

County Of San Diego
Health and Human Services Agency (HHS)

Chapter: Health Insurance Portability and Accountability Act of 1996 (HIPAA)
Key Words: privacy, psychotherapy notes

SUBJECT: **Use & Disclosure of Psychotherapy Notes** NO: **HHS-L-10**
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DATE: July 27, 2007

REFERENCE: Federal Privacy Regulations, 45 C.F.R. Subtitle A, Subchapter C, Parts 160 and 164.

PURPOSE: To establish a policy on when a written authorization from the individual (patient/resident/client) or their legal representative is required for use and disclosure of psychotherapy notes.

BACKGROUND: County agencies designated as covered components must comply with privacy regulations promulgated under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). They must also comply with California laws and regulations pertaining to the use and disclosure of individually identifiable health information, unless such state laws and regulations are preempted by HIPAA.

HIPAA's privacy regulations outline many detailed requirements protecting the confidentiality of health information and providing individuals significant rights with respect to their health information. Compliance with these regulations is addressed in a series of County policies and procedures.

DEFINITIONS

Note: The definitions below are in compliance with the HIPAA and the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule).

Health Care Operations: Any of the following activities:

- Internal performance improvement activities, excluding research;
- Reviewing the competence or qualifications of health care professionals;
- Underwriting, premium rating, and other activities related to health insurance contracting;
- Medical review, legal services, and auditing;
- Business planning and development; or
- Business management and general administrative activities.

Individually Identifiable Health Information: Information that is created or received by the County, identifies an individual (or could reasonably be used to identify an individual) and that:

- Relates to the past, present, or future physical or mental health or condition of an individual;
- Relates to the provision of health care to an individual; or
- Relates to the past, present, or future payment for the provision of health care to an individual.

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This includes demographic information (such as name, address, date of birth, sex, and race) collected from an individual.

Payment: Activities undertaken to obtain or provide reimbursement for health care services, including:

- Billing, claims management, and collection activities;
- Review of health care services for medical necessity, coverage, appropriateness, or charge justification;
- Utilization review activities.

Psychotherapy Notes: Notes recorded in any medium by a mental health professional documenting or analyzing the contents of conversations during a private, joint, family, or group counseling session that are filed separately from the rest of the individual's medical record.

Psychotherapy notes **exclude:**

- Medication prescription and monitoring records;
- Counseling session start and stop times;
- Modalities and frequency of treatment;
- Results of clinical tests; and
- Summaries of diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date.

Protected Health Information (PHI): Individually identifiable health information that is transmitted or maintained by electronic or any other medium. PHI does not include educational records of students maintained by federally funded educational agencies or institutions or persons acting for these agencies or institutions. PHI also does not include records of (1) students who are 18 years or older or are attending post-secondary educational institutions, (2) maintained by a physical or mental health care provider, (3) that are made, maintained, or used only in connection with the treatment of the student, and (4) that are not available to anyone, except a health care provider or appropriate professional reviewing the record as designated by the student.

Treatment: Provision, coordination, or management of health care and related services by one or more health care providers, including:

- Management of care by a provider with a third party;
- Consultation between health care providers relating to a individual; or
- Referral of an individual from one provider to another.

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POLICY: In compliance with state and federal laws and regulations, individuals or their legal representatives will be given the opportunity to access and obtain a copy of their psychotherapy notes and the use and disclosure of psychotherapy notes will be restricted as set forth in the policy and procedure.

PROCEDURES:

Use or disclosure of protected psychotherapy notes requires a valid authorization except under the following conditions:

- To carry out the following treatment, payment or healthcare operations:
 1. Use by originator of the psychotherapy notes for treatment;
 2. Use or disclosure by the County for its own use in training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family or individual counseling; or
 3. Use or disclosure by the covered entity to defend a legal action or other proceeding brought by the individual.

- Authorization is not needed for uses or disclosures required by law:
 1. To the Secretary of the United States Department of Health and Human Services (see Policy HHSA-L-7, Disclosure to the Secretary of the United States Department of Health and Human Services);
 2. That relate to disclosures about victims of abuse or neglect (see Policy HHSA-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required);
 3. That are for judicial or administrative proceedings (see Policy HHSA-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required); or
 4. That are for law enforcement purposes (see Policy HHSA-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required).

- Disclosures for health oversight activities relating to the note's originator (see Policy HHSA-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required);
- Disclosures to the coroner or medical examiner (see Policy HHSA-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required); or
- Disclosures to avert a serious threat to the health or safety of a person or the public (see Policy HHSA-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required).

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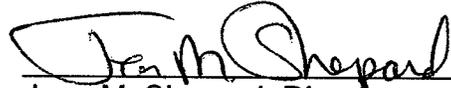
- Unlike other health information, insurance companies, ERISA certified employee benefit plans, and managed care companies that administer benefits will not be able to require patients to release the information from psychotherapy notes as a condition of coverage or payment;

Note: If you believe you have psychotherapy notes, please contact the County Privacy Officer at 619-515-4243.

QUESTIONS/INFORMATION: Privacy Officer of the County of San Diego

SUNSET DATE: This policy will be reviewed for continuance by July 27, 2010.

Approved:



Jean M. Shepard, Director
Health and Human Services Agency