

# **HIPAA Privacy Rule Checklists**

## **Section 164.508 – Authorizations for Psychotherapy Notes**

**Prepared by the  
NCHICA Consent and Patients Rights Work Group  
Privacy and Confidentiality Focus Group**

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## HIPAA Privacy Rule Checklists Section 164.508 – Authorizations for Psychotherapy Notes

### I. Psychotherapy Notes Defined

“Psychotherapy notes” are 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 individual’s medical record. Psychotherapy notes *do not include* medical 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.

### II. Test for When an Authorization for Psychotherapy Notes Must be Obtained

A covered entity is required to obtain an authorization which conforms to the requirements at Section III before using or disclosing psychotherapy notes if each of the following are present:

- a. \_\_\_\_ The psychotherapy notes are separate from the rest of the individual’s medical record, and contain the documentation or analysis of the contents of conversation during a private counseling session or a group, joint, or family counseling session.
- b. \_\_\_\_ The psychotherapy notes **do not contain** medical 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.
- c. \_\_\_\_ None of the following exceptions apply:
  - i. The covered entity seeks to use or disclose psychotherapy notes to carry out the following treatment, payment, or health care operations:
    - \_\_\_\_ Use by originator of the psychotherapy notes for treatment;
    - \_\_\_\_ Use or disclosure by the covered entity in 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; *or*
    - \_\_\_\_ Use or disclosure by the covered entity to defend a legal action or other proceeding brought by the individual; *and*
  - ii. The covered entity is *required* to use or disclose psychotherapy notes for enforcement purposes, or the covered entity is *permitted* to use or disclose psychotherapy notes to the extent mandated by law; when needed for oversight of the health care provider who created the psychotherapy notes; when needed by a coroner or medical examiner; or when needed to avert a serious threat to health or safety.

### III. Required Contents of an Authorization for Psychotherapy Notes

A valid authorization must satisfy each of the following elements:

- a. \_\_\_\_ It is written in plain language;
- b. \_\_\_\_ It contains a specific description of the information to be used or disclosed;

- c. \_\_\_\_ It states the name or specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure;
- d. \_\_\_\_ It states the name or specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure;
- e. \_\_\_\_ It states an expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure;
- f. \_\_\_\_ It contains a statement of the individual's right to revoke the authorization in writing, except (i) to the extent that the covered entity has already used or disclosed information under the authorization, or (b) if the authorization was obtained as a condition of obtaining insurance coverage;
- g. \_\_\_\_ It contains a description of how the individual may revoke the authorization;
- h. \_\_\_\_ It contains a statement that information used or disclosed pursuant to the authorization may be subject to redisclosure by the recipient and no longer be protected by this rule;
- i. \_\_\_\_ It is signed by the individual and dated; *and*
- j. \_\_\_\_ If the authorization is signed by the individual's personal representative, it must include a description of the representative's authority to act for the individual.

#### IV. Other Rules for an Authorization for Psychotherapy Notes

- a. **Defective Authorizations.** An authorization is not valid *if* the document has any of the following defects:
  - \_\_\_\_ The expiration date has passed or the expiration event is known by the covered entity to have occurred;
  - \_\_\_\_ The authorization has not been filled out completely, with respect to the requirements in Section III;
  - \_\_\_\_ The authorization is known by the covered entity to have been revoked;
  - \_\_\_\_ The authorization lacks an element required in Section III;
  - \_\_\_\_ The authorization is inappropriately combined with another document; *or*
  - \_\_\_\_ Any material information in the authorization is known by the covered entity to be false.
- b. **Compound Authorizations.** An authorization for the use or disclosure of psychotherapy notes may be combined *only* with another authorization for the use or disclosure of psychotherapy notes.
- c. **Conditioning Authorizations.** A covered entity may not condition the provision of treatment, payment, enrollment in the health plan, or eligibility for benefits on the provision of an authorization for psychotherapy notes.
- d. **Revocation of Authorization.** An individual may revoke an authorization at any time, provided that such revocation be in writing, except to the extent that (i) the covered entity has taken action in reliance thereon, *or* (ii) if the authorization was obtained as a condition of obtaining insurance coverage, other law provides the insurer with the right to contest a claim under the policy.