

# **AZCounseling, PLLC**

## **HIPAA NOTICE OF PRIVACY PRACTICES**

In 1996, the Health Insurance Portability and Accountability Act (HIPAA) was signed into law. After that time, administrative rules were written by the federal Department of Health and Human Services to implement the act. As a provider of psychotherapy services under insurance programs, we are obligated to follow these rules and laws. The following notice is required by HIPAA and contains our implementation of rules and laws under the HIPAA statutes and state law. Please note that most of what is contained in this document is defined by both state and federal statutes. As such, we have little control or flexibility in the way that these statutes are implemented.

It is also important to note that HIPAA statutes only apply to services that are delivered under your medical insurance program. For example, these do not necessarily apply to services that are delivered under an Employee Assistance Program, Workman's Compensation Plan, or the medical benefits under an automobile insurance plan if you were injured in an accident.

**I. THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY. THIS NOTICE IS PART OF THE INFORMED CONSENT PROCESS AND IS INTENDED TO BE USED IN CONJUNCTION WITH THE "INFORMED CONSENT FOR ASSESSMENT AND TREATMENT" DOCUMENT. THERE IS INFORMATION IN BOTH DOCUMENTS ABOUT PRIVACY AND CONFIDENTIALITY. BOTH DOCUMENTS SHOULD BE REVIEWED AND UNDERSTOOD BEFORE YOU AGREE TO START YOUR THERAPY.**

### **II. IT IS OUR LEGAL DUTY TO SAFEGUARD YOUR PROTECTED HEALTH INFORMATION (PHI).**

By law, we are required to insure that your PHI is kept private. The PHI constitutes information created or noted by your provider that can be used to identify you. It contains data about your past, present or future health or condition, the provision of health care services to you, or the payment for such health care. We are required to provide you with this Notice about our privacy procedures. This Notice must explain when, why, and how we would use and/or disclose your PHI. Use of PHI means when we share, apply, utilize, examine, or analyze information within our practice; PHI is disclosed when your provider releases, transfers, gives, or otherwise reveals it to a third party outside our practice. With some exceptions, we may not use or disclose more of your PHI than is necessary to accomplish the purpose for which the use or disclosure is made; however, we are always legally required to follow the privacy practices described in this Notice.

Please note that we reserve the right to change the terms of this Notice and our privacy policies at any time. Any changes will apply to PHI already on file with us. Before we make any important changes to our policies, we will immediately change this Notice and post a new copy of it in our office. You may also request a copy of this Notice from your clinician, or you can view a copy of it in our office.

As a psychotherapist under HIPAA, two different kinds of PHI may be involved: medical records and psychotherapy notes. Medical records include treatment plans, assessments, symptoms, diagnoses, clinical tests and examinations, progress in treatment, patient functionality, and modalities and frequency of treatment. Psychotherapy notes are optional at the therapist's discretion and contain more personal and sensitive information that is used by the therapist in the process of treatment. Psychotherapy notes have special protections under HIPAA. Depending on the nature and subject of the therapy, your clinician may or may not keep psychotherapy notes on your case and there may be sometimes when your clinician uses or writes these and others when not deemed necessary. In general, where PHI is referred to in this notice it should be interpreted to mean medical records, not psychotherapy notes. It will be noted in this document where PHI includes psychotherapy notes, or where other provisions apply to psychotherapy notes.

It should also be noted however, that in actual practice your clinician rarely uses psychotherapy notes. While the idea of these specially-protected notes sounds good, we have found that the protections that actually result are very minimal. Although this information does not need to be disclosed to insurance and managed care companies, there are many other more frequent types of information requests that are received in our office

where the protections do not apply. There is a danger of having a false sense of security in the use of psychotherapy notes that does not serve our clients well.

### **III. HOW WILL WE USE AND DISCLOSE YOUR PHI.**

We will use and disclose your PHI for many different reasons. Some of the uses or disclosures will require your prior written authorization; others, however, will not. Below you will find the different categories of our uses and disclosures, with some examples.

**A. Uses and Disclosures Related to Treatment, Payment or Health Care Operations that Do Not Require Your Prior Written Consent.** We may use and disclose your PHI without your consent for the following reasons:

- 1. For treatment.** We may disclose your PHI to physicians, psychiatrists, psychologists and other licensed health care providers who provide you with health care services or are otherwise involved in your care. Example: If a psychiatrist is treating you, your clinician may disclose your PHI to him/her in order to coordinate your care.
- 2. For health care operations.** We may disclose your PHI to facilitate the efficient and correct operation of our practice. Examples: Quality control – We might use your PHI in the evaluation of the quality of health care services that you have received or to evaluate the performances of the health care professionals who provided you with these services. We may also provide your PHI to our attorneys, accountants, consultants and others to make sure that we are in compliance with applicable laws.
- 3. To obtain payment for treatment.** We may use and disclose your PHI to bill and collect payment for the treatment and services provided by your clinician. Example: We might send your PHI to your insurance company or health plan in order to get payment for the health care services provided by your clinician. We could also provide your PHI to business associates, such as billing companies, claims processing companies, and others that process health care claims for our office.

