



## POLICY DIRECTIVE

Policy:	<b>DOC 4.5.38 OFFENDER HEALTH RECORD ACCESS, RELEASE, AND RETENTION</b>
Effective Date:	05/01/1998 <span style="float: right;">Page 1 of 3</span>
Revision Date(s):	04/19/2021; 04/24/2026
Department Director Signature:	/s/ Eric Strauss, Director
Medical Director Signature:	/s/ Dr. Paul Rees, MD
Health Services Bureau Chief Signature:	/s/ Cynthia McGillis-Hiner, RN, MSN

### I. POLICY

Department 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 1.5.5 Offender Records Management, Access, and Release*.

### II. APPLICABILITY

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

### III. DEFINITIONS (see Glossary)

### IV. REQUIREMENTS

#### A. General Requirements

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) there is 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 the offender's attorney or other persons authorized by statute; and
    - a. review the offender's 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 the offender's 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 transported by non-health staff, the records are sealed.
  8. Qualified health care and mental health professionals have access to information in an 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**

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 about this policy should be directed to the Health Services Bureau Chief.

#### **VI. REFERENCES**

- A. 41-3-201, MCA; Title 50, Chapter 16, MCA
- B. DOC 1.5.5 Offender Records Management, Access, and Release
- C. P-A-08; National Commission on Correctional Health Services in Prisons, 2018

- D. *Performance-Based Standards and Expected Practices for Juvenile Correctional Facilities, 5<sup>th</sup> Edition, 2025*
- 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 Juvenile Detention and Confinement Facilities, 2022*