

HIPAA Quick Q&A

What is the purpose of the HIPAA Privacy Rule?

The Health Insurance Portability & Accountability Act (HIPAA) Privacy Rule, a regulation promulgated by the U.S. Department of Health and Human Services, establishes a minimum level of privacy protection for health care information. The Privacy Rule establishes a patient's rights regarding the use and disclosure of his/her health care information. It focuses on the application of effective policies, procedures and business service agreements to control the access and use of patient information. The Privacy Rule applies to health care providers, health plans, and health care clearinghouses.

Will the HIPAA Privacy Rule apply to my practice?

We have received a number of inquiries from MTs who want to know if the HIPAA Privacy Rule will apply to them. Therapists in private practice providing health care services are subject to the Rule. Therapists employed by a covered entity (such as a hospital or clinic) are subject to the Rule and their employer is responsible for compliance. Therapists who contract for services with covered entities (Business Associate of a covered entity) are subject to the Rule and ultimately it is up to the covered entity to ensure its vendors are compliant; however, MTs who are well informed and can demonstrate compliance, *a priori* to the covered entity, will exhibit his/her professionalism and competence regarding the Rule. We also believe that it is both wise and prudent to be HIPAA compliant for the following reasons:

- Insurance and managed care companies are rapidly moving from paper to electronic online transactions for payment and all health care operations.
- Circumstances could arise where the need for compliance is triggered by actions over which you may have no control (e.g., a billing service that you use may electronically transmit information about your patient to a third party payer). If this occurs, your entire practice must become HIPAA compliant immediately. Since the April 14, 2003 compliance date, there is no grace period for compliance.
- If you bill any third-party source (e.g., HMO, PPO, Medicare) you will undoubtedly fall under the HIPAA regulations.
- The only possible exception to this advice would be the therapists who are on a total cash basis, have no interface at any time, now or in the future, with any insurance carrier, hospital, managed care company, state or federal program, billing service, or other third-party payer that currently or in the future may require some form of electronic transaction.
- The AMTA Code of Ethics Section 3.12 on Confidentiality calls for a) the protection of patient information and b) information confidentiality in accordance with State and Federal laws.

Am I exempt if I do not use electronic transmissions?

You may be exempt currently if you do not submit claims electronically or participate in any third-part payment plans. However, it is unlikely you will be able to avoid all electronic transactions at some point in the future and remain exempt, especially if you or a business

AMTA is a 501(c)3 non-profit organization and accepts contributions which support its mission. Contributions are tax deductible as allowed by law.

associate working on your behalf transacts any health care business electronically (e.g. billing or payment for services, authorization for treatment, utilization review, and verification of coverage, etc.). That is why we recommend that therapists who provide health care services be HIPAA compliant. It is important to remember that even if you are not involved in the electronic claims and reimbursement portion of the Rule, MTs have a professional obligation to protect the privacy and confidentiality of their client/patient information.

How does the HIPAA Privacy Rule impact current laws in my state?

This is one of the most important issues that must be addressed in order to comply with HIPAA regulations and your state's laws. The HIPAA Privacy Rule establishes *minimum provisions* for the use and disclosure of health care information. If your state laws are more protective than the minimum required by the Privacy Rule, then the state law will apply. This is often the case for mental health services, substance abuse treatment, and certain other conditions. Many state laws essentially extend privacy rights to some or all minors in specific situations. If the state law is less protective, the Privacy Rule provision will apply. To comply with HIPAA, it is necessary to compare all laws related to health care delivery and confidentiality in your state with the HIPAA regulations. A decision must then be made regarding which regulation, statute, or court decision provides the greatest level of protection of health care information from the patient's perspective. The completed analysis is then made part of the required "Notice of Privacy Practices Form" to be given to patients. This analysis is performed on a provision-by-provision basis instead of a law-by-law basis. Therefore, this process is very complicated.

Are practicing MTs in each state required to provide their own state-specific Notice Form?

