



SALISH BHO

HIPAA, 42 CFR PART 2, AND MEDICAID COMPLIANCE STANDARDS POLICIES AND PROCEDURES

Policy Name: CONFIDENTIALITY, USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

Policy Number: 5.07

Reference: 45 CFR Parts 160, 162 and 164, 42 CFR Part 2; 42 CFR 431.300 through 431.307, RCW 70.02, 71.05, 71.34, and RCW 70.96A

Effective Date: 7/2005

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Approved by: SBHO Executive Board

CROSS REFERENCES

- Agreement: Confidentiality and Security Agreement
- Policy: HIPAA and Privacy Agency Staff Training
- Policy: SBHO Staff Training Plan for Privacy and Security

PURPOSE

The Salish Behavioral Health Organization (SBHO), in an effort to be compliant with the federal and state statutes, all requirements of the Health Insurance Portability and Accountability Act (HIPAA) confidentiality and use/disclosure of protected health information, and in accordance with 42 CFR Part 2, provides a standards definition and procedure to be uniformly implemented throughout the region.

PROCEDURE

Confidentiality

The Contractor shall protect all personal information, records, and data from unauthorized disclosure in accordance with 42 CFR §431.300 through §431.307, RCW 70.02, 71.05, and 71.34, and for individuals receiving substance use disorder treatment services, in accordance with 42 CFR Part 2 and RCW 70.96A. The Contractor shall have a process in place to ensure that all components of its provider network and system understand and comply with confidentiality requirements for publicly funded behavioral health services. This is also construed to include protected health information and records compiled, obtained, or maintained relating to complaint or grievance investigation as confidential and disclosed only as authorized or otherwise provided by law. Pursuant to 42 CFR

§431.301 and §431.302, personal information concerning applicants and recipients may be disclosed for purposes directly connected with the administration of this Agreement. Such purposes include, but are not limited to:

- Establishing eligibility.
- Determining the amount of medical assistance.
- Providing services for recipients.
- Conducting or assisting in investigation, prosecution, or civil or criminal proceedings related to the administration of the State Medicaid Plan.
- Assuring compliance with Federal and State laws and regulations, and with terms and requirements of the Agreement.
- Improving quality.

SBHO employees are responsible to use reasonable efforts to safeguard an individual's protected health information and maintain confidentiality of such information. Any document, record, or other written material containing individually identifiable health information is not left unattended and/or unsecured in the SBHO office. All employees read and sign the SBHO Confidentiality and Security Agreement.

We strongly recommend that PHI not be transported to or from the SBHO site, but if you must do so, the following guidelines must be followed:

Transporting Paper PHI From/To Off-Site SBHO site

- Only transport paper PHI off-site if you have your supervisor's approval and only if it is necessary.
- Only transport the minimum amount of PHI necessary.
- Never leave PHI (including portable media devices) unattended, including your vehicle.
- All PHI must be in a separate locked container and the container must be transported in the locked vehicle, preferably out of sight such as in the trunk.
- Maintain a log of files or documents that are leaving the SBHO site. When you arrive at the off-site clinic, immediately make sure all the files you listed on the log are in your possession. The log of files or documents must either remain with the locked PHI contents or must be listed without any identifiable PHI.

The Contractor shall (and require its subcontractors and providers to do so) establish and implement procedures consistent with all confidentiality requirements of the HIPAA (45 CFR §160 and §164) and 42 CFR Part 2 for medical records and any other health and enrollment information that identifies a particular individual.

In the event an individual's picture or personal story will be used, the Contractor shall first obtain written consent from the individual.

The Contractor shall prevent inappropriate access to confidential data and/or data systems used to hold confidential client information by taking, at a minimum, the following actions:

- Verify the identity or authenticate all of the system's human users before allowing them access to any confidential data or data system capabilities.
- Authorize all user access to client applications.
- Protect application data from unauthorized use when at rest.
- Keep any sensitive data or communications private from unauthorized individuals

and programs.

- Notify the appropriate state point of contact within five (5) business days whenever an authorized user with access rights leave employment or has a change of duties such that he user no longer requires access. If the removal of access is emergent, include that information with the notification.
- In the event of a Breach of unsecured PHI or disclosure that compromises the privacy or security of PHI obtained from any state data system, the Contractor shall comply with all requirements of the HIPAA Security and Privacy for Breach Notification and as otherwise required by state or federal law.

