

**The Health Insurance Portability and Accountability Act (HIPAA):
An Oversimplification with Resources
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The purpose of this article is to inform you about the basics of HIPAA and to offer resources for more information. This article is designed to acquaint you with HIPAA not to give you all the information needed to implement HIPAA. Another reason for the article is to make a case for marriage and family therapists' being compliant with the HIPAA regulations. (For additional information on HIPAA, call the Minnesota Psychological Association [651-697-0440] to see about attending one of Steve Peltier's workshops.)

HIPAA was passed by Congress in 1996 as a part of the Kassebaum/Kennedy Act. One purpose of the act was to facilitate patients' transfer of health insurance as they change jobs. Health Insurance providers and Health Care providers then asked Congress to figure a way to transfer records in a standardized manner as patients moved their coverage; the providers and 3rd party payers were seeking simplicity in the transfer of data. Protecting the privacy of the medical records loomed as a factor in transferring these data.

Early on, HIPAA's focus was on electronic data transfer. As fewer 3rd party payers and providers use paper for their transactions, however, more mental health providers experience the impact of HIPAA.

A major purpose of HIPAA has been to define privacy rules and to define the implementation of the privacy rules. Privacy for "medical" patients has not been nationally standardized nor has it been managed in the ways that it has for "mental health" patients. Moreover, many states have stringent rules about privacy as a part of licensure laws for mental health professionals. The purpose, then, of HIPAA will be to set national standards for privacy that will match those standards that many states have set and that most mental health providers have already been meeting. The basic standards of practice in Minnesota have been higher than the regulations as defined by HIPAA. Hence, the impact of HIPAA on mental health providers in Minnesota will be somewhat less than on other health providers.

The impact of HIPAA is to formalize the process by which patients are advised of their privacy rights, to formalize the processes by which clinics and clinic employees are trained to maintain clients' privacy, and to set standards for the security of clients' records. The principle focus in HIPAA is "protected information". HIPAA sets forth standards that address a minimum level of privacy and it assumes that clinicians are aware of all state laws that pertain to privacy.

HIPAA regulations apply to insurance companies, health providers, and their "indirect business" associates, such as lawyers, accountants, billing services, etc. HIPAA applies to information about a client that either identifies a client or can be used to identify a client, that is "Individually Identifiable Health Information". "Individually Identifiable Health Information" becomes "Protected Health Information (PHI)" when it is transmitted or maintained in any electronic form or medium. So, if you keep your client records in your computer, these records classify as PHI; if you or your agent bills for 3rd party reimbursement electronically, the client records are PHI. The HIPAA privacy rules specifically apply to "Protected Health Information".

A key concept for mental health providers is that providers must meet standards for HIPAA compliance, if even one client seeks insurance reimbursement, even without the provider's knowledge. This is a very important point because client datum becomes "protected information" when it is transmitted or maintained in any electronic form or medium.

When a mental health provider transmits PHI in electronic form for any of the following reasons, the privacy rule is triggered.

- Healthcare claims and payments,
- Coordination of benefits,
- Healthcare eligibility, claim status, or enrollment status,
- Referral certification or authorization,
- Health claims attachments,
- First report of an injury.

If you have any agent acting in your behalf, who might transmit PHI electronically such as a billing service, then all your work is regulated under HIPAA privacy regulations; you cannot segregate your practice into clients using insurance and those paying out of pocket. (If, however, you have a billing service doing your 3rd party billings electronically, your agent may be knowledgeable about HIPAA and may be able to facilitate your compliance with HIPAA.)

Electronic transmissions include communicating data using the internet, the extranet (e.g., using internet technology to link branches of the same company), the telephone and telefax, and the movement of data utilizing magnetic tape and floppy, zip, or compact disks. If I move client data from my office to my house using a zip disk, I have triggered the privacy regulations of HIPAA. If I send a fax from my computer, so that an electronic copy of the fax exists, I have triggered the privacy regulations.

Clear rules govern transmitting PHI; clinicians can disclose PHI to facilitate treatment, payment, and healthcare operations. Psychotherapy notes are an exception. HIPAA sets forth specific definitions for treatment, payment, and

healthcare operations. (Submitting psychotherapy notes, under the HIPAA regulations, is no longer necessary to access 3rd party payments.)

Some aspects of HIPAA may seem to be games of semantics, for instance what mental health providers name as consent, HIPAA calls authorization. What mental health practitioners would call informed consent, HIPAA calls notice.

Forms like the standard authorizations for releasing records have not been included in HIPAA. The forms are being prepared by "experts" such as those at the American Psychological Association (APA); the APA will make the specific forms available before the end of 2002. Later, specific regulations on the release of information will be set forth by the Department of Health and Human Services. Many details of this program continue to evolve. You must continue to collect information as it changes to maintain your HIPAA compliance.

One significant point in the HIPAA regulations has been the management of mental health records. Too simply stated, under HIPAA, mental health records will no longer be a part of the "medical" record. Mental Health treatment records (particularly "process" notes) will be distinguished from physical health records. For example, if I have a severe and persistent mental health condition for which I am being treated in my HMO and if I am referred to a physician (out of my HMO) for a physical health concern, my mental health records will not be attached.

Health Providers were required to submit a request for an extension for the implementation of the HIPAA regulations by 16 October 2002. Your billing service may have requested this extension for you. If you have not requested an extension, check the HIPAA web site for instructions as soon as you can or contact Model Compliance Plans at the Centers for Medicare and Medicaid Management (CMMS) at P.O. Box 8040 in Baltimore (Maryland 21244-8040) or call CMMS at (410) 786-3000.

The space in this medium limits spelling out all of the details of HIPAA. And, the topic is too complex to explain in a limited number of words. Become mindful of the implications of HIPAA by using all of resources available. Access specific information from the following websites:

American Association for Marriage & Family Therapists — www.aamft.org;
members only

American Psychological Association — www.apa.org/practice/privacy

Center for Medicare and Medicaid Services (formerly HIFCA) —
www.cms.gov/hipaa

Minnesota Psychological Association — www.mnpsych.org