

STATE OF VERMONT
AGENCY OF HUMAN SERVICES
DEPARTMENT OF CORRECTIONS

Directive: 254.02

Subject: Access To Health Care Records
Effective Date: June 11, 1999 Review and Re-Issue Date:
Supersedes: 6/7/94 APA Rule Number:

Recommended for approval by:		Authorized By:	
_____ Signature	_____ Date	_____ Signature	_____ Date

1. Authority:

1.1 Department Policy 254 - Access to Offender Information; 28 V.S.A. §601(10); Ethical Principles of Psychologists and Code of Conduct, 1992.

2. Purpose:

2.1 This directive provides guidance for managers and health care providers to enhance the effectiveness of health care for persons in the custody of the Vermont Department of Corrections by establishing clear guidelines for access and control of health care information.

3. Applicability/Accessibility

3.1 This directive applies all DOC employees, agents, contractors and to health care (medical and mental health) records. Anyone may have a copy of this directive.

4. Directive

4.1 Health records of persons in custody are not public records but are part of a corrections file maintained under 28 V.S.A. §601(10). They are created or maintained by the Department to aid in the delivery of a managed medical care system. Records of treatment generated by non-DOC facilities or non-DOC health care providers are subject to this directive when placed in the medical files in the custody of the

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Vermont DOC. Distribution of all health care information shall be restricted and access to medical and mental health records will be controlled by the terms of this directive. Persons who are not provided access by the terms of this directive will be granted access only upon court order. Due to ethical considerations, counseling notes and raw data in the offender's record shall be exempted from disclosure.

4.2 Access by non-health care providers depends upon the reasons for requested access. The following shall constitute sufficient reason for granting access on a case-by-case basis.

4.2.1 Department counsel, assistant attorneys general, conflict counsel, or the attorney general may have access to medical and mental health records to assist in preparing the defense of a claim or lawsuit filed by the person in custody against the department or state, or any health care provider;

4.2.2 The Office of the Attorney General in any case involving a complaint before a professional licensing board against any health care provider employed by the department;

4.2.3 Medical and mental health records may be disclosed for purposes of intra-departmental research subject to any conditions established by the director of clinical services and consistent with departmental directives concerning research;

4.2.4 Health care records may be disclosed for purposes of management or financial audits, program monitoring, or assessment of compliance with state or federal law or other department policy;

4.2.5 Access to medical records by Agency of Human Services personnel may be accomplished in order to verify eligibility for state or federal disability benefits;

4.2.6 Department of Health employees and other appropriate Agency of Human Services employees shall have access to health records where the subject of the records is believed to be sick from or been exposed to a diagnosed or suspected disease considered dangerous to public health;

4.2.7 Department of Social and Rehabilitative Services employees shall have access to health records upon request in cases where the person who is the: subject of

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the record is the subject of an investigation for child abuse or for purposes otherwise described in directive.

4.2.8 The Commissioner, the Deputy Commissioner, the Director of Correctional Services, the Clinical Director, the Medical Director, and their designees may have access at all reasonable times for administrative and management purposes.

4.2.9 Department of Developmental and Mental Health Services (DDMHS) employees shall have access to medical or mental health records where the Department of Corrections has requested assistance by the DDMHS in providing assistance to a specific person in the facility.

4.2.10 Community mental health centers, acting under the auspices of the Department of Developmental and Mental Health Services (DDMHS), may have access to health care records where the individual is receiving follow-up care in the community or where they are providing contractual services to offenders either in facility or field settings.

4.3 Access by Department of Corrections Health Care Providers

4.3.1 The primary purposes of medical and mental health records are both to document the care provided to a specific person in custody and to facilitate communication among health care providers who are involved in the screening, assessment or treatment of that person. For these reasons, routine access by health care providers designated by the Department of Corrections is necessary in order to enhance the effectiveness of the Department's overall health care program.

4.4 Access by employees of the Department of Corrections

4.4.1 There are times when non-health staff members are permitted access to health care records. When a request to review a record from an authorized non-health staff member is received, health services staff members should discuss the case and the record with the requesting individual and respond to questions as appropriate. This is often preferable to sending the record by itself, since the health staff member can ensure that only information pertinent to the matter at hand is released. Additionally, the health staff member can locate the information more readily and interpret it as necessary. However, there may be

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occasions when such controlled access is impractical; e.g., request of immediate access by an assistant attorney general in preparing a defense to a lawsuit filed by the person in custody. In these cases, mailed copies or fax transmissions of records to duly designated individuals are reasonable.

