

MENTAL HEALTH RECORDS

A covered entity must obtain an authorization for use and disclosure of psychotherapy notes, except to carry out treatment, payment or health care operations related to the following:

- (1) use by the originator of psychotherapy notes for treatment;
- (2) use or disclosure by the covered entity for 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
- (3) use or disclosure by the entity to defend itself in legal action or other proceedings brought by the individual.

Psychotherapy notes also may be disclosed (1) when required by the Secretary of Health and Human Services in an investigation, (2) when required by law, (3) for health oversight purposes, and (4) to a coroner or medical examiner to identify a decedent or determine a cause of death. Psychotherapy notes also may be disclosed if necessary for law enforcement authorities to prevent or lessen a serious and imminent threat to an individual or the public.

Psychotherapy notes are defined as 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. (Section 164.501)