Yes, as long as an MT is considered a covered health care provider. The HIPAA Privacy Rule requires that covered health care providers provide their patients with a "Notice Form." The Notice Form describes patients' rights related to the use and disclosure of their health care information. The information in the form must comply with either the HIPAA Privacy Rule requirements or the state statutes, depending on which regulation or statute provides patients with the greatest level of protection of their health care information. Given that the HIPAA regulations are highly technical and voluminous, and there are hundreds of health care provisions in each state, this can be a daunting task. It would be very difficult for anyone without legal training or extensive knowledge of the law to develop the required Notice Form. Therefore, it is recommended that MTs in private practice consult locally with counsel, attend a continuing education program and/or conduct further research on the subject.

MTs that contract with other covered entities are the business associate (vendor) for that covered entity and should consult with their customer, the covered entity. Often, larger covered entities have their own Privacy Officer who is responsible for ensuring all their vendors meet the applicable laws. Typically this is done by way of a Business Associate Agreement which may hold the vendor (MT) responsible for compliance.

How might I obtain the information and state-specific forms needed to comply with the HIPAA Privacy Rule?

You basically have five alternatives: (1) review and compare the HIPAA Privacy Rule regulations and your state laws and create your own forms; (2) hire an attorney to do the same work; (3) modify and adapt the enclosed sample template, which is provided by AMTA as an example (but should not be considered definitive nor should AMTA be held responsible); (4) purchase one of the products on the market that may not have been tailored specifically for MTs

AMTA is a 501(c)3 non-profit organization and accepts contributions which support its mission. Contributions are tax deductible as allowed by law.

and may not contain state-specific information; or (5) consult with and adapt a Notice used by a covered entity in your state and with whom you may provide contracted or referral services.

Where can I go for more information on the HIPAA rule? The Centers for Medicare and Medicaid Services (CMS) of HHS has a hotline at 410-786-4232. See also <http://www.cms.gov/hipaa/> OR www.hhs.gov/ocr/hipaa/

Definitions:

“PHI” refers to Protected Health Information. This is information in the client/patient’s health record that could identify them. SSN is PHI as well as any combination of data fields that could identify the individual. The HIPAA rule is specific about PHI for the purposes of de-identification.

“Treatment, Payment and Health Care Operations”:

- Treatment is when the therapist provides, coordinates or manages the client/patient’s health care and other services related to their health care. An example of treatment would be consultation with another health care provider, such as your family physician or a psychologist.

- Payment is when the music therapist obtains reimbursement for the client/patient’s healthcare. Examples of payment are when the therapist discloses PHI to the client/patient’s health insurer to obtain reimbursement for health care or to determine eligibility or coverage.

- Health Care Operations are activities that relate to the performance and operation of the therapist’s practice. Examples of health care operations are quality assessment and improvement activities, business-related matters such as audits and administrative services, and case management and care coordination.

“Use” applies only to activities within the music therapy practice such as sharing, employing, applying, utilizing, examining, and analyzing information that identifies the client/patient.

“Disclosure” applies to activities outside of the music therapy practice, such as releasing, transferring, or providing access to information about the client/patient to other parties.

SAMPLE Notice

Notice of our privacy practices

THIS NOTICE DESCRIBES HOW [Optional: PSYCHOLOGICAL AND] HEALTH INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.

At [MT Services] (*fictitious sample name for illustration purposes only*) we are committed to protecting your privacy. Because we respect your privacy, we ask that you please read this important Notice. It concerns the privacy of your health information when you use the services of [MT Services]. We recommend that you keep a copy of this Notice for future reference.

At [MT Services] we are committed to protecting client confidentiality to the full extent of the law. The information below (which we are required by law to give to you) reflects federal regulations that set a minimum standard of privacy. In most instances, the policies of [MT Services] (and laws of the state of [*insert applicable state(s)*]) are more stringent.

This Notice explains our privacy practices and describes how [MT Services] may use and disclose your health information that specifically identifies you or could be used to identify you (your "health information"). This Notice also provides you with important information about your privacy rights and how you may exercise those rights. Please note that others involved in your healthcare (for example, your health plan, physicians, etc.) may send you separate notices describing their privacy practices.

