

Confidentiality: The Risks Of Using Mental Health Insurance

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Confidentiality is a term that has various legal, administrative, ethical and personal meanings. Confidentiality in health care is not absolute. No matter what assurances you have been given, or what you would assume, your medical and mental health records are not very secure and they are not truly confidential. Keep in mind there are literally hundreds of circumstances in which detailed information regarding your mental health records and personal life can be reviewed, examined and distributed to others as well as be released and even made public. The greatest threat to your confidentiality comes from managed care, insurance and HMOs.

Unfortunately there are many ways in which supposedly confidential information can end up ruining your future, your life, your reputation and even your health. Here is a brief list that illustrates a few circumstances in which confidential records and information can be breached.

Legal exceptions in which reasoned and good faith concerns for personal or public safety allow for a limited release of confidential information.

Administrative exceptions in which by contract or prior consent you agree to the release of information in the future as necessary or deemed appropriate by your HMO, health care or insurance company.

Voluntary consent in which you must sign a release in order for treatment to be paid for, authorized or to begin.

Consent as a condition for employment in which your employer has developed background screening criteria from which they can require that you sign a voluntary release as a necessary step in processing your application for employment.

Court order in which a judge orders the release of confidential information as part of your defense in a criminal case or investigation against you. This can occur under unusual and rare circumstances.

Civil discovery in which you must release information during a civil case in which you are seeking consideration, damages or compensation related to injuries, malpractice & negligence, breach of contract, disability, pain or suffering.

Administrative release of information as a mandatory aspect of a grievance or appeal against your HMO, health care provider or insurance company.

Intentional breach of confidentiality by a managed care company or HMO as a risk management strategy in which the political or economic consequences of maintaining confidentiality are deemed greater than breaching your trust.

Accidental breach of confidentiality in which the responsible source,

organization or person is hidden or cannot be identified for purposes of determining fault or responsibility.

Casual breach of confidentiality in which confidential information is overheard, discussed or released during a single or series of unauthorized informal conversations between peers or friends who work for managed care, your HMO or insurance company.

Employer breach in which a supervisor or manager obtains or comes into possession of mental health information as part of release to return to work following an emergency leave, family leave, injury, illness, relapse, etc...

Absence of legal protections in which an unlicensed counselor or therapist can release information without your permission or release information as part of discovery or demand associated with litigation, investigation or prosecution.

There are three very important questions related to the risk of using health insurance.

1. How do HMOs, managed care and insurance companies get access to confidential information?
2. What information do HMO's, health care and insurance companies demand from your doctor, counselor or psychotherapist?
3. Is the information gathered by HMOs, health care and insurance companies important and necessary?

Almost universally, HMOs, managed health care and insurance companies will require your doctor, psychotherapist or counselor to give you a diagnosis. More importantly, many HMOs, managed health care and insurance companies demand detailed, intimate and private information about your entire life before they authorize payment. It's really simple. [In order to get your insurance company to authorize, provide or pay for treatment you must be diagnosed and give a detailed history.](#) Well intended doctors, psychotherapists and counselors routinely gather personal information and give their patient a diagnosis because they can justify the diagnosis and because a patient doesn't want to pay for counseling or treatment. Do you need a diagnosis and is it really necessary to provide a detailed and intimate life history? In rare cases the answer is yes. In virtually every case the answer is no. But the practice is universal. There are [HYPERLINK "http://www.oregoncounseling.org/Diagnosis/1Diagnosis.htm"](http://www.oregoncounseling.org/Diagnosis/1Diagnosis.htm)[good reasons to be concerned about the use of the current diagnostic system.](#) In order to get your health insurance to authorize, provide or pay for treatment you must have a diagnosis, you probably need one of the more serious diagnoses and you probably need the kind of diagnosis that is covered by insurance. It is growing practice for doctors, counselors and psychotherapists to give people the more serious diagnosis to qualify them for treatment.

Why do HMOs, managed health care and insurance companies gather this information? One reason is to ration the amount of service provided and to identify those people with conditions that are not covered. Another reason is to help identify a profile of patients and professionals that can be used to select risk, reduce costs and control not only who receives help and but who is authorized to provide help. The business of health care goes to all this bother and expense to make as much money as possible and because they don't trust your doctor or counselor to provide the treatment you are entitled to receive.

The most common breach of confidentiality occurs during civil/legal actions in which you can be forced to release your records during evidence discovery and during trials in which you claim injury, disability, mental or emotional suffering. Such procedures also allow opposing attorneys to interview, take depositions and obtain testimony from your counselor, doctor or psychotherapist

In reality, the basis for many of these policies and practices that justify a breach of confidentiality are unnecessary, unethical and probably illegal. What can a person do about it? Getting to the bottom of what actually happened and then being able to correct an injustice can be impossible. It can be an extremely difficult to prove damages and once a breach of confidentiality occurs there is nothing that can be done to undo the damage. At the very least it requires a lot of energy, money and time, as well as a good attorney. The odds are against you even if you are right and even if you have all the resources necessary .

The following are just few examples of literally hundreds of circumstances in which your confidential records and treatment history can be reviewed, made public or obtained. If you are in the military, there is very little that can be considered confidential from the military. In the private sector, there are more distinct boundaries between health care providers and your employer, but even those can become blurred. In the private sector there are cases in which you can be formally excluded during a job application if you refuses to sign a release to investigate your background.

The line between employers and health care companies are increasingly blurred. For example, many HMO's and managed care companies are both the employer and the health care provider for their employees. Employees must trust that their supervisors, managers and administrators will police themselves and follow their own policies. Imagine being a psychiatrist on staff in a hospital that you work for where your patient is a nurse who also works in your hospital. Imagine that this psychiatrist is also an administrator and that he or she discovers that the nurse is breaking hospital policy to protect patients, Normally he would not be allowed by law to take actions to have her suspended because the relationship is confidential. The conflict of interest here is huge and the

informal mechanisms of sharing information can be astonishing.

Your employer and managed health care company increasingly work together to cut costs. As insurance companies increasingly centralize their records, they provide access to multiple sources that are not policed by any external agency and are essentially on their good behavior to not misuse their access to your records.

The Medical Information Bureau, Inc., in Cambridge, Massachusetts, maintains a nationwide database of health care claims and makes information available to interested parties. Insurers have been known to withhold life insurance from people with certain diagnoses and to withhold health and disability insurance from people who have submitted mental health claims to another insurer. Other interested parties may access this data as part of legal proceedings, investigations, evaluations or actions in which you are required to sign a release. Supervisors, human resource managers, employee assistance counselors, recruitment specialists and employment screening investigators who work for employers can in some cases obtain access to these records and are expected to voluntarily police themselves and ignore information that would discriminate against you.

Employers can find out more about your health care history in other ways. In some cases you can be compelled by a prospective employer to sign a release authorizing them or their agent to have access to your mental health records. They can ask you if you have any condition or problem and imply that they merely want to be sure you receive protection that you are entitled to under the law. For example, the [HYPERLINK "http://www.oregoncounseling.org/EvalAssess/ADA.htm"](http://www.oregoncounseling.org/EvalAssess/ADA.htm) [Americans With Disabilities Act of 1990](#) provides some federal protection for citizens who are disabled by psychological or physical problems. However the ADA applies primarily to large employers, is difficult to enforce and many psychological problems are not covered. Employers are looking for information that they feel is essential to select the best person for a job. At best, people may be protected somewhat from the most obvious and gross acts of discrimination.