

Texas Tech University Health Sciences Center El Paso HIPAA Privacy Policy

Policy: 3.2 Using and Disclosing PHI	Effective Date: January 15, 2015
Psychotherapy Notes	Last Revision Date: January 25, 2022 <u>March 19, 2024</u>
References: 45 CFR 164.508 ; 45 CFR 164.512 ; Texas Health and Safety code, Chapter 611 ; Texas Attorney General Pre-emption analysis ; http://www.hhs.gov/ocr/hipaa ; http://www.hhs.gov/ocr/index.html	

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Policy Statement

Psychotherapy notes shall be maintained separately from other portions of the patient’s medical record and shall only be used or disclosed as allowed by law and this policy.

Scope

This policy applies to all health care clinics, research or educational activities, or areas owned, operated, and/or provided by Texas Tech University Health Sciences Center El Paso (TTUHSC El Paso).

Policy

1. Maintenance of Psychotherapy Notes

- a. *Separate File.* Psychotherapy notes shall be maintained separately from the patient’s general medical record. In the electronic health record (EHR), it is sufficient if psychotherapy notes are maintained in a separate folder that is only accessible that is accessible only by the mental health professional that created the note, designated medical records staff, or for use allowed under paragraph 2c.
- b. *Information Placed in the Medical Record.* The following information, which is not considered psychotherapy notes, may be placed in the patient’s regular medical record for audits, program evaluations, research, and/or payment purposes:
 - Medication prescription and monitoring;
 - Start and stop times of counseling sessions;
 - Modalities and frequencies of treatment furnished;
 - Results of clinical tests; and
 - Any summary of the diagnosis, functional status, treatment plan, symptoms, prognosis, and progress date.

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2. Use or Disclosure of Psychotherapy Notes

- a. *HIPAA Authorization for Psychotherapy Notes Required.* Except as otherwise allowed by law and this policy, a separate HIPAA Authorization specifically limited to the use or disclosure of psychotherapy notes must be obtained from the patient or his/her/their legal representative before psychotherapy notes can be used or disclosed.

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The HIPAA Authorization for Release of Psychotherapy Notes SHALL NOT be combined with any other HIPAA Authorization or consent form.

- b. *Location of TTUHSC El Paso Approved HIPAA Authorization for Psychotherapy Notes Forms.* ~~All HIPAA Authorization for Psychotherapy Note forms required~~

Texas Tech University Health Sciences Center El Paso HIPAA Privacy Policy

~~under this policy shall be prepared, reviewed, and updated by the Institutional Privacy Officer. HIPAA Authorization forms can be accessed by going to the HIPAA website. The Institutional Privacy Officer shall prepare, review, and update all HIPAA Authorization for Psychotherapy Note forms required under this policy. The forms can be accessed by going to the HIPAA website:~~
<http://elpaso.ttuhscc.edu/hipaa/forms> tab.

- c. *HIPAA Authorization Not Required.* A HIPAA Authorization **IS NOT** required for TTUHSC El Paso to carry out its own **LIMITED** treatment, payment, or health care operations in the following circumstances:
1. For use by the originator of the psychotherapy notes for treatment;
 2. For use or disclosure in TTUHSC El Paso training programs in which students, trainees, or practitioners in mental health learn, under supervision, to practice or improve their counseling skills;
 3. To defend a legal action brought by the patient against TTUHSC El Paso or its employed mental health professionals;
 4. To the Department of Health and Human Services to determine compliance with the privacy rule; and
 5. As otherwise required or allowed by law for the following purposes:
 - To a government authority, to report information about an individual who is a suspected victim of abuse, neglect, or domestic violence;
 - During ~~the course of~~ any judicial or administrative proceeding in response to an order;
 - During ~~the course of~~ any judicial or administrative proceeding in response to a subpoena, discovery request, or other lawful process, only if there is evidence that written notice has been provided to the patient and no objections were filed; and
 - For limited law enforcement purposes as outlined at [45 CFR 164.512\(f\)](#)
 6. To a health oversight agency for oversight of the provider who created the notes;
 7. To a coroner or medical examiner for the purpose of identifying a deceased person, determining the cause of death, or other duties as authorized by law; or
 8. To medical or law enforcement personnel reasonably able to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, or prevent or lessen the Probability of immediate mental or emotional injury to the patient.
- d. *Patient Right to Access and Denial of Access.* See [HPP 1.5 Access to Inspect Granting, Denying](#)

Under Texas law, a patient has the right to access ~~his or her~~their psychotherapy notes, which may be denied as outlined in paragraph 2) below.

1. Right to Access. The patient must provide a written and signed HIPAA Authorization for Psychotherapy Notes [form](#). Any patient request to access his or her psychotherapy notes must be reviewed by the mental health professional ~~that~~ who created the psychotherapy notes and who shall either approve or deny the request to access the psychotherapy notes.

Texas Tech University Health Sciences Center El Paso HIPAA Privacy Policy

2. **Denial of Access.** Access to psychotherapy notes may be denied if the mental health professional determines that the release of the psychotherapy notes is reasonably likely to endanger the life or physical safety of the patient or another person. If access is denied, the mental health professional shall:
 - Provide the patient with a signed and dated written statement that states access to the psychotherapy notes would likely endanger the life or physical safety of the patient or another person, which shall also be included in the patient's record. The statement must specify the portion of the record to which access is denied, the reason for denial, and the duration of the denial.
 - Re-determine the necessity for the denial each time a request for access to the denied portion of the patient's record is made.

3. **Retention of HIPAA Authorizations**

TTUHSC El Paso shall retain signed HIPAA Authorizations for six (6) years from the date of signature or ~~the date~~ when it was last in effect, whichever is later. In all cases, except research, the signed HIPAA Authorization shall be retained in the patient's medical record. In the case of HIPAA Authorizations for research, the HIPAA Authorization shall be ~~retained~~ maintained in the research subject's research medical record file.

Knowledge of a violation or potential violation of this policy must be reported directly to the Institutional Privacy Officer or the employee Fraud and Misconduct Hotline at (866) 294-9352 or www.ethicspoint.com under [Texas Tech University System](#) ~~TTUHSC El Paso~~.

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Frequency of Review

This policy will be reviewed on each even-numbered (ENY) by the Institutional Privacy Officer, and the HIPAA Privacy and Security Committee, but may be amended or terminated at any time.

Questions regarding this policy may be addressed to the Institutional Privacy Officer, or the Institutional Compliance Officer.

Attachment A: Authorization for Release of Psychotherapy Notes (English)
Attachment B: Authorization for Release of Psychotherapy Notes (Spanish)

Review Date: ~~January 3, 2022~~ March 11, 2024

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Revision Date: January 15, 2015, March 21, 2017, January 21, 2020, January 25, 2022, March 19, 2024