

This is a draft update to VITL’s Secondary Use Policy. VITL welcomes comments at feedback@vitl.net through May 8, 2024. For more information about this update including a summary of the changes, please see this VITL news item: [VITL Welcomes Comments on Secondary Use Policy](#).

Vermont Information Technology Leaders	
Name:	Policy on Secondary Use of PHI Data Protected Health Information on the VHIE by Health Plans and ACOs Accountable Care Organizations Including Quality Review (“Secondary Use Policy”)
Type of Document:	Policy
Type of Policy:	VHIE Data Access
Sponsoring Department(s):	Administration
Sponsor:	President & CEO
Approving Official or Body:	CEO & Board of Directors
Effective Date:	Date the policy was approved, or reapproved
Review Cycle:	Every three years, and every time a significant change to laws or regulations related to PHI access occurs

Purpose

The purpose of this policy is to specify the requirements relevant to Health Plans and Accountable Care Organizations relative to their access to and use of Protected Health Information (PHI) from the Vermont Health Information Exchange (VHIE).

Scope

This policy applies to all Health Plans and Accountable Care Organizations (ACOs) accessing data on the VHIE; and all subsequent use and disclosure of data obtained from the VHIE. This policy must be incorporated into any Data Use Agreements that VITL enters into that allow for access to VHIE data by Health Plans or ACOs, including contracts with third parties that may make VHIE data available to those entities.

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Definitions

“Accountable Care Organization” (“ACO”) shall mean a legal entity that is recognized and authorized under applicable state and federal law, is identified by a tax identification number and is formed by one or more providers that agree to work together to be accountable for providing coordinated high quality care to patients as established and

authorized by the applicable federal, state or private health plan program contracting with the ACO.

“Data” means the patient record data elements relevant to the scope of work of VITL pursuant to its VHIE Service Agreements with Participating Health Care Providers to make such elements available on the VHIE and includes all written or electronic patient information relating to the patient’s identity or to the patient’s medical history, diagnosis, treatment, tests or prognosis which is accessible to a Participating Health Care Providers in the VHIE, and otherwise obtained from the VHIE. Such Information may include, but not be limited to, admission, discharge, transfer, medical, prescription, billing, and/or other data for patients seen, or provided laboratory services or prescription medication, at a Health Care Provider’s facilities or offices.

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Commented [BA1]: Added to clarify this policy applies to data provided to organizations by VITL in datasets, extracts or reports.

“Data Use Agreement” means the agreement between VITL and a Health Plan or ACO that authorizes the Health Plan or ACO: to use of Data for secondary use as described in the Data Use Agreement.

“Exchange” or “The Vermont Health Information Exchange” (“VHIE”) shall mean the health information exchange network operated by VITL.

~~“Health Care Operations” shall mean activities of a Participating Health Care Provider providing Treatment to an individual relating to quality assessment and improvement, evaluations relating to the competence of treating providers or necessary management and administrative activities all as defined in the HIPAA Privacy Regulations, 45 CFR §164.501. “Health Care Operations” shall have the definition assigned to it by the HIPAA Privacy and Security Regulations at 45 C.F.R. § 164.501 except that it ~~that~~ and shall be limited to include the following: {~~

1. Outcomes evaluation and development of clinical guidelines (not research);
2. Patient safety activities;
3. Population-based activities relating to improving health or reducing health care costs;
4. Protocol development; and
5. Case management and care coordination.

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Commented [BA2]: Expands HCO from Quality Review to include more activities, as specified.

Appendix A includes a table that specifies the allowed and unallowed uses of VHE Data by Health Plans and ACOs under this Policy.

Commented [BA3]: Appendix added to clarify what is acceptable under HCO

“Health Plan” shall mean a group health plan, health insurance company, health maintenance organization, a government health program, employee health benefit plan or other third party payer of health care as defined in the HIPAA Privacy Regulations, 45 CFR 160.103 and who qualify as a Covered Entity under 45 CFR 160.103.

“HIPAA Privacy and Security Regulations” means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164 and the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160 and 164.

“Participating Health Care Organization” means a hospital, medical practice, physician practice, home health care agency or other health care provider, who has entered into a VHIE Services Agreement with VITL to participate in the exchange of Data on the VHIE. “Protected Health Information” (“PHI”) shall mean identifiable personal information in any form or medium about the past, present or future physical or mental health or condition of an individual as defined in the HIPAA Privacy Regulations, 45 CFR § 160.103.

