

RELEASE OF INFORMATION

A. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) PRIVACY REQUIREMENTS AND PROTECTED HEALTH INFORMATION

1. HIPAA

- a. The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule states that protected health information (PHI) may only be used or disclosed as allowed by the HIPAA Privacy Rule.
- b. PHI has two components:
 - (1) 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.
 - (2) Information about a specific, identifiable person, e.g., name, social security number, DC number, location, dorm, bunk, work camp.
- c. PHI only applies to individually identifiable health information; both components must be present. For example, an encounter form for inmate Jane Doe because it has both the name of the individual and information about medical services performed.
- d. PHI can be written, oral, or electronic. It is PHI whether the paper form or an electronic record like OBIS is being viewed.
- e. Regardless of where the health information is located, it is considered protected health information. 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.

2. Florida Privacy Rules

Some of the provisions of the HIPAA Privacy Rule may differ from provisions of Florida Statutes. Where the provisions differ, the more stringent provision regarding the use and disclosure of protected information preempts the less stringent provision. With respect to an individual's rights, the provision that provides the individual the greater rights to access and to amend his or her protected information preempts. Note: If you are unsure which provision applies, refer the situation to the HSA for a decision before using or disclosing the information.

3. Health Records

- a. It is universally recognized and accepted by the medical community that health records are the legal property of a health care entity, even though the content of confidential information contained therein belongs to the patient. Therefore, it is essential that health care providers safeguard health records from wrongful disclosure, alteration, falsification, unlawful access or destruction (section 945.10, F.S., and the HIPAA Privacy Rule 45 CFR Parts 160 and 164).
- b. The medical record is a confidential, legal, and privileged document.

B. INMATE'S RIGHT TO ACCESS PHI

1. Requesting Access

- a. Under HIPAA Privacy Rule §164.524, inmates have the right to inspect and obtain copies of protected information about themselves in their designated record sets for as long as the department maintains the information. The request to obtain copies of protected health information may be denied, in whole or in part, if obtaining such copy 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.
- b. No inmate shall be allowed access to any other inmate's designated record set.
- c. An inmate desiring access to his own designated record set shall submit a written request to the HSA. Requests shall be submitted on DC6-236 *Inmate Request* and routed to the HSA for consideration and action.

2. Reviewing the Request

- a. When the inmate request is received, the HSA or HIS will schedule an appointment for the review and a call-out will be issued within 30 days.
- b. All requests shall be granted, including providing access or copies or both, or denied, in whole or in part, by the HSA in writing on DC6-236 within 30 days of the date of receipt of the request, except where the requested records are not maintained onsite, the department shall provide or deny access, in whole or in part, within 60 days from receipt of the requests.
- c. If the department is unable to take action within 30- or 60-day time frames, the department may extend the time for such action by no more than 30 days, provided that within the above applicable time, the

department provides the inmate with a written statement of the reasons for the delay and the date by which the department will complete its action on the request. The department may have only one such extension of time for action on a request for access.

3. Denying Access

a. The department may deny an inmate access to the following information without providing the inmate the right to request a review of the denial:

- (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 1988, 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); or
- (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) A copy of the information 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.

b. The department may also deny access for the following reasons, provided the inmate is given the right to have the denial reviewed:

- (1) A licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the inmate or another person; or
- (2) The protected information makes reference to another person (unless the other person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to the other person;
- (3) The request for access is made by the recipient's personal representative and a licensed health care professional has determined, in the exercise of professional judgement, that the provision of access to such personal representative is reasonably likely to cause substantial harm to the recipient or another person.

