



POLICY TITLE: 314.00 Psychotherapy Notes contained in a Designated Record Set

Responsible Department: Corporate Privacy Office

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SUMMARY & PURPOSE:

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule provides Federal privacy protections for individually identifiable health information, called protected health information or PHI, held by most health care providers and health plans and their business associates. The HIPAA Privacy Rule protects all "*individually identifiable health information*" held or transmitted by a Baptist Health or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule sets out how and with whom PHI may be shared. This policy governs using and disclosing psychotherapy notes for treatment, payment, or administrative activities.

POLICY:

It is the policy of Baptist Health South Florida, Inc. ("BHSF" or "Baptist Health") to comply with applicable state and federal laws, including those protecting the confidentiality of patient health information and establishing certain individual privacy rights. It is our policy to implement these laws in a way that supports our primary mission to the community regarding the delivery of quality health care in an efficient manner. This policy applies to the use of the sensitive note type and its role in the disclosure of psychotherapy notes contained in a Designated Record Set in order to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulations and corresponding state laws governing the confidentiality of such records.

DEFINITION:

Psychotherapy Notes: notes recorded (in any medium) by 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: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

SCOPE/APPLICABILITY:

This policy applies to Baptist Health, its affiliates, all workforce members, and others as described below who document psychotherapy notes on Baptist Health patients or who use or disclose any psychotherapy notes for treatment, payment, or health care operations.

- **Workforce members.** Workforce members means employees, volunteers, trainees, temporary staff, and contractors/consultants who are not independent contractors under *Human Resources Policy 1150 - Independent Contractors*.
- **Medical staff members.** Medical staff members are treated as members of an organized health care arrangement with Baptist Health South Florida and must comply with this policy as if they are workforce members pursuant to their applicable medical staff bylaws.
- **Students.** Employed students are treated as workforce members. Non-employed students (fellows, residents, students) must comply with this policy as if they are workforce members pursuant to the terms of their applicable academic agreements.
- **Independent Contractors and Others.** Independent Contractors and others who have agreed to comply with Baptist Health's policies and procedures as a condition of receiving access to Protected Health Information (PHI) must comply with this policy as if they are workforce members.

PROCEDURES TO ENSURE COMPLIANCE:

1. Uses and disclosures for which an authorization is required
 - a. Except as otherwise permitted or required by the Privacy Rule, Baptist Health may not use or disclose protected health information without a valid authorization.
 - b. When Baptist Health obtains or receives a valid authorization for its use or disclosure of protected health information, such use or disclosure must be consistent with such authorization.
2. Psychotherapy Notes
 - a. Baptist Health must obtain an authorization for any use or disclosure of psychotherapy notes, except to carry out the following treatment, payment, or health care operations:
 - i. Use by the originator of the psychotherapy notes for treatment;
 - ii. Use or disclosure by Baptist Health 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
 - iii. Use or disclosure by the covered entity to defend itself in a legal action or other proceeding brought by the individual.
3. The licensed mental health professional will make the decision, if he or she, construes the work product (e.g. consultations, forms, progress notes, Baker Act forms, E.R. consults, psychological/ neuropsychological test results) as a psychotherapy note, in accordance with the policy's definition, which would require automatic adherence to HIPAA restrictions for the securing and disclosure of this information.
4. Psychotherapy notes will be considered as super sensitive in nature and will be appropriately secured.
 - a. Only appropriate health care providers and staff will have access.
5. The following procedures apply to psychotherapy notes:
 - a. Notes should be recorded on the sensitive note type within the EMR
 - b. This recognition provides for easy identification if deemed necessary by the mental health professional if patients were to request to review their medical chart.
 - c. In the event that a post discharge patient requests their entire medical record from HIM to review or copy, the HIM staff will contact the mental health professional to obtain permission to release the Psychotherapy notes.
 - d. If the patient does not request the entire medical record, only pertinent medical information will be released, this does not include psychotherapy notes.

All references to Policies must go to the BHSF Master Copy on the BHSF Intranet; do not rely on other versions / copies of the Policy.

- e. A mental health professional would need to make the determination if a patient can have access to the portion of the record containing Psychotherapy notes.
 - f. If a consultation note is to be considered super sensitive, the practitioner will write on the appropriate form within the EMR.
6. HIM will review the medical record for Psychotherapy Notes prior to release, and if necessary contact the licensed health care professional to write a summary of the information as outlined in HIM 400.
 7. Medical Records containing Psychotherapy Notes shall be released consistent with state, federal laws and HIPAA regulations that contain provisions relating to release of protected health information.
 8. Deceased individuals
 - a. Baptist Health must comply with the requirements of this policy with respect to the protected health information of a deceased individual for a period of 50 years following the death of the individual.

SUPPORTING/REFERENCE DOCUMENTATION:

- Health Insurance Portability and Accountability Act of 1996 as amended from time to time and including any regulations promulgated thereunder (collectively, "HIPAA")
- Applicable Florida State Laws

RELATED POLICIES, PROCEDURES AND ASSOCIATED FORMS:

- Corporate HIPAA Privacy Policies
- 10000-74220-001.00 Unified Corporate Privacy Policy on HIPAA Compliance
- HIM 400 Use or Disclosure of Medical Record Information

ENFORCEMENT & SANCTIONS:

1. Reference: Corporate HIPAA Privacy Policy 10000-74220-605.20 Sanctions for Privacy Violations
2. Violations of this policy will be determined by the Chief Privacy Officer in consultation with the appropriate levels of department leadership and appropriate Human Resources management level. Reference: HR policies 5250 Employee Conduct and 5300 Corrective Action.
3. Violations of this policy may lead to disciplinary action up to and including termination.
4. Enforcement of this policy will be performed by Baptist Health South Florida's Privacy Office in conjunction with Human Resources, as circumstances may dictate.