

	<b>DEPARTMENT OF PUBLIC SAFETY</b>	<b>EFFECTIVE DATE:</b> <b>DEC 10 2014</b>	<b>POLICY NO.:</b> <b>COR.10.1H.08</b>
	<b>CORRECTIONS ADMINISTRATION</b> <b>POLICY AND PROCEDURES</b>	<b>SUPERSEDES (Policy No. &amp; Date):</b> <b>COR.10E.06 (03/10/10)</b>	
	<b>SUBJECT:</b> <b>RELEASE OF PROTECTED HEALTH INFORMATION</b>		<b>Page 1 of 6</b>

## 1.0 PURPOSE

To establish procedures that restrict access to the privileged information contained in medical records to define the parameters under which this information may be released.

## 2.0 REFERENCES AND DEFINITIONS

### .1 References

- a. Hawaii Revised Statutes: Section 26-14.6, Department of Public Safety; and Section 353C-2, Director of Public Safety, Powers and Duties and Section 92F, Public Access to Government Records: Exempt: Medical Records/Protected Health Information; and 92F-13(4), Withholding protected health information for living or deceased individuals.
- b. Hawaii Revised Statutes: Section 325-101, HIV; ARC; & AIDS; Section 334-5, Mental Health, Drug Addition and Alcoholism; 841-17 & 18, Inquests: Medical Records.
- c. Health Insurance Portability and Accountability Act, 45 C.F.R., 160-164, (1996); Published in Federal Register 67, No. 157, August 14, 2002.
- d. National Commission on Correctional Health Care, Standards for Health Services in Prisons and Jails, (2008).
- e. Department of Public Safety, Policy ADM.O5.02, Public Access to Department Information.

### .2 Definitions

- a. Patient: An individual who has received or is receiving health care.
- b. Medical Record: An indexed data set containing a patient's medical and psychiatric history, diagnoses and treatments generated by all levels of health professionals from the moment of incarceration until the patient is released from custody. This data may be in a hardcopy and/or electronic format.

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- c. Protected Health Information (PHI): Personal medical information on an individual that is kept in a medical record/chart or in other documents. It may be in hardcopy and/or electronic media.
- d. Custodian of Medical Records (CMR): The person at each correctional facility who is designated by the Health Care Division Administrator or designee to be responsible for patients' medical records.
- e. Restricted Information: Medical information requiring additional specific patient consent to release relating to mental health treatment, drug or alcohol treatment and all HIV, AIDS, or any additional information so designated. (ARC).

### 3.0 POLICY

- .1 Patient medical records are the property of the State of Hawaii, Department of Public Safety, Health Care Division. Unless otherwise restricted by law, patients have a right to review or obtain copies of medical information pertaining to them.
- .2 Except for inter-facility transfers and investigations related to health care staff misconduct involving patients, original paper medical records shall not be removed from the Health Care Section until such time as the record is scanned into a data archive.
- .3 Provisions relating to the release of protected health information apply to both hardcopy and electronic version of medical record data.
- .4 A health care provider, agent or any PSD employee shall not disclose protected health information about a patient except as allowed by State law, Federal rules and Department policy.
- .5 The Custodian of Medical Records (CMR) shall respond to subpoenas in personal injury cases, medical tort claims or in medical malpractice suits filed by the patient or the patient's agent. All other requests in criminal, civil suits by the prosecutor or a third party require a signed release of information from the person the medical information pertains to except under a court order.

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#### 4.0 PROCEDURES

- .1 Upon receipt of a valid request for medical information in a personal injury case, medical tort claim or malpractice suit the CMR shall ensure that the requesting party secured the patient's consent except under the following circumstances:
  - a. A State of Hawaii court order requiring disclosure. Proof of the court order is required and the court order must specifically mention medical records. Medical records do not contain court ordered collection of body fluids or test results for forensic purposes.
  - b. By Subpoena provided the attorney of record **represents the patient's interest** in a personal injury claim, medical tort or malpractice suit and the information requested belongs to that patient. The CMR shall seek guidance from the Department of Attorney General before responding to a Subpoena to determine how the records shall be forwarded to the requesting attorney.

