

# Great Rivers Behavioral Health Administrative Services Organization

Policy Title:	<b>Uses and Disclosures: Authorizations</b>	Policy No. <b>5002.01</b>
Category:	Privacy & Security	Date Adopted: 01/10/2020 Date Revised: 04/10/2020 Reviewed:
Reference:	Washington Health Care Authority (HCA) Contract with Great Rivers Behavioral Health Administrative Services Organization Health Insurance Portability and Accountability Act Privacy Rule 42 CFR Part 2	

## POLICY

- 1.1. Great Rivers Behavioral Health Administrative Services Organization (Great Rivers BH-ASO), in an effort to be compliant with the Privacy Rules of Health Insurance Portability and Accountability Act's (HIPAA) Administrative Simplification provisions, sets out in this policy the conditions for obtaining Authorization from individuals with whom it has a direct treatment relationship, for any use and/or disclosure of Protected Health Information (PHI) that is not covered by the Authorization requirement or is not otherwise permitted or required under the Privacy Rule.
- 1.2. Great Rivers BH-ASO will obtain Individual's signed Authorization that meets the standards of the Privacy Rules prior to using or disclosing PHI in those situations where the Authorization does not apply or for those uses that are not otherwise permitted or required under the Rule.
- 1.3. Individuals seeking treatment have the right to refuse to provide Authorizations for use and disclosure of their PHI. Great Rivers BH-ASO may not refuse to treat individuals who withhold their Authorization except in circumstances where the Authorization is for PHI to be created in the course of treatment for the purpose of disclosure to a third party.
- 1.4. Individuals may revoke an Authorization at any time. The revocation must be in writing. Any actions Great Rivers BH-ASO has taken in reliance on an Individual's Authorization will not be affected by the revocation. Great Rivers BH-ASO is not required, for example, to retrieve PHI that Great Rivers BH-ASO has disclosed prior to the revocation. Should any employee be informed verbally that an individual has revoked an Authorization provided to another entity, that employee should immediately inform the Privacy Officer.
- 1.5. Great Rivers BH-ASO Authorization form will always include the following elements:
  - 1.5.1. A specific and meaningful description of the information to be used or disclosed;
  - 1.5.2. The name or specific identification of the entity, person(s), or class of persons, Authorized to make the requested use or disclosure;

- 1.5.3. The name or other specific identification of the person(s), or class of persons, to whom the Covered Entity, (CE) may make the requested use or disclosure;
  - 1.5.4. A description of each 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 the purpose;
  - 1.5.5. An expiration date or event that relates to the individual or the purpose of the use or disclosure. A statement such as "consultation completed", "none", or similar language is sufficient;
  - 1.5.6. The signature of the individual and the date. If signed by a personal representative, a description of the authority of that person to act for the individual must be provided and kept in Individual's medical record.
- 1.6. Required Statements in the Authorization Form.
- 1.6.1. In addition to the core elements listed above, an Authorization must contain statements that put the individual on notice of all of the following:
    - 1.6.1.1. The individual's right to revoke an Authorization in writing and either:
      - 1.6.1.1.1. The exceptions to the right to revoke along with a description of how to revoke; or
      - 1.6.1.1.2. A reference to the Notice of Privacy Practices if the CE's Notice contains the information in a. above.
    - 1.6.1.2. The CE may only condition treatment (or payment by the agency if applicable) on obtaining a signed Authorization when it is providing treatment solely for the purpose of creating PHI for disclosure to a third party and the Authorization is for the disclosure of PHI to that third party.
    - 1.6.1.3. The potential for PHI disclosed pursuant to the Authorization to be subject to re-disclosure by the recipient and no longer protected by the Privacy Rule.
  - 1.6.2. An Authorization that lacks any of these elements or statements is a defective Authorization and will have no effect, therefore, Great Rivers BH-ASO require that all of these elements or statements be in place in any Authorization form version that may be developed in the future.
  - 1.6.3. In the event the PHI involves substance abuse treatment, diagnosis, prognosis, or identity and the PHI constitutes information maintained by a federally assisted (federal assistance includes tax-exempt status) substance abuse program, a special Authorization must be obtained with all of the information described above. Additionally, the statement that PHI may be subject to re-disclosure is inapplicable in the case of substance abuse PHI. A Notice of Prohibition on Re-disclosure must be sent to the recipient along with the Authorization.

