**SOUTHERN HIGHLANDS COMMUNITY MENTAL HEALTH CENTER**

**POLICY AND PROCEDURE MANUAL**

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## Policy 503 – Uses and Disclosures: Authorizations

### I. PURPOSE

Southern Highlands Community Mental Health Center, in an effort to be compliant with HIPAA, 42 CFR Part 2, and HITECH Act of 2009, (Title XII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act "ARRA"), the HIPAA Omnibus Final Rule, and WV Code §27, sets out, in this policy, the conditions for obtaining authorization from consumers with whom it has a direct treatment relationship, for any use and/or disclosure of PHI that is not covered by the consent requirement or is not otherwise permitted or required under the Privacy Rule.

### II. POLICY

Southern Highlands Community Mental Health Center (SHCMHC) will obtain a signed authorization that meets the standards of the Privacy Rules and the WV Code from consumers prior to using or disclosing PHI in those situations in which authorizations are required under the Rule. A copy of the authorization form presently in use is attached to this policy.

Consumers seeking treatment have the right to refuse to provide authorizations for use and disclosure of their PHI. We may not refuse to treat consumers who withhold their authorization except in the following circumstances.

1. Treatment is research-related for the use or disclosure of PHI for such research; or

2. The authorization is for PHI to be created in the course of treatment for the purpose of disclosure to a third party.

Our consumers may revoke an authorization at any time. The revocation must be in writing. Any actions we have taken in reliance on a consumer's consent will not be affected by the revocation. We are not required, for example, to retrieve PHI that we have disclosed prior to the revocation. Should any employee be informed verbally that a consumer has revoked an authorization provided to another entity, that employee should immediately inform the Privacy Officer.

We may amend the authorization form presently in use as long as it is written in plain language and the following elements are present in the amended authorization form.

1. A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.

2. The name or specific ID of the person(s), or class of persons, authorized to make the requested use or disclosure.

3. The name or other specific ID of the person(s), or class of persons, to whom SHCMHC may make the requested use or disclosure.

4. A description of each purpose of the requested use or disclosure. The statement "at the request of the consumer" is a sufficient description of the purpose when a consumer initiates the authorization and does not, or elects not to, provide a statement of the purpose.

5. An expiration date or event that relates to the consumer or the purpose of the use or disclosure. The statement "end of the research study", "none", or similar language is sufficient if the authorization is for a use or disclosure of PHI for research, including for the creation and maintenance of a research database or research repository.

6. The signature of the consumer and the date. If signed by a legal representative or medical surrogate, a written description of the authority of that person to act for the consumer must be provided.

**Required Statements in the Authorization Form**

In addition to the core elements listed above, an authorization must contain statements that put the consumer on notice of all of the following.

1. The consumer's right to revoke authorization in writing and either:

    a. The exceptions to the right to revoke along with a description of how to revoke; or

    b. A reference to the Privacy Notice if SHCMHC's Notice contains the information in a. above.

2. SHCMHC may only condition treatment (or payment by us if applicable) on obtaining a signed authorization when:

    a. It is providing research-related treatment and the authorization provides for the use or disclosure of PHI for such research; or

b. 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.

3. The potential for PHI disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer be protected by the Privacy Rule.

An authorization that lacks any of these elements or statements is a defective authorization and will have no effect, therefore, we require that all of these elements or statements be in place in any authorization form version that may be developed in the future.

In any situation where the specificity of the request is inadequate to provide assurance that we will disclose the correct information, the authorization should be considered defective.

In any situation where the relevant PHI will require extensive redaction, the consumer will be given their entire record so that they can redact prior to disclosure to the requestor of the information. (Note that the consumer 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.)

In any situation where we have conflicts between two or more authorizations or other forms of legal permission in our possession for the same consumer for the use and disclosure of the same PHI, we will attempt to obtain a new, conforming written authorization that resolves the conflict between the other documents. When a new authorization cannot be obtained, we will rely upon the most restrictive form of permission in our possession.

**Substance Abuse Providers**

Federal regulations governing the confidentiality of substance abuse information (42 CFR, Part 2) are generally more restrictive than HIPAA and, therefore, we will follow these regulatory requirements whenever the PHI of any consumer in a federally-assisted alcohol or drug abuse program is disclosed. In any of our federally-assisted alcohol or drug abuse programs, we must always obtain specific authorization for each disclosure of consumer records or other information concerning a consumer unless one of the regulatory exceptions applies. The authorization form (called a "consent" form in the substance abuse federal regulations) will meet the regulatory requirements incorporated in the Form attached to this Policy.

## III. PROCEDURES

The first determination each staff person must make before disclosing Protected Health Information (PHI) 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 consumer. In any case where a staff person is unsure about whether or not an authorization is needed before making a request for PHI or before making a disclosure of PHI, they should contact their supervisor or the Privacy Officer.

