

0730.7.2 SENSITIVE INFORMATION POLICY (NEW MEXICO; EFFECTIVE JULY 1, 2021)

PRIVACY POLICIES

Collective Medical Technologies, Inc.

Objective

This Sensitive Information Policy (“**Policy**”) applies to all Services provided by Collective Medical Technologies, Inc. (“**Collective**”) in the State of New Mexico as of July 1, 2021 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 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 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. Collective relies on the Subscriber to identify the extent to which any of the categories of Sensitive Information described in this Policy apply to the Subscriber (e.g., whether the Subscriber is a covered program under 42 CFR Part 2, etc.).

E. Notwithstanding any provision of this Policy, the Subscriber and Collective are each responsible for their own respective compliance with applicable law.

F. 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 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 45 C.F.R. § 164.501.

² *Id.*

- 1.2. No Psychotherapy Notes in the Services. Psychotherapy Notes may not be uploaded into or requested through the Services.

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

2.1. Definition under 42 CFR Part 2.

2.1.1. **“Substance Use Disorder Information”** or **“SUDI”** means information that is protected under 42 C.F.R. Part 2. SUDI is any information which would identify any individual as having applied for or been diagnosed or treated by any federally assisted 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 6 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. 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 Beginning July 1, 2021, however, New Mexico state law provides for certain disclosures of information in an individual’s electronic medical record (including the mental health and developmental disability

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).

information described in this Section) without the patient’s consent for purposes that are consistent with those permitted under the HIPAA Privacy Rule with respect to protected health information.⁸

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 3, but excluding any information that also meets the descriptions in Sections 1 or 2, may be shared through the Services without patient consent, provided that such sharing is for a treatment, payment, or health care operations purpose, as those terms are used and defined in the HIPAA Privacy Rule.

4. **Certain Confidential Information by Licensed Counselors and Therapists**

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.”⁹

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.”¹⁰ Furthermore, beginning July 1, 2021, New Mexico state law provides for certain disclosures of information in an individual’s electronic medical record (including the confidential information described in this Section 4) without the patient’s consent for purposes that are consistent with those permitted under the HIPAA Privacy Rule with respect to protected health information.¹¹

4.2. Sharing Confidential Information by Licensed Counselors and Therapists. Confidential information, as defined in this Section, but excluding any information that also meets the descriptions in Sections 1 or 2, may be shared through the Services without patient consent, provided that such sharing is for a treatment, payment, or health care operations purpose, as those terms are used and defined in the HIPAA Privacy Rule.¹²

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

⁸ See, NM Stat § 24-14B-6(G) (2021) (stating that, “Notwithstanding any other provision of law, information in an individual's electronic medical record may be disclosed: [...] to a provider, health care institution or health care group purchaser for treatment, payment or health care operation activities, in compliance with the federal Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated pursuant to that act, and if applicable, in compliance with 42 U.S.C. Section 290dd-2 and the regulations promulgated pursuant to that section.”)

⁹ N.M. Code R. § 16.27.18.15.

¹⁰ 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.

¹¹ See, NM Stat § 24-14B-6(G) (2021).

¹² Collective’s interpretation of the provisions at N.M. Code R. § 16.27.18.15 is that the information that is subject to these provisions is, in many instances, likely to also be subject to the confidentiality and consent obligations under federal law with respect to Psychotherapy Notes at 45 C.F.R. § 164.501, as described in Section 1 of this Policy. Accordingly, to the extent that any confidential information described in Section 4 of this Policy also meets the federal definition of Psychotherapy Notes, then such confidential information should not be shared through the Services.

- 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[.]”¹³ A materially identical statute applies to HIV test information.¹⁴ Beginning July 1, 2021, however, New Mexico state law provides for certain disclosures of information in an individual’s electronic medical record (including the test information described in this Section) without the patient’s consent for purposes that are consistent with those permitted under the HIPAA Privacy Rule with respect to protected health information.¹⁵
- 5.2. Sharing HIV Test Information. The test results and information described in this Section 5, but excluding any information that also meets the descriptions in Sections 1 or 2, may be shared through the Services without patient consent, provided that such sharing is for a treatment, payment, or health care operations purpose, as those terms are used and defined in the HIPAA Privacy Rule.

6. Permissible Disclosures of Sensitive Information

- 6.1. General. Subscribers may share Sensitive Information (“**Permissible SI Disclosures**”) to the Collective Network through the Collective Services for the purposes specified above or where one or more of Sections 6.2., 6.3., or 6.4 apply.
- 6.2. 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.
- 6.3. 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 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.
- 6.4. Exceptions under Applicable Law.
 - 6.4.1. *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 Redisclosure Limitation described in Section 6.5. below.
 - 6.4.2. *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

¹³ 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).

¹⁴ NM Stat. § 24-2B-6.

¹⁵ *See* NM Stat § 24-14B-6(G) (2021) (stating that, “Notwithstanding any other provision of law, information in an individual’s electronic medical record may be disclosed: [...] to a provider, health care institution or health care group purchaser for treatment, payment or health care operation activities, in compliance with the federal Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated pursuant to that act, and if applicable, in compliance with 42 U.S.C. Section 290dd-2 and the regulations promulgated pursuant to that section.”)

compliance with applicable requirements of 42 CFR Part 2, including without limitation complying with the Redisdisclosure Limitation described in Section 6.5. below.

- 6.4.3. *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.
- 6.5. 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 6.2., 6.3., or 6.4. of this Policy may not redisdisclose such information thereafter except as permitted by Applicable SI Laws (“**Redisdisclosure Limitation**”).