

RHODE ISLAND DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURE

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|  | POLICY NUMBER: 18.59-4 DOC | EFFECTIVE DATE: 06/21/10 | PAGE 1 OF 14 |
| | SUPERCEDES: 18.59-3 DOC 18.58-1 DOC | DIRECTOR  | |
| SECTION: HEALTH CARE SERVICES | | SUBJECT: CONFIDENTIALITY OF MEDICAL INFORMATION AND INMATE MEDICAL RECORDS | |
| AUTHORITY: Rhode Island General Laws (RIGL) § 42-56-10(22), Powers of the director | | | |
| REFERENCES: Health Insurance Portability and Accountability Act (HIPAA) of 1996, 45 CFR Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information, Final Rule 4/13/01; NCCHC Standard #J-59 (Confidentiality of Health Records) JH02, JH03, JH04, JH06; JH01 J-58, Health Record Format and Contents; J-61, Availability and Use of Health Records; P-44, Continuity of Care; J-63, Retention of Health Records ACA Standard 4-4396, Confidentiality of Health Records Files; 4-4413 Contents of Health Record Files; 4-4415, Transferred and Inactive Records; RIDOC Policies #5.01-3 DOC, Management of Semi-Active and Archival Records; #6.06-3 DOC, Research; #18.05 -1 DOC, Continuous Quality Improvement and Physician Peer Review; #18.07-1 DOC, Communication on Special Needs Patients; #18.30 DOC, Receiving Screening; #18.39 DOC, Mental Health Evaluation of New Commitments; #18.62-2 DOC, Transfer of Health Care Information; RIGL § 5-37.3-1 et seq., Confidentiality of Health Care Communications and Information Act; § 23-6-17 Confidentiality - Disclosure of (HIV) Test Results; § 38-3-5.1, Reproduction of Public Records - Destruction of originals; § 38-3-6, Public records custody and disposal; 42 CFR Part 2 Drug and Alcohol Abuse Information; <u>Federal Register</u> Vol. 65, No. 250, 12/28/00, Definitions, page 82803 (§ 164.501); 45 CFR Parts 160 and 164 - Standards for Privacy of Individually Identifiable Health Information Final Rule - 12/28/00 - Updated, 08/03; Rhode Island Department of Health Rules and Regulations for the Licensure and Discipline of Physicians as amended 01/2000 (Medical Records, 11-2); | | | |
| INMATE ACCESS THROUGH LAW LIBRARY? | | X YES | |
| AVAILABLE IN SPANISH? | | X YES | |

I. PURPOSE:

- A. To comply with federal and state requirements to reasonably protect confidential inmate health information during and after incarceration.

- B. To provide for orderly organization of inmate medical records in order to enhance services as well as promote continuity of care as inmates transfer from one health services setting to another.
- C. To provide an outline of information included in designated record sets.
- D. To ensure that inmate medical records are maintained in accordance with applicable State and Federal laws.

II. POLICY:

- A. Confidential inmate health information contained in the medical record and other individually identifiable health information, whether communicated electronically, on paper or orally, is considered protected from unauthorized disclosure except as outlined below.

NOTE: Unauthorized disclosure may result in employee discipline (up to and including termination and civil and/or criminal penalties).

- B. During an inmate's incarceration, protected health information about inmates may be disclosed without signed authorization from the inmate-patient for the following reasons:
 - 1. Provision of health care;
 - 2. Health and safety of inmate or others;
 - 3. Health and safety of transporting teams;
 - 4. Law enforcement on the premises at the Rhode Island Department of Corrections (RIDOC);
 - 5. The administration and maintenance of safety, security, and good order of RIDOC on a case-specific basis;
 - 6. Peer Review and Continuous Quality Improvement activities.
- C. A signed authorization form must be completed by the inmate prior to release of confidential health information for all inmates on pre-trial release, probation, parole, or any such person no longer in lawful custody of RIDOC.

