What about psychotherapy notes? My understanding is that those are not part of the record, especially if the pertinent information has been recorded in progress notes? And do those belong to the clinician or the agency or the client or someone else?

A: Most states do not allow you to have two sets of notes – you can only have one set of notes. You also for ethical and legal best practices do not want two sets of notes – that could hang you if the file is opened and it is determined that there are notes and then there are other notes. For us, psychotherapy notes are progress notes. When you work for an agency – everything belongs to the agency. In private practice, the notes belong to the clinician. In your informed consent you should talk about the fact that the client does not own the notes – the agency does and that if they want a summary of the notes in the file, you are willing to provide them within 30 days of a written request. Clients do not own the notes.

When a client is being ordered by the courts to complete a substance abuse evaluation does the court have rights of this evaluation without client’s consent, if it is courted ordered?

A: The short answer is yes. As a clinician, you want to let the client know that at the onset of the evaluation.

Where can I find a technology consent with proper verbiage?


I have been asked to take on the role of compliance officer for my facility, can you give me some suggestions on were to begin?


Do HIPAA laws just apply to clients with a MR#? In other words, pre-admissions clients do not fall under these rules?

A: HIPAA laws protect all personal healthcare information so if you are gathering any of that information – you fall under HIPAA. Typically you are gathering personal healthcare information in pre-admissions so it would be best for you to check into this in more detail. Here is some guidelines but you probably are a covered entity if you are do pre-admissions and take insurance or collect personal healthcare information.

- Covered entities under HIPAA are individuals or entities that transmit protected health information for transactions for which the Department of Health and Human Services has adopted standards (see 45 CFR 160.103). Transactions include transmission of healthcare claims, payment and remittance advice, healthcare status, coordination of benefits, enrollment and disenrollment, eligibility checks, healthcare electronic fund transfers, and referral certification and authorization. Covered entities under HIPAA include health plans, healthcare providers, and healthcare clearinghouses. Addiction providers are considered healthcare providers. Health plans include health insurance companies, health maintenance organizations, government programs that pay for healthcare (Medicare for example), and military and veterans’ health programs. Healthcare clearinghouses are organizations that process nonstandard health information and convert data into types that conform to the standards outlined in the HIPAA administrative simplification.
Healthcare providers include hospitals, clinics, doctors, psychologists, dentists, chiropractors, nursing homes, pharmacies, home health agencies, and other providers of healthcare that transmit health information electronically. HIPAA also applies to business associates of HIPAA-covered entities and their subcontractors.

Our facility was not licensed until 2018. Do we need to keep the old hard copy records?
A: You have to keep all client records for between 7 and 10 years, based on your state statutes and board rules. Also, most child and adolescent records are kept longer than adult records. If you are scanning them into an HER, you can destroy the paper copies. Make sure that you check all scans before destroying – ethically and legally – anything. When you “were licensed” has nothing to do with retention of a client’s records.

Are the forms available updated with current CFR?
A: You will have to check all forms against current statutes and rules.

Can you discuss parents wanting access to minor records, when the minor declines ROI with the parent?
A: My suggestion is to work with the minor to create a summary of the client’s record, that they are comfortable with you giving to the parents. The summary could be as simple as diagnosis, treatment plan, dates of service, what has been worked on and what is still left to be worked on. No details beyond this would be a bare minimum summary. Make sure the minor actually can deny – legally – an ROI. In Colorado, the age of consent is 12. Every state is different. When in doubt, reach out to the attorney associated with your liability insurance – and make sure they are versed in the laws for your state.

Is there no redisclosure of community reports or only with ROI?
A: We cannot redisclose any information given to us by another party. If someone needs information that came to you from another party – they need to contact the originator of that information with an ROI. You can only disclose information that is original to you and your agency – that is not an issue of an ROI. That is per HIPAA updates, and is supported by 42 CFR Part 2.

With Zoom now, how do we protect clients if other clients take screen shots or record on their phones?
A: There is nothing we can do about clients taking screen shots. This is worthy of a discussion about each person’s rights to privacy, confidentiality, respect, due process, integrity, trust. Every client has to decide for themselves what level of risk they can handle. I would remind everyone of this at the beginning of every group session. I would talk about secrecy, violation of trust, etc. as one of the group topics. You can keep others from recording via Zoom but taking screen shots is a whole different animal.

You may only report to the drug monitoring program if client consents - correct?
A: Depends on what you mean by drug monitoring program. If you are being asked to report make reports to the criminal justice system, the client has in all likelihood already signed documents with the CJ system allowing for the CJ system to seek and get all information that they want. We cannot hide behind a lack of an ROI with the CJ system – those are court-involved in that a judge is part of the case if there is a PO. For other programs – like Substance Abuse Professionals working with employees of Department of Transportation covered employers – you do not need any consents to talk to the employer, treatment agency, drug monitoring agency, etc. HIPAA and 42 CFR Part 2 do not apply to SAPs. Those are the only two exceptions to ROIs that I am aware of. For all other programs, you have to get a consent or the other agency has to show you a signed and dated consent from the client.

If you have a BAA with a company, does that allow you to email them necessary client info while still remaining HIPAA complaint?
A: Email is tricky, even with a BAA. Make sure all information is encrypted and sent through secure channels. Faxes cannot be hacked into but emails can be. You are not under any less stringent mandates with your BAA.

When setting up a client for services, what should I document in the "Subject Line" of the email?
A: It sounds like you want the subject line to be as neutral and general as possible. Don’t put names or any specifics in the subject line. You and the client could agree to a code word that is generic that you could put in the subject line that tells the client that this email is from you. Like “oatmeal”, “state name”, etc. that they would
remember and know is from you. The thing that you will have to be aware of is that generic subject lines often end up in spam folder. You could just put the date: 04.21.21 – but again depending on the program it may spam it.

If a minor 12 years old in Colorado seeks tx and doesn't have to have parents' permission - what about the parents. What if they have reported the minor missing for 30 days or more?
A: A minor seeking services at age 12 to 18 in Colorado does not have to have their parent’s permission to seek services. If they are missing (i.e., a run away), that is a law enforcement issue. As long as you have contact with the client and know to the best of your ability that they are safe, you cannot violate their confidentiality. Most clients seeking services at this young age have not run away and they are typically seeking services through their school or through their doctor’s office.

Can you share where in the Code the information about “Mandated Clients” is that they cannot revoke release of information? A client who is referred to treatment by probation cannot revoke the release of information at any time, correct? Is this the same for DHS Child Welfare/Protective Services?
A: This is specific to each state so please look through all of the laws in your state that govern counseling and criminal justice system/mandated clients to find out this information so it is specific to your state. The PO or CPS assigned case worker should be able to direct you to the appropriate statutes that cover this. Most states do not allow mandated clients to revoke their ROI that they signed with the courts – because they are still on paper so they do not have specific rights like that. This is also typically true of DHS Child Welfare/Protective Services. From your end – I would seek clinical supervision and/or consultation on this matter to make sure you remain in compliance. You also can reach out to your liability insurance to ask to speak to someone familiar with the laws in your state to find out what they recommend.