References

45 CFR 164.502 Uses and disclosures of protected health information
45 CFR 164.502(b), 164.514(d) Minimum Necessary Requirement
45 CFR 164.506 Uses and Disclosures for Treatment, Payment, and Health Care Operations Management Information System (MIS)-17 Data Security, Device/Media Controls – Disposal and Media Re-use, Access Control – Encryption and Decryption Policy
MIS-54 Workstation Use, Workstation Security Policy
MIS-57 Confidential Information Policy

Scope

Spokane County Community Services, Housing, and Community Development Department (CSHCD), the Spokane County Regional Behavioral Health (Administrative Services Organization) Division (SCRBH), and all its network providers.

1. Policy

1.1. CSHCD SCRBH Health Information Organization (HIO)

1.1.1. The CSHCD SCRBH and the CSHCD SCRBH’s behavioral health Subcontractors and providers disclosing and/or receiving information from the CSHCD SCRBH HIO’s computer system will adhere to all requirements as contained in CSHCD SCRBH HIO’s Consent for the Release of Confidential Information About Alcohol or Drug Treatment and Other Protected Health Information Through Health Information Exchange form¹ (“Consent for Release of

¹ The CSHCD SCRBH HIO Consent for Release of Confidential Information form is a 42 C.F.R. Part 2 compliant consent form, in which the client authorizes the 42 C.F.R. Part 2 program named on the consent form and CSHCD
2. Procedures

2.1. CSHCD SCRBH HIO

2.1.1. The CSHCD SCRBH’s behavioral health subcontractors and providers:

2.1.1.1. Will acknowledge that in creating, receiving, transmitting, transporting, storing, processing, disclosing, or otherwise dealing with any information received from the CSHCD SCRBH HIO’s system, identifying or otherwise, relating to any of the CSHCD SCRBH’s Subcontractors’ substance use disorder (SUD) or co-occurring disorder (COD) Individuals (protected health information [PHI] and protected information), it is fully bound by the federal regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2; and the Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. Parts 142, 160, 162, and 164;

2.1.1.2. Will not create, receive, use, or disclose the CSHCD SCRBH HIO system’s protected information except as permitted or required by CSHCD SCRBH HIO’s consent for release of confidential information form, and/or by law with respect to such information;\(^2\)

2.1.1.3. Will report to CSHCD SCRBH’s Privacy and Security Officer any breach or any use or disclosure of the PHI or protected information in the HIO system not provided for by CSHCD SCRBH HIO’s consent for release of confidential information form, of which it becomes aware, within one (1) business day, to the CSHCD SCRBH HIO’s designated privacy and security official via phone call and email, and if PHI or protected information is included, then via secure/encrypted email, secure fax, or other trusted and secure system;

2.1.1.4. Will resist any efforts in judicial proceedings to obtain access to the CSHCD SCRBH HIO system’s protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2;

2.1.1.5. Will ensure compliance with HIPAA’s security provisions with regards to electronic PHI in accessing or using the CSHCD SCRBH HIO system, and to use appropriate safeguards to prevent the unauthorized use or disclosure of the PHI and protected information;

\(^2\) 42 C.F.R. 2.11 requires qualified service organizations to abide by the federal drug and alcohol regulations which prohibit such organizations from disclosing or re-disclosing any individual identifying information even to an agent or subcontractor without written consent.
2.1.1.6. Will ensure when it is creating, accessing, receiving, and using confidential information as defined in 42 C.F.R. Part 2 from the CSHCD SCRBH HIO system, it will limit the authorized access and use to comply with 42 C.F.R. Part 2, the CSHCD SCRBH HIO Consent for Release of Confidential Information form, and the HIPAA minimum necessary rules;

2.1.1.7. Will ensure that if or when they enter into a contract with any agent, including a Subcontractor, the agent will not be allowed to access or use the CSHCD SCRBH HIO’s computer system on behalf of the Subcontractor; and

2.1.1.8. Unless the HIO system user is given specific authorization and approval to do so by CSHCD SCRBH, HIO system users will ensure they do not use, disclose, re-disclose, or otherwise deal with any protected information, received or accessed directly from the CSHCD SCRBH HIO computer system (currently known as the Raintree system), for the purposes of disclosing the information for a Medical Emergency request as defined in 42 C.F.R. Part 2.

