

Great Rivers Behavioral Health Administrative Services Organization

Policy Title:	Minimum Necessary	Policy No. 5008.00
Category:	HIPAA Privacy & Security	Date Adopted: 01/10/2020 Date Adopted: Date Reviewed:
Reference:	Washington Department of Social and Health Services Contract with Great Rivers Behavioral Health Organization 45 CFR 164.502(b); 164.514(d)	

POLICY:

- 1.1. Great Rivers Administrative Services Organization (Great Rivers BH-ASO) will apply the minimum necessary standards to all uses, disclosures and requests for PHI, except for:
 - 1.1.1. Disclosures to, or requests by, a healthcare provider for the purpose of treatment;
 - 1.1.2. Disclosures to the Individual in Service;
 - 1.1.3. Disclosures made pursuant to Individual in Service Authorization;
 - 1.1.4. Disclosures required to comply with the privacy rule;
 - 1.1.5. Uses and disclosures required by law to the extent that such disclosure complies with and is limited to the relevant requirements of the law; and
 - 1.1.6. Uses and disclosures that are required for compliance with HIPAA standardized transactions (45 CFR Parts 160 & 162).
- 1.2. Any request for entire medical records, other than for treatment purposes, must be justified in writing and made part of the medical record.
- 1.3. Disclosures of PHI will be in accordance with the matrix of type of PHI, types of persons eligible to receive PHI, and the conditions that would apply to such access (see Matrix attached hereto as Ex. A).
- 1.4. Non-routine, non-recurring disclosures of PHI will be reviewed prior to release by the Great Rivers BH-ASO's Privacy Officer.
- 1.5. When processing requests for PHI from external sources Great Rivers BH-ASO will assume, unless advised otherwise, that the requestor only seeks the minimum PHI necessary for its purpose. Great Rivers BH-ASO will rely on the representation of the following person(s), only when reliance is reasonable:
 - 1.5.1. Public officials for a disclosure not requiring any legal permission;
 - 1.5.2. Other covered entities;
 - 1.5.3. A professional who is either a member of the Great Rivers BH-ASO's provider network or a business associate and the request is for the purpose of providing professional services on Great Rivers BH-ASO or provider's behalf and the professional has asserted that the PHI requested is the minimum necessary for his/her stated purpose.
- 1.6. However, if reliance on the representation of the requestor does not appear reasonable, Great Rivers BH-ASP may disregard the representation and make their own determination of the minimum amount of PHI that is necessary for the purpose.

PROCEDURE:

- 2.1. Minimum Necessary
 - 2.1.1. Staff Access to PHI Using the Minimum Necessary Standard [Access Matrix to be created]
 - 2.1.2. The Privacy Officer in consultation with Great Rivers BH-ASO management staff will develop the Role-based Access to PHI Matrix ("Access Matrix"). Great Rivers BH-ASO management staff, including the Privacy Officer, will review the current version of the Access Matrix on an annual basis.
 - 2.1.3. All staff members are responsible for reviewing the Access Matrix and for understanding how it impacts their role within Great Rivers BH-ASO.
 - 2.1.4. Any employee who believes that another employee within Great Rivers BH-ASO is not complying with the Access Matrix must report those concerns either to the appropriate supervisor, or directly to the Privacy Officer.
 - 2.1.5. All employees will be trained on the Access Matrix.
 - 2.1.6. New employees will have training on the Access Matrix incorporated into their orientation programs.
 - 2.1.7. Current employees will receive training in conjunction with the agency's training on the Privacy Regulations that is required under HIPAA.
 - 2.1.8. On an annual basis, if and when the Access Matrix is modified, all employees will receive notice of any changes, a description of any operational changes that must be implemented in order to comply with the changes to the Access Matrix and information on how their day-to-day work will change as a result.
 - 2.1.9. The Administrator will be advised in advance of any changes in order to incorporate them into training.
 - 2.1.10. The Access Matrix currently in effect will be attached to this policy and procedure and may have an effective date later than this policy. Staff can make copies of the Access Matrix to assist them in complying with its requirements.
 - 2.1.11. The Access Matrix lists the various positions or roles within the agency, the types of activities undertaken by the role that uses PHI, and the types of PHI that are needed by staff persons in those roles to fulfill their job requirements.
 - 2.1.12. This list is developed using a standard of only allowing access to the minimum amount of PHI that is necessary. In some cases, it is not reasonable to limit the PHI to the minimum necessary. For example, if information that is needed by a staff person is contained in a paper medical record, they will need access to the whole record. b. If a staff person believes that in a non-routine situation or on a permanent basis he/she needs to access PHI that is not listed on the Access Matrix, he/she should make a request to the Privacy Officer.
 - 2.1.12.1. The Privacy Officer can override the matrix for a single, non-routine situation. The Privacy Officer should document, in writing, the reason for the override, the situations and persons to which it will apply, and the applicable dates.
 - 2.1.12.2. The Privacy Officer cannot make any modifications to the Access Matrix without the approval of management.
 - 2.1.13. If a staff person is not sure if he/she has access to certain PHI, he/she should first consult the supervisor. If the supervisor is unable to answer the staff person's question, the supervisor should go directly to the Privacy Officer for advice on the matter.

