

Privacy of Protected Health Information	1
I. Definitions	2
A. Disclosure	2
B. Health Care Operations	2
C. Health Care Provider.....	2
D. Individually Identifiable Health Information	2
E. Law Enforcement	2
F. Minimum Necessary.....	2
G. Personal Representative.....	2
H. Protected Health Information (PHI).....	3
I. Public Health Authority.....	3
J. Use	3
K. Workforce Members.....	3
II. Privacy of Protected Health Information (PHI) (4-4396M, 4-ACRS-4C-22).....	3
A. Offenders will be afforded the right to privacy	3
B. Access to Protected Health Information.....	3
C. Minimum Necessary Requirements	5
III. Uses and Disclosures When Authorization is Not Required	6
A. Minimum Standards	6
B. Public Health Authorities	6
C. Law Enforcement	6
D. Specialized Government Functions	8
E. Medical Examiners or Coroner	8
F. Funeral Directors.....	8
IV. Accounting of Disclosures of PHI	8
V. Use and Disclosures When Authorization Must Be Obtained (2-CO-1E-07)	9
A. Validation and Content.....	9
B. Completing the Authorization.....	10
VI. Psychiatric/Psychological Protected Health Information	12
A. In accordance with O.S. 43A § 109	12
B. The offender may authorize the release of psychiatric or psychological information	12
C. Release of Psychiatric/Psychological Protected Health Information	12
VII. Drug and Alcohol Abuse Information.....	12
VIII. Human Immunodeficiency Virus (HIV)/Acquired Immunodeficiency Syndrome (AIDS)	13
IX. Use and Disclosure for Notification Purposes	13
X. Disclosure of Health Care Information on Deceased Offenders	13
XI. Refusal of an Authorization	13
XII. Processing PHI for Judicial and Administrative Proceedings.....	14
XIII. Offender Rights to Protected Health Information (PHI)	15
A. Medical Record Review	15
B. Rights to Request an Amendment of Protected Health Information.....	15
XIV. Facsimile Transmission of Protected Health Information.....	16
XV. Administrative Procedures.....	17
XVI. References	17
XVII. Action.....	18
Referenced Forms	19

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Privacy of Protected Health Information

For the purpose of this procedure, the term “offender” will apply to anyone under the authority, custody or care of a prison or a community-based facility operated by or contracted with the Oklahoma Department of Corrections.

I. Definitions

A. Disclosure

The release, transfer, provision of access to, or divulging in any other manner of information outside the Department of Corrections (ODOC).

B. Health Care Operations

Includes functions such as quality assessment and improvement activities, reviewing competence or qualifications of health care professionals, conducting or arranging for medical review, legal services and auditing functions, business planning and development, and general business and administration activities.

C. Health Care Provider

A provider of medical or health services and any other person or organization who furnishes, bills, or is paid for health care.

D. Individually Identifiable Health Information

The information collected from an offender that is created or documented by the health services personnel relating to a past or present medical, dental or mental condition of the individual and/or health care treatment provided to the individual, which either identifies the individual or could be reasonably believed to identify the individual.

E. Law Enforcement

An officer or employee of any agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian Tribe, who is empowered by law to: investigate or conduct an official inquiry into a potential violation of law; or prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

F. Minimum Necessary

The use or disclosure of protected health information by the agency must include reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.

G. Personal Representative

A person who has the authority to act on behalf of an individual in making decisions related to health care.

H. Protected Health Information (PHI)

The individually identifiable health information transmitted by electronic media, maintained in any electronic medium, or transmitted or maintained in any other form of media.

I. Public Health Authority

A governmental agency/authority or a person or entity acting under authority of the agency responsible for public health matters as part of its official mandate.

J. Use

With respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within ODOC.

K. Workforce Members

Employees, volunteers and other persons whose conduct, in the performance of work for the agency are under direct control of the agency.

L. Electronic Health Record (EHR)

An electronic system that contains the offender's protected health information.

M. WebExtender

An electronic system where paper medical files, created prior to the implementation of the EHR, that contain the offenders protected health information are scanned and stored.

