Record Keeping Guidelines

American Psychological Association

Introduction

These guidelines are designed to educate psychologists and provide a framework for making decisions regarding professional record keeping. State and federal laws, as well as the American Psychological Association's (APA, 2002b) "Ethical Principles of Psychologists and Code of Conduct" (hereafter referred to as the Ethics Code), generally require maintenance of appropriate records of psychological services. The nature and extent of the record will vary depending upon the purpose, setting, and context of the psychological services. Psychologists should be familiar with legal and ethical requirements for record keeping in their specific professional contexts and jurisdictions. These guidelines are not intended to describe these requirements fully or to provide legal advice.

Records benefit both the client[1] and the psychologist through documentation of treatment plans, services provided, and client progress. Record keeping documents the psychologist's planning and implementation of an appropriate course of services, allowing the psychologist to monitor his or her work. Records may be especially important when there are significant periods of time between contacts or when the client seeks services from another professional. Appropriate records can also help protect both the client and the psychologist in the event of legal or ethical proceedings. Adequate records are generally a requirement for third-party reimbursement for psychological services.

The process of keeping records involves consideration of legal requirements, ethical standards, and other external constraints, as well as the demands of the particular professional context. In some situations, one set of considerations may suggest a different course of action than another, and it is up to the psychologist to balance them appropriately. These guidelines are intended to assist psychologists in making such decisions.

Guidelines and Use of Language

Psychological practice entails applications in a wide range of settings for a variety of potential clients. This document was written to provide broad guidance to providers of services (e.g., assessment, diagnosis, prevention, treatment, psychotherapy, consultation). Extension of the guidelines to some areas of practice (e.g., industrial/organizational, consulting psychology) may likely call for modifications, although some of the same general principles may be useful.

The term *guidelines* refers to statements that suggest or recommend specific professional behavior, endeavors, or conduct for psychologists. Guidelines differ from standards in that standards are mandatory and may be accompanied by an enforcement mechanism. Guidelines are aspirational in intent. They are intended to facilitate the continued systematic development of the profession and to help facilitate a high level of practice by psychologists. Guidelines are not intended to be mandatory or exhaustive and may not be applicable to every professional situation. They are not definitive and they are not intended to take precedence over the judgment of psychologists.

These guidelines are intended to provide psychologists with a general framework for considering appropriate courses of action or practice in relation to record keeping. Record keeping procedures are directed, to some extent, by the Ethics Code and legal and regulatory requirements. Within these guidelines, more directive language has been used when a particular guideline is based specifically on mandatory provisions of the Ethics Code or law. However, some areas are not addressed in those enforceable standards and regulations. In these areas, more aspirational language has been used. This document aims to elaborate and provide assistance to psychologists as they attempt to establish their own record keeping policies and procedures.

This revision of the 1993 "Record Keeping Guidelines" was completed by the Board of Professional Affairs (BPA) Committee on Professional Practice and Standards (COPPS). Members of COPPS during the development of this document were Eric Y. Drogin (Chair, 2007), Mary A. Connell (Chair, 2006), William E. Foote (Chair, 2005), Cynthia A. Sturm (Chair, 2004), Kristin A. Hancock (Chair, 2003), Armand R. Cerbone, Victor de la Cancela, Michele Galietta, Larry C. James (BPA liaison, 2004–2006), Leigh W. Jerome (BPA liaison, 2003), Sara J. Knight, Stephen Lally, Gary D. Lovejoy, Bonnie J. Spring, Carolyn M. West, and Philip H. Witt. COPPS is grateful for the support and guidance of the BPA, particularly to BPA Chairs Kristin A. Hancock (2006), Rosie Phillips Bingham (2005), and Jalie A. Tucker (2004). COPPS also acknowledges the consultation of Lisa R. Grossman, Stephen Behnke, Lindsay Childress-Beatty, Billie Hinnefeld, and Alan Nessman. COPPS extends its appreciation to the APA staff members who facilitated the work of COPPS: Lynn F. Bufka, Mary G. Hardiman, Laura Kay-Roth, Ernestine Penniman, Geoffrey M. Reed, and Omar Rehman.

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[1] The term *client* is used throughout this document to refer to the child, adolescent, adult, older adult, family, group, organization, community, or other population receiving psychological services. Although it is recognized that the client and the recipient of services may not necessarily be the same entity (APA Ethics Code, Standard 3.07), for economy the term *client* is used in place of *service recipient.*

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It should also be noted that APA policy generally requires substantial review of the relevant empirical literature as a basis for establishing the need for guidelines and for providing justification for the guidelines' statements themselves (APA, 2005). There is relatively little empirical literature, however, that bears specifically on record keeping. Therefore, these guidelines are based primarily on previous APA policy, professional consensus as determined by the APA Board of Professional Affairs (BPA) Committee on Professional Practice and Standards (COPPS), the review and comment process used in developing this document, and, where possible, existing ethical and legal requirements.

Interaction With State and Federal Laws

Specific state and federal laws and regulations govern psychological record keeping. To the extent possible, this document attempts to provide guidelines that are generally consistent with these laws and regulations. In the event of a conflict between these guidelines and any state or federal law or regulation, the law or regulation in question supersedes these guidelines. It is anticipated that psychologists will use their education, skills, and training to identify the relevant issues and attempt to resolve conflicts in a way that conforms to both law and ethical practice.

