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SECTION: HIPAA

AREA: HIPAA PRIVACY/SECURITY POLICIES

SUBJECT: PSYCHOTHERAPY NOTES POLICY

PURPOSE

To inform the UAMS Workforce about the use and disclosure of psychotherapy notes.

SCOPE

UAMS Workforce

DEFINITIONS

Legal Representative means the person authorized by law to act on behalf of the patient, such as the parent of a minor, a court-appointed guardian or a person appointed by the patient in a Power of Attorney document.

Mental Health Professionals include, but are not limited to, psychiatrists, psychologists, licensed social workers, bachelor level social workers, licensed professional counselors or case workers.

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 patient'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.

Required by Law means a mandate contained in law that compels UAMS to make a use or disclosure of information and that is enforceable in a court of law. "Required by Law" includes, but is not limited to, court orders and court-ordered warrants, grand jury subpoenas, a governmental or administrative body authorized by law to require the production of the information being sought, Medicare or Medicaid conditions of participation, and statutes or regulations that require the production of the information. "Required by Law" does not mean a subpoena issued or signed by a non-governmental attorney. See *UAMS Administrative Guide Policy 2.1.13, Use and Disclosure of PHI and Medical Records Policy* for more information regarding subpoenas.

UAMS Workforce means for purposes of this Policy, physicians, employees, volunteers, trainees, and other persons whose conduct, in the performance of work for UAMS, is under the direct control of UAMS, whether or not they are paid by UAMS.

To access any other terms or definitions referenced in this policy:
<http://hipaa.uams.edu/DEFINITIONS%20-%20HIPAA.pdf>

POLICY

All uses and disclosures of Psychotherapy Notes must be in accordance with the federal and state laws and regulations, including the federal HIPAA regulations and consistent with the procedures set forth in this Policy. Psychotherapy Notes are not a part of the patient's medical record and are not required to be disclosed to the patient or the patient's Legal Representative. UAMS will not disclose Psychotherapy Notes to the patient or patient's Legal Representative without prior approval from the originator of the Psychotherapy Notes.

PROCEDURES

1. **Uses and Disclosures of Psychotherapy Notes:** Psychotherapy Notes may be used or disclosed for any of the following purposes:
 - A. Use by the originator of the Psychotherapy Notes for treatment.
 - B. Use or disclosure by UAMS for its own mental health 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.
 - C. Use or disclosure by UAMS to defend itself in a legal action or other proceeding brought by the patient who is the subject of the Psychotherapy Notes.
 - D. To investigate or determine compliance with the HIPAA regulations.
 - E. When Required by Law.
 - F. To a health oversight agency in connection with health oversight activities involving the originator of the Psychotherapy Notes.
 - G. To a coroner or medical examiner for the purposes of identifying a deceased person, determining cause of death, or other duties as authorized by law.
 - H. To prevent a serious and imminent threat to the health or safety of a person or the public.

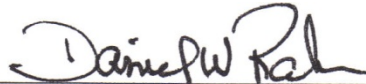
2. **Disclosures Requiring Signed Authorization From Patient:** For all other uses and disclosures of Psychotherapy Notes, you must obtain (a) the patient's signed Authorization using the UAMS [Authorization for Release of Psychotherapy Notes](#) form; and (b) signed approval from the Mental Health Professional who authored the notes. If the author of the Psychotherapy Notes is no longer employed by or affiliated with UAMS, and there is a reasonable basis to believe that the author is no longer available to act on a request for approval, UAMS may consult another UAMS Mental Health Professional to seek approval for such uses or disclosures of the Psychotherapy Notes still in the possession of UAMS, other than those outlined in the above section. UAMS can accept an authorization form that is not the UAMS Authorization for Release of Psychotherapy Notes form; however, the form must be a HIPAA-compliant authorization meeting the requirements of UAMS policy and

may not be combined with an authorization for release of other types of medical records, medical billing records, or medical information.

3. **Patient Authorization Must Be Separate Authorization Using UAMS Authorization for Disclosure of Psychotherapy Notes Form:** Authorizations for release of Psychotherapy Notes will not be combined with Authorizations for release of other PHI. In the event a patient, or patient's Legal Representative authorized by law to act on behalf of the patient, requests a copy of Psychotherapy Notes or requests the release of Psychotherapy Notes to a third party, UAMS will provide the UAMS [Authorization for Disclosure of Psychotherapy Notes](#) form. If there is a request for the release of the patient's PHI at the same time there is a request for the release of Psychotherapy Notes, a separate HIPAA complaint authorization must be provided for the Psychotherapy Notes. UAMS will not provide or accept an authorization that combines the requests into one single authorization.
4. **Patient Access and Request for Copies:** Psychotherapy Notes are not maintained as a part of the patient's medical record. UAMS is not required to provide patients with access to or a copy of their Psychotherapy Notes. The originator of the Psychotherapy Notes, however, may determine at his or her discretion whether to do so.
5. **Security and Storage of Psychotherapy Notes:** A Mental Health Professional who creates Psychotherapy Notes and chooses to maintain and store Psychotherapy Notes must maintain and store the Psychotherapy Notes in a secure location in compliance with the *UAMS Administrative Guide Policy 2.1.23, Safeguarding Protected Health Information*.

SANCTIONS

Violation of this Policy will result in disciplinary action, in accordance with *Administrative Guide Policy 4.4.02, Employee Discipline*.

Signature: 

Date: October 5, 2011

Place Patient Label Here or

Print Patient Name

Account Number



Authorization for Release of Psychotherapy Notes

*(If other types of documents are to be released, use HIPAA compliant authorization form. **Do not** use this authorization form to release documents other than psychotherapy notes.)*

1. I, _____, hereby authorize UAMS to release to:
Name _____ Phone: _____
Address: _____
2. Information of:
Patient Name _____ Medical Record No. (if known) _____
Date of Birth and/or Social Security No. _____ Phone: _____
3. Information is to be limited to the following **Dates of Treatment** (if applicable): _____
4. Information requested to be released:
_____ Psychotherapy Notes Only.

I understand that **if** the records requested to be released include information relating to **sexually transmitted disease, AIDS or HIV, alcohol or drug use, or mental health information**, this information may be released pursuant to this authorization.

5. Purpose of access or release: _____ Medical Care _____ Insurance or Other Payment _____ At Request of the Patient
_____ Other (explain): _____
6. **This authorization will expire on the following date:** _____. If no date is specified, this authorization shall expire one (1) year from the date signed below. I understand that I may revoke this authorization at any time by giving written notice to UAMS, except that a revocation of this authorization will not apply to records already released in reliance upon the authorization. A photocopy of this signed authorization shall constitute a valid authorization.
7. UAMS, its employees and attending physicians are released from legal responsibility or liability for the release of the above information to the extent indicated and authorized herein.
8. I understand that once the above information is disclosed, it may be re-disclosed by the designated recipient and the information may no longer be protected by Federal privacy laws and regulations.
9. I agree to pay the copying cost, including other expenses allowed by law, such as the cost of any supplies, labor of copying, postage, or other expenses incurred by UAMS to provide the copies requested.
10. UAMS will not condition treatment, payment, enrollment or eligibility for benefits on your signing of this authorization.

Signature of Patient or Legal Representative _____ Date: _____

If Legal Representative, authority of Legal Representative _____
(such as parent of a minor, court-appointed guardian, administrator of estate of deceased, attorney-in-fact appointed with power of attorney for healthcare-related decisions, or a healthcare proxy)

Approved by Originator of Psychotherapy Note or other UAMS Mental Health professional: _____

Print Name _____ Signature: _____