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North Sound Behavioral Health Administrative Services Organization, LLC

Section 2500 – Privacy: Right to Request Restrictions on Uses and Disclosures of
Protected Health Information (PHI)

Authorizing Source: 45 CFR 164.522 (HIPAA); 42 CFR Part 2 (Part 2); RCW 70.02

Approved by: Executive Director Date: 08/11/2020 Signature:

POLICY # 2518.00

SUBJECT: RIGHT TO REQUEST RESTRICTIONS ON USES AND DISCLOSURES OF 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 the process to provide and protect an Individual's right to request restrictions on certain Uses and Disclosures of Protected Health Information (PHI).

North Sound Behavioral Health Administrative Services Organization (North Sound BH-ASO) has both direct obligations Required by Law, in its role as a former Covered Entity, and contractual obligations, in its role as a Business Associate of Upstream Covered Entities, to provide additional privacy restrictions.

Capitalized terms have special meanings. Definitions under this policy include Authorized Representative, Business Associate, Business Associate Agreement (BAA), Health Care Operations, Individual, Payment, PHI, Pre-Transition PHI, Required by Law, Treatment and Upstream Covered Entities. See Policy 2502:00: Definitions for Policies Governing PHI.

POLICY

North Sound BH-ASO will consider all requests by an Individual, an Individual's Authorized Representative or an Upstream Covered Entity (the Requestor) for restrictions on the Uses and Disclosures of PHI about the Individual for purposes of Treatment, Payment and Health Care Operations and for Disclosures to an Individual's relatives, family members, close friends and other persons involved in the Individual's care, or Payment for care, or for notification purposes. North Sound BH-ASO will comply with requests when required to do so and otherwise will make its own determinations in response to a request. North Sound BH-ASO will implement any restrictions that are Required by Law or to which it agrees or to which it is required by a BAA unless otherwise prohibited by law.

PROCEDURE

1. Restriction Obligations.

1.1 **As a Business Associate.** To the extent North Sound BH-ASO is acting as a Business Associate of an Upstream Covered Entity, North Sound BH-ASO will implement restrictions in accordance with the applicable BAA.

- 1.2 **As a former Covered Entity.** With respect to Pre-Transition PHI, North Sound BH-ASO will implement restrictions as required of a Covered Entity in accordance with HIPAA and other laws.
2. **Requests for Restrictions.** Requests for restrictions must be in writing. North Sound BH-ASO will honor any written requests that comply with this policy. Workforce will provide any Requestor with assistance in completing the request, as needed.
3. **Receiving Requests.** Requests for restrictions will be promptly forwarded to the Privacy Officer. The Privacy Officer is responsible for making the determinations required below and for managing communications.
4. **Verification of Identity and Authority of Requestor.** Upon receiving the request, the Privacy Officer will verify the identity and authority of the Requestor as an Individual, the Individual's Authorized Representative or an Upstream Covered Entity. See Policy 2524.00: Verification of Identity and Authority.
5. **Processing Requests.** Unless Required by Law to agree to a restriction, the Privacy Officer will decide whether or not to grant the request and will inform the Requestor of the decision.
 - 5.1 **Discretion over Restriction.** The Privacy Officer is not required to agree to the request, except under the circumstances described in Section 5.2 or Section 5.3 of this policy. North Sound BH-ASO reserves the right to agree to restrictions that North Sound BH-ASO, in its sole judgment, determines to be in the best interests of the Individual with respect to Pre-Transition PHI or as provided in the applicable BAA. Except when the record is updated while the Individual is present or on the telephone, a written response to an Individual's request for restrictions on the Use and Disclosure of PHI should be sent to the Individual within a reasonable period of time. The response should indicate whether or not the request was accepted and, if not, an explanation should be included with the response. See also Section 7 below for Denial of Restrictions.
 - 5.2 **Required Restriction for Out-of-Pocket Payments.** The Privacy Officer must grant a request to restrict Disclosures to a Health Plan for Payment or Health Care Operations (unless the Disclosure is Required by Law), if the PHI pertains solely to a health care item or service for which the Individual (or person other than the Health Plan) has paid for in full (that is, out-of-pocket).
 - 5.3 **Required Restrictions under BAAs.** The Privacy Officer must grant a request for restrictions by an Upstream Covered Entity if so required by the applicable BAA.
 - 5.4 **Identifying Difficulties.** North Sound BH-ASO will discuss with the Requestor the potential difficulties that are inherent in granting restrictions.
6. **Agreement to Restriction.** If the Privacy Officer agrees to the request for a restriction on Use and Disclosure of PHI, the following guidelines shall apply:
 - 6.1 **Limited Restriction.** The Privacy Officer should make good faith efforts to limit any restriction to the minimum necessary to accomplish the purposes of the requested restriction.
 - 6.2 **Notification and Documentation.** The Privacy Officer will make appropriate notations in the Individual's record and will "flag" the record with the approved restrictions. The Privacy Officer also will communicate the decision to the appropriate Workforce, Subcontractor Business