HIPAA

Psychologists who are subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) should be aware of certain record keeping requirements and considerations under HIPAA's Security Rule and Privacy Rule (see *HIPAA Administrative Simplification, Regulation Text*, *45 CFR Parts 160, 162 and 164*; U.S. Department of Health and Human Services, Office for Civil Rights, 2006). These guidelines indicate some key areas in which HIPAA requirements or considerations impact record keeping. However, detailed coverage of the requirements for HIPAA compliance is beyond the scope of this document, and the rules related to HIPAA and their interpretation may change over the lifetime of these guidelines. Accordingly, consultation with other sources of information regarding the implications of HIPAA for psychologists is recommended.[2]

Expiration

These guidelines are scheduled to expire 10 years from February 16, 2007 (the date of adoption by the APA Council of Representatives). After this date, users are encouraged to contact the APA Practice Directorate to determine whether this document remains in effect.

Background

In 1988, APA's Board of Professional Affairs (BPA) requested that its Committee on Professional Practice and Standards (COPPS) examine the possible usefulness of guidelines on record keeping for psychologists. Interviews with psychologists indicated that such guidance would indeed be useful. COPPS also surveyed state laws and regulations related to record keeping by psychologists and found them to be vague and to vary substantially across jurisdictions. Based on these findings, BPA directed COPPS to undertake the development of "Record Keeping Guidelines" (APA, Committee on Professional Practice and Standards, 1993), which were subsequently adopted as APA policy.

As part of a process of reviewing guidelines over time to ensure their continued relevance and applicability, BPA noted that the guidelines did not account for new questions raised by rapidly changing technology, particularly electronic communications and electronic media. Further, it was clear that HIPAA had important implications for record keeping by psychologists. In particular, HIPAA's Privacy Rule and Security Rule have implications for the development, maintenance, retention, and security of medical and mental health records. In light of these developments, BPA directed COPPS to revise the "Record Keeping Guidelines."

COPPS began with an assessment of APA member experience with the current guidelines. The 1993 "Record Keeping Guidelines" were posted on the APA Web site for member and public comment in the light of a possible revision. A call for comments was published in the *APA Monitor* and circulated to state, provincial, and territorial psychological associations and to APA divisions. COPPS also surveyed current professional literature on record keeping. Relevant provisions of the Ethics Code (APA, 2002b), which had been extensively revised since the development of the 1993 "Record Keeping Guidelines," were examined in detail, as were the ethics codes and relevant policies of several other mental health professions. COPPS also considered the implications of current federal and state laws and regulations, including HIPAA. COPPS reviewed the questions received from members by the APA Practice Directorate Legal and Regulatory Affairs Office and the APA Ethics Office about record keeping practices. Most commonly, these questions concerned the content of records, management and maintenance of records, electronic records, retention of records, and compliance with rapidly changing state and federal requirements for record keeping. Finally, other APA practice guidelines were examined to ensure internal consistency of APA policies.

After drafting a proposed revision, COPPS sought feedback and incorporated suggestions from the APA Ethics and Legal offices. BPA reviewed and approved the draft for release for a Call for Comments. In the Call for Comments, input was sought from all APA divisions and individual members. COPPS presented the draft at APA Con-

[2] Resources regarding HIPAA, and HIPAA compliance for psychologists, are available at the U.S. Department of Health and Human Services, Office for Civil Rights Web site (www.hhs.gov/ocr/hipaa/) and in documents prepared by the APA Practice Organization (2003, 2005), solely or in collaboration with the APA Insurance Trust (APA Practice Organization & APA Insurance Trust, 2002).

ventions on July 30, 2004 and August 11, 2006, seeking input from APA members. Comments and recommendations were incorporated by COPPS, and a revised draft was submitted to BPA on November 9, 2006. BPA approved the draft in principle and placed it on the agenda for Board of Directors approval in principle during its December 8–9, 2006 meeting. The Board of Directors approved the draft in principle on December 9, 2006, and COPPS further revised the draft, incorporating BPA's recommended changes, during its December 8–9, 2006 meeting and throughout the end of 2006. The final draft was forwarded to Council for its approval at its February 2007 meeting and was approved on February 16, 2007.

Guidelines

Guideline 1—Responsibility for Records: Psychologists generally have responsibility for the maintenance and retention of their records.

Rationale

Psychologists have a professional and ethical responsibility to develop and maintain records (Ethics Code, Standard 6.01). The psychologist's records document and reflect his or her professional work. In some circumstances, the records are the only way that the psychologist or others may know what the psychologist did and the psychologist's rationale for those actions. As a consequence, the psychologist aspires to create records that are consistent with high-quality professional work. If the psychologist is later questioned about services or billing, the availability of accurate records facilitates explanation and accountability.

