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## Social Security

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### **Medical/Professional Relations**

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#### **Fact Sheet For Mental Health Care Professionals:**

#### **Supporting Individuals' Social Security Disability Claims**

Information from you, as a mental health professional, is vitally important to support claims for Social Security Disability Insurance and for Supplemental Security Income benefits. Form SSA-827 (Authorization to Disclose Information to the Social Security Administration) (PDF) legally permits you to make the necessary disclosures of information consistent with applicable laws, including the Health Insurance Portability and Accountability Act (HIPAA), the Substance Abuse Act and the Family Educational Rights and Privacy Act (FERPA).<sup>1</sup>

#### **Social Security's Release Form Authorizes Your Disclosure**

Individuals or their authorized representatives complete and sign the SSA-827 when they file a disability application. This form legally authorizes you and other professionals to release medical records, even if your name(s) are not specifically listed.<sup>2</sup> A copy, facsimile or electronically transmitted version of this signed form is acceptable.<sup>3</sup> You are complying with all relevant federal and state laws and regulations when you release your patient's (or student's) medical records as authorized by the SSA-827.

The request for your records will most often come from a state agency that makes disability determinations for the Social Security Administration (SSA). These agencies are usually called Disability Determination Services (DDS) but the agency name may be different in your state. If the claimant has appealed a decision, you may receive a request for evidence from an Administrative Law Judge in SSA's Office of Disability Adjudication and Review.

When evaluating mental disorders, information from treating sources is essential to accurately assess the onset and severity of claimants' impairments and their effect on functional capacity. This applies to new claims, determinations of continuing eligibility for current beneficiaries, and appeals. With your timely response to requests for information,

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your patients may more quickly start (or continue) to receive cash benefits and Medicare or Medicaid. Without your records, the decision may be made based on the results of a one-time consultative examination by a medical professional unfamiliar with your patient.

You can also help assure more accurate and timely decisions for your patients by submitting your records electronically as described below. Electronic processes can make it quicker and easier for medical and other claimant records to be transferred securely, eliminating mail time and automating handling.

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## **Full Disclosure Is Permitted**

The signed SSA-827 specifies that the authorization permits you to disclose all of your patient's medical or educational information to Social Security and DDS offices for the time period requested. That means you do not have to apply the "minimum necessary standard" before disclosing medical records.<sup>4</sup> Social Security must consider the claimant's complete, relevant medical record for at least 12 months prior to the claim, including assessment of the combined effect of multiple impairments that individually may not be severe. In addition, both HIPAA and the SSA-827 permit you to disclose "information created within 12 months after the date (the release is) signed."<sup>5</sup> (Providers in Puerto Rico should also refer to local law for guidance.)

## **Psychotherapy Notes, as Defined by HIPAA, Can Be Protected**

Social Security recognizes the sensitivity and extra legal protections that concern psychotherapy notes (also called "process" or "session" notes) and does not need the notes. As HIPAA defines the term, "psychotherapy notes means notes recorded in any medium by a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record.

Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date."

If you keep psychotherapy notes separate from your other medical records, you can send the set of records without the psychotherapy notes. If you do not keep psychotherapy notes separate from other parts of the medical records, you can legally disclose all of the

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records. However, you can choose to black out or remove the parts of the records that would be considered psychotherapy notes if kept separately. Another option is to prepare a special report detailing the critical current and longitudinal aspects of your patient's treatment and their functional status.<sup>6</sup>

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## **HIPAA Permits Electronic Transmission of Records**

HIPAA was intended to encourage the efficient electronic exchange of health information. Social Security record gathering procedures support HIPAA safeguards for transmitting medical records.<sup>7</sup> Records can be uploaded to Social Security's Electronic Records Express secure website or safely faxed via Social Security's dedicated lines directly into your patient's electronic claim file. The secure website meets all HIPAA-related security requirements. It uses confidential usernames and passwords and sophisticated encryption to protect records submissions.

## **Your Information Will Not Be Re-Disclosed Without Consent**

Social Security will not re-disclose medical records it receives to other entities or individuals, without prior written consent, except in the very limited manner permitted or required by federal law and regulations.<sup>8</sup>

## **Additional Information Sources**

Please see [www.socialsecurity.gov/disability/professionals](http://www.socialsecurity.gov/disability/professionals) for more information on the SSA-827. This also provides a list of DDS Professional Relations Officers and their contact information for specific questions.

See [www.hhs.gov/ocr/hipaa](http://www.hhs.gov/ocr/hipaa) for HIPAA privacy rules, HHS formal guidance and FAQs. Visit [www.ssa.gov/ere](http://www.ssa.gov/ere) for general information about Electronic Records Express and a demonstration of how to use the secure website. If you would like to register to use Social Security's secure website to send patient records, send an E-mail to [electronic-records-express@ssa.gov](mailto:electronic-records-express@ssa.gov), call 1-866-691-3061 or contact one of your state's Professional Relations Officers (see link above).

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1 See [www.socialsecurity.gov/disability/professionals/ssa827\\_informationpage.htm](http://www.socialsecurity.gov/disability/professionals/ssa827_informationpage.htm) for the form, reference material, and other legal points. The SSA-827 fully complies with HIPAA (45 CFR 164), and other federal and state laws and regulations including the Substance Abuse Act (42 CFR Part 2), FERPA (34 CFR Parts 99 and 300) and applicable state law.

2 Both HIPAA and 42 CFR Part 2 permit authorization forms to include "the . general designation of the program or person permitted to make the disclosure" [45 CFR 164.508(c) (1) (ii)]. "This. will permit a patient to consent to disclosure from a category of facilities or from a single specified program" [42 CFR Part 2, 52 Federal Register 21799 (June 9, 1987)].

3 See Health and Human Services (HHS) frequently asked questions (FAQs) at: [www.hhs.gov/hipaafaq/use/index.html](http://www.hhs.gov/hipaafaq/use/index.html).

4 Providers can rely on the authorization to define what can be released (45 CFR 164.502(b) (2) (iii)). The signed SSA-827 permits full disclosure of all requested information. See the HHS FAQs.

5 See the HHS FAQs.

6 See [www.socialsecurity.gov/disability/professionals/greenbook/index.htm](http://www.socialsecurity.gov/disability/professionals/greenbook/index.htm). Select adult or pediatric and scroll down to the heading for Mental Disorders.

7 45 CFR 164 Subpart C.

8 Privacy Act of 1974, Freedom of Information Act, and federal regulations per 20 CFR 401.

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