

VERMONT HEALTH INFORMATION EXCHANGE (VHIE) DATA USE AGREEMENT

This Agreement, effective as of the 1st day of December, 2024 (the “Effective Date”), establishes the rights and responsibilities of **VERMONT INFORMATION TECHNOLOGY LEADERS, INC.**, a Vermont non-profit corporation (“VITL”), and **THE STATE OF VERMONT AGENCY OF HUMAN SERVICES AND ITS CONSITUTENT DEPARTMENTS** (“State”).

RECITALS:

A. VITL is the statewide health information exchange organization for the State of Vermont and in such capacity has created the Vermont Health Information Exchange (the “VHIE”) whereby Participating Health Care Providers make patient information available on the VHIE to be accessed for specific uses, including uses under VITL’s Policy on Secondary Use of Protected Health Information on the VHIE by Health Plans and Accountable Care Organizations (Secondary Use Policy), available on VITL’s website, and as may be amended from time to time.

B. State is responsible for administering the Vermont Medicaid health insurance program to provide government-funded health benefits for income-eligible people and people who are categorically eligible.

C. VITL acknowledges that State is a Covered Entity required to comply with the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160-164) (“HIPAA”), including the Administrative Simplification regulations (45 C.F.R. Parts 160-164) which include the Standards for the Privacy of Individually Identifiable Health Information (the “Privacy Rule”), the Standards for Electronic Transactions, and the Security Rule (collectively the “HIPAA Rules”).

D. State seeks access to the VHIE records as appropriate to assist it with Payment and Health Care Operations activities related to covered Health Plans administered by State, including meeting its obligations for administering the Vermont Medicaid program.

E. The parties are entering into this Agreement to ensure that any Protected Health Information or VHIE Data is accessed, used, or disclosed by State only as permitted by this Agreement. and in compliance with VITL’s Secondary Use Policy.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and sufficient consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions

Definitions. The following terms, not otherwise defined herein, have the meanings provided below.

“Authorized User” means individuals designated by State for VHIE Access, and to access or use the VHIE Data for purposes described in this Agreement.

“Health Care Operations” shall include the definition assigned to it in the Secondary Use Policy; and, for the purposes of this Agreement, the use and disclosure of VHIE Data for (i) the evaluation of Health Plan performance; (ii) the improvement in the quality of services, coverage, financing, and cost reduction; (iii) development, improvement, and evaluation State Health Plan payment models, both independently and in coordination with Statewide health care reform efforts; and (iv) as required by law for conducting preliminary investigations of suspected fraud or abuse pursuant to 42 C.F.R. § 455.14, and for reporting suspected fraud and abuse pursuant to 42 C.F.R. § 455.17.

“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.

A “Participating Health Care Provider” means a health care provider, including any health care organization meeting the definition of a health care facility as defined in 18 VSA § 9402, who has executed an effective VHIE Services Agreement with VITL.

“Payment” shall have the definition assigned to it in the Secondary Use Policy, and includes provider evaluation required under payment methodologies of the Vermont Medicaid program or other health benefit programs of the State of Vermont.

“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.

“Secondary Use” shall mean the use or disclosure of VHIE Data, including aggregated VHIE Data, for Payment and Health Care Operations Activities as defined in this Agreement.

“VHIE Access” as used in this Agreement shall include the opportunity to query or otherwise view, obtain, or receive VHIE Data of State Health

Plan beneficiaries or members on the VHIE and to query or otherwise obtain or receive Data transmittals or extracts from the VHIE that will be used to populate State systems.

“VHIE 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, and similar data use agreements, 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 Provider 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.

2. Ownership of VHIE Data. State understands and acknowledges that VITL serves as a Business Associate of Participating Health Care Providers who have agreed to make Data available on the VHIE as permitted by law and subject to VITL policy, including the Secondary Use Policy. State is provided the rights described in Sections 3 and 5, below.
3. Rights to VHIE Access and VHIE Data. Under the Secondary Use Policy, VITL may provide VHIE Access to Authorized Users at Health Plans, such as State, for Secondary Uses, such as care management for their beneficiaries or members, under the terms and conditions of this Agreement and the Secondary Use Policy as may be amended from time-to-time.

State may use VHIE Access and use and disclose VHIE Data for Secondary Uses. State may not use Data for health oversight activities as defined by 45 CFR § 164.501 or audit and evaluation activities as defined by 42 CFR § 2.53.

State’s ability to use VHIE Data to conduct preliminary investigations in response to reports of fraud or abuse or identified questionable practices, as required by law pursuant to 42 C.F.R. § 455.14, shall be limited to VHIE data incorporated into State payment records prior to receipt of such report of alleged fraud or abuse or identification of identification of such questionable provider practice. The State’s ability to use VHIE data to satisfy its program integrity obligations shall be limited to instances of suspected fraud or abuse already identified and investigated as required by law. The State shall not request data from nor query the VHIE for the purpose of investigating suspected fraud or abuse, nor analyze VHIE Data in State systems, to identify new instances of suspected fraud or abuse.

State will ensure that only Authorized Users may use and disclose VHIE Data

and only for Secondary Uses.

State must maintain the ability to identify VHIE Data to ensure compliance with the terms of this agreement and the Secondary Use Policy. If it is not reasonably feasible to identify VHIE data within State systems, the State will ensure that all system users able to view VHIE data within such systems are Authorized Users and will make reasonable efforts to prevent any use of the system that would violate the terms of this Agreement or the Secondary Use Policy.

4. Responsibilities of VITL. VITL will provide VHIE Access to Authorized Users designated by State for Secondary Uses related to covered Health Plans administered by State for individuals who have not opted-out of the sharing of their data on the VHIE.

