

	<b>DEPARTMENT OF CORRECTIONS AND REHABILITATION</b> <b>CORRECTIONS ADMINISTRATION</b> <b>POLICY AND PROCEDURES</b>	<b>EFFECTIVE DATE:</b> January 01, 2024	<b>POLICY NO.:</b> COR.10.A.07
		<b>SUPERSEDES (Policy No. &amp; Date):</b> COR.10.1A.09 (04/21/05)	
	<b>SUBJECT:</b> PRIVACY OF CARE		Page 1 of 4

## 1.0 PURPOSE

The purpose of this policy is to ensure healthcare encounters including medical and mental health interviews, examinations, procedures, and exchanges of information remain private and are conducted in a setting that respects the incarcerated individuals' privacy using reasonable safeguards.

## 2.0 SCOPE

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

## 3.0 REFERENCES, DEFINITIONS & FORMS

### .1 References

- a. Code of Federal Regulations Title 21, 45 CFR 160-169, Federal Register Documents, (2023).
- b. Hawaii Revised Statutes §323B, Health Care Privacy Harmonization Act.
- c. Standards for Health Services in Prisons. National Commission on Correctional Health Care, (2018).
- d. Standards for Health Services in Jails. National Commission on Correctional Health Care, (2018).
- e. Standards for Mental Health Services in Correctional Facilities. National Commission on Correctional Health Care, (2015).
- f. Performance-based Standards and Expected Practices for Adult Correctional Institutions. The American Correctional Association. Standards: 5-ACI-6C-10, 5-ACI-6C-11, (2021).

### .2 Definitions:

- a. **Clinical encounters:** Interactions between patients and health staff that involve an assessment, examination, treatment, and/or exchange of protected health information (PHI).

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- b. Health Insurance Portability and Accountability Act (HIPAA): A federal law (public law 104-191) passed by Congress in 1996, which addresses developing standards for protecting the privacy of individually identifiable health information. The act requires the Department of Health and Human Services (HHS) to adopt national standards for electronic health care transactions, and mandates the adoption of federal privacy protections for individually identifiable health information.
- c. Protected Health Information (PHI): Information that (i) is created or received by a health care provider, health plan, employer or health care clearinghouse; (ii) relates to the past, present, or future physical or mental health condition of an individual; the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; and (iii) identifies the individual, (or for which there is a reasonable basis for believing that the information can be used to identify the individual). PHI does not include employment records maintained by the department's personnel files in its role as an employer.
- d. Reasonable Safeguards: Appropriate administrative, physical, and/or technical safeguards that protect against use and disclosure of PHI not permitted by the Health Insurance Portability and Accountability (HIPAA) Privacy Rule, and includes incidental use or disclosure.

#### **4.0 POLICY**

- .1 The extent of need for privacy involving clinical encounters is balanced with health need, the ability to provide timely access, the facility's physical design, and custody concerns.
- .2 Discussions involving protected health information are conducted in private using reasonable safeguards.
- .3 Privacy (e.g., privacy screen, curtain, private area), should be afforded during physical exams, with special considerations for pelvic, rectal, breast, or other genital exams.
- .4 If telehealth is used for patient encounters, consent is to be obtained from the incarcerated individual, a HIPAA-compliant platform is to be utilized and provision is made to ensure integration of the report of the consultation into the health record.

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**5.0 PROCEDURES**

- .1 During all non-emergency clinical encounters (e.g., when triaging health complaints at cell-side in segregated housing, when conducting interviews during the intake process), health care staff use reasonable safeguards to promote private communication.
- .2 During non-emergency situations, health care staff shall not converse about a patient's health status, diagnosis, or treatment in areas where the information can be overheard by other inmates, staff, or visitors.
- .3 Health records shall not be placed in areas where they can be observed or read in violation of the HIPAA privacy rule.
- .4 During physical examinations (particularly during pelvic, rectal, breast, or other genital exams), qualified health care professionals shall implement the use of facility-approved measures to maintain patient privacy (e.g., privacy screen, curtain, private area).
- .5 When safety is a concern and full privacy is lacking, alternative strategies for partial visual or auditory privacy shall be considered (e.g., physical examinations may be conducted in rooms with half walls for visual privacy and glass on the upper half of the wall for auditory privacy; a cloth drape or privacy screen can be used for visual privacy during physical examinations of incarcerated females).
- .6 A chaperone will be present when desired by the provider, or when requested by the patient. At the time of disrobing, a provider of the opposite sex will leave the room. A chaperone of the same sex is required for female offenders.
- .7 All ancillary staff, including security staff, must adhere to confidentiality requirements when they are present and observe the exchange of protected health information either written or verbally.

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APPROVAL RECOMMENDED:

*[Signature]* JAN 0 1 2024  
Deputy Director for Corrections Date

APPROVED:

*[Signature]* JAN 0 1 2024  
DIRECTOR Date

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