

Effective Date: 7/17/2013; April 14, 2003, Motion #03-013  
Last Revised Date: 2/23/2018  
Last Review Date: 2/23/2018

## North Sound Behavioral Health Organization

### Section 2500 – Privacy: Privacy and Confidentiality for Protected Health Information (PHI)

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

Cancels:

See Also:

Responsible Staff: Privacy Officer

Executive Director Signature:

Approved by: Board of Directors

Motion #: 03-013 Date: 4/14/2003

Date: 3/6/2018

#### **POLICY #2501.00**

#### **SUBJECT: PRIVACY AND CONFIDENTIALITY FOR PROTECTED HEALTH INFORMATION (PHI) (including administrative responsibilities)**

#### **PURPOSE**

In compliance with Health Insurance Portability and Accountability Act (HIPAA), Part 2 and Washington law, this policy declares the commitment of North Sound Behavioral Health Organization (North Sound BHO) and sets out guidelines to maintain a culture of compliance for the protection of the privacy and confidentiality of PHI, including appropriate use and disclosure of PHI, affording of Individuals rights with respect to PHI and administrative responsibilities to promote and protect the privacy and confidentiality of PHI. North Sound BHO is committed to privacy and confidentiality protections.

Capitalized terms in this policy have specific meanings. Definitions under this policy include Individual, PHI, Required by Law and Workforce. See Policy 2502.00: Definitions for Policies Governing PHI.

#### **BACKGROUND**

In its designated role as the local behavioral health organization, North Sound BHO has multiple responsibilities mandated by federal and state statutes [see RCW 71.24.300]. The authority to gain access to PHI and/or Treatment records to fulfill these responsibilities and duties also is granted by state statute [see RCWs 71.05.390, 71.05.630 (2)(a)(b)(e), 70.02.050 (1)(b)(h), 71.34.200 (6) (10) and 71.24.300]. The privilege granted by these laws, however, carries with it considerable responsibility for protecting the PHI accessed, created, received, transmitted, or disclosed by North Sound BHO in the performance of its duties against misuse by, or disclosure to, unauthorized organizations and persons.

North Sound BHO is acutely aware mental illness, substance use disorder (SUD), Acquired Immunodeficiency Syndrome (AIDS), Human Immunodeficiency Virus (HIV) and sexually transmitted diseases (STD) continue to be categories of conditions that may subject Individuals to discrimination and other disadvantages. It also is understood with the growth of managed care and the increase in the amount and sensitivity of information made available to third-party payors/reviewers, there may be a corresponding decrease on the part of some Individuals in their inclination or desire to seek Treatment. The goal of North Sound BHO is to adopt and maintain policies, procedures, and practices that gives Individuals comfort that North Sound BHO's confidentiality and privacy protections are strong and will protect their privacy in compliance with federal and state law.

## **POLICY**

North Sound BHO is fully committed to providing Individuals privacy and confidentiality protections for PHI. North Sound BHO also recognizes Individuals put a great deal of trust in us with respect to their privacy and confidentiality. North Sound BHO and its Workforce will: comply with applicable federal and state law relating to the privacy and confidentiality of PHI including HIPAA, Part 2, and Washington law; protect PHI from unauthorized use or disclosure; promote Individual rights with respect to PHI; and, as further described in this policy, implement and maintain certain administrative processes with respect to the privacy and confidentiality of PHI. North Sound BHO's privacy policies, procedures and practices collectively honor that obligation and commitment. North Sound BHO further honors that commitment by enforcing its privacy and confidentiality policy, procedures and practices.

## **PROCEDURES**

1. **Culture of Privacy and Confidentiality Compliance.** North Sound BHO and its Workforce are committed to protecting the privacy and confidentiality of PHI and the Individuals they serve. North Sound BHO and its Workforce are and shall be committed to fostering a culture of compliance with respect to protecting the privacy and confidentiality of PHI.

