

 NEW YORK STATE	Corrections and Community Supervision DIRECTIVE		TITLE Consent to Release of Information Concerning Chemical Dependence Treatment		NO. 8341
					DATE 03/24/2023
SUPERSEDES DIR #8341 Dtd. 10/12/18			DISTRIBUTION A B	PAGES PAGE 1 OF 5	DATE LAST REVISED
REFERENCES (Include but are not limited to) Drug Law Reform Acts (Chapters 738 of the Laws of 2004, 643 of the Laws of 2005, and 56 of the Laws of 2009); 42 CFR Part 2, 45 CFR Parts 160 & 164; NYS MHL Article 10; ACA Expected Practices: 2-CO-1A-14, 4-APPFS-2D-01; Directive #2010			APPROVING AUTHORITY  		

- I. PURPOSE:** To provide Department of Corrections and Community Supervision (DOCCS) Program Services, Community Supervision, and Re-Entry Services staff with instructions for obtaining consent for release of information concerning chemical dependence treatment and to provide instructions regarding the requirement to confirm receipt of the consent document (Office of Addiction Services and Supports (OASAS) Form TRS – 49, “Consent to Release of Information Concerning Chemical Dependence Treatment for Criminal Justice Clients”) by the provider (community-based program). The OASAS Form TRS – 49 is the New York State Division of Criminal Justice Services (DCJS) source document for purposes of monitoring program referrals, admissions, treatment specifications, discharge data, and provider performance for services provided to the criminal justice population within the State of New York. OASAS Form TRS – 49 is defined as a universal consent form that will be utilized by DOCCS, probation departments, District Attorneys, and the court system when making referrals to community-based treatment providers. This formal consent permits OASAS to share client data with criminal justice agencies identified on the consent form and also provides for the exchange of client-specific treatment information between the treatment programs and the referring criminal justice agency, and other authorized agencies (or authorized practitioners).
- NOTE: References to a “community-based program,” “community-based treatment,” or “provider” will include outpatient, residential, and inpatient treatment programs.
- II. POLICY:** DOCCS staff shall adhere to all laws, regulations, and rules pertaining to the confidentiality of records and the conditions under which assessment or evaluation information, intake summary, diagnosis, treatment recommendations, admission status, course and level of treatment, progress, compliance, and prior treatment history information may be obtained or released. DOCCS will exclusively utilize the OASAS consent form (Form TRS – 49) for all referrals for assessments by community-based alcohol and substance abuse treatment programs and for monitoring program participation and treatment specifications. DOCCS staff will ensure that the OASAS client consent form is utilized in connection with referrals made in preparation for release from facilities under the jurisdiction of DOCCS, release from a New York State Office of Children and Family Services (OCFS) facility, release from a New York State Office of Mental Health (OMH) facility, while under Community Supervision, while being supervised under the provisions of Article 10 of the NYS Mental Hygiene Law, and in preparation for re-release from a local (county) correctional facility.

NOTE: Any reference to “releasee” in this directive is intended to refer to an individual released to Community Supervision and presently under the jurisdiction of DOCCS. References to “releasee,” for purposes of this directive, shall also include any NYS Mental Hygiene Law (MHL) Article 10 identified respondents who are presently under the jurisdiction of DOCCS.

NOTE: Facility staff are to refer to Directive #2010, “FOIL/Access to Departmental Records,” when requesting/releasing drug or alcohol records for the purpose of assessing a substance abuse treatment need or communicating with an outside source.

OASAS is responsible for the distribution of Form TRS – 49 to treatment providers across New York State and OASAS is also responsible for providing direction and guidance to providers with respect to utilization.

III. DEFINITIONS

- A. OASAS “Consent to Release of Information Concerning Chemical Dependence Treatment for Criminal Justice Clients” (Form TRS – 49): The consent form to be utilized when referring releasee(s) to community-based alcohol and substance abuse treatment programs.

NOTE: Facility, Field, and Re-Entry Services staff will download the OASAS Form TRS – 49 via the DOCCS Operation’s Forms database. Staff are required to access the form in this manner in order to ensure the accuracy of case-specific data and to complete the Case Management System (CMS) record entry.

