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| **POLICY TITLE:** | Privacy & Confidentiality Practices Policy - CP27 |
| **APPLIES TO:** | All Clinical Staff at Caregiver Grove Behavioral Health |
| **EFFECTIVE DATE:** | December 1, 2018 |
| **ANNUAL**  **REVIEW DATE:** | January 1 (each calendar year)  Updated: January 21, 2024  Reviewed: August 19, 2024 |
| **PURPOSE:** | The purpose of Caregiver Grove Behavioral Health’s Privacy and Confidentiality Practices policy is to ensure that the privacy and confidentiality of client records comply with state and federal regulations related to Protected Health Information (PHI). |
| **DEFINITION:** | Privacy and Confidentiality policy practices is the process that Caregiver Grove Behavioral Health utilizes to ensure that client records are protected based on state and federal laws.  PHI is defined as individually identifiable health information relating to the individual’s past, present, or future physical or mental health or the condition of an individual, the provision of health care to an individual or the past, present, or future payment, claim processing, or other data used to make decisions about an individual. |
| **POLICY** | Caregiver Grove Behavioral Health personnel must comply with all state and federal regulations regarding privacy practices and confidentiality of client records. All personnel will ensure that all client records are handled in a professional manner which is designed to prevent tampering, alteration, destruction, misfiling, loss, and unauthorized or inadvertent disclosure of any data in the absence of the client’s written consent. All personnel will review and agree to abide by the information indicated in this policy. All new staff will receive training and orientation regarding HIPAA and 42 CFR Part 2 within the first thirty days of employment as indicated at OAC 5122- 26-06(G)(6).  **Procedure**   1. All new personnel must review all Caregiver Grove Behavioral Health policies and procedures within one week of hire. Any inquiries related to confidentiality must be addressed to the Privacy Officer. All personnel must review and sign a Confidentiality and Privacy Agreement. A copy of the signed agreement will be maintained in the employee’s file with the Human Resources department. 2. Caregiver Grove Behavioral Health personnel are prohibited from using or disclosing PHI except when authorized or consented to by the client or their authorized representative. 3. Caregiver Grove Behavioral Health employees must not tell any individual outside of a Caregiver Grove Behavioral Health OhioMHAS-certified program that a client attends or receives services from the program or disclose any information identifying a client as an alcohol or other drug services client unless the client consents in writing for the release of their information, the disclosure is allowed by court order, or the disclosure of PHI is made to a qualified individual for a medical emergency, research, audit or program evaluation reasons. 4. Caregiver Grove Behavioral Health must make all reasonable efforts to not use or disclose more than minimum amount of PHI necessary to accomplish their purpose for the use or disclosure. This is known as “minimum use necessary”. 5. Caregiver Grove Behavioral Health must obtain a general consent from the client or their authorized representative to use or disclose their PHI for payment, treatment, and health care operations. 6. Caregiver Grove Behavioral Health can disclose PHI to the client or their authorized representative without any condition. Caregiver Grove Behavioral Health may disclose PHI for other purposes when there is written consent from the client. 7. Caregiver Grove Behavioral Health may disclose PHI for the following reasons: when requested by the client and/or their authorized representative or when requested by the U.S. Department of Health and Human Services Secretary or other health oversight entity (Medicaid, CMS, etc.) for compliance and enforcement reasons. 8. Federal regulations do not protect any threat to commit a crime, or any information concerning a crime committed by a client either at the facility or program or against any individual employed by Caregiver Grove Behavioral Health. 9. Federal regulations do not protect any information about known or suspected child abuse or neglect from being reported under state law to appropriate state or local authorities. If a Caregiver Grove Behavioral Health clinician knows or suspects the occurrence of abuse or neglect involving an individual under the age of 18 years, involving an individual under 21 years who is developmentally disabled, or physically impaired, or involving an adult who is elderly, developmentally disabled, or physically impaired, the clinician must report that information to the public children services agency or adult service agency in the county in which the child or adult resides or in the county which the abuse or neglect has occurred. 10. When another entity contacts Caregiver Grove Behavioral Health and requests PHI to be released (via an authorization), Caregiver Grove Behavioral Health staff must verify the identity and authority of the individual requesting the PHI. Verification may include a known place of business, address, phone, or fax number as well as a known individual. The authorization must be valid. 11. PHI of deceased clients will be maintained for as long as Caregiver Grove Behavioral Health maintains the records based on regulatory guidelines. 12. Caregiver Grove Behavioral Health will destroy any unnecessary documentation that contains PHI in a timely manner. Destruction of data includes, but is not limited to, incorrect documentation, and messages from clients that are no longer needed. 13. Caregiver Grove Behavioral Health personnel will not disseminate any client or company information to an outside source (attorney, press, and any other entity outside of Caregiver Grove Behavioral Health). 