- c. If the department denies access for a reason listed in 3b above, the inmate has the right to have the denial reviewed by a licensed health care professional, who did not participate in the original decision to act as a reviewing official. The HSA will designate the reviewer. The inmate must submit a written request for review.
- d. The designated reviewing official must determine, within ten (10) days of receipt of the written request for review, whether or not to deny the access requested. The department must provide or deny access in accordance with the determination of the reviewing official.
- e. The licensed health care professional workforce member who is handling the request for review must immediately upon review provide written notice to the inmate of the determination of the designated reviewing official and take other action to carry out the designated reviewing official's determination.
- f. If the department denies access, in whole or in part, to the designated record set, the department must comply with the following requirements:
 - (1) Give the inmate access to any other protected information requested, to the extent possible;
 - (2) Where a request for access to an inmate's designated record set is denied in part, the department shall provide access to the requested record after excluding the information for which access was denied.
 - (3) Send a plainly written denial to the inmate that contains the following information:
 - (a) The basis for the denial;
 - (b) Information on where the requested information is maintained if section 2b applies and the department knows where the information is maintained;
 - (c) If the reason for denial is reviewable, a statement of the inmate's right to a review and instructions on how to request a review;
 - (c) A description of how the inmate may complain pursuant to the inmate grievance process; and
 - (d) A description of how the inmate may complain to the Secretary of Health and Human Services.

- g. If the information being requested required duplication, the cost of duplication shall be paid by the inmate and the inmate will sign a receipt for such copies. The cost of copying is \$0.15 per page for singled-sided copies. Only one-sided copies will be made for inmates. Additionally, a special service charge will be assessed for providing information when the nature or volume of the records requested requires extensive clerical or supervisory assistance by department personnel. Extensive means that it will take more than 15 minutes to locate, review for confidential information, copy and refile the requested material. The special service charge will be computed to the nearest quarter of an hour exceeding 15 minutes based on the current rate of pay for the pay grade of the person who performed the service. Exceptions will not be made for indigent inmates.

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. The record will be reviewed in a secure area in the presence of medical record staff or the HSA.
- c. When an inmate accesses his/her records, his/her name must be recorded DC4-534 *Health Care Information Request Record* and filed in the inmates record behind the Consents/Refusals/HC Dirs pink section.
- d. 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 submitted by the inmate to obtain any copies. The written request for copies can be included in the written request for access.
- e. All psychotherapy notes and psych testing information (orange folder) must be removed from the record prior to the review. Denial of access to psychotherapy notes is addressed under 3a(1) Denying Access. Denial of access to psych testing is covered in 3f Denying Access.

C. INMATE'S RIGHT TO REQUEST RESTRICTIONS ON USE AND DISCLOSURE OF PHI

1. Requesting a Restriction

- a. 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.
- b. Inmates must make requests for restrictions on the DC6-236 *Inmate Request* and provide a reason to support the requested restriction.

2. Reviewing the Request for a Restriction
 - a. The HSA must review and process the request for a restriction.
 - b. The department may not restrict disclosures of protected information:
 - (1) To other government agencies providing benefits or services to the inmate;
 - (2) To government agencies that oversee health care providers; or
 - (3) That are required by law.
 - c. The department is not required to agree to a restriction. If the department agrees to the restriction, the department and its business associates must honor the restriction.
 - d. The department must notify the inmate of the denial or acceptance of the request to restrict information. The HSA must ensure that a copy of the notice of denial or acceptance is filed in the inmate-designated record set and sent to other workforce members with a need to know.
3. Honoring the Request for a Restriction
 - a. 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 behind the Consents/Refusals/HC Dirs pink section. This information and the written request must be kept for six years from the date it was created or the date it was last in effect, whichever is later.
 - b. An exception is if the inmate is in need of emergency treatment and the restricted information is needed to provide the emergency treatment. If restricted information is disclosed to a health care provider for emergency treatment, the department must request that the health care provider not further use or disclose the information.
 - c. The department may terminate its agreement to a restriction, if:
 - (1) The inmate agrees to or requests the termination in writing;
 - (2) The inmate orally agrees to the termination and the oral agreement is documented; or
 - (3) The department informs the inmate that it is terminating its agreement to a restriction. The termination is only effective for

protected information created or received after the department informed the inmate of the termination.

