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North Sound Behavioral Health Administrative Services Organization, LLC

Section 2500 – Privacy: Uses and Disclosure of Protected Health Information (PHI)

Authorizing Source: 45 CFR 164 (HIPAA); 42 CFR Part 2 (Part 2); RCW 70.02

Approved by: Executive Director Date: 12/23/2024 Signature:

POLICY # 2522.00

SUBJECT: USES AND DISCLOSURE OF PROTECTED HEALTH INFORMATION (PHI)

PURPOSE

In compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Part 2, State Law and any applicable Business Associate Agreements (BAAs) and Qualified Service Organization Agreements (QSOAs) with Upstream Covered Entities, this policy sets out the prohibited, permissible and required Uses and Disclosures of Protected Health Information (PHI), including Part 2 Information, Mental Health Information and Sexually Transmitted Disease (STD) information. These laws are intended to safeguard sensitive health data and permit Use and Disclosure of PHI only for appropriate purposes or with express authorization by or on behalf of the Individual.

Capitalized terms in this policy have specific meanings. Definitions under this policy include Authorized Representative, Business Associate, Business Associate Agreement (BAA), Disclosure or Disclose, Health Care Operations, Individual, Mental Health Information, Part 2, Part 2 Information, Part 2 Program, Payment, PHI, Pre-Transition PHI, Public Health, Qualified Service Organization Agreement (QSOA), Required by Law, Research, STD, Subcontractor Business Associate, Transition Date, Treatment, Upstream Covered Entity, Use, Vulnerable Adult and Workforce. See Policy 2502.00: Definitions for Policies Governing Protected Health Information (PHI).

POLICY

North Sound Behavioral Health-Administrative Services Organization (North Sound BH-ASO) recognizes the importance of, and is committed to protecting, the privacy of PHI, particularly of Part 2 Information, Mental Health Information and STD information, as well as the need for promoting a culture of compliance with its privacy obligations. North Sound BH-ASO will Use and Disclose PHI only as Required by Law or permitted by law in accordance with this and other policies, including Policy 2509.00: Minimum Necessary. North Sound BH-ASO will not Use and Disclose PHI if prohibited by law. To the extent that North Sound BH-ASO is acting as a Business Associate of an Upstream Covered Entity, North Sound BH-ASO will comply with the Use and Disclosure obligations of the applicable Business Associate Agreement (BAA) and/or Qualified Service Organization Agreement (QSOA).

PROCEDURES

1. **Segregation of PHI.** North Sound BH-ASO segregates Pre-Transition PHI from PHI North Sound BH-ASO creates, receives, maintains or transmits in its capacity as a Business Associate of Upstream Covered Entities.

For any Use or Disclosure of PHI, Workforce must determine whether or not the PHI is Pre-Transition PHI. For Pre-Transition PHI, the Uses and Disclosures must be required or permissible – and not

prohibited – for a Covered Entity (North Sound BH-ASO’s status before the Transition Date). For other PHI, Uses and Disclosures must be required or permissible for a Business Associate or Qualified Service Organization and pursuant to the applicable BAA or QSOA with the Upstream Covered Entity.

2. **Business Associate Agreement and Qualified Service Organization Agreement.** North Sound BH-ASO will comply with its BAAs and QSOAs. As a Business Associate, North Sound BH-ASO “steps into the shoes” of the Upstream Covered Entity and must not Use or Disclose PHI in a manner prohibited by HIPAA for the Upstream Covered Entity (except as specifically permitted for a Business Associate).

3. **Prohibited Uses and Disclosures of PHI.**

3.1 **Prohibition on Sale of PHI.** North Sound BH-ASO will **not** sell PHI in a manner not permitted by the Privacy Rule. Specifically, North Sound BH-ASO will not Disclose PHI if North Sound BH-ASO directly or indirectly receives remuneration from or on behalf of the recipient of the PHI in exchange for any PHI unless North Sound BH-ASO obtains a valid authorization that includes a statement that the Disclosure will result in remuneration for North Sound BH-ASO. The prohibition against receiving remuneration related to PHI will not apply if the purpose of the exchange is for:

- 3.1.1 Public Health activities;
- 3.1.2 Research, but only if the price charged reflects the reasonable cost-based fee to cover costs to prepare and transmit the PHI for the purpose;
- 3.1.3 Treatment and Payment;
- 3.1.4 Business Associate activities that a Business Associate undertakes on behalf of North Sound BH-ASO or that North Sound BH-ASO undertakes on behalf of an Upstream Covered Entity as long as the only remuneration provided is by or to North Sound BH-ASO for the performance of the Business Associate activities;
- 3.1.5 Access by an Individual to PHI about the Individual;
- 3.1.6 Sale, transfer, merger or consolidation of all or part of North Sound BH-ASO and for related due diligence;
- 3.1.7 Required by Law; and/or
- 3.1.8 Other permissible purposes in accordance with the applicable requirements of the Privacy Rule, where the only remuneration received is a reasonable, cost-based fee to cover the cost to prepare and transmit the PHI for the purpose or a fee otherwise expressly permitted by other law. [See 45 C.F.R. § 164.502(a)(5)(ii).]

3.2 **Prohibition Related to PHI that Constitutes Genetic Information.** North Sound BH-ASO will **not** Use or Disclose Genetic Information for underwriting purposes. For purposes of this Section, “Genetic Information” means information about: (a) the Individual’s genetics tests; (b) the genetic tests of family members of the Individual; (c) the manifestation of a disease or disorder in family members of the Individual; (d) any request for, or receipt of, a genetic test, genetic counseling, including obtaining, interpreting or assessing Genetic Information, or genetic education; or (e) participation in clinical Research that includes these genetic services, by the Individual or any family member of the Individual. Genetic Information includes the Genetic Information of: (i) a fetus carried by the Individual or family member who is pregnant; and (ii) any embryo legally held by an Individual or family member utilizing an assisted reproductive

technology. Genetic Information does not include information about the sex or age of the Individual. [See 45 C.F.R. § 164.502(a)(5)(i).]

3.3 **Prohibition on Uses and Disclosure of PHI for Certain Activities Involving Reproductive Health Care.**

- 3.3.1 North Sound BH-ASO will not Use or Disclose PHI for any of the following activities: (a) to conduct a criminal, civil or administrative investigation into any Person for the mere act of seeking, obtaining, providing or facilitating Reproductive Health Care; (b) to impose criminal, civil or administrative liability on any Person for the mere act of seeking, obtaining, providing or facilitating Reproductive Health Care; or (c) to identify any Person for activities described in Section 3.3.1(a) or (b). Seeking, obtaining, providing or facilitating Reproductive Health Care includes, but is not limited to, actually or attempting to express interest in, use, perform, furnish, pay for, disseminate information about, arrange, insure, administer, authorize, provide coverage for, approve, counsel about, assist or otherwise take action to engage in Reproductive Health Care. See Policy 2502.00: Definitions for Policies Governing Protected Health Information (PHI) (definition of Reproductive Health Care).
- 3.3.2 The prohibition described in this Section relating to Reproductive Health Care applies only when North Sound BH-ASO reasonably determines: (a) the Reproductive Health Care is lawful under the law of the state in which the Reproductive Health Care was provided under the circumstances it was provided; or (b) the Reproductive Health Care is lawful under federal law under the circumstances the Reproductive Health Care was provided.
- 3.3.3 North Sound BH-ASO will presume that Reproductive Health Care provided by another Person is lawful UNLESS North Sound BH-ASO: (a) has actual knowledge that the Reproductive Health Care was not lawful under the circumstances in which it was provided; or (b) is supplied factual information by the Person requesting the Use or Disclosure of PHI that demonstrates a substantial factual basis that the Reproductive Health Care was not lawful under the specific circumstances in which it was provided.