Application

A psychologist makes efforts to see that legible and accurate entries are made in client records as soon as is practicable after a service is rendered. Psychologists are urged to organize their records in a manner that facilitates their use by the psychologist and other authorized persons. Psychologists ensure that supervisees, office staff, and billing personnel who handle records are appropriately trained regarding awareness of and compliance with ethical and legal standards related to managing confidential client information (Ethics Code, Standards 2.05 and 6.02). Where appropriate, a psychologist maintains control over clients' records, in accordance with the policies of the institution in which psychological services are provided and consistent with Ethics Code, Standard 6.01. To the degree that there are conflicts between the institutional policies and procedures and the Ethics Code, psychologists appropriately address these issues as outlined in the Ethics Code (Standard 1.03), clarifying the nature of the conflict, making known their commitment to the Ethics Code, and, to the extent feasible, resolving the conflict in a way that permits adherence to the Ethics Code.

Guideline 2—Content of Records: A psychologist strives to maintain accurate, current, and pertinent records of professional services as appropriate to the circumstances and as may be required by the psychologist's jurisdiction. Records include information such as the nature, delivery, progress, and results of psychological services, and related fees.

Rationale

The Ethics Code (Standard 6.01) sets forth reasons why psychologists create and maintain records. Based on various provisions in the Ethics Code, in decision making about content of records, a psychologist may determine what is necessary in order to (a) provide good care; (b) assist collaborating professionals in delivery of care; (c) ensure continuity of professional services in case of the psychologist's injury, disability, or death or with a change of provider; (d) provide for supervision or training if relevant; (e) provide documentation required for reimbursement or required administratively under contracts or laws; (f) effectively document any decision making, especially in high-risk situations; and (g) allow the psychologist to effectively answer a legal or regulatory complaint.

Application

In making decisions about the content of records, the psychologist takes into account factors such as the nature of the psychological services, the source of the information recorded, the intended use of the records, and his or her professional obligations. Some hospitals, clinics, prisons, or research organizations mandate record format, specific data to be gathered and recorded, and time frames within which the records are to be created. A psychologist endeavors to include only information germane to the purposes for the service provided (Ethics Code, Standard 4.04). Additionally, consistent with the Ethics Code (Principle A), psychologists are sensitive to the potential impact of the language used in the record (e.g., derogatory terms, pathologizing language) on the client.

Considerations Regarding the Level of Detail of the Record

A psychologist makes choices about the level of detail in which the case is documented. Psychologists balance client care with legal and ethical requirements and risks. Information written in vague or broad terms may not be sufficient if more documentation is needed (e.g., for continuity of care, mounting an adequate defense against criminal, malpractice, or state licensing board complaints). However, some clients may express a desire for the psychologist to keep a minimal record in order to provide maximum protection and privacy. Although there may be advantages to keeping minimal records, for example, in light of risk management concerns or concerns about unintended disclosure, there are, alternately, legitimate arguments for keeping a highly detailed record. Those may include such

factors as improved opportunities for the treatment provider to identify trends or patterns in the therapeutic interaction, enhanced capacity to reconstruct the details of treatment for litigation purposes, and more effective opportunities to use supervision and consultation. The following issues may provide a guide to assist the psychologist in wrestling with these tensions:

The client's wishes. For a variety of reasons, clients may express a wish that limited records of treatment be maintained. In some situations, the client may require limited record keeping as a condition of treatment. The psychologist then considers whether treatment can be provided under this condition.

Emergency or disaster relief settings. When psychologists provide crisis intervention services to people on an emergency relief basis, the records that are created may be less substantial because of the situational demands. The psychologist may be guided by the oversight agency regarding necessary elements for the record. For example, disaster relief agencies may require only cursory identifying information, the date of service, a brief summary of the service provided, and the provider's name. There may be limited opportunity to keep as detailed records as would be kept in a less urgent situation, particularly in the short-term or immediate crisis. In some situations, such as disaster relief following an airplane crash or a hurricane, no further intervention beyond the on-site contact may occur and, given the brevity and sheer number of services provided, highly detailed records may be impossible to construct even after the crisis.

Alteration or destruction of records. Many statutes, regulations, and rules of evidence prohibit the alteration or removal of information once a record has been made. In the context of litigation, addition or removal of information from a record that has been subpoenaed or requested by court order may create liability for the psychologist. Psychologists may wish to seek consultation regarding relevant state and federal law before changing an existing record. It is recommended that later additions made to a record be documented as such.

Legal/regulatory. Some statutes and regulations mandate inclusion or prohibit exclusion of particular information. For example, an institutional rule for record keeping may prohibit reference to sealed juvenile records or to HIV test results, or a statute may govern disclosure of information about treatment for chemical dependency. The psychologist takes into account the statutes and regulations that govern practice and heeds mandates in making decisions about record detail.

Agency/setting. Psychologists providing psychological services within an institution consider institutional policies and procedures in making decisions about the level of detail in the record (See Guideline 10).

Third-party contracts. The psychologist considers whether the decision to maintain less detailed records deviates from contracts between the psychologist and third-party payers. Many third-party payers' contracts require specific information to be included within the record. Psychologists who sign but do not abide by contracts with such payers will potentially experience a number of adverse consequences (e.g., required reimbursement of previously received funds, legal actions).

The record of psychological services may include information of three kinds.

