

December 23,2015

NOTICE OF RULE DEVELOPMENT

DEPARTMENT OF CORRECTIONS

RULE NO.:      RULE TITLE:

33-401.701      Medical and Substance Abuse Clinical Files

PURPOSE AND EFFECT: The purpose and effect of the amendment is to add references to a new Form, namely DC4-711Bsp, which is the Spanish-language version of Form DC4-711B.

SUBJECT AREA TO BE ADDRESSED: Medical and Substance Abuse Clinical Files

RULEMAKING AUTHORITY: 944.09,945.10 FS

LAW IMPLEMENTED: 119.07, 395.3025, 944.09, 945.10, 945.25, 945.6034 FS

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA

ADMINISTRATIVE REGISTER. THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND TO OBTAIN A COPY OF THE PRELIMINARY DRAFT IS: Adam Stallard, 501 South Calhoun Street, Tallahassee, Florida 32399.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AS FOLLOWS:

33-401.701 Medical and Substance Abuse Clinical Files.

(1) through (9) No change

(10) Use and disclosure of protected health information.

(a) through (c) No change

(d) If use or disclosure of an inmate's protected health information is not otherwise permitted by law, an inmate must authorize the use or disclosure by giving written consent using Form DC4-711B, Consent and Authorization for Use and Disclosure Inspection and Release of Confidential Information, or Form DC4-711Bsp, its Spanish-language version, or a legally approved, HIPAA compliant release of protected health information form from another governmental agency. Form DC4-711B and Form DC4-711Bsp are is incorporated by reference in Rule 33-601.901, F.A.C.

(e) Form DC4-711B, DC4-711Bsp, or any other authorization used for these purposes shall be submitted with the written request for access to an inmate's protected health information. A copy of the authorization shall be provided to the inmate and the inmate shall 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's medical file.

(f) Form DC4-711B, DC4-711Bsp, or any other authorization used for these purposes must be notarized unless witnessed by a member of the Department's workforce 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 he witnessed the signing of the authorization by the inmate and that, to the best of his knowledge, the inmate knew what was signed.

(g) through (h) No change

(i) In accordance with 45 C.F.R. § 164.502, a personal representative of a living inmate shall have access to or authorize the disclosure of the inmate's protected health information that is relevant to the personal representative's legal authority to make health care decisions on behalf of the inmate. Form DC4-711B, Form DC4-711Bsp, or any other authorization used for these purposes Consent and Authorization for Use and Disclosure Inspection and Release of Confidential Information shall be signed by the inmate or the inmate's personal representative in accordance with Florida law. In accordance with 45 C.F.R. § 164.514(h)(1), the Department shall verify and document the authority of the personal representative to serve in that capacity.

(j) through (m) No change

(11) Alcohol and Drug Abuse Treatment Files: Any information, whether recorded or not, concerning the identity, diagnosis, prognosis or treatment of any inmate or offender which is maintained in connection with the performance of any alcohol or drug abuse prevention or treatment function shall be confidential and shall be disclosed only as follows:

(a) No change

(b) Pursuant to 42 C.F.R. Part 2, the department is authorized to disclose information about an inmate or offender to those persons within the criminal justice system who have made participation in the program a condition of the disposition of any criminal proceedings against the inmate or offender or of the inmate or offender's parole or other release from custody if:

1. No change

2. The inmate or offender has signed Form DC4-711B, Form DC4-711Bsp, or any other authorization used for these purposes meeting the requirements of subsection paragraph .QQI except for the revocation provision in paragraph subparagraph Q.Q)(g) – This written consent shall state the period during which it remains in effect.

This period shall be reasonable, taking into account:

a. through c. No change

(c) through (d) No change

Rulemaking Authority 944.09,945.10 FS. Law Implemented 119.07,395.3025, 944.09, 945.10, 945.25,945.6034

FS. History-New 4-15-10, Amended 8-6-13,\_\_\_\_\_