CHILD AND YOUTH PROTECTION

Purpose: This procedure outlines Northwest Educational Service District 189 (NWESD 189) compliance with federal, state, and local rules and laws related to patient confidentiality. Specifically, 42 CFR 432, 7.42 CFR Part 2, RCW 71.05, RCW 71.34, WAC 388-877, WAC 388-877A, WAC 388-877B, the *Health Insurance Portability and Accountability Act* (HIPPA) of 1996, the *Family Educational Rights and Privacy Act* (FERPA) of 1974, and North Sound Mental Health Administration (NSMHA) Policy #1009.00.

Confidentiality: NWESD 189 employees, contractors, and volunteers shall protect all information, records and data from unauthorized disclosure. Any state or local provision that would permit or require a disclosure prohibited by the federal rules is invalid. If, however, a state or local statute is more stringent than a federal rule, the state statute will prevail.

Protected information includes, but is not limited to, any information acquired about a child, youth, or family whether or not it is in writing or recorded in some other form, including the identity, address, medical or treatment information, and all communications made by him/her to program staff. Protected information also means any information, whether oral or recorded in any form or medium, that:

1) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse;

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;

3) relates to application(s) for service, whether or not he/she is admitted to treatment; and/or,

4) former consumers and deceased consumers.

The Director of the Department of Behavioral Health and Prevention Services will ensure:

1) All department staff, contractors, and volunteers with access to a child's or youth's confidential information sign an "oath of permanent confidentiality." The signed oath will become a part of individual personnel file. The Oath will include the following elements:

   A) Acknowledgement that the employee, contractor, and or volunteer will not make unauthorized disclosure of information.

   B) Acknowledgement that the employee, contract, or volunteer has read, understands, and agrees to comply with all NWESD 189 confidentiality-related policies and procedures.

C) Acknowledgment that the employee, contractor or volunteer understands that violation of the rules of confidentially may subject him/her to disciplinary action including termination, and may subject him/her to federal, state, or local criminal or civil charges.

2) Prior to the release of confidential information the Department's records custodian must have a written release of information that is:

   A) signed by the child, youth, or family:

   B) describes the specific information to be released; and,

   C) meets all the privacy rules in the statutes referenced above.

3) Any release of information and consent for treatment delineates the functional independence of the Quality Management Team and Ombudsman service.

4) Any information shared pursuant to a signed authorization form is limited to information that is minimally necessary to accomplish the purpose of the disclosure. For example, it would be improper to disclose everything in a child's or youth's file if the recipient of the information only requested/required one specific piece of information. Requests that seem excessive, in the professional opinion of the clinician receiving the request, will be staffed with the Clinical Supervisor prior to release of information, unless the child or youth presents imminent harm to self or others. All signed releases will be filed in the child's or youth's clinical file along with a list of each document provided, including dates of release.

5) The NWESD 189 clinician requests only necessary information when requests are made for medical records from other providers.

The following age-of-consent rules apply:

1) Any minor thirteen (13) years of age or older may request and receive outpatient mental health [RCW 71.34.030] or chemical dependency [RCW 70.96A.095] treatment without the consent of the minor's parent/guardian. If parent/guardian consent was not required for treatment, parent/guardian authorization is not required to make disclosures.

2) Parent/guardian consent is required for any treatment of a minor under the age of thirteen (13). If parent/guardian consent was required for treatment, parental authorization is also required to make disclosures.

As mandated reporters, Department of Behavioral Health and Prevention clinical staff, contractors, and volunteers are required to report confidential information when one (1) or more of the following conditions apply:

1) Suspected abuse or neglect of a child or vulnerable adult. Such reporting would be made to either DSHS or local law enforcement.

2) Imminent danger to an identified third party. Such reports would be made to the local police or, at the discretion of the clinician, the identified third party. The NWESD 189 will support staff in taking reasonable steps to protect any identified individual or group from significant and imminent risk or danger.

3) Law enforcement makes a request for relevant information necessary to respond to an emergent situation that poses a significant and imminent risk to the public.

4) The clinician reasonably believes that a disclosure of protected information will avoid or minimize an imminent danger to the health or safety of the child or youth.

Additional special case situations:

1) Except under certain specified conditions, Federal law 42 CFR Part 2 ("Confidentiality of Alcohol and Drug Abuse Patient Records") prohibits the disclosure of records or other information concerning any consumer in a federally assisted alcohol or drug abuse program. A general medical release form or any consent form that does not contain all of the elements specified in 42 CFR Part 2, Section 2.31 ("Form of Written Consent") will not be considered acceptable. Each disclosure made with the consumer's written consent must be accompanied by a written statement about prohibition of redisclosure as outlined in 42 CFR Part 2, Section 2.32 ("Prohibition on Redisclosure").

