DEPARTMENT OF CORRECTIONS

Policy Number:	**500.3071**
Title:	**Behavioral Health Data Practices**
Effective Date:	**12/3/19**

PURPOSE: To guide behavioral health information collection, creation, storage, maintenance, access and dissemination.

APPLICABILITY: All correctional facility staff and behavioral health units

DEFINITIONS:
Authorized representative – a person legally authorized to act on behalf of an offender regarding access to that offender's health information. In the case of a juvenile resident, this term refers to the resident's parent or legal guardian.

Behavioral health information – data concerning mental health, sex offender, or chemical dependency assessment/treatment that is collected, created, received, maintained or disseminated by the DOC.

Confidential information – information that is not accessible to the public or to the individual subject of the information.

Emancipated minor – a minor who, by law, may give effective consent to personal medical and mental health services.

Private information – information that is not accessible to the public, but is accessible to the individual subject of the information.

Provider – DOC employee or contractor whose duties include mental health, sex offender, or chemical dependency assessment/treatment.

PROCEDURES:

A. Information security

Each facility maintains appropriate data security safeguards (Minn. Stat. § 13.05, subd. 5). At a minimum, this includes keeping behavioral health information under lock, electronic password protection, or the direct supervision of behavioral health staff at all times. Behavioral health clinical files, or other behavioral health offender/resident information in paper or electronic form, must not be removed from department of corrections (DOC) premises unless approved by a supervisor for a business purpose.

B. Notices to offenders

1. A copy of *Access to Health Records – Notice of Rights*, a notice published by the Minnesota Department of Health, must be prominently posted in all behavioral health offices or program areas in compliance with Minn. Stat. § 144.292 subd. 4.

2. The Rights of Mental Health Clients (link attached) or the Chemical Dependency Clients Bill of Rights (link attached) must be prominently posted in all behavioral health offices or

program areas (as appropriate) in compliance with Minnesota Rule 7200.4905, subp. 1 and other Minnesota Rules.

3. Tennessen warning
Notice must be given before any mental health, chemical dependency, or sex offender assessment; at the time of admission to treatment programs; or any other time offenders/residents are asked to provide behavioral health information. The notice must indicate the purpose and intended use of the requested information, whether the offender/resident may refuse or is legally required to supply the requested information; any known consequence arising from supplying or refusing to supply the information; and the identity of other persons or entities authorized by state or federal law to receive the information (see Minn. Stat. § 13.04, subd. 2). A standardized Behavioral Health Privacy Notice form (link attached) and Behavioral Health Services Agreement (link attached) are also available on the behavioral health internal iShare site.

C. Inaccurate or incomplete information
An offender/resident may contest the accuracy or completeness of the offender's/resident's behavioral health information by writing to the facility behavioral health director and describing the nature of the disagreement (see Minn. Stat. § 13.04, subd. 4). Within 30 days, the director either: (1) corrects the information found to be inaccurate or incomplete and attempts to notify past recipients of inaccurate or incomplete information, including recipients named by the offender/resident; or (2) notifies the offender/resident that the authority believes the information to be correct. Information in dispute is disclosed only if the offender's/resident's statement of disagreement is included with the disclosed information.

D. Information disclosure with consent
1. Record review by offender/resident
Upon written request, offenders/residents may access and review their behavioral health records without charge (see Minn. Stat. § 144.292):
a) Prior to review by the offender/resident, the confidential section of the file must be removed (see Policy 106.320, "Offender/Resident Records").
b) Reviews must be conducted under direct staff supervision.
c) The review must be documented in the offender's/resident's file.

2. Withholding information
Behavioral health information may be withheld from an offender/resident if it has been classified as "confidential data on individuals" under Minn. Stat. § 13.02, subd. 2. The following specific types of behavioral health information may also be withheld:
a) Detrimental information
A provider may withhold health information from the offender/resident if the provider determines that the information 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 (see Minn. Stat. § 144.292). Such determination to withhold information must be made before a request is received, otherwise the information request must be honored.

b) Psychological test security
A provider is not required to provide copies of psychological tests, test materials, or scoring keys to any individual who has completed a test, or to an individual not qualified to administer, score, and interpret the test, if the provider reasonably

determines that access would compromise the objectivity, fairness, or integrity of the testing process for the individual or others (see Minn. Stat. § 148.965). An offender/resident may authorize the release of test results, even raw test results; although the provider should recommend that raw test results be released only to a qualified provider.

