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North Sound Behavioral Health Administrative Services Organization, LLC

Section 2500 – Privacy: Subcontractor Business Associate (Downstream)

Authorizing Source: 45 CFR 164.514 (HIPAA); 42 CFR Part 2 (Part 2); RCW 70.02

Approved by: Executive Director Date: 08/11/2020

Signature:

POLICY # 2507.00

SUBJECT: SUBCONTRACTOR BUSINESS ASSOCIATE (DOWNSTREAM)

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 sets out the nature of “downstream” third-party relationships with Subcontractor Business Associates as well as other contractors and the requirements for contracting with these entities.

Capitalized terms have specific meanings. Defined terms in this policy include Business Associate, Business Associate Agreement (BAA), De-identified Data, Disclosure or Disclose, Part 2 Information, Protected Health Information (PHI), Required by Law, Subcontractor, Subcontractor Business Associate, Upstream Covered Entity and Use. See Policy 2502.00: Definitions for Policies Governing PHI.

POLICY

North Sound Behavioral Health Administrative Services Organization (North Sound BH-ASO), as a Business Associate of Upstream Covered Entities, will determine whether any downstream vendor, supplier, consultant, service provider or other Subcontractor is a Business Associate (a Subcontractor Business Associate) of North Sound BH-ASO. North Sound BH-ASO shall not permit a Subcontractor Business Associate to create, receive, maintain or transmit any PHI, including Part 2 Information, unless the Subcontractor Business Associate first provides written assurances, usually in the form of a Business Associate Agreement (BAA).

Additionally, North Sound BH-ASO, from time to time, may be acting as a Business Associate and/or a contractor to a lawful holder of Part 2 Information and will comply with its obligations under the applicable BAA, with the Upstream Covered Entity or agreement with the lawful holder of Part 2 Information and with federal and state law, including HIPAA, Part 2 and Washington Law. See Policy 2501.00: Privacy and Confidentiality of PHI.

PROCEDURE

1. **Identification of Subcontractor Business Associates.** North Sound BH-ASO will consider any third-party, who is not a member of the Workforce to be a Subcontractor Business Associate when the person or entity creates, receives, maintains or transmits PHI on North Sound BH-ASO’s behalf or when providing certain services to North Sound BH-ASO that involve the creation, receipt, maintenance or transmission of PHI.
 - 1.1 **Subcontractor.** For purposes of this policy, a Subcontractor is a person or entity to whom North Sound BH-ASO delegates a function, activity or service (other than in the capacity as

Workforce). Subcontractors may include, for example, outside consultants, contractors, suppliers and vendors. Subcontractors may become Subcontractor Business Associates if they create, receive, maintain or transmit PHI on behalf of the Business Associate. See Policy 2502.00: Definitions for Policies Governing PHI (for more detail on Subcontractors).

- 1.2 **Subcontractor Business Associate.** For purposes of this policy, a Subcontractor Business Associate of North Sound BH-ASO is a Subcontractor that creates, receives, maintains or transmits PHI on behalf of a Business Associate. For example, a Subcontractor that provides claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, patient safety activities, billing, benefit management, practice management, repricing, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation or financial services is a Subcontractor Business Associate if those functions or services involve the creation, receipt, maintenance or transmission of PHI. The determination of whether a Subcontractor is a Subcontractor Business Associate depends not on what type of entity it is, but on the basis of the services or functions it provides to North Sound BH-ASO and whether it creates, receives, maintains or transmits of PHI, including Part 2 Information, in the course of performing its services for North Sound BH-ASO.
- 1.3 **Excluded as a Subcontractor Business Associate.** For example, a Subcontractor Business Associate is NOT:
 - 1.3.1 A Health Care Provider receiving PHI for Treatment purposes, even if doing so under contract with and on behalf of North Sound BH-ASO;
 - 1.3.2 A financial institution (or entity acting on behalf of a financial institution) engaging in financial transactions (although there may be situations in which a financial institution would qualify as a Subcontractor Business Associate);
 - 1.3.3 A sponsor of a Health Plan (for Health Plan activities);
 - 1.3.4 A government agency for determining eligibility for or enrollment in a government health plan;
 - 1.3.5 A Subcontractor that receives or accesses only De-Identified Data (but would be a Business Associate if it were De-Identifying PHI) See Policy 2503.00: De-Identification and Limited Data Sets; or
 - 1.3.6 Workforce of North Sound BH-ASO.

2. **Contractual Obligations.**

- 2.1 **Written Assurances.** North Sound BH-ASO, through its Privacy Officer, requires any Subcontractor Business Associate of North Sound BH-ASO to sign a BAA or another document that meets HIPAA requirements. Because North Sound BH-ASO regularly receives Part 2 Information through the authorization by or on behalf of an Individual and, therefore, acts as a lawful holder of Part 2 Information, North Sound BH-ASO, through its Privacy Officer, will require additional contractual obligations on any of its Business Associates that are to create, receive, maintain or transmit Part 2 Information.
- 2.2 **When Acting as a Business Associate.** When North Sound BH-ASO is acting as a Business Associate of an Upstream Covered Entity, it will enter into a BAA with the upstream Covered Entity as a Business Associate. BH-ASO

2.3 Content of BAA—HIPAA Requirements. North Sound BH-ASO prefers to use one of its template agreements, which includes expanded obligations for Part 2 Information. Not all relationships will require the expanded BAA requirements, and some Subcontractor Business Associates will insist on using their template agreements. For these reasons, before executing any BAA that modifies the template or that is not a North Sound BH-ASO template, the responsible Workforce member must obtain approval of the Privacy Officer, who may consult with legal counsel. A Subcontractor Business Associate Agreement with North Sound BH-ASO, at a minimum, shall contain the following provisions:

- 2.3.1 Establish the permitted and required Uses and Disclosures of PHI by the Subcontractor Business Associate;
- 2.3.2 Not authorize the Subcontractor Business Associate to Use or further Disclose the PHI in a manner that would not be permissible under the HIPAA Privacy Rule if done by the Upstream Covered Entity, except for data aggregation or management/administration/legal obligations of the Subcontractor Business Associate, if permitted by the BAA;
- 2.3.3 Not Use or further Disclose the PHI other than as permitted or required by the BAA or as Required by Law;
- 2.3.4 Use appropriate safeguards to protect the PHI;
- 2.3.5 Comply with the HIPAA Security Rule with respect to electronic PHI;
- 2.3.6 Report to North Sound BH-ASO any Use or Disclosure of PHI not provided for by the BAA of which it becomes aware;
- 2.3.7 Report to the North Sound BH-ASO any Breach of Unsecured PHI;
- 2.3.8 Report to North Sound BH-ASO any Security Incident, which may include certain advanced or proactive notification (with no further notification required) for Security Incidents that do not represent risk to PHI such as pings on a firewall;
- 2.3.9 Ensure any of the Subcontractor Business Associate’s Subcontractors that create, receive, maintain or transmit PHI on the Subcontractor Business Associate’s behalf agree to the same restrictions and conditions that apply to the Subcontractor Business Associate with respect to PHI, including complying with the Security Rule;
- 2.3.10 Make available PHI to facilitate access to PHI;
- 2.3.11 Make available PHI for amendment and incorporate any amendments to PHI maintained;
- 2.3.12 Provide an accounting of disclosures;
- 2.3.13 Make its internal practices, books and records relating to the Use and Disclosure of PHI received from, or created, or received by the Subcontractor Business Associate on behalf of, the Covered Entity available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with HIPAA;
- 2.3.14 To the extent the Subcontractor Business Associate is to carry out an obligation of a Covered Entity under the Privacy Rule, comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of the obligation; and
- 2.3.15 Upon termination of the BAA, if feasible, return or destroy all PHI received from, or created, or received by the Subcontractor Business Associate on behalf of, North Sound BH-ASO that the Subcontractor Business Associate still maintains in any form and retain no copies of the PHI or if return or destruction is not feasible, extend the

protections of the BAA to the PHI and limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI infeasible.

- 2.4 **Expanded Part 2 Content Requirements.** When a Subcontractor Business Associate, which is providing Payment or Health Care Operations services to North Sound BH-ASO, will create, receive, maintain or transmit Part 2 Information, the BAA also must provide that the Subcontractor Business Associate:
- 2.4.1 Is fully bound by the provisions of Part 2 upon receipt of Part 2 Information; and
 - 2.4.2 Receives from North Sound BH-ASO one of the following notices:
 - (a) This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR part 2). The federal rules prohibit you from making any further disclosure of information in this record that identifies a patient as having or having had a substance use disorder either directly, by reference to publicly available information or through verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (see 42 CFR § 2.31). The federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with SUD, except as provided at §§ 2.12(c)(5) and 2.65;
 - (b) 42 CFR Part 2 prohibits unauthorized disclosure of these records.
 - 2.4.3 Implements appropriate safeguards to prevent unauthorized Uses and Disclosures of Part 2 Information;
 - 2.4.4 Report any unauthorized Uses, Disclosures or breaches of Part 2 Information to North Sound BH-ASO; and
 - 2.4.5 Not re-disclose Part 2 Information to a third-party unless the third-party is a contract agent of the Subcontractor Business Associate helping the Subcontractor Business Associate provide services described in the services agreement and if the agent further discloses the Part 2 Information only back to the Subcontractor Business Associate or to North Sound BH-ASO.
- 2.5 **Additional Provisions.** North Sound BH-ASO may negotiate additional provisions in its agreements for the protection of North Sound BH-ASO and Individuals BH-ASO. These provisions include requiring insurance/cyber (data privacy/network security) insurance, indemnification, more restrictive Breach notification timeframes or documentation requirements and removal of limitations of liability. Workforce responsible for negotiating agreements, including BAAs, should consult legal counsel when appropriate.
- 2.6 **Amendments.** Amendments to a template or existing BAA may not be made without the Privacy Officer's approval and/or the prior advice and recommendation BH-ASO legal counsel.
- 2.7 **Monitoring of Subcontractor Business Associates.** Because the protection of PHI is of crucial importance to North Sound BH-ASO, Workforce should be cognizant of the behavior of Subcontractor Business Associates and report any conduct that is inconsistent with the BAA to North Sound BH-ASO's Privacy Officer.

- 2.8 **Documentation.** All BAAs along with any accompanying documentation shall be retained for at least six (6) years. Documentation retention requirements include:
 - 2.8.1 **Policies and procedures for Subcontractor Business Associates.**
 - 2.8.2 **BAA templates.**
 - 2.8.3 **Executed BAAs with Subcontractors.**

- 2.9 **Other Policies.** Other policies and procedures to review that are related to this policy:
 - 2.9.1 **Policy 2501.00: Privacy and Confidentiality of PHI.**
 - 2.9.2 **Policy 2502.00: Definitions for Policies Governing PHI.**
 - 2.9.3 **Policy 2503.00: De-Identified Data and Limited Data Sets.**
 - 2.9.4 **Policy 2522.00: Uses and Disclosures of PHI.**

ATTACHMENTS

Template Business Associate Agreement