2.1.14. Staff persons who do not comply with the Access Matrix are subject to disciplinary sanctions up to and including termination.

2.2. Disclosures

2.2.1. Disclosures of PHI are categorized by the Privacy Regulations as follows:

- 2.2.1.1. Disclosures that are not required to meet the minimum necessary requirements;
- 2.2.1.2. Disclosures that are required to meet the minimum necessary requirements, and within this category:
 - 2.2.1.2.1. Routine and Recurring Disclosures;
 - 2.2.1.2.2. Non-routine and Non-Recurring Disclosures
- 2.2.1.3. Disclosures that are not required to meet the minimum necessary standard.
- 2.2.1.4. Disclosures of PHI to the Individual in Service are not subject to the minimum necessary requirement.
- 2.2.1.5. Disclosures of PHI to health care providers for treatment purposes are not subject to the minimum necessary requirement. This allows staff to determine quickly and without constraint the information necessary for staff to know in order to care for the Individual in Service. However, please see the Uses and Disclosure: Treatment, Payment and Operations policy for restrictions on disclosures to third party members of the treatment team.
- 2.2.1.6. Please see the Uses and Disclosures: Authorizations policy, for additional information on disclosing mental health, substance abuse and HIV/AIDS information to treatment team members.
- 2.2.1.7. Disclosures of PHI that are being done in response to an Individual's in Service Authorization, including an Individual in Service initiated Authorization are, in most cases, not subject to the minimum necessary requirements. The exceptions to this are:
 - 2.2.1.7.1. Disclosure that Great Rivers BH-ASO is requesting. Great Rivers BH-ASO requires to apply the minimum necessary standards to their requests for disclosures to them by third parties. By signing the Authorization, the Individual in Service consents to the provider's determination of the minimum necessary.
 - 2.2.1.7.2. Authorizations sent by third parties to Great Rivers BH-ASO when Great Rivers BH-ASO believes the Authorization is excessive or is not warranted. For example, an Individual in Service requests the disclosure of his/her psychotherapy notes to his/her employer. In those cases, the staff person who receives the Authorization should consult with the supervisor or the Privacy Officer to determine if the client should be contacted and wishes to submit a modified Authorization.
 - 2.2.1.7.3. Please see the Uses and Disclosures: Authorizations policy for instructions on the requirements for a valid Authorization.