The CMR shall seek guidance from the Department of the Attorney General before responding to a Subpoena **should the attorney or agent represent a third party who is not the Department of Public Safety, its employee or agent, or the person to whom the information pertains.**

- c. The Ombudsman's Office when representing a patient's complaint provided the Custodian of Records can identify the requesting party or by calling back the Ombudsman Office.
- d. An interpreter for the purpose of providing health care and medical information to a patient.
- e. To the patient's private health care insurance carrier for reimbursement for services rendered provided the patient has been informed of said release and is afforded the opportunity to make alternate reimbursement arrangements.
- f. The medical examiner or anyone designated Coroner by the State of Hawaii may examine the medical record or request copies of the medical record in connection with an autopsy, investigation or inquest in the death of an patient.
- g. The Department of the Attorney General or its contractors in its defense of the State, the Department, the facility or its employees in any personal injury claim, medial tort or malpractice suit brought by a patient.

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- h. Consistent with state statute, Internal Affairs, facility investigators, the Sheriffs, the Honolulu Police Department or any bona fide law enforcement agency of the United States of America may examine the medical information of the subject of the personal injury case, medical tort claim, or the malpractice suit, but such examination is limited to only those progress note entries and related reports such as emergency room, diagnostic, or injury reports that specifically pertain to the underlying incident of the personal injury case, medical tort claim or malpractice suit. Requests for information not pertaining to either the subject or underlying incident of the personal injury case, medical tort claim, or malpractice suit, requires consent for the person to whom the information pertains.
- i. To corrections program staff and facility social workers only that information necessary and appropriate for the purpose of job or program placement and transfers and to transport correctional officers only that information necessary for the safe transport of the patient. This includes correctional officers and other staff who function as part of the mental health treatment team, who are in turn responsible for knowing and adhering to these rules regarding patient confidentiality.
- j. If a patient is unable to give consent due to a mental health or medical condition or emergency.
- k. To continue medical care or for extended care outside of the Department. The CMR shall forward copies of the last six months of care and treatment including histories and physicals, diagnostics and consultations. A medical summary shall be attached to each patient's record.
- l. To the power-of-attorney or the legally appointed guardian of a patient, who has been adjudicated by a court as being incompetent.
- m. To the executor/executrix or next-of-kin of a deceased patient unless otherwise indicated by the patient prior to death. Any probated document that indicates executorship or any vital statistic document that proves kinship shall suffice as proof. In the absence of the above DOC 0404D, Request for Medical Records of Decedent Non-Probate may be sent to next of kin to facilitate a record release. One copy shall be issued to the identified next of kin. Priority kinship in the case of multiple requests from relatives shall be established in the following fashion:
- The spouse, if the decedent was married.
  - If not married, the oldest adult child.

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- If there are no children or if the children are minors, the father or mother (whoever makes the request first) or both parents in the case of divorce.
  - If there are no living parents, no spouse and no adult children, then the eldest sibling is the next of kin.
- n. To the State of Hawaii Department(s) that is tasked with the investigation of patient tort claims for the purpose of replacing property. Only the PHI directly related to the claim shall be released.
- o. The sharing of information with the Department of Health as required by law.
- p. Statistical or research projects, audits or evaluations, or quality improvement activities that protect against the release of patient identifying data.
- .2 The CMR shall screen requests for information from medical records as to content and validity.
- .3 Medical records containing HIV/AIDS or related diseases, drug/alcohol treatment, or mental health treatment documents **require specific consent for release of information pertaining to those conditions from the person to whom the information pertains** before the information can be released. A court order specifically identifying the release of each or selected items from this restricted list is the only exception.
- .4 Requests for medical information shall be processed to provide true and exact medical record copies.
- .5 A summary of the released information shall be recorded on form DOC 0490, Information Reviewed or Released From This Medical Record and Form PSD 1017, Request for Disclosure/Access of Department Information/Records.
- .6 The CMR is prohibited from releasing information in the medical record from other hospitals or agencies, except when the request is for continuity of care as authorized by state statute. In the case of personal injury lawsuits, the CMR shall reference the information to the requesting party.
- .7 A consent is valid for one (1) year. The patient may void or revoke all or part of consent upon demand and at any time prior to the release of the information. Once information has been released, the Department shall not be responsible for the further disclosure or distribution of the released information.

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- .8 Copies of the released medical record information shall be accompanied by DOC Form 0488, Requested Copies of Medical Records. The records shall be sealed in an envelope or box, marked confidential and date stamped.
- .9 The copying cost is up to 50 cents per page, which may be waived for indigent patients. Copy cost shall be billed using the State Accounting Form B-10, Bill for Collection. The check or money order shall be made out to the Director of Finance in care of the Health Care Section.