- B. Referring Entity and Staff Member’s Name (OASAS Form TRS – 49): The referring entity shall be defined as DOCCS, and the consent document will include the bureau/area office of assignment and full address for staff assigned to the case at the time of the referral. The staff member’s name will be the Parole Officer (PO) responsible for the supervision of the releasee. Assigned staff will enter the appropriate contact telephone number in the address section of the TRS – 49. During the community preparation phase, this shall also be defined as the PO who will be responsible for the supervision of the releasee at time of release from a DOCCS facility, OCFS facility, OMH facility, the Lakeview Drug Treatment Program (DTP), or a local correctional facility (county jail).
- C. NYSID - New York State Identification Number (OASAS Form TRS – 49): DOCCS staff responsible for completing OASAS Form TRS – 49 must verify the accuracy of the NYSID number recorded on the form. The DOCCS Operation’s Forms database will pre-populate the NYSID number based on the current assignment record. The NYSID number will be utilized by the treatment (provider) program, OASAS, and DCJS for both individual and criminal justice population data monitoring.
- D. Referring Entity Type (OASAS Form TRS - 49): Referrals from DOCCS are defined below.
1. *Parole General*: The referral is made while the releasee:
 - a. Is under supervision.
 - b. In the revocation process and under consideration for restoration to a community-based program.
 - c. Will be re-released or restored from a local correctional facility.

- d. Will be released from an OCFS facility.
 - e. Will be released from an OMH facility.
 - f. Will be released from a DOCCS facility other than the Lakeview DTP or Lakeview Shock Incarceration Facility.
- 2. *Parole Shock Release*: The referral is made after the releasee has completed the Shock Incarceration Program.
- 3. *Parole Lakeview DTP Release*: The referral is made after the releasee has completed the Lakeview DTP.
- 4. *Parole Resentence Release*: The referral is made following re-sentence and release under the provisions of the Drug Law Reform Acts (Chaps. 738 of the Laws of 2004, 643 of the Laws of 2005, and 56 of the Laws of 2009). Release may occur at a general confinement facility under the jurisdiction of DOCCS or release may occur at a correctional facility under the jurisdiction of the New York City Department of Correction (NYC DOC).
- E. Chemical Dependence Treatment Provider (OASAS Form TRS – 49): Name and location of the treatment provider that is to be recorded on the consent form.
- F. Consent Date (OASAS Form TRS – 49): The date the releasee signed the consent form is defined as the effective date of consent.
- G. Title 42 of the Code of Federal Regulations, 42 CFR Part 2: Under the statutory provisions of Part 2, the regulations impose restrictions upon the disclosure and use of alcohol and drug abuse patient records maintained in connection with the performance of any federally assisted alcohol and drug abuse program. Disclosure with consent is defined in the statute. Regulations specified in Part 2 prohibit the disclosure and use of patient records unless certain circumstances exist. The regulations are intended to ensure that an alcohol or drug abuse patient in a federally assisted alcohol or drug abuse program is not made more vulnerable by reason of the availability of their patient record than any individual who has an alcohol or drug problem and who has not sought treatment.
- H. Health Insurance Portability and Accountability Act of 1996 (HIPAA) 45 CFR (Pts. 160 & 164): Commonly referred to as the “Security Rule” or “Privacy Rule” and covers the electronic creation, transfer, storage, and receipt of Protected Health Information (PHI). PHI is defined as any electronic information that is created or received by a health care provider that relates to the past, present, or future physical or mental health of an individual and that identifies the individual. The rule requires appropriate safeguards to protect the privacy of personal health information and sets limits and conditions on use and disclosure.
- I. Chapter 56 of the Laws of 2009: 2009 law revisions and Drug Law Reform expansion enacted on April 7, 2009, includes:
 - 1. New sentencing laws for drug crimes (first and second felony offender provisions).
 - 2. Expanded eligibility and opportunity for participation in the Shock Incarceration Program.
 - 3. Lakeview DTP eligibility expanded, and the District Attorney consent provision repealed.

4. Judicial diversion opportunities expanded for the chemically dependent.
 5. Provision for conditional sealing of records upon successful completion of the diversion program.
 6. Re-sentencing opportunity for felony class B drug offenders.
 7. New crimes established for the sale of controlled substance by an adult to a minor and the “kingpin” statute with emphasis on large scale profiteering drug organizations.
- J. Chemical Dependence: For purposes of this consent procedure, “chemical dependence” is defined as drug addiction, alcoholism, or the abuse of drugs and alcohol.

