

## **0730.26 SENSITIVE INFORMATION POLICY (KENTUCKY)**

### PRIVACY POLICIES

Collective Medical Technologies, Inc.

#### **Objective**

This **Kentucky Sensitive Information Policy 0730.26** (“**Policy**”) applies to all Services provided by Collective Medical Technologies, Inc. (“**Collective Medical**”) pursuant to a Master Subscription Agreement or similar instrument whereby Subscribers subscribe to Collective Medical Services (“**Underlying Agreement**”) and may be updated or amended by Collective Medical from time to time in its sole discretion.

A. Collective Medical provides access to remotely hosted applications and underlying technical services in support of the Collective 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 (“**Collective Network**”).

B. “**Sensitive Information**” is Patient Data which falls into specific categories according to applicable federal or Kentucky State law, in each case as defined in this Policy.

C. Sensitive Information may only be included in Patient Data uploaded to the Collective Network and requested for disclosure by a Subscriber or User through the Collective 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 Commonwealth of Kentucky and is in addition to all other policies and requirements for use of the Collective 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.**

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<sup>1</sup> 45 C.F.R. § 164.501.

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

- 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 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. SUDI 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 SUDI under this Policy.

## 2.2. Sharing Substance Use Disorder Information.

- 2.2.1. SUDI 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. **Records of Licensed Alcohol or Other Drug Abuse Agencies under State Law**

### 3.1. Definition under Kentucky State Law.

- 3.1.1. Kentucky law regulating licensed alcohol or other drug abuse agencies requires that “[t]he administrator of each program [] keep a record of the treatment afforded each alcohol and other drug abuse patient, which shall be confidential in accordance with administrative regulations promulgated by the [Kentucky Cabinet for Health and Family Services].”<sup>5</sup> The administrative regulations require that licensed alcohol or other drug abuse agencies that are federally assisted comply with 42 C.F.R. Part 2.<sup>6</sup> Accordingly, records of licensed alcohol or other drug abuse agencies that are federally assisted are subject to the limitations discussed above for SUDI under 42 C.F.R. Part 2. This means those records cannot be disclosed without consent except in limited circumstances, such as in the case of a bona fide medical emergency in which the patient’s prior informed consent cannot be obtained.

### 3.2. Sharing Records of Licensed Alcohol and Other Drug Abuse Agencies.

- 3.2.1. Records of licensed alcohol and other drug abuse agencies, 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 records 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

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

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

<sup>5</sup> Ky. Rev. Stat. § 222.271(1).

<sup>6</sup> 908 Ky. Admin. Regs. 1:320(2) (“An AOD agency, which is federally-assisted, shall maintain a confidential record of treatment for all clients pursuant to 42 CFR Part 2, confidentiality of alcohol and drug abuse patient records ....”).

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 Information under State Law**

##### **4.1. Definition under Kentucky State Law.**

4.1.1. Kentucky law applicable to state and regional mental health programs provides that all applications and requests for admission and release, and all certifications, records, and reports of the Kentucky Cabinet for Health and Family Services which directly or indirectly identify a patient or former patient or a person whose hospitalization has been sought, must be kept confidential and not disclosed by any person.<sup>7</sup> However, disclosure is permitted without authorization for (a) Treatment of the patient by any health care provider involved in the patient's care; (b) Treatment, Payment, or Health Care Operations under HIPAA, including disclosure between health care providers through a HIE; or (c) participation by health care providers through a HIE for the purpose of meeting the requirements of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, and its related federal regulations.<sup>8</sup> Thus, disclosure is permitted by providers for Treatment, Payment, or Health Care Operations without authorization as is permitted under HIPAA.

4.1.2. Additionally, however, Kentucky law provides that no third party to whom disclosure of patient records is made by a provider may redisclose or otherwise reveal the mental health and chemical dependency records of a patient, beyond the purpose for which the disclosure was made, without first obtaining the patient's specific written consent to the redisclosure.<sup>9</sup> Thus, insurers are prohibited from redisclosing the mental health and chemical dependency information received from a provider without patient authorization.

