

0730.6 SENSITIVE INFORMATION POLICY (NEW HAMPSHIRE)

PRIVACY POLICIES

Collective Medical Technologies, Inc.

Objective

This **New Hampshire Sensitive Information Policy 0730.6** (“**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 Hampshire 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 Hampshire 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 ^(SEP)

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 valid consent or authorization for sharing such information through the Services.

¹ 45 C.F.R. § 164.501.

² *Id.*

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 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 for Emergencies.

- 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 and Drug Abuse Information under State Law

3.1. Definition under New Hampshire State Law.

- 3.1.1. Alcohol and drug abuse information consists of reports or records on any client of the program or a certified substance abuse treatment facility or any client referred by the commissioner of health and human services for other than rehabilitation, research, statistical or medical purposes. The definition of a “certified substance abuse treatment facility” is “a facility funded in part or in whole by the office of alcohol and drug abuse prevention, and certified under rules adopted pursuant to New Hampshire state law.⁵ The definition of “client” is “a person who voluntarily seeks substance abuse treatment as provided by the office of alcohol and drug abuse prevention through its agents or substance abuse treatment contractors.”⁶
- 3.1.2. New Hampshire State law prohibits the use of such reports and records except upon the written consent of the person examined or treated.⁷ In addition, State law prohibits individuals who are licensed or certified as alcohol or drug counselors or other professionals, and their employees, from disclosing “any

³ 42 C.F.R. §§ 2.11 (b), (c).

⁴ *Id.*

⁵ N.H. REV. STAT. ANN. § 172:1

⁶ *Id.*

⁷ *Id.*

confidential information that the licensee, certificate holder, or employee may have acquired while performing substance use counseling services for a patient unless in accordance with [the 42 C.F.R. Part 2 Regulations].”⁸ In other words, an Emergency Disclosure, as described in Section 3, of such information could be made without patient consent.

3.2. Sharing Alcohol and Drug Abuse Information

3.2.1. Alcohol and drug abuse information as defined in this Section 3 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.

4. **Certain Mental Health Information**

4.1. Definition Under New Hampshire State Law

4.1.1. New Hampshire State law limits the mental health information that may be disclosed for diagnosis and treatment of involuntarily admitted mental health patients at State-designated treatment facilities. If the patient has been involuntarily admitted to a “designated receiving facility,” the law provides that any health care provider (including a hospital) may provide certain limited information—“medications prescribed, known medication allergies or other information essential to the medical or psychiatric care of the person admitted” if the medical director (or his or her designee) of the State-designated treatment facility determines that “obtaining information is essential to the care or treatment” of the patient and requests the information.⁹ A “designated receiving facility” is “a treatment facility which is designated by the commissioner [of the department of health and human services] to accept for care, custody, and treatment persons involuntarily admitted to the state mental health services system.”¹⁰ The law allows any health care provider that previously provided services to the involuntarily admitted patient to disclose the limited information set forth in statute, notwithstanding the New Hampshire physician-patient and mental health practitioner-patient privileges.¹¹

4.1.2. New Hampshire regulations also provide confidentiality protections for individuals receiving mental health services in the community from community mental health programs,¹² individuals receiving developmental services or acquired brain disorder services in the community from provider agencies,¹³ and individuals in state mental health facilities.¹⁴ A community mental health “program” is “any public or private corporation, person or organization which provides services to individuals with a mental illness or intellectual disability when such services are funded in whole or in part or are operated, monitored or regulated by the bureau [of behavioral health within the department of health and human services.]”¹⁵ This definition of “program” encompasses all organizations providing services to individuals with mental illness that are supported or overseen by the New Hampshire Bureau of Behavioral Health. These programs are prohibited from disclosing mental health information without the written consent

⁸ N.H. REV. STAT. ANN. § 330-C:26.

⁹ N.H. REV. STAT. ANN. § 135-C:19-a.

