

Effective Date: 7/1/2019

Review Date: 7/30/2019

Revised Date:

## North Sound Behavioral Health Administrative Services Organization, LLC

Section 2500 – Privacy: Business Associate Privacy Functions

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

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

### **POLICY # 2526.00**

### **SUBJECT: BUSINESS ASSOCIATE PRIVACY FUNCTIONS**

#### **PURPOSE**

In compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Part 2, Washington law and any applicable Business Associate Agreements (BAAs) with Upstream Covered Entities, this policy establishes the processes by which North Sound Behavioral Health-Administrative Services Organization (North Sound BH-ASO), in North Sound BH-ASO's role as a Business Associate of certain Upstream Covered Entities, will provide privacy protections for PHI that is created, received, maintained or transmitted by North Sound BH-ASO, comply with the applicable privacy requirements under HIPAA, Part 2, Washington law and applicable BAAs and create and maintain a culture of compliance for the privacy of PHI within North Sound BH-ASO.

Capitalized terms used in this policy have specific meanings. Definitions under this policy include Business Associate Agreement (BAA), De-Identified Data, Disclose or Disclosure, Limited Data Set, PHI, Subcontractor Business Associate, Upstream Covered Entity, Use and Workforce. See Policy 2502.00 Definitions for Policies Governing PHI.

#### **POLICY**

North Sound BH-ASO recognizes that, as part of its functions as a Business Associate of Upstream Covered Entities, North Sound BH-ASO will protect the privacy of PHI and the rights associated with PHI, create and maintain a culture of privacy compliance and comply with the requirements of applicable federal and state law, this policy, other North Sound BH-ASO policies, procedures and practices and applicable BAAs to the extent that North Sound BH-ASO: (a) creates, receives, maintains or transmits PHI from or on behalf of Upstream Covered Entities under HIPAA; and (b) acts as the Business Associate of its Upstream Covered Entities under HIPAA.

#### **PROCEDURE**

1. **BAAs with Upstream Covered Entities.**
  - 1.1 **Compliance.** North Sound BH-ASO will comply with the terms and conditions of its BAAs.
  - 1.2 **Entering into BAAs.** The Privacy Officer must review, with the assistance of legal counsel and, as appropriate, negotiate any BAA with Upstream Covered Entities.
  - 1.3 **Termination of Relationship with Upstream Covered Entity.** Upon termination of the business relationship between North Sound BH-ASO and an Upstream Covered Entity, North Sound BH-ASO will terminate access to, return or destroy all of the Upstream Covered Entity's PHI that North Sound BH-ASO maintains in any form and retain no copies of the PHI or, if return or

destruction is not feasible, extend the protections of the applicable BAA to the PHI and limit further Use and Disclosure of the PHI to those purposes that make the return or destruction of the PHI infeasible. North Sound BH-ASO anticipates that return or destruction of PHI will not be feasible in most situations due, in part, to recordkeeping and documentation obligations and the promotion of continuity of care for Individuals. North Sound BH-ASO shall comply with the applicable BAA and services agreement with respect to a termination of a relationship with an Upstream Covered Entity.

## 2. Uses and Disclosures of PHI.

- 2.1 **General Rule.** North Sound BH-ASO, as a Business Associate, may Use and Disclose PHI only as permitted or required by each applicable BAA. Moreover, North Sound BH-ASO may Use or Disclose PHI only if the Use or Disclosure: (a) would not be prohibited if done by the Upstream Covered Entity; or (b) is for North Sound BH-ASO's management or administration, to carry out North Sound BH-ASO's legal responsibilities, to create De-Identified Data or to provide Data Aggregation Services to a Upstream Covered Entity as long as the Use or Disclosure of PHI specifically is permitted by the BAA. North Sound BH-ASO may Use and Disclose De-Identified Data in accordance with HIPAA if consistent with the applicable BAA. See Policy 2521.00: Uses and Disclosures of PHI.
- 2.2 **Required Uses and Disclosures of PHI.** North Sound BH-ASO will Use or Disclose PHI: (a) as required by each applicable BAA, such as to assist a Upstream Covered Entity with providing Individuals with their rights under HIPAA; (b) to the Department of Health and Human Services in response to a formal demand as part of a compliance investigation, compliance review, enforcement action or audit of North Sound BH-ASO or a Upstream Covered Entity, subject to any legal privileges or protections that may apply; and (c) as Required by Law. North Sound BH-ASO may provide any legally permissible notifications to the applicable Upstream Covered Entity regarding a request for information as may be required or permitted by the BAA.
- 2.3 **Permitted Uses and Disclosures of PHI.**
- 2.3.1 To Provide Services. North Sound BH-ASO may Use or Disclose PHI for the purpose of providing its services to Upstream Covered Entities, to the extent the Use or Disclosure is permitted by the applicable BAA and HIPAA would permit the Upstream Covered Entity to make the Use or Disclosure. North Sound BH-ASO will verify that any BAA permits Use and Disclosure of PHI to provide its services to the Upstream Covered Entity.
- 2.3.2 North Sound BH-ASO's Management, Administration and Legal Responsibilities. If specifically permitted by the applicable BAA, then North Sound BH-ASO may Use and Disclose PHI for the proper management and administration of North Sound BH-ASO and to carry out its legal responsibilities. In the case of any Disclosure for these purposes, either: (a) the Disclosure is Required by Law; or (b) North Sound BH-ASO must obtain reasonable assurances from the person to whom North Sound BH-ASO is to Disclose the PHI that it will be held confidentially and Used or further Disclosed only as Required by Law or for the purposes for which it was Disclosed to the person and that the person will notify North Sound BH-ASO of any instances of which the person is aware in which the confidentiality of the PHI has been breached. North Sound BH-

ASO will make good faith attempts to have each BAA permit Uses and Disclosures of PHI for North Sound BH-ASO's management, administration and legal responsibilities.

