

## 0730.21 SENSITIVE INFORMATION POLICY (IOWA)

### PRIVACY POLICIES

Collective Medical Technologies, Inc.

## Objective

This **Iowa Sensitive Information Policy 0730.13** (“**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 Iowa 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 Iowa 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 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.

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<sup>1</sup> 45 C.F.R. § 164.501.

<sup>2</sup> *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.<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, 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 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. Substance Use Disorder Information under State Law

### 3.1. Definition under Iowa State Law.

- 3.1.1. Iowa law states that the “registration and other records of facilities shall remain confidential and are privileged to the patient.”<sup>5</sup> “Facility” is defined as an institution, a detoxification center, or an installation providing care, maintenance and treatment for persons with substance-related disorders licensed by the Iowa Department of Public Health under Iowa Code § 125.13, hospitals licensed under Iowa Code Chapter 135B, or the state mental health institutes designated by Iowa Code Chapter 226.<sup>6</sup>

### 3.2. Sharing Substance Use Disorder Information.

- 3.2.1. Records of facilities, as defined in this section, may be disclosed through the Services without patient consent (i) to “medical personnel in a medical emergency” or (ii) for “purposes of care coordination as defined in section 135D.2154 if not otherwise restricted by federal law or regulation.”<sup>7</sup> Records of

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

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

<sup>5</sup> Iowa Code § 125.37(1).

<sup>6</sup> Iowa Code § 125.2(7).

<sup>7</sup> Iowa Code § 125.37(3)(a), (b). Iowa Code § 135D.2(2) defines “care coordination” as the management of all aspects of a patient's care to improve health care quality.

facilities, as defined in this section, may also be disclosed through the Services where an individual has provided consent for sharing such information through the Services as described in Section 7 below.

#### **4. Mental Health Information under State Law**

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

4.1.1. Iowa's laws protecting mental health and psychological information provide that, with limited exceptions, as noted below, a mental health professional, data collector, or employee or agent of a mental health professional, of a data collector, or of or for a mental health facility shall not disclose or permit the disclosure of mental health information.<sup>8</sup>

4.1.2. "Mental health professional" means an individual who has either of the following qualifications:

4.1.2.1. The individual meets all of the following requirements: (1) holds at least a master's degree in a mental health field, including but not limited to psychology, counseling and guidance, nursing, and social work, or is an advanced registered nurse practitioner, a physician assistant, or a physician and surgeon or an osteopathic physician and surgeon; (2) holds a current Iowa license if practicing in a field covered by an Iowa licensure law; and (3) has at least two years of post-degree clinical experience, supervised by another mental health professional, in assessing mental health needs and problems and in providing appropriate mental health services.

4.1.2.2. The individual holds a current Iowa license if practicing in a field covered by an Iowa licensure law and is a psychiatrist, an advanced registered nurse practitioner who holds a national certification in psychiatric mental health care and is licensed by the board of nursing, a physician assistant practicing under the supervision of a psychiatrist, or an individual who holds a doctorate degree in psychology and is licensed by the board of psychology.<sup>9</sup>

4.1.3. "Mental health facility" means a community mental health center, hospital, clinic, office, health care facility, infirmary, or similar place in which professional services are provided.<sup>10</sup>

4.1.4. "Data collector" means a person, other than a mental health professional or an employee of or agent for a mental health facility, who regularly assembles or evaluates mental health information.<sup>11</sup>

4.1.5. "Mental health information" means oral, written, or recorded information which indicates the identity of an individual receiving professional services and which relates to the diagnosis, course, or treatment of the individual's mental or emotional condition.<sup>12</sup>

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

4.2.1. Mental health professionals, mental health facilities, and data collectors may disclose mental health information without patient consent through the Services only (i) for Treatment purposes in the case of a medical emergency, (ii) for Treatment purposes to other mental health providers to provide mental health services, or (iii) to other Covered Entities for care coordination purposes as defined in Iowa Code § 135D.2.<sup>13</sup> Mental health professionals and data collectors may not disclose mental health information without patient consent through the Services for general Payment purposes or for Health Care Operations purposes other than care coordination.

4.2.2. Mental health professionals, mental health facilities, and data collectors may also disclose mental health information through the Services where an individual has provided consent for sharing such information through the Services as described in Section 7 below.

#### **5. AIDS and HIV-Related Information under State Law**

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

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<sup>8</sup> Iowa Code § 228.2(1).

<sup>9</sup> Iowa Code § 228.1(6).

<sup>10</sup> Iowa Code § 228.1(4).

<sup>11</sup> Iowa Code § 228.1(2).

<sup>12</sup> Iowa Code § 228.1(5).

<sup>13</sup> See, Iowa Code § 228.2(1), (4).

5.1.1. Iowa law states that “any information, including reports and records, obtained, submitted, and maintained pursuant to” Iowa Code Chapter 141A (Acquired Immune Deficiency Syndrome (AIDS)) may not be released except for certain Treatment purposes.<sup>14</sup>

5.2. Sharing AIDS and HIV-Related Information.

5.2.1. Subscribers may not disclose AIDS and HIV-related information, as described above, though the Services except where an individual has provided consent for sharing such information through the Services as described in Section 7 below.

**6. Genetic Information under State Law**

6.1. Definition under Iowa State Law.

6.1.1. With limited exceptions, Iowa law prohibits any person from obtaining genetic information or samples for genetic testing from an individual without first obtaining informed and written consent from the individual or the individual's authorized representative.<sup>15</sup> “Genetic information” has the same meaning as in the Federal Genetic Information Nondiscrimination Act (“GINA”).<sup>16</sup>

6.2. Sharing Genetic Information.

6.2.1. Subscribers may share genetic information through the Services 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. or 7.3. 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. 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**”). 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 Redislosure 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 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 Redislosure 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 (“**Other Permitted SI Disclosures**”), provided that CMT does not provide technical or operational

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<sup>14</sup> Iowa Code § 141A.9(1).

<sup>15</sup> Iowa Code § 729.6(3).

<sup>16</sup> Iowa Code § 729.6(1)(c). GINA defines “genetic information” as information about (i) such individual's genetic tests, (ii) the genetic tests of family members of such individual, and (iii) the manifestation of a disease or disorder in family members of such individual. The term includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual. The term does not include information about the sex or age of any individual. 29 U.S.C. § 1191b(d)(6).

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**").