

	<b>ADMINISTRATIVE REGULATION</b>  Department of Correctional Services State of Nebraska	NUMBER  115.23	PAGE 1 of 10
		<b>MENTAL HEALTH SERVICES</b>	

**This Administrative Regulation is to be made available in law libraries or other inmate resource centers.**

- EFFECTIVE: March 18, 1983
- REVISED: February 27, 2004
- REVISED: October 31, 2005
- REVIEWED: August 31, 2006
- REVISED: November 30, 2007
- REVISED: October 22, 2008
- REVISED: October 27, 2009
- REVISED: October 27, 2010
- REVISED: October 31, 2011
- REVISED: December 7, 2012
- REVISED: November 20, 2013
- REVISED: December 5, 2014
- REVISED: October 30, 2015
- REVISED: October 31, 2016

**SUMMARY of REVISION/REVIEW**

Multiple revisions throughout.

APPROVED:

  
 \_\_\_\_\_  
 Dr. Randy Kohl,  
 Deputy Director Health Services

  
 \_\_\_\_\_  
 Scott R. Frakes, Director  
 Nebraska Department of Correctional Services

	<p style="text-align: center;"><b>ADMINISTRATIVE REGULATION</b></p> <p style="text-align: center;"><b>Department of Correctional Services State of Nebraska</b></p>	<p style="text-align: center;">NUMBER</p> <p style="text-align: center;">115.23</p>	<p style="text-align: center;">PAGE</p> <p style="text-align: center;">2 of 10</p>
		<p><b>MENTAL HEALTH SERVICES</b></p>	

PURPOSE

To provide for the mental health needs of inmates including the detection, diagnosis, treatment and referral of inmates with mental health problems.

GENERAL

It is the policy of the Nebraska Department of Correctional Services (NDCS) that there is written policy, procedure, and practice, approved by the appropriate mental health authority, to provide for all activities carried out by mental health services personnel, which specify the provision of mental health services for inmates. These services include but are not limited to those provided by qualified mental health professionals who meet the educational and license/certification criteria specified by their respective professional disciplines or mental health trained staff. Mental Health employees who work for other public or private agencies shall have their duties and responsibilities specified in a contract or other type of agreement. Students or interns delivering mental health services in any institution shall work under Mental Health staff supervision commensurate with their level of training. There is a written agreement between the facility and training or educational facility that covers the scope of work, length of agreement, and any legal or liability issues.

There is a written suicide prevention and intervention program that is reviewed and approved by the Medical Director. (Administrative Regulation (AR) 115.30, *Suicide Prevention/Intervention*). All staff with responsibility for inmate supervision are trained in the implementation of the program.

Operational Memoranda, specifically addressing mental health services, policies and practices shall implement this AR in specific facilities/programs within NDCS.

PROCEDURE

- I. The Behavioral Health Assistant Administrator for Mental Health shall report to the Behavioral Health Administrator.
- II. The operation and administration of the Mental Health Department shall comply with facility procedure. Security regulations applicable to facility personnel shall apply to mental health personnel.
- III. A documented external peer review program for mental health professionals is used by facilities every two years per the procedures specified in Medical Protocol 29.
- IV. Internal peer review is completed approximately annually at each facility that provides mental health services per the procedures specified in Medical Protocol 36.
- V. Each institution shall ensure that appropriate physical facilities and professional mental health staff are available to provide mental health services. The mental health program that includes at a minimum:
  - A. Screening for mental health problems on intake as approved by the mental health professional.
  - B. Outpatient services for the detection, diagnosis, and treatment of mental illness.
  - C. Crisis intervention and the management of acute psychiatric episodes.

	<p style="text-align: center;"><b>ADMINISTRATIVE REGULATION</b></p> <p style="text-align: center;"><b>Department of Correctional Services State of Nebraska</b></p>	<p>NUMBER</p> <p>115.23</p>	<p>PAGE</p> <p>3 of 10</p>
		<p><b>MENTAL HEALTH SERVICES</b></p>	

- D. Stabilization of the mentally ill and monitoring for psychiatric deterioration in the correctional setting.
- E. Elective therapy services and preventive treatment where resources permit.
- F. Provision for referral and admission to licensed mental health facilities for inmates whose psychiatric needs exceed the treatment capability of the facility.
- G. Procedures for obtaining and documenting informed consent.

