

Behavioral Health Care for Mobile Populations: Risk Management Considerations

Note: these are general risk management considerations. Health Centers should seek the advice of an attorney to adopt specific risk management policies and procedures that address their unique needs.

BACKGROUND:

In recognition of the importance of behavioral health as a component of quality health care delivery, HRSA requires health centers to provide these services to their patient population. These are services that are difficult for many MHCs to provide onsite so they must be contracted to outside providers. Behavioral health services may include, but are not limited to, counseling for mental health issues (e.g., depression, anxiety) and substance abuse (e.g., alcohol, recreational drugs). Health centers need to be aware of the special requirements imposed by HIPAA on medical records generated by the provision of behavioral health services, and consider the impact on FTCA coverage of referring patients to outside and/or off-site providers.

CONSIDERATIONS:

HIPAA Compliance: The Health Insurance Portability and Accountability Act of 1996 (HIPAA) created standards for the use and disclosure of patients' health information that have specific provisions for behavioral health care.

- HIPAA regulation refers to the patient behavioral health information as “psychotherapy notes,” which are notes recorded by a mental health professional documenting or analyzing the contents of conversation during a private, group, joint, or family counseling session and that are separated from the rest of the individual’s medical record.
- Psychotherapy notes do *not* include 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.
- Normally, a Health Center *must* disclose health information to a patient at their request; however, a Health Center does *not* have to allow an individual to inspect and obtain a copy of his/her psychotherapy notes.
- A Health Center generally must obtain written authorization from the individual who received the counseling if someone other than the person who created the notes is going to use them or if their contents are going to be disclosed.
- However, a Health Center may use or disclose psychotherapy notes without authorization:
 - for training programs that allow students, trainees, or practitioners in mental health to learn to practice their skills in counseling;

- to defend itself in a legal action or other proceeding brought by the person who is the subject of the notes;
 - to comply with an investigation by the Department of Health and Human Services;
 - when the use or disclosure is required by law;
 - when the information is used or disclosed for oversight of the person who created the notes;
 - to a coroner or medical examiner; or
 - to avert a serious threat to health or safety.
- For all other uses or disclosures, a Health Center must obtain written authorization. A Health Center must retain the authorization, or an electronic copy of it, for six years after the date when it was last in effect.
 - Prior to use or disclosure of psychotherapy notes, the Health Center should ensure that the authorization's expiration date has not passed or the expiration event has not occurred. It should also ensure that the authorization has been completely filled out.
 - A Health Center should have a procedure in place which ensures that when a revocation of authorization is received, no further uses or disclosures are made of the psychotherapy notes whose authorization was revoked.
 - An authorization for the use or disclosure of psychotherapy notes may only be combined with another authorization for a use or disclosure of psychotherapy notes, and not with any other type of authorization.

FTCA Coverage:

- For behavioral health services to qualify for FTCA coverage, the provision of behavioral health services must have been approved in the annual grant application.
- For referrals to be entitled to FTCA coverage, they must be made pursuant to a formal written referral agreement under which the Health Center maintains responsibility for the patient's treatment plan and will be providing and/or paying or billing for appropriate follow-up care based on the outcome of the referral.
 - The formal written referral agreement should describe the manner by which the referral will be made and managed, and the process for referring patients back to the Health Center for follow-up care.