	<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.H.08
		<b>SUPERSEDES (Policy No. &amp; Date):</b> COR.10.1H.08 of 12/10/2014	
	<b>SUBJECT:</b> <b>RELEASE OF PROTECTED HEALTH INFORMATION</b>		Page 1 of 7

**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 SCOPE**

This policy and procedure apply to all branch facilities and their assigned personnel.

**3.0 REFERENCES, DEFINITIONS & FORMS**

.1 References

- a. Department of Corrections and Rehabilitation, Policy ADM.05.02, Public Access to Department Information.
- b. Hawaii Revised Statutes (HRS), Section 26-14.6, Department of Corrections and Rehabilitation; and Section 353-A, Director of Corrections and Rehabilitation, 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.
- c. Hawaii Revised Statutes: Section 325-101, HIV; ARC; & AIDS; Section 334-5 Mental Health, Drug Addiction, and Alcoholism; 841-17 & 18, Inquests: Medical Records.
- d. Health Insurance Portability and Accountability Act, 45 CFR, 160-164, (1996); Published in Federal Register 67, No. 157, August 14, 2002.
- e. Standards for Health Services in Prisons. National Commission on Correctional Health Care, (2018).
- f. Standards for Health Services in Jails. National Commission on Correctional Health Care, (2018).
- g. Standards for Mental Health Services in Correctional Facilities. National Commission on Correctional Health Care, (2015).

**NOT CONFIDENTIAL**

COR  P & P M	<b>SUBJECT:</b>  <b>RELEASE OF PROTECTED HEALTH INFORMATION</b>	<b>POLICY NO.:</b> <b>COR.10.H.08</b>
		<b>EFFECTIVE DATE:</b> <b>January 01, 2024</b>
		<b>Page 2 of 7</b>

.2 Definitions:

- a. 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.
- b. Medical Record: A record representing a patient's medical and mental health history and care from the moment of incarceration until they are released from custody.
- c. Patient: An individual who has received or is receiving health care.
- d. 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.
- 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 Forms

- a. DCR 0404D, Request for Medical Records of Decent Non-Probate (attached)
- b. DCR Form 0488, Requested Copies of Medical Records (attached)
- c. DCR 0490, Information Reviewed or Released from this Medical Record (attached)
- d. DCR 1017, Request for Disclosure/Access of Department Information /Records (attached)
- e. State Accounting Form B-10, Bill for Collection

**4.0 POLICY**

- .1 Patient medical records are the property of the State of Hawaii, Department of Corrections and Rehabilitation, Health Care Division. Unless otherwise

**NOT CONFIDENTIAL**

COR  P & P M	<b>SUBJECT:</b>  <b>RELEASE OF PROTECTED HEALTH INFORMATION</b>	<b>POLICY NO.:</b> <b>COR.10.H.08</b>
		<b>EFFECTIVE DATE:</b> <b>January 01, 2024</b>
		<b>Page 3 of 7</b>

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 (PHI) apply to both hardcopy and electronic version of medical record data.
- .4 A health care provider, agent or any DCR 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 expect under a court order.

## 5.0 PROCEDURE

- .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 the 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 Corrections and

**NOT CONFIDENTIAL**

COR  P & P M	<b>SUBJECT:</b>  <b>RELEASE OF PROTECTED HEALTH INFORMATION</b>	<b>POLICY NO.:</b> <b>COR.10.H.08</b>
		<b>EFFECTIVE DATE:</b> <b>January 01, 2024</b>
		<b>Page 4 of 7</b>

**Rehabilitation, 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’s 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 a 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, medical tort or malpractice suit brought by a patient.
- 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 medial information of the subject of the personal injury case, medical tort claim, or the malpractice suit, but such as emergency room, diagnostic, or injury case, medical tort claim 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.

**NOT CONFIDENTIAL**

<b>COR</b>  <b>P &amp; P M</b>	<b>SUBJECT:</b>  <b>RELEASE OF PROTECTED HEALTH INFORMATION</b>	<b>POLICY NO.:</b> <b>COR.10.H.08</b>
		<b>EFFECTIVE DATE:</b> <b>January 01, 2024</b>
		<b>Page 5 of 7</b>

- 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 month 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 documents that proves kinship shall suffice as proof. In the absence of the above DCR 0404D, Request for Medical Records of Decent 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:
    - 1. The spouse, if the decedent was married.
    - 2. If not married, the oldest adult child.
    - 3. 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.
    - 4. 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 CRM shall screen requests for information from medical records as to content and validity.

**NOT CONFIDENTIAL**


COR  P & P M	<b>SUBJECT:</b>  <b>RELEASE OF PROTECTED HEALTH INFORMATION</b>	<b>POLICY NO.:</b> <b>COR.10.H.08</b>
		<b>EFFECTIVE DATE:</b> <b>January 01, 2024</b>
		<b>Page 6 of 7</b>

- .3 Medical records continuing 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 of form DCR 0490, Information Reviewed or Released from this Medical Record and Form DCR 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.
- .8 Copies of the released medical record information shall be accompanied by DCR 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 fifty (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.

**NOT CONFIDENTIAL**

COR P & P M	SUBJECT:  RELEASE OF PROTECTED HEALTH INFORMATION	POLICY NO.: COR.10.H.08
		EFFECTIVE DATE: January 01, 2024
		Page 7 of 7

APPROVAL RECOMMENDED:

  
\_\_\_\_\_  
Deputy Director for Corrections

JAN 01 2024  
\_\_\_\_\_  
Date

APPROVED:

  
\_\_\_\_\_  
DIRECTOR

JAN 01 2024  
\_\_\_\_\_  
Date

NOT CONFIDENTIAL