TN Department of Children's Services

POLICY

20.25 Health Information Records and Access	
Application: All Department of Children's Services and Contract Agency Employees	
Authority: TCA 37-5-105(3), 37-5-106, TCA 10-7-504, TCA 63-11-213, TCA 68-11-304	**Standards: COA:** PA-CR 2.02, PA-CR 2.04, PA-FC 10.02, PA-FC10.05, PA-KC 10.02, PA-RPM 6.01-6.03, PA-RPM 8.01-8.03; PREA: 115. 386, 115.387, 115.388, 115.389
Commissioner:	**Date:**
Original Effective Date: 10/01/98 Current Effective Date: 08/15/11	Supersedes: DCS 20.25 01/15/10 Last Review Date: 08/15/11

Glossary:

- Family Service Worker:
  - A DCS term used to identify the position previously known as the DCS Case Manager or Home County Case Manager. This person is principally responsible for the case and has the primary responsibility of building, preparing, supporting, and maintaining the Child and Family Team as the child and family move to permanence.

Policy Statement:

The Department of Children's Services (DCS) will maintain health information under legal and ethical obligations of confidentiality. A confidential and complete health record must be maintained in a manner consistent with statutory requirements and accepted standards of health care.

Purpose:

DCS staff has a responsibility to ensure health data is kept secure and to make sure a child/youth's rights are maintained and access controls are followed. Our goal is to maintain adequate confidentiality of records while still facilitating appropriate and timely care while in custody.

Procedures:

A. Content

The health record will include assessment and diagnostic reports, medical records, dental records, psychiatric and psychological reports and evaluations, summary data, treatment plans, progress notes, physicians' orders or copies of prescriptions, discharge summaries, medication information, consents, referral forms, and release of information forms, and any other items relevant to facilitate follow-up and promote continuity of care.

B. Storage

All active health records must be stored in a locked and secure area in a Youth Development Center (YDC) and Private Provider Agencies. Health records in a YDC are maintained separately from the case file. Health records kept in resource homes should be maintained in a place that is not easily accessible to unauthorized persons. They do not have to be locked. All health record information held in the Family Service Worker's (FSW)/Juvenile Service Worker's (JSW) master case file will be filed and maintained in accordance with DCS Policy 31.5, Organization of Family Case Files.

C. Access

1. Access to a child/youth's medical and/or mental health information will be in accordance with DCS policies and procedures, state statutes, and Health Insurance Portability and Accountability Act (HIPAA) requirements.
2. For children/youth in resource homes, the FSW/JSW or Health Unit Nurse can determine what health information can be shared with those who have a demonstrated need to know.
3. In Private Provider Facilities, the Director may specify health information that may be shared with staff responsible for supervising the delivery of care to a youth when there is a demonstrated need to know.
4. In a YDC, only authorized personnel may have access to active medical records. A YDC will maintain a list of personnel authorized to have access. When there is a demonstrated need to have access to health information for delivery of care, specific health information may be shared individually with administrative staff responsible for supervising the delivery of care to a youth.
5. A health status report may be provided to individuals, committees, teams, or boards etc., needing health information to consider transfer or classification of the youth or to facilitate appropriate treatment by non-health care staff. The health status report

can be prepared by the YDC nursing staff, the Private Provider Agency case manager, or DCS Family Service Worker. The DCS Regional Health Nurse may be consulted for assistance as needed.

6. Medical and dental records may be released to a physician, dentist, nurse practitioner, another health care or state agency, an attorney representing the youth, the parents of a minor, or the personal representative of a deceased youth formerly in custody in accordance with the specific guidelines listed below. (See section D)
7. Psychiatric and psychological information may be released only to a physician, psychologist, other mental health professionals, or another health care or state agency, including Vocational Rehabilitation and Social Security.
8. A response to the receipt of a valid court order is an **exception** to the aforementioned standards. Medical, dental and psychiatric/psychological records can be released upon receipt of a court order.

