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Privacy of Protected Health Information

I. Definitions

A. Disclosure

The release, transfer, provision of access to, or divulging in any other manner of information outside the Oklahoma Department of Corrections (ODOC).

B. Health Care Operations

Includes functions such as quality assessment and improvement activities, reviewing competence or qualifications of health care professionals, conducting or arranging for medical review, legal services and auditing functions, business planning and development, and general business and administration activities.

C. Health Care Provider

A provider of medical or health services and any other person or organization who furnishes, bills, or is paid for health care.

D. Individually Identifiable Health Information

The information collected from an inmate that is created or documented by the health services personnel relating to a past or present medical, dental or mental condition of the individual and/or health care treatment provided to the individual, which either identifies the individual or could be reasonably believed to identify the individual.

E. Law Enforcement

An officer or employee of any agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian Tribe, who is empowered by law to: investigate or conduct an official inquiry into a potential violation of law; or prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

F. Minimum Necessary

The use or disclosure of protected health information by the agency will include reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.

G. Personal Representative

A person who has the authority to act on behalf of an individual in making decisions related to health care.

H. Protected Health Information (PHI)

The individually identifiable health information transmitted by electronic media, maintained in any electronic medium, or transmitted or maintained in any other form of media. (5-ACI-6C-11 b#2)

I. Public Health Authority

A governmental agency/authority or a person or entity acting under authority of the agency responsible for public health matters as part of its official mandate.

J. Use

With respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within ODOC.

K. Workforce Members

Employees, volunteers and other persons whose conduct, in the performance of work for the agency are under direct control of the agency.

L. Electronic Health Record (EHR)

An electronic system that contains the inmate's protected health information.

M. WebExtender

An electronic system where paper medical files, created prior to the implementation of the EHR, containing the inmates' protected health information have been scanned and are stored. (5-ACI-6D-07)

II. Privacy of Protected Health Information (PHI) (2-CO-4E-01, 5-ACI-6C-03M, 5-ACI-6C-11, 4-ACRS-4C-22)

A. Pursuant to 45 CFR § 164.520 inmates do not have a right to notice of privacy practices for protected health information. Inmates will be afforded the right to privacy of all medical records and other PHI used or disclosed by ODOC in any form, whether electronically, on paper, or orally. ODOC will protect inmate information against loss or unauthorized use in accordance with state and federal regulation:

1. Medical services will store inmates PHI in the EHR and in WebExtender. (5-ACI-6D-07)

2. Active medical records will be stored separately from field records. (5-ACI-6C-03M b#1)

B. Access to Protected Health Information (5-ACI-6C-11)

1. Each correctional health services administrator (CHSA) will ensure there are administrative, technical and physical safeguards to reasonably safeguard PHI from intentional or unintentional unauthorized use or disclosure. Access to PHI is governed by federal law, 45 CFR Part 160 and 45 CFR Part 164, as well as applicable state laws as referenced within this procedure. (5-ACI-6C-03M b#2)
2. Access to the medical records will be controlled by health services personnel.
3. Inmates will not have access to, or be used in the processing of, medical record information under any circumstances, except as permitted in this procedure for providing an inmate access to review their own records.
4. The CHSA or designee will be responsible for the disclosure of PHI. Only the minimum necessary PHI will be disclosed.
5. To protect and preserve the administration and maintenance of the safety, security, and good order of the facility, the CHSA or designee, serving as the health authority, is authorized to share with the facility head, pertinent information regarding an inmate's medical management. (5-ACI-6C-03M b#3)
6. PHI will be provided to inspector general agents assigned to conduct an investigation where such PHI is necessary or relevant to the investigation.
7. PHI provided to ODOC staff to address the medical needs of the inmate as it relates to housing, program placement, security and transport, will be done in accordance with the appropriate ODOC procedures as identified below. (5-ACI-6C-03M b#4, b#5) PHI will be provided to the office of the General Counsel upon request.
 - a. "Health Assessment for Inmate Transfers" ([OP-140113](#));
 - b. "Community Corrections Assessment" ([OP-060104](#));
 - c. "Community Corrections Residential Contracts" ([OP-030402](#));
 - d. "Screening New Arrivals" ([OP-140114](#)); and
 - e. "Health Assessment" ([OP-140115](#)).

