

1.4.E.5 Inmate Health Records

I Policy Index:



Date Signed: 10/07/2019
Distribution: Public
Replaces Policy: 4E.12
Supersedes Policy Dated: 05/30/2019
Affected Units: All Institutions
Effective Date: 10/07/2019
Scheduled Revision Date: September 2020
Revision Number: 19
Office of Primary Responsibility: DOC Administration

II Policy:

A complete record of health care services will be maintained for each inmate to accurately document health services accessed by, offered to, or discontinued by an inmate while in the custody of the Department of Corrections (DOC), including some placements where inmates are housed in an institution under DOC contract.

III Definitions:

Health Care Services:

A system of preventative and therapeutic services that provide for the physical and mental well-being of a population. Includes medical and dental services, mental health services, optometry, nursing, pharmaceutical services, personal hygiene, dietary services and environmental conditions.

IV Procedures:

1. Establishing Health Records:

- A. At the time of admission to a DOC facility, a complete health record will be established for the inmate (See DOC policy 1.4.A.2 *Inmate Admission* and SDCL § 24-2-19). Initial demographic information is tracked in the Comprehensive Offender Management System (COMS).
- B. All inmate health records will be organized in a uniform manner. The order of content shall be standardized (See DOH policies P-A-08 *Health Records* and ACA 4-4413). Correctional health shall utilize CorrecTek to document and maintain electronic medical records.
- C. To facilitate continuity of care, and ensure current diagnostic evaluations, all inmates will have a single health record containing relevant reports, evaluations, results, and other information specific to the inmate's medical care. Inmates re-incarcerated as a violator/detainee, or received on a new sentence will have their pre-existing electronic health record activated to facilitate continuity of care. Hardcopy records may be retrieved from the archives.
- D. All entries into an inmate's health record and access to such records or health information is controlled by the responsible health authority (DOH Correctional Health Services).

- E. Medical records contain both privileged and non-privileged information. A written authorization from the inmate or legal representative is required to disclose privileged information.

2. Location of Health Records:

- A. All health records shall be kept in a secure location, under the control and supervision of Health Services staff or stored in an alternative, secure location if archived. Health records shall be maintained separate from other correctional records (ACA #4-4396) with access controlled by Health Services. Inactive inmate health records prior to May 2015 will be maintained in a secure area under the institution's control. All inmate health records after May 2015 are electronic.
- B. Upon release of an inmate from DOC custody, including release to parole, suspended sentence or discharge or death of the inmate, all paper health records for the inmate will be placed in the archives (ACA 4-4415).
 - 1. Inactive paper health records for male inmates released from DOC custody will be archived at the South Dakota State Penitentiary (SDSP). Inactive paper health records for female inmates will be archived at the South Dakota Women's Prison (SDWP), or with Records Management, if no space is available at the institution.
 - 2. Inactive paper health records will be kept for a minimum of eight (8) years following the date the inmate's record is archived.
 - a. All inactive paper health records (including jacketed x-rays) that exceed the retention period, will be properly destroyed, unless there is pending legal action involving the inmate and their health records, and sufficient notice has been provided to the record authority to hold the record.
 - b. The South Dakota Department of Health is responsible for coordinating the destruction of inmate health records in a way that meets the destruction criteria set by the Department of Health and state and federal law.
 - 3. Health records of inmates released from DOC custody, including those on suspended sentence or parole supervision, are subject to privacy rights that apply to non-incarcerated individuals under Privacy Regulations/HIPPA laws.

3. Transfer of Health Records:

- A. Hard copy health information, including summaries, originals, copies or print-outs of health records, as determined by health service staff, may be provided to the receiving institution (includes certain contract facilities or programs), including those outside the jurisdiction of the South Dakota (Interstate Compact), as deemed necessary by Health Services staff (See DOH policy P-A-08 [Health Records](#) and NCCHC P-H-03). Health records may be requested by the receiving authority. Records sent by mail will be sent certified mail.
- B. To avoid delays in continuing service to the inmate, Health Service staff at the receiving institution shall review each transferred inmate's medical record upon arrival. If no Health Services staff is on duty at the time of admission, the inmate's health records will be reviewed the next business day. The receiving institution shall assume authority of care of the inmate.
 - 1. A computer-generated Nurse Transfer document will be generated by the sending facility.