3. Requests for information must comply with Minn. Stat. § 144.292, Minn. Stat. § 144.293, and Policy 106.210, "Providing Access to and Protecting Government Data."

a) A copying fee may not be charged when an offender/resident requests a copy for the purpose of:
   (1) Reviewing current care (Minn. Stat. § 144.292, subd. 6);
   (2) Appealing a denial of social security disability income or social security disability benefits (Minn. Stat. § 144.292, subd 6); or
   (3) Providing information for continuity-of-care purposes at the time of an offender's/resident's release.

b) Written consent for the release of information may be an original, a photocopy or a facsimile copy and must include (per Minn. Stat. § 13.05, subd. 4) the:
   (1) Offender's/resident's name and identifying information;
   (2) Name of provider or agency releasing the information;
   (3) Name of party to whom the information is being released;
   (4) Purpose of release;
   (5) Nature of the information to be disclosed (dates, condition, specific reports);
   (6) Date (not to exceed one year), event, or condition under which the consent will expire;
   (7) Signature of the offender/resident or the offender's/resident's authorized representative; and
   (8) Date signed.

   The release of information is retained in the offender's/resident's mental health file.

c) Family request for information (see Minn. Stat. § 144.294)
   Upon the written request of a spouse, parent, child, or sibling of an offender/resident being evaluated for or diagnosed with mental illness, a provider must inquire of the offender/resident whether the offender/resident wishes to authorize a specific individual to receive information regarding the offender's/resident's current and proposed course of treatment. If the offender/resident so authorizes, the provider must communicate to the designated individual the offender's/resident's current and proposed course of treatment, so long as this is consistent with facility security.

d) Alcohol and drug records
   The disclosure of alcohol and drug abuse prevention, assessment, and treatment records is more restricted than other behavioral health information, and must be in compliance with federal regulation 42 CFR Part 2.
   (1) The release of drug and alcohol abuse information must be specifically authorized in the written consent.

(2) The released information must be accompanied by the following written statement: "This notice accompanies a disclosure of information concerning a client in alcohol/drug abuse treatment, made to you with the consent of such client. This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR 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 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 patient with a substance use disorder."

4. Offenders/residents under guardianship
When an offender/resident has a court-appointed guardian, consent of the guardian is required for the release of information or the provision of health care.
   a) A copy of the court order must be obtained and placed in both the mental health and medical records.
   b) Health services and the offender's/resident's case manager must be notified of the offender's/resident's guardianship status.
   c) A notation "under guardianship" must be made on the name tab of the offender's/resident's mental health file.

5. Minor residents
   a) Generally, a parent or legal guardian has access to, and must consent to the release of, behavioral health information for the parent's or guardian's minor child. However, emancipated minors (see below) may give consent for behavioral health care, including the release of information.
      (1) Uncertain parenthood
      When parenthood is uncertain (e.g., different last names), a parent must provide a legal document verifying parenthood (e.g., birth certificate, affidavit of paternity).

      (2) Divorced parents
      Each parent has the right of access to health and other related records and information about the minor. Presentation of a copy of a court's divorce order, and judgment and decree to the custodian of a record constitutes sufficient authorization for the release of the record or information to the requesting party. A parent may be denied access to the parent's minor child's information only when a court has ordered termination of parental rights or limitations with respect to access to records.

      (3) Foster parents may access or release a minor resident's behavioral health information after presenting proof of guardianship.

   b) Consent of minors
      (1) Emancipated minors
      Minors are emancipated if they meet the criteria in Minn. Stat. §§ 144.341 through 144.347. Emancipated minors may give consent for health care services, including the release of information. Parents may not access

behavioral health information on their emancipated child without the consent of that child unless, in the judgment of the provider, failure to disclose the information would seriously endanger the health of the minor.

(2) A minor, emancipated or otherwise, may give effective consent for access to health care regarding the treatment of pregnancy and associated conditions, venereal disease, and alcohol and other drug abuse, and no other consent is required (see Minn. Stat. § 144.343).

(3) Upon collecting private data from a minor, the minor must be informed that the minor may request that the data not be disclosed to the parent(s), but that the provider may only withhold the data if such withholding is determined to be in the best interests of the minor (Minnesota Rule 1205.0500).

c) Deceased offender/resident (see Minn. Stat. §13.10)
Behavioral health information regarding a deceased offender/resident may be released to:
(1) The personal representative of the estate of the decedent during the period of administration;
(2) If no personal representative has been appointed, or after discharge, to the surviving spouse, any child of the decedent; or
(3) If there is no surviving spouse or children, the parents of the decedent.

Private and confidential data regarding a deceased individual becomes public ten years after the death or presumed death of the individual and 30 years after the creation of the data.

