

STATE OF OHIO



DEPARTMENT OF REHABILITATION
AND CORRECTION

SUBJECT: Access and Confidentiality of Medical, Mental Health, and Recovery Services Information	PAGE <u>1</u> OF <u>8</u> NUMBER: 07-ORD-11
RULE/CODE REFERENCE: ORC5120.21; 42 C.F.R. part 2; 42 U.S.C. §§ 290 dd-3 and ee-3	SUPERSEDES: 07-ORD-11 dated 4/18/2011
RELATED ACA STANDARDS: 4-4396; 4-4403-1; 4-4413	EFFECTIVE DATE: May 23, 2012
	APPROVED: 

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

II. PURPOSE

The purpose of this policy is to establish procedures for maintaining the confidentiality of the medical, mental health and recovery services files, while promoting the exchange of information among Department of Rehabilitation and Correction (DRC) health care providers and permitting limited disclosure to other institutional staff in specified circumstances.

III. APPLICABILITY

This policy applies to all persons employed by or under contract with the Department of Rehabilitation and Correction and all offenders incarcerated in institutions operated by the Department.

IV. DEFINITIONS

Medical Professionals - Those persons who by virtue of their training and experience are qualified to provide medical care within the provisions of the State's licensure laws, policies, and guidelines. For the purposes of this policy, medical professionals include medical staff, medical clerical staff, and medical support staff.

Mental Health Professionals - Any individual who is licensed, certified or registered under the revised code, or otherwise authorized in this state, to provide mental health services.

Recovery Services Professionals - Those persons who, by virtue of their training and experience, are qualified to provide alcohol and other drug counseling services within the provisions of the state's licensure laws, policies, and guidelines. For purposes of this policy, recovery services professionals include recovery services treatment staff and recovery services clerical/support staff.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction to ensure the restricted access to, safekeeping, and confidentiality of medical, mental health, and recovery service records.

VI. PROCEDURES

A. Medical Files

1. Every offender entering a DRC institution shall have a medical file containing all medical information, to include:
 - a. Reception health screening information;
 - b. All subsequent clinical contacts between the offender and medical services staff; and
 - c. Physical examination records, progress notes, assessment forms, physician's orders, laboratory reports, and all other information pertaining to the physical health of the offender.
2. The medical file shall be maintained separately from the offender's master file and other records.

B. Mental Health Files

1. Every offender entering a DRC institution shall have a mental health file established which contains clinical information such as:
 - a. Initial and detailed mental health screenings obtained during the reception process; and
 - b. All subsequent clinical contacts between the offender and the mental health staff; and
 - c. Medication reports, screenings/evaluations/assessments, third party information and releases, treatment plan information, hospital information, laboratory/test results, psychological testing and other evaluations, progress notes and crisis care, and programming information.
2. The mental health file shall be maintained separately from the offender's record office file and other records.

3. Evaluations done for non-treatment purposes, i.e. parole evaluations are not to be included in the mental health file. These evaluations are to be placed in the record office file; a notation that an evaluation has been done shall be made in the mental health file.

C. Recovery Services Files

1. Strict confidentiality of information about persons, including offenders, receiving alcohol and drug treatment is mandated by 42 U.S.C. §§290 dd-3 and ee-3 and 42 C.F.R. part 2. Restrictions on disclosure apply to any information that would identify the offender as an alcohol or drug abuser, either directly or by implication. The rule applies whether or not the person making an inquiry already has the information, has other ways of getting the information, has some form of official status, is authorized by state law or has a subpoena or search warrant. Pursuant to 42 C.F.R. Part 2 §2.4, violations of these regulations are punishable by a fine of up to \$500 for a first offense and up to \$5000 for each subsequent offense.
2. Pursuant to 42 C.F.R. Part 2 §2.12 (c)(3), restrictions on disclosure in these regulations do not apply to communications of information between or among personnel having a need for information in connection with their duties that arise out of the provision of diagnosis, treatment or referral for treatment if communications are within a program or between a program and an entity that has administrative control over that program.
3. Regulations permit programs to disclose aggregate information or information about an offender if the program reveals no patient identifying information or information identifying a person as an alcohol or drug abuser.
4. Information protected by federal confidentiality regulations may be disclosed only in the following situations:
 - a. The offender has signed the Disclosure/Release of Client Information form (DRC5214);
 - b. During a medical emergency when the offender is not able to sign a consent to release information;
 - c. Program evaluations and communications among program staff; and
 - d. Upon receipt of an order of a state or federal court to release information. However, a subpoena, search warrant or arrest warrant signed by a judge is not sufficient to permit disclosure of protected information.
5. Federal laws and regulations do not protect any information about a crime committed by a client either in the program, against any person who works with the program or any threat to commit such a crime. Additionally, federal confidentiality laws and regulations do not protect any information regarding suspected child abuse or neglect from being reported to state or local authorities as required by state law. Department staff is required to inform offenders of "Duty To Warn Statutes".

6. The Disclosure/Release of Client Information (DRC5214) must be used for exchange of alcohol and drug treatment information with other entities. Medical and mental health consent forms are not adequate for this purpose. The Disclosure/Release of Client Information form, (DRC5214), shall be used for release of information requested by a court, probation department or other criminal justice entity to verify attendance and progress in treatment.