Your health information

To provide you with safe and convenient music therapy services [other named services may be included], we need to obtain and use some health information. Without your health information, we would be unable to provide our services. Examples of the health information we hold include your therapy records, your health plan information, your services payment history, and your address. This information may come from you (for example, when you tell us about your medical and/or psychosocial history), your physician, and your health plan and its agents.

The HIPAA privacy standards

The United States Department of Health and Human Services has adopted privacy standards "the HIPAA Privacy Standards" which protect your health information. The HIPAA Privacy Standards establish rules for when healthcare providers, such as [MT Services], may use or disclose your health information. Importantly, the HIPAA Privacy Standards also tell us what we cannot do with your health information. Activities that are not permitted under HIPAA will require your written authorization.

AMTA is a 501(c)3 non-profit organization and accepts contributions which support its mission. Contributions are tax deductible as allowed by law.

Copyright © 2004, American Music Therapy Association.

How [MT Services] may use or disclose your health information

The HIPAA Privacy Standards allow us to use and disclose your health information, without your authorization, for treatment, payment, and health care operations purposes.

Treatment: We are permitted to use and disclose your health information to provide you with appropriate treatment. For example, we may use or disclose your health information to:

- Review and interpret your treatment plan

- Contact your treating physician [Optional: health care provider] to resolve questions about your therapy

- Notify you of any issues or scheduling problems with your therapy

Payment: We are permitted to use and disclose your health information to receive payment for our services. For example, we may:

- Bill you for your therapy

- Contact your health plan or its agents to check your co-payment amount

- Check to see if music therapy services are covered under your plan

- Provide your health plan or its agents with the health information they need to pay us for the services we provide, and so that they may otherwise manage your health benefit

Healthcare operations: We are permitted to use and disclose your health information for the general administrative and business activities necessary for us to operate as a provider of therapeutic services. For example, we may:

- Review and evaluate the performance of our therapists

- Conduct audits and compliance programs

- Collect medical and psychosocial history information from you

- Send communications informing you of the status of your therapy

- Provide customer service

- Operate our website (*Include only as applicable*)

- Review and resolve grievances

[MT Services] may also share health information with:

You: We are permitted to disclose your health information to you. For example, we may inform you of the status and progress of your therapy. In addition, we may contact you to provide appointment reminders or information about treatment alternatives or other health-related benefits and services that may be of interest to you.

AMTA is a 501(c)3 non-profit organization and accepts contributions which support its mission. Contributions are tax deductible as allowed by law.

Family members and others involved in your care: In certain circumstances, we are permitted to disclose your health information to family members or other people involved in your care. For example:

If a family member calls [MT Services] on your behalf, we may provide the family member with information about your therapy, but only if he or she is able to be properly identified and authenticated and only if you have provided permission to [MT Services] in advance.

This is done for the convenience of you and your family, so that the people close to you may continue to be involved in your care. If for any reason you do not want us to disclose your health information to your family members, you have the right to request a restriction as provided below in *Your Privacy Rights*.

[MT Services] service vendors: At times, we must provide your health information to outside companies so that they may help us operate more efficiently. For example, we may provide your name, address, and other health information to a company that helps us mail important health communications to you. These companies perform their duties at our direction, within strict guidelines established by the HIPAA Privacy Standards. All of these companies are required to protect your health information and use it only for authorized purposes. (*Use only if applicable*)

Courts and government bodies: In certain circumstances, federal and state laws may require us to disclose your health information. We may also provide information to government agencies for healthcare-related investigations, audits, or inspections; to comply with workers' compensation laws; or for certain national security or intelligence activities. If you are involved in a legal matter, we may be ordered to provide your health information to a court or other party. In those cases, only the specific health information required by law, subpoena, or court order will be disclosed.

Public health and safety entities: We are also permitted to disclose your health information for certain purposes that have been determined to benefit the public as a whole. For example, we may disclose your health information to the Food and Drug Administration, to your local public health department, or to law enforcement agencies if the disclosure will prevent or control disease, or prevent a serious threat to the health and safety of an individual or the public.

