

SUBSTANCE USE NETWORK (SUN) PROJECT OF NORTH CAROLINA



Memorandum of Understanding

This Memorandum of Understanding is effective immediately following obtainment of the final signature of the parties listed on Attachment A [hereinafter referred to collectively as the “Parties,” or for any one of the Parties, as a “Party”] but no later than the first day of _____ excluding any unsigned Parties.

Whereas, the “Substance Use Network Project” or “SUN Project” is not a separate legal entity but is a coalition of independent agencies and organizations working as a team to serve women with substance use disorder and their children.

Whereas, the purposes of the SUN Project are to refer and coordinate services to meet the needs of pregnant and parenting women with substance use disorder and their children, improve the delivery of services to these women and their children, and identify gaps in services that need to be addressed.

Whereas, an individual participating in SUN [hereinafter “client participant”] may be provided direct services by any or all of the Parties, in which case that individual, whether a woman participant or her child participant, becomes a client of each Party that provides such a service.

Whereas, the Parties desire to set forth their understandings with respect to the way in which they will comply with the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 [hereinafter “HIPAA”] (45 C.F.R. Parts 160 and 164); the federal confidentiality regulations governing substance use disorder treatment records (42 C.F.R Part 2); the federal confidentiality regulation governing the Special Supplemental Nutrition Program for Women, Infants and Children [“WIC Program”] (7 C.F.R. § 246.26); the North Carolina confidentiality law governing mental health, developmental disabilities, and substance use disorder services (G.S. 122C); and the North Carolina confidentiality law governing reportable communicate disease information (G.S. 130A-143).

Now, therefore, the Parties, acting by and through the undersigned duly authorized agents, hereby agree as follows:

(1) With respect to all information related to client participants in the SUN Project, each Party agrees to fully abide by the terms and conditions set out in HIPAA, 42 C.F.R. Part 2, 7 C.F.R. § 246.26, G.S. 122C, and G.S 130-143, *where applicable*.

(2) Each Party that is currently subject to HIPAA will continue its practice of being individually responsible for providing HIPAA Privacy Rule protections (including, without limitation, a Notice of Privacy Practices) and state privacy protections to each client participant to whom it provides direct services and any other agency required to provide protection, practice, and/or confidentiality notice in writing.

(3) So that the SUN Project Parties serving a client participant through the SUN Project may coordinate the assessment, referral, and provision of services, each such client participant in the Program (or, in the case of a child participant, the child's legally responsible person) will be requested to sign a "Client Authorization to Use and Disclose Pregnant Woman's Healthcare, Substance Use Disorder Treatment, and Other Information" and a "Client Authorization to Use and Disclose Child's Healthcare and Other Information" that authorize the use, disclosure, and sharing of information among the Parties. The Parties shall use the forms attached to this Memorandum of Understanding as Attachment B and C (hereinafter the "Client Authorization"). The Client Authorization, when signed by the client participant, is intended solely for the uses described in it and the Parties are bound by the terms of the authorization when using and disclosing confidential information except as otherwise required or permitted by local, state, or federal law.

(4) Except as otherwise permitted or required by state or federal law, each Party specifically agrees to restrict access to and use of confidential information regarding client participants to those personnel within the Party's agency or organization who have a need for the information in connection with their duties that arise out of the purposes set forth in the Client Authorization.

(5) The Parties further agree that, unless otherwise provided by law, any and all information regarding client participants shall not be used or disclosed for any purpose except those specified in the Client Authorization.

(6) The Parties recognize that as mandated by state law, G.S. 7B-301, they are required to report any and all incidences where there is cause to suspect that any juvenile is abused, neglected, or dependent, as defined by G.S. 7B-101, to the director of the department of social services in the county where the juvenile resides or is found. If the juvenile resides or can be found in Rowan County, the report should be made to the Rowan County Department of Social Services. If the juvenile resides or can be found in Cabarrus County, the report should be made to the Cabarrus County Department of Human Services.

(7) Redislosure of Confidential Information: The Parties understand that, with respect to information received pursuant to the Client's Authorization, there are rules governing the redislosure of such information, and the Parties agree to comply with these rules where applicable:

- a) The confidentiality provisions of G.S. 122C apply to a "facility." A "facility" is a person, agency, or organization whose primary purpose is to provide mental health, developmental disabilities, or substance use disorder services.
 - i. However, the confidentiality provisions of G.S. 122C also apply to any "individual having access to confidential information," and such individual may not disclose such information except as permitted or required by G.S. 122C-53 through G.S. 122C-56. A Party who is not a "facility" but who receives information that is confidential under G.S. 122C may redisclose that information only as permitted or required by G.S. 122C.

