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North Sound Behavioral Health Administrative Services Organization, LLC

Section 2500 – Privacy: Opportunity to Agree or Object

Authorizing Source: 45 CFR 164.510 (HIPAA); 42 CFR Part 2 (Part 2); RCW 70.02

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

POLICY # 2511.00

SUBJECT: OPPORTUNITY TO AGREE OR OBJECT

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 conditions for providing Individuals with an opportunity to agree or object to the Use or Disclosure of Protected Health Information (PHI) to persons involved with the Individual's care or payment related to the Individual's care and for notification purposes.

Capitalized terms have specific meanings. Defined terms in this policy include Business Associate Agreement (BAA), Health Care, Individual, Mental Health Information, Part 2 Information, Payment, PHI, Sexually Transmitted Disease (STD), Upstream Covered Entity and Workforce. See Policy 2502.00: Definitions for Policies Governing PHI.

POLICY

North Sound Behavioral Health Administrative Services Organization (North Sound BH-ASO) may Use and Disclose PHI for notification purposes and may Disclose PHI to others involved in the Individual's care or payment related to the Individual's care, in accordance with this policy and as permitted by law. To the extent North Sound BH-ASO is acting as a Business Associate of an Upstream Covered Entity, North Sound BH-ASO will make a Use and Disclosure of PHI under this policy only if permitted by the applicable Business Associate Agreement (BAA). **The Uses and Disclosures of PHI after providing the Individual with the opportunity to agree or object do not include Part 2 Information, Mental Health Information, or Sexually Transmitted Disease (STD) information** except as permitted in Section 3 of this policy.

PROCEDURE

1. **Permitted Uses and Disclosures of PHI with Opportunity to Agree or Object.**

- 1.1 **Immediate Family Members and Close Friends.** In accordance with Section 4 of this policy, Workforce members (without a written authorization) may Disclose PHI, excluding Part 2 Information, Mental Health Information and STD information, to an Individual's immediate family member, including a state registered domestic partner or a person with whom the Individual is known to have a close personal relationship, as long as the PHI Disclosed is directly relevant to that person's involvement with the Individual's Health Care or Payment related to the Individual's Health Care and as long as in accordance with good medical or other professional practice and when acting in the best interests of the Individual. *Note: Workforce member may **not** Disclose Part 2 Information, Mental Health Information or STD information*

under this section. Prior to any Disclosure, the Workforce member shall provide the Individual with the opportunity to agree or object, as provided in Section 4 of this policy. For example, and as more specifically described in Section 4 of this policy, if the Individual is present or is otherwise available prior to the Disclosure of PHI and has the capacity to make Health Care decisions, then a Workforce member may discuss this information with the family and those other persons if the Individual agrees or, when given the opportunity, does not object. If the Individual is not present or it is impracticable because of emergency circumstances or the Individual's incapacity to ask the Individual about discussing the Individual's Health Care or Payment with a family member or other person, then a Workforce member may share this information with the person when, in exercising professional judgment, the Workforce member determines doing so would be in the best interest of the Individual.