D. Medical, Mental Health, and Recovery Services File Access

1. All medical, mental health and recovery services professional staff shall have access to an offender's medical, mental health and recovery services files as needed when acting in the course of their specific duties.
2. Other health care personnel who may have more limited access to these files in the course of their assigned duties, but only as their duties require, include:
 - a. Dentists,
 - b. Medical records technicians, and
 - c. Members of an individual offender's mental health treatment team in the context of a treatment team meeting.
3. Department legal counsel or other attorneys representing the Department may access an offender's medical, mental health and recovery services files as needed in the course of their duties.
4. The following personnel may have access to designated information from medical, mental health and recovery services files on a need to know basis by request to the Health Care Administrator, Mental Health Administrator / Mental Health Manager / designee and/or Recovery Services Supervisor / designee.
 - a. Managing Officer of the institution or designee;
 - b. Adult Parole Authority (APA) Regional Administrators;
 - c. Adult Parole Authority (APA) Special Needs Coordinator;
 - d. Internal investigative staff, including the Institutional Inspector;
 - e. Departmental and accrediting body auditors;
 - f. Persons authorized by an order or judgment of a court with appropriate jurisdiction; and
 - g. Bureau of Classification staff for interstate corrections compact transfers

5. Additional personnel may have access to Patient One View, if written authorization from the Bureau of Medical Services Chief is obtained.
 6. The following personnel may have access to designated information from medical, mental health and recovery services files with the offender's consent as verified by a signed Authorization for Release of Information form:
 - a. Parole Board;
 - b. Select Adult Parole Authority (APA) field staff such as those responsible for ensuring continuity of care for offenders leaving the department's physical custody and returning to the community;
 - c. Bureau of Community Sanctions;
 - d. Interagency staff including the Ohio Department of Mental Health (ODMH), halfway houses, etc.; and
 - e. Re-entry management teams;
 7. Ohio Revised Code 5120.21 and Department Policy 07-ORD-05, Cooperation with Court and Interagency Record Requests, govern all other access to medical, mental health and recovery services files.
 8. Confidential medical, mental health and recovery services information obtained from agencies outside of DRC may not be re-released to other agencies outside of the DRC without written consent by the offender.
 9. Health record information is transmitted to specific and designated physicians or medical facilities in the community upon the written request or authorization of the offender.
- E. Disclosure of Health Care Information to Correctional Staff
1. Medical, mental health and recovery services personnel shall be required to report to correctional personnel, including the Managing Officer, when an offender is identified as:
 - a. Suicidal;
 - b. Homicidal;
 - c. Presenting a reasonably clear danger of injury to self or others;
 - d. Presenting a reasonably clear risk of escape or the creation of internal disorder or riot;
 - e. Requiring movement to a special unit or cell for observation, evaluation or treatment of acute episodes;
 - f. Requiring transfer to a treatment facility outside of the prison; or

will arrange a convenient time for the offender to review his or her Mental Health record. A mental health employee must be present during the entire time that the offender is reviewing the mental health record.

3. Recovery Services Files

- a. Offenders wishing to review their personal recovery services record may do so by sending a request in writing to the institution Recovery Services Supervisor.
- b. The Recovery Services Supervisor shall arrange a convenient time for the offender to review his/her recovery services record. A recovery services staff member must be present during the entire time that the offender is reviewing the Recovery Services record.

G. Statutory Duty to Report

1. Ohio law requires that health care staff report circumstances of abuse.
 - a. Such circumstances may include, but are not limited to:
 - i. Physical, sexual, or mental abuse of the mentally retarded, children or the elderly;
 - ii. Criminal activity; and
 - iii. Credible threats of imminent personal harm to identifiable persons or structures.
 - b. Any evidence of, or information regarding, such circumstances shall be documented on an Incident Report (DRC1000) and immediately reported to the Managing Officer or designee.
2. Ohio law requires that health care staff report the diagnosis of certain contagious diseases such as tuberculosis and sexually transmitted diseases to designated Department of Health units. Reporting requirements are addressed in Department Policy 68-MED-18, Infection Control Activities, and Protocol C-3, Tuberculosis Skin Test Screening Guidelines.
3. The Ohio Department of Mental Retardation and Developmental Disabilities maintains an Abuser Registry, which contains the names of persons who have been involved in abuse of a mentally retarded person.
 - a. The Managing Officer or designee shall notify the Bureau of Mental Health Services of the results of any investigation that finds an employee guilty of abuse of an offender with mental retardation.
 - b. The Bureau of Mental Health Services shall be responsible for notifying the Department of Mental Retardation and Developmental Disabilities of any such finding.

H. Offender Appraisal of the Limits and Extent of Mental Health Information Confidentiality

1. Mental health professionals who have a treatment or counseling relationship with the offender shall disclose the following information to the offender before proceeding:
 - a. The professional's position and agency;
 - b. The purpose of the meeting or interaction;
 - c. The uses to which the information must or may be put including those situations listed in Section VI.D.3 and VI.E.1 of this policy, which dictate circumstances under which disclosure may be made to other correctional staff.
2. The mental health professionals shall indicate a willingness to explain the potential risks associated with the offender's disclosures.

Related Department Forms

Incident Report	DRC1000
Disclosure/Release of Client Information	DRC5214