The Department of Health and Human Services: We are required to disclose your health information to the Department of Health and Human Services, at its request, so it may investigate complaints and review our compliance with the HIPAA Privacy Standards.

Other ways [MT Services] may use and disclose your health information:

To create "de-identified health information": We may create data that cannot be linked to you by removing certain elements from your health information, such as your name, address, telephone number, and member identification (record) number. [MT Services] may use this de-identified information to conduct certain business activities; for example, to create summary reports and to analyze and monitor the services we provide.

For research purposes: We are permitted to use and disclose your health information for research purposes, but only if we receive prior approval from a special review board. Before we receive approval, the review board must consider a number of factors and determine whether there are appropriate safeguards in place to protect the privacy of your health information.

Child Abuse: If your therapist, in the ordinary course of professional practice, has reasonable cause to suspect or believe that any child under the age of eighteen years (1) has been abused or neglected, (2) has had nonaccidental physical injury, or injury which is at variance with the history given of such injury, inflicted upon such child, or (3) is placed at imminent risk of serious harm, then your therapist must report this suspicion or belief to the appropriate authority.

Adult and Domestic Abuse: If your therapist knows or in good faith suspects that an elderly individual or an individual who is disabled or incompetent has been abused, the appropriate information as permitted by law may be disclosed.

Health Oversight Activities: If the Professional Board of Examiners is investigating your therapist, the board may subpoena records relevant to such investigation.

Judicial and Administrative Proceedings: If you are involved in a court proceeding and a request is made for information about your diagnosis and treatment and the records thereof, such information is privileged under state law, and will not be released without the written authorization of you or your legally appointed representative or a court order. The privilege does not apply when you are being evaluated for a third party or where the evaluation is court-ordered. You will be informed in advance if this is the case.

Serious Threat to Health or Safety: If your therapist believes in good faith that there is risk of imminent personal injury to you or to other individuals or risk of imminent injury to the property of other individuals, the appropriate information, as permitted by law, may be disclosed.

Worker's Compensation: TSI/CAAP may disclose protected health information regarding you as authorized by and to the extent necessary to comply with laws relating to worker's compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.

For other purposes: We must obtain your written authorization if we want to use or disclose your health information for activities other than those listed above [and/or where state laws are more stringent]. If we need your authorization for certain activities, we will contact you. You may revoke your authorization at any time in writing.

Your privacy rights

[MT Services] is committed to complying with the HIPAA Privacy Standards while providing you with all the information you need to make informed decisions about your healthcare and therapy. The following describes your privacy rights under the HIPAA Privacy Standards:

AMTA is a 501(c)3 non-profit organization and accepts contributions which support its mission. Contributions are tax deductible as allowed by law.

Copyright © 2004, American Music Therapy Association.

The right to request your [MT Services] "designated record set": You may request a copy of your health information maintained by [MT Services] your [MT Services] designated record set. The [MT Services] designated record set will contain health information specific to your therapy.

The right to request amendments to your [MT Services] designated record set: You may request changes to the information contained in your [MT Services] designated record set. However, we are not required to honor your request if, for example, the information you want to amend is accurate and complete. When requesting an amendment, you must provide a reason to support your request.

The right to request an "accounting of disclosures": You may request a list or accounting of the nonroutine disclosures of your health information that we have made. Examples may include disclosures to a court or government agency, to a public health and safety entity, for research, or to the Department of Health and Human Services. You may receive one accounting per year free of charge. For additional requests within a one-year period, we may impose a reasonable fee.

The right to request a copy of this Notice: You may request a copy of this Notice at any time. In addition to requesting a copy of this Notice in writing, you may find this Notice on this website (*if applicable*).

The right to request restrictions: You may request restrictions on how we use and disclose your health information, and whether we disclose your health information to family members or others involved in your care. Although [MT Services] is not required to agree to your restriction requests, we will try to honor your request to block health information from your family members. If [MT Services] agrees to your restriction request, it is important to understand that your family members will no longer be able to act on your behalf or continue to be involved in your care, which may make our services less convenient for you and your family.