2) Consumer consent is not required for release of relevant records regarding inmates of correctional institutions from mental health service providers to the Washington State Department of Corrections (DOC) when such information is necessary to carry out DOC responsibilities as authorized in RCW 71.05.445 and 71.34.225 (WAC 388-865-0600). Relevant records (specifically defined under WAC 388-865-0610) include provider records and reports, except where prohibited by federal laws or regulations. For purposes of this provision, an individual is no longer an inmate when released on parole, probation, supervised release or is no longer in lawful custody.

   Written requests from DOC personnel must include the purpose for which information is intended, proper identification of the person to whom records are to be sent, specifics regarding what relevant information is requested, and the name, title, date, and signature of the requester (WAC 388-865-0640). The scope of the information is dependent on the reason for the request (WAC 388-865-0620), and must be provided to the DOC within the specified time frames (WAC 388-865-0630).

3) Release of information related to testing or treatment of sexually transmitted diseases must be specifically authorized in accordance with RCW 70.24.105

The Chair of the Quality Management Team is responsible for ensuring that all members of the Quality Management Team sign an *Oath of Permanent Confidentiality*.

Consent for treatment: All children, youth, and families receiving behavioral health services from the NWESD 189 will sign a Form 1310-BH1300F1 *Consent for Treatment* (Spanish version) prior to the initial assessment for treatment. Consent by a legal representative is required prior to any service to children twelve (12) years of age and under.

The lack of a signed Form 1310-BH1300 F1 *Consent for Treatment* will not prevent NWESD 189 behavioral health program staff from participating in consultation for children and youth who have been involuntarily committed or those on a Less Restrictive Order (LRO).

1) At the time of scheduling the initial assessment appointment, the NWESD 189 clinician will notify the child, youth, and/or family of the need for Form 1310-BH1300 F1 *Consent for Treatment* and determine if the child, youth, and/or family have special needs that will create barriers to understanding Form 1310-BH1300 F1 *Consent for Treatment* including, but not limited to, language barriers, limited reading proficiencies, or visual limitations.

2) At the beginning of the initial appointment, the NWESD 189 clinician will explain Form 1310-BH1300 F1 *Consent for Treatment* prior to the beginning of the assessment and obtaining the child, youth and/or legal representative's signature.

3) If the child, youth, or family's primary language is a "Prevalent Language" as defined by the Department of Social and Health Service (DSHS), Form 1310-BH1300 F1 *Consent for Treatment* will be presented in English and also translated to the appropriate language.

4) The NWESD 189 may provide Form 1310-BH1300 F1 *Consent for Treatment* exclusively in English if the child, youth, or family's primary language is other than English and they can understand English and they consent to receive Form 1310-BH1300 F1 *Consent for Treatment* in English. In this situation, the consent to receive this information in English must be documented in the clinical record.

5) For children, youth, and families whose primary language is not translated, the requirement may be met by providing the information through audio or video recording in the enrollee's primary language, having an interpreter read the materials in the enrollee's primary language, or providing materials in an alternative format that is acceptable to the enrollee. If any of these methods is used it must be documented in the clinical record.

6) The NWESD 189 behavioral health clinician will sign the consent with his/her degree and specialty if applicable, including the date signed. Form 1310-BH1300 F1 *Consent for Treatment* will be filed in the clinical record.

7) Services, including an assessment, shall not proceed until Form 1310-BH1300 F1 *Consent for Treatment* is signed by all required parties.

Inpatient continuity of care: To the degree feasible, it is the intent of the Department of Behavioral Health and Prevention Services to provide seamless access and coordination of care between medically necessary inpatient and outpatient mental health services for all children and

youth receiving behavioral health services regardless of setting. For the purpose of this procedure, an inpatient unit refers to community hospital inpatient units, freestanding evaluation and treatment facilities (E&Ts), and detox units.

The Director of the Department of Behavioral Health and Prevention Services will ensure that continuity of care is provided by ensuring that a clinician is assigned and working closely and collaboratively with the child, youth, and family; inpatient facilities, and available natural and community supports. This is particularly necessary when an individual is so acutely mentally ill that he/she requires the intensity of treatment and supervision of an inpatient facility. Closely coordinated care between inpatient and outpatient mental health providers is more effective care, which leads to better outcomes for the child, youth and family, fewer re-hospitalizations, and more cost-effective treatment.

Specifically, the child or youth for whom inpatient psychiatric hospitalization or substance abuse treatment is being sought by the outpatient clinician shall have a face-to-face evaluation by that clinician within twenty-four (24) hours prior to the request for admission. For psychiatric hospitalizations the clinician will be a Mental Health Professional (MHP) or supervised by a MHP. For substance abuse treatment the clinician will be a Chemical Dependency Professional (CDP) or supervised by a CDP.

