

# Great Rivers Behavioral Health Administrative Services Organization

Policy Title: <b>Uses and Disclosures: No Permission Required</b>	Policy No. <b>5004.01</b>
Category: HIPAA Privacy & Security	Date Adopted: 01/10/2020 Date Revised: 06/11/2021 Date Reviewed: 05/18/2021
Reference: Washington Health Care Authority Contract with Great Rivers Behavioral Health Organization; Volk v DeMeerleer, 386 P. 3d 254, 187 Wn. 2d 241 (2016) 45 CFR § 164.512	

## Purpose

- 1.1. Great Rivers Behavioral Health Administrative Services Organization (Great Rivers BH-ASO), in an effort to be compliant with the Privacy Rule of the Health Insurance Portability and Accountability Act's (HIPAA) Administrative Simplification provisions, sets out, in this policy, the conditions for responding to requests for disclosure of Protected Health Information (PHI) in compliance with law and limited to the relevant requirements of the law that do not require the initial authorization or prior consent of the Individual.

## POLICY:

- 2.1. Great Rivers BH-ASO may use or disclose PHI without the written authorization of the individual, or the opportunity for the individual to agree or object, in certain situations as defined in 45 CFR § 164.512. When Great Rivers BH-ASO is required to inform the individual of, or when the individual may agree to, a permitted use or disclosure, Great Rivers BH-ASO's information and the individual's agreement may be given orally.
- 2.2. Great Rivers BH-ASO has appointed a Privacy Officer who is responsible for processing all requests for disclosures of PHI from external authorities in compliance with law and limited to the relevant requirements of that law. Great Rivers BH-ASO recognizes that it is not compelled to make disclosures by the Privacy Rule, but that Great Rivers BH-ASO may do so without fear of further penalty under the Privacy Rule.
  - 2.2.1. Documentation retention requirements include:
    - 2.2.1.1. Policies and procedures for disclosures with no permission required.
  - 2.2.2. Other policies and procedures to review that are related to this policy:
    - 2.2.2.1. Notice of Privacy Practices;
    - 2.2.2.2. Uses and Disclosures Authorizations; and
    - 2.2.2.3. Administrative Requirements – Document

## PROCEDURE:

- 3.1. Uses and Disclosures: No Permission Required
  - 3.1.1. In most cases the decision about whether to disclose without the individual's Authorization or agreement will be made by the Privacy Officer in consultation with the treating professional(s) or other direct care staff person involved in the individual's treatment. The Privacy Officer may delegate this responsibility to others in the organization pursuant to a standing order for disclosures that are routine or on a case-by-case basis and the Privacy Officer will contact the Compliance Officer if assistance is needed.

- 3.1.2. Many of these disclosures need to be accounted for to the individual should they request a list of disclosures; (see Policy 5012 Individual's Right to an Accounting of Disclosures of PHI.) Because of this it is very important that staff carefully record the date, the PHI disclosed, the reason for disclosure, and to whom the disclosure was made on the Log of Disclosures of PHI form attached to Policy 5012 Individual's Right to an Accounting of Disclosures. This form should be filed in the administrative section of the medical record. The Agency must be able to account for certain disclosures for up to ten (10) years. (Please see Policy 5012, Individual's Right to an Accounting of Disclosures of PHI for additional information and instructions.)
- 3.1.3. When a court order is required to disclose PHI, the Privacy Officer will review the requested PHI and proposed disclosure process. When appropriate, the Privacy Officer will consult with Great Rivers agency's attorneys before releasing PHI pursuant to a court order or before declining to do so because the request is not in the form of a proper judicial order.
- 3.1.4. Whenever Great Rivers BH-ASO is permitted to disclose PHI pursuant to a subpoena (see "Judicial and Administrative Proceedings" above), Great Rivers BH-ASO will receive satisfactory assurances from the party issuing the subpoena that:
  - 3.1.4.1. Reasonable efforts have been made by such party to ensure that the individual has been given notice of the request. Satisfactory assurances must include a written statement and documentation that the party has made a good faith attempt to provide written notice to the individual, or if the individual's location is unknown, to mail a notice to the individual's last known address. The notice to the individual must include sufficient information about the proceeding to permit the individual to raise objections to the court. The time for the individual to raise objections must have elapsed with no objections filed or with all objections having been resolved by the court; or
  - 3.1.4.2. Reasonable efforts have been made by such party to secure a qualified protective order. A qualified protective order means 1) a court order or stipulation of all parties to the proceeding that prohibits the parties from using or disclosing PHI for any purpose other than the proceeding for which the PHI was requested, and 2) requires the return to the CE or destruction of the PHI at the end of the proceeding. Satisfactory assurances, in this case, must include a written statement of the party and accompanying documentation demonstrating that the parties have agreed to a qualified protective order and have presented it to the court or that the party seeking the PHI has requested a qualified protective order from the court.
- 3.1.5. If Great Rivers BH-ASO is uncertain as to whether the party requesting the PHI has adequately Great Rivers BH-ASO's own notice to the individual, to obtain an authorization from the individual, to seek a proper judicial order to release the PHI, to object to or (or request the court to) quash the subpoena or to seek Great Rivers BH-ASO's own qualified protective order.
- 3.1.6. In other cases, the disclosure can be made without prior notice to the individual, but as soon as practicable afterwards; the individual must be informed that the disclosure was made. In all cases, the Privacy Officer in consultation with the treating professional(s) or direct care provider will determine who should be responsible for notifying the individual about the disclosure. The notification, time, and date should be recorded on the "Log of Disclosures of PHI" form and signed by the staff responsible for notifying the individual. All notifications to the individual about a disclosure may be made orally, but can be made using electronic or written communication.
- 3.1.7. Some of the disclosures discussed in this policy and procedure are mandated by law:
  - 3.1.7.1. Reporting child abuse. In these cases, the Privacy Officer should be informed of the disclosure, but does not need to approve it. Each individual who is mandated to report has a legal obligation to report that cannot be overruled

by the opinion of another staff person. However, senior clinical staff as well as the Compliance Officer are available for consultation with any staff person who is unsure of whether or not a disclosure should be made.

- 3.1.7.2. Duty to Warn (RCW 72.05.120(2)). In these cases, there is a duty to warn or to take reasonable precautions to provide protection from violent behavior where the individual of service has communicated an actual threat of physical violence against a reasonably identifiable victim or victims. The duty to warn to take reasonable precautions to provide protection from violent behavior is discharged if reasonable efforts are made to communicate the threat to the victim or victims, and to law enforcement personnel. This duty has now been expanded by the Washington Supreme Court decision in Volk v DeMeerleer, 386 P. 3d 254, 187 Wn. 2d 241 (2016) to extend to any person or even the public if they are "foreseeable" victims.
- 3.1.7.3. In some cases, the staff person making the disclosure may believe that by disclosing to either the individual, to the individual's parents or guardians, or to others involved in the care of the individual, they are endangering the individual. In most of these cases, the staff person has an obligation to protect the safety of the individual and to not disclose even if it is permitted. Only professional treating staff should make this decision in consultation with the Privacy Officer or Compliance Officer. Other direct care providers should consult with their clinical supervisor about exercising the agency's right to not disclose. The Privacy Officer should notify the Compliance Officer if possible prior to the decision not to disclose and in all cases within 48 hours after the decision is made not to disclose.

POLICY SIGNATURE

DocuSigned by:  
*Trinidad A. Medina*  
2166FCAF973B400...

Trinidad Medina,  
Chief Executive Director

6/24/2021

Date