- 2.4 **De-Identified Data; Data Aggregation; Limited Data Sets.** If specifically permitted in the applicable BAA, then North Sound BH-ASO may: (a) create De-Identified Data in accordance with HIPAA and Use and Disclose the De-Identified Data; (b) perform Data Aggregation Services, which is the combining of PHI from multiple Upstream Covered Entities to permit data analyses that relate to the Health Care Operations of the respective Covered Entity Clients; and (c) create Limited Data Sets.
- 2.5 **Verification of BAA.** For any given Use or Disclosure, North Sound BH-ASO should verify that the Use or Disclosure is permitted by the applicable BAA. The Privacy Officer should confirm that each BAA specifically permits North Sound BH-ASO to Use and Disclose PHI as necessary to perform the functions for the Upstream Covered Entity pursuant to any underlying services agreement and as Required by Law. The Privacy Officer also should determine whether the BAA also permits North Sound BH-ASO to Use or Disclose PHI for its own management, administration or to carry out its legal responsibilities. North Sound BH-ASO should verify that the BAA allows the particular activities before Using and Disclosing PHI for North Sound BH-ASO's own purposes. For example, before providing a Upstream Covered Entity's PHI to an auditor or attorney outside of North Sound BH-ASO, or Using PHI as necessary to improve North Sound BH-ASO's services, North Sound BH-ASO should verify that the BAA permits North Sound BH-ASO to Use and Disclose PHI for its management, administration, and to carry out its legal responsibilities.

### 3. **Minimum Necessary.**

- 3.1 **Uses, Disclosures and Requests of PHI.** North Sound BH-ASO will make reasonable efforts to limit PHI Used, Disclosed, or requested to the minimum necessary to accomplish the purpose of the Use, Disclosure, or request. For example, North Sound BH-ASO regularly will inform Upstream Covered Entities not to Disclose to North Sound BH-ASO PHI that is not necessary for North Sound BH-ASO to provide its services. Only authorized Workforce may request, Use, or Disclose PHI, and the request, Use or Disclosure must be necessary to accomplish a permissible or required work purpose. The minimum-necessary standard does not apply to: Disclosures made to the Individual under the Individual's right of access; Uses or Disclosures made under a valid authorization; Disclosures made to the Department of Health and Human Services; Uses or Disclosures Required by Law; and Uses or Disclosures required to comply with HIPAA. See Policy 2509.00: Minimum Necessary.
- 3.2 **Access to PHI Is Limited to Authorized Workforce.** North Sound BH-ASO has determined that only authorized Workforce may access PHI. Adequate safeguards must be in place to prevent access by Workforce who are not authorized Workforce. Workforce shall not access, request, Use or Disclose PHI, unless specifically permitted by the Privacy Officer. Authorized Workforce shall not provide access to PHI to other Workforce unless the recipient:
- 3.2.1 **Work-Related Need.** Has a legitimate need for and is authorized to receive the PHI in connection with the recipient's responsibilities, the Disclosure of PHI is permitted under the applicable BAA and HIPAA, and the Privacy Officer has approved the access;  
or

3.2.2 Authorization. Has received authorization from the affected Individuals in connection with the PHI and the Privacy Officer has approved the access.

4. **Consultation with Privacy Officer**. The Privacy Officer must be consulted whenever doubt exists as to when an access, Use, Disclosure and/or request is permissible.
5. **Safeguards**. North Sound BH-ASO will use appropriate safeguards to prevent the Use or Disclosure of Upstream Covered Entities' PHI other than as permitted by this policy, HIPAA and/or the BAA. See also Policy 2519.00: Safeguarding PHI, Policy 2512.00: Copying, Printing and Faxing PHI; Policy 2505.00: Disposal of PHI and Series 4000: Security Policies.
6. **Reporting**. North Sound BH-ASO will report to the applicable Upstream Covered Entity:
  - 6.1 Any Use or Disclosure of the Upstream Covered Entity's PHI not provided for in the BAA of which North Sound BH-ASO becomes aware.
  - 6.2 Any Security Incident as required by the BAA. Not all Security Incidents may need to be reported. North Sound BH-ASO shall verify the requirements of the applicable BAA.
  - 6.3 Any Breach of Unsecured PHI.

