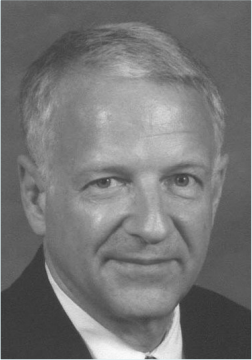


PSYCHOTHERAPY NOTES

by Glenn Karr,
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This column will focus on Psychotherapy Notes under HIPAA because they offer a unique opportunity to shield patient information from insurance companies.

Although a health insurance plan may condition enrollment and eligibility and payment of claims on reviewing medical records, this does give them access to psychotherapy notes for those purposes. This means that psychotherapy notes are protected from health care plan review for claims payment and eligibility purposes and should be protected from later audits.

Here is the definition of Psychotherapy Notes, as well as a helpful HIPAA website address which provides a tremendous amount of information on HIPAA, in addition to the Code of Federal Regulations sections that apply to Psych Notes:

PSYCHOTHERAPY NOTES
(45 CFR Sections 164.501 & 164.508)
(<http://www.hhs.gov/ocr/hipaa/>)

Psychotherapy notes are defined as: notes recorded (in any medium) by a health care 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.

If you do decide to keep psychotherapy notes, which are generally described as session notes, then you will have to keep a separate file containing the exclusions to psychotherapy notes. Insurance companies are allowed to obtain all the information listed in the exclusion sentence in the definition above.

One of the problems in keeping psychotherapy notes is that separate authorizations/release forms are necessary to release the notes to anyone else, including other therapists in your practice, except in several specific instances: by the originator of the notes for treatment (yes, you are reading that correctly, the government will allow you to use your own notes!); to carry out training programs in mental health under supervision; and to defend a legal action or other proceeding brought by the individual. Also, there are exceptions allowing the therapist to disclose information in the notes to prevent a serious and imminent threat, when required to do so by law (e.g. to comply with child and other required abuse reporting statutes), or when a coroner requests them involving a deceased person.

So if you keep psychotherapy notes you will be shielding them from insurance companies, but you will then also be required to obtain a specific written authorization from the patient to share the notes with colleagues in your office and you will have to maintain a file for the psychotherapy notes that is not accessible by other therapists in your office, so sharing the same file cabinet would not be permissible. In addition, when an attorney issues a release/authorization form to you for everything in the patient's file, then two authorization/release forms are needed, one for the psychotherapy notes and one for the rest of the records. So it does add

another level of complexity.

Some large practices specifically dislike psychotherapy notes because it makes it more difficult for therapists within an office to share records involving a patient. In addition, given the new sanctions for violating HIPAA provisions, psychotherapy notes provides you with another opportunity to make a mistake and therefore invites fines if you aren't following the requirements exactly. Still, many therapists find it advantageous to keep their psychotherapy notes separate. Although in many states psychotherapy notes are provided extra protection from viewing them even by the patient, and this would apply to psychiatrists in Ohio, for social workers, counselors and psychologists in Ohio a patient may not be denied access to their psychotherapy notes for any reason. I have been working to get that changed to allow all therapists to have the right to determine whether or not a patient should have direct access to their psychotherapy notes, but that process may take several more years.

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