

On the Topic of Confidentiality, Insurance and Managed Care

You and I are beginning a collaborative relationship: we will be working together to achieve your therapeutic goals. There must be a good level of trust in our relationship in order for our work to be effective.

Confidentiality is an important part of that trusting relationship. I have included the following in order for you to be able to make an informed decision about your protected health information. Please read carefully and discuss with me any questions or concerns you may have:

As a Marriage and Family Therapist, I am required by law and by my profession's Code of Ethics to maintain everything I know about you in strict confidence. That means I cannot reveal your name or anything else about you to anyone else without your consent to do so. The exceptions to this standard are as follows: if you are in imminent danger of killing yourself; if you make serious threats to kill someone else; if I have reason to believe you are abusing or neglecting a child or elder; or if I am subpoenaed to testify about you in court.

Although many people don't realize it, you have signed over your right of confidentiality to your health insurance company. That means when you request them to pay for any of the services I provide to you that you have given your insurance company authorization to obtain any and all information I have about you. It used to be that insurers only wanted your name and other identifying information, your "diagnosis" (a numeric code indicating the kind of problem you are getting help for), and the dates and types of service I am providing to you (eg. individual or group therapy). Presently, it is common for insurance companies -- and the "managed care" companies they utilize -- to require very detailed information about your personal problems and

background, and even to see your entire file. If they don't get the information they want, they will generally not pay for the services you receive.

The attached article* and the following websites are provided for you to explore further. I strongly encourage you to be proactive in protecting your health information by posing questions to your insurance company, employer, and health professionals should you have any concerns regarding your protected health information.

<http://www.ctvip.org/web2a.html>

<http://www.guidetopsychology.com/mancar.htm>

<http://www.ccemhc.org/myths.html#b>

<http://www.ccemhc.org/confid.html>

<http://www.socialworker.com/managed.htm>

<http://hdlighthouse.org/see/care/confidentiality.htm>

<http://www.nmha.org/shcr/bestprac2/index.cfm>

*'Behavioral Health Matters...'



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Behavioral Health Matters - Is Confidentiality Still Protected Under Managed Behavioral Health Care?

"In the meantime, any form of managed behavioral health treatment within HMOs, PPOs, or even indemnity insurance (ie, with a behavioral health carve-out arrangement) is a *caveat emptor* situation. I would personally advise paying very careful attention to what the therapist is releasing to whom and having a frank discussion including what constraints the managed care company is placing on the therapist."

Introduction:

The big secret these days is that what patients tell therapists is no longer confidential. Managed care companies demand detailed accounts of patients' workplaces, family problems, love life, addictions, suicidal ideation, episodes of anger, and so on. These data are required to substantiate the diagnosis and treatment plan at remote sites where case managers sit at their computers. The information, which includes case assessments, mental status exams, and progress reports, comes in by telephone, fax, and mandatory written reports and questionnaires. Everything is entered on the computer; written reports may be microfilmed for future reference. Almost all behavioral health companies file the material by the patient's health insurance number, which is usually the same as his or her social security number.

Furthermore, these companies are constantly merging and expanding. For example, Magellan Behavioral Health now owns Green Springs Behavioral Health (which had previously purchased Vista Behavioral Health), Human Affairs International, and Merit Behavior. That puts Magellan in charge of the behavioral health care of 62 million people across the US, 58,000 providers, more than \$1.5 billion in revenues, and perhaps 70% of the behavioral health market. Not to be outdone, Options Health Care, Inc., purchased Value Behavioral Health from HCA/Columbia (the for-profit hospital chain under investigation for Medicare billing fraud and other illegal activities) to become the second largest behavioral health care company, managing 20 million people. Charter Behavioral Systems bought Behavioral Healthcare Corp. in 1997 to become a combined entity of 139 mental health care facilities in 36 states and Puerto Rico, with revenues of \$1.2 billion.

Large corporate consolidations necessarily lead to huge collections of patient data and, of course, a large number of employees. Although companies use passwords and other safeguards to limit access to patient files, a haunting question remains about whether any system can satisfactorily guard a huge collection of sensitive, personal data derived from supposedly confidential conversations between patients and their therapists. (What a gold mine for private detectives and political operatives, not to mention the possibility of blackmail!)

Unreliable Data:

There is another unfortunate complication. As the behavioral health budget has shrunk, managed care has approved only urgent situations and high-risk patients for ongoing treatment. It is thus not uncommon for therapists, usually trying to help their patients (but perhaps also to help themselves if business is slow), to exaggerate their patients' difficulties. The data in the behavioral health companies' archives are therefore not

necessarily accurate and are possibly skewed toward psychopathology and the dramatic. The patient with suicidal ideation may slide into the category of someone with an obsessive need to kill him- or herself; the moderately angry worker may be portrayed as ready to blow up the workplace. What happens later when either of these individuals is running for political office and this highly charged, supposedly substantiated material leaks to the press?

The best way to guard these patient data may very well be to not collect them in the first place. Yet how else can one manage behavioral health care? Like other parts of the health care system, behavioral health has begun to sign capitation contracts with groups of providers. From an information management perspective, especially confidentiality, capitation is helpful. Data can usually stay with the providers, where they traditionally have remained quite safe and carefully protected. Capitation, of course, has many other problematic features that may be discussed in future columns. Other management strategies, utilizing peers and detailed cost data, as in the Professional Affiliation Group (PAG) model, also avoid the central collection of sensitive clinical data.

Some hope for change in the current system comes from an unexpected source: the behavioral management companies themselves. The large costs associated with information collection (required for case-by-case management) make the current system vulnerable. Unfortunately, the most likely scenario is that the problem will be solved by technological advances (eg, continuous and rapid Internet connection). Man's ability to invent tools often moves ahead of the ability to use those tools for good rather than evil purposes (or so it seems from a confidentiality perspective).

Yet if the system were to vanish tomorrow, I would still worry about what happens to the mass of information already collected. In the meantime, any form of managed behavioral health treatment within HMOs, PPOs, or even indemnity insurance (ie, with a behavioral health carve-out arrangement) is a *caveat emptor* situation. I would personally advise paying very careful attention to what the therapist is releasing to whom and having a frank discussion including what constraints the managed care company is placing on the therapist. It is amazing that the confidentiality problem has not destroyed behavioral health treatment. Perhaps most patients feel so badly when they arrive for treatment that they do not care so much (at that time) who knows about it. It also may mean that neither managed behavioral health companies nor therapists have been candid with patients. The routine signature for release of data for managed care purposes, like other areas of managed care, has implications beyond the immediate and obvious.