Procedure A-1: Use & Disclosure of Protected Health Information

I. Use and Disclosure of PHI related to Healthcare

A. SBC providers, MDHFS staff designated to the SBC, and SBC contract providers may use PHI for treatment, payment and health care operations. Use of information applies to internal sharing or utilization of PHI. Disclosure applies to the release of PHI to non-SBC providers or entities and is restricted as discussed in this policy.

B. **Definitions**

1. **Treatment** means providing, coordinating or managing a patient's care, including patient education and training, consultations between providers and referrals.
2. **Payment** means activities related to being paid for services rendered. These activities include eligibility determinations, billing, claims management, utilization review and debt collection.
3. **Health care operations** means a broad range of activities such as quality assessment, student training, contracting for health care services, medical review, legal services, auditing functions, business planning and development, licensing and accreditation, business management and general administrative activities.
4. **Client** means the parent or guardian of a minor, an emancipated minor, a minor who has borne a child or a minor when federal or state law provides that the minor can consent for health services.

II. Permissible Disclosures Without Authorization for Public Policy Purposes

An authorization is not required in the following situations:

A. For disclosures required by state or federal law.

B. For public health activities specifically permitted or required by law, such as preventing and controlling disease, injury, or disability; providing information to the Food and Drug Administration regarding adverse drug events, tracking health-related products, enabling product recalls, or conducting post-marketing product surveillance.

C. For reporting victims of abuse or neglect as specifically required under the MN reporting of Maltreatment of Minors law.

D. For reporting to a health oversight agency regarding activities authorized by law, including civil, administrative or criminal investigations, proceedings, actions, or inspections, audits, licensure surveys or investigations, or disciplinary actions.

E. For responding to an order of a court or administrative tribunal issuing a subpoena, discovery request or other lawful process.

F. For preventing or lessening a serious and imminent threat to the health or safety of a person or the public when the individual to whom the disclosure is made is capable of preventing or lessening the threat.

III. Minimum Necessary Rule

A. **General Rule – Authorization required for use or disclosure of PHI**

When disclosing PHI, or when requesting PHI from another covered entity, SBC staff will make reasonable efforts to limit the PHI requested, used or disclosed to the minimum necessary to accomplish the clients care.

The following disclosures are not subject to the minimum necessary requirement:

1. Disclosures for, or uses related to, treatment. *(see Attachment 1: SBC Privacy Policy Matrix)*
2. Disclosures to the client or client representative pursuant to client access rights.
3. Uses or disclosures made pursuant to a valid HIPAA authorization which describes the PHI to be disclosed.
4. Disclosures made to the Secretary of the United States Department of Health and Human Services pursuant to an investigation or compliance review.

5. Other uses or disclosures that are required by law and that commonly prescribe what information must be disclosed (e.g., pursuant to a subpoena or court order, reporting child abuse or any other use or disclosure of PHI that is required by law).

IV. Administration of Authorizations

A. Administration

1. All other uses and disclosures of PHI not described in the section above are prohibited unless the client signs an authorization form specifically permitting the use/disclosure.
2. SBC staff shall obtain a client's authorization **prior** to the use or disclosure of PHI for reasons other that treatment, payment or health care operations or for purposes required by law.
3. A client's written authorization to disclose PHI to other health care providers in routine care coordination is not required.
4. SBC shall not deny treatment based on the refusal of an individual to authorize the use of disclosure of his/her PHI.

B. An authorization is required in the following situations

See Attachment 1: SBC Privacy Authorization Matrix

1 Use of PHI by SBC, its providers, its affiliates and its contract providers for purposes not related to treatment, payment or health care operations.

2 SBC providers can share PHI with a school nurse and a Licensed Clinical School Social worker for purpose of treatment without authorization.

3 *Restrictions on the use and disclosure of psychotherapy notes are defined below in mental health record section.*

C. Valid Authorization Forms

1 When authorization is required, all SBC providers shall obtain client authorization using the standard SBC Authorization to Release Protected Health Information form *(see Attachment 3).*

2 Authorizations for use or disclosure of PHI received from other persons, providers, or agencies requesting information from SBC must contain all of the HIPAA-required elements *(see Attachment 2)*. Inadequate authorizations should be returned to the sender.