NOTE: Restricted Uses and Disclosures as mandated by 42 CFR Part 2

SBHO recognizes the purpose and effect of 42 CFR Part 2 to ensure that a patient is not more vulnerable by reason of the availability of the record that the patient receives treatment for substance use disorder. Any treatment information, whether or not recorded, and any information which references the patient as having a substance use disorder cannot be disclosed unless expressly authorized by 42 CFR Part 2. Consultation with SBHO Privacy Officer is strongly encouraged.

42 CFR Part 2 Information/Substance Use Disorder Information

Federal regulations governing the confidentiality of Part 2 Information generally are more restrictive than HIPAA and should be followed when any Part 2 Information is requested for use or disclosure. A fundamental concept of protecting Part 2 Information is not identifying the Individual as having a diagnosis or having received Treatment concerning substance use disorder (SUD). Part 2 applies to Part 2 Programs. SBHO is not a Part 2 Program.

Individuals routinely authorize Part 2 Programs to disclose Part 2 Information to North SBHO for Payment, Health Care Operations and other purposes. As a result, SBHO is a lawful holder of Part 2 Information, subject to various Part 2 requirements. Therefore, SBHO will comply with Part 2, as applicable. Workforce members must obtain a specific authorization for each disclosure of Part 2 Information concerning an Individual, EXCEPT:

Internal Program Communication. Workforce members may disclose Part 2 Information to other Workforce members or to an entity having direct administrative control over SBHO, if the recipient needs the information in connection with the provision of substance abuse disorder diagnosis, Treatment, or referral for Treatment.

Medical Emergencies. Workforce members may disclose Part 2 Information to medical personnel who have a need for the Part 2 Information about an Individual for the purpose of treating a condition that poses an immediate threat to the health of any person and requires immediate medical intervention. Workforce members may disclose Part 2 Information only to medical personnel and must limit the amount of Part 2 Information to that which is necessary to treat the emergency medical condition. Immediately following the disclosure, Workforce members must document the following in the Individual's records:

- The name and affiliation of the medical personnel to whom disclosure was made;

- The name of the individual making the disclosure;
- The date and time of the disclosure; and
- The nature of the emergency

Court Order. Before a court may issue an order authorizing disclosure of Part 2 Information, SBHO and any Individual 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 there is “good cause” for the disclosure. Court-ordered disclosures must be limited to the Part 2 Information essential to fulfill the purpose of the order and they must be restricted to those persons who need the Part 2 Information. Typically, court orders will state they are “protective orders,” “qualified protective orders,” or “orders under seal.” Workforce shall obtain the advance approval of the Privacy Officer before disclosing Part 2 Information for these purposes. If the order is sought by an authorized Law Enforcement Official or prosecuting attorney, the following criteria must be met:

- The crime must be serious (e.g., an act causing or threatening to cause death or injury);
- The records requested must be likely to have information of significance to the investigation or prosecution;
- There is no other practical way to obtain the Part 2 Information;
- The public interest in disclosure outweighs any actual or potential harm to the Individual or the ability of the Part 2 Program to provide services to other Individuals; and
- When law enforcement personnel seek the order, the Part 2 Program has had an opportunity to be represented by counsel.

Subpoenas. Workforce members are prohibited from disclosing PHI about Individuals in response to subpoenas unless:

- The Individual has signed a valid authorization for the disclosure of the PHI, specifically including Part 2 Information; or
- A court has ordered SBHO to disclose or release the PHI after giving the Individual and SBHO an opportunity to be heard and after making a “good cause” determination. Workforce shall obtain the advance approval of the Privacy Officer before disclosing Part 2 Information for these purposes.

Crime on Premises. Workforce members may disclose limited information to Law Enforcement Officials when a crime has been committed on the premises of a Part 2 Program or against Part 2 Program personnel. These disclosures must be directly related to crimes and threats to commit crimes on SBHO premises or against SBHO Workforce and must be limited to the circumstances of the incident and the Individual’s status, name, address and last known whereabouts. Workforce shall obtain the advance approval of the Privacy Officer before disclosing Part 2 Information for these purposes.

Research Purposes. Under this exception, Workforce may disclose Part 2 Information to researchers the Privacy Officer 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 Part 2 Information will be securely stored and not re-disclosed in violation of law. Workforce shall obtain the advance approval of the Privacy Officer before disclosing Part 2 Information for these purposes. See the Policy 2513.00: Research for additional information.

