



State of Vermont
Agency of Human Services
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VIA E-MAIL

Senator Virginia Lyons
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Representative Lori Houghton
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Senator Lyons and Representative Houghton,

Over the course of the past year, the Agency of Human Services (AHS) and the Green Mountain Board (GMCB) have engaged in collaborative sessions to update the Vermont Health Care Information Strategic Plan. As outlined by Act 167 (2023), AHS and GMCB were tasked with identifying a data integration strategy to merge and consolidate claims data in the Vermont Healthcare Uniform Reporting and Evaluation System (VHCURES) with clinical data in the Vermont Health Information Exchange (VHIE). During collaborative sessions, one proposal was for the VHCURES claims data to be shared with AHS and the integration of the data to take place within the VHIE. A potential barrier to this approach, however, is the interpretation of the statutory language governing the VHCURES data in 18 V.S.A. § 9410.

AHS seeks legislative guidance on the interpretation of the confidentiality provisions outlined in 18 V.S.A. § 9410—specifically, whether it would be permissible for GMCB to share personally identified VHCURES data with the VHIE or AHS, or if legislative changes to the statute are required to align with the objectives of Act 167. AHS understands and respects that the data within VHCURES belongs to GMCB and should sharing of that data violate the statute, it would be GMCB who is liable. AHS does not believe, however, that § 9410 would prohibit VHCURES data from being shared with AHS or integrated within the VHIE. Without additional guidance, this impasse prevents AHS from further progress on the integration of clinical and claims data in the VHIE.

As a preliminary matter, it is unclear whether the prohibition on disclosure of data that contain direct personal identifiers in § 9410(h)(3)(D) would be applicable to data sharing between GMCB and AHS. Section 9410 contemplates two separate databases; a “unified healthcare database” maintained by GMCB (§ 9410(a)(1)) and a “comprehensive health care information system” developed through a collaboration of GMCB and AHS (§ 9410(h)(3)(A)). The prohibition in § 9410(h)(3)(D) applies to the latter, which contemplates data sharing between the parties but prohibits disclosure outside of that relationship.



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Furthermore, the prohibition does not prevent “any” disclosure that contains direct personal identifiers – it specifically limits public disclosure of that data. Neither the VHIE database, nor datasets generated from the VHIE, are available to the public; VITL maintains robust policies and protections to ensure the privacy and security of the patient health information it stewards. Access to patient data on the VHIE is subject to numerous laws, standards and agreements that exist to protect sensitive patient health information from being disclosed without the patient’s consent or knowledge. These include: (1) The individual patient’s consent choice, (2) the Protocols for Access to Protected Health Information on VHIE included in Appendix A of the Health Information Exchange Strategic Plan, and (3) the data use agreements (VHIE Services Agreements) that VITL maintains with each organization that provides data to or accesses data from the VHIE, which specify the permitted uses for VHIE data. The permitted uses include treatment, payment, or health care operations in accordance with HIPAA and VITL’s associated policies, as well as state and federal law. The security and confidentiality of the patient health records in the VHIE is a primary focus of VITL’s work. In addition to data security and privacy protocols and policies, the VHIE has a robust data governance structure and program. The VHIE puts patients at the center of their health data and allows them to make decisions on how their health data is utilized, including the opportunity to opt-out of the VHIE. The patient consent and education process is core to the VHIE and resulted in over 98% of Vermonters choosing to share their health data on the VHIE.

AHS seeks legislative guidance on whether the prohibition on disclosure of data in 18 V.S.A. § 9410(h)(3)(D) prevents incorporating VHCURES data within the VHIE. If it is the intent of the legislature to prohibit the GMCB from sharing the VHCURES data with AHS that includes personal identifiers, then AHS will need to revisit its approach to obtaining claims data to ensure that the VHIE goal of creating one health record for every Vermonter is met.

Sincerely,

Bartholomew J. Gengler
General Counsel
Vermont Agency of Human Services