4. **Mandatory Uses and Disclosures of PHI without Individual Authorization.** As required by federal law or State Law, PHI will be Used or Disclosed by Workforce members as follows:

- 4.1 **HIPAA Compliance.** Workforce members will Disclose PHI to the Secretary of the Department of Health and Human Services as required to ascertain compliance with HIPAA requirements. The Privacy Officer must approve any Disclosure of PHI for this purpose.
- 4.2 **Court Orders and Warrants.** Workforce members will Disclose PHI pursuant to and in compliance with a lawful court order, court-ordered warrant or similar instrument, including if applicable an attestation. This includes Mental Health Information and STD information. See Section 10.3 of this policy with regard to Part 2 Information. North Sound BH-ASO will not Use or Disclose PHI potentially related to Reproductive Health Care for purposes of judicial or administrative proceedings under this Section without obtaining a valid attestation from the Person requesting the Use or Disclosure (See Section 8 of this policy). The Privacy Officer must approve any Disclosure for this purpose.

- 4.3 **Sex Offenders.** Workforce members will Disclose PHI in court-ordered reports of positive blood test results for HIV or other STDs regarding Persons charged with sex offenses to the Persons whose need for the information is the basis for the order.
- 4.4 **Public Health Activities.** Workforce members will Disclose PHI as Required by Law to Public Health authorities, such as the Centers for Disease Control and Prevention and the National Institutes of Health. The Privacy Officer must approve any Disclosure for this purpose. See Policy 2502.00: Definitions for Policies Governing PHI (definition of Public Health).

5. Permitted Uses and Disclosures of PHI for Treatment, Payment and Health Care Operations (A Written Authorization is Not Required). HIPAA permits Covered Entities to Disclose PHI for purposes of Treatment, Payment, and Health Care Operations (TPO) without authorization. Unlike HIPAA, Part 2 requires Part 2 Programs to obtain an Individual's consent before they can Use and Disclose Part 2 Information for Treatment, Payment and Health Care Operations, which may be in the form of a single consent (called a "TPO Consent") from Individuals for all future Uses and Disclosures of Part 2 Information for TPO, including redisclosures of Part 2 Information by recipients of the Part 2 Information under the single consent until the consent expires or is revoked. For the purposes of Sections 5.1–5.3, if an Individual has executed a TPO Consent, then Part 2 Information about the Individual may be treated as PHI, and not as "Part 2 Information."

5.1 Treatment.

- 5.1.1 Workforce members may Use PHI, except Part 2 Information, for Treatment activities by North Sound BH-ASO without an Individual's authorization. (Health Care Providers may Use PHI for their own Treatment purposes). This includes information related to Mental Health Information and STD information. Part 2 Programs may Use and communicate Part 2 Information within the Part 2 Program (or with an entity with direct administrative control of the Part 2 Program) in connection with Part 2 Program personnel's duties that arise out of the provision of diagnosis, Treatment or referral for Treatment. See Policy 2502.00: Definitions for Policies Governing PHI (Definition of Treatment).
- 5.1.2 Workforce members may Disclose PHI, except Part 2 Information, for Treatment purposes to a Health Care Provider without an Individual's authorization. (Health Care Providers may Disclose PHI for Treatment purposes). This includes Mental Health Information and STD information. Workforce may not Disclose Part 2 Information for Treatment purposes without either a TPO Consent or other consent by or on behalf of the Individual. Part 2 Programs must obtain consent from Individuals for Disclosure of Part 2 Information for Treatment purposes. This may include a single consent for future Uses and Disclosures for Treatment and may be combined with a TPO Consent of future Uses and Disclosures for Treatment, Payment and Health Care Operations.
- 5.1.3 Uses or Disclosures of PHI for Treatment purposes are not subject to the minimum necessary requirements.

5.2 Payment.

- 5.2.1 Workforce members may Use or Disclose PHI, except Part 2 Information, for Payment purposes of North Sound BH-ASO without an Individual's authorization. This includes Uses and Disclosures of Mental Health Information and STD information.

- 5.2.2 Workforce members may Disclose PHI, except Part 2 Information, for the Payment purposes of a Health Care Provider or Covered Entity without an Individual's authorization. This includes Uses and Disclosures of Mental Health Information and STD information. If a Workforce member is unable to verify to whom PHI should be Disclosed for purposes of a different entity's Payment, then the Workforce member will contact the Privacy Officer who will determine whether an authorization is required.
- 5.2.3 Part 2 Programs must obtain consent from Individuals for Uses and Disclosure of Part 2 Information for Payment purposes. This may include a single consent for future Uses and Disclosures for Payment and may be combined with TPO Consent for future Uses and Disclosures for Treatment, Payment and Health Care Operations. To the extent that North Sound BH-ASO, as the Business Associate of an Upstream Entity, receives Part 2 Information for Payment purposes in reliance on a TPO Consent or other consent, North Sound BH-ASO is acting as a Lawful Holder of Part 2 Information and, therefore, is subject to certain Part 2 requirements. North Sound may permit a Subcontractor Business Associate to create, receive, maintain or transmit Part 2 Information for Payment purposes, as long as North Sound BH-ASO has a signed and valid BAA in place that contains the expanded language required by Part 2. See Policy 2507.00: Subcontractor Business Associates (Down Stream).
- 5.2.4 Uses or Disclosures for Payment purposes are subject to the minimum necessary requirements.

5.3 **North Sound BH-ASO's Health Care Operations.**

- 5.3.1 Workforce members may Use or Disclose PHI, including Mental Health Information, except Part 2 Information, to carry out North Sound BH-ASO's Health Care Operations without an Individual's authorization. Part 2 Information may be Disclosed for Health Care Operations, as long as the Individual consents to the Disclosure. This may include a single consent for future Uses and Disclosures Health Care Operations and may be combined with a TPO Consent for future Uses and Disclosures for Treatment, Payment and Health Care Operations. When North Sound BH-ASO is acting as a Lawful Holder of Part 2 Information, meaning an Individual consented to permit North Sound BH-ASO to receive Part 2 Information, North Sound BH-ASO may permit a Subcontractor Business Associate to create, receive, maintain or transmit Part 2 Information for Health Care Operations purposes as long as North Sound BH-ASO has a signed and valid BAA in place that contains the expanded language required by Part 2. See Policy 2507.00: Subcontractor Business Associates (Downstream).
- 5.3.2 Uses or Disclosures for purposes of Health Care Operations are subject to the minimum necessary requirements.