- 2.2.1.8. Disclosures of PHI to the Secretary of Health and Human Services for compliance Purposes and disclosures that Great Rivers BH-ASO is required to make in order to comply with the HIPAA regulations on standard transactions are not subject to the minimum necessary requirements.
 - 2.2.1.8.1. Many of these disclosures will be made routinely, for example, PHI contained in a bill for services, and are covered by billing agreements.
 - 2.2.1.8.2. If a staff person, however, receives any request for PHI from a person(s) purporting to be a representative of HHS or any of its sub-agencies, he/she should contact the Privacy Officer about the request before disclosing any information.
 - 2.2.1.8.3. If the Privacy Officer is not available other management staff should be contacted.
 - 2.2.1.8.4. If the person representing HHS presents in person at a site and states that he/she is involved in an investigation, audit or any other type of fact-finding mission, staff should confirm the credentials but should not interfere with the investigation or audit process.
- 2.2.1.9. Disclosures that Great Rivers BH-ASO are required to make by law. In this case, Great Rivers BH-ASO is only permitted to release the information that is relevant to the requirements of the law.
- 2.2.1.10. Please see Uses and Disclosures: Authorizations policy, for additional information on disclosures required by law.

2.3. Routine and Recurring Disclosures

- 2.3.1. The Great Rivers BH-ASO's Privacy Officer in consultation with management staff will develop the Routine Disclosures Matrix ("Disclosures Matrix").
 - 2.3.1.1. The Disclosures Matrix in effect at any time will be the matrix attached to this policy.
 - 2.3.1.2. The Privacy Officer and other management staff will review the current version of the Disclosures Matrix on an annual basis.
- 2.3.2. All staff members of Great Rivers BH-ASO are responsible for reviewing the Disclosures Matrix and for understanding how it affects disclosures of PHI they may be asked to make.
 - 2.3.2.1. Any employee who believes that an employee or department within the agency is not complying with the Disclosures Matrix must report those concerns either to the Administrator, or directly to the Privacy Officer.
 - 2.3.2.2. All employees will be trained on the Disclosures Matrix.
 - 2.3.2.3. New employees will have training on the Disclosures Matrix incorporated into their orientation programs.
 - 2.3.2.4. Current employees will receive training in conjunction with the agency's training on the Privacy Regulations that is required under HIPAA.

- 2.3.2.5. On an annual basis, if and when the Disclosures Matrix is modified, all employees will receive notice of any changes, a description of any operational changes that must be implemented in order to comply with the changes to the Disclosures Matrix and information on how their day-to-day work will change as a result, if at all.
- 2.3.2.6. The Administrator will be advised in advance of any changes in order to incorporate them into training.
- 2.3.3. The Disclosures Matrix currently in effect will be attached to this policy and procedure. Staff can make copies of the Disclosures Matrix to assist them in complying with its requirements.
- 2.3.4. The Disclosures Matrix lists routine disclosures by type, e.g. "Disclosures for eligibility determinations for Social Security benefits", the roles or positions of the persons that the PHI should be disclosed to, and, the types of PHI that can be disclosed.
 - 2.3.4.1. This list is developed using a standard of only allowing access to the minimum amount of PHI that is necessary for the use or disclosure of PHI. In some cases, it is not reasonable to limit the PHI to the minimum necessary. For example, in some cases, especially with paper records, it may not be possible to separate information out or may not be reasonable to redact every piece of information that is not needed for the purpose of the disclosure. Any staff person, who believes that compliance with the Disclosures Matrix in a particular case violates the minimum necessary standard, should appeal to the supervisor. The supervisor may then appeal to the Privacy Officer for assistance.
 - 2.3.4.2. The Privacy Rule exempts from the minimum necessary standard all required elements of the HIPAA electronic transactions, however, the optional elements of these transactions must be considered in developing the Disclosures Matrix.
 - 2.3.4.3. Any type of disclosure not listed as a routine disclosure on the Disclosure Matrix is considered a non-routine disclosure and staff must follow the procedures listed below under non-routine disclosures.
 - 2.3.4.4. All disclosures of the entire medical record to a third party for payment or for operations pursuant to the Uses and Disclosures for Treatment, Payment and Operations policy are considered non-routine disclosures. See also below "Disclosure of the Entire Medical Record."
 - 2.3.4.5. The Privacy Officer cannot make any modifications to the Access Matrix without the approval of management.
 - 2.3.4.6. If the Privacy Officer is not sure if a particular disclosure meets the definition of a routine disclosure, he/she should consult with the Administrator and other management staff.
 - 2.3.4.7. Staff persons who do not comply with the Disclosures Matrix are subject to disciplinary sanctions up to and including termination.

