Confidentiality, Use and Disclosure of Protected Health Information

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Document Scope: (applies to Policy & Procedure only)

- The requirements herein apply only to the GCBH BH-ASO Central Office and its functions.
- X The requirements herein apply, verbatim, to GCBH BH-ASO and its network providers[2].
- The requirements herein apply both to GCBH BH-ASO and its network providers[2]. Additionally, network providers must have internal documents outlining their processes for implementing the requirements, insofar as they relate to actions for which network providers are responsible.

PURPOSE: To establish standards for confidentiality, use and disclosure of Protected Health Information (PHI).

POLICY

A. Greater Columbia Behavioral Health (GCBH BH-ASO) adheres to federal and state statutes and all requirements of the Health Insurance Portability and Accountability Act (HIPAA) pertaining to Protected Health Information.

PROCEDURE

1. Confidentiality:

   1.1. GCBH BH-ASO will protect all Personal Information, records, and data from unauthorized disclosure in accordance with 42 CFR §431.300 through §431.307, RCWs 70.02, 71.05, 71.34, and for individuals receiving substance use disorder treatment services, in accordance with 42 CFR Part 2 and RCW 70.96A. GCBH BH-ASO will 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.

[1]See definitions of document types in AD100, "Development, Approval & Review of Formal GCBH BH-ASO Documents"

[2]"Network Provider" – An organization with which GCBH BH-ASO is contracted for the provision of direct services.

1.2. GCBH BH-ASO 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 GCBH BH-ASO Region Office. All employees read and sign the GCBH BH-ASO Confidentiality and Security Agreement.

1.2.1. If a notice or other form of PHI communication is returned as undeliverable, GCBH-ASO will properly dispose by shredding that PHI. This will be accomplished either by personally shredding documents using an appropriate shredding machine or by depositing paper into a locked bin that is designated for shredding. Responsible staff will document the receipt of the undelivered mail and the date of its destruction.

1.3. GCBH BH-ASO will (and will require its subcontractors and providers to do so as well) establish and implement procedures consistent with all confidentiality requirements of the Health Insurance Portability and Accountability Act (HIPAA) (45 CFR Parts 160 and 164) for medical records and any other health and enrollment information that identifies a particular individual.

1.4. In the event an individual's picture or personal story will be used, GCBH BH-ASO will first obtain written consent from the individual.

1.5. GCBH BH-ASO will prevent inappropriate access to confidential data and/or data systems used to hold confidential individual 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 HCA point of contact within five (5) business days whenever an authorized user with access rights leaves employment or has a change of duties such that the 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 HCA data system, GCBH BH-ASO will comply with all requirements of the HIPAA Security and Privacy for Breach Notifications and as otherwise required by state or federal law.

2. Use and Disclosure, Valid Authorization Required:

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

2.1.1. Valid Authorization:

2.1.1.1. Protected health information is disclosed to other individuals designated in a valid authorization. To be valid, the authorization includes, but not limited to, the following elements:

2.1.1.1.1. Name of the individual: The name and other specific identification of the individual authorized to make the requested use or disclosure.

2.1.1.1.2. Name of the personal representative (if any): The name and other specific identification of the individual authorized to make the requested use or disclosure on the behalf of the individual.

2.1.1.1.3. Requester/recipient: The name or other specific identification of the individual/ entity to whom GCBH BH-ASO may make the requested use or disclosure.

2.1.1.1.4. 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.

2.1.1.1.5. 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.

2.1.1.1.6. Expiration date: An expiration date or expiration event that relates to the individual or the purpose of the use or disclosure.

2.1.1.1.7. 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.

2.1.1.1.8. Right to revoke: The authorization must contain notice to the individual of their right to revoke the authorization in writing except to the extent that the covered entity has taken action in reliance thereon.

3. Disclosures Not Requiring Authorization:

3.1. Required disclosures:

3.1.1. GCBH BH-ASO is required to disclose protected health information:

3.1.1.1. To an individual when requested.

3.1.1.2. 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.

3.2. Permitted Uses and Disclosures:

3.2.1. GCBH BH-ASO is permitted to use or disclose protected health information for:

3.2.1.1. Treatment, payment, and health care operations (TPO) of GCBH BH-ASO as described:

3.2.1.1.1. 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.

3.2.1.1.2. Payment activities may include, but not limited to, those undertaken by GCBH BH-ASO 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.

3.2.1.1.3. Health Care Operations may include, but not limited to, conducting quality assessment and improvement activities, reviewing competence of or qualifications of mental 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.

3.2.1.2. About Victims of Abuse, Neglect, or Domestic Violence: PHI may be disclosed about an individual with whom GCBH BH-ASO reasonably believes to be a victim of abuse, neglect, or domestic violence to the appropriate government authority.

