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## **North Sound Behavioral Health Administrative Services Organization, LLC**

Section 2500 – Privacy: Privacy and Confidentiality for Protected Health Information (PHI)

Authorizing Source: 45 CFR 164 (HIPAA); 42 CFR Part 2 (Part 2); RCW 70.02

Approved by: Executive Director      Date: 7/30/2019      Signature:

### **POLICY # 2501.00**

#### **SUBJECT: PRIVACY AND CONFIDENTIALITY FOR PROTECTED HEALTH INFORMATION (PHI) (including Business Associate and Administrative Responsibilities)**

#### **PURPOSE**

In compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Part 2, Washington law and any applicable Business Associate Agreements (BAAs) with Upstream Covered Entities, this policy declares the commitment of North Sound Behavioral Health Administrative Services Organization (North Sound BH-ASO), and sets out guidelines to maintain a culture of compliance, for the protection of the privacy and confidentiality of PHI, including appropriate Use and Disclosure of PHI, affording of Individuals rights with respect to PHI and implementing administrative responsibilities to promote and protect the privacy and confidentiality of PHI. North Sound BH-ASO is committed to privacy, security and confidentiality protections.

Capitalized terms in this policy have specific meanings. Definitions under this policy include Authorized Representative, Business Associate, Business Associate Agreement (BAA), Individual, Mental Health Information, Part 2, Part 2 Information, Payment, PHI, Pre-Transition PHI, Required by Law, Sexually Transmitted Disease (STD), State Law, Transition Date, Treatment, Upstream Covered Entity, Use and Workforce. See Policy 2502.00: Definitions for Policies Governing PHI.

#### **BACKGROUND**

On July 1, 2019 (the Transition Date), as required by the Washington Health Care Authority (HCA), North Sound BH-ASO converted from a behavioral health organization, which was a Covered Entity under HIPAA, to a behavioral health administrative services organization, which is a Business Associate of its Upstream Covered Entities and is not a Covered Entity under HIPAA. Accordingly, North Sound BH-ASO will continue to use, disclose and recognize Individual rights with respect to pre-transition PHI as permitted and required for a Covered Entity. For all other PHI, North Sound BH-ASO shall act as a Business Associate. Pre-transition PHI shall be segregated from PHI created, received, maintained or transmitted by North Sound BH-ASO in its capacity as a Business Associate.

In its designated role as the regional behavioral-health administrative services organization, North Sound BH-ASO has multiple responsibilities mandated by federal law and State Law.

North Sound BH-ASO bears considerable responsibility for protecting the PHI accessed, created, received, transmitted, maintained, Used or Disclosed by North Sound BH-ASO, in the performance of its duties, against misuse by, or Disclosure to, unauthorized organizations and persons. Further, North Sound BH-ASO is acutely aware mental illness, substance use disorder (SUD), and Sexually Transmitted Disease (STD) continue to be

categories of conditions that may subject Individuals to discrimination and other disadvantages. The goal of North Sound BH-ASO is to adopt and maintain a culture of protecting the confidentiality, privacy and security of all PHI, particularly these more sensitive categories of PHI, and to comply with federal law and State Law.

## **POLICY**

North Sound BH-ASO is fully committed to providing confidentiality, privacy and security protections for PHI. North Sound BH-ASO also recognizes Individuals put a great deal of trust in us with respect to their privacy and confidentiality. North Sound BH-ASO and its workforce will: embrace culture of compliance with confidentiality, privacy and Individual rights relating to PHI; comply with applicable federal law and State Law relating to the privacy and confidentiality of PHI including HIPAA, Part 2 and Washington law; protect PHI from unauthorized Use or Disclosure; promote Individual rights with respect to PHI; comply with its obligations as a Business Associate, of Upstream Covered Entities, as further described in this policy; and, implement and maintain certain administrative processes with respect to the privacy and confidentiality of PHI, as further described in this policy. North Sound BH-ASO's privacy policies, procedures and practices collectively honor that obligation and commitment. North Sound BH-ASO further honors that commitment by enforcing its privacy and confidentiality policy, procedures and practices.

