

NUMBER: 2.1.09**DATE: 4/1/2003****REVISION: 9/20/2007; 10/05/2011; 11/09/2020; 01/10/2023****PAGE: 1 of 3****SECTION: HIPAA****AREA: HIPAA PRIVACY/SECURITY POLICIES****SUBJECT: PSYCHOTHERAPY NOTES POLICY****PURPOSE**

To inform the University of Arkansas for Medical Sciences (“UAMS”) Workforce about the use and disclosure of Psychotherapy Notes.

SCOPE

The UAMS Workforce.

DEFINITIONS

Legal Representative shall mean 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 shall include, but is not limited to, psychiatrists, psychologists, licensed social workers, bachelor level social workers, licensed professional counselors, or case workers.

Psychotherapy Notes shall mean 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 2.1.13, *Use and Disclosure of PHI and Medical Records Policy* for more information regarding subpoenas.

UAMS Workforce shall mean 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.

Go to the UAMS HIPAA Office website at hipaa.uams.edu to access any other terms or definitions referenced in this policy.

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 available on the UAMS HIPAA website at hipaa.uams.edu or in UAMS Forms OnDemand; 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. **Separate Patient Authorization Required for Disclosure of Psychotherapy Notes:** Authorizations for release of Psychotherapy Notes will not be combined with Authorizations for release of other Protected Health Information (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 available on the UAMS HIPAA website at hipaa.uams.edu or in UAMS Forms OnDemand. 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 their discretion whether to do so. Refer to UAMS Administrative Guide 2.1.13, *Use and Disclosure of PHI and Medical Records Policy*.
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 UAMS Administrative Guide 4.4.02, *Employee Discipline Policy* and UAMS Administrative Guide 2.1.42, *HIPAA Sanctions Policy*.

Signature: _____

A handwritten signature in black ink, appearing to read "C. A. Smith", is written over a horizontal line.

Date: January 10, 2023