5.4 **Another Covered Entity's Health Care Operations.**

- 5.4.1 Workforce members, without an Individual's authorization, may Disclose PHI Information (including Mental Health Information), but not including Part 2 Information and STD information, to another Covered Entity for purposes of that Covered Entity's Health Care Operations, but only if the other Covered Entity has or had a relationship with the Individual, the PHI pertains to that relationship and the Disclosure is limited to:

- (a) Quality assessment and improvement activities;
- (b) Peer review;
- (c) Population health-based activities in connection with improving health care outcomes or reducing health care costs;
- (d) Health Plan case management or care coordination activities;
- (e) Training;
- (f) Accreditation;
- (g) Certification;
- (h) Licensing;
- (i) Credentialing; and/or
- (j) Health care fraud, waste and abuse compliance or detection.

For example, if a Health Plan is seeking PHI to perform data analysis to identify ways to reduce Health Care costs and requests PHI regarding a former member, then North Sound BH-ASO may Disclose PHI from the period of time during which the Individual was a member of the Health Plan, to the extent the PHI is relevant to the Health Plan's analysis. Workforce members should not Disclose PHI for another Covered Entity's Health Care Operations without the Privacy Officer's approval.

- 5.4.2 Workforce members may Disclose Part 2 Information to another Covered Entity for purposes of that Covered Entity's Health Care Operations, but only with the written consent of the Individual and only for the limited Health Care Operations purposes described in Section 5.4.1. This may include a single consent for future Uses and Disclosures for Health Care Operations and may be combined with a TPO Consent for future Uses and Disclosures for Treatment, Payment and Health Care Operations.
- 5.4.3 Workforce members may Disclose STD information to another Covered Entity for purposes of that Covered Entity's Health Care Operations, but only with the written authorization of the Individual.
- 5.4.4 Uses or Disclosures for purposes of the Health Care Operations of other Covered Entities are subject to the minimum necessary requirements.

5.5 Organized Health Care Arrangement's Health Care Operations.

- 5.5.1 Workforce members may Use and Disclose PHI, without Individual authorization, for the Health Care Operations of an Organized Health Care Arrangement to which North Sound BH-ASO belongs. Note: Part 2 Information and STD information may not be Disclosed for these purposes.
- 5.5.2 Workforce members may Use and Disclose Part 2 Information for the Health Care Operations of an Organized Health Care Arrangement to which North Sound BH-ASO belongs but only with the written consent of the Individual. This may include a single consent for future Uses and Disclosures for Health Care Operations and may be combined with a TPO Consent of future Uses and Disclosures for Treatment, Payment and Health Care Operations.
- 5.5.3 Workforce members may Disclose STD information for the Health Care Operations of an Organized Health Care Arrangement to which North Sound BH-ASO belongs, but only with the written authorization of the Individual.

6. **Permissible Uses and Disclosures of PHI with the Opportunity to Agree or Object.** Workforce members may Use and Disclosure PHI for the purposes listed below, as long as the Individual has been given the opportunity to agree or object in accordance with Policy: 2511.00: Opportunity to Agree or Object. Note: Uses and Disclosures for these purposes may not be permitted for Part 2 Information, Mental Health Information or STD information. See Policy: 2511.00: Opportunity to Agree or Object.

- 6.1 **Persons involved in Individual's care;**
- 6.2 **Notification; and**
- 6.3 **Disaster relief purposes.**

7. **Other Permissible Uses and Disclosures of PHI When a Written Authorization is Not Required.** The following Uses and Disclosures of PHI are permitted without obtaining authorization to the extent and in the manner provided by applicable law and North Sound BH-ASO policies and procedures. These Uses and Disclosures are subject to the minimum necessary requirements as well as other specific requirements. See Policy 2509.00: Minimum Necessary.

Note: Special rules for Uses and Disclosure apply to Part 2 Information, Mental Health Information, STD information and PHI that potentially relates to Reproductive Health Care. Workforce must clarify the permissiveness of any Use or Disclosure of Part 2 Information, Mental Health Information, STD information and PHI potentially related to Reproductive Health Care with the Privacy Officer.

See also: Section 9 of this policy for Uses and Disclosures of Mental Health Information; Section 10 of this policy for Uses and Disclosures of Part 2 Information; and Section 11 of this policy for Uses and Disclosures of STD information.

- 7.1 **Law Enforcement Activities.** Workforce members may Disclose PHI to Law Enforcement Officials in certain circumstances. North Sound BH-ASO will not Use or Disclose PHI potentially related to Reproductive Health Care for Law Enforcement activities under this Section without obtaining a valid attestation from the Person requesting the Use or Disclosure. See Section 8 of this policy. Workforce will contact the Privacy Officer in these situations. The Privacy Officer must approve any Disclosure of PHI for this purpose. See Policy 2502.00: Definitions for Policies Governing Protected Health Information (PHI) (definition of Reproductive Health Care).
- 7.2 **Health Oversight.** Workforce members may Use and Disclose PHI for health oversight purposes in certain circumstances. North Sound BH-ASO will not Use or Disclose PHI potentially related to Reproductive Health Care for health oversight purposes under this Section without obtaining a valid attestation from the Person requesting the Use or Disclosure. See Section 8 of this policy. Workforce will contact the Privacy Officer in these situations. The Privacy Officer must approve any Disclosure of PHI for this purpose. See Policy 2502.00: Definitions for Policies Governing Protected Health Information (PHI) (definition of Reproductive Health Care).
- 7.3 **Judicial and Administrative Proceedings.** Workforce members may Use and Disclose PHI for judicial and administrative proceedings in certain circumstances. North Sound BH-ASO will not Use or Disclose PHI potentially related to Reproductive Health Care for judicial and administrative proceedings under this Section without obtaining a valid attestation from the Person requesting the Use or Disclosure. See Section 8 of this policy. Workforce will contact the Privacy Officer in these situations. The Privacy Officer must approve any Disclosure of PHI for this purpose. See Policy 2502.00: Definitions for Policies Governing Protected Health Information (PHI) (definition of Reproductive Health Care).