## **PROCEDURES**

1. **Culture of Privacy and Confidentiality Compliance.** North Sound BH-ASO and its Workforce are committed to protecting the privacy and confidentiality of PHI and the Individuals we serve. North Sound BH-ASO and its Workforce are and shall be committed to fostering a culture of compliance with respect to protecting the privacy and confidentiality of PHI.
2. **Compliance with Laws.** North Sound BH-ASO will comply with applicable law, including:
  - 2.1 **45 CFR Parts 160, 164 (HIPAA):** administrative simplification section of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations;
  - 2.2 **42 CFR Part 2 (Part 2):** Confidentiality of SUD Individual Records;
  - 2.3 **42 CFR 432.300 – 431.307:** State Organization and General Administration, Safeguarding Information on Applicants and Recipients; and
  - 2.4 **RCW 70.02** Uniform Health Care Information Confidentiality Act.

**Note: In considering issues related to privacy and confidentiality, it is important to note any State Law that permit or require a Disclosure prohibited by federal law is invalid. If, however, a State Law is more stringent than HIPAA, meaning it provides greater privacy protections or greater Individual rights, then the State Law prevails. If North Sound BH-ASO can comply with both HIPAA and the State Law, then North Sound BH-ASO will comply with both. If you are unsure as to the applicable standard, then please consult with North Sound BH-ASO's Privacy Officer.**

### **3. Personnel Designations.**

- 3.1 **Privacy Officer.** North Sound BH-ASO has an appointed Privacy Officer. The Privacy Officer has primary responsibility for developing and implementing this policy and related privacy policies, procedures and practices and has other duties as may be assigned.

- 3.2 Security Officer.** North Sound BH-ASO has an appointed Security Officer. The Security Officer is responsible for the development and implementation of security policies, procedures and practices for North Sound BH-ASO and has other duties as may be assigned.
- 3.3 Contact Person or Office.** The contact person or office is responsible for receiving privacy complaints, providing further information about matters covered in the notice of privacy practices that applies to Pre-Transition PHI, in North Sound BH-ASO's capacity as a former Covered Entity and other duties as may be assigned.
- 4. Business Associate Obligations.** North Sound BH-ASO, as a Business Associate, shall comply with the terms and conditions of its Business Associate Agreements (BAAs) with Upstream Covered Entities. North Sound BH-ASO also will comply with applicable HIPAA requirements, as well as Part 2 and Washington law that apply directly to Business Associates.
- 5. Covered Entity Obligations.** North Sound BH-ASO, as a former Covered Entity, shall comply with those HIPAA requirements, as well as Part 2 and Washington law that apply to Covered Entities with respect to Pre-Transition PHI.
- 6. Uses and Disclosures of PHI.** Workforce members will Use and Disclose PHI only as permitted under Policy 2522.00: Uses and Disclosures of PHI and by HIPAA, Part 2, Washington law and applicable Business Associates Agreements (BAAs) with Upstream Covered Entities. Workforce members will provide additional protections for Part 2 Information, Mental Health Information, and Sexually Transmitted Disease (STD) information as Required by Law and applicable BAAs. See also Policy 2522.00: Uses and Disclosures of PHI.
- 6.1 Minimum Necessary.** When Using, Disclosing or requesting PHI, Workforce members will make reasonable efforts to limit the Use, Disclosure or request to the minimum necessary to accomplish the intended and permissible purpose of the Use, Disclosure or request, to the extent required by HIPAA, Part 2, Washington law and applicable BAAs and in accordance with Policy 2509.00: Minimum Necessary. For example, it would be improper to Disclose everything in an Individual's file if the recipient of the information needs only a single piece of information. A general guideline for Disclosure of confidential information is to Disclose only the minimum necessary, for only as long as is necessary and to only necessary recipients considering the purpose of the communication. Minimum necessary also applies to Workforce so that only Workforce members who have a job-related need to know may access, Use or Disclose PHI.
- 6.2 Authorization.** For any Uses and Disclosures of PHI not specifically permitted by law or Required by Law, North Sound BH-ASO must obtain an authorization by the Individual or the Individual's Authorized Representative. See Policy 2521.00: Authorization.
- 6.3 No Marketing or Sale of PHI.** North Sound BH-ASO will not engage in Marketing or Sale of PHI: (a) unless it meets an exception recognized by HIPAA and Washington law and is permitted by any applicable BAAs; or (b) obtains a valid authorization by or on behalf of the Individual.