II. Privacy of Protected Health Information (PHI) (4-4396M, 4-ACRS-4C-22)

A. Offenders will be afforded the right to privacy of all medical records and other PHI used or disclosed by ODOC in any form, whether electronically, on paper, or orally. ODOC will protect offender information against loss or unauthorized use in accordance with state and federal regulation:

1. Medical services will store offenders PHI in the EHR and in WebExtender.
2. Active medical records will be stored separately from field records. (4-4396M)

B. Access to Protected Health Information

1. Each correctional health services administrator (CHSA) will ensure there are administrative, technical and physical safeguards to reasonably safeguard PHI from intentional or unintentional unauthorized use or disclosure. Access to PHI is governed by federal law, 45 CFR 160 and 164, as well as applicable state laws as referenced within this procedure. (4-4396M)
2. Access to the medical records will be controlled by health services personnel.
3. Offenders will not have access to, or be used in the processing of, medical record information under any circumstances.
4. The CHSA or designee will be responsible for the disclosure of PHI.
5. Authorized appropriate members of the workforce may have access to PHI. All requests for PHI must be in writing through:
 - a. Personnel involved in the individual treatment of the offender.
 - b. ODOC personnel in the performance of their job duties. Only the minimum necessary PHI will be disclosed to preserve the health and safety of an offender, other offenders, volunteers, visitors, or other correctional staff. Examples of appropriate disclosures may include:
 - (1) Known or suspected communicable disease, such as active tuberculosis, to ensure appropriate precautions are taken;
 - (2) Known medical condition, such as a seizure disorder, that may require non-medical staff intervention during transport; or
 - (3) Known medical condition that may require alternative methods of restraint. For example, an offender with a broken arm or leg. (4-4396M)
 - c. PHI provided to ODOC staff to address the medical needs of the offender as it relates to housing, program placement, security and transport, will be done in accordance with the appropriate ODOC procedures as follows: (4-4396M)
 - (1) "Health Assessment for Offender Transfers" ([OP-140113](#));
 - (2) "Community Corrections Assessment" ([OP-060104](#));
 - (3) "Community Corrections Residential Contracts" ([OP-](#)

[030402](#));

- (4) "Screening New Arrivals" ([OP-140114](#)); and
- (5) "Health Assessment" ([OP-140115](#)).

To protect and preserve the integrity of the facility, the health authority is authorized to share with the facility head, pertinent information regarding an offender's medical management.

- d. Personnel involved in lawsuit or litigation or a potential litigator. This may include, but is not limited to:
 - (1) The Attorney General of Oklahoma;
 - (2) Attorneys for ODOC;
 - (3) An investigator designated by the director of ODOC;
 - (4) Attorney who represents the agency liability insurance carrier;
 - (5) Department of Central Services Risk Management Unit; and
 - (6) Special report investigators designated by the general counsel for ODOC. Authorization will be on a case-by-case basis.

C. Minimum Necessary Requirements

1. When using or disclosing PHI, reasonable efforts will be made to limit the PHI to the minimum necessary to accomplish the purpose of the use or disclosure.
2. Reasonable efforts will be made to limit access to the workforce to only the PHI that is needed to carry out assigned duties.
3. Use or disclosure of the entire medical record will not be made unless the use or disclosure of the entire medical record is specifically justified as the amount reasonably necessary to accomplish the purpose of the use or disclosure.
4. Exceptions to the minimum necessary requirement may include:
 - a. Disclosures to the individual who is the subject of the PHI;
 - b. Disclosures made pursuant to an authorization; or

- c. Disclosures to or requests by health care providers for treatment purposes.

III. Uses and Disclosures When Authorization is Not Required

A. Minimum Standards

1. When disclosing PHI, the minimum necessary standards apply:
 - a. For treatment, payment or health care operations; and
 - b. For health oversight activities.
2. PHI can be disclosed to a health oversight agency for oversight activities necessary for the health care operations, including but not limited to:
 - a. Audits;
 - b. Civil, administrative, or criminal investigations;
 - c. Inspections;
 - d. Licensure or disciplinary actions; and
 - e. Civil rights compliance.

B. Public Health Authorities

1. Such entities are authorized by law to collect or receive information for the purpose of preventing or controlling disease, injury or disability, reporting vital events, conducting public health surveillance, investigations or interventions.
2. They are authorized or obligated by law to collect or receive reports of child abuse or neglect if the disclosure is required by law, reports to an authority or agency authorized by law to receive reports to the extent disclosure complies with and is limited to the relevant requirements of the law (e.g., abuse, neglect, domestic violence, reporting of wounds or specific injuries).

C. Law Enforcement

Requests from law enforcement agencies include the following:

1. Court order or court-ordered warrant, subpoena or summons-issued by a judicial officer. The Office of the General Counsel will be contacted before responding to any subpoena or court order.