2. Confidentiality of inmate health records will be maintained throughout the physical or electronic transfer of transferred health records (ACA #4-4414). If health records are physically transported or transferred by staff other than Health Service staff, the records shall be sealed in an envelope or other suitable container (NCCHC P-H-02).

4. Inmate Access to Health Records:

- A. Inmates may review specified health records or billing records, in whole or part, used to make medical decisions about the inmate and receive copies of these records, unless providing such copies or access to the records would result in risk the health or safety of the inmate, staff or others; or threaten the security and disciplined operation of the institution; or threaten the custody or rehabilitation of the inmate (See DOC policy 1.1.E.3 [Offender Access to DOC Records](#)). The inmate must send a written request to Health Services specifying the record(s) they wish to review. Inmates may not request to review their "entire medical record".
- B. Access to inmate health records is controlled by Health Services. Sensitive information, such as information pertaining to future appointments scheduled off the facility, must be redacted and secured from records provided to an inmate.
 1. A co-pay fee may be charged to an inmate to inspect their health record, billing record or other records in accordance with DOC policy 1.4.E.10 [Medical Services Copayments](#). The inmate must be supervised by health service staff while inspecting their records
 2. Inmates requesting and approved to receive copies of their health records or billing records, will be charged a fee of .05 cents for each sheet of paper generated (See DOC policy 1.1.E.3 [Offender Access to DOC Records](#)).
 3. Inmates may not inspect or receive copies or print-outs of psychotherapy notes, or records that contain information compiled by the institution for use in a criminal or administrative proceeding, or records generated by Behavioral Health Services.

5. Release of Medical Records:

- A. If an inmate escapes from secure custody or supervision, the Warden or Secretary of Corrections may authorize the disclosure of certain health information contained within the inmate's health records that may be useful in the apprehension of the inmate or that is pertinent to the inmate's safety and in the inmate's best interest, consistent with applicable laws and standards of ethical conduct. HIPPA does not restrict the use or disclosure of an escaped inmate's health information.
- B. Disclosures of certain inmate health records for law enforcement purposes is permitted, if such disclosure is necessary to preserve the health and safety of the inmate and/or others. In instances where disclosure of certain health records is permitted and approved by the Secretary of Corrections or designee, the amount and type of information disclosed shall be limited to that which is necessary to achieve the intended outcome (1-HC-3A-03).
- C. Information contained within an inmate's health record may be released to specified outside authorities, when such a release is necessary to:
 1. Comply with a court-ordered warrant, subpoena or summons issued by a judicial officer, a grand jury subpoena or through statutory privilege.
 2. Comply with an administrative subpoena or investigative demand or written request from a law enforcement official.

3. Respond to a request from law enforcement for the purpose of identifying or locating an inmate that is a suspect, fugitive, material witness or missing person.
 4. Assist the medical examiner or coroner in determining the cause of death or to carry out other authorized duties of the examiner/coroner.
 5. To prevent or lessen a serious and imminent threat to the health or safety of the inmate, staff or public.
 6. To identify or apprehend an inmate who has escaped from custody (law enforcement agencies).
 7. Comply with an order issued by any person with authority to approve the release of the record.
- D. The Clinical Supervisor or designee will be notified if inmate records are to be released for any of the above reasons.

Note: *Behavioral Health records that are part of the inmate's records may not be released.*

- E. Certain information from an inmate's health record may be accessed and/or released to identified persons if necessary for:
1. The provision of health care to the inmate;
 2. The health and safety of the inmate or other inmates;
 3. The health and safety of staff;
 4. The health and safety of others responsible for transporting or transferring the inmate;
and
 5. Law enforcement.
- F. The following outside agencies or individuals may submit a written request to receive information contained within an inmate's medical records. A fee may be assessed by the DOH for copies of an inmate's medical records. Faxing of medical records other than to a medical provider for the purpose of providing continuing care is not permitted. A valid signed Release of Information from the inmate or legal representative may be required (See DOH policy P-A-08):
1. Attorneys;
 2. Optometric;
 3. Regulatory agencies, Center for Disease Control (CDC), DOH and its various Divisions (Vital Statistics, Disease Intervention Office etc.);
 4. Welfare organizations, Social Security Administration;
 5. Workers Compensation;
 6. Disability Determination Services;
 7. South Dakota Advocacy Services; and
 8. Others, as approved by the responsible health authority or requested by the inmate.
- G. To protect and preserve the integrity of the institution and the legitimate penological interests of the DOC, Health Services shall provide the Warden with pertinent information that may exist within an inmate's health records to assist with the efficient management of the inmate and to ensure specific inmate needs are met (1-HC-3A-03).
- H. Inmate medical records are a business document and property of the DOC/state. The original paper medical records of an inmate may only be removed from the facility (other than as directed by Health Services) by court order, subpoena or administrative directive.

