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**PROCEDURE – 2522-A**

The North Sound Mental Health Administration (NSMHA) may not use or disclose Protected Health Information (PHI) without a valid authorization completed by the consumer, or applicable personal representative, with limited exceptions. The standard NSMHA authorization form is attached to this policy. Any disclosures that occur shall be limited to the minimum necessary to meet the purpose of the use or disclosure.

**Exceptions to the Minimum Necessary Requirement are as Follows:**

1. When the consumer authorizes the disclosure; and
2. Disclosures required by law

**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 the 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 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 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.

The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to state law, shall not be admissible as evidence in any legal proceeding without the written consent of the person who was the subject of the proceeding except in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(2)(c) on charges that were dismissed pursuant to RCW 10.77 et seq. due to incompetency to stand trial or in a civil commitment proceeding pursuant to RCW 71.09 et seq. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney.

In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

### **Internal Uses and Disclosures of PHI**

1. It will be the responsibility of each employee who uses or discloses PHI for internal and external use to read and to understand the organization's Privacy Practices. These practices are outlined in detail in the current version of our Privacy Notice, which is attached to the Privacy Notice Policy and Procedure. This notice may be amended from time to time.
2. In general, the organization will not use and disclose PHI without the consumer's explicit authorization. We will, except in emergency situations, provide each consumer with a copy of our Privacy Notice that details the types of uses and disclosures of their PHI that we make for treatment, payment and operations prior to their beginning a relationship with us. Please see the Privacy Notice Policy and Procedure for more detail on this.
3. If an employee has any questions about whether or not a use or disclosure is permitted, he or she must request assistance from either the appropriate supervisor or the Privacy Officer/designee before making the disclosure or using the PHI.

### **External Disclosures of PHI for Treatment, Payment and Operations**

1. **Treatment:** A signed authorization will be obtained from the consumer unless the disclosure is permitted without authorization. A copy of the signed authorization will be provided to the Privacy Officer/designee to retain on file. Disclosures without authorization will be reviewed to determine whether they are subject to accounting, and if so, appropriately documented per the "Accounting of Disclosures" policy.
2. **Payment:** The organization may disclose PHI to another healthcare provider to assist that provider in getting payment for services provided to one of our consumers. In all cases, however, the PHI disclosed must only be the minimum necessary needed to secure payment. An example of this might be a situation in which we have called an ambulance to transport a consumer in an

emergency situation. The ambulance employees may not be able to obtain information at that time from the consumer for payment purposes and so may need to contact us afterwards for necessary information. In order to ensure that only the minimum necessary information is released, and that the disclosure complies with our privacy practices, the following procedure will be followed:

- a. The Fiscal Officer will be responsible for all disclosures to other healthcare providers for payment purposes.
- b. This responsibility may be delegated to trained employees or Business Associates who follow written instructions for each type of routine payment request the organization receives for information for payment purposes.
- c. The written instructions must be developed by the Fiscal Officer and approved by the Privacy Officer/designee. The written instructions will list the disclosures allowed by type of service, as well as the type of provider, the PHI that is allowed to be disclosed, and a procedure for ensuring that the provider requesting the information has provided a service to a consumer of ours and could not obtain the information directly from the consumer.
- d. Employees who have not been trained and do not have access to the written instructions for disclosures must not, under any circumstances, disclose information to a third party who requests for their own payment purposes.
- e. If the request is from a third party who is not listed in the written instructions, and who asks for additional PHI not listed in the instructions, or who seeks payment for a type of service not contemplated in the instructions, the request must be sent to the Fiscal Officer for disposition.
- f. In any cases in which we are releasing the entire record to a third party for payment purposes, we must justify why this is being done in writing and file this documentation in the record with a copy to the Privacy Officer. This should be documented on the "Accounting for Disclosures" form.

