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### **Notice of Privacy Practices**

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule provides clients with important privacy rights and protections with respect to their health information, including important controls over how their health information is used and disclosed by health plans and health care providers. Ensuring strong privacy protections is critical to maintaining individuals' trust in their health care providers and willingness to obtain needed health care services, and these protections are especially important where very sensitive information is concerned, such as mental health information. At the same time, the Privacy Rule recognizes circumstances where health information may need to be shared to ensure the client receives the best treatment and for other important purposes, such as for the health and safety of the client or others. The Rule is carefully balanced to allow uses and disclosures of information, including mental health information, for treatment and these other purposes with appropriate protections.

In recognition of the integral role that family and friends play in a client's health care, the HIPAA Privacy Rule allows routine, and sometimes critical, communications between health care providers and these persons. Where a client is present and has the capacity to make health care decisions, health care providers may communicate with a client's family members, friends, or other persons the client has involved in his or her health care or payment for care, so long as the client does not object. The provider may ask the client's permission to share relevant information with family members or others, may tell the client he or she plans to discuss the information and give them an opportunity to agree or object, or may infer from the circumstances, using professional judgment, that the client does not object.

Where a client is not present or is incapacitated, a health care provider may share the client's information with family, friends, or others involved in the client's care or payment for care, as long as the health care provider determines, based on professional judgment, that doing so is in the best interests of the client. Note that, when someone other than a friend or family member is involved, the health care provider must be reasonably sure that the client asked the person to be involved in his or her care or payment for care.

In all cases, disclosures to family members, friends, or other persons involved in the client's care or payment for care are to be limited to only the protected health information directly relevant to the person's involvement in the client's care or payment for care.

The Privacy Rule applies uniformly to all protected health information, without regard to the type of information. One exception to this general rule is for psychotherapy notes, which receive special protections. The Privacy Rule defines psychotherapy notes as notes recorded by a health care provider who is a mental health professional documenting or analyzing the contents of a conversation during a private counseling session or a group, joint, or family counseling session and that are separate from the rest of the client's medical record. Psychotherapy notes do not include any information about medication prescription and

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monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, or results of clinical tests; nor do they include summaries of diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date. Psychotherapy notes also do not include any information that is maintained in a client's medical record. Psychotherapy notes are treated differently from other mental health information both because they contain particularly sensitive information and because they are the personal notes of the therapist that typically are not required or useful for treatment, payment, or health care operations purposes, other than by the mental health professional who created the notes. Therefore, with few exceptions, the Privacy Rule requires a covered entity to obtain a client's authorization prior to a disclosure of psychotherapy notes for any reason, including a disclosure for treatment purposes to a health care provider other than the originator of the notes.

A notable exception exists for disclosures required by other law, such as for mandatory reporting of abuse, and mandatory "duty to warn" situations regarding threats of serious and imminent harm made by the client.

In situations where the client is given the opportunity and does not object, HIPAA allows the provider to share or discuss the client's mental health information with family members or other persons involved in the client's care or payment for care. In all cases, the health care provider may share or discuss only the information that the person involved needs to know about the client's care or payment for care.

Finally, it is important to remember that other applicable law or professional ethics may impose stricter limitations on sharing personal health information, particularly where the information relates to a client's mental health.

The HIPAA Privacy Rule permits a health care provider, when a client is not present or is unable to agree or object to a disclosure due to incapacity or emergency circumstances, to determine whether disclosing a client's information to the client's family, friends, or other persons involved in the client's care or payment for care, is in the best interests of the client. Where a provider determines that such a disclosure is in the client's best interests, the provider would be permitted to disclose only the PHI that is directly relevant to the person's involvement in the client's care or payment for care. This permission clearly applies where a client is unconscious. However, there may be additional situations in which a health care provider believes, based on professional judgment, that the client does not have the capacity to agree or object to the sharing of personal health information at a particular time and that sharing the information is in the best interests of the client at that time. These may include circumstances in which a client is suffering from temporary psychosis or is under the influence of drugs or alcohol. If, for example, the provider believes the client cannot meaningfully agree or object to the sharing of the client's information with family, friends, or other persons involved in their care due to her current mental state, the provider is allowed to discuss the client's condition or treatment with a family member, if the provider believes it would be in the client's best interests. In making this determination about the client's best interests, the provider should take into account the client's prior expressed preferences regarding disclosures of their information, if any, as well as the circumstances of the current situation. Once the client regains the capacity to make these choices for themselves, the provider should offer the client the opportunity to agree or object to any future sharing of their information. The Privacy Rule permits, but does not require, providers to disclose information in these situations. Providers who are subject to more stringent privacy standards under other laws, such as certain state confidentiality laws would need to consider whether there is a similar disclosure permission under those laws that would apply in the circumstances.

