

House Bill 17-1011 Requires Action by Mental Health Professionals in Colorado

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Larry James, Psy.D., J.D.
303-757-0302

Julie Jacobs, Psy.D., J.D.
720-552-0084

Colorado's House Bill 17-1011 has passed the Legislature and has been signed into law by the Governor. This law provides an insert into the Mental Health Practice Act, section 12-43-224(1)(a). The purpose of the new law was to establish a statute of limitations for filing complaints with the licensing boards regarding the maintenance of records. However, this measure also requires mental health professionals to provide written notices to clients, in order to comply with the law. The new law states:

(II) (A) Any person who alleges that a licensee, registrant, or certificate holder violated a provision of this article 43 related to 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.

(B) The seven-year limitation period specified in subsection (1)(a)(II)(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.

Thus, under the new law, anyone who wishes to file a complaint against a mental health provider related to the maintenance of records must do so within seven years after the person discovered or reasonably should have discovered the alleged misconduct.

In addition, the new law requires that mental health licensees, registrants and certificate holders provide their clients written notice that the client's records may not be maintained after the time limit for filing such complaint. The notice must be provided within 180 days after the end of the client's treatment. It applies to all clients whose treatment ended since July 1, 2017.

On a practical level, it seems this compliance can best be met by completing the following three steps:

1. Send a written notice to every client that has terminated treatment since July 1, 2017, within 180 days of the termination. This notice should be mailed to the former client's last-known address, and documented accordingly. The client's signature is not required.
2. Provide all current clients written notice of the same information, through a letter or memo sent or given to the client, and documented accordingly. The client's signature is not required.
3. Add the notice language to your Mandatory Disclosure statement which will provide the required information to all new clients coming into the practice.

The new statutory language is not perfectly clear as to whether the notice should include the information regarding the statute of limitations or only the information regarding the length of time records will be maintained. In reviewing the Legislature's summary of the bill, it could be argued that the statute of limitations information is not required. However, that summary is not legally relevant when interpreting statutory language. As such, we recommend the following statement in the notice letter and Mandatory Disclosure statement:

Any person who alleges that a mental professional has violated the licensing laws related to the maintenance of records of a client eighteen years of age or older, must file a complaint or other notice with the licensing board within seven years after the person discovered or reasonably should have discovered this. Pursuant to law, this practice will maintain records for a period of seven years commencing on the date of termination of services or on the date of last contact with the client, whichever is later.

LPCs should also include the following:

When the client is a child, the records must be retained for a period of seven years commencing either upon the last day of treatment or when the child reaches eighteen years of age, whichever comes later, but in no event shall records be kept for more than twelve years.

By following these three steps, licensees, registrants, and certificate holders will be in compliance with the provisions of this new statute as it is currently written. It could be that someday the Boards will let us know that the information regarding the statute of limitations is not required in the notice. However, until such time, we recommend that the entire statement is provided.