

Policy on Patient Consent for Provider Access to
Protected Health Information on VHIE or through the Blueprint

Section 1 - Introduction

Upon approval by the Vermont Secretary of Administration and the Green Mountain Care Board, this Policy shall be incorporated into and become part of the Vermont statewide Health Information Technology Plan (the “Plan”). Vermont law requires that the Plan include standards and protocols for the implementation of an integrated electronic health information infrastructure for the sharing of electronic health information among health care facilities, health care professionals, public and private payers, and patients.¹

As required by statute, VITL has been designated in the Plan to operate the exclusive statewide health information exchange network for the State of Vermont and its standards and protocols shall be consistent with those adopted by the Plan.² In consultation with health care providers and health care facilities, VITL shall establish criteria for creating and maintaining connectivity to the Vermont Health Information Exchange (“VHIE”).³

Section 2 - Definitions

(a) “Consent” or “Written Consent” shall mean an individual’s act of giving written permission to a Participating Health Care Provider in the Vermont Health Information Exchange (“VHIE”) and in the Blueprint Registry maintained under the State of Vermont Blueprint for Health (“Blueprint” and, collectively with VHIE, the “Exchanges”) to permit access to the individual’s protected health information (“PHI”) on the Exchanges to all Participating Health Care Providers involved in the treatment of the individual. Consent shall be evidenced by a signature provided in writing or other legally recognized tangible medium that is retrievable in a perceivable form. Consent may be provided by an individual’s legal representative as authorized by law.

(b) “De-identified” shall mean that all identifying information related to an individual as set forth in the HIPAA Privacy and Security Rule⁴ are removed from the protected health information.

¹ 18 VSA § 9351(a)

² 18 VSA § 9352(c)

³ 18 VSA § 9352(i)

⁴ 45 CFR § 164.514(b).

(c) “Exchanges” shall mean the Vermont Health Information Exchange (“VHIE”) and the Blueprint Registry maintained under the State of Vermont Blueprint for Health (“Blueprint”).

(d) “Health Care Operations” shall mean activities of Participating Health Care Providers providing treatment to an individual relating to quality assessment and improvement, evaluations relating to the competence of treating providers or necessary administrative and management activities⁵.

(e) A “Legal Representative” under Vermont law may be a legal guardian, a parent of an unemancipated minor or an agent once an advance directive becomes effective.

(f) A “Medical Emergency” is a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention⁶. The term “Medical Emergency” specifically is intended to include an “Emergency Medical Condition” which is defined as a medical condition manifesting itself by acute symptoms of sufficient severity such that the absence of medical attention could reasonably be expected to result in (1) placing the health of the individual in serious jeopardy or (2) serious impairment to bodily functions or (3) serious dysfunction of any bodily organ or part⁷.

(g) A “Participating Health Care Provider” shall mean a health care provider, including a physician practice and any health care organization,⁸ that has contracted with either the Vermont Information Technology Leaders, Inc. (“VITL”) or the State of Vermont Blueprint for Health initiative to make PHI of its patients available electronically on either or both of the Exchanges. The term “Participating Health Care Provider” shall include all the individual providers and authorized staff employed or otherwise legally associated with the entity or organization.

(h) “Protected Health Information” (“PHI”) shall mean “individually identifiable health information” in any form or medium about the past, present or future physical or mental health or condition of an individual as such terms are defined in the HIPAA Privacy and Security Rule⁹.

(i) “Revoke” or “Revocation” of Consent shall mean an individual’s statement of intent to terminate the permission given to a Participating Health Care Provider to access the individual’s Protected Health Information on the Exchanges. Revocation of Consent shall be evidenced by a signature provided in writing or other legally recognized tangible medium that is retrievable in a perceivable form. Revocation of

⁵ 45 CFR §164.501.

⁶ 42 CFR 2.15.

⁷ 42 U.S.C. § 1395dd(e)(1); 42 C.F.R. § 489.24(b).

⁸ As defined in 18 VSA § 9402(6).

⁹ 45 CFR §160.103.

Consent may be provided by an individual's legal representative as authorized by law.

(j) "Treatment" shall mean the provision, coordination, or management of health care and related services by one or more health care providers.

Section 3 - Policy

(a) Consent for Provider Access

Participating Health Care Providers shall only access Protected Health Information on the Exchanges for individuals who have a current Written Consent for such access on record. The policy does not apply where the PHI is being accessed from the Participating Health Care Provider's own electronic health record or the PHI is directed to a Participating Health Care Provider from another Participating Health Care Provider in a manner consistent with the federal HIPAA privacy regulations and Vermont law.

(b) Patient Education Materials

Participating Health Care Providers shall direct individuals to educational information developed and made available to them by VITL and the State of Vermont regarding the Exchanges and their use by Participating Health Care Providers, and shall refer individuals to VITL and the State of Vermont for additional information. This information shall advise individuals of the ability of Participating Health Care Providers to access their PHI for treatment and of their individual rights under this Policy. It shall advise them of the content of the information on the Exchanges accessible to Participating Health Care Providers. It also shall advise them that their information can be available to Participating Health Care Providers providing treatment in an emergency and that de-identified information may be used for research, quality improvement and public health purposes. Upon request, the individual shall also be provided a Notice of Privacy Practices by the Participating Health Care Providers.