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

4.2.1. The information described in this section may be disclosed through the Services by providers without patient authorization for Treatment, Payment, and Health Care Operations purposes. The information described in this section may be disclosed through the Services by insurers and other non-providers only where an individual has provided consent for sharing such information through the Services as described in this Section 4 or as described in Section 7 below.

#### **5. HIV Test Results or Health Conditions Derived from HIV Infection under State Law**

##### **5.1. Definition under Kentucky State Law.**

5.1.1. Kentucky state law prohibits any person who has obtained or has knowledge of a HIV test result from disclosing the identity of the person or the test result in a manner which permits identification of the subject of the test, except in limited circumstances.<sup>10</sup> Disclosure is permitted for Treatment purposes among health care providers without patient authorization; specifically, disclosure is permitted to health care providers consulting between themselves or with health-care facilities to determine diagnosis and treatment and to health care personnel who have a legitimate need to know the test result in order to provide for his protection and to provide for the patient's health and welfare.<sup>11</sup>

5.1.2. Insurers and others participating in activities related to the insurance application and underwriting process are exempt from the limitations under the statute discussed above.<sup>12</sup> However, they are subject to a more stringent statute that requires that insurers maintain strict confidentiality of HIV test results and a specific health condition derived from a HIV infection except as required by law or pursuant to a

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<sup>7</sup> Ky. Rev. Stat. § 210.235.

<sup>8</sup> Ky. Rev. Stat. § 210.235(4).

<sup>9</sup> Ky. Rev. Stat. § 304.17A-555(2).

<sup>10</sup> Ky. Rev. Stat. § 214.625(5)(c). Note that Ky. Rev. Stat. § 214.181(5)(d) contains substantially the same restrictions and exemptions for disclosure.

<sup>11</sup> Ky. Rev. Stat. § 214.625(5)(c)(3), (4).

<sup>12</sup> Ky. Rev. Stat. § 214.625(9). See also Ky. Rev. Stat. § 214.181(9).

written request or authorization by the applicant.<sup>13</sup> Thus, insurers, including nonprofit hospitals, cannot disclose HIV test results or a specific health condition derived from a HIV infection without patient authorization.<sup>14</sup>

5.2. Sharing HIV Test Results or Health Conditions Derived from HIV Infection.

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

**6. Genetic Tests under State Law**

6.1. Definition under Kentucky State Law.

6.1.1. Kentucky prohibits a group or individual health benefit plan or insurer offering health insurance in connection with a health benefit plan from (i) requesting or requiring an applicant, participant, or beneficiary to disclose to the plan or insurer any genetic test about the participant, beneficiary, or applicant; or (ii) disclosing any genetic test about a participant or beneficiary without prior authorization by the participant.<sup>15</sup> Kentucky's Insurance Code does not define the term "genetic test."

6.2. Sharing Genetic Information.

6.2.1. The genetic test information described in this section may be disclosed though 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 Collective Network through the Collective Medical Services where one or more of Sections 7.2. or 7.3. apply.

7.2. Collective Medical 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**"). Collective Medical 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.

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

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<sup>13</sup> Ky. Rev. Stat. § 304.12-013(4)(f).

<sup>14</sup> See, Ky. Rev. Stat. § 304.12-013(3)(c) (defining "Insurer" as an insurer, a nonprofit hospital, medical-surgical, dental, and health service corporation, a health maintenance organization, or a prepaid dental plan organization.).

<sup>15</sup> Ky. Rev. Stat. § 304.12-085(3), (4). See also, Ky. Rev. Stat. § 304.17A-005(22), (27) for the definitions of "health benefit plan" and "insurer."

(“**Other Permitted SI Disclosures**”), provided that Collective Medical 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**”).