4.5 Access by the Person in Custody

4.5.1 The person in custody shall have reasonable access to full time health care providers (e.g. nurses) to discuss his/her medical and mental health care treatment. Such communication serves an important role enhancing the cooperation needed on the part of inmate-patients to assist in their health care plan and to encourage their role as an active player in health care planning. They meet with nurses and physicians to work collaboratively toward health improvement goals and to receive information verbally and with explanation of its meaning. Access by the person in custody to non-facility health care providers (e.g. physicians or psychologists under contract to provide on site services to inmates) to discuss his/her treatment shall be permitted depending upon the non-facility health care provider's schedule and availability at the facility, as well as the demands of the patient population when the non-facility health care provider is at the facility. A former inmate may contact the Responsible Health Care Authority in writing and request an appointment to discuss his/her record under the same terms as a person in custody.

4.5.2 Copies of records of the individual's medical and mental health treatment shall not be provided to the person in custody except as follows:

4.5.2.1 The subject of the record has requested access to a copy of his /her records pursuant to a discovery in litigation involving the Office of the Attorney General and the assistant attorney general assigned to the case has authorized access;

4.5.2.2 A court of competent jurisdiction has issued an order the Department's Legal Division has verified that the order should be complied with. Subpoenas are not court orders and generally do not provide authority for the person in custody to receive a copy of his /her record unless the Department's Legal Division has so certified;

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4.5.2.3 Due to ethical considerations, counseling notes and raw data in the offender's health record shall be exempted from disclosure.

4.6 Access to Records by a Third Party

4.6.1 Medical and mental health care records in the possession of the Vermont Department of Corrections shall be provided to third parties only as follows:

4.6.1.1 Non-DOC health care providers request access to and/or copies of an individual's records the individual in question has signed a written release approved by DOC health care providers;

4.6.1.2 A court of competent jurisdiction has issued an order and the Department's Legal Division has verified that the order should be complied with. Subpoenas are not court orders and generally do not provide authority for the third party to access an individual's medical and mental health records unless the Department's Legal Division has so certified;

4.6.1.3 An attorney representing the person in custody has requested access pursuant to discovery in litigation involving the Office of the Attorney General and the assistant attorney general assigned to the case has authorized access;

4.6.1.4 The Office of the Defender General and its contractors and the attorney of record in a criminal case may inspect health care records of a person in custody where the subject of treatment has signed a written release approved by the Department of Corrections health care provider. Copies of records may be provided without cost when the Responsible Health Care Authority of the facility has determined that the request is reasonable in light of the nature of the request;

4.6.1.5 Guardians of the person in custody shall have the same access as provided to the person in custody provided that the individual has signed a written release approved by the Department of Corrections health care provider and/or that requestor has been approved by a court of competent jurisdiction to act on behalf of the person in custody or to administer the estate of the person in custody.

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4.6.1.6 Due to ethical considerations, counseling notes and raw data in the offender's health record shall be exempted from disclosure.

4.7 Protection of Medical and Mental Health Records

4.7.1 The original medical and mental health records shall not be removed from the facility by any offender or third party. The Responsible Health Care Authority of the facility having custody of original medical and mental health records shall establish procedures that preserve the security of these records and protect them from damage or loss. All medical and mental health records remain the property of the Department of Corrections. Although protection and custody of the health and mental health records may be delegated to third parties (e.g. contracted providers), these records remain the property of the VT DOC. All final decisions pertaining to these records shall reside with the commissioner and his designees.

4.8 Responsible party

4.8.1 The person(s) with authority to grant or control access to health care information in each case is the DOC Medical Director, the Director of Clinical Services, and/or the Responsible Health Care Authority at the facility. Questions concerning access should be directed to the Director of Clinical Services or the DOC Legal Division.

4.9 Copy Costs

4.9 All persons receiving copies of records governed by this directive are responsible for paying the public rate cost of the copies except employees of the AHS, persons assigned to the Office of the Attorney General and court personnel. Individuals who do not currently have sufficient funds available to reimburse the department should not be denied copies of records for that reason alone. However, the person in custody, at the discretion of the superintendent, may be held responsible to pay past copy costs at a future date when funds become available.

5. Training Method

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6. Quality Assurance Processes

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7. Financial Impact:

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8. References

9. Responsible Director and Draft Participants