

Special Protections and Frequently Asked Questions for Psychotherapy Notes

By Dana Taylor

January 17, 2019



Psychotherapy notes receive special protection under the HIPAA Privacy Rule (“Privacy Rule”). It is important for practices with behavioral health providers to ensure their staff understands the special protections provided to psychotherapy notes.

The Privacy Rule defines psychotherapy notes as “notes recorded by a health care provider who is a mental health professional documenting or analyzing the contents of a conversation during a private counseling session or a group, joint or family counseling session, and that are separate from the rest of the patient’s medical record.” These notes do not include information about medication management, session start and stop times, test results, summaries of the patient’s diagnosis or symptoms, or information about the patient’s progress.^[1] The psychotherapy notes receive special protection because of their sensitive nature and because they are personal notes of the provider that are generally not required for treatment, payment, or health care operations.

The Privacy Rule requires that the practice obtain specific authorization prior to any type of disclosure of psychotherapy notes for ANY reason, including a disclosure for treatment purposes to another healthcare provider.^[2] There are very limited exceptions to requiring specific authorization for disclosure of psychotherapy notes such as reporting of abuse, neglect, or domestic violence, or a threat of serious and imminent harm made by the patient during his/her session.

It is always a good time for your practice to review and revise your records release form. The example below specifically delineates the requirement for a separate release form for psychotherapy notes. The information contained in [the example offered here](#) [1] can be altered to remove services not offered by your practice.

Your practice may also want to determine if your electronic medical record (EMR) is able to distinguish between psychotherapy notes and other medical record entries, and if an alert notification can be added to the psychotherapy notes section.

Below are the most frequent questions MagMutual receives regarding the release of psychotherapy notes:

Does a patient have a right to access their own psychotherapy notes?

No, the patient does not have a right to access their own psychotherapy notes. However, the provider, in their own discretion, can provide a copy of the patient's psychotherapy notes to the patient consistent with applicable state law.

If my practice receives a subpoena or court order for "all mental health records," should I also release the psychotherapy notes?

No. If the subpoena or court order does not specifically request "psychotherapy notes," do not release the psychotherapy notes. Only release the applicable mental health records.

Do I need written authorization to release my patient's psychotherapy notes to another provider for treatment purposes?

Yes, you must have the patient's written authorization to release psychotherapy notes to another provider for treatment purposes.

What can I do with the psychotherapy notes without written authorization?

The only things you can do without written authorization from the patient are to release the psychotherapy notes if required by law, you are reporting abuse, neglect, or domestic violence or there is a serious threat to the health or safety of the patient. We advise that you always obtain written authorization from the patient.

What if I get a request from law enforcement for the psychotherapy notes?

You should ask the law enforcement official to obtain a court order signed by a judge that specifically requests the psychotherapy notes. If one of your patients presented at a hospital emergency department, the emergency department physician can call you to discuss the patient's case. This discussion can occur without the patient's written authorization under the HIPAA psychotherapy note exception for serious threat to the health or safety of the patient.

[1] 45 CFR § 164.501

[2] 45 CFR § 164.508(a)(2)

on how to use the information provided rests solely with you, the PolicyOwner.

Source URL: <https://www.magmutual.com/learning/article/special-protections-and-frequently-asked-questions-psychotherapy-notes>

Links

[1] https://www.magmutual.com/sites/default/files/info_to_be_used_or_disclosed.jpg