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North Sound Behavioral Health Administrative Services Organization, LLC

Section 2500 – Privacy: Right to Access Protected Health Information (PHI)

Authorizing Source: 45 CFR 164.524 (HIPAA); 42 CFR Part 2 (Part 2); RCW 70.02

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

POLICY # 2514.00

SUBJECT: RIGHT TO ACCESS PROTECTED HEALTH INFORMATION (PHI)

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), this policy sets out a process to provide and protect an Individual's right to access certain information maintained by North Sound Behavioral Health Administrative Services Organization (North Sound BH-ASO). North Sound BH-ASO has both direct obligations as Required by Law and contractual obligations to provide access to PHI.

Capitalized terms in this policy have specific meanings. Definitions under this policy include Authorized Representative, Business Associate, Business Associate Agreement (BAA), Designated Record Set, Individual, Part 2, Part 2 Information, Part 2 Program, Pre-Transition PHI, Protected Health Information (PHI), Upstream Covered Entity and Workforce. See Policy 2502.00: Definitions for Policies Governing PHI.

POLICY

Upon request, North Sound BH-ASO will provide an Individual, the Individual's Authorized Representative or the Upstream Covered Entity (the Requestor) access to PHI about the Individual that is maintained by North Sound BH-ASO for as long as North Sound BH-ASO maintains the PHI, subject to limited exceptions.

PROCEDURE

1. **Access Obligations.**

1.1 **As a Business Associate.** To the extent that North Sound BH-ASO is acting as a Business Associate of an Upstream Covered Entity, North Sound BH-ASO will provide access to PHI under this policy in accordance with the applicable BAA. For example, a BAA may require North Sound BH-ASO to provide the PHI to the Upstream Covered Entity (so that the Upstream Covered Entity can provide access to PHI to the Individual) or to provide the PHI directly to an Individual.

1.2 **As a Former Covered Entity.** With respect to Pre-Transition PHI, North Sound BH-ASO will provide access to PHI under this policy as required of a Covered Entity under HIPAA and other laws.

2. **Requests.** The Requestor may request access to PHI about the Individual that is maintained by North Sound BH-ASO in a Designated Record Set.

2.1 **Written Requests Only.** All requests must be in writing. North Sound BH-ASO prefers the use of its Access Request Form <http://nsbhaso.org/for-providers/forms>; however, North Sound BH-

ASO will honor any written requests that comply with Section 2.2 of this policy and Policy 2524.00: Verification of Identity. Workforce will provide any Requestor with assistance in completing the request. This requirement is not designed to restrict, or introduce barriers or burdens to, an Individual's right of access. Further, an Upstream Covered Entity may request access to PHI that is maintained by North Sound BH-ASO, as provided in the applicable Business Associate Agreement.

2.2 **Receiving Requests.** Requests for access will be promptly forwarded to the Privacy Officer or the Privacy Officer's designee. The Privacy Officer is responsible for processing requests as provided in this policy.

2.3 **Content of a Valid Request.** For North Sound BH-ASO to process a request for access to PHI, the written request must contain at a minimum:

- 2.3.1 The Individual's first and last name, middle initial, address, date of birth and the last four digits of the Individual's Social Security Number;
- 2.3.2 Identification of the specific PHI to be accessed;
- 2.3.3 The manner in which access is requested (for example, whether the requested access is by personal on-site inspection or by providing copies of the PHI);
- 2.3.4 The preferred form and format of information requested, such as paper or electronic (including on compact disk (CD) or Universal Serial Bus (USB) drive or by electronic submission);
- 2.3.5 Who is to receive the access (i.e., the Individual, an Authorized Representative, the Upstream Covered Entity or a third-party designated by the Requestor);
- 2.3.6 The name of the person making the request (i.e., the Individual, an Authorized Representative or the Upstream Covered Entity) and if a person other than the Individual, a description of the person's authority to make the request. A copy of a government issued photo identification card is preferable, but not required, to help verify identity and authority. See Policy 2524.00: Verification of Identity; and
- 2.3.7 Additional information reasonably necessary to accommodate the access request.

2.3.8 **No Requirement for Reason for a Request.** Workforce shall not require the Requestor to provide a reason for the request for access.

3. **Processing Requests for Access.**

3.1 **Responsibility.** The Privacy Officer is responsible for ensuring that Requestors obtain appropriate access to PHI under this policy.