**Compliance with Laws.** North Sound BHO will comply with applicable law, including:

- 1.1 **45 CFR Parts 160, 164 (HIPAA)** the "Health Insurance Portability and Accountability Act of 1996" and its implementing regulations;
- 1.2 **42 CFR Part 2 (Part 2)** "Confidentiality of SUD Individual Records";
- 1.3 **42 CFR 432.300 – 431.307** "State Organization and General Administration," "Safeguarding Information on Applicants and Recipients";
- 1.4 **RCW 70.02** "Uniform Health Care Information Confidentiality Act"; and
- 1.5 **WAC 388-865-0115** Access to Clinical Records.

***Note: In considering issues related to privacy and confidentiality, it is important to note any state law that would permit or require a disclosure prohibited by federal law is invalid. If, however, a state law is more stringent than HIPAA, meaning it provides greater privacy protections or greater Individual rights, then the state law prevails. If you are unsure as to the applicable standard, then please consult with North Sound BHO's Privacy Officer.***

## **Personnel Designations**

- 1.6 **Privacy Officer.** North Sound BHO has an appointed Privacy Officer. The Privacy Officer has primary responsibility for developing and implementing this policy and related privacy policies, procedures and practices and other duties as may be assigned.
- 1.7 **Security Officer.** North Sound BHO has an appointed Security Officer. The Security Officer is responsible for the development and implementation of security policies, procedures and practices for North Sound BHO and has other duties as may be assigned.

- 1.8 Contact Person or Office.** The contact person or office is responsible for receiving privacy complaints, providing further information about matters covered in the notice of privacy practices and other duties as may be assigned.

**Uses and Disclosures of PHI.** Workforce members will use and disclose PHI only as permitted under Policy 2522.00: Uses and Disclosures of PHI and by HIPAA, Part 2 and Washington law. Workforce members will provide additional protections for Part 2 Information, mental health information, and sexually transmitted disease information as Required by Law. See also Policy 2522.00: Uses and Disclosures of PHI.

- 1.9 Minimum Necessary.** When using, disclosing, or requesting PHI, Workforce members will make reasonable efforts to limit the use, disclosure, or request to the minimum necessary to accomplish the intended and permissible purpose of the use, disclosure, or request, to the extent required by HIPAA, Part 2, Washington law and in accordance with Policy 2509.00: Minimum Necessary. For example, it would be improper to disclose everything in an Individual's file if the recipient of the information needs only one (1) specific piece of information. A general guideline for disclosure of confidential information is to disclose only the **minimum necessary**, for only as long as is necessary and to only necessary recipients considering the purpose of the communication.
- 1.10 Authorization.** For any uses and disclosures of PHI not specifically permitted by law or Required by Law, North Sound BHO must obtain an authorization by the Individual or the Individual's Authorized Representative. See Policy 2521.00: Authorization.
- 1.11 No Marketing or Sale of PHI.** North Sound BHO will not engage in Marketing or Sale of PHI unless it meets an exception recognized by HIPAA and Washington law or obtains a valid authorization by or on behalf of the Individual.

### **Individual Rights**

- 1.12 Right of Individuals to Receive the Notice of Privacy Practices.** North Sound BHO shall have and appropriately provide a notice of privacy practices, written in plain language, that provides Individuals with notice of North Sound BHO's privacy practices in a manner consistent with HIPAA, Part 2 or Washington law and Policy 2510.00: Notice of Privacy Practices.
- 1.13 Right of Individuals to Access PHI.** Individuals have the right to request access to or a copy of PHI maintained in a Designated Record Set and Workforce members will process and respond to their requests, in accordance with Policy 2514.00: Right to Access PHI.
- 1.14 Right of Individuals to Request to Amend or Correct PHI.** Individuals have the right to request amendment or correction of PHI maintained in a Designated Record Set and Workforce members will process and respond to any of these requests, in accordance with Policy 2515.00: Right to Amendment of PHI.