2.4. Non-Routine and Non-Recurring Disclosures

- 2.4.1. Non-routine routine and non-recurring disclosures are any disclosures that are subject to the minimum necessary standard and are not listed on the Disclosures Matrix as routine and recurring disclosures. Please see above under "Disclosures

that are not required to meet the minimum necessary standard” and “Routine Disclosures”.

- 2.4.2. Privacy, Security, and Compliance Officer’s will be resources and final decision-makers for Great Rivers BH-ASO staff on non-routine disclosures:
 - 2.4.2.1. These Officers will be trained on Great Rivers BH-ASO policy and regulation concerning the non-routine disclosures of PHI.
 - 2.4.2.2. These Officers will be responsible for reviewing all requests for the non-routine disclosures of PHI and determining which PHI should be disclosed in order for the agency to meet the minimum necessary standard.
 - 2.4.3. All staff persons requesting a review of non-routine disclosures should have the following information available for the reviewer:
 - 2.4.3.1. The authorization or request if in writing;
 - 2.4.3.2. The staff person’s assessment of the PHI that should be disclosed and why.
 - 2.4.3.3. Any back-up documentation, for example, the medical record, which can assist the reviewer in making the determination.
 - 2.4.4. The Privacy Officer and all Great Rivers BH-ASO staff can assume the PHI being requested is the minimum necessary, if the assumption is reasonable, as follows:
 - 2.4.4.1. Requests by:
 - 2.4.4.1.1. Public officials for a disclosure not requiring any legal permission;
 - 2.4.4.1.2. Other covered entities, including licensed residential providers;
 - 2.4.4.1.3. A professional who is either a member of Great Rivers BH-ASO’s workforce or a business associate and the request is for the purpose of providing professional services and the professional has asserted that the PHI requested is the minimum necessary for the stated purpose; and
 - 2.4.4.1.4. Payers for the purposes of conducting HIPAA’s standard transactions including all required elements of those transactions. The optional elements are subject to the minimum necessary standard and will be dealt with as a routine or non-routine disclosure as described above.
 - 2.4.4.2. If a staff person, for any reason, believes that the requestor should not be relied upon to determine the minimum necessary PHI needed and has listed on the request, he/she should make sure the Privacy, Security, or Compliance Officers are advised of this opinion so they may include this information in their deliberation.
 - 2.4.5. The decision by the Privacy, Security, or Compliance Officer should be recorded in writing on the document requesting the PHI or linked or attached to the document. The decision should be signed and dated.
- 2.5. Disclosing the Entire Medical Record
- 2.5.1. Each time a disclosure of PHI is made by a Great Rivers BH-ASO that includes the entire medical record, the decision to disclose the entire record must be

documented on the "PHI Disclosure to be Included in Accounting" form, including the reasons why, and placed in the administrative section of the medical record attached to the written request (if one is available). A copy of the documentation should be sent to the Privacy Officer.

- 2.5.2. If a written request is not available, the documentation should include the requestor's name, position, and agency or company, the stated reason for the request, the date, and the signature and name of the person making the disclosure.
- 2.5.3. This does not apply to routine disclosures made for treatment purposes, to an Individual in Service, or pursuant to an Individual in Service Authorization.

POLICY SIGNATURE

Edna J. Fund, Chair
Great Rivers BH-ASO Governing Board

Date