- 1.6.4. In any situation where the specificity of the request is inadequate to provide assurance that Great Rivers BH-ASO will disclose the correct information, the Authorization should be considered defective.
  - 1.6.5. In any situation where the relevant PHI will require extensive redaction, the individual will be given his/her entire record so that he/she can specify information to be redacted prior to disclosure to the request or of the information. (Note that the Individual must be permitted to have access, under the Privacy Rules, to their entire designated record set in these cases or they will not be allowed to perform the redaction.)
  - 1.6.6. In any situation where there are conflicts between two or more Authorizations or other forms of legal permission in Great Rivers BH-ASO's possession, for the same individual for the use and disclosure of the same PHI, Great Rivers will attempt to obtain a new, conforming written Authorization that resolves the conflict between the other documents. When a new Authorization cannot be obtained, Great Rivers BH-ASO will rely upon the most restrictive form of permission in its possession.
- 1.7. Substance Abuse Providers
- 1.7.1. Federal regulations governing the confidentiality of substance abuse information (42 CFR, Part 2) are generally more restrictive than HIPAA and, therefore, Great Rivers BH-ASO will follow these regulatory requirements whenever the PHI of any Individual in a federally assisted alcohol or drug abuse program is disclosed. In any of Great Rivers BH-ASO's federally assisted alcohol or drug abuse programs, Great Rivers BH-ASO must always obtain specific Authorization for each disclosure of Individual records or other information concerning an Individual unless one of the regulatory exceptions applies. See Policy 5001, Treatment, Payment and Health Care Operations – the section for Substance Abuse Providers. Great Rivers BH-ASO's Authorization form (called a "consent" form in the substance abuse federal regulations) will meet the regulatory requirements.
  - 1.7.2. Documentation retention requirements include:
    - 1.7.2.1. Signed Authorizations for each requested use and disclosure;
    - 1.7.2.2. Policies and procedures for Authorizations and any changes thereto; and
    - 1.7.2.3. Revocations.
  - 1.7.3. Other policies and procedures to review that are related to this policy:
    - 1.7.3.1. Uses and Disclosures for Treatment, Payment and Operations;
    - 1.7.3.2. Privacy notice;
    - 1.7.3.3. Authorizations;
    - 1.7.3.4. Opportunity for Agreement;
    - 1.7.3.5. No Permission; and
    - 1.7.3.6. Administrative requirements – documentation retention.

## **PROCEDURE**

### 2.1. Determining Which Disclosures Require an Authorization

- 2.1.1. The first determination the Privacy Officer must make before disclosing Protected Health Information either internally or externally, or before requesting the disclosure of PHI from another entity or provider, is whether or not the disclosure or request requires an Authorization from the individual.
  - 2.1.2. In all cases, whether the disclosure is for an internal use or for a third party external to the organization, the Privacy Officer will follow the guidelines found in the Minimum Necessary policy for determining the type and amount of PHI that should be disclosed.
  - 2.1.3. In all cases where an Authorization is required, the Privacy Officer will make sure that the individual understands that his/her treatment is not conditioned on whether or not he/she signs an Authorization. This assurance is included in writing on every Authorization form. The only exceptions to this, where treatment may be conditioned upon the individual's Authorization, are for research related treatment and in situations where the purpose of the treatment is specifically for disclosure to a third party, e.g. a consultation.
- 2.2. Internal Disclosures
- 2.2.1. Most internal disclosures to other agency employees and contractors are permitted without an Authorization if the purposes of the disclosure and the intended use of the information disclosed are for treatment, payment or operations. One major exception to this is for psychotherapy notes, which require an Authorization for internal use except in certain limited circumstances. Please see Policy 5001, Uses and Disclosures for Treatment, Payment and Operations.
- 2.3. Sharing of PHI for Treatment Among Current Treatment Team Members
- 2.3.1. In general, the regulations encourage the sharing of the PHI needed for treatment among members of the current, internal Great Rivers BH-ASO treatment team for the Individual. An Authorization is obtained for team members external to the organization, excluding providers, who are in an indirect treatment relationship, e.g. laboratories that do not deal directly with the Individual but are an important source of information for treatment purposes. A list of current treatment team members is kept in the medical record and is reviewed regularly by the Individual and clinical staff.
  - 2.3.2. Individuals in services are informed of Great Rivers BH-ASO's intention to share information among treatment team members in Great Rivers BH-ASO's Notice of Privacy Practices. The primary Clinician goes over the paragraph in the Notice of Privacy Practices that describes sharing PHI for treatment purposes to make sure the Individual understands its meaning with regards to disclosures to treatment team members. This is documented in the record or on the Acknowledgement of Receipt of the Notice of Privacy Practices.
  - 2.3.3. The one major exception to this general rule is psychotherapy notes which require a signed Authorization by the Individual for disclosure both internally and externally, except in very limited circumstances. Authorization for the

