



TMA Privacy and Civil Liberties Office Information Paper



USE AND DISCLOSURE OF PSYCHOTHERAPY NOTES

HIPAA Privacy ♦ February 2012

I. Supporting Policies for this Information Paper

- A. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule (45 CFR 164.508(a)(2)) establishes special rules regarding the use and disclosure of psychotherapy notes.
- B. The Department of Defense Health Information Privacy Regulation (DoD 6025.18-R, C5.1.2) implements the above part of the HIPAA Privacy Rule within the Military Health System (MHS).

II. Definitions Associated with Use and Disclosure of Psychotherapy Notes

- A. Covered Entity: A health plan or a healthcare provider within the MHS that transmits any health information in electronic form to carry out financial or administrative activities related to healthcare.
- B. Disclosure: The release, transfer, provision of access to, or revealing in any other manner of PHI outside the entity holding the information.
- C. Military Health System (MHS): All DoD health plans and all DoD healthcare providers that are, in the case of institutional providers, organized under the management authority of, or in the case of covered individual providers, assigned to or employed by TMA, the Army, the Navy, or the Air Force.
- D. Protected Health Information (PHI): Information that is created or received by a covered entity and related to the past, present, or future physical or mental health of an individual; providing payments for healthcare to an individual; and can be used to identify the individual. It excludes health information in employment records held by a covered entity in its role as employer.
- E. Psychotherapy Notes: Notes recorded by a healthcare provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record.

- Psychotherapy notes excludes:
 - Medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and
 - Any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.
- F. Use: With respect to PHI, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

III. Guidance Regarding Use and Disclosure of Psychotherapy Notes

- A. A covered entity must obtain a valid written authorization from the patient prior to any use or disclosure of psychotherapy notes, except:
1. To carry out the following treatment, payment, or healthcare operations:
 - a. Use by the creator of the psychotherapy notes for treatment,
 - b. Use or disclosure by the covered entity for its own training programs; or
 - c. Use or disclosure by the covered entity to defend itself in a legal action or other proceeding brought by the individual.
 2. A use or disclosure that is:
 - a. Required by the Department of Health and Human Services,
 - b. Required by law,
 - c. For health oversight activities, with respect to the creator of the notes,
 - d. About decedents to coroner and medical examiners; or
 - e. To avert a serious and imminent threat to the health or safety of a person or the public. This may include a serious and imminent threats to:
 - i. Military personnel,
 - ii. A specific military mission, or
 - iii. National security.
- B. Access to Psychotherapy Notes. A covered entity may deny an individual access to psychotherapy notes without providing an opportunity for review.