**7. Individual Rights.**

## **7.1 Recognition of Rights.**

- 7.1.1 With respect to Pre-Transition PHI, North Sound BH-ASO shall comply with a Covered Entity's obligations to provide the Individual rights as required under HIPAA.
- 7.1.2 In its capacity as a Business Associate, North Sound BH-ASO shall comply with its BAA obligations to facilitate the provision of these rights on behalf of its Upstream Covered Entities.

**7.2 Right of Individuals to Access PHI.** Individuals have the right to request access to or a copy of PHI maintained in a Designated Record Set. Workforce members will process and respond to Individuals' and Upstream Covered Entities' requests for access, in accordance with Policy 2514.00: Right to Access PHI.

**7.3 Right of Individuals to Request to Amend or Correct PHI.** Individuals have the right to request amendment or correction of PHI maintained in a Designated Record Set. Workforce members will process and respond to Individuals' and Upstream Covered Entities' requests for amendment, in accordance with Policy 2515.00: Right to Amendment of PHI.

**7.4 Right of Individuals to Request Certain Privacy Restrictions.** Individuals have the right to request restrictions on certain Uses and Disclosures of PHI. Workforce members will process and respond to Individuals' and Upstream Covered Entities' requests for certain privacy restrictions, in accordance with Policy 2518.00: Right to Request Restrictions on the Uses and Disclosures of PHI.

**7.5 Right of Individuals to an Accounting of Disclosures.** Individuals have the right to receive an accounting of certain disclosures of PHI. Workforce members will process and respond to Individuals' and Upstream Covered Entities' requests for accountings of Disclosures in accordance with Policy 2516.00: Right to Accounting of Disclosures.

**7.6 Right of Individuals to Request Alternative Communications.** Individuals have the right to request transmission or communication of PHI by alternative means or to an alternative location. Workforce members will process and respond to Individuals' and Upstream Covered Entities' request for alternative communications, in accordance with Policy 2517.00: Right to Alternative Communications.

**7.7 Right of Individuals to Make Complaints.** Individuals have the right to make and file complaints. Workforce members will process and respond to complaints. See Section 6.4 of this policy.

**7.8 Right of Individuals to Have Authorized Representatives Act on Their Behalf.** Individuals have the right to have Authorized Representatives act on their behalf under certain circumstances. See Policy 2514.00: Right to Access PHI; Policy 2515.00: Right to Amendment of PHI; Policy 2518.00: Right to Request Restrictions; Policy 2516.00: Right to Accounting of Disclosure; Policy 2517.00: Right to Alternative Communications; and Policy 2521.00: Authorizations.

**7.9 Right of Individuals to Receive the Notice of Privacy Practices.** Individuals have the right to receive a notice of privacy practices from certain Covered Entities. When it was a Covered Entity, North Sound BH-ASO had a notice of privacy practices, written in plain language, that provided Individuals with notice of North Sound BH-ASO's privacy practices as a Covered Entity in a manner consistent with HIPAA, Part 2, Washington law and Policy 2510.00: Notice of Privacy Practices. North Sound BH-ASO no longer needs to provide its notice of privacy practices to Individuals since it is no longer a Covered Entity but will continue to post the notice of privacy practices on its website, and to comply with, its notice of privacy practices with respect to Pre-Transition PHI in its capacity as a former Covered Entity.

## **8. Reporting.**

**8.1 Reporting as a Business Associate.** As required by the applicable BAA, North Sound BH-ASO will report to the applicable Upstream Covered Entity the Events listed below. The timing of the report will be consistent with North Sound BH-ASO's legal obligations, any timing requirements in the applicable BAA and the level of risk reasonably likely to be presented by the Use or Disclosure. The applicable BAA may impose additional reporting requirements. See also North Sound BH-ASO's Policy 2525: Breach Notification and Reporting to Upstream Covered Entities under HIPAA. The following events will trigger reporting to the Upstream Covered Entity under the BAA:

- 8.1.1 Any Use or Disclosure of the Upstream Covered Entity's PHI not provided for in the BAA of which NORTH SOUND BH-ASO becomes aware.
- 8.1.2 Any Security Incident as required by the BAA. Not all Security Incidents may need to be reported. North Sound BH-ASO shall verify the requirements of the applicable BAA. See Policy 2505: Definitions for Policies Governing PHI (definition of Security Incident).
- 8.1.3 Any Breach of Unsecured PHI. See Policy 2502: Definitions for Policies Governing PHI (definitions of Breach and Unsecured PHI).

