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| **POLICY TITLE:** | Authorization for Release of Protected Health Information Policy - CP33 |
| **APPLIES TO:** | All Clinical Staff at Caregiver Grove Behavioral Health |
| **EFFECTIVE DATE:** | December 1, 2018 |
| **ANNUAL**  **REVIEW DATE:** | January 1 (each calendar year)  Reviewed: July 1, 2019  Updated: November 1, 2019  Updated: January 14, 2024  Reviewed: July 29, 2024 |
| **PURPOSE:** | The purpose of Caregiver Grove Behavioral Health’s Authorization for Release of Protected Health Information (PHI) policy is to ensure compliance with state, local, and federal regulations regarding written and electronic authorizations for release of PHI. |
| **DEFINITION:** | Caregiver Grove Behavioral Health Authorization for Release of PHI policy is the process of how Caregiver Grove Behavioral Health releases PHI. |
| **POLICY** | The purpose of Caregiver Grove Behavioral Health Authorization for Release of Protected Health Information (PHI) policy is to ensure compliance with state, local, and federal regulations regarding written and electronic authorizations for release of PHI.  HIPAA and 42 CFR Part 2 protects the client’s identifying information. Under 42 CFR Part 2, this is information that identifies the client as an individual who has received alcohol or drug treatment services, either directly or indirectly. This includes any information, whether oral or written that would directly or indirectly reveal the individual’s status as a current or former client. Records protected from unauthorized disclosure include any information acquired about an individual– including identity, address, medical or treatment information, and all communications made to staff – whether it is in writing or is recorded in some other form.  HIPAA protects any health information that identifies an individual, while 42 CFR, Part 2 only protects information that identifies an individual as being a patient in a drug or alcohol abuse program or as having a drug or alcohol problem. It is possible for some information, i.e., that which does not include drug/alcohol info, to only be protected by HIPAA and not by 42 CFR, Part 2.    **Policy:** 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 PHI. All individuals receiving substance use services will have their rights protected in accordance with applicable state and federal laws and regulations. All staff will review the agency’s HIPAA & 42 CFR Part 2 training guide and sign an attestation indicating they agree to abide by the regulatory requirements.  Releasing the client’s PHI requires specific signed consent or authorization from the client or their authorized representative if the client is under the age of 18 years. Each request for information regarding a current or previous client must be accompanied by an authorization of release of information except as specified in §5119.27, 5119.28, and 5122.31 of the Ohio Revised Code.  Exceptions may include imminent danger to the client or others or any abuse of a child. For individuals in treatment for substance use disorder, even if those issues are not the primary cause for treatment, the federal regulations regarding release of PHI according to CFR Volume 52, Number 110 (Tuesday, June 9, 1987) or subsequent revisions must be followed.  Internal access to confidential information shall be limited to those staff that has a need to know that specific information to perform their assigned job duties. Access shall ordinarily be limited to staff providing services to the individual, or staff performing approved peer review, professional consultation, investigation, supervisory, or clinical records functions.  Individuals receiving substance use disorder services must have Release of Information form(s) completed which is 42 CFR Part 2 compliant. Verbal consents are not permissible.  All Caregiver Grove Behavioral Health personnel must be familiar with and adhere to the guidelines in this policy.  **Procedure**  **General Information**  An authorization is the client’s written permission for a covered entity to use or disclose PHI for uses other than treatment, payment, or health care operations.  For clients receiving addiction services treatment, the release must include one of the following statements:   1. "This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR part 2). The federal rules prohibit you from making any further disclosure of information in this record that identifies a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is not sufficient for this purpose (see 42 CFR 2.31 ). The federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at 42 CFR 2.12(c)(5) and 42 CFR 2.65." 2. "42 CFR part 2 prohibits unauthorized disclosure of these records."     The authorization must be written in specific terms and the statements provided on the authorization bind Caregiver Grove Behavioral Health. Use or disclosure by Caregiver Grove Behavioral Health for purposes inconsistent with the statements made in the authorization constitutes a violation of the HIPAA regulations.  An authorization is not necessary to use or disclose PHI to carry out treatment, payment, and health care operations.   * Any authorization for the release of PHI must be specific and detailed and intended to provide the clients with sound information about and control over the uses and disclosures of PHI about themselves. * Caregiver Grove Behavioral Health must obtain the client or their authorized representative’s authorization to use or disclose PHI for employment determinations. * There are no limitations on the limitations on the information that can be authorization for disclosure, except with regard to psychotherapy notes. * If the client or their authorized representative request their entire record to be released, the authorization must be specific enough to ensure that the client has a clear understanding that the entire record will be disclosed. * If Caregiver Grove Behavioral Health seeks the individual’s permission to obtain PHI from another covered entity for any purpose, it must obtain the client’s authorization for the covered entity that houses the PHI to make the disclosure. * If Caregiver Grove Behavioral Health seeks PHI from another covered entity for purposes other than treatment, payment, health care operations, the authorization needs to only contain the core elements in the section, “Required Elements of Authorization” in this policy. * Should Caregiver Grove Behavioral Health seek PHI from another covered entity for the purpose of treatment, payment, or health care operations, the authorization must meet all the requirements in the section titled, “Required Elements for Authorization”. Many of these purposes will already be covered in the signed consent from the client or their authorized representative at the onset of treatment. * Caregiver Grove Behavioral Health is permitted to obtain authorization for treatment, payment, or health operations to assist in demonstrating to another covered entity that the client’s intent is to release the PHI. Authorizations as such must contain the core elements required of all authorizations and must describe the purpose of the PHI. * The authorization must request the minimum necessary information needed for the purpose of authorization.   