

## Access to Records by Social Workers' Clients

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### Introduction

Federal and state law, and the *NASW Code of Ethics*, all have requirements for the release of records to the client. From time to time social workers receive requests from clients for access to the notes or records of the professional services provided. Social workers who have been rigorously trained to protect clients' privacy may be alarmed or disturbed by such requests and concerned about how to respond appropriately. This Legal Issue of the Month article will address the legal and ethical provisions regarding client access to social workers' professional records. Requests for access to records by a third party or by the parents of minors are not covered in this article and are referenced in other LDF resources.

### NASW Code of Ethics

*NASW Code of Ethics*, Standard 1.08 Access to Records (NASW, 2008), states a clear expectation that social workers should provide clients with "reasonable access to records concerning the clients." Upon request from a client a social workers' record or a portion of a record should be withheld only "in exceptional circumstances when there is compelling evidence that such access would cause serious harm to the client." Generally, this would include situations where a client's mental health status is not stable and access to information in the treatment record would cause them to be a danger to themselves. For circumstances that do not rise to a level of potential dangerousness, but where serious misunderstanding is likely, the social worker is encouraged to "provide assistance in interpreting the records and consultation with the client regarding the records."

### HIPAA

Under the medical privacy regulations of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), patient access to records of their own treatment is a mandatory legal right (see generally, HHS OCR, accessed 2012). Delaying, denying or improperly obstructing the patient (or client) from accessing their treatment records is considered a HIPAA violation punishable by civil monetary penalties. Under HIPAA, health care entities, such as licensed social workers, have to provide access to a patient's records within 30 days if the records are stored on the premises of the practitioner and up to 60 days if the records are stored off-site. If records are not going to be made available within 30 days, the health practitioner is required to state this in writing along with a rationale and the date by which the records will be available (and in no event later than 60 days). In the event that a conflicting state law requires patient access to records within a shorter period, the shorter deadline will apply, as it is more beneficial to the patient.

## **State Law**

Every state has some form of access to medical records law and in many instances these are directly applicable to licensed social workers. Generally, these are contained in provisions that are separate from the state social work licensing board's laws and regulations. Many states provide a time frame for responding; however, many are nonspecific or refer to access "within a reasonable time." In states without a specific time frame, it would be reasonable to apply the HIPAA time limits. For some practitioners who do not conduct any electronic billing transactions with health insurance plans, HIPAA may not apply, and state law is the only consideration (along with ethical standards). State laws are readily available online and a chart is listed below for reference to the legal provision in each state.

## **Exceptions to Client Access**

- **Prevention of Harm**

Similar to the *NASW Code of Ethics*' provision regarding possible self-harm (discussed above), HIPAA and state laws also have exclusions from patient access to records to prevent harm to self or others. A number of states have specific provisions for how this applies to the records of mental health patients. The HIPAA standard permits denial of access in order to prevent substantial harm to the patient or another person, under 45 C.F.R. § 164.524(d)(1). A written decision to deny access to the record should be made in a timely manner with a description of the basis for denial, and a statement of the patient's right to have the decision reviewed and how to request such a review. The review of a denial is to be made by another licensed professional of the practitioner's choosing and the decision by that reviewer should also be communicated in writing to the patient. The HIPAA medical privacy regulations also require that patients must be informed in writing of how complaints may be filed with the health care practitioner or the Secretary of the U.S. Department of Health and Human Services (HHS), similar to what is included in every HIPAA Notice of Privacy Practices, which is offered to all clients at the initiation of treatment. "If access to some of the patient's record is denied, the health care entity must, to the extent possible, give the patient access to any other portions of the record requested." State laws have similar provisions, although at times they may permit withholding of a record for a broader range of rationales.

- **Separate Psychotherapy Notes**

Another basis for withholding a portion of a mental health record is contained in the HIPAA provisions for "separately maintained psychotherapy notes." This would apply to practitioners who keep more detailed personal notes of a client's condition in a second file, separate from the primary client record or chart. The "psychotherapy notes" privacy protections are defined and discussed in the LDF legal article, *Social Workers and Psychotherapy Notes* (Morgan, S. and Polowy, C., 2006). Denying the client access to separately maintained psychotherapy notes does not require a right of review by the client, according to HIPAA. However, neither HIPAA nor the *NASW Code of Ethics* requires that the clinician's separate notes be withheld from the client. Thus, that information should be withheld only after the ethical basis for doing so has been carefully considered (Morgan, S., et al., 2007, p. 6).

- **Information Provided by Third Parties**

Under HIPAA, if information is provided to a practitioner by a non-health-related entity under a promise of confidentiality, then when a patient requests access to their record, that segment of confidential information should not be provided to the patient (45 C.F.R. § 164.524(a)(2)). An example might be a relative of a patient who discloses information to the practitioner.