When mental health care services are rendered against an inmate's will, it is in accordance with state and federal laws and regulations. Otherwise, any inmate may refuse (in writing) mental health care services.

- H. Mental health care encounters, interviews, examinations, and procedures should be conducted in a setting that respects the inmate's privacy.

VI. Each institution shall provide written policy and procedure for the identification of special needs inmates (AR 115.12, *Special Needs Inmate Programs*). Each institution shall ensure that psychiatric consultation is available for the management and treatment of inmates with special needs. The availability of appropriate resources either within the institutions or within the community for treating those inmates who are diagnosed with major mental illness by a qualified psychiatrist, psychologist or licensed independent mental health practitioner shall be distributed by the Behavioral Health Administrator or the Behavioral Health Administrative Assistant – Mental Health.

Major mental illness is defined as one of the following:

- A. A DSM 5 diagnosis of one or more of the following: Schizophrenia, Delusional Disorder, Schizophreniform Disorder, Schizoaffective Disorder, Brief Psychotic Disorder, Substance-Induced Psychotic Disorder (excluding intoxication and withdrawal), Other Specified Schizophrenia Spectrum and Other Psychotic Disorder, Major Depressive Disorder, and Bipolar Disorder I and II.
- B. A DSM 5 diagnosis of one or more of the following and meeting the threshold for high severity depressive disorder, other mood disorder, posttraumatic stress disorder, obsessive compulsive disorder, panic disorder, or other anxiety disorder.

High severity is defined as one or more of the following: current functional impairment which causes clinically significant distress or impairment in social, occupational, or other important areas of functioning, multiple prior hospitalizations for mental illness, prior mental health board commitment, multiple suicide attempts and/or high lethality attempt(s).

VII. All intersystem and intrasystem transfer inmates will receive an initial mental health screening at the time of admission to the facility by mental health trained or qualified mental health care personnel. The mental health screening includes, but is not limited to:

- A. Inquiry into:
  - 1. Whether the inmate has a present suicide ideation

	<b>ADMINISTRATIVE REGULATION</b>  <b>Department of Correctional Services State of Nebraska</b>	<b>NUMBER</b>  115.23	<b>PAGE</b> 4 of 10
		<b>MENTAL HEALTH SERVICES</b>	

2. Whether the inmate has a history of suicidal behavior
3. Whether the inmate is presently prescribed psychotropic medication
4. Whether the inmate has a current mental health complaint
5. Whether the inmate is being treated for mental health problems
6. Whether the inmate has a history of inpatient and outpatient psychiatric treatment
7. Whether the inmate has a history of treatment for substance abuse

**B. Observation of:**

1. General appearance and behavior
2. Evidence of abuse and/or trauma
3. Current symptoms of psychosis, depression, anxiety, and/or aggression

**C. Disposition of inmate:**

1. To the general population
2. To the general population with appropriate referral to mental health care services
3. Referral to appropriate mental health care services for emergency treatment

VIII. During an inmate's initial medical/mental health screening, if it is determined that the inmate was receiving psychiatric and /or psychological services and/or psychotropic medication immediately prior to incarceration, the inmate will be requested to sign a release of information for prior treatment records. Any inmate determined to have been under psychiatric or psychological care immediately prior to incarceration shall be referred to the consulting or staff psychiatrist or Behavioral Health Assistant Administrator for Mental Health/designee to determine the need for continued mental health treatment and subsequent provision of such services. Psychotropic medications will be continued as prescribed upon incarceration or placement in NDCS custody from parole status until the inmate is seen by a NDCS employed or contracted prescriber (psychiatrist preferred, if available).

When an inmate is transferred to another facility within NDCS, psychotropic medication will be continued as ordered until the patient is seen by the facility employed or contracted prescriber (psychiatrist preferred, if available).