D. INMATE'S RIGHT TO REQUEST CONFIDENTIAL COMMUNICATIONS

1. Requesting Confidential Communications
 - a. An inmate has the right to request that the department communicate with him or her by alternative means or at alternative locations.
 - b. Inmates must make requests for confidential communication in writing on DC6-236 *Inmate Request*.
2. Reviewing the Request for Confidential Communications
 - a. The HSA must review the request to determine if:
 - (1) All the required information is present and valid.
 - (2) The department has the capability to accommodate the method of contact.
 - b. The HSA should consult with the Privacy Officer regarding the request for confidential communication to determine the appropriate response as needed.
 - c. The department may refuse an inmate's request if the inmate has not specified a reasonable method of contact or if the request would jeopardize the security or operations of the institution.
3. The HSA must notify the inmate that the request for confidential communication was denied or accepted.
4. Honoring the Request for Confidential Communications
 - a. If the department agrees to the confidential communication, the department must honor the inmate's request.
 - b. The workforce member must retain the inmate's request and notification of denial or acceptance for a minimum of six years. The workforce member must put a copy of the request in the medical record.

E. INMATE'S RIGHT TO AMEND PHI

1. Requesting to Amend PHI

- a. An inmate has the right to request that the department amend a designated record set for as long as DC maintains the PHI in the designated record set.
 - b. Inmates must make requests for amendments in writing on DC6-236 *Inmate Request* and provide a reason to support the requested amendment.
 - c. If the department is informed by another covered entity of an amendment to an inmate's protected information, the department must amend the protected information in its designated record sets.
2. Reviewing the Request to Amend PHI.
- a. The HSA must review and process the request for an amendment.
 - b. The department must act on the inmate's request for an amendment no later than 60 days after receipt of the request.
 - c. If the department is unable to act on the amendment within 60 days, the department may extend the time by no more than 30 days, provided that within 60 days, the department provided the inmate with a written statement of the reasons for the delay and the date by which the department will complete its action on the request. The department may have only one time extension for action on the request.
3. Denying the Request to Amend PHI
- a. The department may deny an inmate's request for an amendment to PHI if it determines that the protected information:
 - (1) Was not created by the department, unless the inmate provides a reasonable basis to believe that the originator of protected information is no longer available to act on the requested amendment;
 - (2) Is not part of the designated record set;
 - (3) Is information that is not available for inspection by the inmate because access to the PHI 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 who is responsible for the transporting of the inmate. Other information that is not available for inspection by the inmate includes psychotherapy notes, information compiled in reasonable anticipation of, or for use in a civil, criminal, or administrative action or proceeding, subject to the Clinical Laboratory Improvements amendments of 1988, if the

PHI was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonable likely to reveal the source of the information.

- (4) Is accurate and complete.
- b. If the department denies the requested amendment, in whole or in part, the department must send the inmate a written denial notice, in plain language that contains:
- (1) The basis for the denial;
 - (2) The inmate's right to submit a written statement disagreeing with the denial and how the inmate may submit such a statement on DC6-236;
 - (3) A statement that if the inmate does not submit a statement of disagreement, the inmate may request that the department provide the inmate's request for amendment and the denial with any future disclosures of the protected information that is the subject of the amendment; and
 - (4) A description of how the inmate may complain through the inmate grievance process.
- c. The department must permit the inmate to submit a written statement disagreeing with the denial of all or part of a requested amendment and the basis of such disagreement. The statement of disagreement is limited to 100 words.
- d. The department may prepare a written rebuttal to the inmate's statement of disagreement. The department must provide a copy of any rebuttal to the inmate. Document that the rebuttal was provided to the inmate on DC4-701 *Chronological Record of Health Care*.
- e. The department must identify the form or PHI in the designated record set that is the subject of the disputed amendment and append or otherwise link the inmate's request for an amendment; the department's denial of the request; the inmate's statement of disagreement, if any; and the department's rebuttal, if any, in the designated record set.
- f. If a statement of disagreement has been submitted by the inmate, the department must include the material appended in accordance with the above section or an accurate summary of the information with any subsequent disclosure of the protected information to which the disagreement relates.