3.2 **Verification of Identity and Authority of Requestor.** The Privacy Officer will verify that the access request is in writing and contains the required information. (See Section 2.3 of this policy.) The Privacy Officer may call the Requestor to clarify the request. The Privacy Officer will verify the identity and authority of the Requestor (for example, by verifying the Requestor's driver's license or other government-issued photo identification), unless the Requestor already is known to the Privacy Officer or responsible Workforce member who is assisting the Privacy Officer to process the request for access. North Sound BH-ASO will not require a Requestor to request a record in person, as doing so may pose an unreasonable burden on the Requestor. See Policy 2524.00: Verification of Identity.

3.3 **Review and Determination.** The Privacy Officer, who may consult with an appropriate behavioral health provider or qualified specialist, will review the request and take one of the following actions:

- 3.3.1 Grant the request for access;
- 3.3.2 Deny the request for access, with no option to review;
- 3.3.3 Deny the request in part, with no option to review and grant the request in part;
- 3.3.4 Deny the request for access, with an option to review; or
- 3.3.5 Deny the request in part, with an option to review and grant the request in part.

4. **Granting Access.**

- 4.1 **Provision of Access.** If the request is approved, then North Sound BH-ASO will provide access to the specified PHI. The Privacy Officer will verify the Requestor is the Individual, the Individual's Authorized Representative or an Upstream Covered Entity and how the Requestor prefers to have access (for example, in person, through paper or electronic copies of information, or with a summary). This may include contacting the Requestor if the written request is not clear. Duplicative PHI need not be provided as part of the right of access. The Privacy Officer shall verify the Requestor is receiving the access in the form and manner reasonably requested, in compliance with this policy.
- 4.2 **Access through Inspection.** Access through inspection will be provided during regular business hours at mutually convenient times.
- 4.3 **Paper Copies.** Access through paper copies will be sent to the Requestor by first-class mail through the U.S. Postal Service at the address specified by the Requestor or may be picked up by the Requestor. North Sound BH-ASO will not require, but may permit if requested by the Requestor, a Requestor to pick up PHI.
- 4.4 **Electronic Copies.**
 - 4.4.1 Access through electronic format will be provided in the format requested by the Requestor, if readily producible by North Sound BH-ASO. If not readily producible, then the Privacy Officer will contact the Requestor to discuss a mutually agreeable form and format. To the extent the PHI is maintained only as a paper record and the request is made for an electronic copy, North Sound BH-ASO will provide a scanned electronic copy of the PHI.
 - 4.4.2 Access to electronic PHI shall be provided in a secure manner. For example, an encrypted CD or USB drive may be sent by U.S. Mail. Encrypted electronic PHI may be transmitted to an email address. North Sound BH-ASO may transmit unencrypted electronic PHI only as specifically designated by the Requestor after the Requestor is informed this delivery of unencrypted PHI over the Internet presents a risk the PHI could be viewed by an unauthorized person.
- 4.5 **Explanations.** Upon request by the Requestor, the Privacy Officer shall provide an explanation of any code or abbreviation used in the PHI that is subject to the right of access.
- 4.6 **Access When Certain PHI is Not Subject to Access.** North Sound BH-ASO will make reasonable efforts to redact any PHI that is not subject to access and allow access to any remaining PHI.
- 4.7 **Access by a Third Party.** A Requestor may request North Sound BH-ASO to transmit a copy of PHI subject to access directly to an entity or person identified by the Requestor (and that person or entity is not the Individual or Authorized Representative).
 - 4.7.1 In this situation, in addition to the requirements under Sections 1, 2, 3 and 4 of this policy, the Privacy Officer shall verify the request is: (a) in writing and signed by the Individual or Authorized Representative; (b) identifies the designated third-party; (c)

identifies where to send a copy of the PHI; and (d) meets the other requirements under Section 2.3 of this policy.

- 4.7.2 Once the request meets these requirements, the Privacy Officer will send the requested PHI to the third-party (instead of the Requestor) and will charge the Requestor no more than the fees identified in Section 6 of this policy.
- 4.7.3 This Section 4.7 of this policy is limited to requests submitted by Individuals and their Authorized Representatives and requests that a third party (including an Upstream Covered Entity) submits on behalf of an Individual or Authorized Representative. It does not apply to requests that are initiated by third parties that are not on behalf of an Individual or Authorized Representative or Upstream Covered Entity.
- 4.7.4 **NOTE:** North Sound BH-ASO may not provide Part 2 Information to a designated third-party under this section unless the Requestor also provides a valid authorization.
- 4.7.5 The maximum charge under Section 6.3 of this policy for access requests will apply.