- D. The medical record is the property of RIDOC and is maintained by the Department in accordance with all Federal and State laws.
1. The medical record identifies the patient name, RIDOC identification number, and date of birth.
 2. Active records are kept in the dispensary of the facility in which the inmate receives his/her care.
 3. Inactive records are maintained in the Medical Records Unit's central office for a period of time according to the retention schedule or as space allows.
- E. Photocopies of original medical records are processed after receipt of a complete and signed authorization. A copy of the authorization is provided to the inmate - patient at the time of completion.
- F. Upon request, the inmate-patient is provided with one copy of his/her medical record.
1. The inmate is responsible for fees associated with the photocopies (see item III.C.).
 2. It is the inmate's responsibility to secure this copy and provide copies to others, as he/she deems appropriate.
- G. Medical information stored on the RIDOC computer network or stand-alone personal computers shall be secured at all times.
- RIDOC's Management Information Systems (MIS) Unit performs a systematic backup of all computerized medical information-related files at least weekly.
- H. RIDOC utilizes the Problem Oriented Medical Records (POMR) system in the delivery of health services.
- I. Inmate medical records are available to and used for documentation by all health care practitioners (medical, mental health, and dental care) for each clinical encounter with inmates in order to provide continuity of care.
- J. Inmates' medical records are maintained for a duration consistent with Rhode Island General Laws §38-3-5.1 and §38-3-6 and RIDOC policy 5.01-3 DOC, Management of Semi-Active and Archival Records, or a successive policy.

III. PROCEDURES:

A. General Guidelines

1. Access to medical records is limited to those individuals specified on a medical records access list, developed and maintained by the Medical Records Unit.
2. Individuals not listed on the medical records access list may submit written requests for disclosures to the Director or designee. Said requests will be considered after consultation with the Associate Director of Health Care Services (Corrections) or designee.
3. Medical records may be faxed for medical emergencies only.
4. Alcohol and drug abuse information may not be released unless specific consent is obtained from the inmate per Federal Regulations 42 CFR Part 2.
5. Rhode Island General Laws (RIGL) §23-6-17, Prevention and Suppression of Contagious Diseases, precludes disclosure of HIV status without the specific consent from the inmate.
6. Inmate-patient requests for photocopies of mental health notes shall be denied (45 CFR Parts 160 and 164).
7. At all times, confidentiality of the medical record and its contents will be maintained. If records are transported by non-medical staff, the records are enclosed in sealed envelopes.

B. Release of Information (Inmate -patient and/or Authorized Representative)

1. RIDOC's Medical Records Unit (or other authorized agent) may release the contents of an inmate's medical record to a designated individual or agency upon written request/authorization by the inmate.
2. An authorization form is used for purposes of obtaining the necessary consent. The form must be properly dated and signed by the inmate. The inmate retains a copy of the authorization for his/her personal use. The original is filed in the inmate's medical record.
3. The RIDOC Inmate Handbook contains the following instructions for inmates wishing to obtain copies of their RIDOC medical records:

- a. A signed authorization is required prior to release of any photocopies of medical records.
- b. The inmate-patient is responsible for costs associated with retrieving, copying, and mailing a copy of his/her medical record.
- c. The former inmate-patient may request copies of his/her medical record in writing [Medical Records Unit, Intake Service Center, P.O. Box 8249, Cranston, RI 02920] or via telephone (401-462-3880).

