

## 0730.15 SENSITIVE INFORMATION POLICY (VIRGINIA)

### PRIVACY POLICIES

Collective Medical Technologies, Inc.

## Objective

This Sensitive Information Policy ("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 Virginia 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 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 Virginia 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.<sup>1</sup> (L)  
(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.<sup>2</sup>

1.2. No Psychotherapy Notes in the Services. Psychotherapy Notes may not be shared through the Services, except where an individual has provided consent for sharing such information through the Services.

### 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 Abuse Program Information”) 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. 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 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 be shared through the Services only (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. 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. Mental Health, Developmental Disability, and Substance Abuse Information under State Law**

3.1. Definition Under Virginia State Law

- 3.1.1. Each individual receiving services in a hospital, training center, other facility, or program operated, funded, or licensed by the Virginia Department of Behavioral Health and Developmental Services, excluding those operated by the Department of Corrections, shall have “access to his medical and clinical treatment, training, or habilitation records and be assured of their confidentiality . . .”<sup>5</sup> “Individual receiving services” or “individual” means a current direct recipient of public or private mental health, developmental, or substance abuse treatment, rehabilitation, or habilitation services.<sup>6</sup>
- 3.1.2. The portion of the law specific to mental health and developmental disabilities information states that each individual has a right to give his authorization before the provider shares identifying information about him or his care unless “another state law or regulation, or these regulations specifically require or permit the provider to disclose certain specific information.”<sup>7</sup> The law lists several specific exceptions to the authorization requirement for mental health and developmental disability information, including disclosures required or permitted by any other state or law or regulation, including Va. Code Ann. § 32.1-127.1:03.<sup>8</sup> Therefore, disclosures of mental health and developmental disability information are

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

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

<sup>5</sup> Va. Code Ann. § 37.2-400(A)(8).

<sup>6</sup> Va. Code Ann. § 37.2-100.

<sup>7</sup> 12 Va. Admin. Code § 35-115-80(A).

<sup>8</sup> 12 Va. Admin. Code § 35-115-80(B)(8)(o) (“Providers may disclose information to the extent required or permitted by any other state or law or regulation. See also § 32.1-127.1:03 of the Code of Virginia for a list of circumstances in which records may be disclosed without authorization.”).

permitted under Va. Code Ann. § 32.1-127.1:03 for purposes including Treatment, Payment, and Health Care Operations.

3.1.3. Substance abuse information is subject to more stringent requirements under Virginia law than mental health and developmental disability information. Specifically, an individual's services record pertaining in whole or in part to referral, diagnosis, or treatment of substance use disorders can be disclosed only in accordance with 42 C.F.R. Part 2.<sup>9</sup> Furthermore, persons certified by the Virginia Board of Counseling as substance abuse counselors or substance abuse counseling assistants are also required to comply with 42 C.F.R. Part 2.<sup>10</sup> Thus, substance use disorder records can only be disclosed in accordance with 42 C.F.R. Part 2.

### 3.2. Sharing Mental Health, Developmental Disability, and Substance Abuse Information

3.2.1. Mental health and developmental disability information, as defined in this Section, may be shared through the Services without the patient's authorization in the same manner as general medical information under the HIPAA Privacy Rule and Va. Code Ann. § 32.1-127.1:03 for purposes of Treatment, Payment, or Health Care Operations.

3.2.2. Substance abuse information, as defined in this Section, may be shared through the Services only as consistent with the restrictions applicable to 42 C.F.R. Part 2, as set forth in Section 2.2, above.

## 4. HIV Test Results

### 4.1. Definition Under Virginia State Law.

4.1.1. With the exception of HIV test results held by insurers, discussed below, Virginia law provides that the "results of every test to determine infection with human immunodeficiency virus shall be confidential. Such information may be released only to persons or entities permitted or authorized to obtain protected health information under any applicable federal or state law."<sup>11</sup> Therefore, as a practical matter, health care providers do not need to treat sharing of HIV test results differently than general medical information under the HIPAA Privacy Rule and Va. Code Ann. § 32.1-127.1:03 for Treatment, Payment, and Health Care Operations purposes.

