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North Sound Behavioral Health Administrative Services Organization, LLC

Section 2500 – Privacy: Marketing

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 # 2508.00

SUBJECT: MARKETING

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 requirements and restrictions concerning the Use and Disclosure of Protected Health Information (PHI) for Marketing purposes.

Capitalized terms have special meanings. Definitions under this policy include BAA, Financial Remuneration, Individual, Marketing, PHI and Treatment. See Policy 2502.00: Definitions for Policies Governing PHI.

POLICY

North Sound Behavioral Health Administrative Services Organization (North Sound BH-ASO) will obtain an authorization to Use or Disclose PHI for Marketing purposes, except as otherwise permitted by federal and state law, and as permitted by applicable BAAs with Upstream Covered Entities.

PROCEDURE

1. **Authorization for Marketing Generally Required.** Except as provided in this policy, North Sound BH-ASO must obtain an authorization for any Use or Disclosure of PHI for Marketing purposes, as defined below.
2. **Marketing.**
 - 2.1 **Definition.** For purposes of this policy, “Marketing” is any communication about a product or service that encourages recipients of the communication to purchase or use the product or services, subject to the exceptions described below.
 - 2.2 **Exceptions to the Definition of Marketing (No Financial Remuneration Involved).** If this exception applies, then the communication is not Marketing, and no authorization is required. A communication is not Marketing if:
 - 2.2.1 No form of Financial Remuneration (as defined below in Section 3) is to be or has been received by North Sound BH-ASO with respect to the communication; and
 - 2.2.2 The communication is made:
 - (a) For Treatment of the Individual including case management or care coordination for the Individual or to direct or recommend alternative treatments, therapies, providers or settings of care to the Individual;

- (b) To describe a health-related product or service (or payment for a health-related product or service) that is provided by, or included in a plan of benefits of, North Sound BH-ASO; or
- (c) For case management or care coordination, contacting of Individuals with information about Treatment alternatives and related functions to the extent these activities do not fall within the definition of Treatment.

2.3 **Exceptions to the Definition of Marketing (Financial Remuneration Involved).** If this exception applies, then the communication is not Marketing, and no authorization is required. To the extent Financial Remuneration has been paid to North Sound BH-ASO for the communication, a communication about a product or service that encourages recipients of the communication to purchase or use the product or service is not Marketing if the communication:

- 2.3.1 Is made to provide refill reminders or otherwise communicate about a drug or biologic that currently is being prescribed by a Health Care Provider for the Individual receiving the communication; and
- 2.3.2 Any Financial Remuneration received by North Sound BH-ASO in exchange for making the communication is reasonably related to North Sound BH-ASO's cost of making the communication.

- 3. **Definition of Financial Remuneration.** For purposes of this policy, "Financial Remuneration" means any direct or indirect payment from or on behalf of a third-party whose product or service is being described.
- 4. **Specially Protected Information.** North Sound BH-ASO Workforce will not Use or Disclose for Marketing purposes, any Part 2 Information, Sexually Transmitted Disease (STD) information, or Mental Health Information without a written authorization by the Individual or the Individual's Authorized Representative.
- 5. **Situations in Which No Authorization for Marketing Is Required.** Notwithstanding Section 1 of this policy, North Sound BH-ASO may make a Marketing communication, without authorization by the Individual or the Individual's Authorized Representative, in the form of: (a) a face-to-face communication made by North Sound BH-ASO to the Individual; or (b) a promotional gift of nominal value.
- 6. **Examples of Non-Marketing Activities.** The following are examples (although not an exclusive list) of situations that do not meet the definition of Marketing (as long as North Sound BH-ASO does not receive Financial Remuneration from a third-party for the communication):
 - 6.1 **Government-Sponsored Programs.** Communications about government-sponsored programs do not fall within the definition of Marketing. North Sound ASO is permitted to Use and Disclose PHI to communicate, for example, about eligibility for Medicaid benefits or the State Children's Health Insurance Program (SCHIP).
 - 6.2 **Health-Related Services.** Communications that are merely promoting good health and not about a specific product or service are not considered Marketing. For example, mailings concerning wellness classes, support groups and health fairs are permitted and are not considered Marketing.

- 6.3 **Newsletters.** North Sound BH-ASO may make communications in newsletter format without authorization as long as, the content of the communication does not fit the definition of Marketing.
- 6.4 **Care Coordination.** Communications about case management or care coordination or recommendations of treatment alternatives and care options, including Health Care Providers or settings of care, do not fall within the definition of Marketing.
- 6.5 **Referrals.** Health Care Providers may write a prescription or refer an Individual to a specialist for follow-up tests, because these are communications about Treatment and are not considered Marketing.

[Note: Care should be taken so that any otherwise permissible communications may not suggest the Individual has a Substance Use Disorder (SUD), mental health issue, or Sexually Transmitted Disease (STD)].

- 7. **Authorization.** If an activity constitutes Marketing and no exceptions apply, then North Sound ASO will obtain an authorization (also called a consent, release of information or ROI) for the Use and Disclosure of PHI for Marketing. An authorization to permit Uses and Disclosures of PHI for Marketing should identify Marketing as a purpose. If the Marketing involves Financial Remuneration to North Sound ASO from a third-party, then the authorization must state that remuneration is involved.
- 8. **Role as a Business Associate.**
 - 8.1 **Upstream Covered Entity's PHI.** North Sound BH-ASO will not Use or Disclose PHI created, received, maintained, or transmitted on behalf of an Upstream Covered Entity for North Sound BH-ASO's marketing purposes without an authorization and, preferably, the Upstream Covered Entity's permission.
 - 8.2 **BAA.** North Sound BH-ASO will comply with the applicable BAAs with respect to a Use or Disclose PHI created, received, maintained, or transmitted on behalf of an Upstream Covered Entity.
- 9. **Documentation.** Documentation related to Marketing will be retained for at least six (6) years.
- 10. **Related Policies.** Other policies and procedures to review that are related to this policy include:
 - 10.1 **Policy 2501.00: Privacy and Confidentiality of PHI.**
 - 10.2 **Policy 2502.00: Definitions for Policies Governing PHI.**
 - 10.3 **Policy 2521.00: Authorization for Use and Disclosure of PHI.**

ATTACHMENTS

None