



SALISH BH-ASO POLICIES AND PROCEDURES

Policy Name: INDIVIDUAL PROTECTED HEALTH INFORMATION RIGHTS

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PURPOSE

To ensure Individuals understand and can access their rights regarding their Protected Health Information (PHI).

POLICY

The Salish Behavioral Health Administrative Services Organization (SBH-ASO), in an effort to be compliant with the privacy rules of the Health Insurance Portability and Accountability Act's (HIPAA) Administrative Simplification provisions and 42 CFR Part 2, sets out in this policy, the individual rights regarding their protected health information.

These rights fall into six (6) general categories:

1. The right of adequate notice of:
 - a. Uses and disclosure of PHI that may be made by SBH-ASO
 - b. The individual's rights and SBH-ASO's legal duties with respect to the individual's PHI
2. The right to access PHI
3. The right to request amendment and/or correction of PHI
4. The right to request and receive an accounting of disclosures of PHI
5. The right to request restrictions on the use and/or disclosure of PHI
6. The right to request confidential communication

PROCEDURE

1. Adequate Notice

SBH-ASO recognizes that the most important individual right provision in the HIPAA regulations is the right to notification of SBH-ASO's privacy practices. This right affords individuals the opportunity to become aware of and understand how their PHI will be used and disclosed. This notice becomes the portal through which individuals are able to further access their information and to control the uses and disclosures of such information. SBH-ASO, in its efforts to meet compliance with these regulations, has developed its privacy notices to conform to the requirements as described in the regulations. Additionally, the Privacy Notice will be posted in the Region Office. The SBH-ASO Privacy Notice will be made available through the SBH-ASO providers, posting at the Region Office, and via the SBH-ASO website.

2. Access to PHI

- a. SBH-ASO considers all requests from our individuals, or previous individuals, for access to their PHI that is maintained in the designated record set and that is dated after April 14, 2003 (see SBH-ASO policy Designated Record Set). SBH-ASO will consider individual requests to either inspect or obtain a copy of their PHI for as long as their PHI is maintained in the designated record set.
- b. SBH-ASO will require that individuals make their request in writing. The request should address the following:
 - Identification of the specific PHI that the client wishes to access
 - The reason for their request (this is optional for the client)
 - Whether they wish to inspect or obtain copies of the PHI
 - Notification of the cost we will charge for copying and postage
 - Notification of their right to obtain a summary or explanation of their information, along with the cost of that service
- c. SBH-ASO will deny a client access to PHI, and that denial will not be subject to review, if the PHI requested is
 - Contained in records or documents compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding.
 - Is subject to the Federal Privacy Act.
 - Was obtained under the promise of confidentiality from another person (not a healthcare provider), and the access requested would be reasonably likely to reveal the source of that information.
 - Created or obtained in the course of research that involves treatment when the individual agreed to the denial of access for the duration of the research (that includes treatment) when consenting to participate in the research, and the individual has been informed that access will be reinstated upon completion of the research.

- Being requested by an inmate and it is determined that such a copy would jeopardize the health, safety, security, custody, or rehabilitation of the individual or other inmates or the safety of an officer or other person responsible for transporting the inmate. SBH-ASO will provide an inmate with the right to inspect his PHI unless other grounds for denial exist.
- d. SBH-ASO will deny access to any PHI that a licensed healthcare professional determines:
- Is, in their professional judgment, is reasonably likely to endanger the life or physical safety of the individual or another person.
 - In their professional judgment, makes reference to another person (not a health care provider), and access is reasonably likely to cause substantial harm to that other person.
 - Has been requested by a personal representative, and access by that person is reasonably likely to cause substantial harm to the individual or another person.
- e. When denying an individual access for any of these three reasons, these denials will be subject to review as described below. In addition, if access to the entire record is denied and the individual requests a review of the decision, SBH-ASO will make the entire record available to the individual's attorney, with the consent of the individual, or to a psychotherapist designated by the individual.
- f. It is SBH-ASO's policy to deny individuals access to their PHI only infrequently and in unusual circumstances and, when access is denied, it must be for one of the reasons listed above. Furthermore, SBH-ASO will provide access, to the extent possible, to any other requested PHI that is not part of the PHI to which access has been denied.
- g. When an individual has been denied access for one of the reasons that is subject to review, it will be SBH-ASO's policy to respond in writing giving the basis for denial in plain language within the time period set forth below. SBH-ASO will also inform the individual of their right to request a review of the denial of access and provide a description of how the individual may file a complaint with us or with the Secretary of the Department of Health and Human Services (DHHS).
- h. In any case where the individual requests a review, SBH-ASO will promptly refer the denial to another licensed healthcare professional, who has not been directly involved in the denial, for their review. SBH-ASO will also promptly inform the individual, in writing, if the reviewer upholds the denial. In those cases where the reviewer permits access, the individual will be informed.
- i. When SBH-ASO has agreed to grant access to PHI, the individual will be notified and arrangements made to do so within thirty (30) days from the date of the request. Should the PHI requested be maintained off-site,