2. A Grand Jury subpoena; the Office of the General Counsel will be contacted before responding to any subpoena or court order.
3. Administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:
 - a. The information sought is relevant and material to a legitimate law enforcement inquiry;
 - b. The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
 - c. De-identified information could not reasonably be used.
4. Disclosure about an individual, who is suspected to be a victim of a crime, if:
 - a. The individual agrees to the disclosure; or
 - b. The individual is incapacitated or other emergency circumstances provided that:
 - (1) Such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim.
 - (2) Law enforcement activity dependent upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree.
 - (3) The disclosure is in the best interests of the individual.
5. PHI that constitutes evidence of criminal conduct that occurred on the premises or that a death may have resulted from criminal conduct.
6. Serious threats to health or safety when:
 - a. It is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and is to a person reasonably able to prevent or lessen the threat; or
 - b. It is necessary to apprehend an individual where the individual has escaped from lawful custody.

7. PHI belonging to a suspected perpetrator if the victim of a crime is a member of the ODOC workforce.

D. Specialized Government Functions

1. National Security and Intelligence
2. Correctional Institutions
 - a. A correctional institution having lawful custody of an offender may obtain copies of the medical record if the correctional institution represents that such medical information is necessary for:
 - (1) The provision of health care;
 - (2) The health and safety of such individual or other offenders;
 - (3) The health and safety of the officers, employees, or others at the correctional institution;
 - (4) The health and safety of such individuals and officers or other persons responsible for the transporting of offenders from one correctional institution, facility or setting to another; or
 - (5) The administration and maintenance of the safety, security, and good order of the correctional institution.
 - b. An individual is no longer an offender when released, paroled, or placed on probation, supervised release or otherwise is no longer in lawful custody.
3. The Secretary of the Department of Health and Human Services

E. Medical Examiners or Coroner

PHI will be provided in accordance with [OP-140111](#) entitled "Offender Death, Injury, and Illness Notifications and Procedures."

F. Funeral Directors

Required information will be provided in accordance with [OP-140111](#) entitled "Offender Death, Injury and Illness Notification and Procedures."

IV. Accounting of Disclosures of PHI

- A. An offender has a right to receive an accounting of disclosures of PHI released without an authorization except for disclosures:
1. To carry out treatment, payment or health care operations;
 2. For national security or intelligence purposes; or
 3. To correctional institutions.
- B. The CHSA or designee will document all non-authorization disclosures on the "Accounting of Disclosure Form" ([DOC 140108H](#), attached). The "Accounting of Disclosure Form" ([DOC 140108H](#)) will be maintained in the offender's EHR when the offender's PHI has been disclosed or released outside of the agency.
- C. An offender may request a copy of the "Accounting of Disclosure Form" ([DOC 140108H](#)).
- D. All requests for information will be responded to within 30 days of receipt. If the information requested cannot be gathered and submitted to the individual/offender within that period, the offender will be informed in writing by "Acknowledgement of Request for Protected Health Information" ([DOC140108I](#), attached) that the request has been received.
- E. The estimated time of completion may be extended no more than 30 days.
- V. Use and Disclosures When Authorization Must Be Obtained (2-CO-1E-07)
- "Authorization for Release of Protected Health Information" ([DOC 140108A](#), attached) or similar authorization form will be submitted for the disclosure of medical, dental and psychiatric information. (4-4415)
- A. Validation and Content
- Authorization forms must be valid and contain the following information:
1. Expiration date; if a date is not stated, the authorization is valid for 90 days;
 2. Dates of the PHI to be disclosed;
 3. To whom and where the PHI is to be disclosed;
 4. Purpose of the disclosure;
 5. The extent or nature of the PHI to be disclosed;
 6. Date and signature of the offender or personal representative;

7. If signed by personal, legal, or guardian representative, a description of the representative's authority to act on behalf of the offender;
8. Statement the offender has the right to revoke the authorization in writing;
9. Statement that the PHI may not be disclosed without specific written authorization from the offender; and
10. Statement in all caps and bolded in accordance with O.S. § 63 Section 1-502.2(B):

THE INFORMATION AUTHORIZED FOR RELEASE MAY INCLUDE RECORDS WHICH MAY INDICATE THE PRESENCE OF A COMMUNICABLE OR NONCOMMUNICABLE DISEASE.

