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Guidance for the Evaluation of AI Scribes

Artificial intelligence (AI) is rapidly developing and becoming increasingly integrated into products designed to be used in mental health care, including provider-facing support and patient-facing tools. One area of much interest and discussion in the psychological community is the use of AI scribes to assist with clinical documentation. AI scribes have potential benefits to reduce the administrative burden for providers and enable them to be more present during their clinical work. While AI scribes can assist with adhering to various professional, organizational, and payer documentation requirements, they have access to confidential Protected Health Information (PHI) and other Personally Identifiable Information (PII). Therefore, careful consideration of the risks and benefits is needed to determine whether an AI scribe may be appropriate for your practice and if so, to select a high-quality tool that complies with professional ethical standards and applicable privacy laws.

AI scribes generally function by using ambient technology to listen to clinical sessions. Using a combination of technologies, including natural language processing and large language models (LLMs), the AI scribe transcribes the audio from the appointment. The AI scribe then generates a clinical note using that transcript and the algorithms built into the underlying model. The provider would review the content of the AI generated note and edit as needed, before saving it in the clinical record.

Below are several important considerations when evaluating an AI scribe for use in your practice. It builds on the general recommendations found in APA's AI tool guide for practitioners. To gather answers to the questions below, a provider will need to review the company's website, terms of service or use, privacy policy, and business associate agreement. After reviewing these materials, if further clarity is needed, providers are encouraged to reach out to the company directly.

COMPANY REPUTATION

It is worthwhile to begin by researching the company offering the AI scribe.

- Do they have behavioral health providers on staff who guide the development of their AI scribe product?

SOFTWARE INTEGRATION

There are many types of AI scribing tools available. Some electronic health records (EHR) platforms offer a built-in tool, others can communicate with your EHR via application programming interfaces (API), and some are standalone products. Those that are built into your EHR may offer ease of use, as EHRs are increasingly operating as comprehensive practice management solutions (e.g., offering billing, clinical record, virtual platform, AI scribing, etc.). Whereas AI scribes that are standalone or that integrate via API may offer you more choice to select among the many available options.

- Is the tool standalone, integrated via API, or bundled within an EHR platform?

FUNCTIONALITY

Ambient listening vs. dictation

Most AI scribes operate using an ambient listening mode (e.g., a provider enables the AI scribe to run in the background, essentially “listening” to a clinical appointment). Many AI scribes also have a dictation function. This option does not require the AI to “listen in” on a session. Rather a provider would either dictate or upload a written summary of the clinical appointment, and the AI scribe would turn that summary into a note of your choosing (e.g., intake report, progress note, etc.).

- What note templates are available?
 - » Does it offer SOAP, DAP, BIRP, etc.?
 - » Are templates customizable?
- Does it work for both in-person and virtual visits?
- Can the tool be used when multiple parties are part of a clinical appointment (e.g., for family or group therapy)?
- Does the tool perform well across various languages, dialects, and/or accents?
- What is the patient experience when an AI scribe is used? How will they know it is in use and/or will there be any change to their experience?
- Is there additional functionality?
 - » Some AI scribes also provide insights regarding clinical themes, ratio of talk time between therapist and patient, etc.
 - » Often AI scribes will format clinical notes in a way that facilitates insurance reimbursement such as documenting symptoms, progress, interventions, and supporting medical necessity.

PRIVACY COMPLIANCE

At a minimum, AI scribes are accessing PHI and must be compliant with HIPAA (or GDPR and/or other applicable privacy laws and standards in the jurisdiction(s) where you practice).

- Does the tool attest that it is HIPAA compliant?
- A signed Business Associate Agreement (BAA) between the provider and AI scribe company is required and should be saved in your records.

TECHNICAL SECURITY

Given the confidential data to which AI scribes have access, it is critical to understand how data is secured. This includes the processes and procedures that are in place to limit the possibility of a breach and in the event of a breach, to limit the amount of identifiable information available (see data handling section below).

The HIPAA Security Rule requires that electronic protected health information (e-PHI) be secured when it is in transit and at rest; while it does not specify which security measures an organization must use, in practice this is achieved through encryption.

National Institute of Standards and Technology (NIST) has developed guidance to assist organizations in complying with the Security Rule. Advanced Encryption Standard (AES) is a widely used and U.S. government-approved algorithm used to encrypt and decrypt data. Products often are listed as using AES-128, AES-192, or AES-256-bit encryption. The numbers (128, 192, 256) refer to the bit length of the encryption/decryption key.

- Choose a product that encrypts data in transit and at rest using a recognized standard. (e.g., minimum of AES-128).

The following recommendations, while beyond what HIPAA requires, represent currently accepted best practices for technical security. You are encouraged to look for a product that meets these standards:

- Does the tool require multifactor authentication (e.g., two or more credentials to login)?
- Does the tool demonstrate enhanced security through a voluntary certification, such as HITRUST certification or SOC 2 attestation?
- Does the company engage in penetration testing? This generally involves hiring an independent, third-party company to engage in a simulated cyberattack to identify and mitigate any security vulnerabilities.

