Additional Information on Risk Adjustment Audits in California

1. Further Information on *When* You Can Release: Proper Notice or Patient Authorization

Why Is Section 56.104 set up so patients get notice after the fact? The law appears to be intended to provide a higher level of confidentiality for outpatient mental health records. However, it is poorly written and the only logical reading is that an insurer requesting records does not need to send the notice to the patient before the records are released – although such prior notice would have given the patient a meaningful opportunity to object.

If you receive proper notice from the insurance company, there is no requirement under the statute that you must notify the patient – this is the insurer's responsibility. You can release the records. However, you may decide to inform your patients if you receive a request for records in connection with an RA audit and/or ask for their authorization to a release of records.

If you obtain a patient's written authorization, you do not need to receive 56.104 notice and can release the requested records to the insurer.

If your patient objects to the release before you have provided the records, we recommend that you respect that objection and inform the insurer of your reason for withholding the records. If the insurer insists on receiving the records despite the patient's objection, please contact the California Psychological Association, the APA Practice Organization or another trusted resource.

If you have already provided records in connection with a risk adjustment audit without receiving a 56.104 notice or patient authorization, you do not need to take any further action. We believe that you reasonably relied on the insurers' statements that you were legally permitted to comply with their requests. However, we urge you to follow the guidance provided in this document when responding to future audits.

2. Further Information on *What* Records to Release

For members who keep a "combined record" what is the minimum necessary information to extract? As noted in the main article, Anthem and Aetna have confirmed that psychologists who keep a combined record can exclude sensitive information and provide only the minimum necessary information to support the audit. We recommend that those with combined records take this approach with other insurers as well.

The minimum amount of information necessary to appropriately establish a member's health status is essentially what HIPAA excludes from the psychotherapy notes protection and may include:

- Clinical documentation (admission, discharge notes, or progress notes)
- Modalities and frequencies of treatment furnished
- Results of clinical tests
- Medication prescription and monitoring.
- Summary of the following:
    - o Diagnosis

- o Functional status
- o Treatment plan
- o Symptoms
- o Prognosis
- o Progress to date

We suggest that members with combined records extract the relevant information in a way that provides a copy of the actual record text. This can be done by copying the record and cutting and pasting the relevant portions into a new file. Alternatively, if your record contains only a small amount of sensitive therapy information, you can white out or black out the sensitive details.

We recognize that this extraction could be time-consuming. Therefore, psychologists who accept insurance and keep a combined record may want to reconsider their recordkeeping approach (see *Detailed or lean therapy records? Rethinking your record keeping approach in the wake of Risk Adjustments Audits under ACA* (http://www.apapracticecentral.org/update/2014/12-18/detailed-lean-records.aspx).

3. New Guidance for Anthem Providers on Recordkeeping and Closed Files

In addition to the prior guidance specific to mental health providers (http://group.anthem.com/BHMRR), Anthem recently amended its provider manual to address risk adjustment audits (https://www.anthem.com/provider/noapplication/f0/s0/t0/pw_e217110.pdf?refer=ahpprovider). In particular, Anthem providers should be aware of new recordkeeping expectations, which are based on HHS guidance and appear to apply to all Anthem providers in ACA compliant plans. The listed documentation requirements, which are likely already addressed in many members' records, include:

- Patient's name and date of birth should appear on all pages of the record
- Patient's condition(s) should be clearly documented in record
- The documentation must show that the condition was monitored, evaluated, assessed/addressed or treated
- The documentation must be legible, clear, concise, complete and specific
- When using abbreviations, use standard and appropriate abbreviations
- Signature, credentials and date must appear on record

Anthem Audit Requests for Closed Files

Several California psychologists noticed language in Anthem EOBs suggesting that they should not provide any information regarding closed files. We raised that issue with Anthem and they clarified that psychologists may provide files on any covered patients they have treated within the last 24 months.

Additional Resources

"Update on Risk Adjustment Audits" http://www.apapracticecentral.org/update/2015/04-16/risk-adjustment-audits.aspx.

"Explaining Health Care Reform: Risk Adjustment, Reinsurance, and Risk Corridors" http://kff.org/health-reform/issue-brief/explaining-health-care-reform-risk-adjustment-reinsurance-and-risk-corridors/

"Detailed or lean therapy records? Rethinking your record keeping approach in the wake of Risk Adjustments Audits under ACA" (http://www.apapracticecentral.org/update/2014/12-18/detailed-lean-records.aspx).

***Note: The Practice Organization cannot give members legal opinions or legal advice. Those seeking legal advice should retain a licensed attorney in their state with appropriate experience.**