When Caregiver Grove Behavioral Health provides treatment for the primary purpose of providing information to a third party, Caregiver Grove Behavioral Health may condition treatment on the receipt of an authorization to use or disclose PHI related to that treatment.  The client or their authorized representative can revoke an authorization, in writing or electronically, at any time, except to the extent that Caregiver Grove Behavioral Health has already acted in reliance on the authorization.  When the authorization is revoked, Caregiver Grove Behavioral Health must cease making uses and disclosures pursuant to the authorization to the greatest extent practical.  Caregiver Grove Behavioral Health must document and retain any signed authorization that is obtained or received.  **Required Elements of Authorization**  The authorization consent form must contain the following elements in order to be valid and specific language as it relates to the client’s behavioral health services and those receiving treatment for Substance Use Disorder treatment (42 C.F.R. § 2.31(a); 45 C.F.R. § 164.508(c)).  The authorization for release of information must include, but not be limited to the following:   1. The full name of the client who is the subject of the disclosure. 2. The client’s date of birth. 3. A description of the specific information that is to be used or disclosed to allow Caregiver Grove Behavioral Health to know which information the authorization references and its purpose. 4. The name of the person or entity disclosing the information. 5. The name of the person or entity receiving the information. 6. An expiration event or date- this can be a date, time frame or event that is directly related to the client or the purpose of the use or authorization. The authorization date cannot exceed the state regulations, which is one year from the date of the signature. 7. A statement that the client has the right to revoke an authorization at any time in writing, except to the extent that action has been taken in reliance on the authorization. 8. Instructions as to how the client or their authorized representative may revoke the authorization. 9. A statement indicating that Caregiver Grove Behavioral Health will not condition treatment, payment, enrollment, or eligibility on the client’s authorization for the release of information, or a statement if the consequences to the client if the client refuses to sign an authorization for the release of information. 10. The client’s or their authorized representative’s electronic or written signature and the date of the signature. 11. Language that is easily understood by the client or their authorized representative.     For records relating to mental health services, information from other providers that is contained in the individual client record may be released from the individual client record with the written authorization provided in accordance with the provisions of this rule.    For records relating to addiction services, information from other providers that is contained in the individual client record may be released from the individual client record only if the written authorization provided in accordance with this rule explicitly authorizes both the disclosure of provider's records and the re-disclosure of the other provider's records.  **Minor clients & Releasing Information**  If the client is a minor, the release of information must either:   1. Be signed by the client’s parent or legal guardian. 2. When certified to provide mental health services, the authorization may be signed by a client of fourteen years of age or older if all other requirements of ORC §5122.04 are met. 3. When certified to provide addiction treatment services, the authorization may be signed by the client and the client’s parent or legal guardian. 4. When certified to provide addiction treatment services and minor client's providing consent to treatment pursuant to §3719.012 of the Revised Code, the client must sign the release of information. 5. When certified to provide addiction treatment services, when providing services to clients who are minors but who are not providing consent pursuant to §3719.012 of the Revised code; the provider must either obtain the client's authorization to contact the client's parent or legal guardian or find the minor lacks in capacity to make a rational choice in accordance with 42 C.F.R. part 2.14(c)(2).     **Caregiver Grove Behavioral Health is prohibited from acting on an authorization that has any of the following defects:**   1. The document has not been completely filled out. 2. The expiration date has passed, this can be a certain event or specific date. 3. The completed form is materially deficient. 4. Caregiver Grove Behavioral Health is aware that the authorization has been revoked or that the information is false.     **Authorization for Release of Progress Notes**   1. Authorization is required for the use and disclosure of the client’s progress notes for any purpose (including treatment, payment, and health care operations). 2. Caregiver Grove Behavioral Health may use progress notes to carry out treatment activities, such as consultation with another clinician, if the client signed the Consent for Use of Protected Health Information presented at intake. A signed authorization is not necessary for this purpose. 3. In addition, progress notes can be used with the client’s consent for use in training programs in which students, trainees or practitioners in mental health learn under supervision to practice or improve skills in group, joint, family, or individual counseling. 