with respect to protected health information, the sharing, employment, application, utilization, examination, or analysis of such information **within the Department**.
- b. **Disclose**- refers to the release, transfer, provision of access to, or divulging in any other manner of information **outside the Department**.

2. Use of Protected Health Information

- a. Information/records may be released to departmental staff when a legitimate need to know exists (e.g., classification and assignment), and required approval is obtained. Only the minimally necessary information will be released to departmental staff to accomplish the intended purpose of use.
- b. All institutional staff requests for health records shall be controlled using a charge-out system. All health records shall be reviewed for completeness and protection from risk upon return to department. Deficiencies shall be reported to/corrected by appropriate staff prior to release. Any health record that reveals risk potential shall be referred to the Chief Health Officer (CHO)/Institutional Medical Director and the Regional Risk Manager.
- c. The Department may use protected health information of an inmate, without the inmate's consent, if necessary for the following reasons:
  - 1) The provision of health care to the inmate;
  - 2) The health and safety of the inmate or other inmates;
  - 3) The health and safety of the officers or employees or others at correctional institution;
  - 4) The health and safety of inmates and officers or other persons responsible for transporting inmates or transferring them from one institution to another;
  - 5) Law enforcement on the premises of the correctional institution; and
  - 6) The administration and maintenance of the safety, security, and good order of the correctional institution.
- d. Inspectors from the Inspector General's office may have access to information contained in the health record as required while an investigation of a crime on the premises.
  - 1) All records reviewed will take place in the medical records area. DC4-765H- *Inspector General Medical Record Review Log* will be maintained in medical records identifying that a record reviewed including the date, the inspector accessing the record and the reason.
  - 2) Only information necessary for the purpose state shall be reviewed

- 3) Inspectors must submit a written request for copies of portions of the health records that are needed to be provided. Only copies of original documents will be released. Any written requests from the IG for copies of information from the medical record will also maintained on log.
  - e. In the event of an inquiry from non-health care personnel for release of information of a category not previously approved, staff will refer such request to the Chief Health Officer (CHO)/ Institutional Medical Director. Determination of a non-health care person's need to know shall be resolved by the CHO/Institutional Medical Director in consultation with the Warden and the HSA, functioning as the Privacy Coordinator, in written form if a question cannot otherwise be resolved.
  - f. The Department must make reasonable effort to **use, disclose and request** only the **minimum amount** of protected health information needed to accomplish the intended purpose.
3. Disclosing Protected Health Information
- a. Information requests should be processed within seven to ten (7-10) working days following receipt of request. DC4-781Q- *Request for Protected Health Information Log* shall be maintained to include: date request received, requester, purpose of request, date information mailed, and name/signature of staff mailing copies. It is recommended that DC4-781Q be monitored by the HSA.
  - b. Information and records may be released to the following as noted below for the purposes of treatment, payment and operations:
    - 1) Consultants/hospitals for treatment of the inmate.
    - 2) Health care providers and/or consultant appointments/hospitals for administrative purposes associated with treatment, continuity of care/services, confidential surveillance reporting, education and research, clinical quality management studies, professional competence, etc., i.e., the Federal Department of Health and Human Services, the Department of Health, county public health units, the Agency for Health Care Administration, the Centers for Disease Control, etc., but only to the extent necessary.
    - 3) Court Orders- refer to Procedure 102.002 for proper handling and instructions.
    - 4) Subpoenas- refer to Procedure 102.003 for proper handling and instructions.



- c. When PHI is disclosed, the health record shall reflect an NCR copy of the DC4-744 *Release of Information Statement* (filed under the pink divider in the record), noting date/time and responsible party releasing state information. Any access to health records after hours shall be controlled by the health provider in charge who will ensure that all procedures outlined in this TI are observed.

#### 4. Releasing the PHI

- a. No information concerning test results, or other health information, shall be released over the phone without proper verification/authorization and an adequate amount of certainty that the caller, e.g., the institutional physician, county health department/sexually communicable disease/ clinics, etc., is the person authorized to receive such information. All calls shall be forwarded to the CHO/ Institutional Medical Director, the Nursing Supervisor or their designee.
- b. When an email is forwarded or copied to someone **outside** the Department of Corrections, make sure that the email **does not contain PHI** anywhere in the chain of forwarded emails.
- c. Electronic mail containing PHI destined for anyone outside DOC must be encrypted. Refer to Procedure 102.006 for further instructions.
- d. When communicating with more than one individual about PHI, send separate emails to each person.

#### 5. Releasing Other Health Records

Federal and state statutes provide regulatory standards directed toward medical records that aid confidentiality and prevent wrongful disclosure.

- a. Alcohol and Drug Abuse Treatment Records: Medical information related to programs or activities related to education, training, treatment, and rehabilitation may not be released without meeting the specific requirements of state and federal laws and regulations related to these records. There are no exceptions. The Privacy Officer shall be contacted for any questions related to the release of such records.
- b. Mental health records may not be disclosed without the express knowledge and informed consent of the inmate and compliance with the specific requirements of state and federal laws and regulations related to these records. There are no exceptions to this. The Director of Mental Health Services shall be contacted for any questions related to the release of such records.
- c. If disclosure of an inmate's medical records is not otherwise permitted by law, an inmate must authorize by giving consent using Form DC4-711B or a HIPAA compliant release.

