

<p>GEORGIA DEPARTMENT OF CORRECTIONS</p> <p><b>Standard Operating Procedures</b></p>		
<p><b>Policy Name:</b> Confidentiality of Mental Health Records</p>		
<p><b>Policy Number:</b> 508.10</p>	<p><b>Effective Date:</b> 4/27/2018</p>	<p><b>Page Number:</b> 1 of 6</p>
<p><b>Authority:</b> Commissioner</p>	<p><b>Originating Division:</b> Health Services Division</p>	<p><b>Access Listing:</b> Level I: AI Access</p>

**I. Introduction and Summary:**

All mental health information will be regarded as confidential, available to authorized users, and disclosed in accordance with federal and state law and Georgia Department of Corrections (GDC) policy. This procedure is applicable to all GDC facilities with a mental health mission.

**II. Authority:**

- A. O.C.G.A. §§24-9-40 through 24-9-43, 50-18-72 (2), 24-9-47, and 37-3-162;
- B. GDC Standard Operating Procedures (SOPs): 508.04 Credentialing Verification and Privileging, 508.16 Mental Health Levels of Care, and 507.02.02 Confidentiality of the Health Record and Release of Information;
- C. National Commission on Correctional Health Care Standards: 2014 Adult Standard: P-H-02 - Confidentiality of Health Records, and 2014 Juvenile Standard: Y-H-02 Confidentiality of Health Records and Information; and
- D. ACA Standard: 4-4396.

**III. Definitions:**

- A. **Confidentiality** - An expressed or implied promise not to divulge or share certain information except for narrow and defined circumstances. This protection of information from unauthorized disclosure is a result of a professional relationship afforded by professional codes of ethics.
- B. **Disclosure** - The act of transmitting or communicating mental health information to a person who would not otherwise have access thereto.
- C. **Mental Health Primary Care Provider** - Mental Health staff granted any clinical privileges under SOP 508.04 Credentialing Verification and Privileging.

**IV. Statement of Policy and Applicable Procedures:**

- A. Ownership of Mental Health Records and Mental Health Information:
  - 1. A mental health record will be maintained on every offender receiving mental health services while in the custody of the GDC;

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2. The mental health record is the property of the GDC and will be maintained in accordance with professional standards and practices governing mental health records administration; and
3. Except as identified in this SOP, information from offenders' mental Health records shall not be included in institutional or Central Office files.

**B. Access to Mental Health Records:**

1. All mental health records will be kept separate from custody records and stored in a secure area under the control of the mental health unit manager. Mental health records will not be left unattended in areas accessible to unauthorized individuals;
2. A sign-out card will be placed in each mental health record. The person signing out the record will note the date and sign their name. This card will be left in the file cabinet in place of the record; and
3. Direct Access to the Mental Health Record will be Limited to the Following:
  - a. Mental health care providers employed by GDC or the contract vendors who are providing mental health care services to the patient;
  - b. Any member of the offender's treatment team;
  - c. Health care providers employed or contracted with by GDC or the contract vendor;
  - d. Members of the Office of Health Services, Central Office and contract vendors' designated personnel involved in conducting quality improvement studies, audits, or investigating offender health care concerns;
  - e. Individuals conducting research approved by the statewide mental health program supervisor and/or Commissioner of the GDC;
  - f. The Georgia Attorney General's Office or other legal agents of involved parties in the event an offender files a claim or suit relating to the offender's mental health care, against the state or health care agents, including the contract vendor, which results in waiver of confidentiality;
  - g. GDC's Office of Legal Services for purposes of responding to properly authorized requests, as determined by Office of Legal Services attorneys, for

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disclosure of such records and to assist the Georgia Attorney General's Office and other entities in the handling of legal matters;

- h. Offenders or any representative designated by the offender pursuant to Paragraph E of this SOP will have access to their own mental health record for review upon written request to the responsible mental health authority and with reasonable notice; and
- i. Exceptions to (g) are permitted in certain mentally disordered offenders in which the treating Psychiatrist/Psychologist believes that disclosure of mental health information is detrimental to the physical or mental health of the offender and makes a notation to that effect in the mental health record.

C. Access to Mental Health Information for Non-Mental Health Personnel:

- 1. Access to mental health information for non-health personnel who adhere to the same rules of confidentiality as mental health personnel is necessary in certain circumstances for the purposes of;
  - a. Appropriate classification of the offender that includes institutional, housing, programming, and work assignments based on medical limitations and capabilities;
  - b. Ensuring that mental health appointments are kept in a timely manner (e.g., providing a list to correctional staff of offenders who have mental health appointments);
  - c. Appropriately processing disciplinary reports in accordance with SOP 209.01, Offender Discipline; and
  - d. Ensuring compliance with the "heat plan" per SOP 508.24 Psychotropic Medication Use Management.
- 2. Mental health personnel will collaborate with institutional operations and the Georgia Department of Community Supervision (probation and parole) to ensure that adequate mental health information is available for the appropriate classification of offenders. Appropriate security measures will be instituted to prevent unauthorized access to confidential mental health information (e.g., security codes for access in computer systems).