4.8 **Important Note about Part 2 Information.**

- 4.8.1 Federal law does not prohibit North Sound BH-ASO or any program covered by Part 2 from giving an Individual access to PHI about the Individual.
- 4.8.2 Any Part 2 Information that is being accessed should be accompanied by one of the following notices:

Notice

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 §2.31). The federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at §§2.12(c)(5) and 2.65

OR

42 CFR Part 2 prohibits unauthorized disclosure of these records.

- 4.8.3 The restriction on the Use of any Part 2 Information to initiate or substantiate any criminal charges against an Individual or to conduct any criminal investigation of an Individual applies to any person who obtains Part 2 Information from a Part 2 Program, regardless of the status of the person or whether the Part 2 Information was obtained in compliance with Part 2. This restriction on use bars, among other things, introduction of Part 2 Information as evidence in a criminal proceeding and any other

Use of the Part 2 Information to investigate or prosecute an Individual with respect to a suspected crime.

- 4.9 **Important Note about Sexually Transmitted Diseases (STD) Information.** Any Disclosure in reliance on an authorization of PHI containing information related to STDs must include the written notice described below. North Sound BH-ASO may give this notice orally, as long as, North Sound BH-ASO provides a written notice within ten (10) days.

Notice

This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written authorization of the person to whom it pertains, or as otherwise permitted by state or federal law. A general authorization for the release of medical or other information is not sufficient for this purpose.

- 4.10 **Notification of Fees.** The Privacy Officer shall inform the Requestor of the amount to be charged prior to granting the request, or as part of the notification of the granting of the request. North Sound BH-ASO may charge no more than the fees identified in Section 6 of this policy.

5. **Denial of Request for Access.** North Sound BH-ASO may deny a request for access to PHI only as provided in this Section 5 of this policy.

- 5.1 **Grounds for Denial without Opportunity for Review.** North Sound BH-ASO may deny a Requestor access to PHI without opportunity for review in the circumstances described below. Note: If the Requestor is an Upstream Covered Entity, then North Sound BH-ASO shall comply with the applicable BAA.

- 5.1.1 The PHI was compiled in reasonable anticipation of, or for use in, a civil, criminal or administrative action or proceeding (for example, litigation).
- 5.1.2 The PHI was obtained from someone other than a Health Care Provider (for example, a family member) under a promise of confidentiality and access would be reasonably likely to reveal the source of the information.
- 5.1.3 The PHI consists of Psychotherapy Notes; however, North Sound BH-ASO will not have any Psychotherapy Notes.

- 5.2 **Reviewable Grounds for Denial with Opportunity for Review.** North Sound BH-ASO may deny a Requestor access to the requested PHI, giving the Individual or the Individual's Authorized Representative an opportunity for review, in the circumstances described below. **Note:** If the Requestor is an Upstream Covered Entity, then North Sound BH-ASO shall comply with its Business Associate Agreement.

- 5.2.1 An appropriate licensed behavioral Health Care Provider has determined the access is reasonably likely to endanger the life or physical safety of the Individual or another person. Concerns the Individual may not understand or may be upset by the

information are not grounds for denial if the Individual's life or physical safety is not at risk.

- 5.2.2 The PHI makes reference to another person (who is not a Health Care Provider) and a licensed health care professional has determined the access requested is reasonably likely to cause substantial harm to that other person.
- 5.2.3 The request for access is made by the Individual's Authorized Representative and a licensed health care professional has determined access by the Authorized Representative is reasonably likely to cause substantial harm to the Individual or another person.
- 5.4 **Temporary Suspension of Access – Non-reviewable Grounds.** Access to PHI that was created or obtained by North Sound BH-ASO in the course of appropriately approved Research that includes Treatment may be suspended temporarily for as long as the Research is in progress. This suspension applies only if the Individual (or Authorized Representative) has agreed to the denial of access when consenting to participate in the Research that includes Treatment and North Sound BH-ASO has informed the Individual (or Authorized Representative) the right of access will be reinstated upon completion of the Research.
- 5.5 **Communicating a Denial of Access.** When access to PHI is denied, the Privacy Officer will provide a written denial to the Requestor, preferably using the Letter Denying Access to Health Information Form <http://nsbhaso.org/for-providers/forms> . The denial will be in plain language and will include:
 - 5.5.1 The date of the request;
 - 5.5.2 The basis for the denial;
 - 5.5.3 Whether the Requestor has the right to have the denial reviewed and a description of how the Requestor may exercise any review rights;
 - 5.5.4 If applicable, a statement the North Sound BH-ASO does not maintain a record of the information requested and the name and address, if known, of the Health Care Provider who maintains the record; and
 - 5.5.5 A description of the complaint procedures available to the Requestor with North Sound BH-ASO and the Secretary of the Department of Health and Human Services. The description must include the name (or title) and telephone number of the contact person or office designated by North Sound BH-ASO.
- 5.6 **Review of Denial for Reviewable Grounds.** If a denial is made under Section 5.2 of this policy (reviewable grounds for denial) and the Requestor requests review of the denial, then:
 - 5.6.1 The request and denial will be reviewed promptly by a licensed health care professional who is selected by the Requestor and who was not directly involved in the original decision to deny access;
 - 5.6.2 The reviewing licensed health care professional will determine whether to provide or deny access; and
 - 5.6.3 The Privacy Officer promptly will provide to the Requestor a written notice of the reviewer's determination.
- 5.7 **Making Other Information Accessible.** If a denial is made under Section 5 of this policy, then the Privacy Officer must provide access, in accordance with Section 4 of this policy, to any PHI that is not subject to grounds for denial. For example, the Privacy Officer may need to redact