- 1) Mental health records, including even the identification of a person as an inmate/patient, must be protected with extreme care. Confidentiality is essential to mental health related treatment.
- 2) Mental health records may be released only upon receipt of a properly signed, notarized, dated, and witnessed release of health care records form that specifically requests psychiatric/psychological information, or by court order.

6. Record Duplication Process/Fees

The Health Information Specialist (HIS) shall ensure that:

- a. When a health record is copied for release, complete inmate and institutional identification information is on each page.
- b. Each record page is copied squarely and evenly and there are no fading, missed or crooked edges.
- c. All health record copies released shall be accompanied by DC4-744-*Release of Information Summary Statement* which prohibits redisclosure and cites federal/state laws which protect health records from release without the written and informed consent of the inmate.
- d. Upon receipt of the fee from the requester, the health record will be copied, packaged and mailed. Refer to Rule 33-601.901(2) for handling and additional instructions.

7. Packaging Records For Mailing

- a. Ensure that all appropriate copies are made.
- b. Do not copy miscellaneous (administrative/nonmedical) divider information.
- c. Do not redisclose health information released to DC from an outside health care provider. Attorneys must request those copies separately from the facility rendering the care.
- d. Ensure that the left-side jacket copies are placed on top of right-side jacket copies and fastened together (acco paper fastener).
- e. Ensure that the DC4-744 is the very first document (cover letter) of the packet being mailed. Ensure that complete mailing address information is provided and that the HIS signature/date is present.
- f. Two-hole punch (standard) copies; fasten with acco paper fasteners (with top sliding reinforcement clips).
- g. Ensure that mailing envelopes/labels have "Confidential" stamped on the front.
- h. The processing time frame shall not exceed more than seven to ten (7-10) working days from date request is received. If additional time is needed, the

HIS shall contact the requester and agree to an extended time frame and/or alternate mailing date. If an extension is agreed upon, it should be documented. Any problems regarding prompt copying shall be referred to the HSA for assistance, solution, and/or follow-up.

- i. DC4-744-*Release of Information Statement* shall be used as the cover letter for all health record copies. The original (white copy) goes to the requester and the NCR (canary copy) is to be maintained in the health record (with the original letter of request) as verification that the copies were mailed.
- j. Certified return receipt requested mail is the preferred mailing route. The signed certified mail receipts shall be maintained in the medical records unit and stapled to DC4-744.
- k. The correspondence log shall document and track inmates requests and ensure that responses are processed in a timely manner (up to ten days). Monthly monitoring of this correspondence log shall be completed by the HSA.

8. Requests for Medical Records for Inactive Inmates

- a. Use DC14 or GH07 CDC screen to check inmate's status and make sure s/he is in fact no longer incarcerated. For active inmates, contact Medical Records at the institution where inmate is housed. Mail signed release of information and request to that institution.
- b. Upon receipt of a request, staff should make sure there is a signed release of information attached to the request (DC4-711B).
- c. A cover letter shall be sent to the requesting agency/law firm, etc., stating that the request has been forwarded to the appropriate authority where records are housed. If they did not include a signed release of information, the response letter should state:

We received your request for inmate (name) records. We did not receive a signed release of information form (DC4-711B). We have included a DC4-711B. Upon receipt of signed release of information (DC4-711B), we will forward your request to the appropriate authority for processing.

If a signed release of information was included in the request, the letter will state:

We received your request for inmate (Name) records. We will forward your request to the appropriate authority for processing.

- d. Make copies of all requests to place in file maintained in Medical Records. Forward original requests and signed DC4-711B to:

Statewide Record Retention Center- INACTIVE RECORDS  
7819 NW 228 Street  
Raiford, FL 32083

I. Breach of Protected Health Information [ref. 102.006, FDC HIPAA Privacy Policy ]

A breach is the unauthorized acquisition, access, use or disclosure of PHI which compromises the security or privacy of the PHI.

1. Following the discovery of a potential breach, the HSA at the institution will notify the Privacy Officer who shall begin an investigation to determine if there is a reportable breach of PHI.
2. Once it is determined by the Privacy Officer that a reportable breach has occurred, notification must be provided to the inmate(s) that are affected. The Privacy Officer must notify the affected inmates without unreasonable delay, but no later than sixty (60) calendar days from the time the breach is discovered or should have been discovered.
3. An exception to the time frame for providing notification of a breach may be temporarily delayed if a law enforcement official determines that notification of the breach would impede a criminal investigation.
4. If five hundred (500) or more inmates are affected by the breach, the media and the Secretary of the United States Department of Health and Human Services must be notified.
5. If the breach involves less than five hundred (500) inmates, the information regarding the breach will be recorded on a log. This log will be submitted annual to the United States Department of Health and Human Services.