

0730.5 SENSITIVE INFORMATION POLICY (WEST VIRGINIA)

PRIVACY POLICIES

Collective Medical Technologies, Inc.

Objective

This Sensitive Information Policy ("Policy") applies to all Services provided by Collective Medical Technologies, Inc. ("CMT") pursuant to a Master Subscription Agreement ("Underlying Agreement") and may be updated or amended by CMT from time to time in its sole discretion.

A. CMT provides access to remotely hosted applications and underlying technical services in support of the CMT Network ("Services") to support the exchange of information among health care organizations ("Subscribers") within and across certain geographies who have entered into the Underlying Agreement for purposes of coordinating, collaborating and supporting treatment, payment, health care operations and public health activities for the benefit of patients ("CMT Network"). The Subscriber is a health care organization which has entered into the Agreement and uses the Services.

B. "Sensitive Information" is Patient Data originating from a Subscriber located in West Virginia which falls into specific categories according to applicable federal or West Virginia state law, in each case as defined in this Policy.

C. Sensitive Information may only be included in Patient Data uploaded to the Services or requested for disclosure by a Subscriber or User through the Services in compliance with this Policy. Any upload of Sensitive Information, access or attempted access to Sensitive Information, or request for Sensitive Information made using the Services in violation of this Policy is a material breach of the Underlying Agreement and may violate applicable federal and/or state laws, or ethical or licensure obligations of a Subscriber or User.

D. This Policy applies to Patient Data originating from and the use of the Services by all Subscribers and Users in the State of West Virginia, and is in addition to all other policies and requirements for use of the Services. Capitalized terms not defined herein shall have the definitions established in the Underlying Agreement.

Policy

1. Psychotherapy Notes

1.1. Definition under HIPAA.

1.1.1. Psychotherapy Notes are notes recorded (in any medium) by a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session, and that are separated from the rest of the individual's medical record.¹

1.1.2. Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the patient's diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

1.2. No Psychotherapy Notes in the Services. Psychotherapy Notes may not be uploaded into or requested through the Services, except where an individual has provided consent for sharing such information through the Services.

¹ 45 C.F.R. § 164.501.

2. Alcohol & Drug Treatment Centers and/or Programs

2.1. Definition under 42 CFR Part 2.

2.1.1. Alcohol and drug treatment program information (“Substance Abuse Program Information”) is any information which would identify any individual as having applied for or been diagnosed or treated by any health care provider or health care facility which holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment services, including:

2.1.1.1. An identified unit within a general medical facility which holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment (including, for example, an inpatient detoxification unit); and

2.1.1.2. Medical personnel or other staff in a general medical care facility whose primary function is the provision of alcohol or drug abuse diagnosis, treatment or referral for treatment and who are identified as such providers.²

2.1.2. Substance Abuse Program Information does not include diagnostic or treatment information from a general health care facility which does not hold itself out as providing alcohol or drug abuse diagnosis, treatment, or referrals for treatment. Hospital Emergency Departments are generally not covered by 42 CFR Part 2 (except where they hold themselves out specifically as providing alcohol and drug abuse treatment or referral services) and information from them is not included in Substance Abuse Program Information under this Policy.

2.2. Sharing Substance Abuse Program Information for Emergencies.

2.2.1. Substance Abuse Program Information may only be uploaded or requested through the Services (i) to medical personnel to the extent necessary to meet a bona fide medical emergency in which the patient’s prior informed consent cannot be obtained (“Emergency Disclosure”); or (ii) where an individual has provided consent for sharing such information through the Services.

2.2.2. In the event of an Emergency Disclosure, the Subscriber must document, or arrange for system documentation of, the following information (1) the name of the medical personnel to whom disclosure was made and their healthcare facility, (2) the name of the individual making the disclosure, (3) the date and time of the disclosure, and (4) the nature of the emergency.

3. Opioid Treatment Program Information

3.1. Definition under West Virginia Law.

3.1.1. An Opioid Treatment Program is a program or practitioner engaged in the treatment of individuals with opioid dependence through on-site administration or dispensing of an opioid treatment medication in the form of an opioid agonist or partial opioid agonist (but not merely the issuance of prescriptions for partial opioid agonist medications). Of note, licensed hospitals and licensed behavioral health facilities that provide opioid treatment services³ are expressly subject to West Virginia licensure and certification requirements for opioid treatment programs. However, just as with 42 C.F.R. Part 2, the confidentiality requirements apply only to information from the Opioid Treatment Programs themselves, whether inpatient or outpatient, but not to information originating from other units of the hospital / facility, such as a hospital ED.

² 42 C.F.R. §§ 2.11 (b), (c).

³ W. VA. CODE R. § 69-7-3.47. (“Opioid treatment services” are defined as: “Treatment and services provided by an opioid treatment program that uses opioid treatment medications as part of its treatment modality. Opioid treatment services may be provided through intensive outpatient, residential or hospital settings. Treatment may include medical maintenance, medically supervised withdrawal and detoxification, various levels of medical, psychosocial and other types of care, detoxification treatment, short-term detoxification treatment, long-term detoxification treatment and maintenance treatment.”)

