

## 0730.25 SENSITIVE INFORMATION POLICY (NEW JERSEY)

### PRIVACY POLICIES

Collective Medical Technologies, Inc.

#### Objective

This **New Jersey Sensitive Information Policy 0730.25** (“**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 Jersey 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 and requested for disclosure by a Subscriber or User through 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 Jersey 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 or in the Special Consent Policy referenced below.

#### 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.<sup>1</sup>

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.<sup>2</sup>

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 a valid consent or authorization for sharing such information through the Services as described in Section 7 below.

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

###### 2.1. Definition under 42 CFR Part 2.

2.1.1. Alcohol and drug treatment program information (“**Substance Use Disorder Information**” or “**SUDI**”) is any information which would identify any individual as having applied for or been diagnosed or treated

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<sup>1</sup> 45 C.F.R. § 164.501.

<sup>2</sup> *Id.*

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.<sup>3</sup>

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.<sup>4</sup> Hospital Emergency Departments, for example, 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 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 as described in Section 7 below.

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. **Alcohol or Other Drug Abuse Information under State Law**

### 3.1. Definition under New Jersey State Law.

3.1.1. New Jersey law requires the confidentiality of treatment records of public and private facilities, or portions thereof, which provide services especially designed for the treatment of intoxicated persons or persons with alcohol use disorder, including, but not limited to intoxication treatment centers, inpatient treatment facilities, outpatient facilities, and residential aftercare facilities.<sup>5</sup> Various New Jersey implementing regulations defer out to 42 CFR Part 2 with respect to the specific confidentiality requirements.<sup>6</sup>

### 3.2. Sharing Alcohol and Other Drug Abuse Information.

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<sup>3</sup> 42 C.F.R. §§ 2.11 (b), (c).

<sup>4</sup> *Id.*

<sup>5</sup> N.J. Stat. § 26:2B-8.

<sup>6</sup> *See, e.g.,* N.J. Admin. Code § 10:161B-3.6(b)(5) (stating that outpatient substance use disorder treatment facilities must ensure "the confidential maintenance of client records while the program is in operation and in the event that it ceases to operate, as required by Federal confidentiality regulations at 42 CFR Part II, and Federal HIPAA requirements at 45 CFR Part 160."); *see also* N.J. Admin. Code § 10:161B- 16.2(a)(10)(i) ("Information in the client's clinical record shall not be released to anyone outside the program without the client's written approval to release the information in accordance with Federal statutes and rules for the Confidentiality of Alcohol and Drug Abuse Client Records at 42 U.S.C. §§290dd-2, and 290ee-2, and 42 CFR Part 2 §§2.1 et seq., and the provisions of the Health Insurance Portability and Accountability Act (HIPAA) at 45 CFR Parts 160 and 164, unless the release of the information is required and permitted by law, a third-party payment contract, a peer review, or the information is needed by DHS for statutorily authorized purposes."); N.J. Admin. Code § 10:161B-18.1(a)(4) ("The facility shall preserve the confidentiality of information contained in the clinical record in accordance with Federal statutes and rules for the Confidentiality of Alcohol and Drug Abuse Client Records at 42 U.S.C. §§290dd-2 and 290ee-2 and 42 CFR Part 2, §§2.1 et seq. and the provisions of the Health Insurance Portability and Accountability Act (HIPAA) at 45 CFR Parts 160 and 164.").

- 3.2.1. Alcohol and other drug abuse information, as described in this section, may only be uploaded or requested through the Services (i) as an Emergency Disclosure; or (ii) where an individual has provided consent for sharing such information through the Services as described in Section 7 below.
- 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. Mental Health and Developmental Disability Information under State Law**

##### **4.1. Definition under New Jersey State Law.**

- 4.1.1. New Jersey Statutes Title 30 (Institutions and Agencies) governs the admission and commitment of persons with mental illness and developmental disabilities to the institutions designated for those purposes and governs and controls all phases of the relationship between the patients and such institutions including payments, maintenance, custody, treatment, parole, and discharge.<sup>7</sup> “Institution” means any State or county facility providing inpatient care, supervision, and treatment for persons with developmental disabilities and any psychiatric facility for the treatment of persons with mental illness.<sup>8</sup> “Psychiatric facility” means a State psychiatric hospital,<sup>9</sup> a county psychiatric hospital, or a psychiatric unit of a county hospital.<sup>10</sup> Thus, New Jersey’s restrictions on the disclosure of mental health and developmental disability information only apply to State and county facilities.
- 4.1.2. With limited, narrow exceptions, all records made pursuant to the provisions of Title 30 and directly or indirectly identifying any individual presently or formally receiving services in an institution are confidential and may not be disclosed without the patient’s authorization.<sup>11</sup>

##### **4.2. Sharing Mental Health Information.**

- 4.2.1. The mental health and developmental disability information described in this section may be disclosed through the Services only where an individual has provided consent for sharing such information through the Services as described in Section 7 below.

#### **5. HIV-Related and Venereal Disease Information under State Law**

##### **5.1. Definition under New Jersey State Law.**

- 5.1.1. Under New Jersey state law, records which contain identifying information about a person who has or is suspected of having AIDS or HIV infection are confidential and may be disclosed only for the purposes authorized by New Jersey Statutes Title 26, Chapter 5C (Acquired Immune Deficiency Syndrome).<sup>12</sup> Disclosure is permitted without patient consent only for the limited Treatment purpose of disclosing information to qualified personnel directly involved in the diagnosis and treatment of the person who is the subject of the record.<sup>13</sup>
- 5.1.2. Furthermore, no person may disclose the name, address, or identity of any person known or suspected to have a venereal disease except to the person's physician or to a health authority; provided, however, that the person's physician may disclose the name, address or identity of such person when and only when the physician deems such disclosure necessary in order to protect the health or welfare of the

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<sup>7</sup> N.J. Stat. § 30:4-24.