	<b>ADMINISTRATIVE REGULATION</b>  <b>Department of Correctional Services State of Nebraska</b>	<b>NUMBER</b>  115.23	<b>PAGE</b> 5 of 10
		<b>MENTAL HEALTH SERVICES</b>	

- IX. All intersystem inmate transfers will undergo a mental health appraisal by a qualified mental health person within 14 days of admission to a facility. If there is documented evidence of a mental health appraisal within 90 days, a new mental health appraisal is not required, except as determined by the designated mental health authority. Mental health appraisals include, but are not limited to:
- A. Assessment of current mental status and condition
  - B. Assessment of current suicidal potential and person-specific circumstances that increase suicide potential
  - C. Assessment of violence potential and person-specific circumstances that increase violence potential
  - D. Review of available historical records of inpatient and outpatient psychiatric treatment
  - E. Review of history of treatment with psychotropic medication
  - F. Review of history of psychotherapy, psychoeducational groups, and classes or support groups
  - G. Review of history of drug and alcohol treatment
  - H. Review of educational history
  - I. Review of history of sexual abuse-victimization and predatory behavior
  - J. Assessment of drug and alcohol abuse and/or dependence
  - K. Use of additional assessment tools, as indicated
  - L. Referral to treatment, as indicated
  - M. Development and implementation of a treatment plan, including recommendations concerning housing, job assignment, and program participation
- X. Inmates referred for mental health treatment (Attachment A - Mental Health/Medical Referral Form) will receive a comprehensive evaluation by a licensed mental health professional. The evaluation is to be completed within 14 days of the referral receipt date and include at least the following:
- A. Review of mental health screening and appraisal data.
  - B. Direct observation of behavior.
  - C. Collection and review of additional data from individual diagnostic interviews and tests assessing personality, intellect, and coping abilities.
  - D. Compilation of the individual's mental health history.

	<b>ADMINISTRATIVE REGULATION</b>  <b>Department of Correctional Services State of Nebraska</b>	<b>NUMBER</b>  115.23	<b>PAGE</b> 6 of 10
		<b>MENTAL HEALTH SERVICES</b>	

- E. Development of an overall treatment/management plan with appropriate referral to include transfer to mental health facility for inmates whose psychiatric needs exceed the treatment capability of the facility.

**XI. HEALTH REVIEW PRIOR TO PLACEMENT IN RESTRICTIVE HOUSING**

Prior to placing an inmate in restrictive housing the shift supervisor will initiate the medical assessment. Health services staff must conduct a face-to-face assessment of the inmate to identify any physical injuries, urgent mental health needs, or other emergent or urgent conditions.

- A. If during the initial screening by health services staff, concerns about mental health status are noted, the inmate shall be seen by mental health staff for a one-on-one, out-of-cell assessment within 24 hours.
  - 1. 24 hours is from the time of placement on Immediate segregation status as noted by the shift supervisor.
  - 2. If the mental health needs are deemed to be emergent, the inmate shall be held in a location other than restrictive housing until a mental health screening can be completed by mental health staff.
- B. Inmates placed on Immediate Segregation status will be housed in the restrictive housing, secure mental health housing, or a skilled nursing facility in response to the medical/mental health assessment.

**XII. The Behavioral Health Assistant Administrator for Mental Health shall maintain a Mental Health Care Record for each inmate that provides complete and accurate information on all mental health contacts during the course of his/her incarceration. The Mental Health Care Records and mental health client information are confidential and are to be treated as such by all personnel.**

Those charged with the responsibility for collecting, assembling, maintaining or releasing information have a duty to respect and protect that confidentiality.