The following additional procedures apply to mental health services:

1) If, following the evaluation, the clinician determines the child or youth requires inpatient psychiatric hospitalization, the clinician shall contact a psychiatric hospital and secure a bed.

2) The clinician shall provide required demographic and clinical information and be prepared to discuss whether less restrictive options might meet the consumer's needs.

3) If the clinician has assessed the child or youth as needing an inpatient level of care, but the child, youth and/or family refuses psychiatric hospitalization, the clinician shall request evaluation by a Designated Mental Health Professional (DMHP) or a Designated Crisis Responder (DCR) for any child or youth age thirteen (13) or older.

The following additional procedures apply to Medicaid-funded mental health services:

1) Once a bed has been identified, but prior to admission, the assessing clinician will call Volunteers of America Western Washington (VOA) at 800-707-4656 for certification and authorization of the admission.

2) If VOA determines the child or youth meets medical necessity criteria, the hospitalization episode will be certified and arrangements for admission can be made (e.g. transportation).

3) When notified of an enrollee's inpatient admission the assigned NWESD 189 clinician will contact the inpatient unit within three (3) working days for all enrollee admissions. For eligible

consumers who are not enrolled in services, VOA shall be responsible for contact with the inpatient unit.

4) The assigned NWESD 189 clinical staff will provide to the inpatient unit information regarding the enrollee's treatment history at admission or once notified of admission. Minimally, the most recent psychiatric evaluation or intake assessment, last two (2) prescriber notes, medication sheet, last two (2) months of progress notes, advance directive (if applicable), and/or other information as requested shall be sent to the inpatient unit. All available information related to payment resources and coverage will also be provided. VOA has this responsibility for eligible consumers who are not currently enrolled in services.

5) The assigned NWESD 189 clinician will participate in treatment and discharge planning with the inpatient treatment team for enrolled children and youth. The primary care clinician/team will be responsible for notifying team members (including other formal systems), if any, of hospitalization and will engage team in discharge planning process. VOA shall have the responsibility for treatment and discharge planning for eligible consumers who are not currently enrolled in services.

6) For enrolled children and youth who have been hospitalized, there will be documented good faith NWESD 189 prescriber-initiated requests with inpatient staff/psychiatrist for consultation regarding medication changes while the enrollee is in the hospital. If the NWESD 189 prescriber is unavailable, other qualified clinical staff can facilitate fax or voicemail communication between the inpatient and outpatient prescribers.

7) For enrolled children and youth, the assigned NWESD 189 clinician will, once notified of admission, attempt to have at least one (1) direct contact (conference call, face-to-face or phone contact) with the enrollee or legal guardian and hospital staff prior to discharge. If unable to make direct contact, the clinician will document attempts and reason contact did not occur. VOA has this responsibility for eligible consumers who are not currently enrolled in services.

8) If the child or youth is not already enrolled in services, VOA shall coordinate with the inpatient provider to designate a contracted network Children's Mental Health Agency (CMHA) prior to discharge for children, youth and families seeking community support services. In the event that the child or youth is a Tribal Member or receiving mental health services from a Tribal or Urban Indian Health Program and the enrollee or their legal representative consents, efforts must be made to notify the Tribal Authority or Recognized American Indian Organization (RAIO) to assist in discharge planning and transition for the consumer. If the enrollee chooses to be served only by the Tribal Mental Health Service, referral to a contracted network CMHA is not required.

9) Non-crisis services will be offered to children and youth within seven (7) calendar days of discharge from an inpatient unit.

10) NWESD 189 clinical staff will advocate for an adequate (enough to last until the outpatient prescriber appointment) supply of medication to be supplied and dispensed in a manner that

assures safety. A follow-up psychiatric appointment is to be established within seven (7) working days of discharge, or as needed to assure continuity of medications and care.

11) For children and youth on Less Restrictive Alternatives (LRAs), the NWESD 189 clinical staff will offer covered mental health services to assist in compliance with LRA requirements.

12) The NWESD 189 will respond to requests for participation, implementation, and monitoring of enrollees on Conditional Releases (CR) consistent with RCW 71.05.340 and shall provide covered mental health services for enrollees on CRs.

13) The NWESD 189 will offer best efforts to offer covered mental health services for follow-up and after-care as needed when they are aware an enrollee has been treated in an emergency room. These services shall be offered in order to maintain the stability gained by the provision of emergency room services.

14) The NWESD 189 will ensure that authorized community psychiatric inpatient services are continued through an enrollee's discharge should a community hospital become insolvent. NSMHA shall retain this responsibility for eligible consumers not enrolled in services.

Presented to the Board: 01/28/15

Reference:
42 CFR 432.300 to 431-307
7.42 CFR Part 2
RCW 71.05
RCW 71.34
WAC 388-877A
WAC 388-877B
HIPAA of 1996
FERPA of 1974

Cross Reference:
NSMHA Policy # 1509.00