Introduction

The American Psychological Association Practice Directorate has provided an excellent online presentation about electronic healthcare records (EHRs) and the basic terminology related to EHRs; the presentation dispels common myths about EHR systems and provides detail about their meaningful use in integrated health care settings.1

The Division 31 and 42 EHR working group’s2 primary goal was to create a series of State specific templates that would work well for psychologists as they transition into the use of EHRs, particularly in integrated health care settings where shared information is clinically essential and specific laws or regulations may dictate at least some of what is included in those records. To achieve this goal, we reviewed the laws related to record keeping, and the relevant and recent literature (particularly the last decade) regarding EHRs, including variations across states. Further, we consulted with key psychologists that have been using EHRs on a day to day basis, who have developed experience establishing polices and processes within their own institutions and practices. They have effectively used this developing technology to improve clinical care while protecting patient rights. They have found that the EHR enables collaborating professionals within the integrated health care settings to understand the behavioral risk factors that exist in each case and to be kept informed about the health behavior changes that occur with psychological service interventions (HRSA, 2012).3

To digest the laws accurately, we examined the annotated codes and regulations available on Westlaw and Lexis for the 50 states and the District of

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2 Sam Knapp, E.D.D.; Christina Luini, JD, M.L.I.S.; Dinelia Rosa, PhD; Mary Karapetian Alvord, PhD; Vanessa K. Jensen, PsyD; Jeffrey N. Younggren, PhD; G. Andrew H. Benjamin, JD, PhD, ABPP. The working group, came together to discharge the obligations of the CODAPAR grant that we wrote and received: http://www.apadivisions.org/division-31/news-events/grant-funding.aspx.
Columbia with reference to several relevant state-by-state surveys retrieved from Lexis and Westlaw. Our research answered the following questions for each jurisdiction: (a) Do record keeping duties created by statutes or administrative rules exist? (b) Have court rulings created a common-law duty or interpreted the statutes or administrative rules? (c) What are the contents of the record that are mandated by law? (d) Are there laws related to the maintenance, retention, and security of records? (e) What are the consequences of violating specific duties?

Readers should view the narrative summary of Pennsylvania’s law as a starting point for interpreting how to meet the law within their own jurisdiction as they construct their electronic records. As laws can change, members of the Pennsylvania Psychological Association can check the law with their state associations to see there are more current interpretations for meeting the record keeping duties. Some professional liability carriers also provide free legal and professional consultation.

Pennsylvania specific templates for the types and contents of the record are provided based upon a review of its law. This digest should be read if you intend to use the templates. Psychologists who are interested in learning about privileged communication laws, duty to protect or warn obligations, other mandated reporting obligations, or rules regarding patient access to information should read Pennsylvania Law and Psychology (Knapp, Tepper, Baturin, & VandeCreek, 2008) or other publications from the Pennsylvania Psychological Association. Many of these can be found in the members’ only section on the website of the Pennsylvania Psychological Association (http://www.papsy.org/).

State specific templates for contents of a record

Pennsylvania law calls for an intake and evaluation note, and progress notes. The contents of the two templates for these documents comply with the law digested below. We believe that a termination note will likely reduce exposure to arguments about continued duty of care and reduce the risk of responsibility in a duty to protect/warn jurisdiction, such as Pennsylvania, and recommend that psychologists use this template, too. Because the documents permit hovering over the underline...

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4 50 State Surveys, Legislation & Regulations, Psychologists & Mental Health Facilities (Lexis March 2012); Lexis Nexis 50 State Comparative Legislation / Regulations, Medical Records (Lexis June 2011); 50 State Statutory Surveys: Healthcare Records and Recordkeeping (Thomson Reuters/ West October 2011).

5 Benjamin, G. A. H., Kent, L., & Sirikantrapor, S. (2009). Duty to protect statutes. In J. L. Werth, Guidelines do not substitute for laws of each state and provincial jurisdiction. Such guidelines should not be used as a substitute for obtaining personal legal advice and consultation before making decisions regarding EHRs. Because statutory, administrative, and common law can change quickly, readers are well advised to seek legal advice about current laws and rules in their jurisdiction.
fields with a cursor to select an option or permit filling in the shaded text boxes, they cannot be inserted into this document. Please access each of the documents on this website, separately.