- g. If the inmate has not submitted a written statement of disagreement, the department must include the inmate's request for amendment and its denial or an accurate summary of the information with any subsequent disclosure of the protected information if the inmate has requested such action.
- h. When a subsequent disclosure of the information is made using a standard transaction that does not permit the additional material to be included with the disclosure, the department may separately transmit the material required in this section to the entity that is receiving the standard transaction.

4. Granting the Request to Amend PHI.

If the department accepts the requested amendment, in whole or in part, the department must comply with the following requirements:

- a. The department must make the amendment to the medical record by identifying the portions in the medical record that are affected by the amendment and appending or otherwise providing a link to the location of the amendment.
- b. The department must inform the inmate that the amendment is accepted and obtain the inmate's identification of, and agreement to have the department notify relevant persons with which the amendment needs to be shared as described below within 60 days.
- c. The department must make reasonable efforts to inform and provide the amendment within a reasonable time to:
 - (1) Persons identified by the inmate as having received protected information about the inmate and needing the amendment; and
 - (2) Persons, including business associates, that the department knows have the protected information that is the subject of the amendment and that may have relied, or could foreseeably rely, on such information to the detriment of the inmate.

F. INMATE'S RIGHT TO AN ACCOUNTING OF DISCLOSURES

1. Requesting an Accounting of Disclosures

- a. Inmates have the right to request that the department provide them with an accounting of disclosures of protected health information. An example of this is that an inmate can request that medical records staff produce a list of anyone that has received their PHI without a DC4-711B *Consent and*

Authorization for Use and Disclosure, Inspection and Release of Confidential Information.

- b. Inmates must make requests for an accounting of disclosures on DC6-236 *Inmate Request*.
2. Reviewing the Request for an Accounting of Disclosures
 - a. The HSA must review and process the request for an accounting of disclosures.
 - b. The department must provide the accounting of disclosures within 60 days of the request. If the department cannot provide the accounting within 60 days, it must inform the inmate of the reason for the delay and when it expects to provide the accounting. Only one extension of 30 days is permitted per request.
 - c. Inmates can request an accounting of disclosures for up to six years prior to the date on which the accounting is requested. (Disclosures made prior to April 14, 2003 are excluded from this requirement.)
 3. Providing the Accounting of Disclosures
 - a. The department must provide the inmate with a written account that includes the following information:
 - (1) The date of the disclosure;
 - (2) The name and address of the entity or person who received the protected information;
 - (3) A brief description of the protected information disclosed; and
 - (4) A brief statement of the purpose of the disclosure or a copy of a written request from the entity or person that received the protected information.
 - b. The accounting of disclosures does not have to contain the following disclosures of PHI:
 - (1) Disclosures for the purpose of treatment, payment and health care operations;
 - (2) Disclosures to law enforcement or correctional officers for the health and safety of the inmate, other inmates, officers, employees of the correctional institution or others at the correctional institution;

- (3) Disclosures to law enforcement on the premises of the correctional institutions;
 - (4) Disclosures for the administration and maintenance of the safety, security, and good order of the correctional institution;
 - (5) Disclosures for national security or intelligence purposes;
 - (6) Disclosures made to inmates of their own protected information;
 - (7) Disclosures made as part of a limited data set;
 - (8) Disclosures made to third parties pursuant to the inmate's written authorization; and
 - (9) Disclosures made prior to April 14, 2003.
- c. If the department made multiple disclosures of protected information to the same entity for a single purpose, the accounting for a given period of time may give:
- (1) The required information listed above for the first disclosure;
 - (2) The frequency, periodicity, or number of disclosures made; and the date of the last disclosure.
- d. The department must provide the first accounting to an inmate in any 12-month period without charge.
- e. If the second or subsequent request for disclosure within a 12-month period required duplication, the inmate shall pay the cost of duplication and the inmate will sign a receipt for such copies. The cost of copying is \$0.15 per page for singled-sided copies. Only one-sided copies will be made for inmates. Additionally, a special service charge will be assessed for providing information when the nature or volume of the records requested requires extensive clerical or supervisory assistance by department personnel. Extensive means that it will take more than 15 minutes to locate, review for confidential information, copy and refile the requested material. The special service charge will be computed to the nearest quarter of an hour exceeding 15 minutes based on the current rate of pay for the pay grade of the person who performed the service. Exceptions will not be made for indigent inmates. The department shall inform the inmate in advance of the fee and provides the inmate with an opportunity to withdraw or modify the request for a subsequent accounting in order to avoid or reduce the fee. The HSA may waive the fee.