disclosures of psychotherapy notes cannot be combined with any other Authorization. Please see the definition of psychotherapy notes in the appendix.

- 2.4. Sharing of PHI Needed for Payment and Operations Among Covered Entities and Healthcare Providers
  - 2.4.1. PHI that is needed by another covered entity or healthcare provider in order to seek payment for services Great Rivers BH-ASO provided to an Individual can be disclosed or requested without an Authorization.
  - 2.4.2. PHI that is needed by another covered entity or healthcare provider in order to seek payment for services provided by them to one of Great Rivers BH-ASO's Individuals can only be disclosed pursuant to Policy 5001 Uses and Disclosures for Treatment, Payment and Operations.
  - 2.4.3. PHI that is needed by another covered entity or provider for certain operations may be disclosed or requested without an Authorization. The operations are generally those in which Great Rivers BH-ASO is a participant either directly or indirectly, for example, giving service delivery information to a managed care organization in order for them to conduct utilization management or quality improvement activities. Disclosures of PHI for the operations of a third party can only be made pursuant to Policy 5001, Uses and Disclosures for Treatment, Payment and Operations.
- 2.5. Disclosures to Business Associates
  - 2.5.1. Disclosures to Great Rivers BH-ASO's Business Associates are permitted without an Authorization but the information must be limited to the information they need in order to accomplish the work Great Rivers BH-ASO requires of them. Please see Policy 5004 Business Associates for information on how to determine who is a business associate and how to determine whether the disclosure of PHI is permitted and what types of PHI can be disclosed.
- 2.6. Other Disclosures That Do Not Require An Authorization
  - 2.6.1. Disclosures that can be made without an Authorization and are explained in Great Rivers BH-ASO's Notice of Privacy Practice are:
    - 2.6.1.1. Made for the health oversight activities of federal, state and private regulators and payers, including those responsible for determining whether or not Great Rivers BH-ASO is in compliance with the Privacy Regulations of HIPAA,
    - 2.6.1.2. Required by law, or
    - 2.6.1.3. Made because of an imminent threat to life and safety,
  - 2.6.2. There are other disclosures as well that may be made without an Authorization. See Policy 5004 on "No Permission." Any disclosure made for any of the above reasons should be approved by the Privacy Officer prior to the disclosure where possible, and within 24 hours of disclosure where prior notice is not possible.
  - 2.6.3. The above disclosures must be documented on a "PHI Disclosure To Be Included in Individual's Accounting Form" and filed in the administrative

section of the medical record. See Policy 5012 on Accounting for Disclosures for additional information.

2.7. Disclosures That Do Require An Authorization

2.7.1. Disclosures either internally or externally that do require an Authorization are those in which:

- 2.7.1.1. The PHI requested is the content of psychotherapy notes (there are very few exceptions, see Psychotherapy Notes Policy 5001).
- 2.7.1.2. The PHI requested or disclosed is not going to be used for healthcare purposes.
- 2.7.1.3. The PHI requested or disclosed is for treatment but is being requested of a covered entity or provider who is not a current member of the treatment team, for example requesting parts of a record from a prior provider.
- 2.7.1.4. The PHI requested or disclosed is for treatment purposes, but the treatment team member is not a healthcare provider, for example, developing a treatment plan with the school a child attends.
- 2.7.1.5. The PHI requested or disclosed is for the operations or payment needs of another Covered Entity or healthcare provider but it does not meet the conditions outlined above under, "Sharing of PHI Needed for Payment and Operations Among Covered Entities and Healthcare Providers."

