



STATE OF MONTANA  
DEPARTMENT OF CORRECTIONS  
POLICY DIRECTIVE

Policy No. DOC 4.5.38	Subject: <b>OFFENDER HEALTH RECORD ACCESS, RELEASE, AND RETENTION</b>
Chapter 4: FACILITY/PROGRAM SERVICES	Page 1 of 3 and Attachments
Section 5: Clinical Services	Effective Date: May 1, 1998
Department Director Signature: /s/ Brian Gootkin	Revised: 4/19/2021
Medical Director Signature: /s/ Dr. Paul Rees	
Clinical Services Division Administrator Signature: /s/ Connie Winner	

## I. POLICY

The Department of Corrections facility health care units understand that health care information is protected by a right of privacy and will maintain health record confidentiality as well as retain and store offender health records in accordance with Montana statute and [DOC Policy 1.5.5, Offender Records Management, Access and Release](#).

## II. APPLICABILITY

All Secure care facilities Department-owned and contracted, as specified in contract.

## III. DEFINITIONS

**Chief Facility Health Officer** – The health authority or nursing supervisor responsible for the facility health care services.

**Health Care Providers** – Licensed health care providers (e.g., physicians, nurses, psychiatrists, dentists, and mental health practitioners), including contracted or fee-for-service providers, responsible for offender health care and treatment.

**Health Care Staff** – Includes licensed health care providers and non-licensed health care staff (e.g., medical records staff, health care aides) responsible for offender health care administration and treatment.

**Qualified Health Care Professionals** – Physicians, physician assistants, nurse practitioners, dentists, mental health professionals and others who by virtue of their education, credentials, and experience are permitted by law to evaluate and care for offenders, including contracted or fee-for-service professionals

**Qualified Mental Health Professionals** – Psychiatrists, psychologists, psychiatric social workers, psychiatric nurses, licensed professional counselors and others who by virtue of their education, credentials, and experience are permitted by law to evaluate and care for the mental health needs of offenders.

## IV. DEPARTMENT DIRECTIVES

### A. General Requirements

**Subject: OFFENDER HEALTH RECORD ACCESS, RELEASE, AND RETENTION**

1. The chief facility health officer, in consultation with the Legal Services Bureau chief, or designee, may approve staff requests for access to health care information on a need-to-know basis.
2. Demands for offender health records pursuant to a subpoena will be submitted to the Legal Services Bureau for review, an attorney in the Legal Services Bureau will advise health care staff concerning dissemination of the records identified in the subpoena.
3. A mental health practitioner may release mental health records in accordance with the following:
  - a. adult records may be released with the signed consent of the adult offender; and
  - b. youth records may be released with the signed consent of a parent or legal guardian.
4. Health care staff will not release health care information in accordance with the following:
  - a. information obtained from another health care provider or organization will not be released;
  - b. staff will not release information without written offender consent unless:
    - 1) medical records are necessary for the offender's medical care and treatment;
    - 2) staff receive evidence of child abuse;
    - 3) in the case of a medical emergency;
    - 4) for the control of certain communicable diseases;
    - 5) a health care provider determines a situation presents a clear and immediate danger to others; or
    - 6) a request for information is received from the Montana Departments of Justice and/or Administration, Risk Management and Tort Defense Division in which a claim of constitutionally inadequate medical care, diagnosis, or treatment has been filed against the Department of Corrections.
5. An offender may:
  - a. authorize, in writing, release to his or her attorney or other persons authorized by statute; and
  - b. review his or her health care records by submitting a written request to health care staff.
6. When an offender authorizes release of health care information, staff will place a signed release form in his or her medical file. If the offender does not consent to the information release, health care staff will notify the inquiring party.
7. When offender records are transport by non-health staff, the records are sealed.
8. Qualified health care and mental health professional have access to information in offender's custody record when the responsible health or mental health authority determines that such information may be relevant to the offender's health, mental health, and course of treatment.

**B. Health Care Staff Responsibilities**

**Subject: OFFENDER HEALTH RECORD ACCESS, RELEASE, AND RETENTION**

1. Health care staff will maintain offender health records in a secure location in the health care unit area and control access to offender health records including ensuring that records are inaccessible to offenders or non-health care staff.
2. A member of the health care staff who denies the release of health information must complete the following:
  - a. document a reason(s) for denial on the original release request form;
  - b. date and sign the form;
  - c. file the form in the offender health record; and
  - d. return a copy of the form to the requesting party.
3. Health care staff will protect the confidentiality of inactive health care records, prevent unauthorized health care information release, and allow for timely records access and reactivation if an offender returns to the facility.
4. Following a youth or adult offender death or discharge from the Department or in the event a youth offender reaches age of majority, health care staff will, in accordance with Montana Secretary of State standards, ensure offender health care records are retained according to the following:
  - a. in the facility medical unit for two years; and
  - b. at the records storage center for eight years.
5. Health care staff ensure that when the medical, dental, and mental health records are stored separately, a process is in place to ensure that all pertinent information is shared.

## V. CLOSING

Questions concerning this policy should be directed to the Clinical Services Division Administrator

## VI. REFERENCES

- A. [41-3-201, MCA; Title 50, Chapter 16, MCA](#)
- B. [P-A-08; National Commission on Correctional Health Services in Prisons, 2018](#)
- C. [ACA Standards for Juvenile Correctional Facilities, 2003](#)
- D. [DOC Policy 1.5.5, Offender Records Management, Access and Release](#)
- E. [MH-H-02, MH-H-03, MH-H-04; National Commission on Correctional Mental Health Services in Correctional Facilities, 2015](#)
- F. [Y-H-02, Y-H-03, Y-H-04; National Commission on Correctional Health Services in Juveniles Detention and Confinement Facilities, 2015](#)

## VII. ATTACHMENTS

[Authorization for the Release of Information](#)  
[Youth Health Information Request to Release Records](#)

[PDF](#)  
[PDF](#)