The timing of the report will be consistent with North Sound BH-ASO's legal obligations, any timing requirements in the applicable BAA and the level of risk reasonably likely to be presented by the Use or Disclosure. The applicable BAA may impose additional requirements. See also Policy 2502.00: Definitions Governing PHI and Policy 2525.00: Breach Notification and Reporting to Upstream Covered Entities under HIPAA.

7. **Access to PHI**. Upon an Upstream Covered Entity's request, which may be in the form of delegation of the function, North Sound BH-ASO will make available the Upstream Covered Entity's PHI to the Upstream Covered Entity to the extent necessary for the Upstream Covered Entity to meet its obligations to provide Individual access to PHI and as required in the applicable BAA. The applicable BAA may impose timing and other requirements. See Policy 2514.00: Right to Access PHI.
8. **Amendment of PHI**. Upon a Upstream Covered Entity's request, which may be in the form of delegation of the function, North Sound BH-ASO will make available Upstream Covered Entity's PHI to the Upstream Covered Entity and incorporate any amendments to the extent necessary for the Upstream Covered Entity to meet its obligations to amend incomplete or inaccurate PHI and as required in the applicable BAA. The applicable BAA may impose timing and other requirements. See Policy 2516.00: Right to Accounting of Disclosure.
9. **Accounting of Disclosures**. Upon a Upstream Covered Entity's request, which may be in the form of delegation of the function, North Sound BH-ASO will report to the Upstream Covered Entity all reportable Disclosures of PHI by North Sound BH-ASO, as necessary to enable the Upstream Covered Entity to comply with its obligation to account for Disclosures of PHI and as required in the applicable BAA. The applicable BAA may impose timing and other requirements. North Sound BH-ASO will report only those Disclosures for which the Upstream Covered Entity would be required to provide an accounting. See Policy 2516.00: Right to Accounting of Disclosures.
10. **Right to Alternative Communications**. Subject to certain restrictions, Individuals have the right to request confidential communications to alternate locations or by alternate means. When an Upstream

Covered Entity informs North Sound BH-ASO of a request that has been granted, which may be in the form of delegation of the function, North Sound BH-ASO will address the request. See Policy 2517.00: Right to Alternative Communications.

11. **Request for Privacy Restrictions.** Subject to certain restrictions, Individuals have the right to request of Covered Entities certain restrictions of Uses and Disclosures of PHI confidential communications. When an Upstream Covered Entity informs North Sound BH-ASO of a request that has been granted, which may be in the form of delegation of the function, North Sound BH-ASO will reasonably address the privacy restriction. See Policy 2518.00: Right to Restrict Uses and Disclosures of PHI.
12. **Disclosures to Department of Health and Human Services.** Subject to any legal or discovery privileges or protections, North Sound BH-ASO will make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Department of Health and Human Services for purposes of the Department of Health and Human Services' determination of an Upstream Covered Entity's or North Sound BH-ASO's compliance with HIPAA. The Privacy Officer will determine whether North Sound BH-ASO must or may notify the applicable Upstream Covered Entity of any request by the Department of Health and Human Services under this Section. See Policy 2518.00: Uses and Disclosure of PHI.
13. **No Prohibited Sale of PHI.** North Sound BH-ASO will not Disclose or receive PHI in exchange for financial or nonfinancial remuneration without the affected Individual's authorization unless a HIPAA exception applies. Payment for services provided by North Sound BH-ASO as a Business Associate does not apply to this prohibition. The Privacy Officer must be consulted about any arrangement that could be deemed a sale of PHI that is prohibited by HIPAA. See Policy 2523.00: Sale of PHI.
14. **No Prohibited Marketing.** North Sound BH-ASO will not Use or Disclose PHI for Marketing and will not require Upstream Covered Entities to Use and Disclose PHI for Marketing, subject to certain exceptions, without the affected Individual's authorization. The Privacy Officer must be consulted before Using or Disclosing PHI for what may constitute Marketing. See Policy 2508.00: Marketing.
15. **Subcontractors.** Workforce may Disclose PHI to North Sound BH-ASO's Subcontractor Business Associates and allow North Sound BH-ASO's Subcontractor Business Associates to create, receive, maintain or transmit PHI on its behalf, as long as an appropriate BAA (or other written assurances) is in place with the Subcontractor Business Associate and the requirements of Policy 2507.00: Subcontractor Business Associates (Downstream) are met. Workforce shall verify that a BAA is in place and that appropriate due diligence has been performed before a Subcontractor receives, creates, maintains or transmits PHI.
16. **Training.** North Sound BH-ASO will train Workforce on their obligations under HIPAA, Part 2, Washington law and applicable BAAs with Upstream Covered Entities. See Policy 2520.00: Training.
17. **Reporting of Concerns.** Workforce should report to the Privacy Officer any concerns related to this policy, HIPAA, Part 2, Washington law and applicable BAAs with Upstream Covered Entities. For example, if a Workforce member reasonably suspects an impermissible Use or Disclosure of PHI by another North Sound BH-ASO Workforce member or by a North Sound BH-ASO Subcontractor Business Associate, then the Workforce member **immediately** should report the concern to the Privacy Officer. See Policy 2501.00: Privacy and Confidentiality of PHI.

**ATTACHMENTS**

None