“Payment” shall have the definition assigned to it by the HIPAA Privacy and Security Regulations at 45 C.F.R. § 164.501 including precertification and preauthorization of services. Payment ~~it does not include the use of Data for post-payment audits of services rendered.~~

~~“Quality Review” shall mean the review of Data by Health Plans or Accountable Care Organizations for the purpose of disease management, utilization review or quality assessment or improvement. Utilization review includes precertification and preauthorization of services, concurrent and retrospective review of services. ~~It does not include post payment audits of services rendered.~~~~

“Treatment” shall have the definition assigned to it by the HIPAA Privacy and Security Regulations at 45 C.F.R. § 164.501, namely the provision, coordination, or management of health care and related services by one or more health care providers, including but not limited to, services for the diagnosis, prevention, cure or relief of a health care injury or disease. It may also include the coordination or management of health care by a health care provider with a third party, consultation between health care providers relating to a patient, or the referral of a patient for health care from one health care provider to another.

“Vermont Health Information Exchange” or “VHIE” means the Vermont Health Information Exchange, an integrated electronic health information infrastructure for the sharing of PHI and Data among Participating Health Care Organizations operated by VITL.

Policy

Secondary Use of PHI Data

Consistent with the current Protocols for Access to Protected Health Information on VHIE, approved by the Green Mountain Care Board as of December 2, 2020, PHI and Data as defined herein shall be made available for secondary use as authorized by this policy on the Exchange only for the purposes of Treatment, payment and Health Care Operations as permitted under state and federal law, including for public health purposes with authorized public health authorities, unless the patient has affirmatively elected not to have the patient’s electronic health information shared on the Exchange VHIE (opted out).

1. VITL may make PHI and Data available from the Exchange to Health Plans or Accountable

Commented [BA4]: Deleted as this is addressed with the new definition of Health Care Operations

Commented [JW5]: Striking “on the Exchange only” is intended to clarify that health plans and ACOs may both access Data on the exchange, and receive data that is obtained from the exchange.

Commented [BA6]: Removed because the use of public health purposes is authorized by the Protocols for Access to PHI policy (“Appendix A”) of the State’s HIE Strategic Plan

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~~Care Organizations of their beneficiaries or attributed lives~~ available from the VHIE to Health Plans or Accountable Care Organizations ~~on the Exchange may be made available by VITL to Health Plans or Accountable Care Organizations~~ for purposes related to the Treatment, Payment, and Health Care Operations, ~~including Quality Review, as defined above, of their beneficiaries or attributed lives~~ under a Data Use Agreement between VITL and a Health Plan or Accountable Care Organization, ~~as set forth below.~~

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2. ~~VITL may make PHI and Data available on from the Exchange~~ VHIE to Health Plans or Accountable Care Organizations for the purpose of populating a clinical or health registry or other system for a use that is authorized by this policy. The requirements of this policy and other applicable VHIE requirements will continue to apply to the PHI or Data after it has been used to populate a registry or system unless the continued application of such requirements is incompatible with intended use of the PHI or Data such as providing the PHI or Data to the individual who is the subject of the information.

VITL Approval and Data Use Agreements

In the event that access to Data on the ~~Exchange~~ VHIE is requested by a Health Plan or Accountable Care Organization ("Recipient Organization"), VITL may ~~authorize~~ provide the Recipient Organization access to Data on the ~~Exchange~~ VHIE for its beneficiaries or attributed lives who receive treatment in Vermont so long as it enters into a written VHIE Data Use Agreement with VITL. ~~The Data Use Agreement which authorizes the proposed use and obligates the Recipient Organization to the following provisions:~~

1. to use and limit access to the Data only for its beneficiaries or attributed lives for purposes related to Treatment, payment and Health Care Operations, including Quality Review, subject to minimum necessary requirements as provided in the HIPAA Privacy and Security Regulations;
2. to use and maintain appropriate safeguards to prevent use, access, or disclosure of VHIE Data other than as permitted by the Data Use Agreement or required by law;
3. to comply with the HIPAA Privacy and Security Regulations and all other applicable federal and state laws and regulations protecting the confidentiality of PHI;
4. ~~to designate staff or authorized users, as specified in the Data Use Agreement, who may access the Exchange VHIE for Data for permitted purposes as described in this Policy;~~
5. to provide information regarding any registry or system that would be populated by VHIE Data, including the access, use, and administrative and technical safeguards that would apply to VHIE data.
4. _____
- 5-6. _____ to maintain policies and procedures for the appropriate access, training, and discipline of staff with regard to access to the ~~Exchange~~ VHIE;
- 6-7. _____ to maintain policies and procedures to prohibit any discrimination against an individual who has opted out of the ~~Exchange~~ VHIE;
- 7-8. _____ to acknowledge that no PHI for care for which an individual has self- paid and that is subject to the individual's requested restriction to prevent disclosure to a Health Plan will be released from the ~~Exchange~~ VHIE;

Commented [BA7]: Expands use of data to include authorized users. An example of this would be where an ACO might provide data received from the VHIE to its participating providers in support of their work together.