14. Caregiver Grove Behavioral Health staff must not leave Caregiver Grove Behavioral Health offices with a client unless it is specifically part of their job description or due to emergency or evacuation procedures. 15. Without a client’s written consent for the release of PHI, court-ordered disclosures, or disclosures made to a qualified individual for a medical emergency, research, audit, or program evaluation purposes, Caregiver Grove Behavioral Health personnel shall not disclose any of the following information to any individuals outside of a Caregiver Grove Behavioral Health, OhioMHAS-certified program:  * Staff must not disclose that a client attends or receives services from the program. * Staff must not disclose any information identifying a client as an alcohol or other drug services client.  1. When the client receives Substance Use Disorder (SUD) services from Caregiver Grove Behavioral Health, the client’s records are protected under 42 CFR Part 2. The client’s SUD records must be segregated from the client’s behavioral health or other medical records. 2. Client consent must be obtained, in writing, prior to disclosure. Consent may be obtained once for all future uses or disclosures until it is revoked. 3. Caregiver Grove Behavioral Health’s model notice must be easily understood by the client. The notice must include the following:  * A statement of the client’s rights with respect to PHI (includes self-pay clients) * A brief description of how the client may exercise their related rights. * A description of each purpose for which Caregiver Grove Behavioral Health is permitted or required to use or disclose PHI without the client’s written authorization.  1. Caregiver Grove Behavioral Health must not discriminate against a client about whom the 42 CFR Part 2 records relate in admission, access to, or treatment for health care. The agency must not discriminate against a client based upon the 42 CFR Part 2 records in affording access to services provided with federal funds. 2. Except with a valid court order or patient consent, Part 2 records or testimony about such records may not be disclosed or used in any civil, criminal, administrative, or legislative proceeding conducted by any Federal, State, or local authority, against a patient, including that:  * The record or testimony shall not be entered into evidence in any criminal prosecution or civil action before a Federal or State court * The record or testimony shall not form part of the record for decision or otherwise be considered in any proceeding before a Federal, State, or local agency. * The record or testimony shall not be used by any Federal, State, or local agency for a law enforcement purpose or to conduct any law enforcement investigation. * The record or testimony shall not be used in any application for a warrant.   **Prohibited Disclosures**   * Staff may not disclose information that identifies the client as having or has been referred for SUD services without the client’s written consent unless a Part 2 exception applies. * Staff shall not acknowledge that the client is in an SUD program, including in response to record requests. * Disclosure to family, friends, and caretakers is prohibited without express consent from the client. * SUD records are prohibited for use in civil, criminal, legislative, or administrative proceedings other than by court order or client consent.     Caregiver Grove Behavioral Health must adhere to all local, state, and federal regulations regarding the format and use of written and electronic authorizations for releases of the client’s protected health information (PHI).  The agency will ensure that all clinical records are handled in a professional manner which is designed to prevent loss, misfiling, tampering, alteration, destruction, and unauthorized or inadvertent disclosure of any information in the absence of the client’s written consent.  All staff will review the agency’s HIPAA & 42 CFR Part 2 guide and sign an attestation indicating they agree to abide by the regulatory requirements. As part of Caregiver Grove Behavioral Health’s orientation process, all staff will be trained and receive a copy of the policies and procedures within thirty calendar days of the first date of employment. A copy of the signed agreement shall be maintained in the personnel record.    Per OAC 5122-26-08, staff’s access to the client's records, treatment information, diagnosis or other PHI is limited to access and disclosure in accordance with applicable federal and state laws and regulations.  Caregiver Grove Behavioral Health’s storage of all PHI must be in accordance with all applicable federal and state laws and regulations.    **42 CFR PART 2**  42 CFR Part 2 permits the disclosure of information under certain circumstances without consent during a medical emergency or in other limited situations. If a Part 2 program (or a healthcare provider that has received Part 2 patient information) believes that there is an immediate threat to the health or safety of any individual, there are steps described below that the Part 2 program or healthcare provider can take in such a situation:    **Notifications to medical personnel in a medical emergency:** A Part 2 program can make disclosures to medical personnel if there is a determination that a medical emergency exists, i.e., there is a situation that poses an immediate threat to the health of any individual and requires immediate medical intervention [42 CFR §2.51(a)]. Information disclosed to the medical personnel who are treating such a medical emergency may be redisclosed by such personnel for treatment purposes as needed.  **Notifications to law enforcement:** Law enforcement agencies can be notified if an immediate threat to the health or safety of an individual exists due to a crime on program premises or against program personnel. A Part 2 program is permitted to report the crime or attempted crime to a law enforcement agency or to seek its assistance [42 CFR §2.12(c)(5)]. Part 2 permits a program to disclose information regarding the circumstances of such incident, including the suspect’s name, address, last known whereabouts, and status as a patient in the program.  **Reports of child abuse and neglect**: The restrictions on disclosure do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities.  However, Part 2 restrictions continue to apply to the original alcohol or drug abuse patient records maintained by the program including their disclosure and use for civil or criminal proceedings which may arise out of the report of suspected child abuse and neglect [42 CFR § 2.12(c)(6)]. Also, a court order under Part 2 may authorize disclosure of confidential communications made by a patient to a program in the course of diagnosis, treatment, or referral for treatment if, among other reasons, the disclosure is necessary to protect against an existing threat of life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect [42 CFR § 2.63(a)(1)].  **Court ordered disclosures**: Under the regulations, Part 2 programs or “any person having a legally recognized interest in the disclosure which is sought” may apply to a court for an order authorizing disclosure of protected patient information [42 CFR § 2.64]. Thus, if there is an existing threat to life or serious bodily injury, a Part 2 program or “any person having a legally recognized interest in the disclosure which is sought” can apply for a court order to disclose information.  **Under what circumstances can information disclosed pursuant to Part 2 be redisclosed?**  Once Part 2 information has been initially disclosed (with or without patient consent), no redisclosure is permitted without the patient’s express consent to redisclose or unless otherwise permitted under Part 2.  Disclosures made *with* patient consent must be accompanied by a statement notifying the recipient that Part 2 redisclosure is prohibited unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by Part 2 (42 CFR § 2.32).  When disclosures are made *without* patient consent under the following circumstances, limited redisclosures without obtaining the patient’s consent are permitted, such as medical emergencies [42 CFR § 2.51], child abuse reporting [42 CFR § 2.12(c)(6)], crimes on program premises or against program personnel [42 CFR § 2.12(c)(5)], and court ordered disclosures when procedures and criteria are met [42 CFR §§ 2.61-2.67].  When disclosures are made under the following circumstances the recipient is prohibited from redisclosing the information without consent, except under the following restricted circumstances:  **Research**: Researchers who receive patient identifying information are prohibited from redisclosing the patient-identifying information to anyone except back to the program [42 CFR § 2.52(b)].  **Audits and Evaluations**: Part 2 permits disclosures to persons and organizations authorized to conduct audits and evaluation activities, but imposes limitations by requiring any person or organization conducting the audit or evaluation to agree in writing that it will redisclose patient identifying information only (1) back to the program, or (2) pursuant to a court order to investigate or prosecute the program (**not** a patient), or (3) to a government agency that is overseeing a Medicare or Medicaid audit or evaluation [42 CFR § 2.53(c)(d)].  **Qualified Service Organization Agreements (QSOAs)**: Part 2 requires the QSO to agree in writing that in receiving, storing, processing, or otherwise dealing with any information from the program about patients, it is fully bound by Part 2, it will resist, in judicial proceedings if necessary, any efforts to obtain access to information pertaining to patients except as permitted by Part 2, and will use appropriate safeguards to prevent the unauthorized use or disclosure of the protected information [42 CFR § 2.11]. In addition, QSOAs may allow disclosure in certain circumstances.  **Authorizing Court Orders**: When information is disclosed pursuant to an authorizing court order, Part 2 requires that steps be taken to protect patient confidentiality. In a civil case, Part 2 requires that the court order authorizing a disclosure include measures necessary to limit disclosure for the patient’s protection, which could include sealing from public scrutiny the record of any proceeding for which disclosure of a patient’s record has been ordered [42 CFR § 2.64(e)(3)]. In a criminal case, such order must limit disclosure to those law enforcement and prosecutorial officials who are responsible for or are conducting the investigation or prosecution and must limit their use of the record to cases involving extremely serious crimes or suspected crimes. For additional information regarding the contents of court orders authorizing disclosure, see 42 CFR § 2.65(e).    **HIPAA:** The HIPAA Privacy Rule protects the privacy of the patient’s PHI. The rules are balanced to ensure that the appropriate uses and disclosures of the information may be made when necessary to treat the patient, claims payment purposes, and health care operations. It is also established to protect the nation’s public health and for other critical purposes. Providers are required to report all disclosures and/or breaches of PHI to the U.S. Department of Health & Human Services annually.  In an emergency, covered entities must continue to implement reasonable safeguards to protect patient information against intentional or unintentional impermissible uses and disclosures. Further, covered entities (and their business associates) must apply the administrative, physical, and technical safeguards of the HIPAA Security Rule to electronic PHI.  **Protected Health Information (PHI)** is defined as individually identifiable health information relating to the past, present or future physical or mental health or condition of an individual, provision of health care to an individual or the past, present or future payment, claims adjudication, and other records used to make decisions about an individual.  **Treatment** is the provision of health care by or the coordination of health care among health care providers, the referral of a patient from one provider to another, or the coordination of health care or other services among health care providers and third parties authorized by the health plan or the individual. Treatment activities also include the management of health care and related services and consultation between providers.  **Payment** activities include determination of coverage of health care benefits, billing, claims management and medical data processing, review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care or justification of charges and utilization activities including pre-certification and preauthorization of services.  **Health care operations** include conducting quality assessment and improvement activities, reviewing the competence or qualifications and accrediting/licensing of health care professionals, engaging in insurance activities related to the renewal of a contract for insurance, evaluating health care professionals, conducting, or arranging for the medical review and auditing services, and compiling and analyzing information in anticipation of or for use in a civil or criminal legal proceeding.    **PATIENT RIGHTS:**    **Right of Access:**   * Patient has right to request copy of or review of medical records   **Right of Amendment:**   * Patient may request an amendment to their medical record * Provider may refuse the patient’s request * If the request is refused, the patient may still request a statement be included in the medical record explaining disagreement (provider may include their response)   **Right to Request Accounting**   * Patient may request listing of certain disclosures over the previous six years     **Right to Request Confidential Communications**   * Patient may request communication in alternative means * Provider must accept if reasonable     **Right to Request a Restriction**   * Patient may request that information not be disclosed * Provider only required to comply with request if related to disclosure to health plan for item paid in full out of pocket     **Disclosure of PHI to Family, Friends, or Others:** A covered entity may share protected health information with a patient’s family members, relatives, friends, or other persons identified by the patient as involved in the patient’s care. A covered entity also may share information about a patient as necessary to identify, locate, and notify family members, guardians, or anyone else responsible for the patient’s care, of the patient’s location, general condition, or death.  This may include, where necessary to notify family members and others, the police, the press, or the public at large. Refer to 45 CFR 164.510(b).    **NOTE:** The covered entity should get verbal permission from individuals or otherwise be able to reasonably infer that the patient does not object, when possible; if the individual is incapacitated or not available, covered entities may share information for these purposes if, in their professional judgment, doing so is in the patient’s best interest. Best practice would be to advise the covered entity at each interaction and general notification would need to be stored in the medical record.    **To ensure that PHI is protected:**   * Consent must be obtained prior to disclosure * Consent must be in writing * Consent may be obtained once for all future uses or disclosure until revoked * Remember, HIPAA protects behavioral health records (Separately maintained psychotherapy notes **must** have patient consent to disclose session notes)     **Violation of the Privacy Practices**  Caregiver Grove Behavioral Health personnel who violate the privacy regulations will be subject to corrective actions up to and including termination. Personnel may also be subject to sanctions under federal and state law as well as sanctions by the applicable licensing board.  If an employee believes, in good faith, that Caregiver Grove Behavioral Health has violated clinical or professional standards or creates a condition that potentially endangers a client, employee, or the public, the employee may be in a position to disclose PHI without sanctions. In such circumstances, the disclosure by the employee shall be made to a public health authority, health oversight agency, health care organization authorized to investigate or oversee the conduct at issue, or to an attorney retained by that employee for the purposes of determining legal options with regards to that conduct.    If a Caregiver Grove Behavioral Health employee is a victim of a criminal act and discloses PHI for the purposes of identifying the suspected individual, the employee may not face sanctions for disclosing the PHI.    **MONITORING:**  Caregiver Grove Behavioral Health must monitor compliance with Caregiver Grove Behavioral Health, federal and state privacy regulations using processes indicated in the procedure.  **Procedure for Monitoring:**  Peer Review will identify in their review of individual clinician’s records, compliance with following guidelines:   1. All disclosures of PHI that are accompanied by a signed Release of Information are documented in the client’s EHR, to include what information was released to whom. 2. Authorizations are completed properly and used appropriately for releasing psychotherapy notes.     The Privacy Officer is responsible for reviewing compliance and privacy issues with the Quality Improvement Committee on a monthly basis. |
| **APPLICABLE STANDARDS:** | OAC 5122-26-08; 5122-27-06  CARF 1.K.2.a., b.; 1.K.3.; 1.K.7.; 1.K.8.  HIPAA  ORC 2151.42.1; 2151.421 |
| **EXCEPTIONS:** |  |
| **APPROVERS:** | John Tooson IV | Chief Executive Officer (CEO)  Arnethia Levey | Vice President, Program Development & Compliance |