- **Information That Identifies Third Parties**

According to the *NASW Code of Ethics*, Standard 1.08 (b) (NASW, 2008), care should be taken when providing a client with access to their record to protect the confidentiality of third parties who are identified or discussed in the records. In some instances, this may require that individually identifying information be blanked out or “redacted.” In any instance where a portion of a record is made unreadable, it is necessary to attach a description of the information redacted and the professional rationale, such as this: “Consistent with professional ethical standards, portions of this record have been redacted to protect the identity of third parties.” This may or may not meet all the requirements when records are requested for legal purposes; however, it provides a basis for asserting arguments as to why the content should be protected from disclosure.

### **Administrative Considerations**

- **Options for Disclosure—Summary Record**

It is acceptable to offer a summary of a client’s record as an option; however, if there is no other basis for withholding the actual record, then it is entirely at the client’s option whether to accept a summary. Under HIPAA, if a client is to be charged a fee for the creation of the summary then the amount to be charged must be stated in writing in advance and the client will have the option to accept or reject the offer of a summary (45 C.F.R. § 164.524(c)(2)(ii)).

- **Payment of Fees for Records**

A general rule is that it is acceptable to charge a client for the actual costs of copying and mailing their file; however, there is some variation on a state by state basis and in comparison to HIPAA. HIPAA does not permit general handling fees to be charged for clients’ access to their own record. Any copying fee must be based on expenses linked to the actual costs of copying, paper, use of copier, etc. and actual shipping fees (45 C.F.R. § 164.524(c)(4)). Thus, a general administrative fee for the chart would not be acceptable under HIPAA. Some states do not allow any charge to the patient if the request is for the purpose of applying for public benefits. Many states specify how much the provider may charge per page for copying medical records.

### **Analysis and Conclusions**

Social workers who receive a request for records from a client or former client need to understand that these individuals are exercising a basic client right and should act accordingly in response. Social workers who require that clients make requests for records in writing need to put that expectation in writing and include it in the HIPAA Notice of Privacy Practices (see Sample HIPAA Privacy Forms and Policies). Whenever social workers are documenting services provided to clients, consideration should be given to the possibility that the client may later access the information. Even social workers who do not bill insurance are likely to be subject to state laws requiring clients the right to access their own records. In some instances, maintaining a separate folder of more private, detailed notes can be a basis for withholding that information from the client. Client safety is always an appropriate consideration in decisions about granting or denying access to records and any denial of records or information needs to be clearly stated. Prompt attention is required for responding to requests for records; however, the law does not require that clients be granted “immediate” access. A social worker who is uncertain how to respond should seek guidance immediately, so as not to impair the client’s right to a prompt response. Acknowledging the client’s request while seeking guidance on how to respond appropriately may serve to assure the client that their situation is being addressed professionally.

## State Law Chart for Access to Records

STATE	Right to Access Health Records	Right to Access Mental Health Records	Right to Deny Access
Alaska	Alaska Stat. 18.23.005	Alaska Stat. 47.30.845	
Alabama	Ala. Admin Code 540-x-9-.10	Ala. Code 22-56-4: patients	Ala. Code 22-56-4:
Arizona	Ariz. Rev. Stat. 12-2293	Ariz. Rev. Stat. 36-507	Ariz. Rev. Stat. 12-2293
Arkansas	Ark. Code Ann. 16-46-106		Ark. Code Ann. 16-46-106
California	Cal. Health and Safety Code 123110:	Cal. Health and Safety Code 123105	Cal. Health and Safety Code 123115
Colorado	Colo. Rev. Stat. Ann. 25-1-802	Colo. Rev. Stat. Ann. 25-1-802:	
Connecticut	Conn. Gen. Stat. 20-7c:	Conn. Gen. Stat. 17a-548	Conn. Gen. Stat. 20-7c: Conn. Gen. Stat. 17a-548
Delaware	24 Del. Admin. Code 1700-30.0	16 Del C 5161:	16 Del C 5161:
District of Columbia	DC St. §3-1210.11		
Florida	Fla. Stat. Ann. 456.057	Fla. Stat. Ann. 456.057	
Georgia	Ga. Code 31-33-2	Ga. Code 37-3-162	Ga. Code 31-33-2:
Hawaii	Haw. Rev. Stat. 622-57		Haw. Rev. Stat. 622-57
Idaho	None.	Idaho Code 66-346	Idaho Code 66-346
Illinois	735 ILCS 5/8-2001		
Indiana	Ind. Code 16-39-1-1	Ind. Code 16-39-2-4	Ind. Code 16-39-1-5 Ind. Code 16-39-2-4
Iowa	Iowa Admin Code 653-13.7(7)		
Kansas	K.S.A. 65-4971		K.S.A. 65-4971
Kentucky	Ky. Rev. Stat. Ann. 422.317		
Louisiana	La. Rev. Stat. Ann. 40:1299.96	La. Rev. Stat. Ann. 40:1299.41	La. Rev. Stat. Ann. 40:1299.96A(2)(d)
Maine	22 M.R.S.A. § 1711-B	22 M.R.S.A. § 1711-B 22 M.R.S.A. §1711-C	22 M.R.S.A. § 1711-B
Maryland	Md. Code Ann. Health-Gen 4-304	See Md. Code Ann. Health-Gen 4-304.	Md. Code Ann. Health-Gen 4-304
Massachusetts	Mass. Gen. Laws ch. 112, 12CC	Mass. Gen. Laws ch. 112, 12CC	Mass. Gen. Laws ch. 112
Michigan	Mich. Comp. Laws 333.20201	Mich. Comp. Laws 330.	Mich. Comp. Laws 330.
Minnesota	M.S.A. 13.04; M.S.A. 144.292	M.S.A. 144.292; 144.294	M.S.A. 144.292
Mississippi	Miss. Code Ann. 41-9-65	Miss. Code Ann. 41-21-61 Miss. Code. Ann. 41-21-102(7)	
Missouri	Mo. Rev. Stat. 191-227:	Mo. Rev. Stat. 630.110 Mo. Rev. Stat. 630.005	Mo. Rev. Stat. 191-227 Mo. Rev. Stat. 630.110
Montana	Mont. Code Ann. 50-16-541	Mont. Code Ann. 50-16-504	Mont. Code Ann. 50-16-542
Nebraska	Neb. Rev. Stat. 71-8403	Neb. Rev. Stat. 71-961	Neb. Rev. Stat. 71-8403
Nevada	Nev. Rev. Stat. 629.061	Nev. Rev. Stat. 629.031 Nev. Rev. Stat. 433.504	Nev. Rev. Stat. 433.504
New Hampshire	NH Rev. Stat. 332-I:1:	NH Rev. Stat. 332-I:1	
New Jersey	NJ Stat Ann 26:2H-12.8		NJ Stat Ann 26:2H-12.8(g)
New Mexico	N.M. Stat. Ann 43-1-19		N.M. Stat. Ann 43-1-19
New York	McKinney's Public Health Law §18		McKinney's Public Health Law §18
North Carolina	No general statute; N.C. Gen. Stat. § 90-411(fees for	N.C. Gen. Stat. 122C-53	N.C. Gen. Stat. 122C-53