3.1.2. Opioid Treatment Program information is subject to confidentiality in accordance with Federal regulations, 42 C.F.R. Part 2, and HIPAA.⁴

3.2. Sharing Opioid Treatment Program Information for Emergencies.

3.2.1. Opioid Treatment Program Information may only be uploaded or requested through the Services (i) to medical personnel to the extent necessary to meet a bona fide medical emergency in which the patient's prior informed consent cannot be obtained ("Emergency Disclosure"); or (ii) where an individual has provided written consent for sharing such information through the Services.

3.2.2. In the event of an Emergency Disclosure, the Subscriber must document, or arrange for system documentation of, the following information (1) the name of the medical personnel to whom disclosure was made and their healthcare facility, (2) the name of the individual making the disclosure, (3) the date and time of the disclosure, and (4) the nature of the emergency.

4. Other Mental and Behavioral Health Service Information

4.1. State confidentiality provisions for State hospitals and mental health facilities. West Virginia law establishes the requirements for licensure of State hospitals and mental health treatment facilities that provide care for the mentally ill, intellectually disabled or addicted. A mental health "Facility" is any inpatient, residential or outpatient facility for the care and treatment of the mentally ill, intellectually disabled or addicted which is operated, or licensed to operate, by the Department of Health and Human Resources, including State hospitals and veteran's administration hospitals.⁵ With respect to clients or patient of such Facilities, the law establishes that "[c]ommunications and information obtained in the course of treatment or evaluation of any client or patient are confidential information."⁶ The confidential information from these Facilities may be disclosed without the patient's affirmative consent for limited purposes, which purposes include the treatment of the patient by other health professionals.⁷

4.2. State confidentiality provisions for behavioral health centers. West Virginia law establishes the requirements for behavioral health centers ("Centers") that offer services to individuals with mental illness, mental retardation, behavioral disabilities or addiction, or that offer preventative services for these disabilities.⁸ Patient information from entities that fall under the specific definition of a Center cannot be disclosed without written consent, except in certain circumstances, such as to staff of the Center for treatment purposes.⁹

4.3. State confidentiality provisions for behavioral health consumers. West Virginia regulations governing the treatment of behavioral health consumers provide that a behavioral health "consumer has the right to have

⁴ See W.VA.CODER. §69-7-15.4.c.5.

⁵ See W. VA. CODE § 27-1-9

⁶ W. VA. CODE § 27-3-1(a); see also W. VA. CODE R. § 64-59-11.1.1.

⁷ W. VA. CODE § 27-3-1(b)(5)-(7); W. VA. CODE R. § 64-59-11.1.2.

⁸ W. VA CODE R. § 64-11-8, W. VA. CODE R. § 64-11-2.1.

⁹ W. VA. CODE R. § 64-11-3.7 (defining "center"); W. VA. CODE R. § 64-11-3.32 (defining "private practice"); W. VA. CODE R. § 64-11-6.9.c. (describing permitted purposes). Of note, a "Center" does not include:

- Hospitals governed by the Division of Health;
- 24-hour inpatient services located within a general or psychiatric hospital that are licensed under the Division of Health;
- Nursing homes governed by the Division of Health;
- Personal care homes governed by the Division of Health;
- Residential board and care homes governed by the Division of Health;
- Non-supervised apartment living quarters occupied by consumers of the Center;
- Specialized family care homes under the supervision of the West Virginia Department of Health and Human Resources;
- Self-help groups;
- Information and referral services;
- Private practices (individuals/group practices of healing arts or behavioral health professions by State-licensed professionals); or
- Entities operated by the State or federal government.

all information about his or her diagnosis and treatment kept confidential.”¹⁰ A behavioral health “consumer” is an individual “receiving treatment or services in or from a behavioral health service.”¹¹ A “behavioral health service” is an “inpatient, residential or outpatient service for the care and treatment of individuals with mental illness, developmental disabilities or substance abuse.”¹² Behavioral health consumer information can be disclosed without the consumer’s written consent for limited purposes, which purposes include the treatment of the consumer.¹³

- 4.4. Sharing Other Mental and Behavioral Health Information. The information described in this Section 4 may not be shared through the Services, except where an individual has provided written consent for sharing such information through the Services.

5. HIV Test Information

- 5.1. Definition of HIV Test Information. The results and any other information with respect to the testing of a patient for HIV/AIDS.
- 5.2. Sharing HIV Test Information. HIV Test Information may not be shared through the Services, except where an individual has provided written consent for sharing such information through the Services.

¹⁰ W. VA. CODE R. § 64-74-11.1.

¹¹ W. VA. CODE R. § 64-74-2.5.

¹² W. VA. CODE R. § 64-74-2.4.

¹³ W. VA. CODE R. § 64-74-11.2.g.