(c) Consent Procedure for Provider Access

Participating Health Care Providers shall enter into a Business Associate Agreement ("BAA"), including, if applicable, a Qualified Service Organization Agreement ("QSOA"), with the Exchange(s) to make the PHI of its patients available to the Exchange(s). Written Consent from patients for access to their PHI on the Exchanges shall have been obtained by a Participating Health Care Provider using a Consent form which includes statements required by this Policy. The Exchanges shall establish a mechanism for Participating Health Care Providers to confirm that an individual has consented to Participating Health Care Providers' access to the individual's PHI on that Exchange. It is the obligation of the Participating Health Care Provider that collects a Written Consent from a patient to provide confirmation to the Exchange that the individual has consented to Participating Health Care

Providers' access to the individual's PHI on that Exchange and to maintain a record of the individual's Written Consent.

(d) Form of Consent

(1) An individual's Consent for Participating Health Care Providers' access to his or her PHI on either or both of the Exchanges (1) shall be dated with the name, address, and birth date of the individual, (2) shall be effective until the Exchange(s) ceases operation or Consent is revoked and (3) shall include statements substantially similar to the following:

- (A) I give my consent to Participating Health Care Providers to access and use or disclose my protected health information, including mental health, and substance abuse treatment information, on the Vermont Health Information Exchange, or through the Vermont Blueprint for Health's Registry (the "Exchanges") for my treatment, for payment for my treatment and for health care operations consistent with the federal HIPAA privacy regulations and Vermont law.
- (B) I have been referred to VITL and the State of Vermont Blueprint for Health for information regarding the Exchanges and am aware that I can request information regarding the privacy practices of any Participating Health Care Provider as described in its Notice of Privacy Practices.
- (C) I understand I do not have to give my consent in order to receive treatment from any Participating Health Care Provider.
- (D) This consent is subject to my revocation (termination) at any time except to the extent that my protected health information obtained from the Exchanges has already been accessed by Participating Health Care Providers and included in their medical records.
- (E) If not previously revoked, or otherwise stated, my consent will terminate automatically when the Exchange stops operating. My consent will remain in effect indefinitely unless I provide written notice of revocation.

(2) Consent may be given by an Individual's Legal Representative as authorized by law.

(e) Individual Access to PHI on the Exchanges

An individual shall be provided the right of access to his or her PHI available on the Exchanges through a Participating Health Care Provider or through VITL or the State of Vermont Blueprint for Health.

(f) Access by Treating Participating Health Care Providers Only

All Participating Health Care Providers shall have policies and procedures (1) to ensure that PHI from another Participating Health Care Provider is accessed on the Exchanges only when an individual has provided Consent or the PHI is directed to the Participating Health Care Provider from another Participating Health Care Provider and (2) to ensure that only those involved in the diagnosis or treatment of an

individual, payment for that treatment or necessary health care operations may access the individual's PHI on the Exchanges. Participating Health Care Providers, VITL and the State of Vermont Blueprint for Health shall comply with all applicable federal and state laws.

(g) Emergency Access to PHI on Exchanges

A Participating Health Care Provider may access the PHI of an individual on the Exchanges without the individual's Consent for use in the treatment of the individual for a Medical Emergency when the Participating Health Care Provider is unable to obtain the individual's Consent due to the individual's Emergency Medical Condition. Participating Health Care Providers accessing PHI for a Medical Emergency must notify the individual or the individual's Legal Representative of such access as soon after such access as is reasonably possible and must obtain Written Consent for further access to PHI of that individual on the Exchange after the Medical Emergency has ended.

(h) Audit of Consents

VITL and the State of Vermont shall periodically audit the Consent records of Participating Health Care Providers in the VHIE or in the Blueprint, respectively. Failure to obtain patient consent, as required by this Policy, shall result in sanctions. VITL and the State of Vermont shall review all instances of emergency access to PHI on the VHIE or the Blueprint, respectively.

(i) Request for Audit Report

An individual may request and receive an Audit Report of access to his or her PHI on the VHIE by contacting VITL's Privacy Officer. VITL shall provide the requested Audit Report as soon as reasonably possible and within 30 calendar days. An individual may request and receive an Audit Report of access to his or her PHI on the Blueprint by contacting the State of Vermont Agency of Human Services' Privacy Officer. The State of Vermont shall provide the requested Audit Report as soon as reasonably possible and within 30 calendar days.

(j) Revocation

An individual who has granted Consent to permit his or her PHI to be accessed on the Exchanges for treatment, for payment for treatment, and Health Care Operations by Participating Health Care Providers shall be entitled to revoke such consent. After receiving an individual's Revocation of Consent, Participating Health Care Providers shall not access the Exchanges to seek the individual's PHI. VITL and the State of Vermont shall each establish a mechanism for Participating Health Care Providers to confirm that an individual has revoked consent for access to the individual's PHI on their respective Exchange. It is the obligation of VITL and the State of Vermont to maintain a record of the individual's Revocation for their respective Exchange.

Section 4 – Substance Abuse Treatment Programs

The regulations set forth in 42 C.F.R. Part 2, governing substance abuse treatment records, require additional protections before PHI from such records may be available to be shared between providers on the Exchanges. Therefore, VITL and the State of Vermont intend to supplement this Policy to accommodate PHI from substance abuse treatment programs upon the completion of necessary due diligence and a final plan for the implementation of a 42 CFR Part 2-compliant HIE and consent architecture that will enable the legal and appropriate exchange of PHI from substance abuse treatment programs.