Information in the client's file:

- identifying data (e.g., name, client ID number);
- contact information (e.g., phone number, address, next of kin);
- fees and billing information;
- where appropriate, guardianship or conservatorship status;
- documentation of informed consent or assent for treatment (Ethics Code, Standard 3.10);
- documentation of waivers of confidentiality and authorization or consent for release of information (Ethics Code, Standard 4.05);
- documentation of any mandated disclosure of confidential information (e.g., report of child abuse, release secondary to a court order);
- presenting complaint, diagnosis, or basis for request for services;
- plan for services, updated as appropriate (e.g., treatment plan, supervision plan, intervention schedule, community interventions, consultation contracts);
- health and developmental history.

For each substantive contact with a client:

- date of service and duration of session;
- types of services (e.g., consultation, assessment, treatment, training);
- nature of professional intervention or contact (e.g., treatment modalities, referral, letters, e-mail, phone contacts);
- formal or informal assessment of client status.

The record may also include other specific information, depending upon the circumstances:

- client responses or reactions to professional interventions;
- current risk factors in relation to dangerousness to self or others;
- other treatment modalities employed, such as medication or biofeedback treatment;
- emergency interventions (e.g., specially scheduled sessions, hospitalizations);
- plans for future interventions;
- information describing the qualitative aspects of the professional–client interaction;
- prognosis;
- assessment or summary data (e.g., psychological testing, structured interviews, behavioral ratings, client behavior logs);
- consultations with or referrals to other professionals;
- case-related telephone, mail, and e-mail contacts;
- relevant cultural and sociopolitical factors.

Guideline 3—Confidentiality of Records: The psychologist takes reasonable steps to establish and maintain the confidentiality of information arising from service delivery.

Rationale

Confidentiality of records is mandated by law, regulation, and ethical standards (Ethics Code, Standards 4.01 and 6.02). The assurance of confidentiality is critical for the provision of many psychological services. Maintenance of confidentiality preserves the privacy of clients and promotes trust in the profession of psychology.

Application

The psychologist maintains records in such a way as to preserve their confidentiality. The psychologist develops procedures to protect the physical and electronic record from inadvertent or unauthorized disclosure (see Guideline 5). Psychologists are familiar with the ethical standards regarding confidentiality, as well as state and federal regulations and statutes (e.g., HIPAA, licensing laws, mandated reporting of abuse). Psychologists strive to be aware of the legal and regulatory requirements governing the release of information (e.g., some jurisdictions prohibit the re-release of mental health records, records of sexually transmitted diseases, or chemical dependency treatment records). When the psychologist employs clerical or testing personnel, he or she is required by the Ethics Code (Standard 2.05) to take reasonable steps to ensure that the employee's work is done competently. Therefore, the psychologist strives to educate employees about confidentiality requirements and to implement processes that support the protection of records and the disclosure of confidential information only with proper consent or under other required circumstances (e.g., mandated reporting, court order).

Psychologists may encounter situations in which it is not immediately apparent who should have access to records. For example, children in treatment following marital dissolution may be brought for services by one parent who wishes the record to be kept confidential from the other parent, or an adolescent who is near but has not quite reached the age of majority may request that records be kept confidential from the parent/guardian. A minor may have the legal prerogative to consent to treatment (e.g., for reproductive matters), but the parent may nevertheless press for access to the record. The psychologist is guided by the Ethics Code (providing that psychologists may disclose information to a legally authorized person on behalf of the client/patient unless prohibited by law; Ethics Code, Standard 4.05) as well as by state and federal regulations in these matters. Following marital dissolution, a psychologist may be unclear whether to release records to one of the parents, particularly when the release is not wanted by the other parent. In such a situation, the psychologist recognizes that the relevant court overseeing the marital dissolution may have already specified who has access to the child's treatment records.

Guideline 4—Disclosure of Record Keeping Procedures: When appropriate, psychologists inform clients of the nature and extent of record keeping procedures (including a statement on the limitations of confidentiality of the records; Ethics Code, Standard 4.02).

Rationale

Informed consent is part of the ethical and legal basis of professional psychology procedures (Ethics Code, Standards 3.10, 8.02, 9.03, and 10.01), and disclosure of record keeping procedures may be a part of this process.

Application

Consistent with the APA's Ethics Code, psychologists obtain and document informed consent appropriate to the circumstances at the beginning of the professional relationship. In some circumstances, when it is anticipated that the client might want or need to know how records will be maintained, this process may include the disclosure of record keeping procedures. This may be especially relevant when record keeping procedures are likely to have an impact upon confidentiality or when the client's expressed expectations regarding record keeping differ from the required procedures.

The manner in which records are maintained may potentially affect the client in ways that may be unanticipated by the client. Psychologists are encouraged to inform the client about these situations. For example, in some medical settings, client records may become part of an electronic file that is accessible by a broad range of institutional staff (see Guideline 10). In some educational settings, institutional, state, and federal regulations dictate record keeping procedures that may expand the range of individuals who have access to the records of a school psychologist.

