
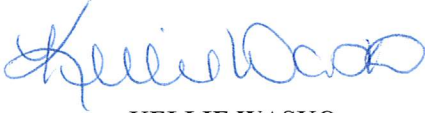


SOUTH DAKOTA  DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURE		POLICY NUMBER 700-28	PAGE NUMBER 1 OF 4
		DISTRIBUTION: Public	
		SUBJECT: Offender Health Records	
RELATED STANDARDS:	<b>ACA 5-ACI:</b> <b>6C-03 (M), 6D-05, 6D-06, 6D-07</b> <b>ACA I-HC-3A-03</b>	EFFECTIVE DATE: 06/01/2024	
		SUPERSESSION: 08/17/2021	
DESCRIPTION: Clinical Services	REVIEW MONTH: May	 <b>KELLIE WASKO</b> <b>SECRETARY OF CORRECTIONS</b>	

## I. POLICY

It is the policy of the South Dakota Department of Corrections (DOC) to have a complete record of health care services which will be maintained for each offender to accurately document health services accessed by, offered to, or discontinued by an offender while in the custody of the Department of Corrections (DOC), including some placements where offenders are housed in an institution under DOC contract.

## II. PURPOSE

The purpose of this policy is to provide guidelines for the development, utilization, management, accuracy, maintenance, and integrity of offender health records in either paper or electronic format.

## III. DEFINITIONS

### Clinical 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 health record will be established for the offender (See DOC policy 500-12 – [Offender Admission](#) and SDCL § [24-2-19](#)). Initial demographic information is tracked in the Comprehensive Offender Management System (COMS).
- B. An offender’s outside medical records may be requested by Clinical Services from an outside provider as deemed necessary and appropriate when responding to an offender’s medical needs or in determining treatment.
- C. All offender *health records are complete and will be organized in a uniform manner* [ACA 5-ACI-6D-05]. The content shall be standardized.
- D. To facilitate continuity of care, and ensure current diagnostic evaluations, all offenders will have a single health record containing relevant reports, evaluations, results, and other information specific to the offender’s medical care. Offenders that return to prison on a technical parole violation, or on a new sentence will have their pre-existing electronic health record (EHR) activated to facilitate continuity of care. Hardcopy records if available may be retrieved from the archives.

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- E. All entries into an offender’s health record and access to such records or health information is controlled by the responsible health authority.
- F. Medical records contain both privileged and non-privileged information. A written authorization from the offender 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 Clinical Services staff, or stored in an alternative, secure location if archived. *The principle of confidentiality applies to offender health records and information about offender health status.*
  - a. *The active health record is maintained separately from the confinement case record.*
  - b. *Access to the health record is in accordance with state and federal law [ACA 5-ACI-6C-03 (M) and ACA 1-HC-3A-03].*
  - c. Inactive offender health records prior to May 2015 will be scanned and saved electronically in a secure location. All offender health records after May 2015 are electronic.
- B. Inactive records
  - 1. *Inactive health record files are retained as permanent records in compliance with the legal requirements of the jurisdiction. 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 [ACA 5-ACI-6D-07].*
  - 2. Upon release of an offender from DOC custody, including release to parole, suspended sentence or discharge, or death, all paper health records for the offender will be placed in the archives.
  - 3. Inactive paper health records for male offenders released from DOC custody will be archived at the South Dakota State Penitentiary (SDSP). Inactive paper health records for female offenders will be archived at the South Dakota Women’s Prison (SDWP), or with records management if no space is available at the institution.
  - 4. Inactive paper or electronic health records will be kept for a minimum of eight (8) years following the date the offender’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 offender and their health records, and sufficient notice has been provided to the record authority to hold the record.
    - b. The South Dakota Department of Corrections is responsible for coordinating the destruction of offender health records in a way that meets the destruction criteria set by the Department of Corrections and state and federal law.
  - 5. Health records of offenders released from DOC custody, including those on suspended sentences or parole supervision, are subject to privacy rights that apply to non-incarcerated individuals under Privacy Regulations/Health Insurance Portability and Accountability Act (HIPAA) laws.

