

February 22, 2016

NOTICE OF PROPOSED RULE

DEPARTMENT OF CORRECTIONS

RULE NO.: 33-401.701

RULE TITLE: Medical and Substance Abuse Clinical Files

PURPOSE AND EFFECT: The purpose and effect of the amendment is to add references to a new Form, namely DC4-711Bsp, which is the Spanish-language version of Form DC4-711B.

SUMMARY: The proposed rulemaking adds several references to Form DC4-711Bsp, which is the Spanish-language version of Form DC4-711B. These forms are referenced numerous times throughout this rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE

RATIFICATION: The Department has determined that this rule will not have an adverse impact on small business and is not expected to directly or indirectly increase regulatory costs more than \$200,000 within a year of taking effect. A SERC has not been prepared by the Department. The Department has determined that the proposed rule is not expected to require legislative ratification based on the SERC or, if no SERC is required, the information expressly relied upon and described herein: upon review of the proposed changes to the rule, the Department has determined that the amendments will not exceed any one of the economic analysis criteria in a SERC as set forth in s. 120.541(2)(a), FS. Any person who wishes to provide information regarding the statement of estimated regulatory costs or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 944.09,945.10 FS

LAWS IMPLEMENTED: 119.07, 395.3025, 944.09, 945.10, 945.25, 945.6034 FS

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR. THE PERSON TO BE CONTACTED REGARDING THE PROPOSED

RULE IS: Adam Stallard, 501 South Calhoun Street, Tallahassee, Florida 32399-2500.

THE FULL TEXT OF THE PROPOSED RULE IS:

33-401.701 Medical and Substance Abuse Clinical Files.

33-401.701 Medical and Substance Abuse Clinical Files.

(1) through (9) No change

(10) Use and disclosure of protected health information.

(a) through (c) No change

(d) If use or disclosure of an inmate's protected health information is not otherwise permitted by law, an inmate must authorize the use or disclosure by giving written consent using Form DC4-711B, Consent and Authorization for Use and Disclosure Inspection and Release of Confidential Information, or Form DC4-711Bsp. its Spanish- language version, or a legally approved, HIPAA compliant release of protected health information form from another governmental agency. Form DC4-711B and Form DC4-711Bsp are incorporated by reference in Rule 33-601.901, F.A.C.

(e) Form DC4-711B, DC4-711Bsp, or any other authorization used for these purposes shall be submitted with the written request for access to an inmate's protected health information. A copy of the authorization shall be provided to the inmate and the inmate shall acknowledge receipt of the copy by signing in the appropriate location on the authorization. The authorization and acknowledgement of receipt of copy shall become a part of the inmate's medical file.

(f) Form DC4-711B, DC4-711Bsp, or any other authorization used for these purposes must be notarized unless witnessed by a member of the Department's workforce when the authorization is not from a current inmate personally known to the witness or is from a source external to the Department. All authorization forms shall be witnessed by at least one person who can verify the fact that he witnessed the signing of the authorization by the inmate and that, to the best of his knowledge, the inmate knew what was signed.

(g) through (h) No change

(i) In accordance with 45 C.F.R. § 164.502, a personal representative of a living inmate shall have access to or authorize the disclosure of the inmate's protected health information that is relevant to the personal representative's legal authority to make health care decisions on behalf of the inmate. Form DC4-711B, Form DC4-711Bsp, or any other authorization used for these purposes Consent and Authorization for Use and Disclosure Inspection and Release of Confidential Information shall be signed by the inmate or the inmate's personal representative in accordance with Florida law. In accordance with 45 C.F.R. § 164.514(h)(1), the Department shall verify and document the authority of the personal representative to serve in that capacity.

G) through (m) No change

(11) Alcohol and Drug Abuse Treatment Files: Any information, whether recorded or not, concerning the identity, diagnosis, prognosis or treatment of any inmate or offender which is maintained in connection with the performance of any alcohol or drug abuse prevention or treatment function shall be confidential and shall be disclosed only as follows:

(a) No change

(b) Pursuant to 42 C.F.R. Part 2, the department is authorized to disclose information about an inmate or offender to those persons within the criminal justice system who have made participation in the program a condition of the disposition of any criminal proceedings against the inmate or offender or of the inmate or offender's parole or other release from custody if:

1. No change

2. The inmate or offender has signed Form DC4-711B, Form DC4-711Bsp, or any other authorization used for these purposes meeting the requirements of subsection paragraph .QQ1f9jW except for the revocation provision in paragraph subparagraph .QQ2(g) — This written consent shall state the period during which it remains in effect.

This period shall be reasonable, taking into account:

a. through c. No change

(c) through (d) No change

Rulemaking Authority 944.09, 945.10 FS. Law Implemented 119.07, 395.3025, 944.09, 945.10, 945.25, 945.6034 FS. History-New 4-15-10, Amended 8-6-13, \_\_\_\_\_

NAME OF PERSON ORIGINATING PROPOSED RULE: Olugbenga Ogunsanwo, M.D., Assistant Secretary for Medical and Health Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Julie L. Jones, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 27, 2016

DATE NOTICE OF PROPOSD RULE DEVELOPMENT PUBLISHED IN FAR: December 23,2015