When a psychologist releases client records, with proper authorization to release information, they may be further distributed without the psychologist's or the client's consent. The psychologist may wish to alert the client of this potential at the outset of services or before consent for release is given. For example, after release in a litigation context, records may be placed in the public domain and be accessible to any member of the public. Another example of unwanted re-release may occur when records are sent, at the client's request, to another treating professional, whose handling of those records is then beyond the control of the psychologist who sent them.

Guideline 5—Maintenance of Records: The psychologist strives to organize and maintain records to ensure their accuracy and to facilitate their use by the psychologist and others with legitimate access to them.

Rationale

The usefulness of psychological service records often depends on the records being systematically updated and

logically organized. Organization of client records in a manner that allows for thoroughness and accuracy of records, as well as efficient retrieval, both benefits the client and permits the psychologist to monitor ongoing care and interventions. In the case of the death or disability of the psychologist or of an unexpected transfer of the client's care to another professional, current, accurate, and organized records allow for continuity of care (see Guideline 13).

Application

The psychologist is encouraged to update active records to reflect professional services delivered to the client and changes in the client's status. The psychologist may use various methods to organize records to assist in storage and retrieval. Methods reflecting consistency and logic are likely to be most useful. For example, a logical file labeling system facilitates the search and recovery of records. The psychologist may consider dividing client files into two or more sections. Psychotherapy notes, as defined by HIPAA, are necessarily kept apart from other parts of the record. Additionally, client information that may be considered useful to others and that is intended to be shared with them may constitute a section. A psychologist may also consider, for purposes of convenience and organization, an additional section to include material generated by the client or by third parties, such as the client's family members, or from prior treatment providers. This might include, among other things, behavioral ratings or logs, diaries, journals, letters from the client's children, pictures or videos, or greeting cards. Psychological test data, because it may bear more careful consideration before being released, may be clustered and designated, within the file, to ensure that its release is appropriately considered.

A specific area of concern is the re-release of data that have been included in the client's record. When the psychologist is releasing the client's record, upon request and with consent, the psychologist is faced with the question of whether the client's previous therapist's records, for example, constitute a part of the record and should be released. The psychologist considers HIPAA regulations regarding psychotherapy notes,[3] the breadth of the records requested, and the client's wishes, along with the situational demands. For instance, when a psychologist is responding to a subpoena[4] for "any and all records" upon which the psychologist relied in forming opinions, it is generally necessary to re-release any third-party information included in the record. The psychologist may nevertheless provide advance notification to the client and allow sufficient time for objection to be raised before responding to such requests for records.

Guideline 6—Security: The psychologist takes appropriate steps to protect records from unauthorized access, damage, and destruction.

Rationale

Psychologists proceed with respect for the rights of individuals to privacy and confidentiality (Ethics Code, Principle E). Appropriate security procedures protect against the loss of or unauthorized access to the record, which could have serious consequences for both the client and psychologist.[5] Access to the records is limited in order to safeguard against physical and electronic breaches of the confidentiality of the information. Advances in technology, especially in electronic record keeping, may create new challenges for psychologists in their efforts to maintain the security of their records (see Guideline 9).

Application

The psychologist strives to protect the security of the paper and electronic records he or she keeps and is encouraged to develop a plan to ensure that these materials are secure.[6] In the security plan, two elements to be considered are the medium on which the records are stored and access to the records.

Maintenance. Psychologists are encouraged to keep paper records in a secure manner in safe locations where they may be protected from damage and destruction (e.g., fire, water, mold, insects). Condensed records may be copied and kept in separate locations so as to preserve a copy from natural or other disasters. Similarly, electronic records stored on magnetic and other electronic media may require protection from damage (e.g., electric fields or mechanical insult; power surges or outage; and attack from viruses, worms, or other destructive programs). Psychologists may plan for archiving of electronic data including file and system backups and off-site storage of data (See Guideline 9).

Access. Control of access to paper records may be accomplished by storing files in locked cabinets or other containers housed in locked offices or storage rooms. Psychologists protect electronic records from unauthorized access through security procedures (e.g., passwords, firewalls, data encryption and authentication). Consistent with legal and regulatory requirements and ethical standards (e.g., Ethics Code, Standard 6.02; HIPAA Privacy Rule and Security Rule), psychologists employ procedures to limit access of records to appropriately trained professionals and others with legitimate need to see the records.

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[3] See the HIPAA Privacy Rule (Standards for Privacy of Individually Identifiable Health Information, 2002).

[4] See "Strategies for Private Practitioners Coping With Subpoenas or Compelled Testimony for Client Records or Test Data" (APA, Committee on Legal Issues, 2006, or http://content.apa.org/journals/pro/37/2/215.pdf).

[5] For psychologists who are subject to HIPAA and keep electronic records, the HIPAA Security Rule requires a detailed analysis of the risk of loss of, or unauthorized access to, electronic records and detailed policies and procedures to address those risks (for more details regarding the Security Rule, see Health Insurance Reform: Security Standards, 2003) .

[6] If the psychologist is subject to HIPAA and maintains electronic records, the HIPAA Security Rule will generally require the development of security policies and procedures for those records (for more details regarding the Security Rule, see Health Insurance Reform: Security Standards, 2003).

