
Department: UW Medicine Compliance

Subject: PP-17 Psychotherapy Notes Management

Policy Number: 17

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Policy:

Psychotherapy Notes are a narrowly defined subset of protected health information (PHI) and have stronger protection provisions under the Health Insurance Portability and Accountability Act (HIPAA) than other types of PHI. The purpose for the heightened protection is to foster effective treatment by increasing patient confidence that intimate mental health care information will not be used or disclosed without the patient's authorization, except in certain specific instances. Except as set forth below, Psychotherapy Notes are used only by the behavioral health provider who creates the notes.

Behavioral health records that do not qualify as Psychotherapy Notes are subject to the general privacy and access requirements as for other PHI. This policy describes how UW Medicine entities¹ handle Psychotherapy Notes and designates where these records may be maintained.

I. Definitions

- **Behavioral Health Records:** Behavior health care providers maintain information as necessary to document the provision of behavioral health treatment. Behavioral health information includes information typically shared with a patient and by definition is part of a behavioral health note. Examples of information found in the Designated Record Set include: strategies for promoting treatment adherence and optimizing disease management, medication prescription and monitoring, counseling session start and stop times, objective behavioral assessments upon which clinical treatment decisions are made, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary assessment of the following items diagnosis, functional state, treatment plan, patient's presenting symptoms, prognosis, and progress to date.

¹ UW Medicine includes the following entities: University of Washington Medical Center and Clinics; Harborview Medical Center and Clinics; UW Medicine Neighborhood Clinics (University of Washington Physicians Network); UW Physicians Sports Medicine Clinic; UW Physician's Eastside Specialty Center; Hall Health Primary Care Center; and University of Washington Physicians.

¹ See "Definitions" section for further description of "workforce".

Examples of notes that are to be included in the Designated Record Set are: physician progress notes, nursing notes, case management notes, individual and group therapy notes and other behavioral health notes. Generally, all of this information is found within the UW Medicine entity's Designated Record Set.

- **Psychotherapy Notes:** Psychotherapy notes are notes, recorded in any medium, by a behavioral health professional, 1) analyzing or detailing the explicit contents of conversation during a private counseling session or a group, joint, or family counseling session, and 2) that are separated from the rest of the individual's medical record. Examples of Psychotherapy Notes include documentation of intimate personal content, details of fantasies and dreams, process interactions, sensitive information about other individuals in the patient's life, or the behavioral health provider's personal reactions, hypotheses, or speculations as a result of a patient or group interaction.

II. Requirements of Psychotherapy Notes

- A) The general exceptions allowing use or disclosure of PHI without patient authorization do not apply to Psychotherapy Notes. Even if the use is an internal UW Medicine use, access to and use of Psychotherapy Notes is restricted. Psychotherapy Notes may be used and disclosed, absent patient authorization, only for the following purposes:
- 1) The behavioral health professional who created the Psychotherapy Notes can use the Notes for treatment purposes;
 - 2) The UW Medicine entity may use or disclose Psychotherapy Notes to conduct UW Medicine training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skill in group, joint, family, or individual counseling. De-identified information should be used when appropriate for these activities. See UW Medicine Privacy Policy: *PP-19 Protected Health Information, Limited Data Set, and De-Identification of Protected Health Information*.
 - 3) A UW Medicine entity may use Psychotherapy Notes to defend a legal action or other proceeding brought by the individual who is the subject of the Notes. The behavioral health provider who created the Psychotherapy Notes may disclose the Psychotherapy Notes to UW Medicine attorney for the purpose of defending against the action or proceeding. Disclosure of Psychotherapy Notes in the course of any other type of judicial or administrative process is governed by UW Medicine Privacy policies: *PP-16a Use & Disclosure of Protected Health Information (PHI) Permitted for Public Health Activities, PP-16b Use & Disclosure of Protected Health Information (PHI) Permitted for Employers, PP-16c Use & Disclosure of Protected Health Information (PHI) Permitted for health Oversight Activities, PP-16d Use & Disclosure of Protected Health*

Information (PHI) Permitted for Decedents, PP-16e Use & Disclosure of Protected Health Information (PHI) Permitted to Avert a Serious Threat to Health or Safety, PP-16f Use & Disclosure of Protected Health Information (PHI) Permitted for Specialized Government Functions, PP-16g Use & Disclosure of Protected Health Information (PHI) Permitted for Judicial and Administrative Proceedings, PP-16h Use & Disclosure of Protected Health Information (PHI) Permitted for Law Enforcement Purposes, and PP-16i Use & Disclosure of Protected Health Information (PHI) Permitted for Victims of Abuse, Neglect or Domestic Violence.

- 4) To the Secretary of Health and Human Services, to assure compliance with HIPAA;
 - 5) When required by law;
 - 6) To a health oversight agency for the purpose of oversight of the provider who created the notes;
 - 7) To a coroner or medical examiner for official duties; **or**
 - 8) To prevent or lessen a serious and imminent threat to health or safety of a person or the public, to a person(s) reasonably able to prevent or lessen the threat, including the target of the threat.
- B) The patient does not have the right to access Psychotherapy Notes. In the event that a patient submits a written request for access to Psychotherapy Notes, the behavioral health provider may deny the individual's request from the individual. Any denial must be in writing. The provider is not required to make a determination that release of the notes would be harmful to the patient. The patient does not have a right to review or appeal of the denial.
- C) Each UW Medicine behavioral health care professional is responsible to maintain his or her own Psychotherapy Notes for individuals under the professional's care. Psychotherapy Notes are to be destroyed as soon as the notes are no longer useful for treatment and/or after treatment has been concluded. The UW Medicine entity's general policy and procedures for destruction of records govern destruction of Psychotherapy Notes.

Procedures:

I. Psychotherapy Notes Maintenance and Destruction

Step	Action
1	Psychotherapy Notes are not part of UW Medicine Designated Record Set. The author of Psychotherapy Notes is responsible for

	the maintenance and storage of the notes. The author of the notes can determine the retention timeframe based upon when the Notes are no longer useful for treatment and/or after treatment has been concluded. Psychotherapy Notes must be destroyed in accordance with UW Medicine entity destruction policies and procedures.
2	Psychotherapy Notes maintained in electronic format must only be accessible by the author of the notes. The electronic notes storage device must meet UW Medicine technical security guidelines.
3	Psychotherapy Notes documented on paper must be maintained with sufficient safeguards to limit access to the author of the notes.

II. Psychotherapy Notes Received into the Designated Record Set

Action
Psychotherapy Notes submitted for inclusion in the Designated Record Set will be removed and returned or forwarded to the behavioral health professional providing the individual's care at the UW Medicine Entity. If a UW Medicine entity cannot identify a therapist providing care to the individual, the information will be destroyed or returned to the originator of the information. If the Psychotherapy Notes are being removed from the Designated Record Set, a notation documenting the removal will be entered in the Designated Record Set.

References:

- I. 45 CFR Part 160 and 164; Section 164.508(a) – “Authorizations for uses and disclosures”.
- II. 45 CFR Parts 160 and 164; Section 164.502(a) – “Uses and Disclosures of Protected Health Information.”
- III. 45 CFR Parts 160 and 164; Section 164.524(a) – “Access to Protected Health Information.”
- IV. RCW 71.05.610; .640.

UW Privacy Officer: _____ Date: _____

John A Coulter, Associate Vice President for Medical Affairs