C. Minimum Necessary Requirements

1. When using or disclosing PHI, reasonable efforts will be made to limit the PHI to the minimum necessary to accomplish the purpose of the use or disclosure.
2. Reasonable efforts will be made to limit access of the workforce to only the PHI that is needed to carry out assigned duties.
3. Use or disclosure of the entire medical record will not be made unless the use or disclosure of the entire medical record is specifically justified as the amount reasonably necessary to accomplish the purpose of the use or disclosure.
4. Exceptions to the minimum necessary requirement may include:
 - a. Disclosures to the individual who is the subject of the PHI;
 - b. Disclosures made pursuant to an authorization; or
 - c. Disclosures to or requests by health care providers for treatment purposes.

III. Uses and Disclosures When Authorization is Not Required

A. Minimum Standards

1. When disclosing PHI, the minimum necessary standards apply:
 - a. For treatment, payment or health care operations; and
 - b. For health oversight activities.
2. PHI can be disclosed to a health oversight agency for oversight activities necessary for the health care operations, including but not limited to:
 - a. Audits;
 - b. Civil, administrative, or criminal investigations;
 - c. Inspections;
 - d. Licensure or disciplinary actions; and
 - e. Civil rights compliance.

B. Public Health Authorities

1. Such entities are authorized by law to collect or receive information for the purpose of preventing or controlling disease, injury or disability, reporting vital events, conducting public health surveillance, investigations or interventions.
2. They are authorized or obligated by law to collect or receive reports of child abuse or neglect if the disclosure is required by law, reports to an authority or agency authorized by law to receive reports to the extent disclosure complies with and is limited to the relevant requirements of the law (e.g., abuse, neglect, domestic violence, reporting of wounds or specific injuries).

C. Law Enforcement

Requests from law enforcement agencies include the following:

1. Court order or court ordered warrant, subpoena or summons issued by a judicial officer. The office of the General Counsel will be contacted before responding to any subpoena or court order.
2. A grand jury subpoena; the office of the General Counsel will be contacted before responding to any subpoena or court order.
3. Administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:
 - a. The information sought is relevant and material to a legitimate law enforcement inquiry;
 - b. The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
 - c. De-identified information could not reasonably be used.
4. Disclosure about an individual, who is suspected to be a victim of a crime, if:
 - a. The individual agrees to the disclosure; or
 - b. The individual is incapacitated or other emergency circumstances provided that:
 - (1) Such information is needed to determine whether a violation of law by a person other than the victim has

occurred, and such information is not intended to be used against the victim.

- (2) Law enforcement activity dependent upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree.
 - (3) The disclosure is in the best interests of the individual.
5. PHI that constitutes evidence of criminal conduct that occurred on the premises or that a death may have resulted from criminal conduct.
6. Serious threats to health or safety when:
 - a. It is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and is to a person reasonably able to prevent or lessen the threat; or
 - b. It is necessary to apprehend an individual where the individual has escaped from lawful custody.
7. PHI belonging to a suspected perpetrator if the victim of a crime is a member of the ODOC workforce.

D. Specialized Government Functions

1. National Security and Intelligence
2. Correctional Institutions
 - a. A correctional institution having lawful custody of an inmate may obtain copies of the medical record if the correctional institution represents that such medical information is necessary for:
 - (1) The provision of health care;
 - (2) The health and safety of such individual or other inmates;
 - (3) The health and safety of the officers, employees, or others at the correctional institution;
 - (4) The health and safety of such individuals and officers or other persons responsible for the transporting of inmates from one correctional institution, facility or setting to another;

- (5) The administration and maintenance of the safety, security, and good order of the correctional institution; or
- (6) The inmate will be in the custody of the correctional institution for this provision to apply. It does not apply when the inmate has been released, paroled, or placed on probation, supervised release or otherwise is no longer in lawful custody.