Our group also suggests that users of the templates consider how “behavior may be shaped by culture, the groups to which one belongs, and cultural stereotypes.” Whenever “Eurocentric therapeutic and interventions models” may impair the consideration of multicultural factors among the integrated health care team members, we urge that psychologists note the factors within the appropriate template fields. In light of the World Health Organization’s demonstrated commitment to the formulation of a diagnostic system that moves beyond biological causation and integrates the contributions of psychological, cultural, and social factors, and APA’s participation in the development of the *International Classification of Functioning, Disability and Health* (World Health Organization, 2010), our group recommends using the latest version of ICD whenever diagnoses are being made. The EHR templates permit drop down diagnoses using the ICD-10 functional diagnoses.

**Statute or Rule**

The Pennsylvania Regulations of the State Board of Psychology (regulations promulgated by Pennsylvania’s State Board of Psychology) establishes several

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6 Please use the most recent version of WORD to access the full capabilities of the EHR templates.


8 *Id.* at p. 45.


10 49 PA. Code §§ 41.1, *et seq.*

Guidelines do not substitute for laws of each state and provincial jurisdiction. Such guidelines should not be used as a substitute for obtaining personal legal advice and consultation before making decisions regarding EHRs. Because statutory, administrative, and common law can change quickly, readers are well advised to seek legal advice about current laws and rules in their jurisdiction.
obligations related to record keeping.\textsuperscript{11}

**Contents of the record that are mandated by law**

A duty to disclose certain information to all patients is required and would include the following written content that would be part of the informed consent process before engaging in psychological services. The Health Insurance Portability and Accountability Act (HIPAA)\textsuperscript{12} calls for a notice of privacy practices\textsuperscript{13} that delineates the psychologist's scope of and limitations of confidentiality. It works in tandem with discussing the confidentiality and privilege laws established by Pennsylvania law.\textsuperscript{14}

The Board has establish some standards about record content:

**Professional records**\textsuperscript{15}

…These requirements express the Board's belief that a psychologist's commitment to the welfare of a client/patient includes the duty to record accurately that person's progress through the evaluation and intervention process. Compliance with this section does not excuse psychologists from complying with stricter standards otherwise imposed by State or Federal law or regulation or by institutional requirements.

(b) A psychologist shall maintain a legible record for each client/patient which includes, at a minimum:

1. The name and address of the client/patient and, if the client/patient is a minor, the names of the parents or the name of the legal guardian. If a minor's parents are separated, notation of legal custodial arrangements is required.
2. The presenting problem or purpose or diagnosis.

\textsuperscript{11} See 49 PA. Code § 41.61.
\textsuperscript{14} 49 PA. Code § 41.61, Principle 5 (a).
\textsuperscript{15} 49 P.A. CODE § 41.57.
(3) The fee arrangement.
(4) The date and substance of each service contact.
(5) Test results or other evaluative results obtained and basic test data from which they were derived.
(6) Notation and results of formal consults with other providers.
(7) A copy of all test or other evaluative reports prepared as part of the professional relationship.
(8) Authorizations, if any, by the client/patient for release of records or information.

In addition to the requirements above, the State Board of Psychology requires all psychologists to follow the standards and guidelines of the American Psychological Association. These would also require psychologists to document contact information (phone, address, next of kin), guardianship status (if applicable), informed consent, any waivers of confidentiality, and mandated disclosures, a treatment plan (and updated as needed), and the developmental and health history. The Record Keeping guidelines of APA also require psychologists to document information in addition to the date and substance of each contact. They need to document the type of session (consultation, assessment, etc.), nature of interaction (treatment modality, referral, letter, phone, etc.), formal or informal assessment. Depending on the circumstances, they may also need to document client response to treatment, risk factors for dangerousness, other modalities employed, emergency interventions, plans for future interventions, qualitative aspects of the professional relationship, prognosis, assessment or summary data, consultations or case-related contacts, and cultural or sociopolitical factors.