the PHI for which North Sound BH-ASO is denying access explaining why the information was redacted but make the remainder of the record available.

6. **Fees.**

6.1 **Reasonable Cost-Based Fees.** Only reasonable cost-based fees may be charged for copies of PHI or summaries and explanations. These fees may include only the costs of:

- 6.1.1 Supplies (such as paper, computer disks and toner);
- 6.1.2 Labor for creating and delivering paper or electronic copies;
- 6.1.3 Postage (if a mailed copy was requested); and
- 6.1.4 Preparation of an explanation or summary of the PHI based on actual time spent preparing the summary or explanation (if the Requester agrees to receive a summary).

6.2 **Prohibited Fees.** North Sound BH-ASO will not charge any fees for: (a) reviewing the request for access; (b) locating, retrieving or identifying the requested information; (c) verifying the identity and authority of the Requestor; (d) confirming the correct information is being accessed; or (e) segregating, compiling or otherwise taking steps to comply with the access requirements, retrieving or handling the information, or for processing the request.

6.3 **Maximum Charge.** North Sound BH-ASO will charge the lesser of the maximum per-page amounts recognized by the State of Washington and the reasonable cost-based fees described in Section 6.1 of this policy. The amounts charged under this policy may differ from the amounts charged for disclosures of PHI for other purposes, such as by authorization, discovery requests and subpoenas.

6.4 **Documentation of Fees.** The Privacy Officer is responsible for maintaining documentation supporting charged fees represent North Sound BH-ASO's actual costs. This may include documentation of the average time it takes per page to perform copying tasks (such as burning a CD or copying a page) and the average hourly rate of the Workforce members or contractors who perform copying tasks.

7. **Timing for Response to Requests.**

7.1 **Action Within 15 Days.** The Privacy Officer will act on a request within fifteen (15) working days by either: (a) granting the request; (b) denying the request; (c) granting in part and denying in part the request; or (d) informing the Requestor of a delay.

7.2 **Delay in Response to a Request.** If the requested PHI is in use or unusual circumstances have delayed handling the request, then the Privacy Officer shall provide the Requestor with a written statement of reasons for the delay and the earliest date, not later than twenty-one (21) working days after receiving the request, by which North Sound BH-ASO's action on the request will be completed. North Sound BH-ASO must grant or deny access within the extended time period.

8. **Logging Requests and Responses.** All documentation relating to the request and North Sound BH-ASO's actions shall be appropriately logged in the Request for Access to PHI log.

9. **Resulting Request for Amendment of Records.** When the review of PHI results in a request for an amendment of the PHI, refer to Policy 2515: Right to Amend PHI.

10. **Documentation.** Documentation relating to access shall be retained at least six (6) years. Retention requirements include:
 - 10.1 **Policies, procedures and processes for right of access to PHI.**
 - 10.2 **Requests for access.**
 - 10.3 **Responses to requests** including response letters, statements of disagreement, letters of denial, rebuttal statements and notifications.

11. **Related Policies.** Other policies and procedures to review that are related to this policy:
 - 11.1 **Policy 2501.00: Privacy and Confidentiality.**
 - 11.2 **Policy 2502.00: Definitions for Policies Governing PHI.**
 - 11.3 **Policy 2515.00: Right to Amend PHI.**
 - 11.4 **Policy 2524.00: Verification of Identity.**

ATTACHMENTS

None