

Protocols for Access to Protected Health Information on VHIE

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Approved by the Green Mountain Care Board and effective as of December 2, 2020.

Section 1 – Purpose

Upon approval by the Green Mountain Care Board, this addendum shall be incorporated into and become part of Vermont’s 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. In particular, 18 V.S.A. § 9351(a)(3)(B) requires that:

The Plan shall provide for each patient's electronic health information that is contained in the Vermont Health Information Exchange to be accessible to health care facilities, health care professionals, and public and private payers to the extent permitted under federal law unless the patient has affirmatively elected not to have the patient's electronic health information shared in that manner.

This addendum is intended to give effect to these provisions.

As required by statute, Vermont Information Technology Leaders, Inc. (“VITL”) has been designated to operate the Vermont Health Information Exchange (“VHIE”) in accordance with standards and protocols that are consistent with those adopted under the Plan.

Notwithstanding the annual review and approval of the HIE Plan as a whole, these Protocols shall remain in effect for the existence of the VHIE until superseded or modified with approval of the Green Mountain Care Board.

Section 2 - Definitions

“Consent” means an individual Patient’s decision to permit access to the Patient’s Protected Health Information on the VHIE by Participating Health Care Organizations and by public or private payers for Permissible Purposes. No affirmative action is required from an individual Patient to establish his or her Consent. A Patient shall be considered to have given his or her Consent until and unless the Patient affirmatively Opts-Out.

“De-identified” means that all identifying information related to a Patient as set forth in the HIPAA

Privacy and Security Rules are removed from the Protected Health Information.

“Health Care Operations” means any of those activities identified by federal regulations at 45 C.F.R. §164.501, as may be amended, including but not limited to, quality assessment and improvement, evaluations relating to the competence of treating providers or necessary administrative and management activities.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as may be amended, and its implementing rules promulgated in 45 C.F.R. Parts 160, 162, and 164, as may be amended.

“HIPAA Privacy Rules” means those privacy rules described in 45 C.F.R. Part 164, Subpart E, as modified and enlarged by the Health Information Technology for Economic and Clinical Health (HITECH) Act and any other subsequent amendments to the Rules.

“HIPAA Security Rules” means those security rules described in 45 C.F.R. Part 164, Subpart C, as modified and enlarged by the HITECH Act and any other subsequent amendments to the Rules.

“HITECH Act” means the Health Information Technology for Economic and Clinical Health Act of 2009, as may be amended, and its implementing rules promulgated at 45 C.F.R. Parts 160, 162, and 164, as may be amended.

“Medical Emergency” means a condition that poses an immediate threat to the health of any Patient and which requires immediate medical intervention. 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 Patient in serious jeopardy or (2) serious impairment to bodily functions or (3) serious dysfunction of any bodily organ or part.

“Opt-Out” means a Patient’s affirmative election to withhold Consent.

“Participating Health Care Organization” means a Health Care Organization, including a physician practice and any health care organization, that has contracted with VITL to participate in the viewing or exchange of health information on the VHIE. The term “Participating Health Care Organization” shall include all the individual providers and authorized staff employed or otherwise legally associated with the entity or organization.

“Patient” means an individual whose personal demographic information or Protected Health Information is stored or transferred by the VHIE. The term “Patient” includes a personal representative who has the authority to authorize the disclosure of a Patient’s Protected Health Information pursuant to 45 C.F.R. § 164.502 (g) and any other applicable state or federal laws.

“Payment” means any activity undertaken to obtain or provide reimbursement for the provision of health care items or services to a Patient.

“Permissible Purposes” means Treatment, Payment, Health Care Operations, consistent with HIPAA and Vermont law.

“Protected Health Information” and the abbreviation “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to the individually identifiable health information created or received by or on behalf of a Participating Health Care Organization. Such term shall also include Electronic Protected Health Information.

“Public Health Authority” means an agency or authority of the United States or a State that has been granted authority and responsibility to protect public health and to prevent or control disease, injury or disability, and, as such, that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability.

“Significant Public Health Risk” shall have the same the meaning as the term “significant public health risk as” in 18 V.S.A. § 2 (12).

“Revoke” or “Revocation” of Opt-Out means a Patient’s withdrawal of a previous election to Opt-Out.

“Treatment” means the provision, coordination, or management of health care and related services by one or more Health Care Organizations.

Section 3 – Provider Access

A. General. Each Patient's electronic Protected Health Information that is contained in the Vermont Health Information Exchange shall be accessible to Participating Health Care Organizations, and public and private payers to the extent permitted under law unless the Patient has affirmatively elected not to have the Patient's electronic Protected Health Information shared in that manner.

Patients shall be free to Opt-Out at any time, which election shall remain in effect unless and until the Patient Revokes such election.

Participating Health Care Organizations shall access Protected Health Information on the VHIE only for Permissible Purposes and only with respect to Patients with whom they have, had, or are about to commence, a Treatment relationship.

De-identified patient information may be used for research, quality review, population health management and public health purposes, as permitted by HIPAA. No commercial use or sale of de-identified patient information is permitted.

