

|   |                                     |
|---|-------------------------------------|
| <b>Topic:</b> Privacy of Psychotherapy Notes  | <b>Department:</b> Entire Agency    |
| <b>Original effective date:</b> 4/1/03  | <b>Last revision date:</b> 12/19/25 |
| <b>Owner:</b> VP for Quality and Compliance   | <b>Frequency of reviews:</b> Annual |
| <b>Internal/Regulatory Reference(s) (all that apply):</b> 164.501; 164.508(a)(2); 164.508(b)(3)(ii); NYS MHL 33.13; NYS Civil Practice Law and Rules (CPLR) 2302; NYS PHL §18 |                                     |
| <b>Related documents/Links:</b>   |                                     |

**Policy:** It is the policy of The Arc of Monroe (“The Arc”) to ensure that people have opportunities for privacy and that business, administrative and support functions promote personal and organizational outcomes.

**Additional Information:** For the purposes of this policy, “psychotherapy notes” mean notes recorded (in any medium) by a mental health provider (such as a psychiatrist or social worker) that document or analyze the contents of conversation during a private or group counseling session **and that are separated from the rest of the person’s medical record.**

Psychotherapy notes **DO NOT INCLUDE** medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

For the purposes of this procedure, “staff” includes employees, contractors, consultants, interns, students and volunteers.

“Protected health information or PHI” is defined as information about people we support that relates to their past, present or future mental or physical health and also identifies them in some way. In addition to more obvious things such as treatment plans, service documentation, clinical assessment, etc., the following are also considered PHI:

- Initials of someone we support. If you share initials, you are sharing PHI. Reducing a name to initials does not protect it under HIPAA law.
- Pictures of someone we support. This includes any photograph that will identify the person in some way. This may be the case even if their face isn’t visible, but something distinctive about them is. It could also apply to pictures of the back of their head, side shots, other parts of their bodies that are distinctive, etc.
- Anything that describes someone in a way that makes it clear who you are talking about (such as a full physical description; or a combination of characteristics that are so unique as to effectively name the person). EXAMPLE: A short middle-aged woman with blazing red hair and right-side hemiparesis who goes to Henrietta Day Services.

This definition applies whether the information is written, spoken, signed, or in an electronic format – regardless of the language (e.g., English or any other language). You should presume that any information about people we support that you work with in your job is PHI and should be treated as such.

| <b>Procedure</b>  |                           |
|---|---------------------------|
| <b>Task:</b>  | <b>Responsible party:</b> |
| <b>General Guidelines</b>   |                           |
| 1. Psychotherapy notes as defined in this policy can be used by the person who wrote them to help treat the person. | Staff                     |

|  |   |
|--|---|
| 2. Clinicians can share their psychotherapy notes with students who are in internships with them, as a means to help them develop their clinical skills.   | Staff   |
| 3. Psychotherapy notes can also be disclosed if doing so will help to keep someone safe, including both the person we support as well as others in the community.  | Staff   |
| 4. The clinician can use or disclose psychotherapy notes to defend themselves if they are sued by the person supported.  | Staff   |
| 5. Any other disclosures of psychotherapy notes require a signed authorization that applies specifically to psychotherapy notes. Authorizations for psychotherapy notes cannot be combined with authorizations for other purposes.   | Manager                                       |
| 6. If we receive a subpoena for psychotherapy notes, it must be accompanied by a court order as required by NYS MHL 33.31.   | Manager; VP for Quality and Compliance        |
| 7. Please note that while a person we support/their legal representative is able to authorize the disclosure of psychotherapy notes from The Arc to other parties, under HIPAA, they (the person supported/their legal representative) would not have a right to access psychotherapy notes. This is because these notes are not a part of the designated record set. HIPAA rules of access apply only to information contained in the designated records set. However, NYS Public Health Law (PHL) §18 pre-empts HIPAA in this area. Under NYS PHL §18, people we support/their legal representative have the right to request “patient information maintained by a healthcare provider in New York.” Under pre-emption analysis, this has been interpreted to include psychotherapy notes as defined in HIPAA law. Restrictions to this access would be limited to situations where it’s believed that the release of such information would, “reasonably be expected to cause substantial harm to the patient or others.”<br><br>If a person we support/legal representative requests access to psychotherapy notes, please contact the VP for Quality and Compliance for support and assistance. | Staff, Manager, VP for Quality and Compliance |
|  |   |
| <b>Manager and Clinical Supervisor responsibilities:</b>   |   |
| 1. Managers are responsible for acting as role models for other staff in regard to keeping PHI as secure as possible.  | Managers and clinical supervisors             |
| 2. Managers and clinical supervisors should have a solid understanding of what constitutes a psychotherapy note in the context of this policy and how they can and cannot be used, including when a specific authorization is required and how to respond to a receipt of a subpoena.  | Managers                                      |
| 3. Managers should know where and from whom to obtain support should they have questions in enforcing this policy.   | Managers                                      |
|  |   |
| <b>VP for Quality and Compliance:</b>  |   |
| 1. Acts as the agency’s Privacy Officer  | VP for Quality and Compliance                 |
| 2. Responsible for administering the agency’s HIPAA privacy policies and procedures  | VP for Quality and Compliance                 |
| 3. Acts as a resource for staff in regard to proper implementation of the HIPAA privacy rule   | VP for Quality and Compliance                 |

|   |                               |
|---|-------------------------------|
| 4. Will assist managers in responding to a subpoena for psychotherapy notes | VP for Quality and Compliance |
|---|-------------------------------|

**Document revision record:**

| <b>Revision Date</b> | <b>Release Date</b> | <b>Reason for change</b>   | <b>Approver</b> |
|----------------------|---------------------|--|-----------------|
| 9/12/08              | 9/12/08             | Reasons for change not documented  | P Dancer        |
| 8/3/17               | 8/3/17              | Reasons for change not documented  | P Dancer        |
| 1/26/21              | 1/26/21             | Transitioned to new procedural format and clarified some aspects   | P Dancer        |
| 1/27/22              | 2/4/22              | Added information regarding how to respond to a subpoena   | ICC             |
| 12/19/25             | 1/12/26             | Added detailed information on the interface between HIPAA law and NYS PHL; added other clarifying language | ICC             |