3. The secretary of the Oklahoma Department of Health and Human Services.

E. Medical Examiners or Coroner

PHI will be provided in accordance with [OP-140111](#) entitled "Inmate Death, Injury, and Illness Notification and Procedures."

F. Funeral Directors

Required information will be provided in accordance with [OP-140111](#) entitled "Inmate Death, Injury and Illness Notification and Procedures."

IV. Accounting of Authorized Disclosures of PHI

A. An inmate has a right to receive an accounting of disclosures of PHI released without an authorization except for disclosures:

- 1. To carry out treatment, payment and health care operations;
- 2. For national security or intelligence purposes; or
- 3. To correctional institutions or law enforcement officials as provided in Section III. D. item 2. of this procedure.

B. The CHSA or designee will document all non-authorization disclosures on the "ODOC Accounting of Disclosure" form ([DOC 140108H](#), attached). The "ODOC Accounting of Disclosure" form ([DOC 140108H](#), attached) will be maintained in the inmate's EHR when the inmate's PHI has been disclosed or released outside of the agency.

C. An inmate may request a copy of the "ODOC Accounting of Disclosure" form ([DOC 140108H](#), attached).

V. Use and Disclosures When Authorization Will Be Obtained (2-CO-1E-07)

Disclosures of PHI are authorized when staff determine the authorization is valid and meets the requirements for release as specified in this procedure. A correctly completed "ODOC Authorization for Release of Protected Health Information" ([DOC 140108A](#), attached) is a valid authorization. Other forms may be valid if the

essential elements of “ODOC Authorization for Release of Protected Health Information” ([DOC 140108A](#), attached) are present. (5-ACI-6C-03 b#6)

A. Requesting Records

1. Staff will determine if the authorization is valid and meets the requirements for release as specified in this procedure.
2. Any request from an attorney, subpoena, or order needs to be sent to the office of General Counsel.
3. The original request will be scanned in the electronic health record.
4. All requests for PHI will be responded to within 30 days of receipt. If the information requested cannot be gathered and submitted to the inmate, other persons or organizations within that time frame, the person(s) will be informed in writing by “ODOC Acknowledgement of Request for Protected Health Information” ([DOC 140108I](#), attached) that the request has been received and an estimated completion date will be provided. The estimated time of completion may be extended no more than 30 additional days.
5. Correspondence or letters contained in the EHR but that are not officially a part of the medical record will not be disclosed or provided to the inmate, persons, or organizations when processing a request for PHI.
6. The inmate may revoke an “ODOC Authorization for Release of Protected Health Information” ([DOC 140108A](#), attached) by completing the “ODOC Revocation of Authorization for Release of Protected Health Information” ([DOC 140108B](#), attached) and submitting the completed form to medical services. The “ODOC Revocation of Authorization for Release of Protected Health Information” ([DOC 140108B](#), attached) will become effective immediately upon receipt by medical staff and placed in the inmate’s EHR. Any other attempts to revoke an authorization for the release of PHI that are in writing and clearly provide that the inmate is revoking said authorization shall be accepted and shall become effective immediately upon receipt by medical staff and placed in the inmate’s EHR.
7. If an “ODOC Authorization for Release of Protected Health Information” ([DOC 140108A](#), attached) is received by someone purporting to be the individual’s personal representative or if the individual is deceased, the authorization form and accompanying documents will be sent to the office of the General Counsel for review and further guidance prior to releasing any PHI.

VI. Psychiatric/Psychological Protected Health Information

- A. In accordance with 43A O.S. § 109, inmates will be entitled to review their psychiatric or psychological records unless such access is reasonably likely to endanger the life or physical safety of the inmate or another person as determined by the person in charge of the care and treatment of the inmate.
- B. The inmate may authorize the release of psychiatric or psychological information to a third party who is not incarcerated.
- C. Release of Psychiatric/Psychological Protected Health Information
 - 1. "ODOC Authorization for Release of Protected Health Information" ([DOC 140108A](#), attached) or similar authorization form will be submitted and completed as specified by this procedure, but will also include the following information:
 - a. The treating physician or practitioner will approve the disclosure by signing Section II. of the "ODOC Authorization for Release of Protected Health Information" ([DOC 140108A](#), attached) to allow the inmate to access their psychiatric/psychological records.
 - 2. Pursuant to 43A O.S. § 1-109, psychiatric/psychological protected health information may not be disclosed without completion of Sections I. and II. of the "ODOC Authorization for Release of Protected Health Information" ([DOC 140108A](#), attached), or a court order. A subpoena by itself is not sufficient to authorize disclosure of psychiatric/psychological treatment information.