¹⁰ N.H. REV. STAT. ANN. § 135-C:2(XIV). See also N.H. REV. STAT. ANN. § 135-C:26 (describing purposes of designated receiving facilities); N.H. CODE ADMIN. R. ANN. HE-M § 405.02(f) (“Designated receiving facility (“DRF”) means a hospital-based psychiatric unit or a non-hospital-based residential treatment program designated by the commissioner to provide care, custody, and treatment to persons involuntarily admitted to the state mental health services system.”).

¹¹ N.H. REV. STAT. ANN. § 135-C:19-a.

¹² N.H. CODE ADMIN. R. ANN. HE-M § 309.05, N.H. CODE ADMIN. R. ANN. HE-M § 309.02(q).

¹³ N.H. CODE ADMIN. R. ANN. HE-M § 310.05. Provider agencies are nonprofit corporations in New Hampshire established under rules adopted by the Commissioner of Health and Human Services to provide services to developmentally disabled persons in the area, or entities under contract with such an agency. See N.H. CODE ADMIN. R. ANN. HE-M § 310.02(v); N.H. REV. STAT. ANN. § 171-A:2.

¹⁴ N.H. CODE ADMIN. R. ANN. HE-M § 311.05.

¹⁵ N.H. CODE ADMIN. R. ANN. HE-M § 309.02(q).

of the patient or his or her guardian, or an applicable exception in the law.¹⁶ Information may be released in accordance with the statutory exceptions described above related to release of information to State-designated treatment facilities.¹⁷ The information may also be released to health facility personnel if to the extent necessary to address an emergency situation involving danger to the individual's health or safety.¹⁸

4.2. Sharing Mental Health Information

4.2.1. New Hampshire hospitals, State-designated treatment facilities, acute psychiatric residential treatment programs, approved community mental health programs, provider agencies serving individuals with developmental services or acquired brain disorder services, and state mental health facilities may disclose mental health information, as described in this Section 4, through the Services only (i) for emergencies where there is a danger to the individual's health or safety or (ii) or where an individual has provided consent for sharing such information through the Services as described in Section 7 below.

5. HIV Test Information

5.1. Definition Under New Hampshire State Law. New Hampshire State law generally limits disclosure of HIV test results to the physician who ordered the test or a person authorized by the ordering physician, the Commissioner of the Department of Health and Human Services, and the person who was tested.¹⁹ However, New Hampshire State law also permits the disclosure by a licensed physician or other health care provider of HIV test results "to other physicians and health care providers directly involved in the health care of the person when the disclosure of such information is necessary in order to protect the health of the person tested."²⁰

5.2. Sharing HIV Test Information. HIV test results may not be shared through the Services, except (i) to other health care providers directly involved in the individual's care for treatment purposes and if necessary in order to protect the health of the person tested or (ii) where an individual has provided consent for sharing such information through the Services as described in Section 7 below.

6. Genetic Test Results for Non-Diagnostic Purposes

6.1. Definition under New Hampshire State Law.

6.1.1. A genetic test is "a test, examination, or analysis which is generally accepted in the scientific and medical communities for the purpose of identifying the presence, absence, or alteration of any gene or chromosome, and any report, interpretation, or evaluation of such a test, examination, or analysis, but excludes any otherwise lawful test, examination, or analysis that is undertaken for the purpose of determining whether an individual meets reasonable functional standards for a specific job or task."²¹

6.1.2. New Hampshire law restricts disclosure of the results of genetic testing or the fact that an individual has undergone genetic testing without written and informed consent from the individual or individual's legal guardian.²² The, however, law does not apply to "genetic testing or genetic analysis used for diagnosis and treatment of a patient by a clinical laboratory that has received a specimen referral from the individual patient's treating physician, genetic counselor, or another clinical laboratory."²³

6.2. Sharing Genetic Test Information. Because the statutory restriction does not apply to genetic testing used for diagnosis and treatment conducted by a clinical laboratory that has received a specimen referral, it is not likely that this restriction would impact a Subscriber's ability to exchange information through the Services.

¹⁶ N.H. CODE ADMIN. R. ANN. He-M §§ 309.05(f), 310.05(g), 311.05(f).

¹⁷ See N.H. CODE ADMIN. R. ANN. He-M §§ 309.05(f)(15)-(18), 311.05(f)(15)-(18).