The right to request "confidential communications" of your health information: You may request that we send your health information to an address that is different than your family address (for example, your work address). Communications containing your health information will be sent to you at the address indicated. However, please note that certain billing information related to your therapy may continue to be mailed to the person with financial responsibility if that is someone other than you. If you request this confidential handling of your health information, it is important to understand that your family members will no longer be able to act on your behalf or continue to be involved in your care, which may make our services less convenient for you and your family.

To exercise any of your privacy rights, please put your request in writing and mail it to [MT Services] at _____ . To ensure the accuracy of your report,

AMTA is a 501(c)3 non-profit organization and accepts contributions which support its mission. Contributions are tax deductible as allowed by law.

Copyright © 2004, American Music Therapy Association.

the request must include the following information: your name, full address, (*in some large practices, date of birth may be useful*).

Additional rights

Some states may provide additional privacy protections under existing or future state laws. We are committed to complying with applicable laws when we use or disclose your health information.

[MT Services]'s responsibilities

We are required by the HIPAA Privacy Standards to maintain the privacy and security of your health information. We must obey all of the applicable conditions of the HIPAA Privacy Standards and only use and disclose your health information as allowed by law. We are required to provide you with this Notice and to abide by the privacy practices outlined in this Notice. [MT Services] reserves the right to change a privacy practice described in this Notice and to make the new privacy practice effective for all health information that we maintain. If we need to make a material change to this Notice, you will receive a new Notice by mail, e-mail, or other means permitted by the HIPAA Privacy Standards.

Protecting your health information

Because protecting your health information is important to us, we have taken steps that protect your health information from unauthorized uses and disclosures. We restrict access to your health information to those members of the [MT Services] workforce (*include if the practice is large*) who need this information to continue providing the therapeutic services that you need. We make your privacy a priority. To that end, we have trained and educated members of our workforce about the meaning and requirements of our privacy practices and their role in complying with the HIPAA Privacy Standards.

Privacy complaints

If you have any concerns about our privacy practices, or if you feel your privacy rights have been compromised, you have the right to file a complaint with the [MT Services] at (*include address*), or with the United States Department of Health and Human Services. Please be assured that if you file a privacy complaint, your complaint will be handled in a professional manner, and you will not be subject to any type of penalty for filing the complaint.

Questions?

At [MT Services], we want to make it easy for you to make informed healthcare decisions. If you have any questions about this Notice or our privacy practices as they relate to your music therapy services, you may call [MT Services] at (*enter telephone*).

This Notice is effective April 14, 2003.

AMTA is a 501(c)3 non-profit organization and accepts contributions which support its mission. Contributions are tax deductible as allowed by law.

Copyright © 2004, American Music Therapy Association.

HIPAA FORM

NOTICE OF PRIVACY PRACTICES: *Acknowledgement of Receipt*

ACKNOWLEDGEMENT OF RECEIPT

By signing this form, you acknowledge receipt of the *Notice of Privacy Practices* of [name of covered entity]. Our *Notice of Privacy Practices* provides information about how we may use and disclose your protected health information. We encourage you to read it in full.

Our *Notice of Privacy Practices* is subject to change. If we change our notice, you may obtain a copy of the revised notice by: (*accessing our web site / contacting our organization at 1-xxx-xxx-xxxx / insert alternative*).¹

If you have any questions about our *Notice of Privacy Practices*, please contact:

I acknowledge receipt of the *Notice of Privacy Practices* of [name of covered entity].

Patient's Name: _____

Signature: _____ Date: _____
(patient/parent/conservator/guardian)

INABILITY TO OBTAIN ACKNOWLEDGEMENT

Complete only if no signature is obtained. If it is not possible to obtain the individual's acknowledgement, describe the good faith efforts made to obtain the individual's acknowledgement, and the reasons why the acknowledgement was not obtained.

Patient's Name: _____

Reasons why the acknowledgment was not obtained:

- Patient refused to sign this acknowledgement even though the patient was asked to do so and the patient was given the Notice of Privacy Practices
- Other: _____

Signature of provider representative: _____ Date: _____

¹ This section applies only if your Covered Entity has reserved the right to change its privacy practices. It is recommended that providers reserve this right.