**5.0 SCOPE**

This policy and procedure applies to all correctional facilities and their assigned personnel.

APPROVAL RECOMMENDED:

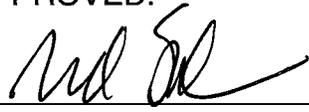

11/7/14  
 \_\_\_\_\_  
 Medical Director Date


12/8/14  
 \_\_\_\_\_  
 Corrections Health Care Administrator Date

\_\_\_\_\_

Deputy Director for Corrections Date

APPROVED:

  
 \_\_\_\_\_  
 Director  
 12/10/14  
 \_\_\_\_\_  
 Date

**NOT-CONFIDENTIAL**

STATE OF HAWAII

DEPARTMENT OF PUBLIC SAFETY  
HEALTH CARE DIVISION

**REQUEST FOR MEDICAL RECORDS OF DECEDENT – NON-PROBATE**

Name of Decedent: \_\_\_\_\_ Date of Death: \_\_\_\_\_

Relationship of Affiant to Decedent: \_\_\_\_\_

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**AFFIDAVIT OF NEXT OF KIN**

STATE OF HAWAII                    )  
  )    SS.  
COUNTY OF \_\_\_\_\_        )

I, the undersigned affiant, being first duly sworn on oath, depose and say:

1. I am the next of kin of the above named decedent and I have superceding priority as defined in HRS §622-57 (a copy of which is printed on the reverse side of this affidavit).
2. A certified copy of the death certificate will be provided in addition to this affidavit
3. A personal representative has not been appointed for the decedent's estate.

\_\_\_\_\_  
Print Name of Affiant: \_\_\_\_\_

Residence of Affiant: \_\_\_\_\_  
\_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Notary Public, State of Hawaii  
My Commission expires: \_\_\_\_\_



STATE OF HAWAII  
DEPARTMENT OF PUBLIC SAFETY  
HEALTH CARE DIVISION

REQUEST FOR MEDICAL RECORDS

Facility: \_\_\_\_\_ Date: \_\_\_\_\_

TO: \_\_\_\_\_ FROM: \_\_\_\_\_

Address: \_\_\_\_\_ Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_

Zip Code: \_\_\_\_\_ Zip Code: \_\_\_\_\_

**ATTACHED ARE THE MEDICAL RECORDS REQUESTED FOR:**

**Patient Name:** \_\_\_\_\_ **SID:** \_\_\_\_\_ **DOB:** \_\_\_\_\_

Entire record \_\_\_\_\_ to \_\_\_\_\_

Progress/Infirmatory Notes \_\_\_\_\_ to \_\_\_\_\_

Mental Health Notes \_\_\_\_\_ to \_\_\_\_\_

Physical/History Form(s) \_\_\_\_\_ to \_\_\_\_\_

Consultation Report(s) \_\_\_\_\_ to \_\_\_\_\_

Diagnostic Report(s) \_\_\_\_\_ to \_\_\_\_\_

Other \_\_\_\_\_

Other \_\_\_\_\_

We are unable to process your request for information because:  
\_\_\_\_\_  
\_\_\_\_\_

THE ATTACHED INFORMATION IS DISCLOSED TO YOU FROM RECORDS WHOSE CONFIDENTIALITY IS PROTECTED BY FEDERAL RULES. FEDERAL REGULATIONS PROHIBIT YOU FROM FURTHER DISCLOSURE OF THE INFORMATION WITHOUT SPECIFIC WRITTEN CONSENT FROM THE PERSON TO WHOM THE INFORMATION PERTAINS OR AS OTHERWISE PERMITTED BY SUCH REGULATIONS. THE DEPARTMENT OF PUBLIC SAFETY DOES NOT ASSUME ANY RESPONSIBILITY FOR THE FURTHER DISCLOSURE OR DISTRIBUTION OF THE ATTACHED RECORDS ONCE IT IS RELEASED. ACCORDING TO FEDERAL GUIDELINES, IT IS YOUR RESPONSIBILITY TO RETURN THE COPIES, OR PROOF OF DESTRUCTION, TO THE ADDRESS LISTED ABOVE UPON COMPLETION OF THE REVIEW OR TRIAL.

Original: To Requester  
Canary: Medical Record  
Pink: Proof of Compliance