2.8. Procedures For Completion Or For Processing An Authorization

2.8.1. Requesting PHI Pursuant to an Authorization

- 2.8.1.1. The need for the PHI being requested should be explained to the individual.
- 2.8.1.2. Every individual should be informed that continued treatment at the agency is not dependent on whether or not he/she signs the Authorization, except in situations where the purpose of the treatment is specifically for disclosure to a third party. This information is included in writing on the Authorization form and should be reviewed with the Individual.
- 2.8.1.3. The Authorization form should be reviewed and completed fully when the individual requesting the Authorization is present. In cases where the Individual or other authorized individual is not present and has requested that a form be sent to them for signature, the staff person receiving the request should, if possible, review the form with the requestor and complete as much of it as possible before sending it out for completion and signature. In particular, the following issues should be discussed, if possible:
  - 2.8.1.3.1. To whom the request should be directed. This information should be completed as specifically

as possible. For example, it is best to send a request directly to a treating professional rather than to the agency the treating professional is employed by. If the name of the person is not known, the request could be sent to the medical records department or to the site where treatment occurred.

2.8.1.3.2. The description of the purpose of each disclosure is needed, with specific information about whether the disclosure is needed for treatment, payment, health care operations or a combination of two or more of these reasons. A statement "at the request of an 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 the purpose.

2.8.1.3.2.1. If the request is for treatment, more specificity is not needed unless the treatment involves substance abuse and the provider is a federally assisted substance abuse program or unless the PHI requested contains HIV status information.

2.8.1.3.2.2. If the request is for operations, describe the type of operations, e.g. utilization management, audits.

2.8.1.3.2.3. If the request is for payment purposes, dates and times of treatment need to be specified.

2.8.1.3.2.4. If the PHI is needed for a reason other than treatment, payment or health care operations, the actual use needs to be specific, e.g. "the information is needed to create a database of individuals with similar circumstances" or "the individual has been referred to a specialist and the information is needed to ensure a comprehensive assessment and appropriate treatment."

- 2.8.1.3.3. Each request for disclosure of PHI is governed by Great Rivers BH-ASO's Policy Minimum Necessary. After determining the minimum amount of information needed for the disclosure, the request for PHI needs to be specific, e.g. the parts of the medical record to be disclosed, the dates of treatment, etc.
- 2.8.1.3.4. How long does the Authorization need to be in effect?
  - 2.8.1.3.4.1. If the disclosure is a one-time event, e.g. the copying and mailing of medical records, this event can be specified. The event listed in the disclosure must relate to the Individual or to the purpose of the use and disclosure. If a follow up to the review of the records is planned to include a discussion with the disclosing professional, staff would need to ensure that adequate time is available to do this.
  - 2.8.1.3.4.2. Once it is determined how long the Authorization needs to be in effect, specify on the form either the date or the event that is most specific in detailing the boundaries of the Authorization. A simple statement such as "consultation completed", "none" or similar language is sufficient.
- 2.8.1.3.5. The individual and/or his/her legal representative need to sign and date the Authorization.
- 2.8.1.3.6. Make two copies of the completed form. If the Authorization is to be signed by a personal representative, documentation of the representative's authority to act for the individual should also be provided and kept in the medical record pursuant to the provisions of Policy 5003, Uses and Disclosures Opportunities for the Individual to Agree or Object.
  - 2.8.1.3.6.1. One copy should be given to the individual for his/her records.



2.8.1.3.6.2. The second copy should be kept in the administrative section of the medical record. A note should be made on this copy that the Individual was given a copy of the Authorization. This entry should be dated and signed.