**8.2 Notification as a Former Covered Entity.** North Sound BH-ASO will provide notification of a Breach of unsecured PHI to: Individuals, the Department of Health and Human Services and possibly the media in its role as a former Covered Entity. See Policy 2525: Breach Notification and Reporting to Upstream Covered Entities.

## **9. Administration.**

**9.1 Workforce Training.** North Sound BH-ASO has implemented, and the Privacy Officer will maintain, a mandatory privacy training program for the Workforce. This privacy training program will: (a) emphasize this policy and North Sound BH-ASO's other privacy policies, procedures and practices; (b) address North Sound BH-ASO's obligations under its BAAs; (c) be tailored to reflect the various functions of Workforce members; and (d) be structured and delivered in a manner that facilitates compliance with applicable federal and state law, including HIPAA, Part 2 and Washington law. See also Policy 2520.00: Training of the Workforce.

- 9.2 Safeguards.** The Security Officer, with assistance from the Privacy Officer, has implemented and will maintain reasonable and appropriate administrative, technical and physical safeguards to protect the privacy of PHI and to protect against impermissible Uses and Disclosures of PHI, in compliance with applicable federal and state law, including HIPAA, Part 2, Washington law and applicable BAAs. See also Policy 2519.00: Safeguarding of PHI, as well as North Sound BH-ASO's security policies, procedures and practices.
- 9.3 Mitigation.** North Sound BH-ASO, to the extent practicable, will mitigate known harmful effects resulting from an impermissible Use or Disclosure of PHI by North Sound BH-ASO or its Subcontractor Business Associates that may occur. See Policy 2525: Breach Notification and Other Reporting to Upstream Covered Entities.
- 9.4 Privacy Complaint Process.**
- 9.4.1 Individuals may file complaints with the Privacy Officer.
- 9.4.2 Workforce members may file complaints or raise questions and concerns with the Privacy Officer.
- 9.4.3 The Privacy Officer is responsible for reviewing each complaint, investigating the complaint as appropriate and attempting to come to an appropriate resolution of the complaint. The resolution will depend on the particular facts and circumstances of the complaint. Examples of complaint resolution include, but are not limited to, those described below.
- (a) Educating the Individual or Workforce member filing the complaint about North Sound BH-ASO's privacy, security and/or Breach notification policies, procedures and practices or about the requirements of HIPAA, Part 2 and Washington law.
  - (b) Implementing changes to North Sound BH-ASO's privacy, security or Breach notification policies, procedures or practices.
  - (c) Providing additional training for Workforce members on North Sound BH-ASO's privacy, security or Breach notification policies, procedures or practices or on HIPAA, Part 2 or Washington law.
  - (d) Imposing sanctions on Workforce members who act in a manner inconsistent with North Sound BH-ASO's privacy, security or Breach notifications policies, procedures and practices, HIPAA, Part 2 or Washington law.
  - (e) Determining whether (and what) mitigation actions are appropriate and implementing appropriate corrective action and mitigation actions.
  - (f) Issuing new Workforce communication and training materials.
  - (g) Not taking further actions because the event did not rise to a level that was impermissible under North Sound BH-ASO's privacy, security, or Breach notification policies, procedures and practices, or HIPAA, Part 2 or Washington law.
- 9.4.4 After North Sound BH-ASO has addressed a privacy complaint, North Sound BH-ASO will inform the Individual or Workforce member who filed the complaint that the complaint

was duly investigated, the general findings of the investigation and the disposition of the complaint. The complaint and its disposition shall be documented.

9.4.5 North Sound BH-ASO recognizes Individuals have the right to file complaints with the Department of Health and Human Services.

**9.5 Prohibition of Intimidation or Retaliatory Acts.** Neither North Sound BH-ASO nor any member of its Workforce may intimidate, threaten, coerce, discriminate against or take any retaliatory action of any kind against an Individual for lodging a good faith complaint or otherwise exercising the Individual's privacy rights provided by HIPAA, Part 2 or Washington law.

