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North Sound Mental Health Administration

Section 2500 – Privacy: Uses and Disclosures – Authorizations

Authorizing Source: RCW 70.02; 71.05; 45 CFR 160 to 165 (HIPAA)

Cancels:

See Also:

Providers must have own “HIPAA & WAC compliant policy”

Responsible Staff: Privacy Officer

Approved by: Executive Director

Signature:

Date: 7/17/2013

POLICY: #2521.00

SUBJECT: USES AND DISCLOSURES – AUTHORIZATIONS

PURPOSE

The North Sound Mental Health Administration (NSMHA), in compliance with the Privacy Rules of Health Insurance Portability and Accountability Act (HIPAA) Administrative Simplification provisions and the laws of the State of Washington, sets out in this policy the conditions for obtaining authorization from individuals for any use and/or disclosure of Protected Health Information (PHI) that requires authorization and is not otherwise permitted or required under the Privacy Rules or applicable law.

POLICY

NSMHA will obtain a signed authorization that meets the standards of the Privacy Rules and Washington State law from individuals prior to using or disclosing PHI in those situations and for those uses that are not otherwise permitted or required under the Privacy Rules and Washington State law. A copy of the authorization form presently in use at NSMHA is attached to this policy.

1. Valid authorizations are required for disclosure of all PHI except under limited circumstances.
2. Valid authorizations are required for any use or disclosure of psychotherapy notes for purposes **other** than treatment, internal training programs, to use or disclose by NSMHA to defend itself in a legal action or other proceeding brought by the individual, and/or a use or disclosure permitted with respect to the oversight of the originator of the psychotherapy notes.

Valid authorizations are required for any use or disclosure of PHI for marketing, except if the communication is in the form of:

1. A face-to-face communication made by a covered entity to an individual; or
2. A promotional gift of nominal value provided by NSMHA.

If the marketing involves direct or indirect remuneration to NSMHA from a third party, the authorization must state that such remuneration is involved.

Except for authorizations given to provide information to third-party payers, an authorization may not permit the release of health care information relating to future health care that the patient may receive more than ninety days after the authorization was signed.

Uses and Disclosures Permitted Without Authorization

1. When the consumer is present, with their agreement and with an opportunity to object, or it can reasonably be inferred from the circumstances, based on the exercise of professional judgment, that the individual does not object to the disclosure;
2. Among internal staff of NSMHA;
3. By a health care professional who has medical responsibility for the consumer’s care;

4. By a county-designated Mental Health Professional (MHP);
5. By a health care professional who is providing services under RCW 71.24 et seq.;
6. By a professional who is employed by a state or local correctional facility where the person is confined, for the provision of health care to the consumer, the health and safety of the consumer or other inmates, the health and safety of the officers or employees of the institution, law enforcement on the premises, or the administration and maintenance of the safety, security and “good order” of the institution;
7. By a professional who is providing evaluation, treatment, or follow up services pursuant to RCW 10.77 et seq.;
8. When the communications regard the special needs of the consumer and the necessary circumstances giving rise to such needs, and the disclosure is made by a facility providing outpatient services to the operator of a care facility in which the consumer resides;
9. To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled;
10. For program evaluation;
11. For some research purposes, if documentation is obtained to verify that an Institutional Review Board (IRB) established under applicable federal regulations, or a “privacy board,” has approved a waiver or alteration of individual authorization, if it is determined by the IRB or privacy board that (a) the research project is of sufficient importance to outweigh the intrusion into the privacy of the patient and (b) a written and legally binding confidentiality agreement is signed by the researcher. Re-disclosure is prohibited, unless in accordance with RCW 42.48.040.
 - a. The program may release PHI to researchers the program director determines are qualified.
 - b. A qualified researcher must have adequate training and experience in the area of the research to be conducted, and must have a protocol that ensures that information will be securely stored and not re-disclosed in violation of state or federal law.
 - c. The confidentiality safeguards in the protocol must be approved by an independent group of three or more individuals.
 - d. The researcher may not re-disclose the information to anyone except to the program itself.
 - e. The research report may not identify a patient, directly or indirectly.
 - f. Finally, no patient-identifying information may be used to conduct any criminal investigation or prosecution of the consumer, even in response to a court order.
12. For disaster relief purposes;
13. Otherwise required by law;
14. For public health activities to a public health authority that is authorized by law to collect or receive such information 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;
15. To a person subject to the jurisdiction of the Food and Drug Administration (FDA) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity in order to collect or report adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations; to track FDA-regulated products; to enable product recalls, repairs, or replacement, or look back (including locating and notifying individuals who have received products that have been recalled, withdrawn, or are the subject of look back); to conduct post marketing surveillance;