B. Completing the Authorization

1. Staff will determine if the authorization meets the requirements in Section V. B. items 1-10 of this procedure.
2. The information requested will be printed from the EHR or WebExtender.
3. The original request will be completed by the facility, with the date the request was received, the date disclosed, the initials of the person preparing the request, how many pages were photocopied and the total amount due to ODOC, as outlined below. This will be documented in Section III of [DOC 140108A](#) entitled "Authorization for Release of Protected Health Information."
4. A copy of the authorization will be provided to the offender.
5. The original request will be filed in the appropriate section of the medical record.
6. All requests for information will be responded to within 30 days of receipt. If the information requested cannot be gathered and submitted to the offender, other persons or organizations within that time frame, the person(s) will be informed in writing by "Acknowledgement of Request for Protected Health Information" ([DOC140108I](#)) that the request has been received and an estimated completion date will be provided. The estimated time of completion may be extended no more than 30 additional days.
7. In accordance with O.S. 76 § 19, photocopies of the PHI will be provided to the offender, persons or organizations for a cost of

\$0.50 cents for each page, plus the cost of postage or delivery fee. No mailing fee will be charged for copies provided by facsimile.

- a. Requests for medical records from attorneys, insurance companies and by way of subpoena will be charged a base fee of \$10.00 in addition to the per page charges, plus postage or delivery fee.
- b. Per United States Code of Federal Regulations Section 160.103, records in a digital form will be produced at the rate of \$0.30 cents per page if:
 - (1) The entire request can be reproduced from an electronic health record system;
 - (2) The medical record is specifically requested to be delivered in electronic format; and
 - (3) The medical record can be delivered electronically.

If the records are transmitted electronically, no postage will be charged but a delivery charge will apply. In no event will a charge for the reproduction of electronically stored and delivered medical records exceed \$200.00 plus postage or delivery fee.

- c. The cost of each x-ray or other photograph or image requested will be \$5.00.
8. Payment must be made before disclosing the PHI. If the request is from a person or organization other than the offender, they will be informed of the fee by sending an "Acknowledgement of Request for Protected Health Information" ([DOC140108I](#)). If funds are not available in the offender's trust fund account the cost of photocopying will be collected as soon as funds become available in the offender's trust fund.
 9. All disclosures will be accompanied with an "Acknowledgement of Request for Protected Health Information" ([DOC140108I](#)). A copy will be filed in the medical record.
 10. An offender acting "pro se" during legal proceeding will be entitled to a copy of his or her PHI in accordance with Section V. of this procedure. Payment of photocopies will be in accordance with Section V. B. item 7. above and is required prior to a copy of the PHI being provided to the offender.

11. Correspondence or letters contained in the medical record will not be disclosed or provided to the offender, persons, or organizations when processing a request for PHI.
12. The offender may revoke an "Authorization of Release of Protected Health Information" ([DOC 140108A](#)) by completing the "Revocation of Authorization for Release of Protected Health Information" ([DOC 140108B](#), attached) and submitting the completed form to medical services. The "Revocation of Authorization for Release of Protected Health Information" ([DOC 140108B](#)) will become effective immediately upon receipt by medical staff and placed in the offenders EHR.

VI. Psychiatric/Psychological Protected Health Information

A. In accordance with O.S. 43A § 109, offenders will be entitled to copies of their psychiatric or psychological records unless such access is reasonably likely to endanger the life or physical safety of the offender or another person as determined by the person in charge of the care and treatment of the offender.

B. The offender may authorize the release of psychiatric or psychological information to the offender's attorney or governmental entity.

C. Release of Psychiatric/Psychological Protected Health Information

"Authorization For Release of Protected Health Information" ([DOC 140108A](#)) or similar authorization form will be submitted and completed in accordance with Section IV. items B. and C. of this procedure, but will also include the following information:

1. "Authorization For Release of Protected Health Information Release of Psychiatric/Psychological Records" ([DOC 140108G](#), attached) must also be completed.
2. The treating physician or practitioner must approve the disclosure by signing Section II. of [DOC 140108G](#) to allow the offender to access his/her psychiatric/psychological records.

VII. Drug and Alcohol Abuse Information

Records of the identity, diagnosis, prognosis, or treatment of any offender which is maintained in connection with the performance of any drug or alcohol abuse prevention function conducted, regulated, either directly or indirectly, will be confidential and disclosed only for the purposes and under the circumstances expressly authorized:

A. The disclosure is allowed by a qualified court order;

- B. The disclosure is made to qualified health personnel in a medical emergency or to qualified personnel for research, audit, or program evaluation;
- C. The disclosure is made only to those individuals who have a need for the information in connection with their duty to monitor the offender's progress; and
- D. The offender has signed a written consent.