<sup>8</sup> N.J. Stat. § 30:4-27.2(n).

<sup>9</sup> N.J. Stat. § 30:1-7 lists certain specific facilities and also includes by reference “any facilities established hereafter for any similar purpose.”

<sup>10</sup> N.J. Stat. § 30:4-27.2(u).

<sup>11</sup> N.J. Stat. § 30:4-24.3.

<sup>12</sup> N.J. Stat. § 26:5C-7.

<sup>13</sup> N.J. Stat. § 26:5C-8(b)(3).

person.<sup>14</sup> The definition of “venereal disease” includes syphilis, gonorrhea, chancroid, lymphogranuloma venereum and granuloma inguinale.<sup>15</sup>

## 5.2. Sharing AIDS and HIV-Related Information.

5.2.1. The HIV-related and venereal disease information described in this section may be disclosed through the Services only where an individual has provided consent for sharing such information through the Services as described in Section 7 below.

## 6. Genetic Information under State Law

### 6.1. Definition under New Jersey State Law.

6.1.1. The New Jersey Genetic Privacy Act provides that regardless of the manner of receipt or the source of genetic information, a person may not disclose the identity of an individual upon whom a genetic test has been performed or disclose genetic information about the individual in a manner that permits identification of the individual.<sup>16</sup> “Genetic information” means the information about genes, gene products, or inherited characteristics that may be derived from an individual or family member.<sup>17</sup>

### 6.2. Sharing Genetic Information.

6.2.1. The genetic information described in this section may be disclosed through the Services only where an individual has provided consent for sharing such information through the Services as described in Section 7 below.

## 7. Permissible Disclosures of Sensitive Information

7.1. General. Subscribers may share Sensitive Information (“**Permissible SI Disclosures**”) to the CMT Network through the CMT Services where one or more of Sections 7.2. or 7.3. apply.

7.2. CMT Special Consent Form. Subscribers may share Sensitive Information pursuant to the Company’s **Special Consent Policy (Policy 0740)** where a patient has signed the Special Consent Form.

### 7.3. Exceptions under Applicable Law.

7.3.1. *Qualified Service Organizations.* Subscribers may wish to use the Services to share, disclose, access or use SUDI for certain Qualified Service Organization (“**QSO**”) related activities as permitted by 42 CFR Part 2, including population health management and data processing activities (“**QSO Activities**”). CMT may act either as a QSO, or agent or contractor of a Subscriber serving as a QSO, for performing certain functions related to QSO Activities through the Services pursuant to a valid QSO agreement (whether included in the parties Business Associate Agreement or otherwise), provided that the Subscriber accessing or using SUDI complies with the Redisclosure Limitation described in Section 7.4. below.

7.3.2. *Audit & Evaluation.* Subscribers which are contracted with state or federal agencies (e.g., state Medicaid programs, Centers for Medicare & Medicaid Services) to perform services (“**A&E Subscribers**”) may access and use SUDI from Subscribers which are covered by 42 CFR Part 2 in order to perform audit and evaluation activities as permitted by 42 CFR Part 2. A&E Subscribers may disclose SUDI to their agents or contractors for purposes of performing audit and evaluation activities, provided that they do so in compliance with applicable requirements of 42 CFR Part 2, including without limitation complying with the Redisclosure Limitation described in Section 7.4. below.

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<sup>14</sup> N.J. Stat. § 26:4-41.

<sup>15</sup> N.J. Stat. § 26:4-27.

<sup>16</sup> N.J. Stat. § 10:5-47.

<sup>17</sup> N.J. Stat. § 10:5-5(oo). “Genetic characteristic” means any inherited gene or chromosome, or alteration thereof, that is scientifically or medically believed to predispose an individual to a disease, disorder, or syndrome, or to be associated with a statistically significant increased risk of development of a disease, disorder, or syndrome. Id. § 10:5-5(nn). “Genetic test” means a test for determining the presence or absence of an inherited genetic characteristic in an individual, including tests of nucleic acids such as DNA, RNA, and mitochondrial DNA, chromosomes, or proteins in order to identify a predisposing genetic characteristic. Id. § 10:5-5(pp).

- 7.3.3. *Other Exceptions or Authority.* Subscribers may share, disclose, access or use Sensitive Information as may be permitted by other exceptions or authority under Applicable Law not identified in this Policy (“**Other Permitted SI Disclosures**”), provided that CMT does not provide technical or operational support for any such Other Permitted SI Disclosures and Subscriber will be solely responsible for ensuring that such use or disclosures meet the requirements of Applicable Law.
- 7.4. Redisclosure Following Permissible SI Disclosures. 42 CFR Part 2 prohibits redisclosure of SUDI by a recipient of such information, even when such receipt is pursuant to a valid patient consent or a valid exception under the Part 2 regulation. Similarly, some Other SI Laws may also prohibit redisclosure of Sensitive Information. Subscribers which access Patient Data pursuant to Section 7.2. or 7.3. of this Policy may not redisclose such information thereafter except as permitted by Applicable SI Laws (“**Redisclosure Limitation**”).