- 1.2 **Disclosures for Notification (including Identification).** A Workforce member may Use or Disclose (without a written authorization) PHI for notification purposes (including identification of an unidentified Individual) under the following circumstances:
 - 1.2.1 The Disclosure is to notify, or assist in notifying, an immediate family member, including a state registered domestic partner of the Individual or an Authorized Representative of the Individual, of the Individual's:
 - (a) Location;
 - (b) General condition; or
 - (c) Death (for example, to notify a family member who could help identify the Individual).
 - 1.2.2 Prior to the Use or Disclosure of PHI, the Workforce member must provide the Individual with an opportunity to agree or object, as provided in Section 4 and the Workforce member must limit the Use or Disclosure in accordance with any objection.
- 1.3 **Limited Disclosure.** When Disclosing PHI to persons involved in the Individual's care, Disclosures of PHI should be limited to PHI about the current circumstances. In addition, should Workforce members believe, in the exercise of their professional judgment, a Disclosure of PHI might cause the Individual serious harm, the Workforce member may withhold PHI from the person involved in the Individual's care. Workforce members should use their professional judgment about the scope of the person's involvement in the Individual's Health Care – both to the length of time of that person's involvement and to the depth of Disclosure of PHI that is appropriate in a particular circumstance.
2. **Uses and Disclosures of PHI for Disaster Relief Purposes.** A Workforce member may Use PHI or Disclose PHI to an authorized disaster relief organization (e.g., the American Red Cross) for the purpose of coordinating with the entity the Uses or Disclosures of PHI permitted under Section 1.2 of this policy. Any Disclosure for disaster relief purposes of PHI is subject to the following conditions:
 - 2.1 **Disaster Relief Organization.** The disaster relief organization must be a public or private entity authorized by law or by its charter to assist in disaster relief efforts;
 - 2.2 **Privacy Officer's Approval.** The Workforce member must obtain advance approval by the Privacy Officer, unless the circumstances surrounding the disaster do not reasonably allow the Workforce member to obtain approval prior to the Disclosure otherwise permitted under this

section, in which case the Workforce member will notify the Privacy Officer of the Disclosure as soon as reasonably possible; and

2.3 **Opportunity to Agree or Object.** The requirements of Section 4 of this policy apply to the Disclosure of PHI to the extent the Workforce member determines (in the exercise of professional judgment) the requirements do not interfere with the ability to respond to the emergency circumstances.

3. **Uses and Disclosures of PHI when the Individual is Deceased.** If an Individual is deceased, then a Workforce member may Disclose PHI, including Mental Health Information, to the Individual's immediate family member, an Authorized Representative or a person with whom the Individual had a close personal relationship prior to the Individual's death, as long as:

3.1 **Limited and Relevant.** The PHI is limited to that relevant to the recipient's involvement; and

3.2 **Individual Preference.** The Disclosure is not inconsistent with any prior expressed preference of the Individual or the Individual's Authorized Representative that is known to North Sound BH-ASO.

4. **Provision of the Opportunity to Agree or Object.**

4.1 **Use and Disclosure of PHI with Competent Individual Present.** If the Individual is present for or otherwise available prior to, a Use or Disclosure of PHI permitted under this policy and has the capacity to make health care decisions, then the Workforce member may Use or Disclose the PHI if the Workforce member:

4.1.1 Obtains the Individual's agreement;

4.1.2 Provides the Individual with the opportunity to object to the Disclosure, and the Individual does not express an objection; or

4.1.3 Reasonably infers from the circumstances, based on the exercise of professional judgment, the Individual does not object to the Disclosure (for example, the Individual previously has authorized other Disclosure of PHI to his spouse, the spouse has continued to be actively involved in the Individual's care and the Workforce member has no reason to suspect any change in the Individual's desire for his spouse to have continued involvement and access to PHI about the Individual).

4.2 **Individual Absent or Incapacitated.** If the Workforce member cannot practicably provide the Individual an opportunity to agree or object to the Use or Disclosure of PHI for the purposes set forth in this policy because of the Individual's incapacity or emergency circumstances, then the Workforce member will exercise **professional judgment** to determine whether the disclosure is in the **best interests of the Individual**. If the Workforce member determines Disclosure is in the best interests of the Individual, the Workforce member may make the Disclosure. The Disclosure will be **limited to the PHI that is directly relevant** to the receiving person's involvement with the Individual's care or payment related to the Individual's health care or is needed for notification purposes.

5. **Documentation.** Documentation shall be retained at least six (6) years and shall include:

5.1 **Policy 2511.00: Opportunity to Agree and Object.**

5.2 **Other related documentation.**

6. **Related Policies.** Other policies and procedures to review that are related to this policy:

6.1 **Policy 2501.00: Privacy and Confidentiality for PHI.**

6.2 **Policy 2502.00: Definitions for Policies Governing PHI.**

6.3 **Policy 2506.00: Documentation.**

6.4 **Policy 2521.00: Authorizations for Use and Disclosures of PHI.**

ATTACHMENTS

None