

TITLE: Use and Disclosure of Psychotherapy Notes	PAGE: Page 1
DEPT./SECTION BHS/Patient Rights	NUMBER: YCHC BHS-BHS-8.04
AFFECTS: Patients and Staff/PROVIDERS	DATE CREATED: 3/30/2016 DATE APPROVED: 05/01/17 DATE REVISED:

Purpose

To ensure that Yakutat Community Health Center (YCHC) BHS employees understand when and how they can release psychotherapy notes and mental health treatment records to requesting parties

Definition

Under the Privacy Rule of the Health Insurance Portability and Accountability Act (HIPAA), *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 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, the treatment plan, symptoms, prognosis and progress to date.

Background

HIPAA concentrates on psychotherapy notes, which addresses mental health treatment records. HIPAA defines "psychotherapy notes" as described above. There is no mention about those notes being available to others, though if the notes are separate from the medical record, one might assume that HIPAA's definition of psychotherapy notes is similar to the notes described in, and excluded from, treatment records. Providers should follow HIPAA guidelines for disclosure.

Policy

- A. **Patient Access to Psychotherapy Notes:** Even though the patient has a right to access most health information, the patient does not have a right to access psychotherapy notes. Therefore, YCHC BHS is not required to fulfill a patient's request for access to psychotherapy notes. However, YCHC BHS should inform the patient of this limitation on access if the request will not be fulfilled.

B. Patient Authorization Required: In most circumstances, YCHC BHS's employees must obtain a patient's written authorization for any use or disclosure of psychotherapy notes. YCHC BHS is not required, however, to disclose any health information, including psychotherapy notes, pursuant to an authorization. Especially with on-going authorizations, if there is a concern that a request for disclosure is unnecessary or excessive, YCHC BHS may ask the patient if the authorization for disclosure is consistent with his or her wishes.

For specific requirements of authorizations involving psychotherapy notes, see:

- YCHC Privacy Policy 17.0 USES & DISCLOSURES FOR WHICH AN AUTHORIZATION IS REQUIRED
- YCHC Privacy Policy 18.0 USES & DISCLOSURES FOR WHICH AN AUTHORIZATION OR OPPORTUNITY TO AGREE OR OBJECT IS NOT REQUIRED
- YCHC Privacy Policy 19.0 USES & DISCLOSURE OF PHI GENERAL RULES
- YCHC BHS 8.03 RELEASE OF BEHAVIORAL HEALTH RECORDS TO CLIENTS
- YCHC BHS 8.04 USE AND DISCLOSURE OF PSYCHOTHERAPY NOTES

C. Patient Authorization Not Required: YCHC BHS is not required to obtain an authorization for the following uses or disclosures of psychotherapy notes:

1. To carry out the following treatment, payment or health care operations:
 - a. Use by the originator of the psychotherapy notes for treatment
 - b. Use by the YCHC BHS to defend ourselves in a legal action or other proceeding brought by the patient
2. To respond to the federal Department of Health and Human Services to determine YCHC BHS 's compliance with HIPAA privacy rules
3. To comply with the law
4. To assist in oversight of the originator of the psychotherapy notes
5. To help coroners/medical examiners in the examination of deceased persons
6. To address serious public health or safety concerns. Special restrictions apply to disclosures made to law enforcement to identify or apprehend an individual who has admitted participation in a crime that YCHC BHS reasonably believes may have caused serious harm to the victim. Specifically, YCHC BHS may not disclose health information, including psychotherapy notes, if YCHC BHS learned of the individual's participation when he or she requested or received treatment, counseling or therapy to affect the propensity to commit such a crime.

Procedures:

1. **Patient Authorized Release of Information:** Prior to any disclosure of behavioral health records or psychotherapy notes, YCHC BHS Behavioral Health (BHS) personnel must request and receive a signed YCHC BHS Behavioral Health Services (BHS) Authorization for Release of Information (ROI) Form from the patient. The ROI form will then be uploaded into the Electronic Health Record system within the patients chart.
2. **Patient Authorization Not Required:** Prior to any disclosure of behavioral health records or psychotherapy notes, YCHC BHS Behavioral health personnel must

- a. Observe and follow YCHC BHS Behavioral Health Service policies that regulate the confidentiality of patient records of substance use disorder patients; refer to BHS POLICY SUBSTANCE ABUSE, 42 CFR PART 2.
- b. Obtain a Disclosure Authorization Form from the entity requesting the PHI, and must verify the identity and authority of the individual or entity requesting the PHI. (For more information on verification procedures, see Privacy Policy 9.0- IDENTITY VERIFICATION).
- c. Disclosure Authorization forms must be uploaded into the Electronic Health Record system within the patients chart.

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