- 7.4 **Deceased Individuals: Coroners and Medical Examiners.** Workforce members may Disclose PHI about an Individual, including Part 2 Information, Mental Health Information and STD information to a medical examiner or coroner for the purpose of identifying a deceased person, determining the cause of death, or other duties as authorized by law. North Sound BH-ASO will not Use or Disclose PHI potentially related to Reproductive Health Care for medical examiner or coroner purposes under this Section without obtaining a valid attestation from the Person requesting the Use or Disclosure. See Section 8 of this policy. The Privacy Officer must approve any Disclosure of PHI for this purpose. See Policy 2502.00: Definitions for Policies Governing Protected Health Information (PHI) (definition of Reproductive Health Care).
- 7.5 **Public Health.** Workforce members may Disclose PHI, including STD information and Mental Health Information, but not Part 2 Information, for Public Health activities. These activities generally include Disclosures to:
- 7.5.1 A Public Health authority (such as the State Health Care Authority, State Department of Health, the Centers for Disease Control and Prevention, or the National Institutes of Health) or its contractors for the purpose of preventing or controlling disease, injury or disability, including, but not limited to: the reporting of disease, injury, vital events such as birth or death and the conduct of Public Health surveillance, Public Health investigations and Public Health interventions; or at the direction of a Public Health authority, to an official of a foreign government agency that is acting in collaboration with a Public Health authority.
 - 7.5.2 A Public Health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect (Section 7.7 of this policy).
 - 7.5.3 To a Person responsible for federal Food and Drug Administration (FDA) activities for purposes related to the quality, safety or effectiveness of FDA-regulated products or activities; or to enable product recalls, repairs or replacements. See Policy 2502.00: Definitions for Policies Governing PHI (definition of Public Health).
- 7.6 **Exposed Person.** Workforce members may Disclose PHI to Persons who may have been exposed to a communicable disease or may be at risk of contracting or spreading a disease or condition. Workforce may Disclose STD information to Persons who, because of their behavioral interaction with the infected Individual, have been placed at risk for acquisition of an STD, if North Sound BH-ASO believes the exposed Person was unaware a risk of disease exposure existed and the Disclosure of the identity of the infected Individual is necessary. Note: Part 2 Information may not be Disclosed for this purpose.
- 7.7 **Actual or Suspected Child Abuse or Neglect.** Workforce members may, and are strongly encouraged to, Disclose PHI as required for reports of child abuse or neglect. This includes all PHI, but see Section 10.7 of this policy, which identifies limitations imposed with regard to Part 2 Information. Note that only licensed Health Care Providers are mandatory reporters. Workforce members, however, will not Use or Disclose PHI for this purpose when the sole basis of the report of child abuse is the provision or facilitation of Reproductive Health Care. See Policy 1009.00: Critical Incidents.
- 7.8 **Vulnerable Adult Abuse.** Workforce members may Disclose PHI as required for reports of Vulnerable Adult abuse, neglect or abandonment. Note: Part 2 Information, Mental Health Information and STD information may not be Disclosed for these purposes (unless otherwise

permitted by this policy). Disclosure of PHI for these purposes may be provided on an anonymous basis. Health Care Providers are mandatory reporters. Vulnerable Adult abuse includes abuse of Persons: (a) 60 years of age or older who have the functional, mental or physical inability to care for themselves ; (b) found incapacitated; (c) who have a developmental disability; (d) admitted to any facility; (e) receiving services from home health, hospice or home care agencies; (f) receiving services from an individual provider; or (g) who self-direct their own care and receives services from a personal aide. See Policy 2502.00: Definitions for Policies Governing PHI (definition of Vulnerable Adult) and Policy 1009.00: Critical Incidents.

7.9 **Victims of Domestic Violence.**

7.9.1 For Disclosures of PHI that are not Required by Law, Workforce members may Disclose PHI about an Individual reasonably believed to be the victim of domestic violence to a government authority authorized by law to receive reports in the following circumstances:

- (a) With the Individual's or the Individual's Authorized Representative's agreement (which may be given orally); or
- (b) If the Individual is incapacitated and a Workforce member obtains a representation from the recipient of the Disclosure the PHI will not be used against the Individual and an enforcement activity would be materially and adversely affected by awaiting the Individual's agreement.

Workforce, however, will **not** Use or Disclose PHI for this purpose when the sole basis of the report of abuse, neglect or domestic violence is the provision or facilitation of Reproductive Health Care.

7.9.2 The Workforce member will inform the Individual or the Individual's Authorized Representative that the report has been made unless:

- (a) The Workforce member, in the exercise of professional judgment, believes informing the Individual or the Authorized Representative would place the Individual at risk of serious harm; or
- (b) The Workforce member would be informing an Authorized Representative and the Workforce member reasonably believes the Authorized Representative is responsible for the abuse, neglect or other injury and informing the Authorized Representative would not be in the best interests of the Individual, as determined by the Workforce member in the exercise of professional judgment.

7.10 **Serious and Imminent Threat to Health and Safety.** Workforce members may, and are strongly encouraged to, Use and Disclose PHI when they reasonably believe an Individual presents a serious and imminent threat to the health or safety of a Person (including the Individual) or the public. Disclosures will be only to Persons reasonably likely to help prevent the threat. This includes Mental Health Information; however, only licensed mental health professionals are considered mandatory reporters.

For example, if an Individual tells his psychotherapist he has persistent images of harming his spouse, then the psychotherapist may: (a) notify the spouse; (b) call the Individual's

psychiatrist or primary care physician to review medications and develop a plan for voluntary or involuntary hospitalization or other Treatment; (c) call 911, if emergency intervention is required; and/or (d) notify Law Enforcement Officials, if needed. Regulators are not likely to second guess a health professional's reasonable judgment about when an Individual seriously and imminently threatens the health or safety of the Individual or others.

Workforce members may Disclose Part 2 Information as detailed in Section 10.2 of this policy to medical personnel to meet a bona fide medical emergency . See Section 11 of this policy for STD information.

- 7.11 **Deceased Individuals: Funeral Directors.** Workforce members may Disclose PHI, not including Part 2 Information, Mental Health Information or STD information, about Individuals to funeral directors, consistent with applicable law, so they can perform their duties.
- 7.12 **Organ Tissue Donation.**
 - 7.12.1 Workforce members may Disclose PHI, not including Part 2 Information and Mental Health Information, to organizations that handle organ procurement or organ, eye or tissue transplants or to an organ donation bank, as required and needed for organ, eye or tissue donation and transplants.
 - 7.12.2 Workforce may Disclose STD information to a health facility or Health Care Provider that procures, processes, distributes or uses: (a) a human body part, tissue or blood from a deceased person with respect to medical information regarding that person; (b) semen, for the purpose of artificial insemination; or (c) blood specimens.
- 7.13 **Research.** Workforce members may Use and Disclose PHI for certain limited Research purposes and as authorized by the Individual and to the extent allowed by federal law and State Law, including HIPAA, and in accordance with Policy 2513.00: Research. This includes Part 2 Information, Mental Health Information and STD information. See Policy 2513.00: Research.
- 7.14 **Worker's Compensation.** Workforce members may Disclose PHI for workers' compensation purposes to the extent authorized by the worker's compensation law. Note: This provision does not apply to Part 2 Information, Mental Health Information or STD information.
- 7.15 **National Security.** Workforce members may Disclose PHI to authorized federal officials for intelligence, counterintelligence, special investigations and other national security activities authorized by the National Security Act and implementing authority and so they may protect the President or other authorized Persons. Note: This provision does not apply to Part 2 Information, Mental Health Information or STD information.
- 7.16 **Military Personnel.** Workforce members may Disclose PHI about Armed Forces personnel and foreign military personnel for activities deemed necessary by appropriate military command authorities. Note: This provision does not apply to Part 2 Information, Mental Health Information or STD information.
- 7.17 **Inmates and Detainees.**
 - 7.17.1 Workforce members may Disclose PHI, including Mental Health Information, regarding an inmate of a correctional institution to a correctional official, or regarding a Person under custody of a Law Enforcement Official to that Law Enforcement Official as long as the correctional institution or Law Enforcement Official represents the PHI is necessary for:

- (a) The provision of Health Care to the Individual;
- (b) The health and safety of the Individual, other inmates, officers, employees or Persons responsible for transporting or transferring inmates;
- (c) Law enforcement on the premises of the correctional institution; or
- (d) The administration and maintenance of the safety, security and good order of the correctional institution.