- 1.15 Right of Individuals to Request Certain Privacy Restrictions.** Individuals have the right to request restrictions on certain uses and disclosures of PHI and Workforce members will process and respond to any requests, in accordance with Policy 2518.00: Right to Request Restrictions on the Uses and Disclosures of PHI.
- 1.16 Right of Individuals to an Accounting of Disclosures.** Individuals have the right to receive an accounting of certain disclosures of PHI and Workforce members will process and respond to any requests in accordance with Policy 2516.00: Right to Accounting of Disclosures.
- 1.17 Right of Individuals to Request Alternative Communications.** Individuals have the right to request transmission of PHI by alternative means or to an alternative location and Workforce members will process and respond to any request, in accordance with Policy 2517.00: Right to Alternative Communications.
- 1.18 Right of Individuals to Make Complaints Regarding Privacy Practices.** Individuals have the right to make and file complaints regarding North Sound BHO's privacy policies, procedures and practices and Workforce members will process and respond to any complaints. See Section 6.4 of this policy.
- 1.19 Right of Individuals to Have Authorized Representatives Act on Their Behalf.** Individuals have the right to have Authorized Representatives act on their behalf under certain circumstances. See Policy 2521.00: Authorizations.

### **Administration**

- 1.20 Workforce Training.** North Sound BHO has implemented, and the Privacy Officer will maintain, a mandatory privacy training program for the Workforce. This privacy training program will: (a) emphasize this policy and North Sound BHO's other privacy policies, procedures, and practices; (b) be tailored to reflect the various functions of Workforce members; and (c) be structured and delivered in a manner that facilitates compliance with applicable federal and state law, including HIPAA, Part 2, and Washington law. See also Policy 2520.00: Training of the Workforce.
- 1.21 Safeguards.** The Security Officer, with assistance from the Privacy Officer, has implemented and will maintain reasonable and appropriate administrative, technical, and physical safeguards to protect the privacy of PHI, in compliance with applicable federal and state law, including HIPAA, Part 2, and Washington law. See also Policy 2519.00: Safeguarding of PHI, as well as, North Sound BHO's security policies, procedures and practices.
- 1.22 Mitigation.** North Sound BHO, to the extent practicable, will mitigate known harmful effects resulting from an impermissible use or disclosure of PHI by North Sound BHO or its Business Associates/Qualified Service Organizations (QSOs) that may occur. Known unauthorized use or disclosure of PHI will be reported as Required by Law.

## 1.23 Privacy Complaint Process

- 1.23.1 Individuals may file complaints with the Privacy Officer or the contact described in North Sound BHO's notice of privacy practices. North Sound BHO shall inform Individuals of this right by including an appropriate statement in North Sound BHO's notice of privacy practices.
- 1.23.2 Workforce members may file complaints or raise questions and concerns with the Privacy Officer.
- 1.23.3 The Privacy Officer is responsible for reviewing each complaint, investigating the complaint as appropriate and attempting to come to an appropriate resolution of the complaint. The resolution will depend on the particular facts and circumstances of the complaint. Examples of complaint resolution include, but are not limited to, those described below.
  - (a) Educating the Individual or Workforce member filing the complaint about North Sound BHO's privacy, security and/or Breach notification policies, procedures and practices or about the requirements of HIPAA, Part 2 and Washington law.
  - (b) Implementing changes to North Sound BHO's privacy, security, or Breach notification policies, procedures, or practices.
  - (c) Providing additional training for Workforce members on North Sound BHO's privacy, security, or Breach notification policies, procedures, or practices or on HIPAA, Part 2 or Washington law.
  - (d) Imposing sanctions on Workforce members who act in a manner inconsistent with North Sound BHO's privacy, security, or Breach notifications policies, procedures and practices, HIPAA, Part 2 and/or Washington law.
  - (e) Determining whether (and what) mitigation actions are appropriate and implementing appropriate corrective action and mitigation actions.
  - (f) Issuing new Workforce communication and training materials.
  - (g) Not taking further actions because the event did not rise to a level that was impermissible under North Sound BHO's privacy, security, or Breach notification policies, procedures and practices, or HIPAA, Part 2 or Washington law.
- 1.23.4 After North Sound BHO has addressed a privacy complaint, North Sound BHO will inform the Individual or Workforce member who filed the complaint that the complaint was duly investigated, the general findings of the investigation and the disposition of the complaint. The complaint and its disposition shall be documented.

1.23.5 North Sound BHO recognizes Individuals have the right to file complaints with the Department of Health and Human Services (DHHS) and will inform Individuals of this right in its notice of privacy practices. See also Sections 6.5 and 6.6 of this policy.