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3. Basic documentation about the offender and the mental health treatment is provided in the confidential mental Health record. Some documents are reviewed and signed by the offender. Documentation can include, but is not limited to, Consent to Mental Health Treatment (M20-02-01), Mental Health Progress Note (M20-02-02), Mental Health Progress Note Number 2 (narrative) (M20-02-02B), Psychiatric Progress Note (M20-02-03) and Refusal of Treatment (M20-02-04).
4. In general, the sharing of mental health information will focus on measures to be taken to provide needed mental health services. Mental health diagnoses will be shared only in circumstances where doing so is necessary to ensure the delivery of services.
5. With the exception of mental health information required for the appropriate classification and assignment of offenders, confidential information from offender's mental health files will not be included in the institutional or Central Office files.
6. Correctional personnel who receive confidential health information, in the course of their duties, will be responsible for maintaining the confidentiality of such information. Correctional personnel shall adhere to the same confidentiality rules as other professionals.

**D. Disclosure of Mental Health Records:**

1. The disclosure of health information complies with the Health Insurance Portability and Accountability Act (HIPAA), where applicable, in a correctional setting. Requests to disclose mental health records to third parties (e.g., attorneys, outside medical facilities, etc.) will be honored upon receipt of a valid written authorization from the offender to release such information. Such authorization will include at a minimum:
  - a. Name of the institution from which the disclosure of information is authorized;
  - b. Name of the individual or institution to receive the information;
  - c. A specific description of the records to be disclosed;
  - d. A date or event on which the authorization shall expire;
  - e. Offender's full name, state ID number, and date of birth;

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- f. Date of authorization;
  - g. Signature of the offender or his/her legal guardian;
  - h. A statement that the offender may revoke the authorization in writing and instructions for submitting such written revocation;
  - i. A statement that treatment, payment, enrollment, or eligibility for benefits may not be conditioned on obtaining the authorization if such conditioning is prohibited by HIPAA;
  - j. A statement regarding the potential for the PHI to be redisclosed by the recipient and no longer protected by HIPAA.
2. The Disclosure of Information Form will be placed in Section 5 of the mental health record with a notation of:
    - a. Description of the specific information that was released;
    - b. Date information was released; and
    - c. Signature of the individual handling the release of information.
- E. Requests for Access to an Offender's Own Mental Health Record and for Photocopying of Records:
1. Offenders who wish to have access to their own mental health record will submit a request in writing to the mental health unit manager or designee who will make arrangements for the offender to inspect the record under the supervision of a staff member. The mental health unit manager or designee will designate a reasonable time for the inspection, with additional time to be scheduled as needed;
  2. Offenders who wish to receive copies of specific information in the record will identify the information desired in writing using the Release of Information form. Arrangements will be made to make a photocopy of the specified information within 30 days. A notation will be made on the form as to what specific information was disclosed to the offender;

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3. Offender's requesting a photocopy of mental health records will be responsible for the reasonable costs of copying and mailing the requested records. The costs to be charged for such copies shall be in accordance with the Medical Records Retrieval Rates fee schedule published by the Georgia Department of Community Health pursuant to O.C.G.A. §31-33-3.
4. Offenders may maintain these copies of records in their possession; however, the GDC will not assume responsibility for the confidentiality or protection of any mental health information disclosed to the offender. Offenders will be advised that correctional officers may inspect envelopes containing mental health records during shakedowns;
5. If the Psychiatrist/Psychologist reasonably determines that disclosure of the record to the patient will be detrimental to the mental health of the patient, the provider may refuse to furnish the record; however, upon such refusal, the patient's record will, upon written request by the patient, be furnished to any other mental health provider designated by the patient. The provider will document reasons for refusal to furnish the record to the patient in the mental health record; and
6. Offenders who wish to have photocopies of mental health records sent to a health care provider, legal representative, or other person designated by the offender (Side 4 of the mental health record), may sign a release of information to have the records disclosed. Payment may be required prior to furnishing the record to a designee other than a health care provider who will be providing treatment.

**F. Certified Copies of Mental Health Records:**

1. Certified copies of the offender's mental health record will be provided upon request and receipt of the proper authorization for disclosure;
2. After the record has been reviewed, but prior to copying, all pages/documents will be clearly numbered in the upper left corner; and
3. A notarized Statement of Authenticity will accompany the copy upon disclosure.

**V. Attachments:** None.

**VI. Record Retention of Forms Relevant to this Policy:** None.