D. Release with authorization

1. Information contained in the health record must not be released without authorization from the child/youth, parent/guardian (if minor), personal representative/DCS staff as outlined below.
2. The following is a list of health information that requires the child/youth's authorization to release:
   - **a)** Mental health information, for youths 16 years of age and older. (see *TCA 33-8-202* and *TCA 33-3-103, 33-3-104*, and *33-3-112*);
   - **b)** Information pertaining to any treatment/services related to reproductive health such as prenatal care, STD diagnosis and treatment, contraceptives/family planning services, etc. (see *TCA 63-6-223, 68-10104c*, and *68-34-107*);
   - **c)** Alcohol and substance abuse (A&D) treatment information from a non-DCS provider. (Refer to *42 USCA 290dd-2* and *42 CFR 2.14*; also refer to *TCA 63-6-220*);
     - ♦ DCS may release A&D treatment information from a DCS provider for treatment purposes or when an appeal has been filed about A&D services from a DCS provider.
   - **d)** Any other health information about youth 14 years of age or older. (Refer to "mature minor exception" in Cardwell v. Bechtol (724 S.W. 2d 739) and DCS ***Policy 20.24, Informed Consent***.
3. DCS staff can sign authorizations for release of health information about a child/youth in custody in the following circumstances:
   - **a)** Child/youth is under 14 years of age, in full guardianship of DCS or TPR is in progress, and information to be released is not information pertaining to 2b or 2c above. An authorization form presented for DCS staff signature must specify

type of records/information to be released, from whom, and reason records are needed with expiration date of authorization within 180 days;

b) Child is under 14 years of age, reunification is still permanency goal but parents are unavailable, uncooperative, or parent was the indicated perpetrator of the child's abuse and information to be released is not 2b or 2c above. An authorization form presented for DCS staff signature must specify type of records/information to be released, from whom, and reason records are needed with expiration date of authorization within 180 days;

c) DCS staff may "co-sign" authorizations under 2d above, if needed to facilitate release, but only **after** the youth has signed/dated the form indicating what information they have given permission to release; or

d) Situations 2a-d above, **if and only if**, youth's physical or mental condition makes it impossible for them to authorize release and parent/guardian is unavailable or uncooperative, i.e., child is comatose or so severely intellectually disabled as to not be able to comprehend attorney's explanation of need to obtain records. Child/youth's condition and parental availability as explanation for why DCS staff need to sign must be documented on form or accompanying letter and signed by child's attorney.

4. HIPAA defers to state law regarding the health privacy rights of minors; if state law permits minors to be treated without parental consent and a minor **does** consent, then the minor "owns" the privacy rights to that health information and the minor's authorization is necessary to release the information. The situations in 2 a-d above are the most common situations where minors in Tennessee can be and are routinely treated without parental consent/knowledge, which means that the minor's written authorization is required to release that health information. The minor may choose to release all, part, or none of his/her health information. Information received from outside health care agencies or providers must not be released to other individuals or outside agencies with or without authorization. That information must be obtained from the originating agency or provider directly. However, if the individual or outside agency is providing treatment, payment for treatment, or health care operations, or if it is a DCS private provider, the information can be shared with them without an authorization.

E. Release without authorization

1. No authorization is required to release protected health information for the purposes of treatment, payment for treatment, or health care operations.

2. Health information, except that from outside health care agencies, may be released without a written authorization to the following persons/agencies in the circumstances described:

a) Attorney General – information may be released to the Office of the Attorney General;
b) Health Department – information may be released to local and state health departments concerning reportable diseases in accordance with Tennessee Statutes and Department of Health guidelines;
c) Monitors of health services - information may be released to the YDC Superintendent and/or the Health Services Coordinator for the purpose of monitoring and evaluating the delivery of health services;
d) Emergency personnel – information may be released to treating physicians or other health care professionals in an emergency situation. Telephone requests must be verified;
e) Transfer of care – information may be released to another hospital, treatment facility, or state agency when the youth is transferred for care;
f) Continuity of care – information may be released to the YDC Health Care Administrator, DCS Community Residential facility Directors, DCS Family Service Workers, Private Provider Agencies, and Resource Parents for continuity of care;
g) Reduction of risk – information may be disclosed if the clinician determines that such disclosure is necessary to protect against a substantial risk of death, disease, or injury to self or others or there is a threat to the security of a facility; or
h) Social Security – information may be released to the Social Security Administration as requested.