IV. PROCEDURE

- A. The Regional Directors, Assistant Regional Directors, Statewide Director of Re-Entry Services, Re-Entry Services Regional Manager, Director of the Sex Offender Management Unit, Bureau Chiefs, and Senior Parole Officers will ensure that assigned staff complies with the approved methodology for accessing and completing the TRS – 49 consent form via the DOCCS Operation’s Forms database.
- NOTE: Use of photocopied or reproduced TRS – 49 consent forms is unacceptable, and the Community Supervision Operations’ chain of command shall prohibit the use of the form in this manner.
- B. The releasee will be informed of the need for consent to release information in a manner that assures understanding of the specific type of information requested and the benefits of releasing such information. Staff will define the purpose of the disclosure and emphasize the need to communicate with program staff in order to obtain information such as treatment need, case history, course and type of treatment, program participation, attendance, and toxicology/urinalysis findings and reports.
- C. The releasee will be informed that the need for treatment services is not contingent upon the releasee’s decision concerning authorization for the release of information.
- D. The releasee will be informed that the consent to release information will remain in effect and will not be revoked until there has been either a formal and effective termination of the sentence or period of post-release supervision, or there has been a revocation of parole, post-release supervision, or local conditional release.
- E. The consent shall be given on OASAS Form TRS – 49. This form is to be downloaded from the DOCCS Operation’s Forms database.
- F. Staff will ensure that the consent form (TRS – 49) is complete and accurate, and includes the following information:
1. Client’s Last Name, First, and Middle Initial: The last name, first name, and middle initial of the releasee.
 2. Referring Entity’s Staff Member’s Name: The assigned PO’s name.
 3. Referring Entity’s Name and Address: DOCCS, bureau/area office of assignment, complete address, and telephone contact number for assigned staff.
 4. Client’s New York State Identification Number (NYSID): Staff will verify the accuracy of the pre-populated NYSID number identification.

5. Referring Entity Type: Staff will select one of the following referring types:
 - a. Parole General.
 - b. Parole Shock Release.
 - c. Parole Lakeview DTP Release.
 - d. Parole Resentence Release (see definition section of this procedure).
 6. Chemical Dependence Treatment Provider: Staff will record the name and location of the treatment provider (program) and any additional authorizations, such as other agencies or practitioners, in the space provided.
 7. Name of Client and Signature of Client with Date: Obtain the signature of the releasee and confirm the date of the consent.
- G. Completion of the consent form and confirmation of receipt of the form by the treatment provider will be recorded in the CMS record of the releasee. The following CMS contact will be created by completing the form:
- OFP** – OASAS Form TRS – 49 created and printed
- H. Staff will send a copy of the completed consent form to the treatment provider and confirm receipt of the form by the provider. OASAS Form TRS – 49 will be personally delivered by staff or sent to the provider via fax transmission. Assigned staff are required to confirm receipt of the consent form by communicating directly with provider staff. The following CMS contact will be created:
- OVR** – OASAS Form TRS – 49 verification of receipt by provider
- I. Staff will provide the releasee with a copy of the consent form and the original consent form will be placed in the releasee's case file.

V. COMMUNITY SUPERVISION OPERATIONS STAFF RESPONSIBILITIES

- A. The Regional Directors, Assistant Regional Directors, Statewide Director of Re-Entry Services, Re-Entry Services Regional Manager, Director of the Sex Offender Management Unit, Bureau Chiefs, and Senior Parole Officers will ensure that all alcohol and substance abuse treatment referrals will be made via submission of a completed OASAS Form TRS – 49.
- B. In the event of a self-referral by a releasee or upon receipt of notification of a self-referral, or in the event of a referral by another agency or practitioner, assigned staff will complete OASAS Form TRS – 49 and submit it to the provider as soon as practicable. Operations staff will need to clearly indicate and detail the additional agency and practitioner authorizations, such as cases processed under the provisions of Article 10 of the Mental Hygiene Law where OMH is responsible for making the actual treatment referral. Staff will obtain consent and confirm receipt of the form by the provider (Procedure - subsection IV-G).
- C. The Bureau Chief and Senior Parole Officer are responsible for ensuring that staff remain in compliance with the chemical dependence treatment consent requirement.
- D. Staff will attach OASAS Form TRS-1, "Prohibition on Re-Disclosure Concerning Substance Abuse Patient," to all shared drug and alcohol records.