

Effective Date: 7/1/2019
Review Date: 2/25/2025
Revised Date: 2/25/2025

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: 2/25/2025 Signature:

POLICY # 2507.00

SUBJECT: SUBCONTRACTOR BUSINESS ASSOCIATE (DOWNSTREAM)

PURPOSE

In compliance with HIPAA, Part 2, State Law and any applicable Business Associate Agreements (BAAs) and Qualified Service Organization Agreements (QSOAs) 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 and as a Qualified Service Organization of Part 2 Programs, will determine whether any downstream vendor, supplier, consultant, service provider or other Subcontractor is a Business Associate (generally referred to as a “Subcontractor Business Associate”) of North Sound BH-ASO. North Sound BH-ASO will 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, a Qualified Service Organization and/or a contractor to a Lawful Holder of Part 2 Information and will comply with its obligations under the applicable BAA, QSOA or agreement with a Lawful Holder of Part 2 Information and with federal law and State Law, including HIPAA, Part 2 and State Law. See Policy 2501.00: Privacy and Confidentiality of PHI.

PROCEDURES

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 creates, receives, maintains or transmits PHI when providing certain services to or performing certain functions on behalf of North Sound BH-ASO.

- 1.1 **Subcontractor.** For purposes of this policy, a Subcontractor is a Person 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 a Business Associate (like North Sound BH-ASO). 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 North Sound BH-ASO as 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.** A Subcontractor who does not create, receive, maintain or transmit PHI on behalf of North Sound BH-ASO is not a Subcontractor Business Associate of North Sound BH-ASO. For example, a landscaping company or a lawyer who only reviews contracts or policies and does not access PHI is not a Subcontractor Business Associate. Additionally, 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 payment 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; and
 - 1.3.6 Workforce of North Sound BH-ASO.

2. **Contractual Obligations.**

- 2.1 **Written Assurances.** North Sound BH-ASO 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 either as a Qualified Service Organization or through a consent or authorization by or on behalf of an Individual and, therefore, acts as a Lawful Holder of Part 2 Information, North Sound BH-ASO 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.
- 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 will 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, will 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 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;
 - 2.3.8 Report to the North Sound BH-ASO any Breach of Unsecured PHI;
 - 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 certain Disclosures of PHI;

- 2.3.13 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;
 - 2.3.14 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; 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 Acknowledges that in receiving, storing, processing or otherwise dealing with any Part 2 Information, it is fully bound by the provisions of Part 2; and
 - 2.4.2 If necessary, will resist in judicial proceedings any efforts to obtain access to patient identifying information related to substance use disorder diagnosis, treatment, or referral for treatment except as permitted by the regulations in this part.
 - 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, reimbursement of costs, more restrictive Breach notification timeframes or documentation requirements and removal of limitations of liability or increasing the limits of a liability cap. 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 from the date of its creation or the date when it was last in effect, whichever is later. 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