**Section 107.330 Release of Clinical Records to Offenders and Authorized Attorneys (Adult Facilities Excluding Transition Centers)** – **Court Agreement**

a) Definitions

1) Offender – A person who is or has been in the custody of the Department.

2) Authorized Attorney – Any attorney authorized in writing by the offender to inspect and copy his or her clinical records.

3) Clinical Record – Any mental health record, maintained by the Department, prepared by a therapist in the course of providing mental health services to an offender. Clinical record does not include the therapist's personal notes, if those notes are kept in the therapist's sole possession for his or her own personal use and are not disclosed to any other person, except the therapist's supervisor, consulting therapist or attorney. If, at any time, the notes are otherwise disclosed, they shall be considered part of the offender's record for purposes of this Section. Clinical record does not include testing material used in the course of providing services if the disclosure of the material would compromise the objectivity or fairness of the testing process.

4) Information not subject to inspection and copying by a an offender – Information contained in clinical records, the disclosure of which a therapist certifies in writing is likely to result in physical harm to the offender, other offenders or Department employees, contractors or volunteers.

5) Therapist – A psychiatrist, physician, psychologist, counselor, social worker or nurse providing mental health services.

6) Mental Health Services – Psychiatric or psychological evaluation or treatment, or pharmaceuticals, or developmental disabilities programming.

b) Rights of and Limitations on Record Access

1) An offender or authorized attorney may have access to and copy all clinical records contained in any file maintained by the Department, provided:

A) The offender consents in writing to the access to and copying of the records by an authorized attorney; and

B) Information not subject to access and copying by an offender may be deleted from records otherwise available to an offender in accordance with procedures established in this Section. Information not subject to access and copying by an offender shall be made available to an authorized attorney provided the attorney agrees in writing not to disclose that information to the offender or any other person who may redisclose it to the offender.

2) All requests by the offender and authorized attorneys to inspect or copy clinical records must be made in writing and must contain a release of the Department and its employees from any liability to the offender as a result of disclosure or dissemination of the records or the information contained in the records, resulting from the access permitted to the authorized attorney or offender.

3) The Department shall comply with all written requests for records:

A) By promptly producing copies of records after either payment of copying costs by the offender or authorized attorney or a waiver of costs by the Department. Costs shall be waived upon a showing of the offender's indigency. The determination of indigency shall be made promptly by the officers to whom the written request is sent, in accordance with subsection (c)(1) of this Section; or

B) By promptly making the requested records available for inspection.

c) Processing of Requests for Record Access

1) All written requests:

A) With regard to the clinical records of offenders currently committed to a Department facility should be directed to the Chief Administrative Officer of the institution in which the person resides;

B) With regard to the clinical records of offenders on authorized absence from a facility or transferred to an Illinois Department of Human Services-Division of Mental Health or Division of Developmental Disabilities facility should be directed to the Chief Administrative Officer of the institution in which the person last resided;

C) With regard to the clinical records of offenders currently on parole or mandatory supervised release should be directed to the Chief Administrative Officer of the institution from which the offender was paroled or released; and

D) With regard to the clinical records of persons formerly committed to the Department should be directed to the supervisor of the Department's microfilm center in Springfield.

2) Upon receipt of the request for records, the records office supervisor, supervisor of the microfilm center, or a designee, shall either:

A) Promptly make the records available for inspection by the offender or authorized attorney; or

B) Promptly forward copies of the records to the offender or authorized attorney after payment or waiver of the costs.

3) The author of the reports or, if the original author is unavailable, a qualified therapist, may examine all records requested.

A) If the author or another therapist certifies in writing that the disclosure of information to the offender is likely to result in physical harm to the offender or other persons:

i) The information may be deleted from the records disclosed to the offender; and

ii) The author's or therapist's certificate shall be attached to the records inspected and copied by all persons.

B) If a document contains information certified to be likely to result in physical harm to the offender or others, only the information so certified may be deleted from the records disclosed to the offender.

4) The Department shall maintain a record in each offender's file that indicates:

A) The parties who have requested to inspect or copy clinical records; and

B) The clinical records inspected or copied.

d) Before this Section is modified, Department legal staff must be consulted. This Section was promulgated pursuant to settlement of litigation by order of the court. It may not be modified without approval of the court.

(Source: Amended at 37 Ill. Reg. 1598, effective February 1, 2013)