

0730.7 SENSITIVE INFORMATION POLICY (NEW MEXICO)

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 or similar instrument whereby Subscribers subscribe to CMT Services ("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").

B. "Sensitive Information" is Patient Data which falls into specific categories according to applicable federal or New Mexico State law, in each case as defined in this Policy.

C. Sensitive Information may only be included in Patient Data uploaded to the CMT Network in compliance with this Policy. Any upload of Sensitive Information 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 the use of the Services by all Subscribers and Users in the State of New Mexico and is in addition to all other policies and requirements for use of the CMT Network. 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 [L]
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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.²

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

2. Alcohol & Drug Treatment Centers and/or Programs under Federal Law

2.1. Definition under 42 CFR Part 2.

¹ 45 C.F.R. § 164.501.

² *Id.*

- 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.³
- 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.⁴ 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.

- 2.2.1. Substance Abuse Program Information may be shared through the Services only (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. 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. Certain Mental Health and Developmental Disability Information

3.1. Definition Under New Mexico State Law

- 3.1.1. The New Mexico Mental Health and Developmental Disabilities Code⁵ prohibits, with some exceptions, the “disclosure or transmission” of “any confidential information from which a person well acquainted with the client might recognize the client as the described person, or any code, number or other means that can be used to match the client with confidential information regarding the client.”⁶ A “client” is “any patient who is requesting or receiving mental health services or any person requesting or receiving developmental disabilities services or who is present in a mental health or developmental disabilities facility for the purpose of receiving such services or who has been placed in a mental health or developmental disabilities facility by the person’s parent or guardian or by any court order.”⁷

3.2. Sharing Confidential Mental Health and Developmental Disability Information

- 3.2.1. Confidential mental health and developmental disability information, as defined in this Section, may be shared through the Services only where an individual has provided consent for sharing such information through the Services.

4. Certain Confidential Information by Licensed Counselors and Therapists

³ 42 C.F.R. §§ 2.11 (b), (c).

⁴ *Id.*

⁵ Chapter 43, Article 1 New Mexico Stat.

⁶ NM Stat. § 43-1-19.

⁷ NM Stat. § 43-1-3(B).

4.1. Definition Under New Mexico State Law.

4.1.1. New Mexico State law provides protections against disclosure of certain confidential information without authorization by state-licensed or registered counselors and therapists. “Confidential information” under the applicable law “means information revealed by a client(s) or otherwise obtained by a counselor or therapist, within the therapeutic context. The information shall not be disclosed by the counselor or therapist without the informed written consent of the client(s). When the client is a corporation or organization, the confidential relationship is between the counselor or therapist and the corporation/organization and not between the counselor or therapist and the employee/individual. Information obtained from the employee by the counselor or therapist shall be available to the organization unless such information was obtained in a separate therapeutic context which is subject to confidentiality requirements.”⁸

4.1.2. These obligations do not apply to health care providers in general, but only to state-licensed counselors and therapists, a category which includes “all professional clinical mental health counselors, marriage and family therapists, professional art therapists, professional mental health counselors, registered independent mental health counselors, licensed mental health counselors, associate marriage and family therapists, alcohol and drug abuse counselors, alcohol abuse counselors, drug abuse counselors, and substance abuse associates.”⁹

4.2. Sharing Confidential Information by Licensed Counselors and Therapists. Confidential information, as defined in this Section, may be shared through the Services only where an individual has provided consent for sharing such information through the Services.

5. **Sexually Transmitted Disease and HIV/AIDs Information**

5.1. Definition Under New Mexico State Law. New Mexico State law prohibits, with some exceptions, any person “who require[s] or administer[s] a test for sexually transmitted diseases” from disclosing “the identity of any person upon whom a test is performed or the result of such a test in a manner that permits identification of the subject of the test[.]”¹⁰ A materially identical statute applies to HIV test information.¹¹

5.2. Sharing HIV Test Information. The test results and information described in this Section may be shared through the Services only where an individual has provided consent for sharing such information through the Services.

⁸ N.M. Code R. § 16.27.18.15.

⁹ N.M. Code R. § 16.27.18.2. See N.M. Code R. §§ 16.27.18.6, .8, .9 and .10, specifying application to “licensed and registered” professionals and applicants for licensure.

¹⁰ NM Stat. § 24-1-9.4. “Sexually transmitted diseases” include chancroid, chlamydia trachomatis infections, gonorrhea and syphilis. See N.M. Code R. § 7.4.3.13(C).

¹¹ NM Stat. § 24-2B-6.