Audits

- Workforce shall obtain the advance approval of the Privacy Officer before disclosing Part 2 Information for audit purposes and will follow protocol set out by the Privacy Officer with respect to the audit.
- As long as Part 2 Information is **not** downloaded, copied, or removed from the premises or forwarded electronically to another electronic system or device, Workforce members and Part 2 Programs may disclose Part 2 Information in the course of record review on the premises to a government agency that funds or regulates a Part 2 Program, or other lawful holder, or a third-party payor, or a quality improvement organization (or its designated contractors) that request access to the records of a Part 2 Program or lawful holder.
- Part 2 Information may be copied or removed from the premises or downloaded or forwarded electronically to another electronic system or device in the course of record review on the premises to a government agency that funds or regulates a Part 2 Program, or other lawful holder, or a third-party payor, or a quality improvement organization (or its designated contractors) that request access to the records of a Part 2 Program or lawful holder only if the auditor agrees in writing to: maintain and destroy the Part 2 Information in a manner consistent with Part 2; retain Part 2 Information in compliance with record retention laws; and comply with the Part 2 restrictions on use and disclosure of Part 2 Information.
- Part 2 Information may be disclosed to a person or entity for the purpose of conducting a Medicare, Medicaid, or CHIP audit or evaluation.
- The auditor or evaluator must agree in writing it will re-disclose Part 2
- Information only back to the Part 2 Program and will use Part 2
- Information only to carry out an audit or evaluation purpose, pursuant to a court order or to investigate or prosecute criminal or other activities.

Abuse and Threats to Health and Safety. Workforce members may and are encouraged to, disclose Part 2 Information when the Part 2 Program is reporting under State Law incidents of suspected child abuse and neglect to appropriate authorities. In this case, SBHO may make only an initial report; SBHO may not respond to follow-up requests for information or to subpoenas, unless the Individual has signed an Authorization or a court has issued an order that complies with the Part 2 Rule. Additionally, SBHO may report Part 2 Information to relevant authorities the abuse of Vulnerable Adults on an anonymous basis if it determines it is important to report elder abuse, disabled person abuse, or a threat to someone's health or safety. Health Care Providers are mandatory reporters.

Review of Part 2 Disclosures. Any PHI disclosed without the consent and/or authorization of an Individual in a Part 2 Program may be made only in consultation with the Privacy Officer. If SBHO receives a request for disclosure of an Individual's record that is not permitted under Part 2, SBHO will refuse to make the disclosure and will make

the refusal in a way that does not reveal or identify the Individual has ever been diagnosed or treated for SUD.

Use and Disclosure: Valid Authorization Required

The fact of admission and all information and records compiled, obtained, or maintained in the course of providing behavioral health services by public or private agencies shall be confidential except as otherwise required or permitted by federal or state statute and regulations.

1. Valid Authorization

Protected health information will be disclosed to other individuals designated in a valid authorization. To be valid, the authorization must include, but not limited to, the following elements:

- a. Individual or his/her personal representative: The name or other specific identification of the individual authorized to make the requested use or disclosure.
- b. Requester/recipient: The name or other specific identification of the individual/entity to whom SBHO may make the requested use or disclosure.
- c. Information/records to be used or disclosed: A description of the information to be used or disclosed that identifies the information in a specific and meaningful way.
- d. Purpose/reason for use or disclosure: A description of the purpose of the requested use or disclosure. The statement "at the request of the individual" is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of purpose.
- e. Statement of revocation: A statement that the authorization is subject to revocation at any time by the individual, except to the extent that the disclosure has been made prior to revocation.
- f. Expiration date: An expiration date, event, or condition upon which the authorization will expire, if not revoked. The date, event, or condition will be for no longer than reasonably necessary to serve the purpose of use or disclosure, not longer than 90 days.
- g. Signature and date: Signature of the individual and date. If the authorization is signed by a personal representative of the individual, a description of the representative's authority to act for the individual must also be provided.

Disclosures Not Requiring Authorization

1. Required disclosures

SBHO is required to disclose protected health information:

- a. To an individual when requested.
- b. When required by the Secretary of the U.S. Department of Human and

Health Services to investigate or determine the agency's compliance with federal law.