In addition, the following record content standards exist for psychologists who work in hospitals or for publicly funded mental health center and certainly would be fitting for integrated health care practices:\footnote{55 PA. CONS. STAT. ANN. § 5100.15.}

(a) A comprehensive individualized plan of treatment shall:

(1) Be formulated to the extent feasible, with the consultation of the patient. When appropriate to the patient’s age, or with the patient’s consent, his family,
personal guardian, or appropriate other persons should be consulted about the plan.

(2) Be based upon diagnostic evaluation which includes examination of the medical, psychological, social, cultural, behavioral, familial, educational, vocational, and developmental aspects of the patient’s situation.

(3) Set forth treatment objectives and prescribe an integrated program of therapies, activities, experiences, and appropriate education designed to meet these objectives.

(4) Result from the collaborative recommendation of the patient’s interdisciplinary treatment team.

(5) Be maintained and updated with progress notes, and be retained in the patient’s medical record . . .

…(c) Individual treatment plans shall be written in terms easily explainable to the lay person and a copy of the current treatment plan shall be available for review by the person in treatment.

(d) When the most appropriate form of treatment for the individual is not available or is too expensive to be feasible, that fact shall be noted on the treatment plan form.

Finally, psychologists who have contracts with third party payers (such as Medical Assistance, Medicare, or a commercial insurer) need to ensure that the record keeping corresponds to the terms of their contracts. That may require them to keep even more information in their records.

**Maintenance, Security, and Retention of records**

Pennsylvania law mandates that psychologists shall store and dispose of

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17 The regulation also specified that the information should be presented “on a form developed by the facility and approved by the Deputy Secretary of Mental Health, as part of the licensing approval process.” However, unless the facility is a hospital or publicly funded mental health practice, the records of the psychologist will not be going through any licensing approval process and this section would not be relevant.
written, electronic and other records in a manner which insures their confidentiality.18

HIPAA permits sharing protected health information (PHI) with other health care professionals who are engaged in the evaluation and treatment of the same patient.19 HIPAA enables the patient to inspect and obtain Protected Health Information (PHI) records.20 In addition, patients have a right to amend any part of the record;21 Under this section, a denial of the proposed amendment can occur if the record was not created by the psychologist (unless the patient provides a reasonable basis to believe that the originator of PHI is no longer available to act on the requested amendment) or if the record is accurate and complete (other subsections are not discussed as they are unlikely to arise for psychologists). Finally, patients may obtain an accounting as to who has accessed the PHI and the details about each disclosure.22

HIPAA also establishes privacy protections for all transmissions of PHI records, and requires specific patient authorizations (with a right of revocation) to transfer PHI records to third parties.23 Concrete security standards are established for all electronic healthcare information (45 CFR 160).

Pennsylvania law has established retention and disposition standards. However, psychologists who have insurance contracts need to ensure that they keep records for the length of time required by those contracts.

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…(d) To meet the requirements of this section, so as to provide a formal record for review, but not necessarily for other legal purposes, a psychologist shall assure that all data entries in professional records are maintained for at least 5 years after the last date that service was rendered. A psychologist shall

18 49 P.A. CODE § 41.57.
20 45 CFR 164.524.
21 45 CFR 164.526 (a).
22 45 CFR 164.528.
23 45 CFR 164.508.
24 49 P.A. CODE § 41.57.
also abide by other legal requirements for record retention, even if longer periods of retention are required for other purposes.

(e) A psychologist shall provide for the confidential disposition of records in the event of the psychologist's withdrawal from practice, incapacity or death.

Consequences for Failure to Keep Records

In several cases before the State Board of Psychology it was determined that the respondent failed to adhere to minimal standards of practice by, among other issues, failing to maintain appropriate records (e.g., Curran v. State Board of Psychology, 200125).

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