HIPAA allows the provider to share or discuss a client's mental health information with the client's family members, as long as the client does not object. If the provider believes, based on professional judgment, that the client does not have the capacity to agree or object to sharing the information at that time, and that sharing the information would be in the client's best interests, the provider may tell the client's family member. In either

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case, the health care provider may share or discuss only the information that the family member involved needs to know about the client's care or payment for care. Otherwise, if the client has capacity and objects to the provider sharing information with the client's family member, the provider may only share the information if doing so is consistent with applicable law and standards of ethical conduct, and the provider has a good faith belief that the client poses a threat to the health or safety of the client or others, and the family member is reasonably able to prevent or lessen that threat. Disclosure may be necessary to prevent a serious and imminent threat to the health or safety of the client or others.

With respect to general treatment situations, a parent, guardian, or other person acting in loco parentis usually is the personal representative of the minor child, and a health care provider is permitted to share client information with a client's personal representative under the Privacy Rule. However, a parent is not treated as a minor child's personal representative when: (1) State or other law does not require the consent of a parent or other person before a minor can obtain a particular health care service, the minor consents to the health care service, and the minor child has not requested the parent be treated as a personal representative; (2) someone other than the parent is authorized by law to consent to the provision of a particular health service to a minor and provides such consent; or (3) a parent agrees to a confidential relationship between the minor and a health care provider with respect to the health care service. Regardless, however, of whether the parent is otherwise considered a personal representative, the Privacy Rule defers to State or other applicable laws that expressly address the ability of the parent to obtain health information about the minor child. In doing so, the Privacy Rule permits a covered entity to disclose to a parent, or provide the parent with access to, a minor child's protected health information when and to the extent it is permitted or required by State or other. Likewise, the Privacy Rule prohibits a covered entity from disclosing a minor child's protected health information to a parent when and to the extent it is prohibited under State or other laws.

In cases in which State or other applicable law is silent concerning disclosing a minor's protected health information to a parent, and the parent is not the personal representative of the minor child based on one of the exceptional circumstances described above, a covered entity has discretion to provide or deny a parent access to the minor's health information, if doing so is consistent with State or other applicable law, and the decision is made by a licensed healthcare professional in the exercise of professional judgment.

A parent also may not be a personal representative if there are safety concerns. A provider may decide not to treat the parent as the minor's personal representative if the provider believes that the minor has been or may be subject to violence, abuse, or neglect by the parent or the minor may be endangered by treating the parent as the personal representative; and the provider determines, in the exercise of professional judgment, that it is not in the best interests of the client to treat the parent as the personal representative.

HIPAA defers to state law to determine the age of majority and the rights of parents to act for a child in making health care decisions, and thus, the ability of the parent to act as the personal representative of the child for HIPAA purposes.

The Privacy Rule distinguishes between mental health information in a mental health professional's private notes and that contained in the medical record. It does not provide a right of access to psychotherapy notes, which the Privacy Rule defines as notes recorded by a health care provider who is a mental health professional documenting or analyzing the contents of a conversation during a private counseling session or a group, joint, or family counseling session and that are separate from the rest of the client's medical record. Psychotherapy notes are primarily for personal use by the treating professional and generally are not disclosed for other purposes. Thus, the Privacy Rule includes an exception to an individual's (or personal representative's) right of access for psychotherapy notes. However, parents generally are the personal representatives of their minor child and, as such, are able to receive a copy of their child's mental health information contained in the medical

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record, including information about diagnosis, symptoms, treatment plans, etc. Further, although the Privacy Rule does not provide a right for a client or personal representative to access psychotherapy notes regarding the client, HIPAA generally gives providers discretion to disclose the individual's own protected health information (including psychotherapy notes) directly to the individual or the individual's personal representative. As any such disclosure is purely permissive under the Privacy Rule, mental health providers should consult applicable State law for any prohibitions or conditions before making such disclosures.

The HIPAA Privacy Rule permits a health care provider to disclose information to the family members of an adult client who has capacity and indicates that he or she does not want the disclosure made, only to the extent that the provider perceives a serious and imminent threat to the health or safety of the client or others and the family members are in a position to lessen the threat. Otherwise, under HIPAA, the provider must respect the wishes of the adult client who objects to the disclosure. However, HIPAA in no way prevents health care providers from listening to family members or other caregivers who may have concerns about the health and well-being of the client, so the health care provider can factor that information into the client's care. In the event that the client later requests access to the health record, any information disclosed to the provider by another person who is not a health care provider that was given under a promise of confidentiality (such as that shared by a concerned family member), may be withheld from the client if the disclosure would be reasonably likely to reveal the source of the information. This exception to the client's right of access to protected health information gives family members the ability to disclose relevant safety information with health care providers without fear of disrupting the family's relationship with the client.

The Privacy Rule permits a health care provider to disclose necessary information about a client to law enforcement, family members of the client, or other persons, when the provider believes the client presents a serious and imminent threat to self or others. Specifically, when a health care provider believes in good faith that such a warning is necessary to prevent or lessen a serious and imminent threat to the health or safety of the client or others, the Privacy Rule allows the provider, consistent with applicable law and standards of ethical conduct, to alert those persons whom the provider believes are reasonably able to prevent or lessen the threat. Under these provisions, a health care provider may disclose client information, including information from mental health records, if necessary, to law enforcement, family members of the client, or any other persons who may reasonably be able to prevent or lessen the risk of harm. HIPAA permits the mental health professional to alert the police, a parent or other family member, school administrators or campus police, and others who may be able to intervene to avert harm from the threat. In addition to professional ethical standards, most States have laws and/or court decisions which address, and in many instances require, disclosure of client information to prevent or lessen the risk of harm. Note that, where a provider is not subject to such State laws or other ethical standards, the HIPAA permission still would allow disclosures for these purposes to the extent the other conditions of the permission are met.

