

<b>CORRECTIONAL MANAGED HEALTH CARE POLICY MANUAL</b>	Effective Date: 11/14/2017	NUMBER: H-61.1
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<b>CONFIDENTIALITY AND RELEASE OF PROTECTED HEALTH INFORMATION</b>		

**AUDIENCE:** All employees of the Health Information Management Department (HIM) at CMHC.

**PURPOSE:** The procedures specified in this policy outline the requirements for proper disclosure of offender protected health information (PHI). PHI includes confidential communication between a patient and the patient’s health care providers. This policy also defines the appropriate procedures for an offender or former offender to obtain access to his or her own medical record information.

Exceptions to the privilege of confidentiality exist in the following circumstances:

1. When a valid written authorization for release of information has been received from the offender or the offender’s legally authorized representative;
2. When state or federal laws permit or require release of PHI without patient authorization; or
3. When a valid subpoena or court order is issued requiring release of PHI.

This policy also provides guidelines to ensure offender health information receives appropriate confidential safeguards.

Unless specifically stipulated otherwise, the provisions in this document apply to all offenders whether they are currently incarcerated or have been released from incarceration.

**DEFINITIONS:**

"Legally Authorized Representative" means: a parent or legal guardian if the patient is a minor; a legal guardian if the patient has been adjudicated incompetent to manage the patient's personal affairs; an agent of the patient authorized under a durable power of attorney for health care; an attorney ad litem appointed for the patient; a guardian ad litem appointed for the patient; a personal representative or statutory beneficiary if the patient is deceased; or an attorney retained by the patient or by another person listed by this subdivision.

“Personal Representative” is an individual authorized to act on behalf of a deceased patient.

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**POLICY:**

**I. Health Insurance Portability and Accountability Act**

In accordance with the Health Insurance Portability and Accountability Act (HIPAA), any individually identifiable health information in any form, either verbal, written, or electronic, concerning the provision of health care to an offender is to be protected and safeguarded against inappropriate use or release. Any individually identifiable health information created or maintained on an offender is known as (PHI). The Texas Department of Criminal Justice (TDCJ) appropriately protects and maintains offender PHI as required by federal and state law (Health Insurance Portability and Accountability Act, 45 CFR §§ 164.500–.534; Medical Practice Act, Texas Occupations Code §§ 151.001–.056; and the Texas Health & Safety Code §§ 181.001–.207). Offender PHI is protected and managed in the same manner PHI is managed for free world patients. PHI is confidential and may only be used and disclosed in accordance with the guidelines in this policy. Furthermore, verbal exchanges of offender health information between Health Services staff must take place in a confidential manner to ensure only those individuals permitted to obtain the information receive it. Additionally, staff must ensure that health records or any written correspondence concerning an offender’s health care is not left unattended or in public view and is given only to individuals who are authorized to receive it.

**II. Access to Health Records**

The Assistant Director of (HIM) is the custodian for health records and must ensure only the appropriate individuals gain access to offender PHI. Offender PHI may be disclosed only in the following circumstances:

- A. If facility medical staff are asked to provide specific information or are asked to provide access to any electronic medical record system for a TDCJ official or employee regarding offender PHI, the TDCJ administration must provide reasonable assurances (see A2, immediately following, for additional information) before medical staff provides access to the requested PHI.
  - 1. The following is a list of personnel who may request and receive PHI:
    - a. TDCJ Health Services staff and designated agents; Texas Correctional Office on Offenders with Medical or Mental Impairments TCOOMMI;
    - b. Members of the Texas Board of Criminal Justice and designated agents;
    - c. Employees of the Office of the Attorney General and the TDCJ Office of the General Counsel;
    - d. Health care personnel of a correctional or other custodial institution in which the offender is detained, if the disclosure is for the sole purpose of providing health care to the offender;
    - e. Employees of the TDCJ Office of the Inspector General conducting formal investigations and counsel substitutes representing the offender in the disciplinary process;

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- f. Employees of the Board of Pardons and Paroles, Parole Division, and designated agents;
  - g. The Governor, his or her employees, and designated agents;
  - h. TDCJ employees specifically designated by the Division Director for Health Services;
  - i. The facility administrator or designee. Each facility health records department will be provided and maintain a facility administrator's designee list;
  - j. State agencies authorized by Texas Health and Safety Code § 614.017 to continue the care of special needs offenders released from the TDCJ to their custody; and
  - k. PREA Ombudsman staff conducting formal investigations.
2. In the request for offender PHI or access to an electronic record, the personnel listed above must also provide reasonable assurances the PHI will be used for, one of the following reasons:
    - a. The provision of health care to offenders;
    - b. The health and safety of the offender or other offenders;
    - c. The health and safety of the officers, employees, or others at the correctional institution;
    - d. The health and safety of the offenders, the officers, or other persons responsible for transporting offenders or transferring offenders from one institution, facility, or setting to another;
    - e. Law enforcement on the premises of a correctional institution; or
    - f. The administration and maintenance of the safety, security, and good order of the correctional institution.
  3. Once an offender is released and no longer resides in a correctional institution, the above PHI exceptions do not apply. For the purposes of this provision, an offender does not reside in a correctional institution when released on parole, probation, supervised release, or otherwise is no longer in lawful custody.
- B. If facility medical staff are asked to provide offender PHI or access to any electronic medical record system containing offender PHI, regarding a specific offender or a group of offenders' PHI, for any requestor who is not a TDCJ official or employee, the non-TDCJ individual or entity must present a valid, executed authorization for the release of PHI from the offender or the offender's legally authorized representative. For example, the following individuals and entities must obtain and provide the offender's authorization to release PHI prior to the release.
1. The offender or the offender's legally authorized representative;
  2. Members of the offender's family;
    - a. The unit health authority (for TTUHSC) or management team (for UTMB) or designee must respond to all telephone inquiries regarding health related matters

