

There are serious civil and criminal penalties for violating HIPAA. Civil penalties are \$100 for each violation up to \$25,000 per calendar year. Criminal penalties are as follows: A person who knowingly obtains or discloses individually identifiable information faces a fine of \$50,000 and up to one-year imprisonment. The penalties increase to \$100,000 and five years in jail if the wrongful conduct involves false pretenses, and to \$250,000 in fines and up to ten years in jail if the wrongful conduct involves the intent to sell, transfer, or use individually identifiable information for commercial advantage, personal gain, or malicious harm. It is, however, noteworthy that HIPAA does not allow for private actions by patients (Feld, 2005). They must complain to the Office of Civil Rights and cannot go to a court of law in cases of the violation of their rights.

HOW DOES HIPAA AFFECT SOCIAL WORK AND SOCIAL WORKERS?

HIPAA is the first comprehensive federal protection for the privacy of personal health information. It imposes a uniform set of privacy protections on public and private health care entities and attempts to standardize health-related records. Interestingly, a goal of HIPAA is to assign one unique identifier (a code) to each patient to be used by all covered entities throughout the country, "a code that would allow each person's medical contacts to be aggregated from birth to death" (Appelbaum, 2002, p. 1813). This aspect of the law is on hold due to the complexity of implementation, but the HIPAA mandate remains. The effects of HIPAA are already far-reaching in the world of health and mental health care and before long, indirectly, HIPAA will start affecting other human services as well. It is already happening in school systems. School social workers already are involved in informing parents of their right to informed consent about their children's records and their right to review the records and request that information they consider educationally irrelevant be expunged from those records (National Association of Social Workers, 2003). It is likely that standards like those of HIPAA will be regulating social services organizations and programs in the future.

The largest proportion of social workers are working in health care organizations such as hospitals, outpatient clinics and programs, home health aid agencies, hospices, and mental health settings such as psychiatric hospitals and community mental health centers. Over 60 percent of all providers of mental health services in the United States are social workers. All these workers are involved in the compliance of HIPAA regulations and standards. There are also a large number of social workers in independent practice who provide services to clients; they are also health care providers and are "covered entities" under HIPAA. Any practicum placement or job in a health or mental health setting will require you to be familiar with HIPAA policies and procedures.

Several aspects of the law are particularly important to social workers. HIPAA gives patients broad access to their records. A patient can review his or her record, have copies of the record, request that the incomplete and incorrect information in the record be changed, and ask for a list of entities to whom the record has been disclosed. However, access to the record can be denied if

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there is a reasonable likelihood that (1) the release of information would endanger the physical safety of the patient or another person; (2) the release of information in the record about another person would cause substantial harm to that person; or (3) in the case of a request by an agent of the patient, the release would cause substantial harm to the patient or another person. Similarly, a patient's request for amendment of his or her record can be denied but the involved correspondence between the CE and patient must become a part of the record.

However, HIPAA gives *psychotherapy notes* special protection in recognition that "the information contained in psychotherapy notes is likely to be qualitatively different from that found elsewhere in the medical record" (Appelbaum, 2002, p. 1815). Psychotherapy notes cannot be released without the explicit authorization of the patient. These notes document the contents of conversations between the patient and therapist during an individual, group, or family counseling session and are separated from the patient's record. These notes can be released to patients. However, "it is wise for clinicians to have a policy regarding release of psychotherapy notes, thereby providing grounds for asserting that such releases are not arbitrary and that all patient requests are being dealt with equally" (Brendel & Bryan, 2004, p. 180). You should make sure that your psychotherapy notes meet the HIPAA requirements and keep them separate from the medical records. Always get the client's consent to discuss his or her case and treatment with other clinicians unless it is a clear emergency as defined here. Make sure that minor clients understand your obligations to their parents and guardians.

HIPAA provides many exceptions to the traditional consent requirement for release of some or all of protected health information as follows:

1. In situations posing a serious threat to public health or safety
2. In cases of suspected child abuse and neglect
3. In response to a request for discovery or a subpoena attorney on the assurance that the attorney has made reasonable efforts to notify the patient of the request
4. In response to a request from a law enforcement officer for the purposes of "identifying or locating a suspect, fugitive, material witness or missing person"
5. In response to the need for national security-related information by national security agencies and secret service
6. In situations where other entities are assisting the holder of PHI in raising funds
7. For purposes of marketing services delivered by the facility that originally treated the patient
8. In situations where an Institutional Review Board waives the requirement for authorization for research use

Brendel and Bryan (2004) recommend that you discuss your agency's privacy-related policies and practices with every client at the very outset of your involvement. "This discussion might include how e-mails, phone messages, answering machines, and note taking are managed in your practice" (p. 182).