3 A client may withdraw an authorization at any time except to the extent that the SBC has already used or released information while the authorization was still valid. Written revocation must be made to the SBC Privacy Coordinator.

D. Invalid Authorizations

An authorization is not valid if one of the following is true:

1. The expiration date has passed or the expiration event is known by SBC to have occurred.
2. The authorization has not been filled out completely.
3. The authorization is known by the SBC to have been revoked.
4. Material information in the authorization is known by the SBC to be false.
5. The authorization was improperly combined with another document.

E. Documenting Authorizations

1 All authorizations for use and disclosure of SBC PHI should be filed and recorded in the medical record of the client concerned and retained for a minimum of six years.

2 A copy of the completed authorization form should be offered to the client.

F. Disclosure of PHI via Email/Facsimile

1. PHI should be hand delivered or mailed.
2. PHI cannot be emailed.
3. Faxing of PHI is allowable in situations when health information is needed immediately for client care purposes, payment or when mail or in person delivery will not meet a necessary timeframe.

G. SBC Personnel Responsible to approve release PHI

1. SBC providers at each clinic site are responsible for requesting authorizations for Release of PHI or Access to PHI. The SBC provider will review and determine if authorization is valid for release to routine disclosures to health care providers. The SBC provider will review and approve the record to be released and document in client medical record.
2. SBC Privacy Coordinator will review and approve the release of PHI on archived records and any non-routine requests.
3. SBC Privacy Coordinator is accountable for Requests for an Accounting of Disclosures, Requests to Amend PHI, Client Requests for Additional Privacy Protection and complaints.
4. Original Medical Records will not be removed from SBC clinics/MDHFS, except when ordered by subpoena or by other court order.

V. Minors

A. Use and disclosure of PHI associated with the care of minors should be administered using the same principles as consent for treatment. Generally, a parent or assigned guardian controls a minor's privacy rights. However, if the minor can consent for services per federal or state statute, then the minor controls his or her privacy rights. There are a number of exceptions that apply in which a minor holds the right to consent and therefore controls all consequent privacy rights. These exceptions include the following:

1. Emancipated minors;
2. A minor who has borne a child;
3. A minor consent health services (pregnancy, STI, Chemical or Mental health crisis); and/or
4. A minor who is living separate and apart from parents or legal guardian.

VI. Mental Health Records

A. Although the federal privacy rule largely does not make a distinction between medical and mental health information, Minnesota state law does provide special protections for mental health information. Mental health information, except psychotherapy notes, may be shared among SBC providers and SBC contract providers for the purposes of treatment. All other uses and disclosures require the specific authorization of the patient to disclose mental health information.

B. Mental health information includes: medication prescription and monitoring, counseling session start and stop times, modalities/frequencies of treatment, results of clinical tests, or summaries of diagnosis, functional status, treatment plans, symptoms, prognosis, or progress recorded by mental health professionals.

C. Psychotherapy notes means notes recorded by mental health professional documenting or analyzing the contents of a conversation during a private counseling session must be kept separate from rest of the individuals' medical record and may not be used or disclosed except for the originator of the notes.

D. Questions regarding the use or disclosure of mental health information should be referred to the SBC Privacy Coordinator.

VII. Verification Procedures

Prior to making any disclosures permitted by HIPAA, SBC staff shall verify the identity of the person requesting SBC PHI and the authority of any such person to have access to SBC PHI. To verify correct identification SBC staff will request school picture ID card or government issued id such as driver's license.

VIII. Media & Other Inquiries

A. All media inquiries should be referred immediately to the SBC Privacy Coordinator.

B. No information may be disclosed if the client has requested that information be withheld.

C. SBC Web sites, Facebook, brochures or publications developed by SBC-funded programs are not to include identifiable clients in photos or personal stories that disclose their current or past mental health issues or substance use, or engagement in behavioral health services.

D. SBC clients must have signed media consent in order to use their photograph in any SBC publications or outreach materials.