¹⁸ N.H. CODE ADMIN. R. ANN. He-M §§ 309.05(f)(10), 310.05(g)(10), 311.05(f)(10).

¹⁹ N.H. REV. STAT. ANN. § 141-F:7.

²⁰ N.H. REV. STAT. ANN. § 141-F:8(IV).

²¹ N.H. REV. STAT. ANN. § 141-H:1(IV).

²² N.H. REV. STAT. ANN. § 141-H:2(III).

²³ N.H. REV. STAT. ANN. § 141-H:2(IV).

However, to the extent that the restriction does apply, such genetic test information may not be shared through the Services except 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., 7.3., or 7.4. 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. Subscriber Developed Consent Form. Subscribers may share Sensitive Information where a patient has signed a consent form developed by the Subscriber (“**Subscriber Consent Form**”) pursuant to the requirements of this Section 7.3. Where Subscriber operates as an Organized Health Care Arrangement as defined under HIPAA (“**OHCA**”), or where Subscriber has confirmed with legal counsel that it operates as a clinically integrated provider network (“**Subscriber Network**”) such that a patient’s signing the Subscriber Consent Form at one provider in the Subscriber Network applies to and authorizes disclosures from all providers participating in the Subscriber Network, CMT can support application of the Subscriber Consent Form to the Subscriber Network, provided that Subscriber delivers to CMT an Eligibility File that identifies the combined population attributed to the Subscriber Network and each participating provider in the Subscriber Network.

7.3.1. *Subscriber Responsibilities*. For use of a Subscriber Consent Form, a Subscriber shall:

7.3.1.1. Obtain consent from the patient using the Subscriber Consent Form and maintain a copy of the executed consent in the patient’s file. Subscriber may (but is not required to) upload a .pdf copy of the executed Subscriber Consent Form to the applicable CMT Services portal (“**Portal**”). CMT will not evaluate the content or permissions included in such forms, or perform any other processing, alerting, or identification based on the executed Subscriber Consent Form.

7.3.1.2. Notify CMT of each patient’s consent status on an ongoing basis as follows:

7.3.1.2.1. Eligibility File. Subscriber will send an Eligibility File to CMT on at least a weekly basis which meets CMT format and content specifications and which includes a column with an identifier on the patient’s consent status (“**Consent Status**”). Subscriber may, at Subscriber’s election, restrict the patients included in the Eligibility File to only those patients who have signed a Subscriber Consent Form, provided that Subscriber confirm this election to CMT in writing.

7.3.1.2.2. Revocation of Patient Consent. For patients who revoke a previously granted consent, Subscriber will indicate the patient’s Consent Status as revoked in the Eligibility File or notify CMT directly of the revocation on an ad hoc basis through the Portal or by contacting CMT customer support.

7.3.1.2.3. Expiration of Patient Consent. CMT recommends that Subscribers set the expiration date for the Subscriber Consent Form to take effect upon the patient’s death or the date on which the patient revokes consent. If Subscriber sets, or allows a patient to set, a different date for expiration of the Subscriber Consent Form, Subscriber shall be solely responsible for monitoring such dates and whether such dates have passed and for notifying CMT pursuant to this Section 7.3.1.2 that the patient’s consent has expired. CMT will not track any such expiration dates or monitor whether such dates have passed.

7.3.1.3. Develop its Subscriber Consent form in consultation with legal counsel to ensure that the form meets the requirements of Applicable Law. Subscriber shall also ensure that the Subscriber Consent Form meets the following requirements:

- 7.3.1.3.1. Identifies CMT and PreManage as the entities which are authorized to “facilitate health information exchange”;
 - 7.3.1.3.2. Uses a “general designation” for the past, present or future individuals or entities which have a treating provider relationship with the patient whose information is being disclosed (i.e., the form will not limit authorized disclosures of Sensitive Information to a specific list or group of providers);
 - 7.3.1.3.3. Includes a general statement that the purpose of the disclosures is to enable other entities that have a treating provider relationship with the patient to provide treatment to the patient;
 - 7.3.1.3.4. Includes a description of the amount and kind of information covered by the consent form which is sufficiently broad to cover the disclosures that Subscriber intends to make;
 - 7.3.1.3.5. Includes a statement that the patient may request a list of the providers which have accessed or received the patient’s Sensitive Information based on the patient’s consent; and
 - 7.3.1.3.6. Satisfies all other requirements of Applicable Law, including 42 CFR Part 2.
- 7.3.1.4. Subscriber is responsible for ensuring that any sharing or disclosures of Sensitive Information by Subscriber through the Services based on the Subscriber Consent Form is limited to the amount and kind of information authorized by the patient to be shared in the Subscriber Consent Form.

7.3.2. CMT Responsibilities.

- 7.3.2.1. Redisclosure Notices. Provided that Subscriber notifies CMT of a patient’s Consent Status, CMT will include the following Redislosure Notices, as applicable, with all such Sensitive Information which is disclosed via the CMT Services:
- 7.3.2.1.1. *Abbreviated Disclosure Notice.* At minimum the following “**Abbreviated Disclosure Notice**” will accompany disclosures of Patient Data through the Services: “42 CFR Part 2 or state confidentiality law prohibits unauthorized disclosure of these records.”
 - 7.3.2.1.2. *Expanded Disclosure Notice.* Where practical, the following “**Expanded Disclosure Notice**” language will accompany disclosures of Patient Data through the Services: “42 CFR Part 2 or state confidentiality law prohibits unauthorized disclosure of these records. This information has been disclosed to you from records whose confidentiality is or may be protected by state law. State law prohibits you from making any further disclosure of it without the specific written authorization of the person to whom it pertains, or as otherwise permitted by state law.”
- 7.3.2.2. Accounting of Disclosures under Consent. Patients may request that Subscriber provide a list of entities to which the patient’s PHI has been disclosed based on the Subscriber Consent Form. When a patient makes such a request, Subscriber should contact Customer Support by email or telephone to request this accounting of disclosures and CMT will produce a report with the necessary information and deliver the report to the Subscriber. If CMT receives a request for accounting of disclosures directly from a patient, CMT will contact the Subscriber to pass the request along to the Subscriber so that the Subscriber may follow its internal privacy policies and procedures with regard to handling of such requests, and upon direction of the Subscriber will produce the accounting of disclosures report requested by the patient.

7.3.3. *CMT Liability Disclaimer.* The Company is providing support for the Subscriber Consent Form process on an optional basis and subject to the following disclaimer:

THE COMPANY MAKES NO REPRESENTATION OR WARRANTY, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, REGARDING USE OF A SUBSCRIBER CONSENT FORM OR THIS POLICY OR USE OF THE SERVICES IN CONNECTION WITH A SUBSCRIBER CONSENT FORM AND THIS POLICY, INCLUDING WITHOUT LIMITATION WHETHER THE CMT SERVICES COMPLY WITH APPLICABLE SENSITIVE INFORMATION LAWS, UNLESS OTHERWISE AGREED BY THE PARTIES. SUBSCRIBERS WHO USE A SUBSCRIBER CONSENT FORM AGREE THAT THE COMPANY HAS MADE NO AGREEMENT OR ASSUMED ANY LIABILITY OTHER THAN AS SET FORTH IN THE MASTER SUBSCRIPTION AGREEMENT OR OTHER OPERATIVE CONTRACTS BETWEEN THE SUBSCRIBER AND THE COMPANY.

7.4. Exceptions under Applicable Law.

7.4.1. *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**”). 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 Redisdisclosure Limitation described in Section 7.5 below.

7.4.2. *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 the 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 7.5 below.

7.4.3. *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 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.

7.5. 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 (e.g., Washington State’s statute concerning the disclosure of information about sexually transmitted disease, RCW 70.02.220), although no such redisdisclosure prohibition is applicable based on New Hampshire state law. Subscribers which access Patient Data pursuant to Section 7.3 or 7.4 of this Policy may not redisdisclose such information thereafter except as permitted by Applicable SI Laws (“**Redisdisclosure Limitation**”).