7.18 North Sound BH-ASO may Disclose STD information with regard to inmates and detainees as follows:

- (a) Where the detainee underwent mandatory testing; or
- (b) Where a correctional institution employee was substantially exposed to the detainee's STD.

7.19 **Incidental Uses and Disclosures.** Certain incidental Disclosures of PHI that may occur as a by-product of permitted Uses and Disclosures are permissible, as long as Workforce members have applied reasonable safeguards and implemented the minimum necessary standard (see Policy 2509.00: Minimum Necessary) to protect Individuals' privacy. To be permissible, there must be a permissible underlying Use or Disclosure. For example, if a Workforce member answers an Individual's question speaking at a reasonable volume (the permissible underlying Disclosure) and this results in another Person overhearing PHI, then the Disclosure to the other Person would be a permissible incidental Disclosure. In contrast, if a communication of PHI is misdirected to the wrong person, then this likely would not be a permissible incidental Disclosure. Note: This does not apply to Part 2 Information or STD information.

7.20 **De-Identified Data.** Workforce members may De-Identify PHI and may Use or Disclose De-Identified Data in accordance with Policy 2503.00: De-Identification and Limited Data Set.

7.21 **Limited Data Sets.** Workforce members may create Limited Data Sets and may Use or Disclose a Limited Data Set for purposes of Research, Public Health or Health Care Operations if the recipient executes a Data Use Agreement, in accordance with Policy 2503.00: De-Identification and Limited Data Sets. Note: This does not apply to Part 2 Information, Mental Health Information and STD information.

7.22 **Other Permissible Uses and Disclosures.** Workforce members otherwise may Use and Disclose PHI only as allowed by federal law and State Law and applicable North Sound BH-ASO policies, procedures, practices and processes.

8. Attestation Requirements for PHI Potentially Related to Reproductive Health Care.

8.1 **When an Attestation is Required.** BBAHC will not Use or Disclose PHI potentially related to Reproductive Health Care for any of the purposes described below without obtaining a valid attestation from the Person requesting the Use or Disclosure:

- 8.1.1 Health oversight;
- 8.1.2 Judicial and administrative proceedings;
- 8.1.3 Law enforcement activities; and/or
- 8.1.4 Coroner and medical examiner purposes.

8.2 **Content Requirements for a Valid Attestation.** A valid attestation must be written in plain language and contain the all of the elements described below. See Exhibit A of this Policy for a model attestation.

- 8.2.1 Description of the information being requested.
- 8.2.2 Identification of the Individual or, if not practicable, a description of the class of Individuals who are the subject of the PHI.
- 8.2.3 Name or other specific identification of the Person(s), or class of Persons, who are requested to make the Use or Disclosure.
- 8.2.4 Name or other specific identification of the Person(s), or class of Persons, to whom North Sound BH-ASO is to make the requested Use or Disclosure (e.g., the recipients).
- 8.2.5 Clear statement that the Use or Disclosure is not for a purpose prohibited by the prohibition related to Reproductive Health Care, as in described in Section 3.3.
- 8.2.6 Statement that a Person may be subject to criminal penalties pursuant to 42 U.S.C. 1320d-6 if that Person knowingly and in violation of HIPAA obtains individually identifiable health information relating to an Individual or Discloses individually identifiable health information to another Person.
- 8.2.7 Signature of the Person requesting the PHI, which may be an electronic signature, and date. If the attestation is signed by an Authorized Representative of the Person requesting the information, then a description of the Authorized Representative's authority to act for the Person also must be provided.

8.3 **Defective Attestations.** An attestation is not valid if the document submitted has any of the following defects:

- 8.3.1 The attestation lacks an element required by Section 8.2.
- 8.3.2 The attestation contains an element or statement not required by Section 8.2.
- 8.3.3 The attestation is a compound attestation, meaning that the attestation is combined with any other document except where the other documentation is needed to support the assertions made in the attestation and the supporting documentation is clearly labeled and distinct from the attestation.
- 8.3.4 North Sound BH-ASO has actual knowledge that material information in the attestation is false.
- 8.3.5 A reasonable Covered Entity or Business Associate in the same position would not believe that the attestation is true with respect to the statement that the Use or Disclosure is not for a purpose prohibited by the prohibition related to Reproductive Health Care, as in described in Section 3.3.

8.4 **Material Misrepresentations.** If, during the course of Using or Disclosing PHI in reasonable reliance on a facially valid attestation, North Sound BH-ASO discovers information reasonably showing that any representation made in the attestation was materially false, leading to a Use or Disclosure for a purpose the prohibition related to Reproductive Health Care, as in described in Section 3.3, then North Sound BH-ASO must cease the Use or Disclosure.

9. **Mental Health.** State Law imposes tighter restrictions on the Disclosure of Mental Health Information. Workforce members will verify they Disclose Mental Health Information only when permitted by law

and North Sound BH-ASO policy. Mental Health Information may be Disclosed without an authorization only in the following circumstances:

- 9.1 **Designated Communications.** In communications between qualified mental health professionals, in the provision of services or appropriate referrals or in the course of guardianship proceedings if provided to a professional who:
 - 9.1.1 Is employed by the facility;
 - 9.1.2 Has medical responsibility for the Individual's care;
 - 9.1.3 Is providing mental health services;
 - 9.1.4 Is employed by a state or local correctional facility where the Individual is confined or supervised; or
 - 9.1.5 Is providing evaluation, Treatment or follow-up services for the criminally insane.
- 9.2 **Special Needs.** When the communications involve the special needs of an Individual and the necessary circumstances giving rise to those needs and the Disclosure is made by a facility providing services to the operator of a facility in which the Individual resides or will reside.
- 9.3 **Designated by the Individual.** When the Individual or the Individual's Authorized Representative designates Persons to whom the Mental Health Information or records may be Disclosed, or if the Individual is a minor, when the Individual's parents, if they are Authorized Representatives of the Individual, make the designation. See also Policy 2511.00: Opportunity to Agree or Object.
- 9.4 **Attorney.** To the attorney of a detained Individual.
- 9.5 **Prosecuting Attorneys.** To a prosecuting attorney when the Individual is subject to detention, involuntary outpatient evaluations or arrest.
- 9.6 **Commitment.** For Persons involved in the Individual's commitment following dismissal of sex, violent or felony harassment offenses.
- 9.7 **Deceased Individual.** To the Individual's next of kin, personal representative, guardian or conservator upon the Individual's death if such Person is the Authorized Representative of the Individual.
- 9.8 **Government Agencies.** To qualified staff members of the Washington State Department of Social and Health Services, the directors of regional support networks, resource management services responsible for serving the Individual or service providers designated by resource management services as necessary to determine the progress and adequacy of Treatment and to determine whether the Individual should be transferred to a less restrictive or more appropriate Treatment modality or facility.
- 9.9 **Coordination of Care.** To the Washington State Department of Social and Health Services as necessary to coordinate Treatment for mental illness, developmental disabilities or substance use disorder of Individuals who are under the supervision of the Washington State Department of Social and Health Services.
- 9.10 **Involuntary Commitment.** To the Individual's Authorized Representative to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals or other actions relating to detention, admission, commitment or Individual's rights.
- 9.11 **Advocacy Agencies.** To staff members of the protection and advocacy agency or to staff members of a private, non-profit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities.

10. **Part 2 Information.** Federal regulations governing the confidentiality of Part 2 Information generally are more restrictive than HIPAA and should be followed when any Part 2 Information is requested for Use or Disclosure. A fundamental concept of protecting Part 2 Information is not identifying the Individual as having a diagnosis or having received Treatment concerning substance use disorder (also referred to as SUD). Part 2 applies to Part 2 Programs. North Sound BH-ASO is not a Part 2 Program. Some of the Upstream Covered Entities are Part 2 Programs. Individuals routinely authorize Part 2 Programs to Disclose Part 2 Information to North Sound BH-ASO or to an Upstream Covered Entity for Treatment, Payment, Health Care Operations and other purposes. As a result, North Sound BH-ASO is a Lawful Holder of Part 2 Information, subject to various Part 2 requirements. North Sound BH-ASO will comply with Part 2, as applicable. Workforce members must obtain a specific consent that meets the requirements of Part 2 for each Disclosure of Part 2 Information concerning an Individual, EXCEPT:
- 10.1 **Internal Program Communication.** Workforce members may Disclose Part 2 Information to other Workforce members or to an entity having direct administrative control over North Sound BH-ASO, if the recipient needs the information in connection with the provision of SUD diagnosis, Treatment or referral for Treatment.
 - 10.2 **Medical Emergencies.** Workforce members may Disclose Part 2 Information to medical personnel who have a need for the Part 2 Information about an Individual to meet a bona fide medical emergency: (a) in which the Individual's prior written consent cannot be obtained; or (b) in which a Part 2 Program is closed and unable to provide services or obtain the prior written consent of the Individual, during a temporary state of emergency declared by a state or federal authority as the result of a natural or major disaster, until such time that the Part 2 Program resumes operations. Workforce members may Disclose Part 2 Information only to medical personnel and will limit the amount of Part 2 Information to that which is necessary to treat the emergency medical condition. Immediately following the Disclosure, Workforce members will document the following in the Individual's records:
 - 10.2.1 The name and affiliation of the medical personnel to whom Disclosure was made;
 - 10.2.2 The name of the Person making the Disclosure;
 - 10.2.3 The date and time of the Disclosure; and
 - 10.2.4 The nature of the emergency.
 - 10.3 **Court Order.** Before a court may issue an order authorizing Disclosure of Part 2 Information, North Sound BH-ASO and any Individual whose records are sought must be given notice of the request for the court order and an opportunity to make an oral or written statement to the court. Before issuing the order, the court also must find there is "good cause" for the Disclosure. Court-ordered Disclosures must be limited to the Part 2 Information essential to fulfill the purpose of the order and must be restricted to those Persons who need the Part 2 Information. Typically, court orders will state they are "protective orders," "qualified protective orders" or "orders under seal." Workforce will obtain the advance approval of the Privacy Officer before Disclosing Part 2 Information for these purposes. If the order is sought by an authorized Law Enforcement Official or prosecuting attorney, then the following criteria must be met:
 - 10.3.1 The crime must be serious (e.g., an act causing or threatening to cause death or injury);

- 10.3.2 The records requested must be likely to have information of significance to the investigation or prosecution;
- 10.3.3 There is no other practical way to obtain the Part 2 Information;
- 10.3.4 The public interest in Disclosure outweighs any actual or potential harm to the Individual or the ability of the Part 2 Program to provide services to other Persons; and
- 10.3.5 When Law Enforcement personnel seek the order, the Part 2 Program has had an opportunity to be represented by counsel.

Note: For any Disclosures pursuant to a court order of Part 2 Information that potentially relates to Reproductive Health Care, an attestation also may be required.

10.4 **Subpoenas.** Workforce members are prohibited from Disclosing PHI about Individuals in response to subpoenas unless:

- 10.4.1 The Individual has signed a valid consent/authorization for the Disclosure of the PHI, specifically including Part 2 Information that meets the requirements of HIPAA, Part 2 and State Law; or
- 10.4.2 A court has ordered North Sound BH-ASO to Disclose the PHI after giving the Individual and North Sound BH-ASO an opportunity to be heard and after making a “good cause” determination.

Workforce will obtain the advance approval of the Privacy Officer before Disclosing Part 2 Information for these purposes. Note: For any Disclosures pursuant to a subpoena of Part 2 Information that potentially relates to Reproductive Health Care, an attestation also may be required.

10.5 **Research Purposes.** Workforce may Disclose Part 2 Information to researchers the Privacy Officer determines are qualified as long as the Disclosure also complies federal and State Law and with North Sound BH-ASO’s policies. A qualified researcher must have adequate training and experience in the area of research to be conducted and must have a protocol that ensures Part 2 Information will be securely stored and not re-Disclosed in violation of law. Workforce will obtain the advance approval of the Privacy Officer before Disclosing Part 2 Information for these purposes. See the Policy 2513.00: Research for additional information.

10.6 **Audits.**

- 10.6.1 Workforce will obtain the advance approval of the Privacy Officer before Disclosing Part 2 Information for audit purposes and will follow protocol set out by the Privacy Officer with respect to the audit.
- 10.6.2 As long as Part 2 Information is not downloaded, copied or removed from the premises or forwarded electronically to another electronic system or device, Workforce members and Part 2 Programs may Disclose Part 2 Information in the course of record review on the premises to a government agency that funds or regulates a Part 2 Program, a Lawful Holder, a third-party payor or a quality improvement organization (or its designated contractors) that request access to the records of a Part 2 Program or Lawful Holder.
- 10.6.3 Part 2 Information may be copied or removed from the premises or downloaded or forwarded electronically to another electronic system or device in the course of record review on the premises to a government agency that funds or regulates a Part 2 Program, or other Lawful Holder, or a third-party payor, or a quality improvement

organization (or its designated contractors) that request access to the records of a Part 2 Program or Lawful Holder only if the auditor agrees in writing to: (a) maintain and destroy the Part 2 Information in a manner consistent with Part 2; (b) retain Part 2 Information in compliance with record retention laws; and (c) comply with the Part 2 restrictions on Use and Disclosure of Part 2 Information.