ACUSO DE RECIBO

Al firmar este formulario, usted acusa el recibo del *Informe de Normas de Confidencialidad* de [*name of covered entity*]. Nuestro *Informe de Normas de Confidencialidad* ofrece información acerca del modo en que podemos utilizar y divulgar su información médica protegida. Le recomendamos que lo lea por completo.

Nuestro *Informe de Normas de Confidencialidad* está sujeto a cambio. Si hacemos modificaciones en el informe, usted puede obtener una copia del informe enmendado de este modo: (*visite nuestra sede en la red / comuníquese con nuestra organización llamando al número 1-800-_____ - _____ / insert alternative*).²

Si tiene alguna pregunta acerca de nuestro *Informe de Normas de Confidencialidad*, puede comunicarse con:

Acuso el recibo del *Informe de Normas de Confidencialidad* de [*name of covered entity*].

Nombre del paciente: _____

Firma: _____ Fecha: _____
(*paciente, padre o madre, guardián, tutor*)

IMPOSIBILIDAD DE OBTENER EL ACUSO DE RECIBO

Complete sólo si no obtiene la firma. Si no es posible obtener el acuso de recibo de la persona, describa las gestiones de buena fe que ha realizado con el fin de obtener dicho acuso, y los motivos por el cual no fue obtenido.

Nombre del paciente: _____

Motivos por el cual no se obtuvo el acuso de recibo:

El paciente se negó a firmar este acuso de recibo a pesar de que se le solicitó hacerlo y recibió el Informe de Normas de Confidencialidad

Otro motivo: _____

Firma del representante del proveedor: _____ Fecha: _____

²This section applies only if your Covered Entity has reserved the right to change its privacy practices. It is recommended that providers reserve this right.

Client/Patient FAQs About The HIPAA Notice of Privacy Practices

1) What does HIPAA stand for?

HIPAA is an acronym for Health Insurance Portability & Accountability Act which was passed by Congress in 1996 and effective as of April 14, 2003.

2) Why should I sign now?

Signing now simply lets us know you received the HIPAA Notice of Privacy Practices. Of course you can choose not to sign.

3) What happens if I don't sign this acknowledgement form?

First, you need to know we will provide you timely care and treatment whether or not you sign the form. Second, if you choose not to sign the form, we will note your choice on the bottom of the acknowledgement form and hope you take a copy of the Notice.

4) Is my signature just acknowledging receipt of this notice?

Yes. By signing this acknowledgement form we then can show the Department of Health & Human Services that we are complying with one of the major rules of HIPAA to make sure we give every patient the opportunity to have our Notice.

5) Why is this notice so long compared to the ones I received from my financial institution or my credit card company(ies) or my life insurance company?

Those companies are subject to a different set of privacy rules under the Graham/Leach Act while all healthcare organizations are subject to HIPAA.

6) Are you doing anything differently with my health information now than you did before HIP AA?

Actually, we are going to guard your medical information even more closely. We have developed more than 200 policies and procedures for our staffs throughout OSF HealthCare to follow to make certain your medical information is shared only with those needing your information for treatment, payment, or healthcare operations.

7) Is this HIPAA Notice and acknowledgement form only for [MT Services]?

Yes; however, all healthcare organizations such as hospitals, physician offices, urgi-care centers, outpatient surgery centers, and home care or hospice care services are subject to HIPAA. These other organizations will have their own Notice and acknowledgement form you may sign when you receive services from them.

8) After I sign this acknowledgement form, then what happens?

We will place your form in your record.

9) What am I going to be paying out because of signing?

Signing our HIPAA Privacy Notice acknowledgement form has **NO** bearing on your current payment arrangements.

10) Am I expected to sign this acknowledgement form without reading the Privacy Notice?

Yes. You are simply going on record that you have the Privacy Notice which we are required by law, that is the Health Insurance Portability & Accountability Act, to provide. Your signature does not indicate that you have read the Notice and agree with everything that is in it.