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To All Robert A. Lees & Associates Clients
Re: House Bill 17 & its implications for Mental Health Professionals

Background and Context

On March 16, 2017, Governor John Hickenlooper signed House Bill 17-1011 into law. This bill created an amendment to the Colorado Mental Health Practices Act, specifically in CRS § 12-43-224, which took effect on July 1, 2017. The full text of the amendment reads:

12-43-224. Disciplinary proceedings – judicial review – mental and physical examinations – multiple licenses.

*(II) (A) Any person who alleges that a licensee, registrant, or certificate holder violated a provision of this article 43 **related to the maintenance of records** of a client **eighteen years of age or older** must file a complaint or other notice with the board within **seven years after** the person discovered or **reasonably should have discovered the misconduct**. A licensee, registrant, or certificate holder **shall notify a client that the client's records may not be maintained after the seven-year period for filing** a complaint pursuant to this section. The required notice must **be provided to the client in writing no later than one hundred eighty days after the end of the client's treatment**. The **notice may be included with the licensee's disclosures** pursuant to section 12-43-214 (1) or sent to the client's last-known mailing address. Consistent with all procedural requirements of this article 43, or otherwise required by law, the board must either take disciplinary action on the complaint or dismiss the complaint no later than two years after the date the complaint or notice was filed with the board.*



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(B) The seven-year limitation period specified in subsection (1)(a)(III)(A) of this section does not apply to the filing of a complaint or other notice with the board for any other violation of this article 43, including the acts described in section 12-43-222 or 12-43-226.

So let's breakdown what this means to you as a mental health professional. We'll start at the end with paragraph (B). The original proponents of this law were excited because they felt it would create a statute of limitations on when a client could grieve a psychotherapist. As in clear in paragraph (B), no such statute of limitations exists or was provided for in this amendment, save for the very specific provisions outline in paragraph (A), which we'll look at now.

This law is limited only to the "maintenance of [client] records" and establishes limits on when a client can file a complaint with the board related to improper maintenance of their record—they have seven years from the time they discovered the records-maintenance misconduct to report it. However, there is one caveat, which is the phrase: "reasonably should have discovered the misconduct." This nuances the language significantly, as there is no specificity around when a client should reasonably discover any records-maintenance misconduct. Nevertheless, according to this law, the client has seven years from the date that they should have reasonably discovered a records-maintenance misconduct to file that with the board.

Not only is this law limited to the maintenance of records, but it's also limited only to records of "client[s] eighteen years of age or older." Thus the law is restricted only to adult Client Records and does not apply to Client Records of minors under the age of 18.

Now let's focus on the wording that applies to you regarding maintaining Client Records and notifying your clients of their rights. First, this law in no way contradicts the requirements for how long you need to retain your client records. As a mental health professional, you need to retain Client Records for a period of seven years, beginning on the date of termination of services or the date of last contact with the client, whichever is later. That last point is important, as the clock for seven years gets reset anytime you have contact with a terminated client (This is another reason we highly encourage you to maintain a contact log in your client files).

Second, you are required to notify your clients in writing that their Client Record will not be maintained beyond seven years. You can do this in two ways, by including this notice in your disclosure statement that the clients sign at the beginning of therapy, or by mailing a written notice to the clients no later than 180 days after termination of services.



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Actions You Should Take

So what should you do? First, you should update your disclosure statements as this is the easiest and best way to comply with this law. We are advising our clients to include in all of their disclosure statements the following statement:

Maintenance of Client Record

As a client, you may request a copy of your Client Record at any time. In accordance with the Rules and Regulations of [your respective DORA board], I will maintain your client record (consisting of disclosure statement, contact information, reasons for therapy, notes, etc.) for a period of seven (7) years after the termination of therapy or the date of our last contact, whichever is later. I cannot guarantee a copy of your Client Record will exist after this seven-year period.

Second, for any clients that terminated services between July 1, 2017 (when this law went into effect) and now, you should mail a written notice to their last known address stating the following:

Rights Pertaining to Your Client Record

As a former client, you may request a copy of your Client Record at any time. In accordance with the Rules and Regulations of [your respective DORA board], I will maintain your client record (consisting of disclosure statement, contact information, reasons for therapy, notes, etc.) for a period of seven (7) years from [date of termination or last contact]. I cannot guarantee a copy of your Client Record will exist seven years after this date.

This only applies to clients that terminated after July 1, 2017. Any clients terminated before July 1, 2017 do not fall under the purview of this law.

We hope this helps clarify some things. If you have any other questions, please don't hesitate to ask us!

Best regards,

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