



Related Change Request (CR) #: 3457

MLN Matters Number: MM3457

Related CR Release Date: January 21, 2005

Related CR Transmittal #: 98

Effective Date: February 22, 2005

Implementation Date: February 22, 2005

### *Psychotherapy Notes*

**Note:** This article was revised to contain Web addresses that conform to the new CMS website and to show they are now MLN Matters articles. All other information remains the same.

### **Provider Types Affected**

Psychotherapists and providers billing Medicare carriers or Fiscal Intermediaries (FIs) for psychotherapy services.

### **Provider Action Needed**

This article and related CR 3457 provide information about instructions to Medicare carriers/intermediaries not to deny claims for psychotherapy on the basis that providers failed to produce psychotherapy notes in response to a broad carrier/intermediary request for documentation. Providers are exempt from submitting psychotherapy notes without patient authorization when the notes in question fit the Final Privacy Rule, 45 CFR, Section 164.501.

However, patient authorization is not required for the release of information excluded from the definition of psychotherapy notes, and the provider should release the non-psychotherapy note material to demonstrate medical necessity. If the provider does not submit sufficient information to demonstrate that services were medically necessary, the claim will be denied.

### **Background**

Psychotherapy notes are defined as notes recorded by a mental health professional that 1) document or analyze the contents of a counseling session and 2) are separated from the rest of a medical record (see Final Privacy Rule, 45 CFR, Part 164.501).

The definition of psychotherapy notes expressly excludes the following information:

#### **Disclaimer**

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- Medication prescription and monitoring,
- Counseling session start and stop times,
- Modalities and frequencies of treatment furnished,
- Results of clinical tests, and any summary of: diagnosis, functional status, treatment plan, symptoms, prognosis, progress, and progress to date.

The preceding class of information does not qualify as psychotherapy note materials, and physically integrating this information into protected psychotherapy notes does not automatically transform it into protected information.

It is important to note that if a provider has combined information excluded from the definition of psychotherapy notes with a psychotherapy note (e.g., symptoms), it is the responsibility of the provider to extract the information needed to support that a Medicare claim is reasonable and necessary.

Also, providers are exempt from submitting psychotherapy notes without patient authorization when the notes in question fit the Privacy Rule definition in, 45 CFR, Part 164.501.

## Implementation

The implementation date for this instruction is February 22, 2005.

## Related Instructions

The *Medicare Program Integrity Manual* (Pub. 100-08), Chapter 3, Subsection 3.4.1.2 (Additional Documentation Requests (ADR) During Prepayment or Postpayment MR) has been revised to reflect this change. The updated manual instructions are attached to the official instruction released to your carrier/intermediary. You may view that instruction by going to <http://www.cms.hhs.gov/transmittals/downloads/R98PI.pdf> on the CMS website.

## Additional Information

The Code of Federal Regulations, Title 45 (Public Welfare and Human Services), Part 164 (Security and Privacy), Subpart E (Privacy of Individually Identifiable Health Information), Section 164.501 (Definitions) [45 CFR, Sec. 164.501] can be found at the following Health and Human Services (HHS) websites:

<http://www.hhs.gov/ocr/hipaa/privrulepd.pdf>

<http://www.hhs.gov/ocr/regtext.html>

If you have any questions, please contact your carrier/intermediary at their toll-free number, which may be found at <http://www.cms.hhs.gov/MLNProducts/downloads/CallCenterTollNumDirectory.zip> on the CMS website.

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