C. Photocopying Charges:

1. Copies of medical records provided for continuity of patient care (e.g., to physicians, hospitals, health/mental health centers, and other health service providers) shall be provided free of cost.
2. Consistent with the Rhode Island Department of Health's guidelines (current as of this policy's effective date), inmates and authorized representatives [as defined in RIGL §5-37.3-3(1)] will be charged for copies of inmate-patient medical records (in whole, or in part) as follows:
 - a. Reimbursement shall be twenty-five cents (\$0.25) per page for the first one hundred (100) pages.
 - b. After one hundred (100) pages, the fee is ten cents (\$0.10) per page.
 - c. Retrieval Fee - A fee of fifteen dollars (\$15.00) will be charged to attorneys and insurance agents for retrieval, regardless of the amount of time necessary to retrieve the record.
 - d. Social Security Administration - Requests for copies will be reimbursed to the RIDOC or its authorized agent for up to fifteen dollars (\$15.00) per request.
 - e. Subpoena Fee - The attorney requesting records through a subpoena shall reimburse the RIDOC or its authorized agent a fee of fifteen dollars (\$15.00) plus twenty-five cents (\$0.25) per page for the first one hundred (100) pages. After one hundred (100) pages, the fee is ten cents (\$0.10) per page.
 - f. United States postage fees will be incurred by requestor on all requests.

- g. Requests made by Rhode Island state agencies will be processed without incurring fees by the requestor.
- h. Indigent Inmates - If an inmate has an insufficient balance, a charge will be placed against his/her account. Such a charge will result in a negative balance in the inmate's account.

When an inmate's account has a negative balance because of such photocopying charges, one-half of all future deposits will be used as an offset to the charges until such time as the charges have been paid in full. There are no restrictions on the other half of deposits beyond normal restrictions.

Any remaining debt at the time of an inmate's release from institutional custody is considered a legal debt and is subject to civil remedy by the State.

NOTE: Unreasonable (i.e., voluminous and/or repeat) requests for photocopies from indigent inmates may be denied at the discretion of the Associate Director of Health Care Services (Corrections) and/or the Medical Records Unit.

D. Access to Medical Records for Research Purposes

A copy of the Institutional Review Board (IRB) approval shall be maintained by the Medical Research Advisory Group (MRAG) for all research projects involving health care (See policy #6.06-3 DOC; Research, or a successive policy). This list of approved projects includes the names of research assistants associated with each project and is updated as appropriate (i.e., whenever a new research project is approved, or a project is completed). The research assistant provides the appropriate certification from the institution where the IRB approval or waiver has been issued. The research assistants gather data during normal RIDOC business hours.

E. Original Documents

The original medical record and/or individual health care documents remain on RIDOC premises at all times. Upon receipt of a court order, the original and a certified copy will be hand carried to the Court for review. The copy of the record is given to the Court in lieu of the original. No other exceptions will be granted.

F. Confidentiality Training

1. Training for Health Care Services staff:

- a. All new hires for Health Care Services are provided with training on confidentiality, record documentation and the Health Insurance Portability and Accountability Act (HIPAA). A log of trainees is sent to the Training Academy. Signed confidentiality agreements are maintained by the Medical Records Unit.
- b. At the conclusion of the training, the Medical Records Unit ensures all staff with access to inmates' personal health information read and sign a Confidentiality Agreement as required by Rhode Island General Laws §5-37.3-4(c)(3). The original shall be filed with the Medical Records Unit, and a copy will be provided to the employee upon request.
- c. The Medical Records Unit forwards the names of and applicable documentation for staff that has been trained as specified above to Training Academy staff for appropriate action.

2. Training for Custody Staff:

All Custody staff receives training on confidentiality of medical information and inmate medical records as part of pre-service training.

G. Privacy Notice (Post Release)

Following an inmate's discharge from the ACI, he/she may request a copy of RIDOC's Privacy Notice governing release of personally identifiable health information from the Medical Records Unit [Intake Service Center, P.O. Box 8249, Cranston, RI 02920; telephone (401) 462-3880]. The Medical Records Unit staff responds in writing to the address provided by the inmate-patient within thirty (30) days.

H. Right to Disclosure (Post Release)

1. The inmate, **after discharge from the ACI**, may request a list of disclosures made from his/her medical record.

Only disclosures made following the inmate's discharge from the ACI will be reported (HIPAA Rules 4-13-01) - i.e., this rule does not apply to disclosures made while the inmate was incarcerated.