10.6.4 Part 2 Information may be Disclosed to a Person for the purpose of conducting a Medicare, Medicaid or CHIP audit or evaluation.

10.6.5 The auditor or evaluator must agree in writing it will re-Disclose Part 2 Information only back to the Part 2 Program and will Use Part 2 Information only to carry out an audit or evaluation purpose, pursuant to a court order or to investigate or prosecute criminal or other activities.

10.7 **Abuse and Threats to Health and Safety.** Workforce members may, and are encouraged to, Disclose Part 2 Information when the Part 2 Program is reporting under State Law incidents of suspected child abuse and neglect to appropriate authorities. In this case, North Sound BH-ASO may make only an initial report. North Sound BH-ASO may not respond to follow-up requests for information or to subpoenas, unless the Individual has signed an authorization or a court has issued an order that complies with Part 2 (See Section 10.3 above). Additionally, North Sound BH-ASO may report Part 2 Information to relevant authorities concerning the abuse of Vulnerable Adults on an anonymous basis if it determines it is important to report elder abuse, disabled person abuse or a threat to someone's health or safety. Health Care Providers are mandatory reporters.

10.8 **Review of Part 2 Disclosures.** Any PHI Disclosed without the consent of an Individual in a Part 2 Program may be made only in consultation with the Privacy Officer. If North Sound BH-ASO receives a request for Disclosure of information or a record that is not permitted under Part 2, then North Sound BH-ASO will refuse to make the Disclosure and will make the refusal in a way that does not reveal or identify the Individual has ever been diagnosed or treated for substance use disorder.

11. **STD Information.** PHI related to an Individual's STD is highly confidential and generally requires Individual authorization. See Policy 2502.00: Definitions for Policies Governing PHI (definition of Sexually Transmitted Disease (STD)). Workforce members may Disclose PHI related to STD without an Individual's authorization if the Disclosure is to:

11.1 **Authorized Representative.** The Individual's Authorized Representative with the exception of an Authorized Representative of a minor who is fourteen (14) years of age or older and otherwise competent. See Policy 2524.00: Verification of Identity and Authority.

11.2 **Public Health.** A state or federal Public Health official.

11.3 **Organ and Tissue Donation.** A health facility or Health Care Provider that procures, processes, distributes or uses: (a) a human body part, tissue or blood from a deceased Person with respect to medical information regarding that Person; (b) semen for the purpose of artificial insemination; or (c) blood specimens.

11.4 **Exposed Person.** Persons who because of their behavioral interaction with the infected Individual have been placed at risk for acquisition of an STD, if North Sound BH-ASO believes the exposed Person was unaware a risk of disease exposure existed and the Disclosure of the identity of the infected Individual is necessary.

- 11.5 **Exposed Official.** A Law Enforcement Official, firefighter, Health Care Provider, Health Care facility staff Person, department of correction's staff Person, jail staff Person or other Person defined by State Law who have requested a test of an Individual whose bodily fluids the Person has been substantially exposed to, if a state or local Public Health officer performs the test.
- 11.6 **Government Agency.** A Washington State Department of Social and Health Services worker, a child placing agency worker or guardian ad litem who is responsible for making or reviewing placement or case-planning decisions or recommendations to the court regarding a minor, who is less than fourteen (14) years of age, has an STD and is in the custody of the Washington State Department of Social and Health Services or a licensed child placing agency. This PHI also may be received by a Person responsible for providing residential care for the minor Individual when the Washington State Department of Social and Health Services or a licensed child placing agency determines it is necessary for the provision of childcare services.
12. **Pursuant to a Written Authorization.** When an authorization (also called a consent, release of information or ROI) is required for Use or Disclosure of PHI, Workforce members will Use and Disclose PHI only pursuant to a valid, written authorization, in a manner consistent with federal law and State Law, including HIPAA. Generally, an authorization is required for Uses and Disclosures for: (a) Research (subject to the exceptions); (b) Psychotherapy Notes; (c) Sale of PHI (subject to the exceptions); (d) Marketing (subject to the exceptions); and (e) purposes not otherwise permitted by law or Required by Law. Most Uses and Disclosures of Part 2 Information (including special consent requirements for SUD Counseling Notes), Mental Health Information and STD information also will require an authorization. For Uses and Disclosures of Part 2 Information, Mental Health Information and STD information, the authorization must comply with the applicable requirements of HIPAA, Part 2 and State law. See Policy 2521.00: Authorization.
13. **Subcontractor Business Associates.** Workforce members may permit downstream Subcontractor Business Associates to create, receive, maintain or transmit PHI as part of certain services or functions for or on behalf of North Sound BH-ASO as long as North Sound BH-ASO has entered into appropriate contractual protections, usually in the form of a Business Associate Agreement (or BAA) with, if appropriate, expanded obligations related to Part 2 Information, as set forth in Policy 2507.00: Subcontractor Business Associates (Downstream). Any BAA must meet the HIPAA minimum content requirements. Uses, Disclosures and requests for PHI must be limited to the terms set forth in the BAA and in accordance with Policy 2507.00: Subcontractor Business Associates (Downstream). Even if a BAA is in place, a Use by, Disclosure to or request by a Subcontractor Business Associate still must be otherwise permissible under this policy, such as a Disclosure for Treatment, Payment or Health Care Operations, except where specifically permitted for a Business Associate.
14. **Minimum Necessary.** Workforce will comply with Policy 2509.00: Minimum Necessary. Only those Workforce members with a job-related need to know may Use or Disclose PHI. In most situations, Workforce may Use and Disclose only the minimum PHI necessary for the permitted or required purpose. Even when the minimum necessary requirements do not apply, Workforce should attempt to limit the PHI being Used and Disclosed as long as consistent with the Individual's best interests. See Policy 2509.00: Minimum Necessary.
15. **Verification of Identity and Authority.** Workforce will verify the identity and authority of any Person requesting the Use or Disclosure of PHI in accordance with Policy 2524.00: Verification of Identity and Authority.