- f. The department must document the following information about accounting of disclosures:
 - (1) The date of disclosure
 - (2) The information listed in the accounting;
 - (3) Written accounting that is provided to the inmate; and
 - (4) The titles and names of the people who were responsible for receiving and processing the request.
 - g. The documentation must be retained for six years.
4. Tracking disclosures of PHI
- a. In order to meet this requirement, the department must track disclosures other than for treatment, payment and health care operations. This includes the following disclosures even if the disclosure was to a business associate. The department must track disclosures:
 - (1) To other government agencies providing benefits or services to the inmate;
 - (2) To government agencies that oversee health care providers;
 - (3) For research; and
 - (4) That are required by law.
 - b. The following specific information about each disclosure must be included and documented in the medical record on DC4-534 *Health Care Information Request Record*:
 - (1) The date of the disclosure;
 - (2) The name and address of the entity or person who received the protected information;
 - (3) A brief description of the PHI disclosed;
 - (4) A brief statement of the purpose of the disclosure, and
 - (5) Written account that was provided to the inmate.

5. Suspension of Rights to an Accounting of Disclosures
 - a. The department may temporarily suspension an inmate's right to receive an accounting of disclosures for a health oversight agency for the time period specified by the oversight agency.
 - b. The oversight agency must state that an accounting of disclosures may impede an investigation that involves the inmate. The statement must specify the time period for which the suspension is required. An oral statement is limited to 30 days; for suspension beyond 30 days, the oversight agency must submit a written statement.
 - c. Although the accounting of disclosures is not released during a suspension, the department must continue tracking and storing the information for future releases.

G. USE AND DISCLOSURE OF PHI

1. Use and Disclosure
 - a. The privacy rule has standards for both use and disclosure of PHI. Use and disclosure are described in the privacy rule as follows:
 - b. Use is reading inmate information on the Department of Corrections Offender Based Information System (OBIS) and/or the Computer Assisted Reception Process (CARP) system, reviewing medical records, analyzing reports that contain PHI, or in any way accessing, discussing, etc., any PHI electronically, in writing or orally.
 - c. Disclosure is disclosing PHI in any form or medium to anyone who is not a member of DC's workforce.
 - d. The difference between use and disclosure is:
 - (1) Use describes information accessed and used within the Department of Corrections.
 - (2) Disclosure occurs when information is given to another individual outside the Department of Corrections.
2. Inmate Authorization: *DC4-711B Consent and Authorization for Use and Disclosure, Inspection and Release of Confidential Information.*
 - a. The department requires that this authorization form be notarized when the authorization is not from a current inmate personally known to the witness or is from a source external to the department. All authorization forms shall be

witnessed by at least one person who can verify the fact that s/he witnessed the signing of the authorization by the inmate and that, to the best of his/her knowledge, the inmate knew what was signed.

- b. An inmate may authorize disclosure by giving written consent/authorization using the DC4-711B *Consent and Authorization for Use and Disclosure, Inspection and Release of Confidential Information*. A copy of the authorization must be provided to the inmate and the inmate must acknowledge receipt of the copy by signing in the appropriate location on the authorization. The authorization and acknowledgement of receipt of copy shall become a part of the inmate medical record.
- c. In case of a deceased inmate, authorization must be signed by next of kin (e.g., spouse, parent or children, or personal estate representative). A certified copy of a letter of administration is required to be on file in the health record.
- d. In the case of legally incompetent inmates/persons, the authorization must be signed by the inmate's proxy, guardian or legal representative. (DC4-711B *Consent and Authorization for Use and Disclosure, Inspection and Release of Confidential Information* is the approved form and must be utilized to request health information records.)
- e. This form will be maintained in the medical record directly behind the Consent/Authorization divider. Health information provided to individuals within DC does not have to be recorded.
- f. The names of authorized non-DC individuals and agencies that receive health information about an inmate must be recorded on DC4-534.
- g. Authorizations requesting information shall be honored for the present and past information only. Those requesting future and/or continuing information shall require an additional signed, dated and notarized authorization from the inmate (DC4-711B *Consent and Authorization for Use and Disclosure, Inspection and Release of Confidential Information*) which shall be accepted as valid for a period not to exceed three (3) months from date of signature unless the inmate specifies a longer time period on the authorization

