

0730.35 SENSITIVE INFORMATION POLICY (Pennsylvania)

PRIVACY POLICIES

Collective Medical Technologies, Inc.

Objective

This **Pennsylvania Sensitive Information Policy 0730.34** (“**Policy**”) applies to all Services provided by Collective Medical Technologies, Inc. (“**Collective**”) pursuant to a Master Subscription Agreement or similar instrument whereby Subscribers subscribe to Collective Services (“**Underlying Agreement**”) and may be updated or amended by Collective from time to time in its sole discretion.

A. Collective 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 Pennsylvania 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 Pennsylvania 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.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.²

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 separate valid consent or authorization for sharing such information through the Services as described in Section 4 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

¹ 45 C.F.R. § 164.501.

² *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.³
- 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.⁴ 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 4 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. Other State-Specific Categories of Sensitive Information

- 3.1. To the extent that the state laws applicable to the Subscriber impose additional restrictions and/or consent requirements beyond those applicable to Patient Data generally and beyond those described above, Subscriber is responsible for knowing and complying with all such restrictions and requirements. By way of example only, the state laws which apply to the Subscriber may impose specific restrictions or other obligations with respect to the use and disclosure of (a) certain types or sources of mental health information, (b) certain HIV and other sexually-transmitted disease information, and (c) certain types or sources of drug or alcohol treatment information.
- 3.2. Any Patient Data which is subject to additional restrictions and/or consent requirements under applicable state law as described in the preceding Section 3.1 is considered to be Sensitive Information under this Policy and may not be shared through the Services, except where the individual to whom the Sensitive Information pertains has provided legally sufficient written consent to such sharing.

4. Permissible Disclosures of Sensitive Information

- 4.1. General. Subscribers may share Sensitive Information ("**Permissible SI Disclosures**") to the Collective Network through the Collective Services where one or more of Sections 4.2., 4.3., or 4.4 apply.
- 4.2. Collective 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.
- 4.3. Subscriber's Own Consent Form. The Company recommends that Subscriber use the Company's Special Consent Form in order to share Sensitive Information through the Services. However, Subscribers may share Sensitive Information through the Services where a patient has signed the Subscriber's own consent form if that consent form materially conforms to the contents of the Company's Special Consent Form. In the event

³ 42 C.F.R. §§ 2.11 (b), (c).

⁴ *Id.*

that a Subscriber uses its own consent form, such Subscriber thereby represents to the Company that the Subscriber has obtained all legally required authorizations from the patient necessary for the Subscriber to share the patient's Sensitive Information through the Services as described in the Underlying Agreement.

4.4. Exceptions under Applicable Law.

4.4.1. *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 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 Redisdisclosure Limitation described in Section 4.5. below.

4.4.2. *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 Redisdisclosure Limitation described in Section 4.5. below.

4.4.3. *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 Collective 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.

4.5. Redisdisclosure Following Permissible SI Disclosures. 42 CFR Part 2 prohibits redisdisclosure 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 redisdisclosure of Sensitive Information. Subscribers which access Patient Data pursuant to Sections 4.2., 4.3., or 4.4. of this Policy may not redisdisclose such information thereafter except as permitted by Applicable SI Laws ("**Redisdisclosure Limitation**").