2.1.2. The CSHCD SCRBH:

2.1.2.1. Acknowledges that in transmitting, transporting, storing, processing, disclosing, re-disclosing, or otherwise dealing with PHI and protected information received from its Subcontractors, identifying or otherwise, relating to the Subcontractors’ SUD or COD Individuals, it is fully bound by the CSHCD SCRBH HIO’s consent for release of confidential information form, the federal regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2; and the Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. Parts 142, 160, 162, and 164;

2.1.2.2. Will ensure it does not use, disclose, or re-disclose the protected information in the HIO system, except as permitted or required by the required CSHCD SCRBH HIO’s consent for release of confidential information form, or by law with respect to such information;3

2.1.2.3. Will report to its Subcontractor(s) any breach of PHI or protected information, or any use or disclosure of the PHI not provided for in the CSHCR SCRBH HIO’s consent for release of confidential information form, of which it becomes aware, within one (1) business day, to the Subcontractor’s designated privacy or security official via phone

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3 42 C.F.R. 2.11 requires qualified service organizations to abide by the federal drug and alcohol regulations which prohibit such organizations from re-disclosing any individual identifying information even to an agent or subcontractor without written consent. The CSHCD SCRBH HIO’s Consent for Release of Confidential Information form is required to be signed by all organization’s individuals receiving SUD or COD program services funded by CSHCD SCRBH, and it authorizes the HIO to disclose and re-disclose protected information to a specified list of affiliated health care providers, organizations, health plans, and entities for specific purposes and conditions.
call and/or email, or if PHI or protected information is included, then via secure/encrypted email, secure fax, or other trusted and secure system;

2.1.2.4. Will resist any efforts in judicial proceedings to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2;

2.1.2.5. Will comply with HIPAA’s security provisions with regards to electronic PHI, and to use appropriate safeguards to prevent the unauthorized use or disclosure of the PHI;

2.1.2.6. Will ensure when it uses, discloses, or re-discloses confidential information as defined in 42 C.F.R. Part 2 from the CSHCD SCRBH HIO system, it will limit the authorized use, disclosure, and/or re-disclosure to comply with 42 C.F.R. Part 2, the CSHCD SCRBH HIO Consent for Release of Confidential Information Form, and the HIPAA minimum necessary rule;

2.1.2.7. Will ensure that if it enters into a contract with any agent, including a Subcontractor, that accesses the CSHCD SCRBH HIO system, the agent will agree to comply with 42 C.F.R. Part 2 and HIPAA 45 C.F.R. Parts 142, 160, 162, and 164; and, if CSHCD SCRBH learns of a pattern or practice by the agent that is a material breach of the contract with the CSHCD SCRBH, to take reasonable steps to cure the breach or terminate the contract, if feasible;

2.1.2.8. Will ensure that any agent, including a Subcontractor, to whom the CSHCD SCRBH provides the PHI or protected information received from the Subcontractor, or created or received by the HIO on behalf of the Subcontractor, is contractually bound to the same restrictions and conditions that apply through the federal regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2; the Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. Parts 142, 160, 162, and 164;

2.1.2.9. Will provide access to the protected information at the request of the Subcontractor, or to an individual as directed by the Subcontractor, in order to meet the requirements of 45 C.F.R. 164.524 which provides individuals with the right to access and copy their own protected information. The CSHCD SCRBH will act on a request for access no later than thirty (30) calendar days after receipt of the request in accordance with 45 C.F.R. 164.524;

2.1.2.10. Will make, or allow the Subcontractor to make, any amendments to protected information provided by the Subcontractor, as directed or agreed to by the subcontractor, pursuant to 45 C.F.R. 164.526. The CSHCD SCRBH will act on the Individual's request for an amendment no later than 60 calendar days after receipt of such a request in accordance with 45 C.F.R. 164.526;
2.1.2.11. Will make available its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of protected information received from the subcontractor, or created or received by the CSHCD SCRBH on behalf of the Subcontractor, to the Subcontractor or to the Secretary of the Department of Health and Human Services for purposes of the Secretary determining the subcontractor’s compliance with HIPAA. The CSHCD SCRBH will act on this request no later than thirty (30) calendar days after receipt of such a request;

