

MAINTAINING CONFIDENTIALITY IN THE ERA OF MANAGED CARE

Today it is not unusual to be asked to forward patient information to third-party payers (private and governmental), managed care organizations (MCOs), utilization review entities, pharmacies, pharmacy benefit management companies (PBMs), and companies that provide various auditing functions--to name a few. Consequently, maintaining patient confidentiality is an increasingly demanding task.

MCO REQUESTS FOR RECORDS

Psychiatrists are sometimes confronted by representatives of MCOs who request immediate access to confidential patient information. These MCO employees often state that their authority rests on the consent form the patient signed when he joined the health plan.

This may be technically correct, but the consent form the patient signs is usually a blanket consent for release of medical records for reimbursement purposes. At the time the patient signed the consent, she may not have anticipated having psychiatric treatment or understood the extent to which information could be accessed. The patient may not even remember signing such a consent. Is this really informed consent? (See Chapter 21.)

The standard of practice in releasing psychiatric treatment records is that the patient is specifically informed of, and decides to consent to, a specific release of information for a specific purpose. Only that information necessary to perform the authorized function can be released. Therefore, when faced with a request for records, a psychiatrist should inform the patient of the request and get the patient's consent to release the information before passing it along to the MCO.

Ideally, the psychiatrist should know the MCO's policies and procedures on confidentiality before signing a contract, including its medical record review procedures for utilization review, credentialing, auditing, quality of care review, etc. The psychiatrist should also find out how much notice is given before on-site audits or reviews are conducted. It is recommended to contact a risk management professional with your liability insurer prior to scheduling an audit or review to discuss what information does/does not need to be disclosed. MCOs generally do not have authority to see the records of patients who are not members of the MCO, or who paid out of pocket for your services.

NCQA STANDARDS

The National Committee for Quality Assurance (NCQA), which sets standards for and accredits MCOs and HMOs, states that MCOs should 1.) protect member confidentiality; 2.) not share data with the member's employer (explicitly or implicitly); 3.) allow members to consent or deny access to their medical records; and 4.) adopt policies and procedures related to confidentiality of member information. NCQA also provides standards and procedures for on-site reviews of medical records for credentialing purposes and states that MCOs should use blinded medical records for this purpose (you can visit NCQA's website at www.ncqa.org).

A CAUTION ABOUT "PSYCHOTHERAPY NOTES" AND SUMMARY STATEMENTS

Some psychiatrists keep "psychotherapy" or "process" notes, which are treated differently from other mental health information. HIPAA strictly defines psychotherapy notes and their permitted disclosures and affords them a higher level of protection against disclosure than the rest of the medical record. Generally, psychiatrists use psychotherapy notes to document very sensitive information, impressions, patient-reported fantasies, etc. that typically are not required or useful for treatment, payment, or healthcare operations. In order to receive heightened protection, psychotherapy notes must be kept separate from the remainder of the patient's legal medical record. It should be noted that the United States Supreme Court, in *Jaffee v. Redmond*, ruled that psychotherapy notes were not discoverable even with a court order.

Some states permit the psychiatrist to release a treatment summary in lieu of a requested medical record, under limited circumstances such as when the psychiatrist fears that releasing the medical record may be harmful to the patient. It is recommended to contact your malpractice carrier prior to issuing a treatment summary in lieu of the requested medical record.

PROCEDURES FOR THE RELEASE OF INFORMATION

- Understand the conditions contained in each MCO agreement for the release of medical information to the payer either for certification of medical care or for audit purposes, and what fees the MCO and state law permit to be charged for producing these records.
- Notify your patients in writing that their protected health information will be shared with payers for payment purposes.

-
- Accompany the released record with a copy of the signed patient release form and written notification to the receiver of the medical record that further disclosure of information is not authorized without the patient's specific consent. (Original patient records should never be released – only legible copies.)
 - Inform the patient whenever a request for release of information is received, even if the patient has already given consent, particularly if it has been a while since the authorization was signed. If it has been some time since the patient signed an authorization for release of medical records form, the patient should complete an updated authorization.
 - Keep a copy of all requests for release of information in the patient record along with the signed authorization for release of medical records form.

Release only that portion of patient information that is necessary in order to comply with the request. Consult with your malpractice carrier or an attorney if you are unclear what portions of the record are required/permitted to be released.

If you communicate about patient information with third-party payers, MCOs, provider networks, etc., via electronic means, make sure there are adequate policies and procedures in place regarding security of the information. All employees should be trained and understand these policies. Remember that the psychiatrist can be held responsible for the actions of employees, affiliates, and contractors. (Be sure to have adequate safeguards in place for paper records, too.) Authorized individuals should have access to information on a need-to-know basis only.