- A. A Mental Health Care Record is the responsibility of the Behavioral Health Assistant Administrator for Mental Health or designee.
- B. The Mental Health Care Record shall be maintained separately from the Inmate Master Record File that is maintained in the Records Office at the institution in which the inmate resides. Mental Health Care Records are maintained in a location within the Mental Health department at the institution in which the inmate resides.
- C. The Mental Health staff shall include the following, as appropriate, when recording entries in the record:
  - 1. Summary of what the inmate states is the problem;
  - 2. Observation of the inmate's behavior;
  - 3. Assessment of the inmate's problem;

	<b>ADMINISTRATIVE REGULATION</b>  <b>Department of Correctional Services State of Nebraska</b>	<b>NUMBER</b>  115.23	<b>PAGE</b> 7 of 10
		<b>MENTAL HEALTH SERVICES</b>	

4. Plan of action.
- D. The Mental Health Care Record shall be used whenever Mental Health staff interviews the inmate. An entry shall be logged on the Mental Health Contact Notes form for each inmate therapy contact (Attachment B - Mental Health Contact Notes).
1. All therapeutic contacts with inmates shall be documented in the inmate's Mental Health Care Record on the date the contact occurs. If the inmate's Mental Health Care Record is not available, such documentation shall occur on a blank Mental Health Contact Note or record form as soon as possible following the contact.
  2. Group contact notes shall be completed as soon as possible following the contact.
  3. It is mandatory that all crisis contacts (i.e., with an inmate with possible suicidal ideation, homicidal ideation) be documented in writing the day of the contact. If the inmate's Mental Health Care Record is not available, the documentation can be made in the Psychiatric section of the Health Care Record, with a copy being placed in the Mental Health Care Record at least by noon the first workday following the contact.
  4. Mental Health Contacts with inmates in one of the Department's skilled nursing facilities shall be made in the Psychiatric section of the Health Care Record, with a copy being placed in the Mental Health Care Record as soon as possible following the contact, but at least by noon of the first workday following the contact.
  5. The complete Mental Health Care Record may contain information from the following areas: Individual contact notes, group therapy notes, psychiatric consultations, psychological evaluations, psychological testing data, classification study including medical reports, treatment plans, summaries of treatment, review notes, and other pertinent data.
  6. Electronic Mental Health Care Records are considered equivalent to paper records.
- E. Outside information and all information not generated by NDCS shall be kept in a separate file inside the Mental Health file and labeled "Outside Information".
- F. When an inmate is transferred from one correctional facility to another, the original Mental Health Care Record for that person shall be transferred to the Mental Health Department of the receiving facility at the time of transfer, provided there is qualified mental health staff to receive the record.
- G. When an inmate is discharged from a correctional facility, paroled, dies or is placed in a community corrections program, the Mental Health Care Record shall be maintained in a secure setting as specified by the Behavioral Health Assistant Administrator for Mental Health.
- H. Inactive Mental Health Care Records shall be filed and retained as permanent records. They will be maintained and stored in a secure area as determined by the

	<p style="text-align: center;"><b>ADMINISTRATIVE REGULATION</b></p> <p style="text-align: center;"><b>Department of Correctional Services State of Nebraska</b></p>	<p style="text-align: center;">NUMBER</p> <p style="text-align: center;">115.23</p>	<p style="text-align: center;">PAGE</p> <p style="text-align: center;">8 of 10</p>
		<p><b>MENTAL HEALTH SERVICES</b></p>	

Behavioral Health Assistant Administrator for Mental Health. Inmates who have been discharged from NDCS shall have their Mental Health files maintained per the NDCS approved records retention schedule.

I. Confidentiality and Release of Mental Health Information:

1. The principle of confidentiality applies to an inmate's Mental Health Care Record and information about an inmate's mental health status.
2. Access to the Mental Health Care Records shall be controlled by the Behavioral Health Assistant Administrator for Mental Health or designee and shall not be granted without a court order except as stated below.
  - a. All NDCS Social Work, Substance Abuse, Reentry Specialists, contract medical and mental health personnel, including psychiatrists and treating physicians, with a demonstrated need to know may have professional access to mental health records without authorization from the inmate.
  - b. The Behavioral Health Assistant Administrator for Mental Health or designee shall also share information regarding an inmate's management, security and ability to participate in programs with the Warden/ designee of the facility or the Parole Board Administrator on a demonstrated need-to-know basis. The Warden/designee or Parole Board Administrator with a demonstrated need to know may have access to the Mental Health Care Records without authorization from the inmate. Only information necessary to preserve the health and safety of an inmate, other inmates, volunteers, visitors, or NDCS staff is provided.
  - c. The Behavioral Health Assistant Administrator for Mental Health or designee shall also share information regarding an inmate's treatment recommendation/s and/or treatment program involvement with NDCS staff, behavioral health, social work, reentry, the Discharge Review Team, Office of Probation Administration, Board of Parole, law enforcement, potential victims, the Department of Health and Human Services, Regional Behavioral Health Authorities or their contractors, or other experts in the field for the purposes of safety and security, formulating release plans, coordinating continuing care, mitigating risk to the patient or to others, consultation with experts, and for purposes of the Nebraska Mental Health Commitment Act.
  - d. Attorneys representing NDCS in litigation are free to examine the Mental Health Care Record without the inmate's written or verbal permission.
  - e. The release of departmental-generated information from Mental Health Care Records shall be controlled by the Behavioral Health Assistant Administrator for Mental Health or designee and shall not be granted without a court order or as stated below.