4. Caregiver Grove Behavioral Health may also use progress notes without client authorization to defend a legal action or other proceeding brought by the client. 5. Managed Care Plans cannot condition payment, eligibility, or enrollment on receipt of an authorization for the use or disclosure of progress notes, even if the health plan intends to use the information for underwriting or payment purposes.     Authorizations cannot be combined to include multiple releases (i.e., a client cannot release information to their Primary Care Physician and to their employer in the same document).  Caregiver Grove Behavioral Health cannot act on an authorization that is combined with any other document including any other written legal permission from the individual.  **Exceptions**  An authorization for the use or disclosure of PHI created for research that includes treatment of the individual may be combined with a consent for the use or disclosure of that PHI to carry out treatment, payment, or health care operations.  Authorizations for the use or disclosure of PHI may be combined, provided that Caregiver Grove Behavioral Health has not conditioned the provision of treatment, payment, enrollment, or eligibility on obtaining the authorization.  **When Authorization is Not Required**   1. An authorization is not required for use or disclosure of records: 2. As required or mandated by law. 3. For enforcement purposes 4. Uses and disclosures related to public health activities. 5. When disclosing abuse or neglect. 6. For uses and disclosures for health oversight activities of the health care provider who created the psychotherapy notes. 7. For disclosures for judicial and legal purposes 8. For disclosures for law enforcement purposes 9. For uses and disclosures to avert a serious threat to health or safety. 10. For investigation of health care fraud. 11. For national security and intelligence purposes for protective services for the President of the United States.   If a consent signed by a Caregiver Grove Behavioral Health client is inconsistent with an authorization received from another provider, Caregiver Grove Behavioral Health must follow the more restrictive document. The clinician may also choose to resolve the conflict of information by having the client sign a new authorization.    **42 CFR PART 2**  The confidentiality of Substance Use Disorder (SUD) patient regulatory guidance is a federal law under 42 CFR Part 2, also known as “Part 2”. These guidelines apply to:     * Federally-assisted SUD treatment facilities * ALL recipients of SUD patient records- not just treatment facilities * Part 2 is far more stringent than HIPAA for uses and disclosures of SUD patient records * Patient consent is usually required for most uses and disclosures, including those for payment, treatment, and health care operations- which HIPAA permits without authorization.     Part 2 regulations serve to protect patient records created by federally assisted programs for the treatment of substance use disorders (SUD). Part 2 was revised in 2020 to further facilitate better coordination of care in response to the opioid epidemic while maintaining its confidentiality protections against unauthorized disclosure and use.    Disclosures to family, friends, and caretakers of SUD records are generally prohibited without express patient consent.    Limitations apply so far as to prohibit disclosure of presence in facility –name may not be used without consent.  The revised rule does not alter the basic framework for confidentiality protection of SUD patient records by federally assisted SUD treatment programs. Part 2 continues to prohibit law enforcement’s use of SUD patient records in criminal prosecutions against patients, absent a court order.    Part 2 also continues to restrict the disclosure of SUD treatment records without patient consent, other than as statutorily authorized in the context of a bona fide medical emergency; or for the purpose of scientific research, audit, or program evaluation; or based on an appropriate court order.    **CONSENT & DISCLOSURE**     * Part 2 programs must still obtain consent to disclose. Uses and disclosures only for treatment, payment, and certain health care operations. * SUD records must continue to be segregated from other patient records to track consent and disclosure. * The amended law imposes stronger enforcement provisions and penalties. Enforcement will be overseen by the HHS Office for Civil Rights (“OCR”), which oversees HIPAA enforcement. * Increased protection of SUD records from use in civil, criminal, administrative, and legislative proceedings * The accounting of disclosures requirement under The Health Information Technology for Economic and Clinical Health Act (HITECH) now applies. Right of individual to request restriction on use or disclosure under the HITECH Act.   **Reminders:**     * 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 * HIPAA protects behavioral health records (Separately maintained psychotherapy notes   **must** have patient consent to disclose session notes)   * 42 CFR Part 2 protects SUD records     42 CFR Part 2 allows for disclosure where the state mandates child abuse and neglect reporting (see 42 C.F.R. § 2.12(c)(6); 45 C.F.R. § 164.512(b)(1)(ii)).; when cause of death (42 C.F.R. § 2.15(b)) is being reported; or with the existence of a valid court order.  Caregiver Grove Behavioral Health is permitted to disclose client-identifying information in cases of medical emergency (45 C.F.R. § 164.506(c); 42 C.F.R. § 2.51); in reporting crimes that occur on Caregiver Grove Behavioral Health premises or against its personnel (45 C.F.R. § 164.502(j)(2), 164.512(f)(2); 42 C.F.R. § 2.12(c)(5)); to entities having administrative control (45 C.F.R. § 164.502 (a)(1),164.506(a), (c); 42 C.F.R. § 2.12(c)(3)); to qualified service organizations (45 C.F.R. § 160.103, 164.504(e), (c); 42 C.F.R. § 2.12(c)(4)); and to outside auditors, evaluators, central registries, and researchers (45 C.F.R. § 164.501, 164.506, 164.512 (c); 42 C.F.R. § 2.53 (c)-(d); 42 C.F.R. § 2.52; 45 C.F.R. § 164.512(i)(1)(ii)). |
| **APPLICABLE STANDARDS:** | OAC 5122-26-08; 5127-27-06; CARF 1.K.1.; HIPAA |
| **EXCEPTIONS:** |  |
| **APPROVERS:** | John Tooson IV | Chief Executive Officer (CEO)  Arnethia Levey | Vice President, Program Development & Compliance |