SBH-ASO can take longer to respond, but no more than sixty (60) days from the date of the request. In either case, SBH-ASO can obtain a single, thirty (30) day extension of time in those rare cases where we are unable to respond in the initial time period. SBH-ASO will notify the individual of the reasons for delay and the date of completion by means of a written statement.

- j. When SBH-ASO has agreed to inspection of the designated record set, SBH-ASO will arrange a mutually agreeable time and place for the inspection.
- k. When SBH-ASO has agreed to provide copies of the requested PHI, SBH-ASO will confer with the individual and determine their preference for the media in which to receive it – paper or electronic (where available). If SBH-ASO cannot agree on how the PHI will be produced, then SBH-ASO will produce the PHI in readable hard copy.
- l. SBH-ASO will charge a fee for copying the material and for postage, if the copies are to be mailed, and the individual will be notified of that charge prior to SBH-ASO copying the material. However, if the individual is requesting the PHI for the purpose of supporting a claim or appeal under the Social Security Act or any federal or state financial need-based benefit program, SBH-ASO will furnish the PHI within thirty (30) days of the request at no charge to the individual.
- m. It will be SBH-ASO's policy to charge for the cost of making the copies (both the labor and machine and paper cost), but will not include charges for the cost of the retrieval and handling of information, nor will the SBH-ASO charge for the costs of processing the request.
- n. SBH-ASO will provide summaries of PHI in those cases where the individual has requested them. SBH-ASO will charge for the costs associated with producing the summary, and the individual will be notified of that charge prior to completing the summary.
- o. In those cases where SBH-ASO receives a request for PHI that SBH-ASO does not maintain, but knows where it is maintained, the individual will be informed of the location of the PHI.

3. Amendment/Correction

- a. SBH-ASO will consider all requests from individuals, or former individuals, to amend their PHI that is maintained in a designated record set for as long as it is maintained at the Region Office. SBH-ASO requires that all requests for amendment be in writing, and to include the reason for the amendment. SBH-ASO will notify individuals of the SBH-ASO policies for requesting amendments in the Privacy Notice.
- b. SBH-ASO will respond to requests for amendment within thirty (30) days from the date of the request. Should, in rare circumstances, SBH-ASO be unable to respond within thirty (30) days, the individual will be notified prior

to the expiration of the thirty (30) day period, in writing, and provided the reason that additional time is needed and given a date (no more than 30 days beyond the original 30 days) by which the individual can expect action on their request be completed.

- 1) In those instances where SBH-ASO grants the request for amendment, the following steps will be completed:
 - Inform the individual in writing
 - Obtain their agreement about the list of people or organizations that they, and you, believe should be informed of the amendment
 - Notify the list identified above of the amendment (Note: SBH-ASO will identify anyone who may have relied upon the subject PHI in the past, or who might reasonably be expected to rely upon it in the future and attempt to obtain agreement from the individual about their notification.)
- 2) In those instances where SBH-ASO denies the request for amendment, the following steps will be completed:
 - Provide the individual with a written denial that is in plain language and that:
 - a) Contains the basis for the denial
 - b) Includes a notification that the individual has the right to provide a written statement disagreeing with the denial and how they might file such a statement.
 - Describe to the individual the procedure for filing a complaint either with:
 - a) DHHS or
 - b) with the person or office in the SBH-SO organization who is responsible for receiving complaints, including their name or title and their telephone number
 - Provide information on how the individual can contact the Office of Behavioral Health Advocates for assistance in filing a complaint.
 - Inform the individual that they may file a statement of disagreement with the SBH-ASO denial that does not exceed two hundred and fifty (250) words.
 - Inform the individual that they may request, should they not file a statement of disagreement, that their request for amendment and the related denial be attached to all future disclosures of the subject PHI.
- c. SBH-ASO will prepare rebuttals in those instances where a licensed healthcare professional determines that a rebuttal is necessary to add clarity to the other material created around this request for amendment.

