



CONFIDENTIALITY OF PSYCHOTHERAPY NOTES PROTOCOL

GUIDING PRINCIPLE

We are committed to a culture of recovery throughout our systems of care, in our interactions with one another, and with those persons and families who trust us with their care.

OVERVIEW

- Psychotherapy and personal notes are specially protected by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Under the Privacy Rule, psychotherapy notes are distinguished from other forms of protected health information (PHI).
- The Privacy Rule makes it clear that only those psychotherapy notes kept separate from the rest of the consumer's mental health record are afforded additional protection.
 - All psychotherapy notes maintained with other documentation, in the consumer's mental health record, lose any special protection for confidentiality and are not required to be treated differently.

DEFINITIONS

- **Consumer:** Any individual who has received or is receiving services from DMHSA.
- **Psychotherapy Notes:** Notes recorded in any medium (i.e. scribbled on paper, typed in Word, audio taped, etc.) by a mental health care provider who is documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are kept separate from the rest of the consumer's mental health record.
 - **The term "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 consumer's diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date.
- **Personal Notes:** The practitioner's speculations, impressions (other than tentative or actual diagnosis), observations and reminders, if they are maintained by the practitioner.

STANDARDS OF CARE

- Psychotherapy and/or personal notes should not be documented or included in the consumer's mental health record.

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- Psychotherapy and personal notes are considered the property of the mental health care provider who created them, and will not be released or disclosed to consumers.

PROTOCOL

- Only if psychotherapy and/or personal notes are documented or included in the consumer's mental health record, they will be:
 - Considered part of the consumer's mental health record; and
 - Disclosed in accordance with DMHSA protocol; and
 - Disclosed to the consumer who requests access to or a copy of the consumer's mental health record.

Separating Psychotherapy Notes Requirement:

- The separating requirement means the psychotherapy notes must be maintained in a separate file from the mental health record and stored in accordance with HIPAA regulations.

Uses and Disclosures:

- Psychotherapy notes may be used without authorization by the originator of the notes for treatment purposes.
- Psychotherapy notes may be used or disclosed without authorization only:
 - When used and disclosed by the DMHSA for its own training programs in which students, trainees, or practitioners learn under supervision to practice or improve their skills in group, joint, family, or individual counseling; or
 - By the Department to defend itself in a legal action brought by the consumer; or
 - When required for an investigation under HIPAA conducted by the U.S. Department of Health and Human Services (DHHS); or
 - To a health oversight agency charged with oversight of the originator of the notes; or
 - When mandated by law; or
 - To coroners and medical examiners for identification purposes; or
 - To avert a serious and imminent threat to the public.
 - Other uses and disclosures are prohibited under the Privacy Rule.
- The consumer who is the subject of the psychotherapy notes has no right of access to inspect or obtain a copy of the notes.
- Psychotherapy notes shall not be presented at multidisciplinary treatment team meetings because any notes that are routinely shared with others are by definition, are not psychotherapy notes.


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Retention of Form:

All psychotherapy notes pertaining to a particular consumer shall be destroyed (i.e. shredded, deleted, etc.), sixty (60) days from the date the consumer's chart is closed.

REFERENCES

- 45 CFR 164.501
- 45 CFR 164.508(a)(2)
- 45 CFR 164.508(a)(2)(i)
- 45 CFR 164.508(a)(2)(ii)
- 45 CFR 164.524(a)(1)(i)
- 45 CFR 508(a)(2)(B)

APPROVED:		Date: <u>6/20/17</u>
	_____ Wilfred Aflague Director	