Your insurance company or managed care organization cannot require your clinician to release information from the psychotherapy notes in order to authorize or pay for treatment services. This is a new protection for patients under HIPAA. However, they can and often do require the release of other PHI including diagnoses, treatment plans, clinical test results, response to treatment, compliance with treatment, mental and functional status, medications prescribed, and modalities and frequency of treatment. We have no knowledge or control over what happens to your PHI once it has been released to an insurance company. You should be aware that submitting a mental health invoice for reimbursement carries a certain amount of risk to confidentiality, privacy, or to future eligibility to obtain health or life insurance. If you choose to use your medical benefits, we are obligated to supply them your PHI.

- 4. Other disclosures.** Examples: Your consent is not required if you need emergency treatment – provided that your clinician attempts to get your consent after treatment is rendered. In the event that your clinician tries to get your consent, but you are unable to communicate with him/her (for example – if you are unconscious or in severe pain), but your clinician thinks that you would consent to such treatment if you could, we may disclose your PHI.

**B. Certain Other Uses and Disclosures Do Not Require Your Consent.** We may use and/or disclose your PHI without your consent or authorization for the following reasons:

- 1. When disclosure is required by federal, state, or local law.**
- 2. To avoid harm.** We may provide PHI to law enforcement personnel or persons able to prevent or mitigate a serious threat to the health and safety of a person or the public. Note: this may include the disclosure of information contained in your clinician's psychotherapy notes.
- 3. If disclosure is compelled or permitted by the fact that you are in such mental or emotional condition as to be dangerous to yourself or the person or property of others and if we determine that disclosure is necessary to prevent the threatened danger.** Note: this may include the disclosure of information contained in your clinician's psychotherapy notes.
- 4. If disclosure is mandated by the Arizona Child Abuse and Neglect Reporting law.** For example, if your clinician has a reasonable suspicion of child abuse or neglect. Note: this may include the disclosure of information contained in your clinician's psychotherapy notes.

5. **If disclosure is mandated by the Arizona Elder/Dependent Adult Abuse Reporting law.** For example, if your clinician has reasonable suspicion of elder abuse or dependent adult abuse. Note: this may include the disclosure of information contained in your clinician's psychotherapy notes.
6. **If disclosure is compelled or permitted by the fact that you tell your clinician of a serious/imminent threat of physical violence by you against a reasonably identifiable victim or victims.** Note: this may include the disclosure of information contained in your clinician's psychotherapy notes.
7. **For public health activities.** Example: in the event of your death, if a disclosure is permitted or compelled, your clinician may need to give the county coroner information about you.
8. **If disclosure is required by the Arizona Board of Behavioral Health Examiners as a result of a complaint or other investigation.** This includes the disclosure of information contained in psychotherapy notes.
9. **If a lawsuit is filed against your clinician by you or someone on your behalf, PHI – including psychotherapy notes, may be disclosed in a court proceeding as part of your clinician's defense.**
10. **For Worker's Compensation purposes.** We may provide PHI in order to comply with Worker's Compensation laws. The HIPAA privacy regulations and protections do not apply to services provided under workman's compensation insurance.
11. **Appointment reminders and health related benefits or services.** Examples: We may use PHI to provide appointment reminders. We may use PHI to give you information about alternative treatment options, or other health care services or benefits we offer.
12. **If an arbitrator or arbitration panel compels disclosure** when arbitration is lawfully requested by either party, pursuant to subpoena *duces tectum* (e.g., a subpoena for mental health records) or any other provision authorizing disclosure in a proceeding before an arbitrator or arbitration panel.
13. **If disclosure is required or permitted to a health oversight agency for oversight activities authorized by law.** Example: When compelled by the U.S. Secretary of Health and Human Services to investigate or assess our compliance with HIPAA regulations.
14. **If disclosure is otherwise specifically required by law.**

**C. Certain Uses and Disclosures Require You to Have the Opportunity to Object.**

1. **Disclosures to family, friends or others.** We may provide your PHI to a family member, friend or other individual who you indicate is involved in your care or responsible for the payment for your health care, unless you object in whole or in part. Retroactive consent may be obtained in emergency situations.

**D. Other Uses and Disclosures Require Your Prior Written Authorization.** In any other situation not described in Sections IIIA, IIIB, and IIIC above, we will request your written authorization before using or disclosing any of your PHI. Even if you have signed an authorization to disclose your PHI, you may later revoke that authorization, in writing, to stop any future uses and disclosures (assuming that we haven't taken any action subsequent to the original authorization) of your PHI by us.

The release of information contained in the psychotherapy notes requires a separate authorization. This authorization is typically used to allow multiple clinicians working on the same case to communicate. For example, we may ask you to sign a release of psychotherapy notes for a psychiatrist who is also involved in your treatment. Like the release of PHI, you can revoke this form of release to stop sharing this information.