2.1.2.12. Will document disclosures of protected information, and information related to such disclosures, as would be required for the Subcontractor to respond to a request by an Individual for an accounting of disclosures in accordance with 45 C.F.R 164.528. The CSHCD SCRBH will act on the Individual's request for an accounting, no later than sixty (60) calendar days after receipt of such a request, in accordance with 45 C.F.R. 164.528; and

2.1.2.13. Will provide to the Subcontractor, or an Individual with information in accordance with Section 2.1.2.9 of this policy, with the required documented disclosures to permit the Subcontractor to respond to a request by an Individual for an accounting of disclosures in accordance with forty-five (45) C.F.R. 164.528. The CSHCD SCRBH will act on the Individual's request for an accounting, no later than sixty (60) calendar days after receipt of such a request, in accordance with 45 C.F.R. 164.528.

3. Definitions

3.1. “Authorized User(s)” means an Individual or Individuals with an authorized business requirement to access HCA Confidential Information.

3.2. “Breach” means the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the Protected Health Information, with the exclusions and exceptions listed in 45 CFR 164.402. For the purposes of this policy, the term “breach” also includes the acquisition, access, use, disclosure, or re-disclosure of Protected Information in a manner not permitted under 42 CFR Part 2, the QSOA, and the CSHCD SCRBH HIO Consent for Release of Confidential Information form.

3.3. “Client” for purposes of this policy includes individuals being served by an CSHCD SCRBH behavioral health contracted provider who is funded by CSHCD SCRBH.

3.4. “Confidential Information” means information that is exempt from disclosure to the public or other unauthorized persons under Chapter 42.56 RCW or other federal or state laws. Confidential Information includes, but is not limited to, Personal Information.

3.5. “Health Information Organization” (HIO) means an organization that oversees and governs the exchange of health-related information among organizations
according to nationally recognized standards. See The National Alliance for Health Information Technology, *Report to the Office of the National Coordinator for Health Information Technology on Defining Key Health Information Technology Terms*, April 28, 2008, found at http://healthit.hhs.gov/portal/server.pt/gateway/PTARGS_0_10741_848133_0_0_18/10_2_hit_terms.pdf.


3.7. “Minimum Necessary” means the least amount of PHI necessary to accomplish the purpose for which the PHI is needed.

3.8. “Part 2 Program” means to be a “program” that falls under 42 CFR Part 2, an individual or entity must be federally assisted and hold itself out as providing, and provide, alcohol or drug abuse diagnosis, treatment or referral for treatment (42 CFR § 2.11). Refer to 42 CFR Part 2 for a more complete definition.

3.9. “Personal Information” means information identifiable to any person, including, but not limited to, information that relates to a person’s name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.

3.10. “Protected Health Information (PHI)” means individually identifiable health information created, received, maintained or transmitted by Business Associate on behalf of a health care component of the Covered Entity that relates to the provision of health care to an Individual; the past, present, or future physical or mental health or condition of an Individual; or the past, present, or future payment for provision of health care to an Individual. 45 CFR 160.103. PHI includes demographic information that identifies the Individual or about which there is reasonable basis to believe can be used to identify the Individual. 45 CFR 160.103. PHI is information transmitted or held in any form or medium and includes EPHI. 45 CFR 160.103. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USCA 1232g(a)(4)(B)(iv) or employment records held by a Covered Entity in its role as employer.

3.11. “Protected Information”, for the purposes of this policy, is information or data contained in the SCRBH HIO’s computer system, identifying or otherwise, relating to the CSHCD SCRBH’s Subcontractors’ Individual’s in SUD programs, COD programs, or other CSHCD SCRBH contracted and qualifying 42 CFR Part 2 Programs.

3.12. “Trusted Systems” include only the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service (“USPS”) first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.
3.13. “Use” includes the sharing, employment, application, utilization, examination, or analysis, of PHI within an entity that maintains such information.

4. **Monitoring**

4.1. The CSHCD SCRBH will require annual attestations of compliance with this policy from all Subcontractors.

4.1.1. If required, due to a HIPAA incident or breach, or General Compliance/Fraud, Waste, Abuse complaint, CSHCD SCRBH will monitor Subcontractors. This monitoring will include:

4.1.1.1. Desk check and/or on-site monitoring the providers’ corresponding policy(ies) and its implementation through the investigation process; and

4.1.1.2. Document any appropriate recommendations, findings, and/or corrective actions required.