Associates and other departments as necessary. The Privacy Officer also may direct the Requestor to the Individual's Health Care Provider(s) with respect to the request. The Privacy Officer will have requests and responses to the requests appropriately documented in the Individual's record.

- 6.3 **Emergency Situations.** Workforce members will not Use or Disclose PHI in a manner inconsistent with the Individual's restrictions unless the Individual is in need of emergency Treatment. When the Individual requires or reasonably appears to require emergency Treatment and restricted PHI is needed to provide the Treatment, North Sound BH-ASO will Disclose to the Individual's treating Health Care Provider the PHI that is required for the Treatment and will direct the Health Care Provider that any further Uses or Disclosures of the restricted PHI are prohibited.
- 6.4 **Requests for Restricted Information.** In non-emergency situations (see Section 6.3 of this policy for emergency situations), when North Sound BH-ASO receives a request for restricted PHI that reasonably appears to be required for appropriate Treatment, North Sound BH-ASO may attempt to locate and discuss with the Requestor the need to send the PHI and attempt to obtain the Requestor's agreement to do so. The Requestor's agreement or disagreement to the release will be documented. If the Requestor refuses to permit North Sound BH-ASO from disclosing the PHI, North Sound BH-ASO may communicate to the Individual's treating Health Care Provider that portions of the Individual's PHI are restricted and are not being Disclosed. This communication should not Disclose the restricted information itself.

7. **Denial of Restriction.** In the event the Privacy Officer denies the request, the Privacy Officer will provide written notice of the denial to the Requestor and include an explanation as to why the request was denied.

8. **Termination of the Restriction.** The Privacy Officer may terminate a restriction in the following situations:

- 8.1 **Written Agreement or Request.** The Individual or when permissible the Authorized Representative, agrees to or requests the termination in writing;
- 8.2 **Oral Agreement or Request.** The Individual or when permissible the Authorized Representative, orally agrees to the termination and the oral agreement is documented by the Privacy Officer in the Individual's record;
- 8.3 **Instructions by Upstream Covered Entity.** An Upstream Covered Entity instructs North South BH-ASO to terminate a restriction that it initially requested, as long as consistent with the applicable Business Associate Agreement; or
- 8.4 **North Sound BH-ASO Termination.** The Privacy Officer informs the Individual or when permissible the Authorized Representative, the restriction is being terminated in which case:
- 8.4.1 This termination is effective only for PHI Disclosed after the Privacy Officer has informed the Individual or when permissible the Authorized Representative, of the termination; and
- 8.4.2 Is not effective for requests granted under Section 5.2 of this policy, which relate to required restrictions.

9. **Documentation.** If the Privacy Officer agrees to a restriction, then the Privacy Officer will document the restriction in electronic or written form. The documentation will be retained as long as the

restriction is in effect and for a period of at least six (6) years after the restriction ends. Other documentation retention requirements include:

- 8.1 **Policies and procedures** for restrictions on the right to request Uses and Disclosures of PHI.
- 8.2 **Restrictions** granted and denied.
- 8.3 **Terminations.**
- 8.4 **Requests** for Restrictions.

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

- 10.1 **Policy 2501.00: Privacy and Confidentiality.**
- 10.2 **Policy 2502.00: Definitions for Policies Governing PHI.**
- 10.3 **Policy 2506.00: Documentation.**
- 10.4 **Policy 2507.00: Subcontractor Business Associates (Downstream).**
- 10.5 **Policy 2524.00: Verification of Identity and Authority.**

ATTACHMENTS

None