DATA HANDLING

In addition to robust technical security, it is also important to assess how data are handled. The concept of “data minimization” is a key consideration, meaning that the least amount of data is stored for a given purpose. This can help to limit the amount of data that could be compromised in the event of a breach. You are encouraged to choose companies that allow you to customize settings to minimize the storage of data beyond what is necessary

for your tasks or easily delete such data manually.

- Is the audio from a session stored, even temporarily? If so, where and for how long? Many tools transcribe the session in real time, meaning the audio is being transcribed as the session is occurring. With real-time transcription, there generally is no permanently saved audio file (which reduces stored data), but a temporary audio file is saved briefly during the transcription of the session.
- You are encouraged to select a tool that de-identifies data while being transcribed so that any identifiers (e.g., name, location, age, etc.) are removed and are not part of the transcript.
- Is the transcript retained? If so, for how long and where is it stored? While there could be clinical reasons that you may wish to retain a transcript of the session, carefully consider in what situations and for how long this data needs to be retained.
- Does the clinician have control over if or for how long a transcript is retained or is this set by the company?

LARGE LANGUAGE MODELS (LLMs)

This is the technology that powers AI scribes. Some companies have developed their own, proprietary models, and others contract with third-party AI companies to use their LLMs.

- Does the company use a purpose-built LLM, meaning a LLM that was specifically built for and trained on health care data?
- Is a general-purpose model used (which are trained on internet-based data)?
 - » If a general-purpose model is used, is the model “fine-tuned”? **Fine-tuning** is the process of further training a general-purpose LLM on specialized data to enhance its ability to perform a specific task.
- Some companies have developed their own proprietary LLM, whereas others use a third party LLM.
 - » If they contract with another company, which one?
 - » Do they have a signed BAA with that company? Does the BAA prohibit the third party from training their LLM with your data?
- Does the company use any session data (even de-identified data) to train their proprietary LLM?
 - » If so, do you have to opt-in (e.g., specifically consent to that use)? Be aware that some companies set this

up as opt-in; whereas others set it up as opt-out (meaning your data is automatically used for training unless you adjust your settings to “opt-out”).

- Does the company reserve the right to sell any de-identified data?
- Does the company use any data for marketing purposes?
- Does the company provide information about how the LLM has been tested for accuracy, risk of bias, and appropriateness for various patient populations?

INFORMED AND LEGAL CONSENT REQUIREMENTS

It is important to develop an informed consent process and documentation policy for the use of AI scribes in your practice.

- Some states (such as **Illinois**) have passed health care laws that require specific, written informed consent prior to the use of an AI tool that records a clinical visit. Additionally, many states have privacy laws (that extend beyond health care) that may apply to your use of an AI tool, including but not limited to consent requirements prior to the recording of any conversation. Therefore, it is important to stay abreast of the AI-related and broader privacy laws in the state(s) where you practice.
- Psychologists have an ethical obligation to obtain consent prior to recording the voices or images of any individuals to whom they provide services. Consider how you will obtain patient informed consent prior to using an AI scribe. Decide how you will clearly convey that it is optional and even if a patient consents now, they can opt out at any time in the future.
- Do you feel adequately prepared to answer questions that patients may have about the AI tool, including how data is handled and how privacy and technical security are maintained?
- If you work with minors (or other populations that cannot provide informed consent), do you have a process for obtaining consent from parents or guardians (or the responsible party) and obtaining assent from the patient?

LEGAL AND LIABILITY CONSIDERATIONS

You must review AI generated documentation for accuracy and edit as needed prior to signing and the documentation becoming part of the clinical record. While AI may assist

with documentation, you remain responsible for all clinical decisions and documentation accuracy.

- As with any technology-enabled care, you are encouraged to consult with your liability carrier to ensure that your use of technology is covered by your professional liability policy or whether additional policies such as a cyber liability policy would be appropriate.
- Legislation regarding the use of AI in health care is rapidly evolving, particularly at the state level. You are encouraged to consult with a local health care attorney familiar with AI and privacy regulations in your practice location to ensure that you are in compliance.

DOCUMENTATION AND PERIODIC REVIEW

You are encouraged to document your review of any product that you select for use in your practice.

- Additionally, companies periodically update their privacy policy and terms of service. You are encouraged to review these updates as part of maintaining ongoing compliance with relevant privacy laws.

NEEDS OF YOUR PRACTICE

A decision about whether to use an AI scribe and if so, which tool to incorporate into your practice, is an individual decision based on one's unique practice needs. However, these steps will help you gather the relevant information needed to make an informed decision.

This document is provided by APA as a preliminary guide for psychologists considering the integration of clinical tools utilizing AI into their practice. It is intended to serve as a starting point for evaluation and is not exhaustive. Users are encouraged to apply their own professional judgment and seek additional resources and guidance as needed, including legal consultation to ensure compliance with applicable laws and regulations. APA does not endorse any specific AI tools and assumes no responsibility for the outcomes of their use. Always ensure compliance with relevant ethical guidelines and legal requirements.