

Health Information Compliance Alert

Reader Question: Psychotherapy Notes Require Extra Privacy Protection

Question: One of our patients is demanding that we release all of his records - including the personal psychotherapy notes written by our psychologist during each session. We don't consider this part of the patient's health record and are reluctant to release the information. Are these notes protected under HIPAA?

North Carolina Subscriber

Answer: You're correct. According to the Department of Health and Human Services (HHS), patients do not have the right to see or get a copy of their psychotherapy notes.

"Contrary to popular belief, HIPAA does not provide special protection to mental health records in general, but it does give added protection to 'psychotherapy notes,'" explains partner attorney **Kim Stanger** with Holland & Hart LLP in online analysis. "Unlike other protected health information, a healthcare provider may deny a patient or their personal representative access to psychotherapy notes."



Why? Psychotherapy notes are the idiosyncratic jottings and thoughts of the individual therapist. "Psychotherapy notes are notes that a mental health professional takes during a conversation with a patient. They are kept separate from the patient's medical and billing records. HIPAA also does not allow the provider to make most disclosures about psychotherapy notes about [a patient] without [a patient's] authorization," according to HHS Office for Civil Rights (OCR) guidance.

Definition: So, what exactly are psychotherapy notes? The HIPAA Privacy Rule defines them as notes, recorded in any medium by a healthcare provider who is a mental health professional for purposes of documenting or analyzing "the contents of conversation during a private counseling session or a group, joint, or family counseling session that are separated from the rest of the individual's medical record."

One way to define "psychotherapy notes" is in terms of what they're not. According to the regulatory provision (45 CFR 164.501), they exclude 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;
- Treatment plan;
- Symptoms;
- Prognosis; and
- Progress to date.

Important: "Unlike other protected health information, only the creator of the psychotherapy notes may use the notes for treatment purposes," Stanger reminds. And their "use or disclosure by others for purposes of treatment payment or healthcare operations or for other reasons generally require[s] the patient's HIPAA-compliant authorization."

State laws: Providers should always review state mandates and laws as they are often more stringent than federal regulations.