Guideline 7—Retention of Records: The psychologist strives to be aware of applicable laws and regulations and to retain records for the period required by legal, regulatory, institutional, and ethical requirements.

Rationale

A variety of circumstances (e.g., requests from clients or treatment providers, legal proceedings) may require release of client records after the psychologist's termination of contact with the client. Additionally, it is beneficial for the psychologist to retain information concerning the specific nature, quality, and rationale for services provided. The retention of records may serve not only the interests of the client and the psychologist but also society's interests in a fair and effective legal dispute resolution and administration of justice, when those records are sought to illuminate some legal issue such as the nature of the treatment provided or the psychological condition of the client at the time of services.

Application

In the absence of a superseding requirement, psychologists may consider retaining full records until 7 years after the last date of service delivery for adults or until 3 years after a minor reaches the age of majority, whichever is later. In some circumstances, the psychologist may wish to keep records for a longer period, weighing the risks associated with obsolete or outdated information, or privacy loss, versus the potential benefits associated with preserving the records (See Guideline 8).

There are inherent tensions associated with decisions to retain or dispose of records. Associated with these decisions are both costs and benefits for the recipient of psychological services and for the psychologist. A variety of circumstances can trigger requests for records even beyond 7 years after the psychologist's last contact with the client. For example, an earlier record of symptoms of a mental disorder might be useful in later diagnosis and treatment. In contrast, the client may be served by the disposal of the record as soon as allowed. For example, the client may have engaged in behavior as a minor that, if later disclosed, might prove demeaning or embarrassing. Also, retaining records over long intervals can be logistically challenging and expensive for the psychologist. The psychologist is encouraged to carefully weigh these matters in making decisions to retain or dispose of records.[7]

Guideline 8—Preserving the Context of Records: The psychologist strives to be attentive to the situational context in which records are created and how that context may influence the content of those records.

Rationale

Records may have a significant impact on the lives of clients (and prior clients). At times, information in a client's record is specific to a given temporal or situational context (e.g., the time frame and situation in which the services were delivered and the record was created). When that context changes over time, the relevance and meaning of the information may also change. Preserving the context of the record protects the client from the misuse or misinterpretation of those data in a way that could prejudice or harm the client.

Application

When documenting treatment or evaluation, the psychologist is attentive to situational factors that may affect the client's psychological status. The psychologist is often asked to assess or treat individuals who are in crisis or under great external stress. Those stresses may affect the client's functioning in that setting, so that the client's behavior in that situation may not represent the client's enduring psychological characteristics. For example, a child subjected to severe physical abuse may produce low scores in a cognitive assessment that may not accurately predict the child's future functioning. Or a psychologist writing a case summary regarding a client who had only been violent in the midst of a psychotic episode is careful to record the context in which the behavior occurred. The psychologist strives to create and maintain records in such a way as to preserve relevant information about the context in which the records were created.

Guideline 9—Electronic Records: Electronic records, like paper records, should be created and maintained in a way that is designed to protect their security, integrity, confidentiality, and appropriate access, as well as their compliance with applicable legal and ethical requirements.

Rationale

The use of electronic methods and media compels psychologists to become aware of the unique aspects of electronic record keeping in their particular practice settings. These aspects include limitations to the confidentiality of these records, methods to keep these records secure, measures necessary to maintain the integrity of the records, and the unique challenges of disposing of these records. In many cases, psychologists who maintain electronic records will be subject to the HIPAA Security Rule, which requires a detailed analysis of the risks associated with electronic records. Conducting that risk analysis may be advisable even for psychologists who are not technically subject to HIPAA. The HIPAA Privacy Rules and Security Standards provide assistance to the practitioner in scrutinizing office practices such as assuring that personal health information is handled in a way designed to protect the privacy of

[7] The HIPAA Security Rule, if applicable, sets forth specific requirements and considerations for the disposal of electronic patient information and computers and devices that contain such information (for more details regarding the Security Rule, see Health Insurance Reform: Security Standards, 2003).

clients; defining proper deidentification of case information for research or other purposes when deidentification is in order; and clearly defining the elements required in an authorization to release information. The discussion in this section addresses considerations beyond the requirements of the Security Rule.

Whether or not the Security Rule applies, rapid changes in the technology of service delivery, billing, and media storage have prompted psychologists to consider how to apply existing standards of psychological record keeping using these methods and media. Psychologists struggle with questions such as whether to communicate with clients through e-mail and how to allow for the secure transmission, storage, and destruction of electronic records. The ease of creating, transmitting, and sharing electronic records may expose psychologists to risks of unintended disclosure of confidential information.

Application

Psychologists may develop security procedures that fit the specific circumstances in which they work. Psychologists using online test administration and scoring systems may consider using a case identification number rather than the client's Social Security number as the record identifier. Psychologists using computers or other digital or electronic storage devices to maintain client treatment records may consider using passwords or encryption to protect confidential material.[8] The psychologist strives to become aware of special issues associated with using electronic methods and media and seeks training and consultation when necessary.[9]

Guideline 10—Record Keeping in Organizational Settings: Psychologists working in organizational settings (e.g., hospitals, schools, community agencies, prisons) strive to follow the record keeping policies and procedures of the organization as well as the APA Ethics Code.