- 1.24 Prohibition of Intimidation or Retaliatory Acts.** Neither North Sound BHO nor any member of its Workforce may intimidate, threaten, coerce, discriminate against, or take any retaliatory action of any kind against an Individual for lodging a good faith complaint or otherwise exercising his or her privacy rights provided by HIPAA, Part 2 or Washington law.
- 1.25 Privacy Rights May Not Be Waived.** Neither North Sound BHO nor any member of its Workforce shall require an Individual to waive his or her privacy rights under HIPAA, Part 2 or Washington law as a condition of Treatment, Payment, enrollment in any health plan, eligibility for direct care, or eligibility for health benefits.
- 1.26 Sanctions for Members of the Workforce.** North Sound BHO leadership, in consultation with the Privacy Officer, are responsible for developing, implementing and consistently imposing sanctions and disciplinary actions, up to and including termination of employment or other relationship with North Sound BHO, against members of the Workforce who fail to comply with this policy or other privacy policies, procedures and practices. Workforce members must participate in privacy training, at which time Workforce members may ask any questions or address any concerns they have regarding North Sound BHO's policies, procedures and practices.

Failure to comply with any North Sound BHO privacy policies, procedures and practices will constitute grounds for immediate disciplinary action up to and including termination of employment, service, or association with North Sound BHO. An inappropriate or indiscriminate acquisition, access, review, use, disclosure, or transmission of PHI, including, but not limited to, actions that might constitute a Breach of unsecured PHI (as provided under HIPAA) and/or a breach of the security of the system (as provided under Washington law), may result in immediate disciplinary action up to and including termination of employment, service, or association North Sound BHO. Disciplinary actions will be taken in a manner consistent with North Sound BHO disciplinary process. As required by federal law, any sanctions applied to any member of the Workforce will be documented and the disposition of the sanction recorded.

- 1.27 Policies, Procedures, Practices, and Other Documentation.** North Sound BHO leadership has and will continue to develop, adopt and implement the policies, procedures, practices, processes and tracking systems as may be necessary to effectuate this policy in compliance with applicable federal and state law, including HIPAA, Part 2 or Washington law. North Sound BHO, from time to time, will review and update these policies, procedures and practices to reflect changes in law and in circumstances. To the extent that any requirements in this policy or other privacy-related policies, procedures and practices impose obligations beyond that which is Required by Law, those requirements will be deemed aspirational in nature. These policies, procedures and practices and any changes, will be reflected in the notice of privacy practices.

**Verification of Identity and Authority.** Workforce members will take reasonable steps and use professional judgment to verify the identity and authority of any Individual, Authorized Representative, or other person with respect to any access to, use, or disclosure of PHI, if the identity or authority is not known to North Sound BHO, in accordance with Policy 2524.00: Verification of Identity.

**Workforce Oath of Confidentiality.** All North Sound BHO Workforce members shall sign an Oath of Confidentiality statement on or shortly after their starting date and on approximately an annual basis. This statement will affirm, in part, that the Workforce members will not make unauthorized uses or disclosures of any PHI and will take reasonable actions to safeguard PHI.

**Questions and Concerns.** Workforce members should bring any questions and concerns about the privacy and confidentiality policies, procedures, or practices at North Sound BHO to the Privacy Officer.

**Reporting of Suspected Impermissible Actions or Omissions.** Workforce members should inform the Privacy Officer of any actual or suspected breaches of any of North Sound BHO's policies, procedures, or practices or any other concerns relating to the privacy and confidentiality of PHI, Individual rights concerning PHI, or privacy administrative obligations.

**Documentation.** Documentation will be retained for at least six (6) years. Retention requirements include, but are not limited to:

- 1.28 Notice of privacy practices.**
- 1.29 Designating letters** for the Privacy Officer and Security Officer.
- 1.30 This policy and related privacy policies, procedures and practices.**
- 1.31 Documentation of sanctions.**
- 1.32 Documentation** concerning complaints.
- 1.33 Authorizations.**
- 1.34 Documentation** concerning exercising of Individual rights.
- 1.35 Other documentation required by North Sound BHO's privacy policies, procedures and practices.**

**Related Policies.** All North Sound BHO privacy policies are related to this policy and should be reviewed.

## **ATTACHMENTS**

None