2. HIPAA Permitted Uses and Disclosures

SBHO is permitted to use or disclose protected health information, except 42 CFR Part 2 information for:

- a. Treatment, payment, and health care operations (TPO) of SBHO as described:
 - *Treatment* activities may include, but not limited to, the provision, coordination, or management of mental health care and related services by one or more mental health care providers, including coordination or management activities with a third party; consultation between mental health providers; or referral of an Individual to another provider.
 - *Payment* activities may include, but not limited to, those undertaken by SBHO to obtain premiums, or to determine or fulfill its responsibility for coverage and provisions of benefits or to obtain or provide reimbursement for the provision of care.
 - *Health Care Operations* may include, but not limited to, conducting quality assessment and improvement activities, reviewing competence of or qualifications of behavioral health professionals, evaluating provider and program performance, conducting or arranging for auditing functions, including fraud and abuse detection and compliance programs; business planning and development; business management and general administrative activities including, but not limited to, customer service; and resolution of internal grievances.
- b. Reporting victims of Abuse, Neglect, or Domestic Violence: Protected health information (PHI) may be disclosed about a mental health Individual that SBHO staff or contracted providers reasonably believe to be a victim of abuse, neglect, or domestic violence to the appropriate government authority. Protected health information may be disclosed about a substance use disorder Individual that SBHO staff or contracted providers reasonably believe to be a victim of child abuse or neglect.
- c. Health Oversight Activities: PHI, except 42 CFR Part 2 information, may be disclosed for purposes of health oversight activities such as audits, investigations, inspections, and licensure.
- d. Law Enforcement when related to public, or private safety or apprehension of an individual: PHI may be disclosed to law enforcement only to the extent necessary to carry out responsibilities. Information is generally limited to fact, place, and date of involuntary commitment and release, and last known address. It is strongly recommended that any consideration of disclosure of this type of information involve the SBHO Privacy Officer.
- e. Court Proceedings: PHI may be disclosed to the courts as required for the administration of Chapter 71.05, or pursuant to a valid authorization or court order authorizing the disclosure of information.

- f. Research and Evaluation: PHI may be disclosed to an individual, organization or agency (such as DBHR) as necessary for management or financial audits, or program monitoring and evaluation.
- g. Workers' Compensation: PHI may be disclosed as permitted by statute.
- h. Department of Corrections: PHI may be disclosed about an inmate to the correctional institution.
- i. Special Government Functions: PHI may be disclosed to authorized federal officials for intelligence, counterintelligence, and other national security activities authorized by law. PHI may also be disclosed to authorized federal officials to provide protection to the President, other authorized persons, or foreign heads of state or so they may conduct special investigations.

Minimum Necessary

Uses and disclosures of protected health information are to consist of only the minimum necessary information required to fulfill the request and/or purpose of the use or disclosure.

1. "Minimum Necessary" applies:

When using or disclosing protected health information, or, when requesting protected health information from another covered entity, SBHO must make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

2. "Minimum Necessary" *does not* apply to:

- a. Disclosures to or requests by a health care provider for treatment.
- b. Uses or disclosures made to the individual.
- c. Disclosures pursuant to a properly formatted authorization for release of information.
- d. Disclosures made to the Secretary of DHHS to investigate or determine the agency's compliance with federal law.

Other Uses and Disclosures

Additionally, SBHO may use and disclose protected health information for the following purposes and as allowed:

1. De-Identified Protected Health Information

SBHO may use protected health information to create information that is not individually identifiable health information (see definition below) or disclose protected health information only to a business associate for such purpose, whether or not the de-identified information is to be used by SBHO. Health information that meets the standard and implementation specifications for de-identification under this policy is considered not to be individually identifiable health information, i.e., de-identified. "Individually identifiable health information" is information that is a subset of health information, including demographic

information collected from an individual, and:

- a. Is created or received by a health care provider, health plan, employer, or health care clearinghouse.
- b. Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.
- c. That identifies the individual.
- d. With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

2. Business Associates

(a) For information related to mental health services: The SBHO may disclose protected health information to a business associate and may allow a business associate to create or receive protected health information on its behalf, if SBHO obtains satisfactory assurance that the business associate will appropriately safeguard the information. SBHO must document, through a written contract or other written agreement or arrangement, the satisfactory assurances that a business associate meets the standards of this policy with respect to protection of identifiable health information. This standard does not apply with respect to disclosures by SBHO to a health care provider concerning the treatment of the individual.

Expanded Part 2 Content Requirements. When a Business Associate, which is providing Payment or Health Care Operations services SBHO, will create, receive, maintain, or transmit Part 2 Information, the BAA also must provide the Business Associate:

(a) Is fully bound by the provisions of Part 2 upon receipt of Part 2 Information; and

(b) Receives from SBHO one (1) of the two (2) following notices:

(1) This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR part 2). The federal rules prohibit you from making any further disclosure of information in this record that identifies a patient as having or

having had a substance use disorder (SUD) either directly, by reference to publicly available information or through verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (see § 2.31). The federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with SUD, except as provided at §§ 2.12(c)(5) and 2.65;

or

(2) 42 CFR Part 2 prohibits unauthorized disclosure of these records.

