

# Psychotherapy vs. Progress Notes: An Overview

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# What are Psychotherapy Notes?

"Psychotherapy Notes" are granted special protection under HIPAA due to the likelihood they contain particularly sensitive information, and also because they are the personal notes of the treating therapist—intended to help him or her recall the therapy discussion or session content, and are of little or no use to others not involved in the therapy.

Information in these psychotherapy notes is not intended to communicate to, or even be seen by, persons other than the therapist.

This information is kept separate by the provider for his or her own purposes/use.

# "Psychotherapy Notes" as Defined by HIPAA Regulations:

## **45 CFR 164.501 (65 Federal Register at 82805) Final Rule (2003)**

- 1) Recorded 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,
- 2) Maintained separate from the medical record (actually separate in a different location – colored paper in the same chart is NOT considered separate), and
- 3) That exclude:
  - a. Medication prescription and monitoring
  - b. Counseling session start and stop times
  - c. The modalities and frequencies of treatment furnished
  - d. Results of clinical tests
  - e. Any summary of diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.



# Greater protection for Psychotherapy Notes

- A covered entity generally must obtain an authorization for disclosure of psychotherapy notes, or for use by a person other than the person who created the psychotherapy notes. This authorization is specific to psychotherapy notes and is in addition to any consent an individual may have given for the use or disclosure of other protected health information to carry out treatment, payment and health care operation. This additional level of individual control provides greater protection than a general application of the "minimum necessary" rule.

- The purposes for which psychotherapy notes may be disclosed without authorization for purposes other than TPO (treatment, payment, operations of one's practice) are limited.
- An authorization is not required for use or disclosure of psychotherapy notes when the use or disclosure is required for enforcement of this rule, when required by law, for oversight of provider who created psychotherapy notes, for a coroner or medical examiner, or when needed to avert serious & imminent threat to health or safety
- Cannot be compelled for payment, underwriting, or plan enrollment

# The “minimum necessary” requirement

- Therapists are to restrict the disclosure of confidential information to the minimum amount of information needed
- Open to interpretation; use clinical judgment
- Psychotherapy notes are granted more protection with regards to disclosures and subpoenas but a) there are currently no state statutes about whether or not psychotherapy notes should be included in disclosed records, and b) no record is ever completely immune from disclosure
- Current status: to be determined by case law.



# Recommendations

- Do not keep psychotherapy notes
- Do not put anything into the pts record that can do more harm than good
- Utilize general vs. specific language whenever possible & avoid use of direct quotations
- Ex: interpersonal stress, family conflict, painful memories, distressing recollections of past events, affect regulation, guilt/regret over past behavior, etc.

# Progress Notes

Are part of the medical record!

Include:

- Session start & stop times
- Medication info
- Modalities & frequencies of tx
- Summary of dx, functional status, symptoms, prognosis, and progress to date



# DRAP Format

- Description: What's going on? Can utilize mental status format if necessary
- Response: Clinician interventions
- Assessment: of pt's physical/emotional state, sx severity, riskiness of behavior, dangerousness, suicidality, etc
- Plan: next session; specific interventions to incorporate into tx