DEPARTMENT OF CORRECTIONS

Policy Number:	**500.190**
Title:	**Health Care Data Practices**
Effective Date:	**6/2/20**

PURPOSE: To provide procedures for the appropriate disclosure of offender health care information.

APPLICABILITY: Minnesota Department of Corrections (DOC); medical and dental health services

DEFINITIONS:

Emancipated minor – a person under the age of 18 years who is emancipated due to current or prior marriage, having borne a child, or living separate and apart from parents or legal guardian (with or without consent) and managing his/her own financial affairs.

Health services staff – any department employee who is regularly employed by the DOC and works in central office, a facility health services unit, or a dental services unit, or is employed by the department's contracted health care vendor.

Health threat to others – a carrier of a communicable disease who demonstrates an inability or unwillingness to act in such a manner as not to place others at risk of exposure to infection that causes serious illness, serious disability, or death.

Immunization data – offender/resident name, address, date of birth, gender, parent/guardian's name, date vaccine was received, vaccine type, lot number, manufacturer, contraindications, or adverse reactions.

Kite – an offender's/resident's written request, complaint, or comment.

Voucher – written record of an expenditure, disbursement, or completed transaction.

PROCEDURES:

A. General guidelines for disclosure of health care information

1. Medical data is private and only available to the subject of the data. Medical data must not be disclosed to others unless:
   a) The data is summary data;
   b) There is a signed and dated authorization;
   c) Pursuant to a valid court order;
   d) To administer federally-funded programs;
   e) Medical emergency;
   f) Pursuant to Minn. Stat. § 253B.0921, "Civil Commitment;"
   g) To communicate an offender's/resident's condition to family or other appropriate persons in accordance with acceptable medical practices, unless the offender directs otherwise; or
   h) As otherwise required by law (e.g., duty to warn).

2. Access to the health record is in accordance with state and federal law. The active health record is retained separately from the confinement case record and stored in a secured area

with access limited to health services staff and medical contractors. Health services staff and contractors must control access to offender/resident medical records, including access to electronic medical records. Department employees and contractors may access offender/resident health care information only to the extent it is required as part of their job duties.

a) Contracted practitioners may access the medical record to prepare a defense to a medical board complaint.

b) Copies from the medical record cannot be made or provided to the medical practitioner.

3. An offender may access, upon written request, their health care information that pertains to examination or treatment of a medical or psychiatric condition or illness.

4. A signed consent is valid for one year or for a lesser period if specified in the consent. The consent does not expire after one year for:
   a) Health insurance plans; and
   b) Life insurance.

5. Health services staff must only re-release health care information with a signed and dated consent from the offender or the offender's/resident's legally authorized representative, unless the release is specifically authorized by law. All information, including consults from other entities, is considered to be part of the medical record. No differentiation is made as to where the documentation initiated, DOC or elsewhere.

6. With the offender's consent, health services staff may furnish a summary of the medical record or copies of pertinent portions of the record in lieu of the entire record.

7. A physician may withhold health care information if they determine that the information in the medical record is detrimental to the offender's/resident's physical or mental health, or is likely to cause the offender/resident to inflict self-harm or harm another. The determination to withhold information must be made by the physician before a request is received, otherwise the request must be honored.

8. A health care provider who inappropriately charges for health care information may be subject to disciplinary action by the Board of Medical Practice for physicians or the Minnesota Department of Health.

9. Health care providers must comply with federal drug and alcohol abuse law for the release of alcohol and drug treatment records and HIV/AIDS treatment records.

10. Health care providers are not obligated to verbally release any private health care information.

11. Staff must provide a copy of a "Health Services Tennessen Notice" (attached) to offenders or parents/authorized representatives as applicable during the receiving and orientation (R&O) process for all new intakes to facilities, excluding facility-to-facility transfers. This is documented on a signature sheet and retained in the base file.

12. Health services staff must respond to data requests immediately, if possible. If unable to respond to the request immediately, health services staff must respond to the request within ten working days.

13. To protect and preserve the integrity of the facility, the health authority shares with the warden/designee information regarding an offender's/resident's medical management.

14. Health care staff must complete training annually on data practices. Training must be recorded and retained in the agency-approved electronic training management system.