16. **Documentation.** Documentation relating to any Use and Disclosure 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:
- 16.1 **Policies, procedures and processes for Uses and Disclosures.**
 - 16.2 **Authorizations.**
17. **Other policies and procedures to review that are related to this policy:**
- 17.1 **Policy 2501.00: Privacy and Confidentiality of PHI.**
 - 17.2 **Policy 2502.00: Definitions for Policies Governing PHI.**
 - 17.3 **Policy 2503.00: De-Identified Data and Limited Data Sets.**
 - 17.4 **Policy 2508.00: Marketing.**
 - 17.5 **Policy 2509.00: Minimum Necessary.**
 - 17.6 **Policy 2511.00: Opportunity to Agree or Object.**
 - 17.7 **Policy 2513.00: Research.**
 - 17.8 **Policy 2521.00: Authorization for Use and Disclosure of PHI.**
 - 17.9 **Policy 2523.00: Sale of PHI.**
 - 17.10 **Policy 2524.00: Verification of Identity and Authority.**

ATTACHMENTS

Exhibit A_Model Attestation

Exhibit A

Model Attestation for a Requested Use or Disclosure of Protected Health Information Potentially Related to Reproductive Health Care

When a HIPAA covered entity¹ or business associate² receives a request for protected health information (PHI)³ potentially related to reproductive health care,⁴ it must obtain a signed attestation that clearly states the requested use or disclosure is not for the prohibited purposes described below, where the request is for PHI for any of the following purposes:

- Health oversight activities⁵
- Judicial or administrative⁶ proceedings
- Law enforcement⁷
- Regarding decedents, disclosures to coroners and medical examiners⁸

Prohibited Purposes. Covered entities and their business associates may not use or disclose PHI for the following purposes:

- (1) To conduct a criminal, civil, or administrative investigation into any person for the mere act of seeking, obtaining, providing, or facilitating lawful reproductive health care.
- (2) To impose criminal, civil, or administrative liability on any person for the mere act of seeking, obtaining, providing, or facilitating lawful reproductive health care.
- (3) To identify any person for any purpose described in (1) or (2).⁹

The prohibition applies when the reproductive health care at issue (1) is lawful under the law of the state in which such health care is provided under the circumstances in which it is provided, (2) is protected, required, or authorized by Federal law, including the United States Constitution, under the circumstances in which such health care is provided, regardless of the state in which it is provided, or (3) is provided by another person and presumed lawful.¹⁰

¹ See 45 CFR 160.103 (definition of "Covered entity").

² See 45 CFR 160.103 (definition of "Business associate").

³ See 45 CFR 160.103 (definition of "Protected health information").

⁴ See 45 CFR 160.103 (definition of "Reproductive health care").

⁵ See 45 CFR 164.512(d).

⁶ See 45 CFR 164.512(e).

⁷ See 45 CFR 164.512(f).

⁸ See 45 CFR 164.512(g)(1).

⁹ See 45 CFR 164.502(a)(5)(iii)(A).

¹⁰ See 45 CFR 164.502(a)(5)(iii)(B), (C). For more information on the presumption and when it applies, see 45 CFR 164.502(a)(5)(iii)(C).

Model Instructions

Information for the Person Requesting the PHI

- By signing this attestation, you are verifying that you are not requesting PHI for a prohibited purpose and acknowledging that criminal penalties may apply if untrue.¹¹
- You may not add content that is not required or combine this form with another document except where another document is needed to support your statement that the requested disclosure is not for a prohibited purpose.¹² For example, if the requested PHI is potentially related to reproductive health care that was provided by someone other than the covered entity or business associate from whom you are requesting the PHI, you may submit a document that supplies information that demonstrates a substantial factual basis that the reproductive health care in question was not lawful under the specific circumstances in which it was provided.¹³

Information for the Covered Entity or Business Associate

- You may not rely on the attestation to disclose the requested PHI if any of the following is true:
 - It is missing any required element or statement or contains other content that is not required.¹⁴
 - It is combined with other documents, except for documents provided to support the attestation.¹⁵
 - You know that material information in the attestation is false.¹⁶
 - A reasonable covered entity or business associate in the same position would not believe the requestor's statement that the use or disclosure is not for a prohibited purpose as described above.¹⁷
- If you later discover information that reasonably shows that any representation made in the attestation is materially false, leading to a use or disclosure for a prohibited purpose as described above, you must stop making the requested use or disclosure.¹⁸
- You may not make a disclosure if the reproductive health care was provided by a person other than yourself and the requestor indicates that the PHI requested is for a prohibited purpose as described above, unless the requestor supplies information that demonstrates a substantial factual basis that the reproductive health care was not lawful under the specific circumstances in which it was provided.¹⁹
- You must obtain a new attestation for each specific use or disclosure request.²⁰
- You must maintain a written copy of the completed attestation and any relevant supporting documents.²¹

¹¹ See 42 U.S.C. 1320d-6.

¹² See 45 CFR 164.509(b)(3) and (c)(iv).

¹³ See 45 CFR 164.502(a)(5)(iii)(B)(3), (C)(2).

¹⁴ See 45 CFR 164.509(b)(2)(ii).

¹⁵ See 45 CFR 164.509(b)(3).

¹⁶ See 45 CFR 164.509(b)(2)(iv).

¹⁷ See 45 CFR 164.509(b)(2)(v).

¹⁸ See 45 CFR 164.509(d).

This attestation document may be provided in electronic form, and electronically signed by the person requesting protected health information when the electronic signature is valid under applicable Federal and state law.

¹⁹ See 45 CFR 164.502(a)(5)(iii)(B)(3), (C)(2).

²⁰ See 89 FR 32976, 33031.

²¹ See 45 CFR 164.530(j).

Model Attestation Regarding a Requested Use or Disclosure of

Protected Health Information Potentially Related to Reproductive Health Care *The entire form must be completed for the attestation to be valid.*

| |
|---|
| Name of person(s) or specific identification of the class of persons to receive the requested PHI. <i>e.g., name of investigator and/or agency making the request</i> |
| Name or other specific identification of the person or class of persons from whom you are requesting the use or disclosure. <i>e.g., name of covered entity or business associate that maintains the PHI and/or name of their workforce member who handles requests for PHI</i> |
| Description of specific PHI requested, including name(s) of individual(s), if practicable, or a description of the class of individuals, whose protected health information you are requesting. <i>e.g., visit summary for [name of individual] on [date]; list of individuals who obtained [name of prescription medication] between [date range]</i> |

I attest that the use or disclosure of PHI that I am requesting is not for a purpose prohibited by the HIPAA Privacy Rule at 45 CFR 164.502(a)(5)(iii) because of one of the following (check one box):

- ☐ The purpose of the use or disclosure of protected health information is **not** to investigate or impose liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care or to identify any person for such purposes.
- ☐ The purpose of the use or disclosure of protected health information **is** to investigate or impose liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care, or to identify any person for such purposes, but the reproductive health care at issue was **not lawful** under the circumstances in which it was provided.

I understand that I may be subject to criminal penalties pursuant to 42 U.S.C. 1320d-6 if I knowingly and in violation of HIPAA obtain individually identifiable health information relating to an individual or disclose individually identifiable health information to another person.

Signature of the person requesting the PHI

Date _____

If you have signed as a representative of the person requesting PHI, provide a description of your authority to act for that person.

This attestation document may be provided in electronic form, and electronically signed by the person requesting protected health information when the electronic signature is valid under applicable Federal and state law.