V Related Directives:

SDCL § 24-2-19.

DOC policy 1.1.E.3 – *Offender Access to DOC Records*

DOC policy 1.4.A.2 – *Inmate Admission*

DOC policy 1.4.E.10 – *Medical Services Copayments*

DOH policy P-A-08 – *Health Records*

VI Revision Log:

July 2003: **Added** references to DOH policies PH 01, PH 02, PH 05 and PH 06. **Added** reference to policy 1.1.E.3 **Changed** the wording on disposing of inactive medical files Deleted reference to record retention from the policy statement.

September 2004: **Changed** policy reference name from *Inmate Access to Records* to *Offender Access to Records* **Changed** inmate to offender **Changed** Director of Nursing to Clinical Supervisor. **Revised** attachment 1.

September 2005: **Expanded** policy to include juvenile offenders **Added** definition of offender. **Added** attachment 2 **Clarified** that Health Services will release an offender's medical records to another state agency/department with a signed release.

October 2006: **Added** reference to policy 1.4.E.10 **Revised** attachment 1.

October 2007: **Revised** attachment 1. **Updated** the name of DOH policy P-H-02.

September 2008: **Revised** formatting of policy and attachments in accordance with DOC policy 1.1.A.2. **Added** reference to DOC policy in section V.

September 2009: **Added** mental health to policy statement. **Deleted** Medical Director or psychiatrist for Mental Health Records in ss (B), **added** reference to Clinical Director or designee for release of mental health records within new ss (C), **added** Note, **deleted** former ss (C) regarding Health Services being the final authority on who is provided access to offender's health records and **added** new ss (G) all within (Access to Records),

September 2010: **Revised** formatting of Section I. **Revised** Note within section (Access to Medical Records) to state prior approval must be granted and copies can be made by either medical or mental health staff once permission is granted.

October 2010: **Deleted** former ss (B) stating that any request/release of medical records must receive prior approval from the Clinical Supervisor or designee and **replaced** with referencing any request/release of medical records must accompany a signed release of information from the offender in new ss (B) both within (Access to Medical Records).

November 2012: **Added** "Records should be organized in a uniform manner and the order of content standardized as offenders may be transferred throughout the DOC system" in Section 1 B. **Added** "provided to the offender to help facilitate continuity of care and ensure diagnostic evaluations are current" to Section 1 C. **Added** "by the owner(s)" to Section 2 D **Added** "Access to medical records is controlled by Health Services" to Section 2 F **Added** H. to Section 2.

September 2013: **Added** D. to Section 1. **Deleted** "expiration of the offender's maximum sentence and **Replaced** with "the date it is archived" in Section 2 B. 3. **Added** D. to Section 2. **Added** 1. and 2. to Section 3 A. **Added** "or legal representative" to Section 3 B. **Added** 1. to Section 3 B. **Deleted** D. "Copies of medical records will be released by court order by the owner of the record upon notification from the Warden, Superintendent or designee, the Clinical Supervisor, Charge Nurse or designee" in Section 3. **Deleted** "Health Service staff will release the offender's medical record to other state agencies/departments with an offender's signed release form" and **Replaced** with "Privileged medical information may be released from an offender's medical record to the following (may require written authorization and signed Release of Information from the offender) and added sub items 1-8 to Section 3 E. **Deleted** "Health Services" and **Replaced** with "Clinical Supervisor or designee" in Section 3 F. **Deleted** "The only exception that may allow for an offender's medical chart to be removed from the medical unit with the correctional facility is when an inmate is being transferred from

one DOC institution to another; i.e. from SDSP to MDSP” in Section 3. **Renumbered** section. **Added** G. to Section 3. **Deleted** attachments 1 & 2. Adult and Juvenile Medical Record Contents.

September 2014: Added “Electronic medical records (EMR) will be initiated on all admissions to the facility” in Section 1 C.