B. Disclosure of health care information – with consent

1. Consent form

a) A consent form may be an original, photocopy, or a facsimile copy and must include the following:

(1) Identification of the offender;
(2) Name of health care provider releasing the information;
(3) Name of party who will receive the information;
(4) Purpose of disclosure;
(5) Nature of information to be disclosed (e.g., dates, condition, specific reports);
(6) Date signed;
(7) Time period that the authorization is effective and the date, event or condition under which the consent will expire;
(8) Signature of the offender or person authorized to give consent to release information; and
(9) Statement that authorization is subject to revocation at any time.

b) Health services staff must not accept any authorization in which the date signed pre-dates the date of treatment.

c) The release of drug and alcohol abuse health care records must be specifically authorized and must be accompanied by the following written statement: "This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR, Subchapter A, Part 2). The federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR, Subchapter A, Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient."

d) Health services staff must contact the requester to clarify specific records requested whenever the authorization specifies "any and all" records of an offender.

2. Guardian/durable power of attorney consent

a) Health services staff must release an offender's health care information on the written consent of a guardian whenever a court has found the offender incompetent to manage their person and/or their affairs.

b) Prior to releasing an offender's health care information, health services staff must review any guardian consent for the release of the offender's health care information for proof of appointment and authority to release health care information.

c) Health services staff must review the durable power of attorney appointment papers prior to releasing an offender's health care information to ensure proper rights to access and release health care information.

d) When an offender lacks the capacity to give consent to the release of their health care information and has not been legally adjudicated to be incompetent, health services staff must request the offender's next of kin to consent to the release of information. If the offender does not have a next of kin, the facility warden must request the court to appoint guardianship or designate health care power of attorney for the release of information.

3. Consent for deceased offenders: consent to release health care information of a deceased offender may be provided by the following, listed in priority:
   a) An executor, administrator, or other appointed personal representative;
   b) If the offender does not have an executor, administrator, or personal representative, the offender's spouse may provide consent; or
   c) If the offender does not have a spouse, the offender's parents, oldest sibling, or any other member of his/her family may provide consent.

4. Consent when not physically able to sign a consent form: if the offender is competent to authorize disclosure of health care information, but is physically unable to sign an authorization, health services staff must:
   a) Have the offender record an "X" on the signature line of the consent form;
   b) Ensure that two staff must witness the "X" accompanied by the statement "patient physically unable to sign" followed by the staffs' signature; and
   c) If the offender is competent to authorize disclosure of health care information but is unable to record an "X":
      (1) The offender may instruct a second party to provide consent;
      (2) Staff must obtain written consent of the second party;
      (3) The written consent must contain the signature and relationship of the second party and the statement, "patient unable to sign;" and
      (4) A separate third party must witness the signature of the second party and sign the authorization as a witness.

5. Parental consent
   a) Parental consent
      (1) The parent or legal guardian must provide consent for the health care and the release of information for all minors, unless the minor meets other conditions as specified in Minn. Stat. §§ 144.341 through 144.347.
      (2) When health services staff are uncertain of parenthood due to different last names or other conditions, staff must request that the parents present a legal document to provide proof of parenthood such as a birth certificate, affidavit of paternity, etc.

   b) Custodial/divorced parents

(1) When parents of a minor (under 18 years of age) are divorced, health services staff are authorized to accept the consent of either parent for release or access to the offender's/resident's health care information regardless of custodial designation pursuant to Minn. Stat. §518.17 subd. 3.
(2) Health services staff may deny parent(s) access to their minor child's health care information only when the parental rights have been terminated or a court has set specific limitations with respect to the child's health care and access to medical records.
(3) Health services staff must not deny access to a minor child's health care information if one parent requests that access be denied to the other parent, unless legal documentation from the court is provided to prove termination of parental rights or other specific restrictions.

c) Foster parents
(1) Health services staff must obtain copies of legal documentation from the court that provides proof of legal guardianship before accepting the consent of foster parents for the release of health care information of the minor child under their guardianship.
(2) Health services staff must accept the authorization of a foster parent with proof of guardianship for the access or release of the minor child's health care information.

d) Withholding information from parents: health services staff must accept the authorization of the minor, rather than the parent/guardian, for access to health care information in the following select circumstances:
(1) Pregnancy and associated conditions;
(2) Venereal disease; and
(3) Alcohol and other drug abuse.