VII. Human Immunodeficiency Virus (HIV)/Acquired Immunodeficiency Syndrome (AIDS)

HIV/AIDS protected health information may be disclosed to designated personnel in accordance with [OP-140125](#) entitled "Bloodborne Pathogen Exposure Control Program."

VIII. Use and Disclosure for Notification Purposes

The PHI may be disclosed to notify or assist with notification of a family member or personal representative of the inmate of their general condition or death if:

- A. The inmate agrees to the disclosure; or
- B. The inmate is incapacitated or an emergency exists, then professional judgment will be made to determine whether the disclosure is in the best interest of the inmate.

IX. Disclosure of Health Care Information on Deceased Inmates

An executor or administrator of the estate of a deceased inmate has the power to authorize the disclosure of protected health information on the deceased inmate.

X. Refusal of an Authorization

ODOC may refuse to honor a written authorization for disclosure of PHI from the inmate, other persons or outside organizations for the following:

- A. The authorization is invalid and is not in accordance with Section V. A. of this procedure.
- B. There is reasonable doubt as to the identity of the person presenting the authorization form. If a request is made in person, identification will be required.
- C. There is some question of the inmate's mental capacity to know what he or she signed (informed consent).
- D. There is reasonable doubt to suspect the inmate's signature is not authentic.
- E. All refusals will be documented on "ODOC Acknowledgement of Request for Protected Health Information" ([DOC 140108](#)], attached). The form will be sent to the requester and a copy will be filed in the medical record.
- F. In all cases, the CHSA will have the responsibility for final decisions on what medical record disclosures will be made and the circumstances under which disclosures will be made.

XI. Processing PHI for Judicial and Administrative Proceedings

- A. Upon receipt of a court order or subpoena, only the PHI expressly requested will be released.
- B. Processing a subpoena not accompanied by an order of a court.
 - 1. The party seeking the PHI will provide a statement showing good faith attempt to provide written notice to the individual about the litigation; or
 - 2. A signed authorization from the individual will accompany the subpoena.
- C. Upon receipt of a subpoena or court order, the CHSA will:

Submit documents to the office of the General Counsel who will identify the type of subpoena or court order in order to determine whether additional legal processes, such as a court order, are needed before records can be produced. This may include: subpoena ad testificandum, a request for

witness to appear only versus subpoena duces tecum, a request for witness to appear and bring specified documents or other tangible things.

XII. Inmate Rights to Protected Health Information (PHI)

A. Medical Record Review

1. The inmate who wishes to review their medical record information will make such a request to the CHSA or designee by completing an "ODOC Authorization for Release of Protected Health Information" ([DOC 140108A](#), attached).
2. The CHSA or designee will ensure an appointment is scheduled to provide a review of the medical record within 30 days following receipt of the request. The amount of time for which the review shall take place will be reasonable.
3. The inmate will be provided a health care professional to interpret or read the health care notations as needed. At no time will the inmate be unaccompanied with the medical record nor allowed to make entries or corrections into the medical record. The inmate will be allowed to make notes of the record contents for their own use.
4. Both the inmate and the witness will authenticate the date and time of review with their signature and title on Section III. of "ODOC Authorization for Release of Protected Health Information" ([DOC 140108A](#), attached). The original "ODOC Authorization for Release of Protected Health Information" ([DOC 140108A](#), attached) will be retained in the medical record with a copy provided to the inmate.
5. If an inmate wishes to review their psychiatric/psychological information, then the treating physician or practitioner will approve the request by signing Section II. of "ODOC Authorization for Release of Protected Health Information" ([DOC 140108A](#), attached). If not approved, the inmate may not have access to their psychiatric/psychological records.
6. The inmate may review the medical record not more than once every six months unless a justification for more frequent review is demonstrated, such as the development of a major illness, major surgery, or other significant health problems.
7. An inmate acting "pro se" during legal proceeding may be entitled to a copy of their PHI or alternative arrangements may be made for the inmate to view and select portions of the records to be submitted to the court on the inmate's behalf. Payment for photocopies is required prior to a copy of the PHI being provided to the inmate or being submitted to the court.