	<b>ADMINISTRATIVE REGULATION</b>  <b>Department of Correctional Services State of Nebraska</b>	<b>NUMBER</b>  115.23	<b>PAGE</b> 9 of 10
		<b>MENTAL HEALTH SERVICES</b>	

1) Other State Agencies

A release of information shall be obtained from the inmate using either the Nebraska Department of Correctional Services' 'Authorization for the Release of Information' (Attachment C) or appropriate release form received from the requesting agency.

2) Physicians and Health Care Institutions

Requests for Mental Health Care Record information by outside physicians or health care institutions may be granted upon proper written authorization from the inmate.

3) Workers' Compensation Claims

Mental Health Care Record information may be released to an employee (present or former), an employer, the carrier, and the Workers' Compensation Court in accordance with Nebraska's Workers' Compensation Act. (Neb. Rev. Stat. §48-120(4)).

4) Nursing Homes

Mental Health Care Record information may be released to nursing homes with a written authorization from the inmate.

3. An inmate may request access to his/her psychological and Mental Health Care Record, and the Department will allow inmates access to their psychological and mental health records upon request unless any treating physician, psychologist, or mental health practitioner determines in their professional opinion that release of the records would not be in the best interest of the patient unless the release is required by court order. (Neb. Rev. Stat. §71-8403).

4. Original Mental Health Care Records Leaving Mental Health Department

- a. The original Mental Health Care Record or information contained therein is not to leave the Mental Health Department unless so specified by Court Order (Neb. Rev. Stat. §83-287). If a copy is acceptable as evidence, the original shall be returned to the Mental Health office.
- b. No original documentation of Mental Health contacts with an inmate shall be removed from the Mental Health area of the facility at which the inmate is housed.

XIII. Mental Health employees who work for other public or private agencies shall have their duties and responsibilities specified in a contract or other type of agreement. An outside employment form shall be completed and reviewed per NDCS policy. Students or interns delivering mental health services in any institution shall work under direct mental health staff supervision commensurate with their level of training.

	<b>ADMINISTRATIVE REGULATION</b>  <b>Department of Correctional Services State of Nebraska</b>	<b>NUMBER</b>  115.23	<b>PAGE</b> 10 of 10
		<b>MENTAL HEALTH SERVICES</b>	

REFERENCE

I. STATUTORY REFERENCE:

- A. Neb. Rev. Stat. §71-8403
- B. Neb. Rev. Stat. §48-120

II. ADMINISTRATIVE REGULATIONS

- A. AR 115.12, *Special Needs Inmate Programs*
- B. AR 115.30, *Suicide Prevention/Intervention*

III. ATTACHMENTS

- A. Mental Health/Medical Referral Form DCS-A-mnh-004 (11/98)
- B. Mental Health Contact Notes DCS-A-mnh-005 (6/99)
- C. Authorization for the Release of Information DCS-A-adm-009 (07/12)

IV. AMERICAN CORRECTIONAL ASSOCIATION (ACA) STANDARDS

- A. Standards for Adult Correctional Institutions (ACI) (4th edition) 4-4368
- B. Performance Based Standards for Adult Community Residential Services (ACRS) (4th edition): 4-ACRS-4C-15, 4-ACRS-4C-16