2.8.1.3.7. The original should be mailed or faxed to the person(s) or entity specified on the Authorization.

2.8.1.3.8. All Authorizations should be kept for ten (10) years from their last effective date.

2.9. Disclosing PHI Pursuant To An Authorization Received From A Third Party

2.9.1. The person receiving the Authorization should check to see who is listed on the form as the disclosing professional. The Authorization may list an individual or the titles or role of the person to whom the Authorization is directed.

2.9.1.1. If the person listed on the Authorization is currently or was previously employed at Great Rivers BH-ASO, the Authorization should be given directly to the Privacy Officer who will consult with the primary care provider before determining whether or not to process the request.

2.9.2. Upon receipt of an Authorization for disclosure of PHI, the Privacy Officer will review the form to determine if it is complete and specific. In particular, the presence of the following items should be reviewed:

2.9.2.1. Signature of the individual who is the subject of the disclosure;

2.9.2.2. Date or specific event listed that defines the period during which the Authorization is in effect, and whether the Authorization is still in effect;

2.9.2.3. The information being requested is specific and clear enough so that it can be acted on;

2.9.2.4. The purpose of the disclosure is explained; (This is necessary only when the PHI being requested is related to the substance abuse treatment of the Individual, the Individual's HIV status or the requestor is a covered entity and is requesting the PHI for their own use or for disclosures by others.)

2.9.2.5. The amount and type of PHI requested is reasonable and necessary given the purpose of the request.

2.9.3. If all the items above are present, the disclosure can be approved. If not, the Privacy Officer determines whether or not to make the disclosure at all or whether to make a partial disclosure. If the Privacy Officer is unsure or believes the Authorization is excessive or not warranted, he/she should consult with the Compliance Officer. If there is agreement that the Authorization is not warranted or may be excessive the Privacy Officer will make a good faith effort to contact the Individual to explain the concerns and to determine if the Individual wishes the Authorization to stand as written or will modify and resubmit it. If the Privacy Officer

- believes that the Authorization should be complied with in its' entirety, he/she will initial and date the bottom of the Authorization form.
- 2.9.4. If the Authorization specifies an oral disclosure and the Privacy Officer determines that the Authorization is warranted, the primary clinician should be notified that he/she should:
- 2.9.4.1. Complete the consultation or discussion;
  - 2.9.4.2. Document on a progress note the date, time, list of all those participating in the discussion, and the content of the conversation;
  - 2.9.4.3. Place the original progress note in the Individual's current or closed medical record and
  - 2.9.4.4. Attach a copy of the progress note to the Authorization and place it in the Individual's current or closed medical record.
- 2.9.5. If the Authorization specifies and warrants written disclosure, a copy of the written disclosure should be attached to the Authorization form and placed in the current or closed medical record.
- 2.9.6. If the Authorization requests copies of documents from the designated record set, the Authorization form should then be directed to medical records or other administrative staff who will gather the information, copy it, and send it as directed in the Authorization.
- 2.9.6.1. Once the information has been sent, the person completing this task should write sent, specify how it was sent (mail, email, fax), date and initial the bottom of the form.
  - 2.9.6.2. The form should then be filed in the administrative section of the medical record. Authorizations should be maintained in the current record for ten (10) years from their last effective date.
- 2.9.7. If the Privacy Officer does not believe that a disclosure should be made at all or believes that the Authorization from a third party is not valid, he/she should write a note on the bottom of the third-party Authorization as to why it will not be complied with, initial and date the form.
- 2.9.7.1. A letter should be mailed to the entity or person requesting the disclosure explaining why the disclosure was not complied with.
  - 2.9.7.2. A copy of the letter should be stapled to the original Authorization and kept in the current or closed Medical Record.
- 2.9.8. If the Privacy Officer has determined that the Authorization can be partially complied with, he/she should specify on the bottom of the Authorization, the exact information to be released, date and initial the note. He/she should then follow one or more of the options listed in three above for disclosing the PHI requested.

## PROCEDURE SIGNATURE

DocuSigned by:

*Edna J. Fund*

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4/14/2020

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Edna Fund  
Great Rivers BH-ASO Board Chairperson

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Date