**9.6 Privacy Rights May Not Be Waived.** Neither North Sound BH-ASO nor any member of its Workforce shall require an Individual to waive the Individual's privacy rights under HIPAA, Part 2 or Washington law as a condition of Treatment, Payment, enrollment in any health plan, eligibility for direct care or eligibility for health benefits.

**9.7 Sanctions for Members of the Workforce.**

9.7.1 North Sound BH-ASO leadership, in consultation with the Privacy Officer, are responsible for developing, implementing and consistently imposing sanctions and disciplinary actions, up to and including termination of employment or other relationship with North Sound BH-ASO, against members of the Workforce who fail to comply with this policy or other privacy policies, procedures and practices.

9.7.2 Failure to comply with any North Sound BH-ASO privacy policies, procedures and practices will constitute grounds for immediate disciplinary action up to and including termination of employment, service or association with North Sound BH-ASO. An inappropriate or indiscriminate acquisition, access, review, Use, Disclosure or transmission of PHI, including, but not limited to, actions that might constitute a Breach of Unsecured PHI (as provided under HIPAA) and/or a breach of the security of the system (as provided under Washington law), may result in immediate disciplinary action up to and including termination of employment, service or association North Sound BH-ASO.

9.7.3 Disciplinary actions will be taken in a manner consistent with North Sound BH-ASO disciplinary process.

9.7.4 As required by federal law, any sanctions applied to any member of the Workforce will be documented, including in the Workforce member's file.

**9.8 Policies, Procedures, Practices and Other Documentation.** North Sound BH-ASO leadership has and will continue to develop, adopt and implement the policies, procedures, practices, processes and tracking systems as may be necessary to effectuate this policy in compliance with applicable federal and state law, including HIPAA, Part 2 and Washington law. North Sound BH-ASO, from time to time, will review and update these policies, procedures and practices to reflect changes in law and in circumstances. To the extent that any requirements in this policy or other privacy-related policies, procedures and practices impose obligations beyond that which is Required by Law, those requirements will be deemed aspirational in nature.

10. **Verification of Identity and Authority.** Workforce members will take reasonable steps and use professional judgment to verify the identity and authority of any Individual, Authorized Representative or other person with respect to any access to Use or Disclosure of PHI, if the identity or authority is not known to North Sound BH-ASO, in accordance with Policy 2524.00: Verification of Identity and Authority.
11. **Workforce Oath of Confidentiality.** All North Sound BH-ASO Workforce members shall sign an Oath of Confidentiality statement on or shortly after their starting date and on approximately an annual basis. This statement will affirm, in part, that the Workforce members will not make unauthorized uses or disclosures of any PHI and will take reasonable actions to safeguard PHI.
12. **Questions and Concerns.** Workforce members should bring any questions and concerns about the privacy and confidentiality policies, procedures or practices at North Sound BH-ASO to the Privacy Officer.
13. **Reporting of Suspected Impermissible Actions or Omissions.** Workforce members should inform the Privacy Officer of any actual or suspected breaches of any of North Sound BH-ASO's policies, procedures or practices or any other concerns relating to North Sound BH-ASO's obligations as a Business Associate, the privacy and confidentiality of PHI, Individual rights related to PHI or privacy administrative obligations.
14. **Documentation.** Documentation will be retained for at least six (6) years. Retention requirements include, but are not limited to:
  - 14.1 **Designating letters for the Privacy Officer and Security Officer.**
  - 14.2 **This policy and related privacy policies, procedures and practices.**
  - 14.3 **Documentation of sanctions.**
  - 14.4 **Documentation concerning complaints.**
  - 14.5 **Authorizations.**
  - 14.6 **Documentation concerning exercising of Individual rights.**
  - 14.7 **Notice of privacy practices.**
  - 14.8 **Other documentation required by North Sound BH-ASO's privacy policies, procedures and practices.**

For additional information regarding documentation, see Policy 2506.00: Documentation.

15. **Related Policies.** All North Sound BH-ASO privacy policies are related to this policy and should be reviewed and followed.

## **ATTACHMENTS**

None