

Jeffrey L. Binder, Ph.D., ABPP

Summary of HIPPA Rights to Privacy

I. Definitions

This section defines terms relating to the psychotherapy relationship covered by HIPAA. Explanations are provided for what is meant by client file, privileged communication, protected health information, treatment, payment, healthcare operations, progress notes, psychotherapy notes, use, disclosures and business associates.

- **Client File:** Each client has a client file that contains records of psychotherapy meetings and other information related to treatment. Information included in the client file is determined by state law, professional standards, and other review procedures. Under HIPAA, the client file is referred to as the "designated medical record." HIPAA very clearly defines what information is to be included in this file. In Tennessee, information contained within the client file is a combination of paperwork; all billing information; a summary of the first appointment; a mental status examination; an individualized, comprehensive treatment plan; progress notes; managed care/insurance company treatment authorizations and review information; psychological test results and raw test data; authorization letters or summaries of care released on your behalf; and a discharge summary completed at the end of treatment.
- **Privileged Communication:** Privileged communication refers to conversations between psychologists and their clients. The psychology licensing law for the state of Tennessee provides very strong confidentiality protections for these conversations. It is at the same level as that between lawyer and client. However, there is a difference between privileged conversations and documentation in your client file. Documentation in your client file is considered "protected health information."
- **PHI:** PHI refers to protected health information, information in your client file that could identify you. PHI includes an individual's past, present, or future physical or mental health condition, the provision of health care to an individual or individuals, or the past, present, or future payment for the provision of health care to an individual or individuals.

HIPAA provides privacy protections for the documentation of this information in your client file as well as the communication of this information to others.

- **Treatment:** Treatment refers to efforts by the psychotherapist to help clients resolve mental health, behavioral, or emotional problems; to manage the client's mental health care; or to coordinate other services related to the client's mental health care. Examples include contents of psychotherapy sessions, psychological testing, or consultations with other people who may be important in the client's treatment.
- **Payment:** Payment refers to reimbursement for mental health care and related services. The clearest examples of this aspect of treatment is collecting out-of-pocket fees from you and filing insurance claims on your behalf to pay for the treatment costs.
- **Health Care Operations:** Health care operations are activities related to the psychologist's professional responsibilities. In mental health care, the best example of healthcare operations is when an insurance company reviews a psychotherapist's work to determine "medical necessity" for the treatment. It may also include performance evaluations, accreditation, certification, licensing or credentialing activities.

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HIPAA distinguishes between two types of documents containing information related to individual psychotherapy sessions. This information is contained within Progress Notes and Psychotherapy Notes.

- **Progress Notes:** Progress notes document the information and activities in a psychotherapy session related to treatment goals. Progress notes contain information on medication prescriptions, time spent in the session, treatment modality (e.g., individual, couples) treatment frequency, test results, diagnostic summaries, level of functioning, treatment plans, symptoms, progress to date, and prognosis.
- **Psychotherapy Notes:** Psychotherapy notes represent information “recorded in any medium by a mental health provider documenting and analyzing the contents of a conversation during a private, group, or joint family counseling session.”

Psychotherapy notes have been accorded a special status by HIPAA. Psychotherapy notes belong to the psychotherapist. Psychotherapy notes are not a part of the client file and therefore the information contained within these notes is not available to clients or to other individuals or agencies except under special authorization (see Uses and Disclosures of Protected Health Information Requiring Authorization section below).

Three additional terms used in reference to client privacy and security are Use of protected health care information, Disclosure of this information, and definition of Business Associates.

- **Use:** Use of protected health information applies only to activities within our office such as sharing, employing, applying, utilizing, examining, and analyzing information that identifies you. This includes activities conducted in the practice of psychotherapy related to filing claims for payment, scheduling appointments, keeping records, and other activities related to the mental health care of clients.
- **Disclosure:** Disclosure applies to activities outside of our office, such as releasing, transferring, or providing access to information about you to other parties. It refers to activities that result in protected health care information being revealed to people or agencies other than to the client or legal guardian. Examples of disclosures would be contact with the client’s physician, school personnel, or reporting concerns about abuse or neglect.
- **Business Associate:** Business associates are any individuals performing ancillary administrative services for the mental health care provider who may have access to client files or other protected information. Business associates include secretaries, billing service personnel, and collection agency personnel.

II. Uses & Disclosures of Protected Health Information Requiring Authorization

Psychotherapy clients or their legal guardians must provide consent for the psychologist or their representative to provide information from the client file to any other person or agency. This includes consent for treatment, payment, health care operations, and release of information to a third party. Special instances of confidentiality are also described relating to psychotherapy notes, psychological test information, and revoking authorization to release confidential information

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- **Consent to Treatment, Payment & Health Care Operations:** Tennessee law and HIPAA require psychologists to obtain informed consent for treatment from clients. This includes consent for the use of psychotherapy techniques, collection of payment due for services provided by the psychologist, and conducting necessary healthcare operations. Clients or the client's legal guardian must sign a consent form authorizing these activities. You provide informed consent to participate in psychotherapy with me when you sign the Patient Intake form and Practice Policies & Procedures form.
- **Release of Information:** Releasing information from a client's file to a third party requires a specific authorization. An example of this type of disclosure would be speaking to another health care provider, a relative, or an employer. A signed release of information form is required before information like this may be shared with others.
- **Psychotherapy Notes:** As mentioned above (see Definitions section, Progress Notes and Psychotherapy Notes), psychotherapy notes are accorded a special, protected status by HIPAA. They are not part of the client file and, therefore, are not available to clients or third parties. This means that insurance companies do not have access to information contained in psychotherapy notes for any reason. Despite this special protection for psychotherapy notes, HIPAA has allowed selected payors (such as Medicare and Workers Compensation) to have access to psychotherapy notes. If psychotherapy notes are required by these payors, clients or their legal guardians will be asked to sign an additional authorization to release this information.

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