2. RIDOC responds in writing within sixty (60) days of receipt of the request (HIPAA Rules 4/13/01).

I. Format and Content

1. All Health Care Services staff documents all health services they provide to inmates in affected inmates' medical records. Tampering with, altering or destroying a medical record is strictly forbidden. Disciplinary action, up to and including termination, civil and/or criminal penalties, may be taken against any person found guilty of such actions.
2. All entries in inmate medical records are consistent with established POMR standards.
3. Every page in each inmate medical record includes the inmate's name, date of birth, and identification (ID) number.
4. Inmate medical records are arranged as follows:
 - a. Section One, Database, includes:
 - (1) Problem lists including allergy and immunization record(s);
 - (2) History and Physical Examination forms;
 - (3) Medical Entrance screening by nursing staff;
 - b. Section Two, Contact Notes, includes:
 - (1) Hepatitis C forms;
 - (2) Chronic Care Forms (e.g., Diabetes, asthma, etc.);
 - (3) Interdisciplinary Contact Notes -- Contact notes for each health care practitioner's (i.e., physician's, physician extender's, nurse's, nutritionist's and social worker's) individual clinical encounter with the inmate which include

subsequent findings, diagnoses, treatments and dispositions. Infectious disease and mental health practitioners make separate contact notes;

- (4) Each entry includes facility, date, time and the documenter's (i.e., health care practitioner's) signature with title.

c. Section Three, Referral and Consultation Data, includes:

- (1) Referral information, furlough forms with results attached and kept in chronological order;
- (2) Letters received in reference to outpatient consultations;
- (3) Competencies;
- (4) Special Needs;
- (5) Eye exams;
- (6) Diet requests.

d. Section Four, Supplemental Clinical Data, includes:

- (1) Medical orders (including mental health):

All orders for medications, treatments, or referrals must be in writing. An order is considered to be in writing if:

- (a) it is written and signed by a lawfully authorized person, or
- (b) it is dictated to and transcribed by a registered nurse or other appropriately licensed person onto the order form.

Additionally, the registered nurse or other appropriately licensed person must:

- (c) record the date and time of the order and identify by name and title the authorized individual who gave the telephone or verbal order; and
- (d) sign the order entry with his/her own name and title. All verbal or telephone orders must be appropriately signed by a practitioner involved in the care of the patient no later than the end of the next calendar day.

Healthcare providers not licensed by the State of Rhode Island (e.g., social workers, dietitians, etc.) may write an order for a referral to a mental health specialist, psychiatrist, or psychologist and the order will be transcribed by a registered nurse or other appropriately licensed person onto the order form. The mental health specialist, psychiatrist or psychologist will co-sign the order on the order form at the time of the consultation.

The order includes:

- (e) the date and time of the order,
- (f) patient location (e.g., ISC),
- (g) the order (e.g., ASA 80 mg b.i.d. times 30 days), and
- (h) the practitioner's signature and name printed just below his/her signature. The order is transcribed by a registered nurse or other appropriately licensed person as outlined above.

- (2) Supplemental clinical data, which includes, but is not limited to, laboratory and radiology reports, EKG's.

e. Section Five, Miscellaneous, includes:

- (1) Correspondence, including requests for health information;
- (2) Records from other facilities;
- (3) Miscellaneous correspondence referring to affected inmates;

- (4) Consent forms;
 - (5) Other items not listed in other sections of the inmate medical record.
 - f. Section Six, Dental, includes:
 - (1) Dental records;
 - (2) Dental X-rays.
 - g. Section Seven, Mental Health and Infirmary Care Notes, includes:
 - (1) Mental Health screening forms;
 - (2) Mental Health Notes (e.g., psychiatrists' and psychologists' contact and other related notes);
 - (3) Infirmary Care notes.
 - h. Section Eight, Medication Administration Record (MAR), includes:
 - (1) Medication Records;
 - (2) Inmate indices, which are listings of all activities among facilities.
- 5. Any bills associated with services provided to inmates for medical furloughs or other services as necessary are maintained in files other than inmate medical records.
- 6. Designated Record Sets
 - a. Per the Federal Register's §164.501, a designated record set means a group of records maintained by or for a covered entity that is:
 - (1) the medical records and billing records about individuals maintained by or for a covered health care provider;