Rationale

Organizational settings may present unique challenges in record keeping. Organizational record keeping requirements may differ substantially from procedures in other settings. Psychologists working in organizational settings may encounter conflicts between the practices of their organization and established professional guidelines, ethical standards, or legal and regulatory requirements. Additionally, record ownership and responsibility is not always clearly defined. Often, multiple service providers access and contribute to the record. This potentially affects the degree to which the psychologist may exercise control of the record and its confidentiality.

Application

Three record keeping issues arise when psychologists provide services in organizational settings: conflicts between organizational and other requirements, ownership of the records, and access to the records.

The psychologist may consult with colleagues in the organization to support record keeping that serves the needs of different disciplines and while meeting acceptable record keeping requirements and guidelines. In addition, the psychologist may review local, state, and federal laws and regulations that pertain to that organization and its record keeping practices. In the event that there are conflicts between an organization's policies and procedures and the Ethics Code, psychologists clarify the nature of the conflict, make their ethical commitments known, and to the extent feasible, resolve the conflict consistent with those commitments (Ethics Code, Standard 1.03).

Record keeping practices may depend upon the nature of the psychologist's legal relationship with the organization. In some settings, the physical record of psychological services is owned by the organization and does not travel with the psychologist upon departure. However, in consultative relationships, record ownership and responsibility may be maintained by the psychologist. It is therefore helpful for psychologists to clarify these issues at the beginning of the relationship in order to minimize the likelihood of misunderstandings.

Often, rules for record creation and maintenance reflect requirements of all relevant disciplines, not only those related to psychological services. Treatment team involvement in service delivery may occasion wider access to records than usually exists in independent practice settings. Because others (e.g., physicians, nurses, paraprofessionals, and other service providers) may have access to and make entries into the client's record, the psychologist has less direct control over the record. Psychologists are encouraged to participate in development and refinement of organizational policies involving record keeping.

It is important to note that multidisciplinary records may not enjoy the same level of confidentiality generally afforded psychological records. The psychologist working in these settings is encouraged to be sensitive to this wider access to the information and to record only information congruent with organizational requirements and necessary to accurately portray the services provided. In this situation, if permitted by institutional rules and legal and regulatory requirements, the psychologist may keep more sensitive information, such as therapy notes, in a separate and confidential file.[10]

[8] The reader may wish to consult the HIPAA Security Rule for further guidance on this issue.

[9] See the HIPAA Security Rule.

[10] In order for therapy notes to have heightened protection as "psychotherapy notes" as defined by the HIPAA Privacy Rule, the notes must be kept separate from the rest of the record. If they are psychotherapy notes, only the psychologist who took the notes can access them, absent a HIPAA complaint authorization from the client (for more details regarding the Privacy Rule, see Standards for Privacy of Individually Identifiable Health Information, 2002).

Guideline 11—Multiple Client Records: The psychologist carefully considers documentation procedures when conducting couple, family, or group therapy in order to respect the privacy and confidentiality of all parties.

Rationale

In providing services to multiple clients, issues of record keeping may become very complex. Because records may include information about more than one individual client, legitimate disclosure of information regarding one client may compromise the confidentiality of other clients.

Application

The psychologist strives to keep records in ways that facilitate authorized disclosures while protecting the privacy of clients. In services involving multiple individuals, it may be important to specify the identified client(s) (Ethics Code, Standards 10.02 and 10.03).

There are a number of further concerns regarding record keeping with multiple clients. First, the information provided to clients as part of the informed consent process at the onset of the professional relationship (Ethics Code, Standard 10.02) may include information about how the record is kept (e.g., jointly or separately) and who can authorize its release. In considering the creation of records for couple, family, or group therapy, the psychologist may first seek to clarify the identified client(s). In some situations, such as group therapy, it may make sense to create and maintain a complete and separate record for all identified clients. On the other hand, if a couple or family is the identified client, then one might keep a single record. This will vary depending upon practical concerns, ethical guidelines, and third-party reporting requirements. Upon later requests for release of records, it will be necessary to release only the portions relevant to the party covered by the release. Given this possibility, the psychologist may choose to keep separate records on each participant from the outset. The psychologist endeavors to become familiar with legal and regulatory requirements regarding the release of a record containing information about multiple clients.

Guideline 12—Financial Records: The psychologist strives to ensure accuracy of financial records.

Rationale

Accurate and complete financial record keeping helps to ensure accuracy in billing (Ethics Code, Standards 6.04 and 6.06). A fee agreement or policy, although not explicitly required for many kinds of psychological services such as preemployment screening under agency contract or emergency counseling services at a disaster site, provides a useful starting point in most service delivery contexts for documenting reimbursement of services. Accurate financial records not only assist payers in assessing the nature of the payment obligation but also provide a basis for understanding exactly which services have been billed and paid. Up-to-date record keeping can alert the psychologist and the client to accumulating balances that, left unaddressed, may adversely affect the professional relationship.

Application

Financial records may include, as appropriate, the type and duration of the service rendered, the name of the client, fees paid for the service, and agreements concerning fees, along with date, amount, and source of payment received. Special consideration may be given to fee agreements and policies, barter agreements, issues relating to adjusting balances, issues concerning copayments, and concerns about collection.

