



## **SALISH BHO**

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

**Policy Name:** INDIVIDUAL PROTECTED HEALTH INFORMATION RIGHTS

**Policy Number:** 5.08

**Reference:** 45 CFR Parts 160, 162 and 164, 42 CFR Part 2

**Effective Date:** 5/2005

**Revision Date(s):** 5/2016; 5/2018

**Reviewed Date:** 5/2016; 6/2017; 5/2018

**Approved by:** SBHO Executive Board

#### **CROSS REFERENCES**

- Policy: Confidentiality, Use and Disclosure of Protected Health Information
- Policy: Designated Record Set

#### **PURPOSE**

The Salish Behavioral Health Organization (SBHO), 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 Protected Health Information (PHI) that may be made by SBHO
  - b. The individual's rights and SBHO'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

SBHO recognizes that the most important individual right provision in the HIPAA regulations is the right to notification of SBHO'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. SBHO, 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. For individuals entering services after April 14, 2003, the SBHO Privacy Notice will be made available through the SBHO provider network and posting at the Region Office.

### 2. Access to PHI

- a. SBHO 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 policy on Designated Record Set). SBHO 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. SBHO 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. SBHO 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.
  - The PHI is subject to the Federal Privacy Act.
  - The information 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.
  - The information was 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.

- An inmate requests a copy of PHI 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. SBHO will provide an inmate with the right to inspect his PHI unless other grounds for denial exist.
- d. SBHO will deny access to any PHI that a licensed healthcare professional determines:
- Exercising professional judgment is reasonably likely to endanger the life or physical safety of the individual or another person.
  - Exercising 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 a 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, SBHO 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 SBHO'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, SBHO 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 a individual has been denied access for one of the reasons that is subject to review, it will be SBHO's policy to respond in writing giving the basis for denial in plain language within the time period set forth below. SBHO 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 DHHS.
- h. In any case where the individual requests a review, SBHO will promptly refer the denial to another licensed healthcare professional, who has not been directly involved in the denial, for their review. SBHO 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 SBHO 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, SBHO can take longer to respond, but no more than sixty (60) days from the date of the request. In either case, SBHO 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. SBHO will notify the individual of the reasons for delay and the date of completion by means

of a written statement.

- j. When SBHO has agreed to inspection of the designated record set, SBHO will arrange a mutually agreeable time and place for the inspection.
- k. When SBHO has agreed to provide copies of the requested PHI, SBHO will confer with the individual and determine their preference for the media in which to receive it – paper or electronic (where available). If SBHO cannot agree on how the PHI will be produced, then SBHO will produce the PHI in readable hard copy.
- l. SBHO 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 SBHO 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, SBHO will furnish the PHI within thirty (30) days of the request at no charge to the individual.
- m. It will be SBHO's policy to charge for the cost of making the copies (both the labor and machine and paper cost), but we will not include in our charges the cost of the retrieval and handling of information, nor will we charge for the costs of processing the request.
- n. SBHO will provide summaries of PHI in those cases where the individual has requested them. SBHO 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 SBHO receives a request for PHI that SBHO does not maintain, but know where it is maintained, the individual will be informed of the location of the PHI.

### 3. Amendment/Correction

- a. SBHO 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. SBHO requires that all requests for amendment be in writing, and to include the reason for the amendment. SBHO will notify our individuals of our policies for requesting amendments in our Privacy Notice.
- b. SBHO will respond to requests for amendment within thirty (30) days from the date of the request. Should, in rare circumstances, SBHO 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 SBHO 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: SBHO 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 SBHO 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) The 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 our organization who is responsible for receiving complaints, including their name or title and their telephone number
  - Inform the individual that they may file a statement of disagreement with the SBHO 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. SBHO 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 SBHO 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
- Provide a link to the location in the file of all of the items listed in b.

#### 4. Accounting of Disclosures

- a. SBHO 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. SBHO requires that all requests for an accounting be in writing. SBHO will notify individuals of policies for requesting an accounting in the SBHO Privacy Notice.
- b. SBHO will respond to requests for an accounting within thirty (30) days from the date of the request. Should, in rare circumstances, SBHO 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. SBHO 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 SBHO has made disclosures to a health oversight or law enforcement agency as permitted and, the agency has provided SBHO 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 SBHO 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 SBHO with an oral statement that a disclosure would be reasonably likely to impede their activities, the SBHO policy will be to withhold disclosures for a 30-day period

after which SBHO 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 SBHO 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. SBHO's policy with respect to multiple disclosures of a 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, SBHO will present the frequency, periodicity, or number of disclosures made during the accounting period and the date of the most recent disclosure.
- g. SBHO 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. SBHO will inform the individual of the fee and obtain their written agreement to pay the fee prior to preparing the accounting. SBHO will offer the individual an opportunity to withdraw or modify their request in order to avoid or reduce the fee.

## 5. Restrictions

- a. SBHO will consider an individual's request for restriction of the uses and disclosures that SBHO makes for purposes of treatment, payment, and operations. SBHO will require individuals make their request in writing. SBHO will discuss with the individual the potential difficulties that are inherent in the restrictions that the individual requests.
- b. SBHO will document the request and, ultimately, whether the restriction has been granted to the individual. While SBHO is not required by the Privacy Rule to agree to individual-requested restrictions, SBHO will grant those restrictions that SBHO believes, in its judgment, to be in the best interests of individuals.
- c. SBHO 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, SBHO 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, SBHO 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 SBHO believes the individual's restriction can no longer be honored, SBHO will terminate the restriction. It will be SBHO'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, SBHO will implement a unilateral termination. This will also be documented in the record. The PHI that SBHO 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. SBHO will consider a individual's written request for confidential communications upon request for same. SBHO will document the alternative information and the approval. Documentation will be placed in the record or noted in an electronic database. SBHO will grant reasonable requests. Reasonableness will be judged by the administrative difficulty of complying with the request.
- b. SBHO will not ask the individual to explain why they wish to have SBHO communicate with them by alternative means or to alternative locations.
- c. SBHO will not comply with the individual's request unless they have provided SBHO with complete information to enable us to communicate with them, i.e., a complete address or other method of contact.
- d. SBHO 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 North Sound BHO 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.

## **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.