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from family members of offenders. The offender’s written valid authorization must be obtained prior to releasing PHI to the family member.

3. Health Services staff may request the facility medical staff to obtain an offender’s written authorization for release of PHI when necessary.
4. Members of the Texas Legislature and their employees or designated agents.-Responses to inquiries from legislators must be copied to the office of the Division Director for Health Services-
5. Health care professionals from the free world medical community, if the offender is not being treated for emergency treatment. For example, an offender’s authorization is required if an offender wishes to have his or her medical condition reviewed by an outside free world health care professional or if the offender has been released back into the free-world population and the offender’s new healthcare professional wishes to obtain records of the offender’s treatment for review as a new patient visit.

C. Under certain circumstances, some individuals will be provided offender PHI without providing reasonable assurances or without obtaining the offender’s authorization. The following are examples of individuals or entities who may request PHI without providing reasonable assurances or the offender’s authorization:

1. Health care providers who have an ongoing treatment relationship with the offender and who would be considered a referring physician or providers who have a need to access information because of the treatment they may have provided to an offender.
2. Health care professionals from the free world medical community, if the offender is being seen for emergency treatment and is still incarcerated.
3. In some instances, TDCJ administration may release offender PHI when required by law. For example, the TDCJ may notify the Texas Department of State Health Services (TDSHS) of offender PHI if an offender has a communicable disease.
4. The release of human immunodeficiency virus (HIV) test results will conform to the requirements contained in Health and Safety Code § 81.103.

D. A deceased offender’s personal representative may receive PHI to the same degree as the offender himself as long as an Affidavit of Personal Representative (Attachment A) is submitted. If the offender was not in the custody of the TDCJ when deceased, the personal representative must provide a copy of the death certificate.

1. If an offender is deceased, the personal representative can authorize release of the offender’s PHI to third parties, pursuant to Texas Occupations Code § 159.005(a)(5), provided a valid authorization is obtained.
2. At a minimum, the last 72 hours of the health record before the death of an offender will be provided to the Justice of the Peace conducting an inquest. Written authorization is not required.

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- E. The unit health authority (for TTUHSC) or management team (for UTMB) must approve the sharing of PHI with personnel who have a need to know but are not included above.

### III. Offender Authorization

- A. A written authorization (See Attachments B English/C Spanish) from the offender is required for all uses and disclosure of the offender's PHI, except in the following instances:
1. Treatment;
  2. Payment;
  3. Health care operations; or
  4. As required by (state and federal) law or permitted by the HIPAA.
- B. Health Records staff are responsible for releasing records and will only make records available as outlined in this policy. The release of records may be further prohibited in writing by the unit health authority (for TTUHSC) or management team (for UTMB) or designee. All such prohibitions must be forwarded to the Division Director for Health Services.
- C. The TDCJ and its contracted providers will ensure that offenders' rights are protected by providing a process for an offender (or a legally authorized representative on behalf of the offender) to inspect and receive a copy, at their expense, of the PHI in the offender's designated record set. **All employees, contract employees, and volunteers, must strictly observe the following standards:**
1. Current offenders may review their present incarceration health records (includes any free world records created during the course of the incarceration and free world records requested by a provider for continuity of care purposes) at no cost, even if part of the record is stored at Health Services Archives. When an offender reviews his or her record, the offender must fill out an authorization form allowing review of the record and present his or her TDCJ I.D card. Such review will be conducted within 15calendar days after the date the request is received and will not exceed thirty minutes in total time. Offenders that behave inappropriately, such as verbal or physical assaults, sexual misconduct, refusal to obey an order, etc... during a scheduled health record review, will not be rescheduled for ninety (90) calendar days. A Health Services employee will be present at all times while an offender is reviewing their health record. Only pencils will be provided to an offender while reviewing their record. Under no circumstances will an offender be allowed to review the health records of another offender.
  2. Former offenders have the right to inspect, or receive a copy of their PHI as long as the PHI is maintained in the designated record set.