	records); N.C. Gen. Stat. § 90-412 (electronic health records)		
North Dakota	ND Cent Code 23-12-14		
Ohio	OH Rev Code 3701.74	OH Rev Code 3701.74	OH Rev Code 3701.74
Oklahoma	76 Okla. Stat. §19	43A Okla.Stat. §1-109	43A Okla.Stat. §1-109
Oregon	Or. Admin. R. 847-012-0000	O.R.S. §179.505	O.R.S. §179.505
Pennsylvania	42 Pa.C.S.A. §6155		
Rhode Island	RI Gen Laws §5-37-22		RI Gen Laws §5-37-22
South Carolina	SC Code Ann. 44-7-325 SC Code Ann. 44-7-130	SC Code Ann. 44-22-110	SC Code Ann. 44-22-110
South Dakota	S.D. Codified Laws 34-12-15	S.D. Codified Laws § 27A-12-26.1	S.D. Codified Laws § 27A-12-26.1
Tennessee	Tenn. Code. Ann. 63-2-101	Tenn. Code. Ann. 63-2-101	
Texas	Tex. Health & Safety Code 241.154	Tex. Health & Safety Code 611.001, 611.0045, 611.008	Tex. Health & Safety Code 611.0045
Utah	Utah Code Ann. § 78B-5-618		
Vermont	3 V.S.A. § 129a		
Virginia	Va. Code. Ann. 32.1-127.1:03	Va. Code. Ann. 32.1-127.1:03	Va. Code. Ann. 32.1-127.1:03
Washington	Wash. Rev. Code Ann. 70.02.080		Wash. Rev. Code Ann. 70.02.090
West Virginia	W. Va. Code, § 16-29-1	W. Va. Code, § 16-29-1	
Wisconsin	Wis. Stat. Ann. 146.83		
Wyoming	Wyo. Stat. Ann. 35-2-611		

### **Additional LDF Resources for NASW Members**

[Sample HIPAA Privacy Forms and Policies](#)

[Social Workers and Psychotherapy Notes \(LDF Legal Issue of the Month, June 2006\)](#)

[Children's Treatment Records: Parental Access and Denial \(LDF Legal Issue of the Month, June 2010\)](#)

[Release of Records and Client Privacy \(LDF Legal Issue of the Month, October 2011\)](#)

### **References**

45 C.F.R. § 164.524

Morgan, S., et al. (2nd ed., 2007). *The social worker and protection of privacy*. NASW General Counsel Law Note. Available from NASW Legal Defense Fund (for ordering information, [www.socialworkers.org/ldf/lawnotes/default.asp](http://www.socialworkers.org/ldf/lawnotes/default.asp)).

National Association of Social Workers (2008). *NASW Code of Ethics*. Wash., DC: Author. Available at <http://socialworkers.org/pubs/code/default.asp>.

U.S. Department of Health and Human Services (HHS), Office of Civil Rights (OCR) (2006). *The HIPAA privacy rules' right of access and health information technology*. Available at [www.hhs.gov/ocr/privacy/hipaa/understanding/special/healthit/eaccess.pdf](http://www.hhs.gov/ocr/privacy/hipaa/understanding/special/healthit/eaccess.pdf).