VIII. Human Immunodeficiency Virus (HIV)/Acquired Immunodeficiency Syndrome (AIDS)

HIV/AIDS protected health information may be disclosed to designated personnel in accordance with [OP-140125](#) entitled "Bloodborne Pathogen Exposure Control Program."

IX. Use and Disclosure for Notification Purposes

The PHI may be disclosed to notify or assist with notification of a family member or personal representative of the offender of his or her general condition or death if:

- A. The offender agrees to the disclosure; or
- B. The offender is incapacitated or an emergency exists, then professional judgment must be made to determine whether the disclosure is in the best interest of the offender.

X. Disclosure of Health Care Information on Deceased Offenders

An executor or administrator of the estate of a deceased offender has the power to authorize the disclosure of protected health information on the deceased offender.

XI. Refusal of an Authorization

ODOC may refuse to honor a written authorization for disclosure of PHI from the offender, other persons or outside organizations for the following:

- A. The authorization is invalid and is not in accordance with Section V. B. items 1-10 of this procedure.
- B. There is reasonable doubt as to the identity of the person presenting the authorization form. If a request is made in person, identification will be required.
- C. There is some question of the offender's mental capacity to know what he or she signed (informed consent).

- D. There is reasonable doubt to suspect the offender's signature is not authentic.
- E. All refusals will be documented on "Acknowledgement of Request for Protected Health Information" ([DOC140108](#)). The form will be sent to the requester and a copy will be filed in the medical record.
- F. In all cases, the CHSA will have the responsibility for final decisions on what medical record disclosures will be made and the circumstances under which disclosures will be made.

XII. Processing PHI for Judicial and Administrative Proceedings

- A. Upon receipt of a court order or subpoena, only the PHI expressly requested will be released.
- B. Processing a subpoena not accompanied by an order of a court.
 - 1. The party seeking the PHI must provide a statement showing good faith attempt to provide written notice to the individual about the litigation; or
 - 2. A signed authorization from the individual must accompany the subpoena.
- C. Upon receipt of a subpoena or court order, the CHSA will:
 - 1. Contact the Office of the General Counsel who will identify the type of subpoena or court order in order to determine whether additional legal processes, such as a court order, are needed before records can be produced. This may include: subpoena ad testificandum, a request for witness to appear only versus subpoena duces tecum, a request for witness to appear and bring specified documents or other tangible things.
 - 2. Read the record or part thereof specified, ensure the entire record is intact, ensure signatures and initials are identifiable, and ensure each sheet is identified with the offender's name and ODOC number.
 - 3. Check the subpoena or court order for requests for additional documents or radiographic images and, after obtaining the additional documents, keep them with the medical record.
 - 4. Copies of the medical record will be submitted unless ordered otherwise.

5. File the original subpoena or court order in the appropriate section of the medical record.
6. A copy of the subpoena will be forwarded to the administrator of Medical Services.

XIII. Offender Rights to Protected Health Information (PHI)

A. Medical Record Review

1. The offender who wishes to review his or her medical record information will make such a request to the CHSA or designee by completing an "Authorization for Release of Protected Health Information" ([DOC140108A](#)).
2. The CHSA or designee will ensure an appointment is scheduled to provide for the review of the medical record within 30 working days following receipt of the request.
3. The offender will be provided a health care professional to interpret or read the health care notations as needed. At no time will the offender be unaccompanied with the medical record nor allowed to make entries or corrections into the medical record. The offender will be allowed to make notes of the record contents for his or her own use.
4. Both the offender and the witness will authenticate the date and time of review with their signature and title on Section II. of [DOC 140108A](#). The original "Authorization for Release of Protected Health Information" ([DOC140108A](#)) will be retained in the medical record with the copy provided to the offender.
5. If an offender wishes to review his or her psychiatric/psychological information, then the treating physician or practitioner must approve the request by signing Section II. of [DOC 140108G](#). If not approved, the offender may not have access to his psychiatric/psychological records.
6. The offender may review the medical record not more than once every six months unless a justification for more frequent review is demonstrated, such as the development of a major illness, major surgery, or other significant health problems.

B. Rights to Request an Amendment of Protected Health Information

1. An offender may request an amendment to his or her PHI, through a "Request for Correction/Amendment of Protected Health Information" ([DOC140108J](#), attached).