- ii. However, a HIPAA covered entity or business associate receiving confidential information that has been disclosed pursuant to G.S. 122C-53 through G.S. 122C-56, including pursuant to a Client Authorization, may use and disclose such information as permitted by the HIPAA Privacy Rule. A Party who is covered by the HIPAA Privacy rule may redisclose information that is confidential under G.S. 122C in accordance with the HIPAA Privacy Rule only.
- b) The confidentiality provisions of 42 C.F.R. Part 2 apply to substance use disorder treatment “programs,” as that term is defined in 42 C.F.R. 2.
 - i. However, the restrictions on the disclosure of information protected by 42 C.F.R. Part 2 apply to individuals and entities who receive patient information directly from a program or other lawful holder of information if the individual or entity receiving the information is notified of the prohibition on redisclosure in accordance with section 2.32 of the regulations. Therefore, the restrictions on redisclosure apply to an entity or Party who is not a covered substance use disorder program but who receives from a substance use disorder program confidential information disclosed pursuant to the authorization of a substance use disorder program patient.
 - ii. A Party to this agreement who receives confidential substance use disorder treatment information from a substance use disorder program pursuant to a Client Authorization and who is notified of the restrictions on redisclosure is a “lawful holder” of information and may not redisclose the information except as permitted or required by 42 C.F.R. Part 2, which would include permission by written consent of the individual whose information is being disclosed.
 - iii. A Party to this agreement who receives confidential substance use disorder treatment information from a “lawful holder” of substance use disorder program treatment information pursuant to a Client Authorization and who is notified of the restrictions on redisclosure is a “lawful holder” of information and may not redisclose the information except as permitted or required by 42 C.F.R. Part 2, which would include permission by written consent of the individual whose information is being disclosed.

(8) Restriction on use of substance use disorder treatment information: The regulations governing substance use disorder treatment records restrict the use of information to initiate or substantiate criminal charges against a patient. No such information may be used to investigate or prosecute a substance use disorder patient without a court or issued in accordance with procedural and substantive requirements of 42. C.F.R. 2.65.

(9) Redisclosure Notice

- a) A substance use disorder treatment program that discloses information pursuant to the substance use disorder treatment patient’s written consent must notify the recipient that the information continues to be protected by 42 C.F.R. Part 2 and may be redisclosed only as permitted by 42 C.F.R Part 2.
- b) The federal regulations, at 42 C.F.R. 2.32, require disclosures made with the patient's written consent to be accompanied by one of the following written statements [this is the version in proposed rule, August 26, 2019, FR 2019-17817]:
 - i. This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR part 2). The federal rules prohibit you

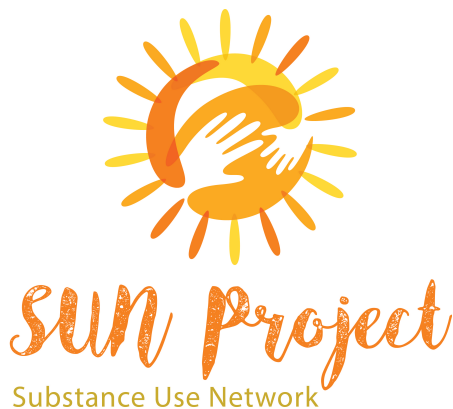
from making any further disclosure of this record unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed in this record or, is otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (see § 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 §§ 2.12(c)(5) and 2.65; or

- ii. 42 CFR part 2 prohibits unauthorized disclosure of these records.

(7) This Memorandum of Understanding inures to the benefit of and is binding on the Parties and is intended for the sole and exclusive benefit of the Parties. Nothing in this Memorandum of Understanding shall give rise to or be deemed to give rise to any third party beneficiary rights to any third party, and in particular, but without limitation, this Memorandum of Understanding does not give rise to any third party rights to any client participant.

So entered into by,

AGENCY NAME: By _____ Duly Authorized Agent Signature Printed Name: _____ Date _____



ATTACHMENT A:

LIST OF SUN PARTICIPATING AGENCIES

(MOU Signatures Pending)

__ Cabarrus Health Alliance, a public health authority and provider of health, pregnancy care, and other services.

__ Cabarrus Partnership for Children, a provider of health, early education, and family outreach services.

__ Cabarrus County Department of Human Services, a provider of child welfare and other services for children and families.

__ Rowan County Department of Social Services, a provider of child welfare and other services for children and families.

__ Atrium Health, a health care organization and network of medical practices, behavioral health centers, hospitals, and other medical facilities under the Charlotte-Mecklenburg Hospital Authority

__ NC Department of Public Safety, Division of Adult Correction and Juvenile Justice.

__ Genesis A New Beginning, a provider of mental health and substance use disorder services.

__ McLeod Addictive Disease Center, Inc., a provider of outpatient, residential, and medication assisted treatment programs for substance use disorders.

__ Daymark Recovery Services, a provider outpatient and psychiatric services for the treatment of mental illness, substance use disorders, and developmental disabilities.

__ Nazareth Children's Home, a provider of behavioral health counseling, residential care, and day treatment programs for children and families.

__ RHA Health Services, a provider of mental health, substance use disorder, and developmental disabilities services.

__ Cabarrus County Detention Center, county jail.

__ Cardinal Innovations Healthcare, a coordinator and payer of behavioral health and developmental disabilities services.