

# Psychotherapy Notes and the HIPAA Privacy Rule

## Definition - 45 CFR § 164.501

"Psychotherapy notes means 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."

## Authorizations for Uses and Disclosures -See 45 CFR § 164.508(a)

**(1) Authorization Required: General Rule.** Except as otherwise permitted or required by the Privacy Rule, a covered entity may not use or disclose protected health information without an authorization that is valid under §164.508. When an authorization is utilized, a covered entity's use or disclosure of protection health information must be consistent with such authorization.

**(2) Authorization Required: Psychotherapy Notes.** Covered entities must obtain authorization for any use or disclosure of psychotherapy notes, except:

**(i)** To carry out treatment, payment or health care operations, when:

**(A)** Use is by the originator of the psychotherapy notes for treatment;

**(B)** Use or disclosure by the covered entity is for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling; or

**(C)** Use or disclosure by the covered entity is to defend itself in a legal action or other proceeding brought by the individual; or

**(ii)** If a use or disclosure is: required by the Secretary to investigate or determine the covered entity's compliance with the Privacy Rule (§ 164.502(a)(2)(ii)); required by law (§ 164.512(a)); for health care oversight activities authorized by law with respect to the originator of the psychotherapy notes (§ 4.512(d)); to provide information to coroners and medical examiners for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law (§164.512(g)(1)); or to prevent or lessen a serious and imminent threat to the health or safety of a person or the public if the disclosure is consistent with applicable law and to a person or persons reasonably able to prevent or lessen the threat, including to the target of the threat (§164.512(j)(1)(i)).

## Right of Access- See 45 CFR § 164.524(a)(1)

With limited exceptions, the Privacy Rule provides an individual with a right of access to protected health information about the individual in a designated record set (e.g., the right to inspect and obtain a copy). However, psychotherapy notes are an exception. Thus, the individual has no access rights to psychotherapy notes under the Privacy Rule.

## Right to Amend- See 45 § 164.526(a)(2)

The Privacy Rule also provides an individual with a right to have a covered entity amend protected health information or a record about the individual in a designated record set. However, a covered entity may deny an individual's request for amendment under certain circumstances, including if it determines that the protected health information or record that is the subject of the request would not be available for inspection under § 164.524 (the right of access).

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