B. Rights to Request an Amendment of Protected Health Information

1. An inmate may request an amendment to their PHI, through a “ODOC Request for Correction/Amendment of Protected Health Information” ([DOC 140108J](#), attached).
2. The request for amendment will be responded to within 60 days of receipt. If a response cannot be submitted to the inmate within that time frame, the inmate will be informed in writing that the request has been received and an estimated time of completion will be provided using the “ODOC Request for Correction/Amendment of Protected Health Information” ([DOC 140108J](#), attached).
3. The estimated time of completion may be extended no more than 30 days.
4. The health care provider may deny the request if the PHI:
 - a. Was not created by the Medical Services unit where the amendment was requested; or
 - b. It is accurate and complete.
5. The inmate will be informed in writing of the denial by completing Section II. of the “ODOC Request for Correction/Amendment of Protected Health Information” ([DOC 140108J](#), attached).
6. The inmate may submit a disagreement statement on the “ODOC Request for Correction/Amendment of Protected Health Information” ([DOC 140108J](#), attached). The disagreement statement cannot exceed the allowable space designated on the form.
7. The health care provider may accept the amendment request of the PHI in whole or in part, and he or she will:
 - a. Make the amendment by, at minimum, identifying the affected PHI and appending or otherwise providing a link to the location of the amendment; and
 - b. The inmate will be informed of the accepted requested by completing the “ODOC Request for Correction/Amendment of Protected Health Information” ([DOC 140108J](#), attached).
8. The denied or accepted “ODOC Request for Correction/Amendment of Protected Health Information” ([DOC 140108J](#), attached) will be filed in the medical record.

XIII. Facsimile Transmission of Protected Health Information

All PHI transmitted by fax will have a cover sheet, which includes the following statement:

THIS COMMUNICATION IS INTENDED SOLELY FOR THE INDIVIDUAL OR ENTITY ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, OR PROHIBITED FROM DISCLOSURE. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY. YOUR COOPERATION IS GREATLY APPRECIATED.

XIV. Administrative Procedures

- A. All inmate grievances in regards to PHI will be filed in accordance with [OP-090124](#) entitled "Inmate/Offender Grievance Process."
- B. Employees will be provided training on PHI approved by the medical services administrator or designee during pre-service training. All training will be documented for compliance with federal regulations.
- C. Training records will be maintained in accordance with [OP-100101](#) entitled "Training and Staff Development."
- D. Sanctions against the workforce who fail to comply with this operational procedure will be in accordance with [OP-110215](#) entitled "Rules Concerning the Individual Conduct of Employees."
- E. Any unauthorized use or disclosure of PHI will be reported to the CHSA, who shall coordinate with the chief Medical Officer and the office of the General Counsel regarding any required notifications that will be made as a result and any mitigating steps to prevent any further harm that may have been caused by the said unauthorized use or disclosure.
 - 1. Any breach involving the unsecured PHI of 500 or more individuals shall be reported to the chief Medical Officer and the office of the General Counsel within 24 hours.
 - 2. Any breach involving the unsecured PHI of less than 500 individuals shall be reported within five working days to the chief Medical Officer and the office of the General Counsel.