4.1.2. Insurers are required to maintain strict confidentiality of HIV-related test results. Information regarding specific HIV-related test results may not be disclosed outside the insurance company or its employees, insurance affiliates, agents or reinsurers, third party contractors, insurance regulators, public health regulators, or insurance industry data banks, except to the applicant being tested or persons designated in the consent form by the applicant.<sup>12</sup>

### 4.2. Sharing HIV Test Results.

4.2.1. Except with respect to HIV test results held by insurers, HIV test results may be shared through the Services without the patient's authorization in the same manner as general medical information under the HIPAA Privacy Rule and Va. Code Ann. § 32.1-127.1:03 for purposes of Treatment, Payment, or Health Care Operations.

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<sup>9</sup> 12 Va. Admin. Code § 35-115-80(B)(1); see also Va. Code Ann. § 32.1-127.1:03(D)(22) (stating substance abuse records can be disclosed "when permitted by and in conformity with the requirements of federal law found in 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2.").

<sup>10</sup> Persons certified by the Board of Counseling as substance abuse counselors or substance abuse counseling assistants shall "[d]isclose counseling records to others only in accordance with the requirements of state and federal statutes and regulations, including, but not limited to §§ 32.1-127.1:03 (Patient Health Records Privacy Act), 2.2-3704 (Virginia Freedom of Information Act), and 54.1-2400.1 (Mental Health Service Providers; Duty to Protect Third Parties; Immunity) of the Code of Virginia; 42 USC § 290dd-2 (Confidentiality of Drug and Alcohol Treatment Records); and 42 CFR Part 2 (Alcohol and Drug Abuse Patient Records and Regulations)." 18 Va. Admin. Code § 115-30-140(B)(6).

<sup>11</sup> Va. Code Ann. § 32.1-36.1(A).

<sup>12</sup> 14 Va. Admin. Code § 5-180-50(C)(5).

4.2.2. Insurers may not share HIV test results through the Services, except where an individual has provided consent for sharing such information through the Services.

## 5. Genetic Information

### 5.1. Definition Under Virginia State Law.

5.1.1. Virginia law does not regulate the general sharing of genetic information for purposes of Treatment, Payment, and Health Care Operations, but does regulate certain uses of genetic information by entities subject to the Virginia Insurance Code and health carriers. Specifically, Virginia's Insurance Code states that "all information obtained from genetic screening or testing conducted . . . shall be confidential and shall not be made public nor used in any way, in whole or in part, to cancel, refuse to issue or renew, or limit benefits under any policy, contract or plan subject to the provisions of [Va. Code Ann. § 38.2-508.4]." <sup>13</sup> In that context "genetic test" means a test for determining the presence or absence of genetic characteristics in an individual in order to diagnose a genetic characteristic.<sup>14</sup> In addition, health carriers may obtain and use the results of a genetic test in making a determination regarding payment of a claim, but cannot request genetic information prior to a covered person's enrollment under the health benefit plan.<sup>15</sup> In that context, "genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, if the analysis detects genotypes, mutations, or chromosomal changes, but does not include an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition.<sup>16</sup>

5.1.2. Virginia law, therefore, limits the way entities subject to the Insurance Code and health carriers can use the results of genetic screening and testing, but does not limit the disclosure of such information for purposes of Treatment, Payment, and Health Care Operations other than as specifically stated above.

### 5.2. Sharing Genetic Information.

5.2.1. Genetic information may be shared through the Services without the patient's authorization in the same manner as general medical information under the HIPAA Privacy Rule and Va. Code Ann. § 32.1-127.1:03 for purposes of Treatment, Payment, or Health Care Operations.

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<sup>13</sup> Va. Code Ann. § 38.2-508.4(C).

<sup>14</sup> Va. Code Ann. § 38.2-508.4(A).

<sup>15</sup> Va. Code Ann. § 38.2-3450(C)(1).

<sup>16</sup> Va. Code Ann. § 38.2-3438.