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8.9. _____ to update its Notice of Privacy Practices and/or beneficiary information, to describe its use of Data from the ~~Exchange-VHIE~~ for Treatment, payment, or health care operation purposes relating to its beneficiaries or attributed lives only;

9.10. _____ to agree that it is prohibited from processing, transmitting, storing or transferring any Data from the ~~Exchange-VHIE~~ by any means outside of the ~~Continental~~ United States, without the express written permission of VITL;

10.11. _____ to comply with ~~applicable the VHE~~ VITL policies and procedures as updated from time to time; and

11.12. _____ to agree to update its Data Use Agreement with VITL when necessary to comply with any changes to the terms and conditions for accessing Data on the ~~Exchange-VHIE~~ as provided in the Participating Health Care Organization VHIE Services Agreement or with any requirements of the Green Mountain Care Board or other Vermont Agency or as a result of changes in state or federal law.

Enforcement

Any ~~entity or individual who is subject to a Data Use Agreement, or any~~ employee, vendor, client, or contractor found to have violated this policy may be subject to ~~access termination,~~ disciplinary ~~action, and/or and/or~~ legal action.

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References

[HIPAA Health Care Operations, 45 CFR § 164.501](#)

[HIPAA Organized Health Care Arrangement, 45 CFR § 160.103](#)

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Review and Revision History

Date	Changes Made	Completed By
TBD	Next Review Due	Scheduled
TBD	Policy update drafted, moved to new template	Beth Anderson
11/23/2021	Last update approved	VITL Staff

Approvals

Reviewed by Sponsor

Date

Approved by CEO

Date

Approved by Board of Directors

Date

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Appendix A to VITL Secondary Use Policy

Access, Use and Disclosure of Data on the VHIE for Health Care Operations by Health Plans and Accountable Care Organizations

<u>Operations as defined by HIPAA 45 CFR 501 Administrative, financial, legal, and quality improvement activities of a covered entity that are necessary to run its business and support the core functions of treatment and payment.</u>	<u>ACO</u>	<u>Health Plan</u>
<u>A. Quality assessment and improvement</u>		
1. Outcomes evaluation and development of clinical guidelines (not research)	<u>Yes</u>	<u>Yes</u>
2. Patient safety activities	<u>Yes</u>	<u>Yes</u>
3. Population-based activities relating to improving health or reducing health care costs	<u>Yes</u>	<u>Yes</u>
4. Protocol development	<u>Yes</u>	<u>Yes</u>
5. Case management and care coordination	<u>Yes</u>	<u>Yes</u>
6. Contacting providers and patients with information about treatment alternatives	<u>No</u>	<u>No</u>
<u>B. Review and training of health care professionals</u>	<u>No</u>	<u>No</u>
1. Review of competence or qualifications of health care professionals	<u>No</u>	<u>No</u>
2. Evaluating practitioner and provider performance	<u>No</u>	<u>No</u>
3. Evaluating health plan performance	<u>No</u>	<u>No</u>
4. Conducting training programs in which trainees learn under supervision	<u>No</u>	<u>No</u>
5. Accreditation	<u>No</u>	<u>No</u>
6. Certification	<u>No</u>	<u>No</u>
7. Licensing	<u>No</u>	<u>No</u>
8. Credentialing activities	<u>No</u>	<u>No</u>
<u>C. Health insurance management</u>		
1. Underwriting	<u>No</u>	<u>No</u>
2. Enrollment	<u>No</u>	<u>No</u>
3. Premium Rating	<u>No</u>	<u>No</u>
4. Activities related to creation, renewal, or replacement of a contract for health insurance or benefits	<u>No</u>	<u>No</u>
5. Contracting for reinsurance or risk relating to claims for health care including stop-loss insurance (except no use of genetic information)	<u>No</u>	<u>No</u>
<u>D. Conducting medical review, legal services, and auditing including fraud and abuse detection</u>	<u>No</u>	<u>No</u>
<u>E. Business planning and development</u>	<u>No</u>	<u>No</u>
1. Cost management and planning related analyses related to managing an entity	<u>No</u>	<u>No</u>
2. Formulary development and administration	<u>No</u>	<u>No</u>
3. Development or improvement of payment methods or coverage policies	<u>No</u>	<u>No</u>
<u>F. Business management</u>	<u>No</u>	<u>No</u>

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<u>1. Management activities</u>	<u>No</u>	<u>No</u>
<u>2. Customer service including data analyses for policy holders, plan sponsors, other customers</u>	<u>No</u>	<u>No</u>
<u>3. Resolution of internal grievances</u>	<u>No</u>	<u>No</u>
<u>4. Sale, transfer, merger, consolidation of all or part of CE with another CE</u>	<u>No</u>	<u>No</u>
<u>5. Creation of de-identified health information or limited data set, or fundraising for Covered entity</u>	<u>No</u>	<u>No</u>

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