d. Designated Record Set

It is the SBH-ASO policy to take the following actions with respect to the designated record set in amendment situations:

- 1) When the amendment request has been granted:
 - Identify the subject PHI in the designated record set; and
 - Append the amendment to the PHI or
 - Provide a link to the location in the file of the amendment.
- 2) When the amendment request has been denied and the client requests it:
 - Identify the subject PHI in the designated record set; and
 - Append the request for amendment and the denial to the PHI or
 - Provide a link to the location in the file of the request and the denial.
- 3) When the amendment request has been denied and the client has filed a statement of disagreement and we have or have not prepared a rebuttal:
 - Identify the subject PHI in the designated record set; and
 - Append the request for amendment, the denial, the statement of disagreement, and, if prepared, our rebuttal to the PHI or

4. Accounting of Disclosures

- a. SBH-ASO will consider all requests from individuals, or former individuals, to receive an accounting of certain disclosures of their PHI that have occurred in the six (6) year period prior to their request, or from the effective date of the Privacy Rule, whichever is shorter. SBH-ASO requires that all requests for an accounting be in writing. SBH-ASO will notify individuals of policies for requesting an accounting in the SBH-ASO Privacy Notice.
- b. SBH-ASO will respond to requests for an accounting within thirty (30) days from the date of the request. Should, in rare circumstances, SBH-ASO be unable to respond within thirty (30) days, the individual will be notified, in writing during the initial thirty (30) day period, and provided with the reason(s) additional time is needed and given the date (no more than 30 days beyond the original 30 days) by which the individual can expect action on their request be completed.
- c. SBH-ASO will account for all uses and disclosures of our individuals' PHI except for those in the following categories:
 - 1) Disclosures made to the individual
 - 2) Disclosures made to carry out treatment, payment, or operations
 - 3) Disclosures made to persons involved in the client's care (relatives

- and/or friends)
- 4) Disclosures made for notification purposes to family or personal representatives
 - 5) Disclosures for national security or intelligence purposes
 - 6) Disclosure to correctional institutions or law enforcement officials when the client is an inmate
- d. In those situations where SBH-ASO has made disclosures to a health oversight or law enforcement agency as permitted and, the agency has provided SBH-ASO with a written statement that inclusion of such disclosures would be reasonably likely to impede with their activities and, the agency has provided a specific time period, our policy will be to exclude those disclosures from any accounting requested by the subject individual. At the end of that period, the SBH-ASO policy will be to include any disclosures made to the agency during that period in any future accountings.
- e. Should the health oversight or law enforcement agency provide SBH-ASO with an oral statement that a disclosure would be reasonably likely to impede their activities, the SBH-ASO policy will be to withhold disclosures for a 30-day period after which SBH-ASO will include the disclosures in requested accountings unless a written statement requesting a longer time period has been provided during the 30-day period.
- 1) The SBH-ASO policy will be to include the following items in every accounting:
 - The date of the disclosure
 - The name and address of the person or organization receiving the PHI
 - A brief description of the PHI disclosed
 - A brief statement that reasonably informs the client of the purpose for the disclosure
- f. SBH-ASO's policy with respect to multiple disclosures of an individual's PHI to the same person or entity for the same purpose will be to present all of the information listed above for the first disclosure in the accounting period. In addition, SBH-ASO will present the frequency, periodicity, or number of disclosures made during the accounting period and the date of the most recent disclosure.
- g. SBH-ASO will provide the first accounting in each twelve (12) month period, beginning with the individual's first request for an accounting, at no charge. Any additional request for accounting from the same individual during their twelve (12) month period will be made subject to the individual's agreement to pay a reasonable, cost-based fee for the additional accounting. SBH-ASO will inform the individual of the fee and obtain their written agreement to pay the fee prior to preparing the

accounting. SBH-ASO will offer the individual an opportunity to withdraw or modify their request in order to avoid or reduce the fee.