2. The request for amendment will be responded to within 60 days of receipt. If a response cannot be submitted to the offender within that time frame, the offender will be informed in writing by the "Request for Correction/Amendment of Protected Health Information" ([DOC140108J](#)), Section II. that the request has been received and an estimated time of completion will be provided.
3. The estimated time of completion may be extended no more than 30 days.
4. The health care provider may deny the request if the PHI:
 - a. Was not created by the Medical Services Unit where the amendment was requested; or
 - b. It is accurate and complete.
5. The offender must be informed in writing of the denial by completing Section II. of the "Request for Correction/Amendment of Protected Health Information" ([DOC140108J](#)).
6. The offender may submit a disagreement statement on the "Request for Correction/Amendment of Protected Health Information" ([DOC140108J](#)). The disagreement statement cannot exceed the allowable space designated on the form.
7. The health care provider may accept the amendment request of the PHI in whole or in part, and he or she must:
 - a. Make the amendment by, at minimum, identifying the affected PHI and appending or otherwise providing a link to the location of the amendment; and
 - b. The offender must be informed of the accepted requested by completing the "Request for Correction/Amendment of Protected Health Information" ([DOC140108J](#)).
8. The denied or accepted "Request for Correction/Amendment of Protected Health Information" ([DOC140108J](#)) must be filed in the medical record.

XIV. Facsimile Transmission of Protected Health Information

All PHI transmitted by fax must have a cover sheet, which includes the following statement:

THIS COMMUNICATION IS INTENDED SOLELY FOR THE INDIVIDUAL OR ENTITY ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, OR PROHIBITED FROM DISCLOSURE. IF

YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY. YOUR COOPERATION IS GREATLY APPRECIATED.

XV. Administrative Procedures

- A. All offender grievances in regards to PHI will be filed in accordance with [OP-090124](#) entitled "Offender Grievance Process."
- B. Employees will be provided training on PHI approved by the medical services administrator or designee during pre-service training. All training will be documented for compliance with federal regulations.
- C. Training records will be maintained in accordance with [OP-100101](#) entitled "Training and Staff Development."
- D. Sanctions against the workforce who fail to comply with this operational procedure will be in accordance with [OP-110215](#) entitled "Rules Concerning the Individual Conduct of Employees."
- E. Any unauthorized use or disclosure of PHI will be reported to the CHSA.
- F. Medical services will mitigate, to the extent practicable, any harmful effects of unauthorized use or disclosure of PHI.

XVI. References

Policy Statement No. P-140100 entitled "Offender Medical, Mental Health and Dental Care"

OP-030402 entitled "Community Corrections Residential Contracts"

OP-060104 entitled "Community Corrections Assessment"

OP-090124 entitled "Offender Grievance Process"

OP-100101 entitled "Training and Staff Development"

OP-110215 entitled "Rules Concerning the Individual Conduct of Employees"

OP-140111 entitled "Offender Death, Injury and Illness Notification and Procedures"

OP-140113 entitled "Health Assessment for Offender Transfers"

OP-140114 entitled "Screening New Arrivals"

OP-140115 entitled "Health Assessment"

OP-140125 entitled "Bloodborne Pathogen Exposure Control Program"

43A O.S. § 1-109

76 O.S. § 19

63 O.S. § 1-502.1-3

45 CFR 160 and 164

42 CFR 2

XVII. Action

The administrator of Medical Services is responsible for compliance with this procedure.

The division manager of Health Services is responsible for the annual review and revisions.

Any exceptions to this procedure will require prior written approval from the director.

This procedure is effective as indicated.

Replaced: Operations Memorandum No. OP-140108 entitled "Privacy of Protected Health Information" dated June 16, 2014

Deleted: OP-140108 Revision-01 dated September 9, 2014

OP-140108 Revision-02 dated March 19, 2015

Distribution: Policy and Operations Manual
Agency Website

<u>Referenced Forms</u>	<u>Title</u>	<u>Location</u>
DOC 140108A	"Authorization for Release of Protected Health Information"	Attached
DOC 140108B	"Revocation of Authorization for Release of Protected Health Information"	Attached
DOC 140108G	"Authorization for Release of Protected Health Information Release of Psychiatric/ Psychological Records"	Attached
DOC140108H	"Accounting of Disclosure Form"	Attached
DOC140108I	"Acknowledgement of Request for Protected Health Information"	Attached
DOC140108J	"Request for Correction/Amendment of Protected Health Information"	Attached