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3. If the TDCJ designated medical records custodian does not maintain the PHI that is the subject of the request for access, and the custodian knows where the requested information is maintained, the custodian must inform the requestor where to direct the request for access.
4. The request must be made in writing and should use the TDCJ designated medical records custodian Authorization Form.
5. The custodian will act on the request within 15 business days after receipt and payment of the request.
6. The custodian must provide the PHI in the format requested by the individual, if it is readily producible in such format; or, if not, in a readable hard copy or other format agreed to by the custodian and the individual.
7. If the requestor agrees in advance, the custodian may provide a summary of the PHI requested, or may provide an explanation of the PHI to which access has been provided.
8. The custodian may impose a reasonable, fee for copies of requested PHI or a summary or explanation of the PHI.
9. An authorization form must be provided to authorized requestors and be signed by the offender or legally authorized representative before copies are provided.

10. Fees See Attachments D and E

First 50 pages                      \$.10 per page

Do not charge for personnel and overhead costs if less than 50 pages of PHI.

Additional pages 51+            \$.10 per page plus  
Personnel costs plus  
Overhead costs

If a copy of PHI is requested from a previous incarceration and the PHI is maintained at Health Services Archives, all charges apply:

\$.10 per page plus  
Personnel costs plus  
Overhead costs

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11. The custodian may deny a request to inspect or receive a copy of PHI in the following limited circumstances:

- a. When a licensed health care professional determines that access to the information would be harmful to the physical, mental, or emotional health of the offender;
- b. When the PHI makes references to another person, other than a health care provider, and a licensed health care professional determines that the access is reasonably likely to cause substantial harm to the other person; or
- c. The request for access is made by an offender's legally authorized representative and a licensed health care professional determines that access by the legally authorized representative is reasonably likely to cause substantial harm to the individual or another person.

12. If denied access to PHI, the custodian will notify the in writing within 15 business days of the request. A copy of the statement denying the request becomes part of the offender's medical or billing record. The denial statement must include:

- a. The reason(s) for denial;
- b. A statement that the individual may request that the custodian choose another licensed health care professional to review the request and the denial; and
- c. A description of how the requestor can file a complaint with a designated CMHC representative, the federal Department of Health and Human Services or the Texas Medical Board. The description must include the name, or title, and contact information for the CMHC representative.

13. If an individual requests review of a denial, the CMHC representative will designate a licensed health care professional who was not directly involved in the denial to review the decision to deny access. The designated reviewer will determine, within a reasonable time period, whether or not to deny the access. A written decision must be provided promptly.

14. CMHC may deny an offender's request without providing the offender with an opportunity for review when:

- a. The information is not part of the designated record set;
- b. CMHC is acting under the direction of a correctional institution and the offender's request to obtain a copy of PHI would jeopardize the offender, other offenders, or the safety of any officer, employee, or other person at the correctional institution, or a person transporting the offender;
- c. The offender agreed to a temporary denial of access when consenting to participate

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in research that includes treatment, and the research is not yet complete;

- d. The records are subject to the Privacy Act of 1974 and the denial of access meets the requirements of that law; or
- e. The PHI was obtained from someone other than CMHC under a promise of confidentiality and access would likely reveal the source of the information.

D. Offenders classified as indigent may review their health records at no cost; however, indigent offenders must purchase their records according to the above mentioned fees before copies will be provided.

E. Mental health records of an offender can be released to third parties if a signed authorization for the release of information is provided. State agencies and health care providers will not be charged a fee.

F. Inquiries from the media must be referred to the TDCJ Public Information Office.

**IV. In the event a request for offender PHI is received in relation to a liability claim, the Authorization for the Use and Disclosure of PHI for Liability Claims will be used. See Attachment F.**

**V. Disclosure Log**

Each facility health records department must maintain a log of all requests for release of PHI, including disclosures allowable by law. The log must include the, date of request, date of disclosure, individual or entity submitting request, name and TDCJ number of the offender, rationale for request, PHI released, and format. An example of the PHI released and format would be, pages 1-5 HSM-1.

**VI. Faxing Health Information**

PHI may be sent via fax only when mailed copies will not meet time constraints or in the event of offender care emergencies, but not for routine release of PHI to authorized third parties. An approved cover sheet must be used containing the confidentiality statement and a legend to the effect that any unauthorized use of the attached information is strictly prohibited and requesting that any data received in error be destroyed immediately and the fax operator notified.

**VII. Obtaining Offender PHI From TDCJ Hospital Galveston**

All requests for offender PHI generated at TDCJ Hospital Galveston must be directed to the Health Information Management Department. An HSA-107 form must be used and faxed to (409) 772-9200.

**VIII.** The attending physician or designee will be granted access to information contained in the



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offender’s confinement record, when the physician believes this information may be relevant to the offender’s health status, by making a request to the facility administrator.

- Reference:
- Medical Practice Act, Tex. Occ. Code §§ 151.001–.056
  - Texas Health and Safety Code
  - Consent to Medical Treatment Act, Tex. Health & Safety Code §§ 313.001–.007
  - ACA Standard 4-4396 (Ref. 3-4377), Confidentiality (Mandatory)
  - ACA Standard 4-4415 (Ref. 3-4379), Inactive Records (Non-Mandatory)
  - Health Insurance Portability and Accountability Act, 45 CFR §§ 164.500–.534