In all cases, whether the disclosure is for an internal use or for a third party external to the organization, employees should follow the guidelines found in the Minimum Necessary policy for determining the type and amount of PHI that should be disclosed.

In all cases where an authorization is required, the staff person must make sure that the consumer understands that their treatment is not conditioned on whether or not they sign an authorization. This assurance is included in writing on every authorization form. The only exceptions to this 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 or evaluation.

### Internal Disclosures

Agency employees and contractors are permitted without an authorization if the purpose of the disclosure and the intended use of the information disclosed is for treatment, payment or health care operations. One major exception to this is for psychotherapy notes, which require an authorization for internal use except in certain limited circumstances.

### Sharing of PHI for Treatment Among Current Treatment Team Members

In general, the regulations encourage the sharing of the PHI needed for treatment among members of the current treatment team for the consumer. This team can be individuals who are internal or external to the organization, and can include providers who are in an indirect treatment relationship, e.g. laboratories that do not deal directly with the consumer but are an important source of information for treatment purposes.

Consumers are informed of our intention to share information among treatment team members in our Privacy Notice. The one major exception to this general rule is psychotherapy notes. They require a separate signed authorization by the consumer for disclosure both internally or externally except in very limited circumstances.

Authorization for the disclosures of psychotherapy notes cannot be combined with any other authorization.

**Sharing of PHI Needed for Payment and Operations Among Covered Entities and Healthcare Providers**

1. PHI that is needed by another covered entity or healthcare provider in order to seek payment for services provided **by us** to a consumer can be disclosed or requested without an authorization.

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 our consumers can only be disclosed pursuant to the Policy 1.0, Uses and Disclosures for Treatment, Payment and Operations.

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 we are participants 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 1, Uses and Disclosures for Treatment, Payment, and Operations.

**Disclosures to Business Associates**

Disclosures to our business associates are permitted without an authorization but the information must be limited to the information they need in order to accomplish the work we require of them. Please see Policy 506, 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.

**Other Disclosures That Do Not Require An Authorization**

Disclosures that are:

1. Made for the health oversight activities of federal, state and private regulators and payers, including those responsible for determining whether or not we are in compliance with the Privacy Regulations of HIPAA,

2. Required by law, or

3. Made because of an imminent threat to life and safety, can be made without an authorization and are explained in our Privacy Notice. There are other disclosures as well that may be made without an authorization. See Policy 505, No Permission Required. 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.

**Disclosures That Do Require An Authorization**

Disclosures either internally or externally that **do** require an authorization are those in which:

1. The PHI requested is the content of psychotherapy notes (there are very few exceptions, see Policy 1.0, Uses and Disclosures for Treatment, Payment and Operations).

2. The PHI requested or disclosed is not going to be used for healthcare purposes. The Privacy Officer should approve any requests for non-healthcare related disclosures.

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.

4. The PHI requested or disclosed is for treatment purposes, but the treatment team member is not part of our workforce or not a healthcare provider, for example, developing a treatment plan with the school a child attends.

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" or in Policy 1.0, Uses and Disclosures for Treatment, Payment and Operations.

## IV. PROCEDURES FOR COMPLETION OR FOR PROCESSING AN AUTHORIZATION

A. Requesting PHI Pursuant to an Authorization

1. Please see the attached authorization form, which includes certain instructions for completion, attached to this policy. This is the most current approved form and should be used by all staff members to request PHI disclosures either internally or externally.

2. The need for the PHI being requested should be explained to the consumer.

3. Every consumer should be informed that their continued treatment at Southern Highlands Community Mental Health Center is not dependent on whether or not they sign the authorization, except for research related treatment and 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 consumer

.

4. The form should be reviewed and completed fully when the consumer requesting the authorization is present. In cases where the consumer 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.

    a. 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.

    b. A description of the purpose of each disclosure is needed. Please be specific about whether the disclosure is needed for treatment, payment, 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 a consumer initiates the authorization and does not, or elects not, to provide a statement of their purpose.

        1) If the request is for treatment you do not need to be more specific 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) If the request is for operations, you should describe the type of operations, e.g. utilization management.

3) If the request is for payment purposes, you should be specific about dates and times of treatment.

4) If the PHI is needed for a reason other than treatment, payment or operations, please specify the actual use, e.g. "the information is needed to create a database of individuals with similar circumstances to conduct research. "

c. The PHI that you would like to be disclosed: Each request is governed by the agency's policy on Minimum Necessary (Policy 509) for guidance on requesting and disclosing PHI. After determining the minimum amount of information needed for the disclosure, you should be specific in your request, e.g. the parts of the medical record you wish to be disclosed, the dates of treatment you are interested in, etc.

d. How long does the authorization need to be in effect?