5. Restrictions

- a. SBH-ASO will consider an individual's request for restriction of the uses and disclosures that SBH-ASO makes for purposes of treatment, payment, and operations. SBH-ASO will require individuals make their request in writing. SBH-ASO will discuss with the individual the potential difficulties that are inherent in the restrictions that the individual requests.
- b. SBH-ASO will document the request and, ultimately, whether the restriction has been granted to the individual. While SBH-ASO is not required by the Privacy Rule to agree to individual-requested restrictions, SBH-ASO will grant those restrictions that SBH-ASO believes, in its judgment, to be in the best interests of individuals.
- c. SBH-ASO will abide by all of the restrictions that are granted, except as described below.
 - 1) When the individual is in need of emergency treatment and the restricted PHI is needed to provide the emergency treatment, SBH-ASO policy will be to make disclosure of the PHI that is required for treatment and to send along with the PHI the requirement that there be no further uses or disclosures of the restricted PHI. In non-emergency situations, when we receive a request for PHI that is restricted but required for appropriate treatment, SBH-ASO will discuss with the individual the need to send the PHI and attempt to obtain their agreement. The individual's agreement should be documented by a note in their record.
- d. In any case where SBH-ASO believes the individual's restriction can no longer be honored, SBH-ASO will terminate the restriction. It will be SBH-ASO's policy to discuss the change of circumstance with the individual and ask for their agreement and to document that agreement in the record.
- e. Should the individual refuse to agree to the termination of the restriction, SBH-ASO will implement a unilateral termination. This will also be documented in the record. The PHI that SBH-ASO created or received during the term of the restriction will be flagged to assure that futures uses and disclosures of it are made in accordance with the restrictions in place for that period.

6. Confidential Communications

- a. SBH-ASO will consider an individual's written request for confidential communications upon request for same. SBH-ASO will document the alternative information and the approval. Documentation will be placed in the record or noted in an electronic database. SBH-ASO will grant reasonable requests. Reasonableness will be judged by the administrative

difficulty of complying with the request.

- b. SBH-ASO will not ask the individual to explain why they wish to have SBH-ASO communicate with them by alternative means or to alternative locations.
- c. SBH-ASO will not comply with the individual's request unless they have provided SBH-ASO with complete information to enable us to communicate with them, i.e., a complete address or other method of contact.
- d. SBH-ASO will provide adequate notice of the request to those employees who may need to contact the individual by flagging the record and, where possible, other databases.

7. Important Note about Part 2 Information

- a) Federal law does not prohibit the SBH-ASO or any program covered by Part 2 from giving an Individual access to PHI about the Individual.
- b) Any Part 2 Information that is being accessed should be accompanied by one (1) of the following notices:

Notice

This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR part 2). The federal rules restrict use of this information to initiate or substantiate any criminal charges against the individual who is the subject of the information or to conduct any criminal investigation of an individual. This restriction on use prohibits, among other things, the introduction of that information as evidence in a criminal proceeding and any other use of the information to investigate or prosecute the individual with respect to a suspected crime. This restriction applies to any person who obtains information from a federally assisted alcohol or drug abuse program.

OR

42 CFR Part 2 prohibits unauthorized disclosure of these records.

- 3) The restriction on the use of Part 2 Information to initiate or substantiate any criminal charges against an Individual or to conduct a criminal investigation of an Individual applies to any person who obtains Part 2 Information from a Part 2 Program, regardless of the status of the person or whether the Part 2 Information was obtained in compliance with Part 2. This restriction on use bars, among

other things, introduction of Part 2 Information as evidence in a criminal proceeding and any other use of the Part 2 Information to investigate or prosecute an Individual with respect to a suspected crime.