Oklahoma State University

Title: Authorization Required: Psychotherapy Notes, Marketing, Sale of PHI	Policy #: PRV-04.02
Category: HIPAA Compliance	Authority: 45 CFR § HIPAA SECTION: 164.508(a)(2)
Standard: Authorizations for Uses and Disclosures	Responsibility: Health Care Components
Effective Date: 4/14/2003	Page 1 of 2
Approved By: OSU Legal Counsel	Revised: 7/1/2013

PURPOSE:

To establish when an authorization is needed regarding Psychotherapy Notes, Marketing purposes and Sale of protected health information.

POLICY:

Psychotherapy Notes – Not withstanding any provision of the Privacy Rule, other than the transition provisions in §164.532, OSU must obtain an authorization for any use or disclosure of psychotherapy notes, except: *§164.508(a)(2)*

1. To carry out the following treatment, payment, or health care operations: *§164.508(a)(2)(i)*
   a. Use by the originator of the psychotherapy notes for treatment; *§164.508(a)(2)(i)(A)*
   b. Use or disclosure by OSU for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling; or *§164.508(a)(2)(i)(B)*
   c. Use or disclosure by OSU to defend itself in a legal action or other proceeding brought by the individual; and *§164.508(a)(2)(i)(C)*
2. A use or disclosure that is required by § 164.502(a)(2)(ii) *Required Disclosures* or permitted by § 164.512(a) *Uses and Disclosures Required by Law*; § 164.512(d) *Uses and Disclosures for Health Oversight Activities* with respect to the oversight of the originator of the psychotherapy notes; § 164.512(g)(1) *Uses and Disclosures about Decedents*; or § 164.512(j)(1)(i) *Uses and Disclosures to avert a serious threat to health or safety*.

Marketing – Notwithstanding any provision of the Privacy Rule, other than the transition provisions in §164.532, OSU must obtain an authorization for any use or disclosure of protected health information for marketing, except if the communication is in the form of: *§164.508(a)(3)(i)*
1. A face-to-face communication made by OSU to an individual; or *§164.508(a)(3)(i)(A)*
2. A promotional gift of nominal value provided by OSU. *§164.508(a)(3)(i)(B)*

If the marketing involves financial remuneration, as defined in paragraph 3 of the definition of marketing in policy PRV-00.01 or §164.501, to OSU from a third party, the authorization must state that such remuneration is involved. *§164.508(a)(3)(ii)*

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Sale of Protected Health Information – Not withstanding any provision of the Privacy Rule, other than the transition provisions in §164.532, OSU must obtain an authorization for any disclosure of protected health information which is a sale of protected health information, as defined in §164.501 of the Privacy Rule. *§164.508(a)(4)(i)*

Such authorization must state that the disclosure will result in remuneration to OSU. *§164.508(a)(4)(ii)*

PROCEDURE:

OSU will not use or disclose psychotherapy notes of an individual other than as stated above. OSU does have a Behavioral Health Department, and although it is not their practice to actively collect information that would meet the definition of psychotherapy notes, if any such information does exist, any authorization needed to use or disclose will be obtained.

OSU does not use any individuals protected health information for marketing purposes and also does not sell protected health information for remuneration of any kind. If any agent or department of OSU decides to market or sell PHI, the agent or department will adhere to the above stated policy.