6. Audio or video recording of the offender's/resident's clinical sessions may be conducted only with the offender's/resident's informed consent, specifically detailing how the recordings are used and how long they are retained. A sample consent form is found on the behavioral health intranet iShare site.

E. Information disclosure without consent
Offender/resident behavioral health information may be disclosed without an offender's/resident's consent in conformance with state or federal law, rule, or regulation. Many, but not all, such laws are referenced below. Note, in some circumstances, alcohol and drug abuse information has more protection than other behavioral health information and may not be released when state law would ordinarily allow or require disclosure (see Procedure D.3.d), above).

1. Record of disclosures
If a provider discloses information without offender/resident consent as authorized by law, the disclosure must be documented in the offender's/resident's record including the information released and to whom it was released (see Minn. Stat. § 144.293 subd. 9).

2. Sharing with non-providers
Behavioral health information may be shared with department employees, contractors, and community corrections agents whose duties require access (Minnesota Rules 1205.0400 and 7200.4700, subp. 5). The facility behavioral health director determines the amount and type of information to be released. Minn. Stat. § 241.06 requires that:

a) When an offender/resident who is required to register as a predatory offender under Minn. Stat. § 243.166 is being released from prison, the commissioner must provide to the corrections agency that gains supervisory control of the offender/resident, the offender's/resident's prison records relating to psychological assessments, medical and mental health issues, and treatment.

b) When an offender/resident is being released from prison, the commissioner must provide to the corrections agency that gains supervisory control of the offender/resident, the offender/resident prison records relating to that offender's/resident's prison-based substance abuse assessments, treatment, and any other substance abuse-related services provided to the offender/resident. If the offender/resident did not participate in the prison-based substance abuse program to which the offender/resident was directed, the commissioner must provide the supervising agency with an explanation of the reasons.

3. Sharing with providers
Health and behavioral health providers may access behavioral health information without prior authorization when the provider's duties require access.

4. Other agencies
Information may be released to other agencies (including community clinics and hospitals, and other correctional facilities) when an offender/resident who is in the department's custody is transported to that agency for care.

5. The end of confinement review committee (ECRC) has access to all private or confidential medical data, including behavioral health information, for purposes of determining a risk level for community notification purposes (see Minn. Stat. § 244.052).

6. Civil commitments

a) A pre-petition screening team conducting an investigation has access to all relevant medical records of proposed offenders/residents currently in treatment facilities (see Minn. Stat. § 253B.07, subd. 1(b)).

b) Prescribing medication for a committed offender/resident
Upon request of a treating physician, a treatment facility must supply complete information relating to the past records on medication administration of an offender/resident committed under Minn. Stat. § 253B. An offender who has the capacity to authorize the release of information retains the right to make decisions regarding access to medical records.

c) Sex offender commitment preliminary determinations
In making a preliminary determination and recommendation regarding sex offender civil commitment under Minn. Stat. Chapter 253D, the department's assessor has access to all private and confidential corrections data (see Minn. Stat. § 244.05, subd. 7).

d) Sex offender civil commitment
A county attorney pursuing a sex offender civil commitment under Minn. Stat. Chapter 253D may request and receive all documentation maintained by the DOC (see Minn. Stat. § 244.05, subd. 7).

7. Warnings of violence

a) Threats of violence – duty to warn (see Minn. Stat. § 148.975 for psychologists and social workers)

When an offender, resident, or other person has communicated to a provider a specific, serious threat of physical violence against a specific, clearly identified or identifiable potential victim (or, in the case of providers who are social workers, society in general or the offender's/resident's own person), the provider has a duty to warn, or take reasonable precautions to provide protection from, such threatened violent behavior. The duty to warn is discharged if the provider communicates the serious, specific threat to the potential victim; and, if unable to make contact with the potential victim, communicates the serious, specific threat to the law enforcement agency closest to the potential victim or the offender, resident, or other person making the threat. Ambiguity in the interpretation of this section should be resolved in favor of public safety. A sample duty-to-warn letter is found on the behavioral health intranet iShare site.

b) Criminal activity

DOC employees must immediately provide written notification to the appointing authority of any knowledge of criminal activity that has the potential to threaten public safety, the safety of staff or offenders/residents, or the security of a correctional facility (Policy 103.220, "Personal Code of Conduct of Employees"). Such disclosure is authorized by:

(1) Minn. Stat. § 13.85, subd. 5: "[Correctional agencies] may release private or confidential corrections and detention data [which includes behavioral health data] to any law enforcement agency, if necessary for law enforcement purposes."