**IV. WHAT RIGHTS YOU HAVE REGARDING YOUR PHI.**

These are your rights with respect to your PHI.

**A. The Right to See and Get Copies of Your PHI.** In general, you have the right to see your PHI that is in our possession, or to get copies of it; however, you must request it in writing. If we do not have your PHI, but we know who does, we will advise you of how you can get it. You will receive a response from your clinician within 30 days of receiving your written request. Under certain circumstances, your clinician may feel he/she must deny your request, but if he/she does, he/she will give you, in writing, the reasons for the denial. He/she will also explain your right to have the denial reviewed.

Psychotherapy notes are intended for the sole use of the clinician providing your care. Please note that the right to review or get copies of your PHI may not include access to psychotherapy notes.

If you ask for copies of your PHI, we will charge you not more than \$.25 per page. Your clinician may see fit to provide you with a summary or explanation of the PHI, but only if you agree to it, as well as to the cost, in advance.

**B. The Right to Request Limits on Uses and Disclosures of Your PHI.** You have the right to ask that we limit how we use and disclose your PHI. While we will consider your request, we are not legally bound to agree. If we do agree to your request, we will put those limits in writing and abide by them except in emergency situations. You do not have the right to limit the uses and disclosures that we are legally required or permitted to make.

**C. The Right to Choose How We Send Your PHI to You.** It is your right to ask that your PHI be sent to you at an alternate address (for example, sending information to your work address rather than your home address) or by an alternate method (for example, via email instead of by regular mail). We are obliged to agree to your request providing that we can give you the PHI, in the format you requested, without undue inconvenience.

**D. The Right to Get a List of the Disclosures We Have Made.** You are entitled to a list of disclosures of your PHI that we have made. The list will not include uses or disclosures to which you have already consented, i.e. those for treatment, payment, or health care operations, sent directly to you, or to your family; neither will the list include disclosures made for national security purposes, to corrections or law enforcement personnel, or disclosures made before April 15, 2003. After April 15, 2003, disclosure records will be held for six years.

We will respond to your request for an accounting of disclosures within 60 days of receiving your written request. This list we give you will include disclosures made in the previous six years (the first six year period beginning 2003-2009) unless you indicate a shorter period. The list will include the date of the disclosure, to whom PHI was disclosed (including their address if known), a description of the information disclosed, and the reason for the disclosure. We will provide the list to you at no cost, unless you make more than one request in the same year, in which case we will charge you a reasonable sum based on a set fee for each additional request.

**E. The Right to Amend Your PHI.** If you believe that there is some error in your PHI or that important information has been omitted, it is your right to request that your clinician correct the existing information or add the missing information. Your request and the reason for the request must be made in writing. You will receive a response within 60 days of our receipt of your request. Your clinician may deny your request, in writing, if he/she finds that: the PHI is (a) correct and complete, (b) forbidden to be disclosed, (c) not part of his/her records, or (d) written by someone other than your clinician. Your clinician's denial must be in writing and must state the reasons for the denial. It must also explain your right to file a written statement objecting to the denial. If you do not file a written objection, you still have the right to ask that your request and the denial be attached to any future disclosures of your PHI. If your clinician approves your request, he/she will make the change(s) to your PHI. Additionally, he/she will tell you that the changes have been made and he/she will advise others who need to know about the change(s) to your PHI.

**F. The Right to Get This Notice by Email.** You have the right to get this notice by email. You have the right to request a paper copy of it as well.

## **V. HOW TO COMPLAIN ABOUT OUR PRIVACY PRACTICES**

If in your opinion, we may have violated your privacy rights, or if you object to a decision made by your clinician about access to your PHI, you are entitled to file a complaint with the person listed in Section VI below. You may also send a written complaint to the Secretary of the Department of Health and Human Services at 200 Independence Avenue S.W. Washington, D.C. 20201. If you file a complaint about our privacy practices, we will take no retaliatory action against you.

## **VI. PERSON TO CONTACT FOR INFORMATION ABOUT THIS NOTICE OR TO COMPLAIN ABOUT OUR PRIVACY PRACTICES**

If you have any questions about this Notice or any complaints about our privacy practices, or would like to know how to file a complaint with the Secretary of the Department of Health and Human Services, please contact: Cassandra Cauble at 5533 E. Bell Road Suite 127 Scottsdale, AZ 85254, 602-867-4905.

## **VII. EFFECTIVE DATE OF THIS NOTICE**

This Notice went into effect on January 1, 2009 and replaces the Notice dated July 2003.

## **VIII. PRIVACY OFFICER**

Our privacy officer is Cassandra Cauble. The Privacy Officer can: (a) answer your questions about our privacy practices, (b) accept any complaints you have about our privacy practices, and (c) give you information on how to file a complaint. You can contact the Privacy Officer by calling Cassandra Cauble at 602-867-4905.