3. Disclosing Protected Health Information

All requests for PHI must be specific and must be in writing. Only a departmental, legally approved, authorization form (DC4-711B *Consent and Authorization for Use and Disclosure, Inspection and Release of Confidential Information*) shall be honored. All other authorization forms are to be returned to requesters with a statement to this effect. A copy of DC4-711B shall be enclosed with detailed

instructions and the location listed to which the form is to be returned. The HSA will handle requests.

- a. Information requests shall 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. All institutional staff requests for health records shall be controlled by the use of a charge-out system. All other requests for copies and/or reviews shall be tracked in DC4-781Q. 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 and the regional risk manager.
- c. 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) A court of competent jurisdiction when directed by court order. You can only disclose PHI that is requested in the court order.
 - (4) Pursuant to a properly served subpoena. You can only disclose PHI that is requested in the subpoena.
 - (5) To departmental staff when a legitimate need to know exists (e.g., classification and assignment), required approval is obtained, and only to the limited extent necessary to meet that need to know (OBIS/HS06 screens can also be viewed by classification).
 - (6) Inspectors from the Inspector General's office may have access to information contained in the health record as required in the course of an investigation.

- (a) Inspectors may review inmate records in the medical records area. DC4-765H *Inspector General Medical Record Review Log* will be maintained in medical records identifying that a record was reviewed including the date, the inspector accessing the record and the reason (e.g., investigation number). Only information necessary for the purpose stated shall be reviewed. Any written requests from the IG for copies of information from the medical record will also be maintained in the log. Disclosures to the IG investigators do not have to be accounted when a disclosure request has been received.
 - (b) The original record will not be released, but a copy of the designated portion may be provided if the inspector requests such in writing. Only copies of the portions of the health record that are needed are to be provided. Need-to-know issues shall be referred, with explanatory data, to the Deputy Director of Health Services Administration for resolution if there is a question at the institutional/regional level.
 - d. In the event of an inquiry from non-health care personnel for release of information of a category not previously approved, refer to the Chief Health Officer (CHO). Determination of a non-health care person's need to know shall be resolved by the CHO/MED in consultation with the warden and the HSA functioning as the Privacy Coordinator, in written form if a question cannot otherwise be resolved.
 - e. When PHI is disclosed, the health record shall reflect an NCR copy of the DC4-744 *Release of Information Statement* (filed behind the pink Consents/Refusals/HC Dirs section), noting date/time and responsible party releasing stated information.
 - f. 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. Valid Authorizations for Release of PHI
- A valid authorization shall contain:
- a. Authentic signature and current date by the inmate/patient.
 - b. Specific name of the person or entity (complete with address) to whom the information is being released.

- c. Specific description of the nature of the information authorized for disclosure. Any and all medical records or similar statement in the authorization shall be returned to requester for specificity.
 - d. Definite purpose and intent for disclosure at the time of release.
 - e. Expiration date
 - f. Notary statement, stamp, and signature (Florida Statute 117.05), if required.
 - g. Psychotherapy notes require a separate authorization for release. No other information to be released may be authorized on the same form being used to authorize a release of psychotherapy notes.
5. 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, 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. When communicating with more than one individual about PHI, send separate emails to each person.
6. Subpoenas and Depositions
- a. Refer to department procedure 102.003 to address issues concerning subpoenas, discovery requests and notices of taking depositions. The following information is offered as a general summary of that procedure or to provide specific guidance regarding implementation of this procedure, and is not to be construed as superseding the provisions found therein.
 - b. A subpoena refers to a document commanding a person to appear at a certain time and place to give testimony and/or to produce records. It may be issued by an attorney or a Clerk of the Court and may relate to a criminal or a civil case, agency or administrative proceeding or investigation. A subpoena duces tecum refers to a subpoena that requests that a person appear at a particular place and time to testify and to have with them certain requested records.