(2) Rule 7200.4700, subp. 10: [A psychologist may disclose] "private information upon a court order or to conform with state or federal law, rule, or regulation."

8. Medical emergency

Behavioral health information may be released for a medical emergency when the provider is unable to obtain the offender's/resident's consent due to the offender's/resident's condition or the nature of the medical emergency (see Minn. Stat. § 144.293). If this disclosure is to be made via telephone, the provider must verify the legitimacy of the requesting agency.

9. Emergency release of information to law enforcement (see Minn. Stat. § 144.294)

A provider must disclose health records relating to an offender's/resident's mental health to a law enforcement agency if the law enforcement agency provides the name of the offender/resident and communicates that the:

a) Offender/resident is currently involved in an emergency interaction with the law enforcement agency; and

b) Disclosure of the records is necessary to protect the health or safety of the offender/resident or of another person.

10. Hospitalizations

Behavioral health information may be released to communicate an offender's/resident's condition to the offender's/resident's family or emergency contact person in situations

where the offender/resident is unable to effectively communicate (see Policy 203.225, "Emergency Notification – Offender/Resident Hospitalization").

11. Professional misconduct
Behavioral health information may be disclosed when making mandated reports of professional misconduct to licensing boards, or in response to licensing board requests or subpoenas in discipline cases (see Minn. Stat. § 148.941, subd. 4).

12. Litigation
Information is released to the Office of the Minnesota Attorney General when it is representing the DOC in a lawsuit, or as directed by the DOC office of legal affairs.

13. Health threats
A provider who has knowledge or reasonable cause to believe that an offender is a health threat to others (e.g., a sexually-active HIV positive offender/resident who does not use contagion precautions) may report that behavior to the Minnesota Department of Health without offender/resident consent (see Minn. Stat. § 144.4175). Such report must be preceded by supervisory consultation.

14. Providers who have reason to believe that child abuse, prenatal exposure to alcohol abuse or controlled substances, or maltreatment of vulnerable adults has occurred are required to report the information. Such reporting must comply with the requirements detailed in Minn. Stat. §§ 626.556 through 626.557. The provider must consult with the provider's supervisor or the facility behavioral health director, as appropriate.

15. Death of an offender/resident
Upon the death of an offender/resident, behavioral health staff must provide the original mental health record to the DOC office of special investigations in compliance with Policy 203.230, "Death of an Offender."

16. In cases where policy does not clearly address an issue related to the release of information, the staff person or the supervisor must forward the issue to the behavioral health ethics committee, which advises the behavioral health director in making the decision.

17. Behavioral health services supervisory staff perform annual documentation audits, which are maintained in the supervisor's file and discussed with the employee.

INTERNAL CONTROLS:

A. Signed releases of information forms are retained in the offender's/resident's mental health file.

B. Disclosures made without offender/resident consent are documented in the offender's/resident's mental health file.

C. Documentation audits are retained in the employee's supervisory file.

ACA STANDARDS: 5-6A-4366, 5-6B-4393-1

REFERENCES: Minn. Stat. Chapter 13 (Government Data Practices); and §§ 144.291 through 144.298 (Minnesota Health Records Act); 144.341 through 144.347; 144.4175;

148.941, subd. 4; 148.975; 241.06; 243.166; 244.05, subd. 7; 244.052; 253B; 253D; 626.556; 626.557;
Minnesota Rules Parts 1205.0400; 1205.0500; 7200.4700; and 7200.4905
Federal Rule 42 CFR Part 2 (Public Health; confidentiality of patient records)
Policy 103.220, "Personal Code of Conduct of Employees"
Policy 106.210, "Providing Access to and Protecting Government Data"
Policy 106.320, "Offender/Resident Records"
Policy 203.225, "Emergency Notification – Offender/Resident Hospitalization"
Policy 203.230, "Death of an Incarcerated Offender"
Board of Psychology
Board of Social Work
Board of Marriage & Family Therapy
Board of Behavioral Health and Therapy
Board of Medical Practice
Board of Nursing

REPLACES: Policy 500.3071, "Behavioral Health Data Practices," 1/15/19.
All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means, regarding this topic.

ATTACHMENTS: Forms, including the following, are available on the Behavioral Health Staff public iShare site:
Rights of Behavioral Health Clients
Chemical Dependency Client Bill of Rights
Mental Health Informed Consent
Audio or Video Recording Consent
Sample Duty-to-Warn Letter

APPROVALS:
Deputy Commissioner, Community Services
Deputy Commissioner, Facility Services
Assistant Commissioner, Operations Support
Assistant Commissioner, Facility Services