3. **Operations:** PHI may be disclosed to a third party provider in certain limited circumstances for their operational needs. In all cases, the third party requesting the information must have or have had a relationship with our consumer, and the information requested must be related to that relationship. On a routine basis, we may release information to the Mental Health Division to assist them in planning or monitoring efforts. Because of the complexity of determining what is or is not a permitted disclosure, however, the following procedure will be followed:

- a. The Privacy Officer/designee will be responsible for all disclosures to third parties requested for those third parties' operations.
- b. This responsibility may be delegated to trained employees or Business Associates who follow written instructions for each type of routine request the organization receives for information for the operations of a third party provider.
- c. The written instructions must be developed by the Privacy Officer/designee and approved by the Executive Director. The written instructions will:
  - i. List the disclosures allowed to each third party specifically;
  - ii. Provide a procedure for ensuring that the provider requesting the information has or has had a relationship to the consumer;
  - iii. Require that the PHI requested is related to the relationship the third party has or had to the consumer; and
  - iv. Require that the PHI disclosed is the minimum necessary for the operational purpose contemplated.

- d. Employees who have not been trained and do not have access to the written instructions for disclosures must not, under any circumstances, disclose information to a third party who requests for their own operations purposes.
  - e. If the request is from a third party that is not listed in the written instructions, and who requests additional PHI not listed in the instructions, or seeks PHI for an operational reason not contemplated in the instructions, the request must be sent to the Privacy Officer/designee for disposition.
  - f. In any cases where we are releasing the entire record to a third party for operational purposes, we must justify why this is being done in writing and file this documentation in the medical record with a copy to the Privacy Officer. This should be documented on the “Accounting for Disclosures” form.
4. All requests for disclosures of PHI to third parties, whether or not they are Covered Entities, will require a signed authorization by the consumer unless otherwise permitted by law.
  5. If an employee has any questions about whether or not a use or disclosure is permitted, he or she must request assistance from either their supervisor or the Privacy Officer/designee before making the disclosure or using the PHI.

### **Psychotherapy Notes**

Because the NSMHA is a pre-paid health plan, no clinical services are currently provided that would entail the creation of psychotherapy notes. Should this change in the future, the following will apply. It is included for educational purposes.

Any request for the use and disclosure of psychotherapy notes by anyone other than the originator of the notes for treatment purposes must be approved by the Privacy Officer/designee. In most cases, an authorization by the consumer will be required. The exceptions to this will be in the case in which:

1. The Privacy Officer/designee has approved use of Notes in an internal training program for treatment staff that is appropriately supervised;
2. The Notes are used to develop a defense against a legal action brought by the consumer against the organization or the provider. The Privacy Officer/designee, in conjunction with legal counsel, will determine the need for use and disclosure of the psychotherapy notes to assist in the defense; and
3. In other situations in which the disclosure is required by law or regulation to assist in health care oversight, to determine or investigate the organization’s compliance with the Privacy Regulations under HIPAA, and to assist law enforcement in certain limited situations. In each of the situations described in this paragraph, the Privacy Officer/designee must be consulted. He she, or they, with advice from legal counsel, will determine if there is a need for the disclosure and the extent of the disclosure of psychotherapy notes.

In all cases, the development or use of psychotherapy notes to assist in psychotherapy will be restricted to mental health professionals within the organization. The measures the treating professional will take to secure these notes must have the approval of the Privacy Officer/designee.

### **Uses and Disclosures: Substance Abuse**

Federal Regulations governing the confidentiality of substance abuse information (42 CFR, Part 2) are generally *more* restrictive than HIPAA, and should be followed when PHI of any consumer in a federally assisted alcohol or drug abuse (“substance abuse”) program is disclosed. Substance abuse providers operating federally-assisted alcohol or drug abuse programs must always obtain a specific authorization for each disclosure of consumer records or other information concerning a consumer, EXCEPT:

1. **For internal program communication purposes.** Under this exception, program staff may disclose information to other staff within the program, or to an entity having direct administrative control over that program, if the recipient needs the information in connection with the provision of substance abuse diagnosis, treatment or referral for treatment.
2. **For medical emergencies posing an immediate threat to health and requiring immediate medical intervention.** Under this exception, disclosures may be made to public or private medical personnel to the extent necessary to meet a bona fide medical emergency of the consumer or any other person.
3. **In response to court-ordered disclosures where the court order has been issued in accordance with procedures specified by the Federal Regulations.** Before a court can issue an Order authorizing disclosure, the substance abuse program and any consumer 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 must also find that there is “good cause” for the disclosure. Court-ordered disclosures must be limited to the information essential to fulfill the purpose of the Order, and they must be restricted to those persons who need the information.
4. If the order is sought by an authorized law enforcement officer or prosecuting attorney, there are five additional criteria that must be met:
  - a. The crime must be extremely serious, e.g., an act causing or threatening to cause death or injury;
  - b. The records requested must be likely to have information of significance to the investigation or prosecution;
  - c. There is no other practical way to obtain the information;
  - d. The public interest in disclosure outweighs any actual or potential harm to the patient or the consumer-patient relationship and the ability of the program to provide services to other patients; and
  - e. When law enforcement personnel seek the Order, the program has had an opportunity to be represented by counsel.
5. A federally-assisted substance abuse program is prohibited from disclosing PHI about consumers in response to subpoenas unless:
  - a. The consumer has signed a proper consent form for the disclosure; or
  - b. A court has ordered the program to release the PHI after giving the consumer and the program an opportunity to be heard and after making a “good cause” determination.
6. **When a consumer has committed or threatened to commit a crime on the program premises or against program personnel.** Under these circumstances, the program may report the crime to the NSMHA, or to seek the assistance of a law enforcement officer. The program may disclose the circumstances of the incident, including the suspect’s name, address, last known whereabouts, and the suspect’s status as a consumer at the program.
7. **When the disclosure is for research purposes.** Under this exception, the program may release PHI to researchers the program director determines are qualified. A qualified researcher must have adequate training and experience in the area of research to be conducted and must have a protocol that ensures that information will be securely stored and not re-disclosed in violation of law.
  - a. The confidentiality safeguards in the protocol must be approved by an independent group of three or more individuals.

- b. The researcher may not re-disclose the information to anyone except to the program itself.
  - c. The research report may not identify a patient, directly or indirectly.
  - d. 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.
8. **When a government agency that funds or regulates the program, a third-party payer, or a peer review organization requests access to program records.** The auditor or evaluator must agree in writing that it will re-disclose identifying information only:
- a. Back to the program;
  - b. Pursuant to a court order to investigate or prosecute the program (not a patient); or
  - c. To a government agency that is overseeing a Medicare or Medicaid audit or evaluation.

Records may be removed only upon a promise in writing to safeguard the records, not to re-disclose the records in violation of law, and to destroy all patient-identifying information when the audit or evaluation is completed.

9. **When the program is reporting under state law incidents of suspected child abuse and neglect to appropriate authorities.**
10. **When the disclosure is to a “Qualified Service Organization” (QSO).** A QSO is a person or entity that provides services to the program. A QSO must enter into a written agreement with the program containing provisions, in addition to those required for a Business Associates Agreement under the Privacy Rule:
- a. Acknowledging that in receiving, storing, processing or otherwise dealing with any information the program about consumers, the QSO will be bound by the Federal Regulations; and
  - b. Promising that it will resist in judicial proceedings, if necessary, any efforts to obtain access to PHI, except as permitted by the Federal Regulations.

### **Substance Abuse Disclosures**

Any PHI disclosed without the authorization of a consumer in a federally-assisted substance abuse program may only be made in consultation with the Privacy Officer.

If the program receives a request for disclosure of a consumer’s record that is not permitted under the Federal Regulations, the program must refuse to make the disclosure, and must ensure that the refusal is accomplished in a way that does not reveal the individual has ever been diagnosed or treated for an alcohol or drug problem.