6. Consent of minors
a) When a minor has the ability to consent to their own care as defined in Minn. Stat. §§ 144.341 through 144.347, health services staff must require the minor's consent for the release of their health care information.

b) Emancipated minors
(1) An emancipated minor may give consent for their health care services.
(2) Health services staff must accept the authorization of an emancipated minor for the release of health care information when the information relates to treatment received.
(3) Staff must only allow parents of the emancipated minor access to the minor's health care information with consent of the minor.

7. Offender/resident consent forms must be retained in the offender's/resident's medical file.

C. <u>Disclosure of health care information without consent</u>
1. Staff and/or contractors of the department may have access to an offender's/resident's health care information without the offender's/resident's/guardian's consent only to the extent necessary to perform their duties. This includes health services staff, case managers, agents, and other department staff.

a) Correctional staff may be advised of an offender's/resident's health status only when the information is necessary to preserve the health and/or safety of an offender/resident, other offenders/residents, volunteers, visitors, or the correctional staff.

b) Health information is provided to correctional staff, classification staff, volunteers, or visitors only when necessary to address the medical needs of the offender/resident in relation to housing, program placement, security, and/or transport.

2. Health services staff may release immunization data and tuberculosis (TB) testing results if the requester provides services on behalf of the offender/resident. Services on behalf of the offender/resident include such as examples as providers, group purchasers, elementary or secondary schools, childcare facilities, public or private post-secondary education institutions, a board of health, community action agencies, and the commissioner of health. Group purchasers include such examples as community integrated services networks; health insurance companies, health maintenance organizations, nonprofit health service plan corporations, and other health plan companies; and employee health plans offered by self-insured employers.
   a) Health services staff may release immunization data and TB testing results to county jails/detention centers that may be holding offenders/residents prior to commitment or as a part of the department program.

   b) Health services staff must attempt to release immunization and TB testing data only to another health care professional (e.g., nurse-to-nurse).

3. Voluntary reporting: any licensed or other human service professional department employee who has knowledge or reasonable cause to believe that a person is a health threat to others by engaging in non-compliant behavior may report that behavior to the commissioner of the Minnesota Department of Health without the offender's/resident's consent.

4. Upon the death of an offender/resident, health services staff must provide the original medical record to the department office of special investigations (OSI).

5. Health services staff must report diseases and infectious agents, suspected cases, carriers and/or deaths due to diseases in compliance with the Minnesota Department of Health requirements.

6. Health services staff must report to the local welfare agency if the staff have knowledge or reason to believe that a pregnant offender has used a controlled substance for a non-medical purpose during pregnancy. For the purposes of this policy, a controlled substance is defined to mean cocaine, heroin, phencyclidine, methamphetamine, or amphetamine.

D. Telephone requests for health care information
   1. Health services staff must verify the name of the caller and the reason for the request through a return call to the provided number prior to releasing any offender/resident health care information.

2. If the request is due to an urgent, emergent need for immediate care and the caller's identity has been verified by health services staff, staff may release critical information without the offender's/resident's/guardian's consent. Health services staff must request a written authorization be mailed/faxed at a later time.

3. If the request relates to non-emergent care, health services staff must require that written authorization be provided before releasing offender/resident health care information.

4. Regardless of the origination of the telephone request, health services staff must try to provide information to actual health care providers (e.g., doctor -to-doctor, doctor-to-nurse, nurse to doctor, or nurse-to-nurse).

5. In the case of mental health or alcohol and drug abuse records, health services staff must ensure that only limited information for medical emergencies is released between health care providers without consent.

6. Health services staff must document in the medical record whenever health care information is released without consent. The following must be entered:
   a) Date and time of information released;
   b) Name and title of individual to whom information was released;
   c) Information released; and
   d) Name and title of health services staff releasing information.