F. Documentation of records release

Each office and facility shall establish procedures and set up a logging system to record requests for information on both active and closed files for tracking purposes. (See DCS Policy ***9.5 Access and Release of Confidential Child-Specific Information.)***

G. Disclosure of health information to resource parents and prospective resource parents

1. The FSW/JSW shall inform resource parents and agency providers of all significant medical and psychological information related to the placement or potential placement of a child/youth in a home or agency placement. This information shall include, but is not limited to, HIV, hepatitis, fetal alcohol syndrome, and prenatal substance addiction, as well as, physically and sexually aggressive behavior and psychiatric conditions and diagnosis. *Only non-identifying information should be shared before placement in regard to positive HIV or AIDS status*. (See DCS Policy ***20.22, HIV/AIDS***).

2. The prognosis and necessary treatment and precautions shall be disclosed, reviewed and explored with the resource parent or agency providing care or potentially providing care for the child/youth.
3. Information regarding the origin of the illness as related to birth parents, health histories or conditions may not be shared by DCS. It may be appropriate for birth parents to share this information with resource parents within the context of their relationship or during initial or subsequent child and family team meetings. This information shall be held in strict confidence by the resource parents in accordance with all confidentiality agreements.

H. Transfer of a child/youth

1. When a child/youth is transferred, the following health records must be sent with him/her: history and physical, medication records, dental records, EPSDT records, immunizations, consent forms, transfer forms when needed, and physician orders, if indicated.
2. When a child/youth is transferred from a DCS placement to a contract provider placement, or is transferred for placement or treatment on a temporary basis, **copies** of the health records will be sent to the receiving placement prior to or at the time of transfer.

I. Release from custody

1. When a child/youth is released from YDC custody or when the child/youth is on escape status from a YDC for longer than one year, the health records must be placed with the master case file (record maintained at the YDC).
2. When a child/youth is released from foster care, the health records are a part of the master case file (record maintained at the home county office) and the entire file is sent to closed files for storage.
3. Any health information such as TennCare card, immunization records, and **copies** of medical records for follow-up care are to be sent with the child/youth to the family home, adoptive home, or with the youth if emancipated.

J. Youth access to records

1. Health records may not be released directly to the child/youth except by court order unless a child/youth is personally involved in a lawsuit directly involving medical issues that would require use of his/her medical records. The Office of the Attorney General and the DCS staff attorney will verify.

2. Children/youth desiring to review his/her own health record must make a written request to the FSW/JSW or the YDC Health Care Administrator. The request must include the purpose of the review and the specific information requested. Arrangements will be made for the specific information to be reviewed in the presence of a health care professional.

   If a child/youth desires to have another individual present during his/her review of their health information, form ***CS-0559, Authorization for Release of Information of HIPAA Protected Health Information TO and FROM the Department of Children's Services and Notification of Release***

3. must be completed prior to the review.
4. Prior to reviewing the health information with the child/youth, the records must be purged of all psychiatric and psychological materials, any information received from outside sources, and any information that might jeopardize the safety of the child/ youth or the facility.
5. Psychiatric and psychological records cannot be reviewed by a child/youth without consultation with the treating or other knowledgeable psychiatric or psychological professional. If the mental health professional believes that the content of the records should not be released to the youth, or that they should be released only in part or under special conditions, due to the anticipated effect upon the child/youth, the records or any part thereof may be withheld pending a court order to release them.

K. Documentation of transfer of records and releases

Information about records sent to another entity should be documented in **TFACTS** and a copy of a release of health information must be included in the health record. If the child/youth is reviewing the record, specific information regarding the specific records included in the review and who was present during the review should be documented in **TFACTS**.

Forms:

CS-0559, Authorization for Release of Information of HIPAA Protected Health Information TO and FROM the Department of Children's Services and Notification of Release

Collateral Documents:

DCS Policy ***9.5, Access and Release of Confidential Child-Specific Information***