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 consumer or to the purpose of the use and disclosure. If you intend to follow up the review of the records with a discussion with the disclosing professional, you would want to ensure you have the time to be able to do this.

2) Once you have determined how long you will need the authorization 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. The statement "end of the research study", "none", or similar language is sufficient if the authorization is for a use or disclosure for research, including for the creation and maintenance of a research database or research repository.

e. Have the consumer and/or his/her legal representative sign and date the authorization as of the date it is signed.

f. Make two copies of the completed form.

1) One copy should be given to the consumer for their records.

2) The second copy should be kept in the medical record in the following section: **Legal**. A note should be made on this copy

that the consumer was given a copy of the authorization. This entry should be dated and signed.

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

h. All authorizations should be kept for six (6) years from the last effective date.

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

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. All authorizations should be sent directly to Medical Records personnel to process.

2. Upon receipt of an authorization for disclosure of PHI, the Medical Records personnel should, review the form to determine if it is complete and specific. In particular, the following items should be reviewed.

a. Is the form signed by the consumer who is the subject of the disclosure?

b. Is there a date or specific event listed that defines the period during which the authorization is in effect? Is the authorization, based on this information, still in effect?

c. Is the information being requested specific enough so that it can be acted on? Is it clear what PHI is being requested? Does it specifically authorize mental health and/or substance abuse information to be included?

d. Is the purpose of the disclosure explained? This is necessary only when the PHI being requested is related to the substance abuse treatment of the consumer, the consumer's HIV status or the requestor is a covered entity and is requesting the PHI for their own use or for disclosures by others.

e. Is the amount and type of PHI requested reasonable and necessary given the purpose of the request?

If yes to all the above, the disclosure can be approved. If no, the Medical Records personnel should determine whether or not they will refuse to make the disclosure at all or whether they will make a partial disclosure. If the staff person is unsure or believes the authorization is excessive or not warranted they should consult with their supervisor or the Privacy Officer. If there is agreement that the authorization is not warranted or may be excessive the staff person should make a good faith effort to contact the consumer to explain their concerns and to determine if the consumer still wishes the authorization to stand as written or will modify and resubmit it. If Medical Records personnel believes that the authorization should be complied with in its entirety, they should write OK and their initials and date at the bottom of the authorization form.

a. If the disclosure is an oral disclosure they should complete the consultation or discussion and document the date, time, list all those participating in the discussion, and the content of the conversation in the medical record of the consumer if there is a current and open record or on the back of the authorization form or on a piece of paper attached to the form for filing in the closed medical record of the consumer.

b. If the disclosure is to be in writing, a copy of the correspondence should be attached to the authorization form and placed in the medical record.

c. If the disclosure requires 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.

    1) Once the information has been sent, the person completing this task should write sent, specify how it was sent (mail, e-mail, fax), date and initial the bottom of the form.

    2) The form should then be filed in the administrative section of the medical record. Authorizations should be maintained in the current record for six (6) years from their last effective date.

3. If the staff person to whom the authorization is directed does not believe that a disclosure should be made at all or believes that the authorization is not valid, they should write a note on the bottom of the authorization as to why it will not be complied with, initial and date the form.

a. A letter should be mailed to the entity or person requesting the disclosure explaining why the disclosure was not complied with.

b. A copy of the letter should be stapled to the original authorization and kept in the Legal section of the current Medical Record.

c. If the Medical Records personnel has determined that it can be partially complied with, they should specify on the bottom of the authorization, the exact information to be released, date and initial the note. They should then follow one or more of the options listed in 3 above for disclosing the PHI requested.

**Other policies and procedures related to this policy:**

Uses and Disclosures for Treatment, Payment and Operations
Privacy Notice
Opportunity for Agreement
No Permission
Administrative Requirements – Documentation Retention

**SOUTHERN HIGHLANDS COMMUNITY MENTAL HEALTH CENTER**

**SUBSTANCE ABUSE REDISCLOSURE NOTICE**

**PROHIBITION ON REDISCLOSURE OF CONFIDENTIAL INFORMATION**

This notice accompanies a disclosure of information concerning a consumer in an alcohol or drug abuse treatment program, made to you with the consent of such consumer.

This information has been disclosed to you from records protected by federal confidentiality rules governing federally-assisted drug or alcohol abuse programs (42 C.F.R., Part 2). The federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 C.F.R., Part2. A general authorization for the release of medical or other information is **not** sufficient for this purpose.

The federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse consumer

**Southern Highlands Community Mental Health Center**
**200 12th Street Extension**
**Princeton, WV 24740**