E. Offender access to their health care information

1. Upon an offender's request, health services staff must provide the offender complete and current information possessed by health services. The offender must be furnished copies of their record at a reasonable cost as determined by financial services (see Policy 300.100, "Offender Accounts").
   a) The offender must submit a kite to have items copied and a signature-verified voucher must be completed and funds available in the offender's account before health care information is copied.

   b) Indigent offenders may have copies of their health care information for legal purposes by completing the Indigent Offender Additional Legal Supply Request form (attached).

   c) Indigent offenders may receive up to 35 pages of relevant health care information as identified by a practitioner, or a summary of health concerns and treatment plan when requested for continuity of care upon release.

2. If necessary to assist the offender in understanding the medical record, the health services staff may refer the offender to their physician for clarification, provide the offender with an abbreviation list, or assist in reading the medical record. Only the physician may interpret the medical record for the offender.

3. When responding to an offender's written request, the health care staff must comply with any of the following options and provide:
   a) Copies of the entire health record, including all information generated by community care providers;

b) Copies of pertinent portions of the record relating to a condition, as specified by the offender; or
c) A summary of the record, with the consent of the offender.

4. Health services staff must, when requested, allow an offender to review their entire medical record during a scheduled time frame. Health services staff/designee must observe the offender's review of the record to ensure that the record is protected from tampering, defacement, or loss.

5. Health services staff must withhold certain health care information from the offender if the staff determines that the information is detrimental to the offender or may cause the offender to inflict self-harm or harm to another, and provided that such determination has been made and documented by the health services physician before such a request is received. Health services staff must document all instances of denial of access to the offender. This document must be the first sheet of the record under the legal divider.

F. Copying of medical records

1. Health services staff must charge a per page fee established by the Minnesota Government Data Practices Act to requesting parties when allowed.

2. Once a check for copying charges is received with the initial written request and signed offender consent form, health services staff must prepare the copies and forward to the appropriate requester.

3. If a check is not received with the initial written request and signed offender consent, health services staff must call the requester and inform them of the fees. Upon receipt of appropriate fees, health services staff must prepare the copies and forward the check to financial services.

INTERNAL CONTROL

A. All health services staff are trained annually on healthcare data practices. Training is maintained in the agency-approved electronic training management system.

B. Offender/resident/guardian consent forms are retained in the offender's/resident's medical file.

C. Provision of a "Health Services Tennessen Notice" is documented on a signature sheet and retained in the offender's/resident's electronic file.

ACA STANDARDS: 4-4395, 4-396, 4-4415

REFERENCES: Minn. Stat. Chap. §§ 13; 144.291 to 144.298; 144.341 through 144.347; 144.4171; 147.131; 253B.03; 253B.0921; 518.17, subd. 3; and 626.5561.
Minn. Rules 4605.7030; 4605.7040; 4605.7050; 4605.7060; 4605.7080 and 4605.7090.
42 Code of Federal Regulations (CFR), Subchapter A, Part 2, "Confidentiality of Drug and Alcohol Records"
42 CFR § 482.21 (b), "Medicare Conditions of Participation"
Policy 203.230, "Death of an Offender"
Policy 106.210, "Providing Access to and Protecting Government Data"
Policy 300.100, "Offender/Resident Accounts"

Division Directive 300.140, "Indigent Offenders"
Policy 500.1261, "The Provision of Health Care to Juvenile Residents"

REPLACES: Division Directive 500.190 "Health Care Data Practices," 10/18/16.
All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

ATTACHMENTS:
Authorization to Release Medical Information (500.190B)
Authorization to Release Medical Information (500.190B (Hmong))
Authorization to Release Medical Information (500.190B (Spanish))
Health Services Tennessen Notice – Adult Offenders (500.190C (English))
Health Services Tennessen Notice – Adult Offenders (500.190C (Spanish))
Health Services Tennessen Notice – Lino Lakes Youthful Offenders (500.190D)
Health Services Tennessen Notice – Red Wing Residents (500.190E)
Health Services Tennessen Notice – Shakopee Adult Offenders (500.190F)
Health Services Tennessen Notice – Shakopee Minor Offenders (500.190G)
Indigent Offender Additional Legal Supply Request form (300.140A)

APPROVALS:
Deputy Commissioner, Community Services
Deputy Commissioner, Facility Services
Assistant Commissioner, Operations Support
Assistant Commissioner, Strategic Planning, Implementation, and Employee Development
Assistant Commissioner, Criminal Justice Policy, Research, and Performance