16. To a person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the Covered Entity or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation;
17. To a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of the health care system; government benefit programs for which health information is relevant to beneficiary eligibility; entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or entities subject to civil rights laws for which health information is necessary for determining compliance;
18. To the courts as required by Washington law, or to a court ordering an evaluation or treatment under RCW 10.77 et seq., solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under Washington law;
19. To law enforcement officers, public health officers, or personnel of the Department of Corrections (DOC) or the Indeterminate Sentence Review Board (ISRB) for persons who are the subject of the records and who are committed to the custody of the DOC or ISRB, which information or records are necessary to carry out the responsibilities of their offices. Except for dissemination of information released pursuant to RCW 71.05.425 and 4.24.550 [regarding persons committed pursuant to RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030], the extent of information that may be released is limited as follows:
 - a. Only the fact, place, and date of involuntary commitment, the fact and date of discharge or release, and the last known address shall be disclosed upon request;
 - b. The law enforcement and public health officers or personnel of the department of corrections or indeterminate sentence review board shall be obligated to keep such information confidential in accordance with this chapter; and
 - c. Additional information shall be disclosed only after giving notice to said person and his or her counsel and upon a showing of clear, cogent, and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained. In the event the said person has escaped from custody, however, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall include an evaluation as to whether the person is of danger to persons or property and has a propensity toward violence;
20. To the prosecuting attorney, as necessary to carry out the responsibilities of the office under RCW 71.05.330(2), 71.05.340 (1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person's counsel, if any.
21. To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees, so long as the decision was reached in good faith and without gross negligence;

22. To appropriate law enforcement agencies, upon request, all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees, so long as the decision was reached in good faith and without gross negligence;
23. To the persons designated in RCW 71.05.425 for the purposes described in that section;
24. To a patient's next of kin, guardian, or conservator, if any, in the event of death, as provided in RCW 71.05.400;
25. To the Department of Health, for the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. The information and records obtained under this subsection, however, are exempt from public inspection and copying pursuant to RCW 42.17 et seq.;
26. To qualified staff members of the Department of Social and Health Services (DSHS), to the directors of regional support networks, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility. When communicating with qualified staff members of DSHS, the disclosing NSMHA staff member shall reiterate that the information must remain confidential;
27. Within the treatment facility where the patient is receiving treatment, confidential information may be disclosed to individuals employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties;
28. Within DSHS as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of individuals who are under the supervision of the Department;
29. To a licensed physician who has determined that the life or health of the individual is in danger, and that treatment without the information contained in the treatment records could be injurious to the patient's health. Disclosure shall be limited to the portions of the records necessary to meet the medical emergency; and
30. To a facility that is to receive an individual who is involuntarily committed pursuant to RCW 71.05 et seq. or upon transfer of the individual from one treatment facility to another under the limitations required by Washington law.

Note: Civil liability, and the issue of immunity for the release of information about a particular person who is committed to the Department pursuant to RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.97A.030, is governed by RCW 4.24.550.

ATTACHMENTS

2521.01 – Core Elements

2521.02 – Procedure 2521-A – Procedures for Completion or for Processing an Authorization

2521.03 – Authorization to Receive and/or Release Information