Fee agreement or fee policy. The financial record for services may begin with a fee agreement or fee policy statement that identifies the amount to be charged for service and the terms of any agreement for payment. The record may potentially include who is responsible for payment, how missed appointments will be handled, acknowledgement of any third-party payer preauthorization requirements, any agreement regarding copayment and adjustments to be made, payment schedule, interest to accrue on unpaid balance, suspension of confidentiality when collection procedures are employed, and the methods by which financial disputes may be resolved (Ethics Code, Standard 6.04).

Barter agreements and transactions. Accurately recording bartering agreements and transactions helps ensure that the record clearly reflects how the psychologist was compensated. Designation of the source, nature, and date of each financial or barter transaction facilitates clarification when needed regarding the exchange of goods for service. Because of the potential for the psychologist to have greater power in the negotiation of bartering agreements, careful documentation protects both the psychologist and the client. Such documentation may reflect the psychologist's basis for concluding, at the onset, that the arrangement is neither exploitative nor clinically contraindicated (Ethics Code, Standard 6.05).

Adjustments to balance. It is helpful to designate the rationale for, description of, and date of any adjustments to the balance that are made as a result of agreement with a third-party payer or the client. This may reduce potential misunderstanding or perceived obligations that might affect the relationship.

Collection. Psychologists may consider including in the record information about collection efforts, including documentation of notification of the intention to use a collection service.

Guideline 13—Disposition of Records: The psychologist plans for transfer of records to ensure continuity of treatment and appropriate access to records when the psychologist is no longer in direct control, and in planning for record disposal, the psychologist endeavors to employ methods that preserve confidentiality and prevent recovery.[11]

Rationale

Client records are accorded special treatment in times of transition (e.g., separation from work, relocation, death). A record transfer plan is required by both the Ethics Code (Standard 6.02), and by laws and regulations governing health care practice in many jurisdictions. Such a plan provides for continuity of treatment and preservation of confidentiality. Additionally, the Ethics Code (Standards 6.01 and 6.02) requires psychologists to dispose of records in a way that preserves their confidentiality.

Application

The psychologist has two responsibilities in relation to the transfer and disposal of records. In anticipation of unexpected events, such as disability, death, or involuntary withdrawal from practice, the psychologist may wish to develop a disposition plan in which provisions are made for the control and management of the records by a trained individual or agency. In other circumstances, when the psychologist plans in advance to leave employment, close a practice, or retire, similar arrangements may be made or the psychologist may wish to retain custody and control of client records.

In some circumstances, the psychologist may consider a method for notifying clients about changes in the custody of their records. This may be especially important for those clients whose cases are open or who have recently terminated services. The psychologist may consider including in the disposition plan, in accordance with legal and regulatory requirements, a provision for providing public notice about changes in the custody of the records, such as placing a notice in the local newspaper.

Considerations of record confidentiality are critical when planning for disposal of records. For example, in transporting records to be shredded, the psychologist may take care that confidentiality of the records is maintained. Some examples of this effort might be accompanying the records through the disposal process or establishing a confidentiality agreement with those responsible for records disposal. When considering methods of record destruction, the psychologist seeks methods, such as shredding, that prevent recovery. Disposal of electronic records poses unique challenges because the psychologist may not have the technical expertise to fully delete or erase records, for example, before disposing of a computer hard drive, external back-up storage device, or other repository for electronic records. Even though efforts to delete or erase records may be undertaken, the records may nevertheless remain accessible by those with specialized expertise. The psychologist may seek consultation from technical consultants regarding adequate methods for destruction of electronic records, such as physically destroying the entire medium or wiping clean (demagnetizing) the storage device.[12]

Conclusion

These "Record Keeping Guidelines" provide a framework for keeping, maintaining, and providing for the disposition of records and what is contained in them. They discuss special situations: electronic records, organizational settings, and multiple clients. They are intended to benefit both the psychologist and the client by facilitating continuity and evaluation of services, preserving the client's privacy, and protecting the psychologist and client in legal and ethical proceedings.

These guidelines do not establish rules for practice, but rather provide an overall conceptual model and strategies for resolving divergent considerations. The demands of professional settings are varied and complex. It would not be feasible to establish detailed guidelines for record creation, maintenance, and disposition that would be relevant for each setting. The current document may provide useful guidance for various professional applications. Where standards and legal and regulatory codes exist, they take precedence over these guidelines.

Record Keeping Guidelines Bibliography

The authors considered the following reference materials and relied upon those with obvious authority (for example, the APA Ethics Code and HIPAA) while also consulting those that provided relevant guidance (APA guidelines; professional publications). This is not an exhaustive list of sources that psychologists may find useful in determining the best course of action in record keeping, and it is not intended to be representative of the entire body of knowledge that can guide decision making. It does represent, however, a solid basis for consideration that, in combination with state and federal regulations, may provide an adequate framework for record keeping.

[11] See the HIPAA Security Rule.

[12] See the HIPAA Security Rule requirements for the disposal of electronic records.

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