XV. Cost of Copies of Healthcare Records

- A. In accordance with 76 O.S. § 19, photocopies of the PHI will be provided to the inmate, persons or organizations for a cost of \$0.50 cents for each page, plus the cost of postage or delivery fee. No mailing fee will be charged for copies provided by facsimile. Records provided electronically shall be charged at \$0.30 per page but shall not exceed \$200.00, plus a delivery fee.
 - 1. In order for records to be provided electronically:

- a. The entire request will be capable of being reproduced from an electronic health record system;
 - b. The medical record is specifically requested to be delivered in electronic format; and
 - c. The medical record can be delivered electronically.
 2. Requests for medical records from attorneys, insurance companies and by way of subpoena will be charged a base fee of \$10.00 in addition to the per page charges, plus postage or delivery fee.
 3. The cost of each x-ray or other photograph or image requested will be \$5.00.
- B. Payment will be made before disclosing the PHI. If the request is from a person or organization other than the inmate, they will be informed of the fee by sending an invoice or the "ODOC Acknowledgement of Request for Protected Health Information" ([DOC 140108I](#), attached).

XVI. Drug and Alcohol Use Information

Any records or information, whether recorded or not, created, received, or acquired by ODOC relating to an inmate's diagnosis, treatment and referral for treatment information are protected by the Confidentiality of Substance Use and Disorder Patient Records regulations (contained in 42 USC § 290dd-2 and 43A O.S. § 1-109). Said records and information shall be kept confidential and shall not be disclosed except as expressly authorized in this procedure or when determined by the office of the General Counsel as a permissible disclosure under the law.

- A. Disclosures of Drug and Alcohol Abuse Information may be made when:
1. The disclosure is allowed by a qualified court order (staff receiving such order shall go through the office of the General Counsel to verify that it is a qualified order in compliance with (42 USC § 290dd-2 and 43A O.S. § 1-109));
 2. Communicating solely between ODOC and another program subject to the Confidentiality of Substance Use and Disorder Patient Records regulations (contained in 42 USC § 290dd-2 and 43A O.S. § 1-109), or an entity having control over such a program, so long as there is a demonstrated need for the information in connection with duties that arise out of the provision of diagnosis, treatment, or referral for treatment of patients with substance use disorders; or
 3. The inmate has signed a written consent which clearly provides authorization for drug and alcohol use information.
- B. Requests regarding Substance Abuse Treatment will be directed to the

Oklahoma Department of Corrections' Program Services unit.

XVII. References

Policy Statement P-140100 entitled "Inmate Medical, Mental Health and Dental Care"

OP-030402 entitled "Community Corrections Residential Contracts"

OP-060104 entitled "Community Corrections Assessment"

OP-090124 entitled "Inmate/Offender Grievance Process"

OP-100101 entitled "Training and Staff Development"

OP-110215 entitled "Rules Concerning the Individual Conduct of Employees"

OP-140111 entitled "Inmate Death, Injury and Illness Notification and Procedures"

OP-140113 entitled "Health Assessment for Inmate Transfers"

OP-140114 entitled "Screening New Arrivals"

OP-140115 entitled "Health Assessment"

OP-140125 entitled "Bloodborne Pathogen Exposure Control Program"

43A O.S. § 109

43A O.S. § 1-109

76 O.S. § 19

45 CFR Part 160

45 CFR Part 164

45 CFR § 164.520

42 USC § 290dd-2

XVIII. Action

The chief Medical Officer is responsible for compliance with this procedure and for the annual review and revisions.

Any exceptions to this procedure will require prior written approval from the agency director.

This procedure is effective as indicated.

Replaced: OP-140108 entitled "Privacy of Protected Health Information" dated September 23, 2021

Distribution: Policy and Operations Manual
Agency Website

<u>Referenced Forms</u>	<u>Title</u>	<u>Location</u>
DOC 140108A	"ODOC Authorization for Release of Protected Health Information"	Attached
DOC 140108B	"ODOC Revocation of Authorization for Release of Protected Health Information"	Attached
DOC140108H	"ODOC Accounting of Disclosure"	Attached
DOC140108I	"ODOC Acknowledgement of Request for Protected Health Information"	Attached
DOC140108J	"ODOC Request for Correction/Amendment of Protected Health Information"	Attached