Leslie S. Tsukroff, Inc.
Business Management Consulting for Mental Health Practitioners
68 North Bridge Street
Somerville, New Jersey 08876
973-879-1678
LsTsukroff@aol.com
https://www.leslietsukroff.com/

MAY NEWSLETTER

Thank you to all who participated in the April 18th Audit-Proof Progress Notes workshop. We had close to 100 participants from 16 different states! In response to feedback, I am working on a non-CEU part 2, which will enable a deeper exploration of the topic.

For those who have been waiting for the recording, it's here. Unfortunately, the sound from the April 18th workshop was not as clear as I would have liked, so I re-recorded the content (minus the Q and A). You can rent this 1 hour webinar which comes with the original presentation slides and the FREE Progress Note Template for $40.00. Click here https://www.leslietsukroff.com/workshop-videos

What's new?

I have started a Resource page to my website @ https://www.leslietsukroff.com/resources

- Newsletters will now be available for download within 24 hours of them arriving in your inbox
- I will also post other websites, articles and information to help enhance your practice

The 21st Century Cures Act, Part II

In April's Newsletter, I outlined the Information Blocking Rule and this new rule's impact on mental health practitioners. I reviewed 2 exceptions (Infeasibility Exception and The Preventing Harm Exception) and as promised, below is an overview of the other 6. Reminder: "exceptions" allow heath care providers to reject a patient's request for access to their medical records without this denial being deemed as interference under the information blocking rule. These "exceptions" outline legitimate reasons a healthcare provider, health IT developer, health information network, or health information exchange might not comply with the laws in the information blocking rule. For a more detailed explanation:

- https://www.healthit.gov/cures/sites/default/files/cures/2020-03/InformationBlockingExceptions.pdf
- https://www.ama-assn.org/system/files/2021-01/information-blocking-part-1.pdf
- https://www.apaservices.org/practice/business/hipaa/information-blocking-rule faq?_ga=2.142843829.1813045668.1620066620-2075089130.1607090617
- https://chimecentral.org/public-policy/interoperability/
- https://www.opennotes.org/

These 8 exceptions fall into 2 categories:

1. Exceptions that encompass not fulfilling requests to access, exchange, or use EHI (Preventing Harm Exception, Privacy Exception, Security Exception, Infeasibility Exception, Health IT Performance Exception)
2. Exceptions that encompass procedures for fulfilling requests to access, exchange, or use EHI (Content And Manner Exception; Fees Exception, Licensing Exception)

Leslie S. Tsukroff, Inc.
Business Management Consulting for Mental Health Practitioners
68 North Bridge Street
Somerville, New Jersey 08876
973-879-1678
LsTsukroff@aol.com
https://www.leslietsukroff.com/

Exceptions that encompass not fulfilling requests to access, exchange, or use EHI

Privacy Exception

Mental health clinicians may not be required to allow access, use or disclose/exchange a patient's electronic health information if it violates existing and applicable state or federal privacy laws. For example, if state or federal law requires written consent of the patient prior to disclosure, if a patient requests that one provider not share information with another provider.

Security Exception

If a mental health practitioner denies access, exchange, or use of EHI in order to protect the integrity and security of Electronic health Information, it may not be considered information blocking. To assert the use of this exception, several conditions must be met, including, but not limited to the practitioner's ability to demonstrate that the denial is "directly related to safeguarding the confidentiality, integrity, and availability of EHI; tailored to specific security risks; and implemented in a consistent and non-discriminatory manner."

Health IT performance Exception

It may not be considered information blocking if a mental health provider's system is temporarily offline due to maintenance, enhancements, or a reason beyond their control.

Exceptions that encompass procedures for fulfilling requests to access, exchange, or use EHI

Content and manner Exception

Mental health providers may be permitted to limit the content of their response or the manner in which they fulfill a request to access, exchange, or use Electronic Health Information; however, the practitioner must meet both the "content condition" and the "manner condition."

The Content Condition refers to the content the clinician "must provide in response to a request to access, exchange, or use EHI in order to satisfy the exception
1. Up to 24 months after the publication date of the Cures Act final rule, an actor must respond to a request to access, exchange, or use EHI with, at a minimum, the EHI identified by the data elements represented in the United States Core Data for Interoperability (USCDI) standard.
2. On and after 24 months after the publication date of the Cures Act final rule, an actor must respond to a request to access, exchange, or use EHI with EHI as defined in § 171.102." Emphasis added

To meet the manner condition, the mental health clinician may need to fulfil a request for access, exchange or use of electronic health information in an alternative manner if they do not have the technical capacity respond to the request in the way it was asked for.