## 3. Transfer of Health Records:

- A. Hard copy health information, including summaries, originals, copies, or print-outs of health records, as determined by Clinical Services staff, may be provided to the receiving institution (including certain contract facilities or programs), including those outside the jurisdiction of the South Dakota (Interstate Compact), as deemed necessary by Clinical Services staff. Health records may be requested by the receiving authority. Records sent by mail will be sent by certified mail.
- B. To avoid delays in continuing service to the offender, Clinical Services staff at the receiving institution shall review each transferred offender’s medical record upon arrival. If no Clinical Services staff are on duty at the time of admission, the offender’s health records will be reviewed the next business day. The receiving institution shall assume authority of care of the offender.
  - 1. A computer-generated nurse transfer document will be generated by the sending facility.
  - 2. *Non-emergency offender transfers require that health record confidentiality is maintained throughout the physical or electronic transfer of transferred health records [ACA 5-ACI-6D-06].* If

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health records are physically transported or transferred by staff other than Clinical Services staff, the records shall be sealed in an envelope or other suitable container.

#### 4. Offender Access to Health Records:

- A. Offenders may review specified health records or billing records used to make medical decisions about the offender and receive copies of these records, unless providing such copies or access to the records would result in risk to the health or safety of the offender, staff or others; or threaten the security and disciplined operation of the institution; or threaten the custody or rehabilitation of the offender. The offender must send a written request to Clinical Services specifying the record(s) they wish to review. Offenders may not request to review their “entire medical record”.
- B. Access to offender health records is controlled by Clinical Services. Sensitive information, such as information pertaining to future appointments scheduled off the facility, must be redacted and secured from records provided to an offender.
  1. A co-pay fee may be charged to an offender to inspect their health record, billing record or other records in accordance with DOC policy. The offender must be supervised by Clinical Services staff while inspecting their records
  2. Offenders requesting and approved to receive copies of their health records or billing records, will be charged a fee for each sheet of paper generated (see DOC policy 500-08 – *Offender Access to DOC Records*).
  3. Offenders may not inspect or receive copies or printouts 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 offender escapes from secure custody or supervision, the warden or secretary of corrections (SOC) may authorize the disclosure of certain health information contained within the offender’s health records that may be useful in the apprehension of the offender, that is pertinent to the offender’s safety or in the offender’s best interest, consistent with applicable laws and standards of ethical conduct. HIPAA does not restrict the use or disclosure of an escaped offender’s health information.
- B. Disclosures of certain offender health information for law enforcement purposes are permitted if such disclosure is necessary to preserve the health and safety of the offender and/or others. In instances where disclosure of certain health information is permitted and approved by the SOC or designee, the amount and type of information disclosed to law enforcement shall be limited to that which is necessary to achieve the intended outcome safely.
- C. Information contained within an offender’s health record shall 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 offender who 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. Prevent or lessen a serious and imminent threat to the health or safety of the offender, staff, or public.
- D. The Health Services Administrator (HSA) or designee will be notified if offender records are to be released for any of the above reasons.

**Note:** Behavioral Health records are not a part of the offender’s general health record and may not be released.

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- E. Outside agencies or individuals may submit a written request to receive information contained within an offender's health records. A fee may be assessed by the DOC for copies of an offender'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 offender or offender's legal representative is required.
- F. *To protect and preserve the integrity of the facility*, and the legitimate penological interests of the DOC, *Clinical Services shall share with the warden pertinent information* that may exist within an offender's health records *regarding an offender's medical management* and to ensure specific offender needs are met [ACA 1-HC-3A-03].
- G. Offender health records are a business document and property of the DOC/State of South Dakota. The original paper medical records of an offender may only be removed from the facility (other than as directed by Clinical Services) by court order, subpoena, or administrative directive.

## V. RESPONSIBILITY

The director of Correctional and Clinical Services is responsible for the annual review of this policy.

## VI. AUTHORITY

None.

## VII. HISTORY

June 2024  
August 2021  
October 2019  
May 2019  
September 2018  
September 2017  
September 2016  
March 2016  
September 2015  
September 2014

## ATTACHMENTS *(\*Indicates document opens externally)*

1. DOC Policy Implementation / Adjustments