- (2) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
 - (3) used, in whole or in part, by or for the covered entity to make decisions about individuals.
 - b. For the purposes of this policy, the term "record" means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.
- 7. Designated Record Sets exclude:
 - a. Data collected and maintained for:
 - (1) Research;
 - (2) Peer review purposes;
 - (3) Performance improvement purposes.
 - b. Appointment schedules;
 - c. Death collection forms;
 - d. Duplicate copies of information that can be located in medical and/or billing records;
 - e. Psychotherapy notes;
 - f. Information compiled in reasonable anticipation of or use in civil, criminal or administrative actions or proceedings;
 - g. Administrative information (e.g., audit logs, authorizations for release of information, consent forms);
 - h. X-rays (films);
 - i. Photos.

8. Records Maintained by Business Associates

Records maintained by business associates (i.e., consultants or contracted health service providers) that meet the definition of designated record sets and are not duplicates of information maintained by RIDOC's Health Care Services may be included in designated record sets.

J. Availability and Use

1. Active inmate medical records are maintained in medical units of facilities in which affected inmates are housed.
2. Recommitted inmates' medical records are available twenty-four (24) hours a day in areas designated by the Director or designee.
 - a. Upon classification and transfer to a facility within RIDOC, the Medical Records Unit clerk transfers the affected inmate's medical record, stamps said record with the "Inmate Transfer" stamp, and gives said record to the desk nurse at the receiving dispensary. The desk nurse reviews the record for current orders, chronic illnesses, immunizations, etc. (See, policy #18.62-2 DOC; Transfer of Health Care Information, or a successive policy.)
 - b. Dental services staff from the receiving facility review all transferred inmates' medical records for current dental orders and other dental issues.

K. Retention

1. Inmate medical records are stored in inactive file areas at the Intake Service Center (ISC) for approximately five (5) years (as storage capacity allows) after the affected inmates' discharges.
2. Medical Records Unit staff purges records from the inactive file areas at the ISC yearly to remove those records older than five (5) years or other agreed upon cycle depending on storage capacity.

Medical Records Unit staff then arrange for storage of said files at the Central Distribution Center's warehouse, where they are maintained [for the remainder of ten (10) years post-discharge (e.g., expiration of sentence March 1, 2000 destruction of record after January 1, 2010)], consistent with

policy 5.01-3 DOC, Management of Semi-Active and Archival Records, or a successive policy.

3. Inmate medical records are destroyed in accordance with policy 5.01-3 DOC, or a successive policy.
 - a. Appropriate staff completes Certification of Records Destruction forms and submits said forms to Records Management Center staff after review and approval by the Assistant Director of Rehabilitative Services or designee for said destruction.
 - b. Consistent with the Rhode Island State Archivist's regulations, designated facility/unit/program staff permanently maintains Certification of Records Destruction forms.
 - (1) The Assistant Director of Rehabilitative Services or designee maintains original Certification of Records Destruction forms for inmate medical records.
 - (2) Copies of said forms are also maintained by:
 - (a) the State Archivist;
 - (b) the Administrator of Physical Resources or designee; and
 - (c) the Medical Records Unit.
 - c. Once the State Archivist approves destruction, inmate medical records are destroyed via incinerator or shredder.

**EXCERPT
FEE SCHEDULE**

18.59-4 DOC

Confidentiality of Medical Information and Inmate Medical Records

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18.59-4 DOC

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Public Notice: 01/29/10

Public Hearing: 03/10/10
FEE SCHEDULE ONLY