Leslie S. Tsukroff, Inc.
Business Management Consulting for Mental Health Practitioners
68 North Bridge Street
Somerville, New Jersey 08876
973-879-1678
LsTsukroff@aol.com
https://www.leslietsukroff.com/

Fees Exception

it may not be considered information blocking if a mental health practitioner to charge fees reasonably related to the costs of providing access to electronic health information other than directly through an already established patient portal, such as requesting medical records in paper format, on a flash drive or on a CD.

Licensing Exception

"It will not be information blocking for an actor to license interoperability elements for EHI to be accessed, exchanged, or used, provided certain conditions are met." This exception is not relevant for mental health providers, but is applicable to those who develop and/or sell Electronic Health Records systems/programs.

Ethics Question of the Month

Can I ask a client to show their CDC vaccine card before I see them? This is a common question being asked in recent weeks. A quick delve into the research resulted in a mixed bag. Some resources felt that it was not unethical, while most viewed this an infringement on privacy. But, ethical and legal considerations should not be the only guiding factors in a clinician's decision-making on the subject.

What are the potential clinical implications? How might prospective new clients react to their treatment being conditioned on providing verification of vaccination status? How might existing clients feel about this? There are many people who are understandably hesitant to become vaccinated, whole there are others for whom it unsafe to be vaccinated. Word of caution-- how or if we ask about vaccination status may have long-lasting impacts on those individuals and families we serve. Just because our respective Codes of Ethics do not tell us we shouldn't, does it mean we "should"?

What about our own comfort level? Many clinicians are worried about being exposed or exposing others to the virus. As private practitioners, we have the right to determine what we feel most comfortable with, as long as our behavior is not discriminatory, we do not abandon our existing clients and we provide clients with equitable alternatives to in-person services.

The decision to provide face-to-face, in office services is a personal one and one that should be thoroughly assessed by each private practitioner. When determining if returning to the office is right for you, in addition to their personal comfort level, private practitioners are encouraged to base their decision on a variety of factors, including, but not limited to: current individual states' COVID health and safety guidelines and mask mandates; individual state and county regulations regarding the re-opening businesses; the practitioner's individual health risks and the health risks of those whom the clinician lives with/cares for; the health statuses of the practitioner's clients, office mates and employees; the physical nature of the practitioner's office space and office building such as the size of the therapy offices and the building's ventilation system; the private practitioner's ability to take measures to reduce the risk of developing and transmitting the virus.

Leslie S. Tsukroff, Inc.
Business Management Consulting for Mental Health Practitioners
68 North Bridge Street
Somerville, New Jersey 08876
973-879-1678
LsTsukroff@aol.com
https://www.leslietsukroff.com/

Regardless of whether or not you choose to ask clients or respective clients about their vaccination status, it is important that you research and abide by the current indoor mask mandates for businesses in your state. While some states provide guidelines for vaccinated and unvaccinated individuals to gather in **private homes,** most state indoor mask mandates for **businesses** do not differentiate between vaccinated and unvaccinated individuals. It is important for clinicians to be aware of laws regarding when masks are required, where masks are required and the circumstances (if any) for situations in which it is legally acceptable for you to decide your office policies on the subject. In addition to state laws, clinicians should follow the medical guidance from the CDC. Since information continues to change rapidly, it is advised that practitioners regularly consult their respective state laws and keep abreast of any changes to federal guidance.

In order to ensure that the needs and wishes of clients, staff and clinicians are respected, clinicians are advised to develop a comprehensive return to office policy that is uniformly implemented across the practice. This policy should be thoroughly discussed with each client several weeks before the clinician plans to reopen. Additionally, the practitioner should continue to offer tele-health to those clients who are not ready to return to in-person treatment or to those who are uncomfortable, unwilling or unable to adhere to the health and safety guidelines addressed in the new office policy. Clients should also be given the option of transferring to another clinician whose practice policies align with their individual needs and preferences.

To ask or not to ask? There is no right or wrong answer. As with most ethical conundrums, this is a complex question and it is up to each clinician to consider the many realistic, valid and complicated issues connected to resuming face-to-face visits. These include, but are not limited to: vaccinations and vaccination status; a client's right to self-determination; the clinician's rights and responsibilities to self, staff, clients and the community; the practical, clinical, ethical, legal and health and safety concerns regarding returning to the office vs. continuing tele-therapy.

Resources

https://www.cdc.gov/
https://www.psychiatry.org/psychiatrists/covid-19-coronavirus/practice-guidance-for-covid-19
https://www.samhsa.gov/coronavirus

Coming in the June Newsletter

Your ethics and practice related questions. Each month, I will feature answers to your burning questions. Please, be careful to provide general questions so as to protect the confidentiality of all involved. Submit questions to LsTsukroff@aol.com