September 2014: **Replaced** term “medical record” with “health record” throughout policy. **Added** “paper and electronic” to Section 1 B. **Deleted** “incarcerated” and **Replaced** with “admitted to a DOC facility” and **Added** “If previously established, an ERM may be located in COMS for the re-admitted offender” in Section 1 C. **Added** 1. to Section 1 C. **Deleted** D. from Section 1. **Deleted** “Active medical records for offenders currently in custody will be kept in the medical unit in secure open shelf storage” and **Replaced** with “Paper health records for an offender housed in the facility will be retained in a secure area of the facility and under the control of health service staff. Inactive paper medical records will be maintained separately from the records of offenders currently housed at the facility.” In Section 2 A. **Added** “paper” health records in Section 2. **Added** 4. to Section 2 B. **Deleted** “After the 10-year period of retaining inactive medical records, the medical record will be destroyed” and **Replaced** with “Medical records that exceed the retention period will be destroyed” in Section 2 B. 5. **Added** new Section 3 “Transfer of Offender Health Records”. **Deleted** “Clinical Director” and **Replaced** with “responsible health authority” in Section 4. **Added** 2. to Section 4 B. **Added** “mental health and dental” in Section 5 A.

September 2015: **Reviewed** with no changes.

March 2016: **Deleted** references to juvenile and STAR Academy. **Added** definition of “inmate”.

September 2016: **Added** definition of “Protected Health Information”. **Added** “The DOC may obtain or use protected health information that exists for the inmate to provide health care to the inmate, for the health and safety of other inmates, staff and for administration and maintenance of the safety, security and good order of the institution” in Section 1 A. **Deleted** C. in Section 1. **Added** “are electronic” and **Added** “prior to April 2015” in Section 2 A. **Added** “Electronic records will continue to be maintained in the electronic system (CorrecTek) used by Health Services” in Section 2 B. **Deleted** 10 and **Replaced** with 8 in Section 2 b. 2. **Added** 4. to Section 2 B. **Added** “Sensitive information, such as the date(s) of future appointments off-site may be redacted” in Section 4 A. **Added** 3. to Section 4 A. **Added** B. to Section 4. **Added** new section 5 title. **Added** “billing records, and other records in whole or part used to make medical decisions about them” and **Added** “unless providing such copies would put at risk the health, safety, security, custody or rehabilitation of the inmate or other inmates, of the safety of any staff member or other person at the facility” in Section 5 A. **Added** 1-6 in Section 5 B. **Added** “court-ordered warrant, subpoena or summons issued by a judicial officer, a grand jury subpoena” to Section 5 B.1. **Added** C. and 1-6 to Section 5.

September 2017: **Reviewed** with no changes.

September 2018: **Changed** policy title from “Inmate Medical Records” to Inmate Health Records” **Revised** policy statement. **Added** definition of “Health Care Services” **Added** “Inmates who are readmitted as a violator or on a new sentence, may have their health record reactivated to facilitate continuity of care, depending on the availability of the record and current state of the record” in Section 1 C. **Added** “or stored in an alternative, secure location if inactive” in Section 2 A. **Added** “unless there is pending legal action involving the inmate/record and sufficient notice has been provided to the record authority to hold the record” in Section 2 B. 3. **Added** “Transfer and sharing of inmate health records shall comply with federal and state law” in Section 3 A. **Added** “If medical records are transported or transferred by staff other than Health Service staff, the records shall be sealed (NCCHC P-H-02) in Section 3 C. 2. **Added** “contained within the inmate’s health records” in Section 5 A. **Added** “Disclosures of protected health records/information for law enforcement purposes, shall be limited to the information necessary to preserve the health and safety of the inmate, other offenders, the public and staff” in Section 5 B. **Added** 6. to Section 5 B. **Added** “or requested by the inmate” in Section 5 E. 8. **Added** “Designated Health Services staff shall have access to an inmate’s custody records within COMS when such records are relevant to the inmate’s health and treatment (NCCHC P-H-04)” in Section 5 F. **Added** G. to Section 5.

May 2019: **Revised** language to be consistent with revised NCCHC standards and updated policy references and language to reflect changes in DOH Correctional Health policies and revised numbering of polices. **Deleted** Section 6.

October 2019: Reviewed with minor changes to language.

Mike Leidholt (original signature on file)

10/07/2019

Mike Leidholt, Secretary of Corrections

Date