A health care provider's "duty to warn" generally is derived from and defined by standards of ethical conduct and State laws and court decisions such as *Tarasoff v. Regents of the University of California*. HIPAA permits a covered health care provider to notify a client's family members of a serious and imminent threat to the health or safety of the client or others if those family members are in a position to lessen or avert the threat. Thus, to the extent that a provider determines that there is a serious and imminent threat of a client physically harming self or others, HIPAA would permit the provider to warn the appropriate person(s) of the threat, consistent with his or her professional ethical obligations and State law requirements. In addition, even where danger is not imminent, HIPAA permits a covered provider to communicate with a client's family members, or others involved in the client's care, to be on watch or ensure compliance with medication regimens, as long as the client has been provided an opportunity to agree or object to the disclosure and no objection has been made.

If a health care power of attorney is currently in effect, the named person would be the client's

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personal representative (The period of effectiveness may depend on the type of power of attorney: Some health care power of attorney documents are effective immediately, while others are only triggered if and when the client lacks the capacity to make health care decisions and then cease to be effective if and when the client regains such capacity). “Personal representatives,” as defined by HIPAA, are those persons who have authority, under applicable law, to make health care decisions for a client. HIPAA provides a personal representative of a client with the same rights to access health information as the client, including the right to request a complete medical record containing mental health information. The client’s right of access has some exceptions, which would also apply to a personal representative. For example, with respect to mental health information, a psychotherapist’s separate notes of counseling sessions, kept separately from the client chart, are not included in the HIPAA right of access.

Additionally, a provider may decide not to treat someone as the client’s personal representative if the provider believes that the client has been or may be subject to violence, abuse, or neglect by the designated person or the client may be endangered by treating such person as the personal representative, and the provider determines, in the exercise of professional judgment, that it is not in the best interests of the client to treat the person as the personal representative.

HIPAA permits health care providers to disclose to other health providers any protected health information (PHI) contained in the medical record about an individual for treatment, case management, and coordination of care and, with few exceptions, treats mental health information the same as other health information. Some examples of the types of mental health information that may be found in the medical record and are subject to the same HIPAA standards as other protected health information include:

- medication prescription and monitoring
- counseling session start and stop times
- the modalities and frequencies of treatment furnished
- results of clinical tests
- summaries of: diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date.

HIPAA generally does not limit disclosures of PHI between health care providers for treatment, case management, and care coordination, except that covered entities must obtain individuals’ authorization to disclose separately maintained psychotherapy session notes for such purposes. Covered entities should determine whether other rules, such as state law or professional practice standards place additional limitations on disclosures of PHI related to mental health.

HIPAA allows health care providers to disclose protected health information (PHI), including mental health information, to other public or private-sector entities providing social services (such as housing, income support, job training) in specified circumstances.

HIPAA expressly defers to the professional judgment of health professionals in making determinations about the nature and severity of the threat to health or safety posed by a client. Health care providers may disclose the necessary protected health information to anyone who is in a position to prevent or lessen the threatened harm, including family, friends, caregivers, and law enforcement, without a client’s permission.

If a client unexpectedly does not attend appointments and the therapist determines, based on professional judgment, that there may be an emergency situation and that contacting the family member of the absent client is in the client’s best interests; or if the disclosure is needed to lessen a serious and imminent threat and the family member is in a position to avert or lessen the threat, the provider may take into account the client’s prior expressed preferences regarding disclosures of their information, if any, as well as the

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circumstances of the current situation. The health care provider may share or discuss only the information that the family member involved needs to know about the client’s care or payment for care or the minimum necessary for the purpose of preventing or lessening the threatened harm.

In situations that also involve reports to the appropriate government authority that the client may be an adult victim of abuse, neglect, or domestic violence, the mental health provider must promptly inform the client that a report has been or will be made, unless:

- informing the client would create a danger to the client; or
- the provider would be informing a personal representative, and the provider reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the client is determined by the provider, in the exercise of professional judgment.

Other standards, such as clinical protocols, ethics rules, or state laws, may also be applicable to client notification about disclosures in situations involving threats of imminent harm.

I/We the undersigned, understand this policy, agree to all the stated terms, and consent to services provided by AMS Wellness.

Client’s Name- Print (Age 18 and Older)	Client’s Name Signature- (Age 18 and Older)	Date
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Client’s Name- Print (Age 12 to 17)	Client’s Name Signature- (Age 18 and Older)	Date
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Parent/Guardian Name- Print	Parent/Guardian Name- Signature	Date
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Parent/Guardian Name- Print	Parent/Guardian Name- Signature	Date
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AMS Wellness Staff- Print	AMS Wellness Staff- Signature	Date
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