(c) Implements appropriate safeguards to prevent unauthorized uses and disclosures of Part 2 Information;

(d) Report any unauthorized uses, disclosures, or breaches of Part 2 Information to SBHO; and

(e) Not re-disclose Part 2 Information to a third-party unless the third-party is a contract agent of the Business Associate helping the Business Associate provide services described in the services agreement and only if the agent only further discloses the Part 2 Information back to the Business Associate or to SBHO.

(f) For information related to SUD services: The SBHO must not disclose any identifying information about patients unless appropriate release of information is completed or exception is specified within 42 CFR Part 2.

3. Deceased Individuals

SBHO must comply with the requirements of this policy, HIPAA, and 42 CFR Part 2 with respect to the protected health information of a deceased individual. If under applicable law, an executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual's estate, SBHO must treat such person as a personal representative under this policy, with respect to protected health information relevant to such personal representation.

4. Personal Representatives

As represented under HIPAA and 42 CFR Part 2, the SBHO must treat a personal representative as the individual for purposes of this policy.

- a. Adults and Emancipated Minors: If under applicable law, a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care, SBHO must treat such person as a personal representative under this policy, with respect to protected health information relevant to such personal representation.
- b. Unemancipated Minors: If under applicable law a parent, guardian, or other person acting *in loco parentis* has authority to act on behalf of an individual who is an unemancipated minor in making decisions related to health care, SBHO must treat such person as a personal representative under this policy, with respect to protected health information relevant to such personal representation, except that such person may not be a personal representative of an unemancipated minor, and the minor has the authority to act as an individual, with respect to protected health information pertaining to a health care service, if:
 - The minor consents to such health care service; no other consent to such health care service is required by law, regardless of whether the consent of another person has also been obtained; and the minor has not requested that such person be treated as the personal representative;
 - The minor may lawfully obtain such health care service without the consent of a parent, guardian, or other person acting *in loco parentis*,

- and the minor, a court, or another person authorized by law consents to such health care service; or
- A parent, guardian, or other person acting *in loco parentis* assents to an agreement of confidentiality between a covered health care provider and the minor with respect to such health care service.
- c. Abuse, Neglect, Endangerment Situations: Notwithstanding a state or federal law or any requirement of this paragraph to the contrary, SBHO may elect not to treat a person as the personal representative of an individual if SBHO has reasonable belief that:
- The individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or
 - Treating such person as the personal representative could endanger the individual and, SBHO, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.
5. Consistent With Privacy Notice
- SBHO is required by HIPAA regulation to have a notice in public view and available to Individuals that it may not use or disclose protected health information in a manner inconsistent with established regulation and policy.
6. HIPAA Disclosures by Whistleblowers and Workforce Member Crime Victims
- a. Disclosures by Whistleblowers: SBHO is not considered to have violated the requirements of this policy if a member of its workforce or a business associate discloses protected health information, provided that:
- The workforce member or business associate believes in good faith that SBHO has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services, or conditions provided by the covered entity potentially endangers one or more Individuals, workers, or the public; and the disclosure is to:
 - A health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of SBHO or to an appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct by the covered entity; or
 - An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate with regard to the conduct described above.
- b. Disclosures By Workforce Members Who Are Victims Of A Crime: SBHO is not considered to have violated the requirements of this policy if a member of its workforce who is the victim of a criminal act discloses protected health information to a law enforcement official, provided that:

- The protected health information disclosed is about the suspected perpetrator of the criminal act; and
- The protected health information disclosed is limited to the information listed in this policy as minimum necessary information.

Authority to Disclose Information

When questions arise concerning the authority to disclose information or the type of information to be disclosed, staff shall first consult with and obtain approval of the Privacy Officer before releasing information.

Authentication of Requester

Prior to disclosure of any protected health information, even with authorization, authenticity of the requester must be established by means reasonably certain of verifying the authenticity of the requestor.

When presented with a valid authorization, check a document to verify the signature is similar to the Individual's signature. The requester will be required to present picture identification to ensure information is given to the person intended.

Accounting of Disclosures

When any disclosure of information or records is made, an entry must be promptly entered into the record to include the date and circumstances under which the disclosure was made, the names and relationships to the individual or agency receiving the information, the information disclosed, identification, and signature of the staff disclosing the information.

MONITORING

This policy is mandated by contract or statute.

1. This policy will be monitored through use of SBHO:
 - Annual SBHO Provider and Subcontractor Administrative Review
2. If a provider performs below expected standards during the review listed above, a Corrective Action will be required for SBHO approval. Reference SBHO Corrective Action Plan Policy.