3.2.1.3. Health Oversight Activities: PHI may be disclosed for purposes of health oversight activities such as audits, investigations, inspections, and licensure.

3.2.1.4. Law Enforcement: PHI may be disclosed 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. This limited disclosure to law enforcement is allowed if related to public or private safety or apprehension of an individual.

3.2.1.5. 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.

3.2.1.6. Research and Evaluation: PHI may be disclosed to an individual, organization or agency (such as MHD) as necessary for management or financial audits, or program monitoring and evaluation.

3.2.1.7. Workers' Compensation: PHI may be disclosed as permitted by statute.

3.2.1.8. Department of Corrections: PHI may be disclosed about an inmate to the correctional institution.

3.2.1.9. Special Government Functions: PHI may be disclosed to the authorized federal officials for intelligence, counterintelligence, and other national security activities authorized by law. PHI may also be disclosed to the authorized federal officials to provide protection to the President, other authorized persons, or foreign heads of state or so they may conduct special investigations.

4. Minimum Necessary:

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

4.1.1. "Minimum Necessary" applies:

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

4.1.2. "Minimum Necessary" does not apply to:

4.1.2.1. Disclosures to or requests by a health care provider for treatment.

4.1.2.2. Uses or disclosures made to the individual.

4.1.2.3. Disclosures pursuant to a properly formatted authorization for release of information.

4.1.2.4. Disclosures made to the Secretary of DHHS to investigate or determine the agency's compliance with federal law.

5. Other Uses and Disclosures:

5.1. Additionally, GCBH BH-ASO may use and disclose protected health information for the following purposes and as allowed:

5.1.1. De-Identified Protected Health Information:

5.1.1.1. GCBH BH-ASO 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 GCBH BH-ASO.

5.1.1.2. 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.

5.1.2. "Individually identifiable health information" is information that is a subset of health information, including demographic information collected from an individual, and:

5.1.2.1. Is created or received by a health care provider, health plan, employer, or health care clearinghouse.

5.1.2.2. 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.

5.1.2.3. That identifies the individual.

5.1.2.4. With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

5.1.3. Business Associates:

5.1.3.1. GCBH BH-ASO 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 GCBH BH-ASO obtains satisfactory assurance that the business associate will appropriately safeguard the information. GCBH BH-ASO documents, 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.

5.1.3.2. This standard does not apply with respect to disclosures by GCBH BH-ASO to a health care provider concerning the treatment of the individual.

5.1.4. Deceased Individuals:

5.1.4.1. GCBH BH-ASO must comply with the requirements of this policy with respect to the protected health information of a deceased individual.

5.1.4.2. 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, GCBH BH-ASO treats such person as a personal representative under this policy, with respect to protected health information relevant to such personal representation.

5.1.5. Personal Representatives:

5.1.5.1. GCBH BH-ASO treats a personal representative as the individual for purposes of this policy.

5.1.5.1.1. 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, GCBH BH-ASO must treat such person as a personal representative under this policy, with respect to protected health information relevant to such personal representation.

5.1.5.1.2. 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, GCBH BH-ASO 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:

5.1.5.1.2.1. 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;

5.1.5.1.2.2. 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

5.1.5.1.2.3. 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.

5.1.5.1.3. Abuse, Neglect, Endangerment Situations: Notwithstanding a State law or any requirement of this paragraph to the contrary, GCBH BH-ASO may elect not to treat a person as the personal representative of an individual if GCBH BH-ASO has reasonable belief that:

5.1.5.1.3.1. The individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or

5.1.5.1.3.2. Treating such person as the personal representative could endanger the individual and, GCBH BH-ASO, 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.

5.1.6. Consistent with Privacy Notice:

5.1.6.1. GCBH BH-ASO 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.

5.1.7. Disclosures by Whistleblowers and Workforce Member Crime Victims:

5.1.7.1. Disclosures by Whistleblowers: GCBH BH-ASO 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:

5.1.7.1.1. The workforce member or business associate believes in good faith that GCBH BH-ASO 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:

5.1.7.1.2. A health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of GCBH BH-ASO 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

5.1.7.1.3. 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.

5.1.7.2. Disclosures by Workforce Members Who Are Victims of a Crime: GCBH BH-ASO 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:

5.1.7.2.1. The protected health information disclosed is about the suspected perpetrator of the criminal act; and

5.1.7.2.2. The protected health information disclosed is limited to the information listed in this policy as minimum necessary information.

6. Authority to Disclose Information:

6.1. 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 or Director before releasing information.

7. Authentication of Requester:

7.1. 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.

7.2. When presented with a valid authorization, check the 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.

8. Accounting of Disclosures:

8.1. 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.

APPROVAL

Sindi Saunders

Karen Richardson or Sindi Saunders, Co-Directors

10/31/2022

Date