c. Who May Issue Subpoenas

- (1) Judges (court orders).
- (2) State and Federal legislative bodies.
- (3) State of Florida Department of Labor and Employment Security (Workers' Compensation).
- (4) Clerk of the court.
- (5) Arbitrators of the American Arbitration Association.
- (6) Attorneys as officers of the court/attorney of record in an action. Any other official investigative body empowered to use the power of subpoena, e.g., Social Security Administration, Department of Business and Professional Regulation, or other permanent commissions.

d. Processing a Subpoena

When directed by the Office of General Counsel, the following steps should be performed in processing the subpoena:

- (1) Review the health record to ensure that it is complete, all signatures are legible, and that each page contains the name of inmate/patient, DC#, race/sex, and date of birth.
- (2) The CHO/MED will review the record and shall notify appropriate institutional/regional/Central Office of Health Services staff if s/he has any concerns.
- (3) Ascertain if the record contains psychiatric, alcohol and/or drug abuse or HIV-related information. If so, it must be removed. A court order or the inmate/patient authorization is specifically required for this information to be released.
- (4) Copy the record in order to take both the original and a copy to court (if required to appear). If asked to leave the record as evidence, submit the copy to the Court. A written statement shall be prepared (prior to court) certifying the copy to be a true and correct copy (DC4-744 *Release of Information Statement* shall be used for this purpose).

- e. The subpoena shall be filed in the health record and a DC4-744 *Release of Information Statement* shall be completed in accordance with the department's release of information procedure.

7. 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 Deputy Director of Health Services Administration 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 Deputy Director of Health Services Administration shall be contacted for any questions related to the release of such records.
- c. Patient medical records may not be disclosed without the written permission of the person to whom they pertain or via court order or subpoena with notice to patient or patient's legal representative.
 - (1) Mental health records, including even the identification of a person as a 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 record form that specifically requests psychiatric/psychological information, or by court order.

8. Record Duplication Process/Fees

The HIS shall ensure that:

- a. When a health record is copied for release, complete inmate and institutional identification information is on each page.
- b. Complete documentation including dates, times, SOAPE/incidental entries, provider stamps, and signatures are in place.

- c. Each record page is copied squarely and evenly and there are no fading, missed or crooked edges.
 - d. 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.
 - e. Upon receipt of the fee from the requester, the health record will be copied, packaged and mailed. The cost of copying is \$0.15 per page for singled-sided copies, \$0.20 per page for double sided copies. Only one-sided copies will be made for inmates. Additionally, a special service charge will be assessed for providing information when the nature or volume of the records requested requires extensive clerical or supervisory assistance by department personnel. Extensive means that it will take more than 15 minutes to locate, review for confidential information, copy and refile the requested material. The special service charge will be computed to the nearest quarter of an hour exceeding 15 minutes based on the current rate of pay for the pay grade of the person who performed the service. Exceptions will not be made for indigent inmates.
9. 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 Health Information Specialist shall contact the requester and agree to an extended time frame and/or alternate mailing date. If an extension is

necessary, it should be documented. Any problems regarding prompt copying shall be referred to the Health Services Administrator 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 *Release of Information Statement*.
- k. The correspondence log shall document and track inmate 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.

10. 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 EOS'd. If the inmate is active, contact Medical Records at the institution where inmate is housed. Mail signed release of information and request to that institution.
- b. When a request comes into this office 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, letter states:

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:

INACTIVE MEDICAL RECORDS
RMC
P.O. Box 628,
Lake Butler, FL 32054