

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: 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: 2/25/2025      Signature:

### **POLICY # 2514.00**

### **SUBJECT: RIGHT TO ACCESS PROTECTED HEALTH INFORMATION (PHI)**

#### **PURPOSE**

In compliance with HIPAA, Part 2, Washington Law, any applicable Business Associate Agreements (BAAs) and any applicable Qualified Service Organization Agreements (QSOAs), 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, Privacy Officer, Protected Health Information (PHI), Upstream Covered Entity and Workforce. See Policy 2502.00: Definitions for Policies Governing Protected Health Information (PHI).

#### **POLICY**

Upon request, North Sound BH-ASO will provide an Individual, the Individual's Authorized Representative or the Upstream Covered Entity (each, a 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. North Sound BH-ASO will comply with applicable BAAs with Upstream Covered Entities with respect to providing access to PHI.

#### **PROCEDURES**

##### **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 in a Designated Record Set 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 maintained in a Designated Record Set 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.
  - 2.2 **Receiving Requests.** Requests for access will be promptly forwarded to the Privacy Officer. 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.
    - 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 (e.g., the Individual, an Authorized Representative or the Upstream Covered Entity);
    - 2.3.6 The name of the Person making the request (i.e., the Individual, an Authorized Representative or the Upstream Covered Entity). If the Requestor is an Authorized Representative, 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 do 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 verifying 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, for in-person requests, 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 to the 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 will 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. There will be no charge for any Requestor's personal inspection of PHI.
- 4.3 **Paper Copies.** Access through paper copies is provided based on the Requestor's request or preference, either: being sent to the Requestor by first-class mail through the U.S. Postal Service at the address specified by the Requestor; or being 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 provides a scanned electronic copy of the PHI.
  - 4.4.2 Access to electronic PHI is 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 provides 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 makes reasonable efforts to redact any PHI that is not subject to access and allow access to any remaining PHI.
- 4.7 **Access Directed to a Third Party.** North Sound BH-ASO does not maintain an electronic health record. Therefore, if an Individual or Authorized Representative requests that PHI be disclosed to a third party named by the Individual or Authorized Representative, then a valid authorization by the Individual is required. For purposes of this policy, an electronic health record is an electronic record of health-related information on an Individual that is created, gathered, managed and consulted by authorized Health Care clinicians and staff. See Policy 2521.00: Authorization for Use and Disclosure of Protected Health Information (PHI). [See 45 C.F.R. § 164.524.].
- 4.8 **Important Note about Part 2 Information.**
  - 4.8.1 Federal law does not prohibit North Sound BH-ASO or any Part 2 Program from giving an Individual access to PHI about the Individual.
  - 4.8.2 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 will inform the Requestor of the amount to be charged prior to granting the access request, or as part of the notification of the granting of the request, and give the Requestor an opportunity to withdraw or modify the request if the Requestor does not agree to the fees. 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 an opportunity for review in any of the circumstances described below. Note: If the Requestor is an Upstream Covered Entity, then North Sound BH-ASO will 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 will comply with its BAA.

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) 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 at <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 requested record available.

## 6. **Fees.**

- 6.1 **Reasonable Cost-Based Fees.** Except as provided in Section 6.4, 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 requests or 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.** Except as provided in Section 6.4, 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 **Fees for Providing Access to a Third Party.** For access to PHI provided to a third party as directed by an Individual or Authorized Representative, North Sound BH-ASO may charge up to the maximum per-page amounts recognized by the State of Washington. This is unlikely but may occur, for example, if requested by an Upstream Covered Entity.

6.5 **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 Subcontractor Business Associates 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 will 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 will 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 Protected Health Information (PHI).

10. **Documentation.** Documentation relating to access will be retained at least six (6) years from the date of its creation or the date when it was last in effect, whichever is later. 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 of Protected Health Information (PHI).**
  - 11.2 **Policy 2502.00: Definitions for Policies Governing Protected Health Information (PHI).**
  - 11.3 **Policy 2515.00: Right to Amend Protected Health Information (PHI).**
  - 11.4 **Policy 2524.00: Verification of Identity.**

#### **ATTACHMENTS**

None