B. Patient Education. VITL and the Department of Vermont Health Access shall develop, maintain and administer a program of Patient education that enables Patients to fully understand their rights regarding the sharing of their Protected Health Information through the VHIE and provide them with ways to find answers to associated questions. Educational materials and processes shall be incorporated as appropriate with existing Patient education obligations, such as Notice of Privacy Practices disclosure requirements under HIPAA, and shall aim to address diverse needs, abilities, and learning styles with respect to information delivery.

Patient education materials and processes shall clearly explain:

- (i) the purpose of the VHIE;
- (ii) the way in which Protected Health Information is collected;
- (iii) how and with whom Protected Health Information may be shared using the VHIE;
- (iv) the Permissible Purposes for which Protected Health Information may be shared using the VHIE;

(v) how to Opt-Out and how to Revoke; and

(vii) how to contact the Office of the Health Care Advocate.

C. Provider Responsibilities. Participating Health Care Organizations shall (1) enter into a Business Associate Agreement (“BAA”), including, if applicable, a Qualified Service Organization Agreement (“QSOA”), with VITL, (2) cooperate in good faith to execute all provider responsibilities under any processes established by VITL to collect and record Patient elections to Opt-Out, and (3) have policies and procedures in place to ensure that only those individuals involved in Treatment, Payment or Health Care Operations may access a Patient’s PHI on the VHIE.

D. VITL Responsibilities. In addition to the obligations provided elsewhere in this addendum, VITL, as the operator of the VHIE, shall (1) establish one or more user-friendly mechanisms through which Patients may Opt-Out, (2) maintain updated Consent-status records of all Patients who have Opted-Out, and (3) for Patients who have Opted-Out, ensure no access through the VHIE except in the event of Medical Emergencies.

E. Patient Access to PHI. All patients shall be provided the right of access to his or her PHI contained in the VHIE through his or her Participating Health Care Organization to the extent permitted under applicable HIPAA rules.

F. Emergency Access to PHI on the VHIE. Notwithstanding a Patient’s choice to Opt-Out, a Participating Health Care Organization may access the Patient’s PHI through the VHIE for use in Treatment of the Patient for a Medical Emergency, but only if the Participating Health Care Organization is unable to obtain Patient consent for such access. Participating Health Care Organizations accessing PHI under such circumstances must notify the Patient of such access as soon as is reasonably possible and must obtain a Revocation of the Patient’s Opt-Out for further access to PHI of that Patient on the VHIE after the Medical Emergency has ended.

G. Patient Request for Audit Report. A Patient may request and receive an audit report of access to his or her PHI on the VHIE, including access by Public Health Authorities, as detailed in Section 5, by contacting VITL’s Privacy Officer. VITL shall provide the requested audit report as soon as reasonably possible, but in no event longer than 30 days after request.

H. Revocation. A Patient who has Opted-Out shall be entitled to Revoke such Opt-Out at any time. VITL shall develop and administer one or more Revocation mechanisms for this purpose. It is the obligation of VITL to update records of the Patient’s Consent status for the VHIE. A Revocation shall remain effective until and unless the Patient subsequently Opts Out anew.

Section 4 – Substance Abuse Treatment Information

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 VHIE. DVHA intends to supplement this addendum 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 VHIE and consent architecture that will enable the legal and appropriate exchange of PHI from substance abuse treatment programs.

Section 5 – Public Health Access

A. General. Section 5 has been proposed and approved in accordance with 18 V.S.A. § 9351(c),

reflecting the newly emerging need for access to VHIE data by Public Health Authorities. Each Patient's PHI that is contained in the VHIE shall be accessible to a Public Health Authority as provided for in this policy and to the extent permitted under state and federal law. This access shall not be limited by the patient's election not to share data with Participating Health Care Organizations and public and private payers under 18 V.S.A. § 9351(a)(3)(B).

B. Access by Public Health Authorities. Public Health Authorities shall access PHI on the VHIE only for the following public health activities and purposes, as permitted under state and federal law:

(i) preventing or controlling disease, injury, or disability to the extent permitted under subsection D; and

(ii) Reporting to a Public Health Authority by Participating Health Care Organizations and participating payers when such reporting is required by law.

A Public Health Authority that receives PHI for a public health activity or purpose may only disclose such PHI to the extent permitted by state and federal laws governing disclosure. Any de-identified patient information may only be disclosed for research, quality review, population health management and public health purposes or as required by law. No commercial use or sale of de-identified patient information is permitted.

C. VITL Responsibilities. VITL shall ensure the ability to audit access to patient records by Public Health Authorities to facilitate compliance by Participating Health Care Organizations and participating payers with Accounting of Disclosure regulations under HIPAA.

D. Access to PHI on the VHIE in response to a Significant Public Health Risk. Except for reporting required by law, a Public Health Authority may only access the Patient's PHI through the VHIE upon a determination by the Commissioner of Health that such access is necessary for the mitigation of a Significant Public Health Risk.

E. Patient Request for Audit Report. A Patient may request and receive an audit report from VITL of access by Public Health Authorities to his or her PHI on the VHIE by contacting VITL's Privacy Officer as described in Section 3.