5. Responsibilities of State
 - a. State may only access, use, and disclose VHIE Data to carry out Secondary Uses as a Health Plan relating to its beneficiaries or members, as authorized under this Agreement and the Secondary Use Policy.
 - b. State is not permitted under this Agreement to engage in or facilitate VHIE Access by or on behalf of any individuals or entities except those performing Payment and Health Care Operations of or on behalf of State.
 - c. State will limit VHIE Access and access to VHIE Data to records of individuals who have, or have had, a relationship to State as a current or former member or beneficiary of a covered Health Plan administered by State and ensure that the records accessed pertain to that relationship.
 - d. State will use and disclose VHIE Data only as authorized by this Data Use Agreement or as required by law.
 - e. State will develop, implement, maintain, document, and use appropriate administrative, technical, and physical safeguards to protect and secure VHIE Data.
 - f. State shall maintain policies and procedures for the appropriate access, training, and discipline of Authorized Users with regard to VHIE Access as well as the use and disclosure of VHIE Data in compliance with this Agreement and the Secondary Use Policy.
 - g. State shall employ protocols for allowing its Authorized Users to access VHIE Data in a manner consistent with HIPAA minimum necessary requirements, this Agreement, and the Secondary Use Policy.
 - h. State shall maintain policies and procedures to prohibit any unlawful discrimination against a beneficiary or member or other individual who has opted out of the VHIE.

- i. State shall comply with the VHIE policies and procedures as referenced in Section 6 below.
- j. State acknowledges that no PHI or Data relating to 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 to State from the VHIE.
- k. State shall, as appropriate, provide notice to members/beneficiaries on its website describing its access to PHI from the VHIE for Payment and Health Care Operations activities relating to its beneficiaries or members of its health benefit programs.
- l. State shall comply with all federal and state laws and regulations protecting the confidentiality of PHI.
- m. State shall report promptly to VITL (within five days), upon confirmation, any VHIE Access other than as permitted by this Agreement, and State will take all reasonable steps to mitigate the effects of any use or disclosure associated with such improper access, cooperating with all reasonable requests by VITL or an involved Participating Health Care Provider toward that end.
- n. Nothing in this Agreement prohibits State from obtaining and disseminating any information that is obtained independent of the Agreement, whether or not the information could also be derived from its Data Access on the VHIE under this Agreement.
- o. No VHIE Data received, accessed or obtained by State shall be processed, transmitted, stored, or transferred by any means outside the United States, except as expressly authorized in writing by VITL's CEO or designee. Authorization requests must 1) be approved by the Secretary or Deputy Secretary of AHS or may be approved by any individual authorized to approve change controls under the State's contract for operation of the VHIE and 2) identify the individuals who will be responsible for ensuring compliance with the terms and conditions of the authorization.
- p. State acknowledges its responsibility to obtain reasonable assurances of compliance with applicable privacy laws and to provide instruction and oversight as necessary to comply with this Agreement with respect to the activities of any State Subcontractor provided VHIE Access or VHIE Data Access as an Authorized User.
- q. State will make available to VITL the policies, procedures, and protocols in paragraphs e-g of this section as reasonably requested to demonstrate compliance with the terms of this Agreement.

6. Policies and Procedures of the VHIE

- (a) VITL will establish policies and procedures, including but not limited to, policies covering the Permitted Use of Data (“Policies and Procedures”) that will govern VITL’s, Participating Health Care Organizations, ACOs, or Health Plans’ activity on the VHIE or use data from the VHIE. These Policies and Procedures shall be available at VITL’s web site (www.vitl.net). These Policies and Procedures govern use of the VHIE and Data provided to and available on the VHIE. State’s use of the VHIE constitutes acceptance of those Policies and Procedures and failure to comply with such Policies and Procedures by State shall constitute a material failure to comply with the terms and conditions of this Agreement.
 - (b) Changes to Policies and Procedures. VITL may change or amend the Policies and Procedures from time to time at its discretion and will post notice of final changes at VITL’s web site (www.vitl.net). VITL shall provide State notice of such changes to Policies and Procedures by electronic mail or other electronic notification, as well as by posting such notice on its website. Any changes will be effective 60 days following adoption by VITL, unless VITL determines that an earlier effective date is required to address a legal requirement, a concern relating to the privacy or security of Data or an emergency situation.
 - (c) Changes to Secondary Use Policy. The Parties will cooperate in good faith to enable VITL to amend its Secondary Use Policy without unreasonably impacting State’s rights and obligations under this Agreement. VITL will notify State if it reasonably anticipates a need to amend the Secondary Use Policy in a manner which will impact State’s rights and obligations under this Agreement and, to the extent feasible, will allow State 30 days to review such amended policy before it is adopted. To the extent feasible, VITL will work with State to adopt reasonable revisions to the amended Secondary Use Policy if such policy would unreasonably impact State’s rights or obligations under this Agreement. If VITL is unable to make such revisions before the amended policy is adopted, VITL will work with State to exempt State from the amended policy so long as State adopts alternative measures approved by VITL that are consistent with what is reasonably necessary to accommodate VITL’s legal or business needs.
7. Fees. There are no fees related to the rights and obligations set forth in this Agreement. Any fees related to these or additional obligations involving the subject matter of this Agreement will be set forth in a separate Agreement between the parties.

8. Term and Termination. The term of this Agreement shall begin on the Effective Date and shall terminate when this Agreement is terminated pursuant to this Section.

Either party may terminate this Agreement for cause at any time for material failure of the other party to comply with the terms and conditions thereof, if such material failure is not corrected within a period of sixty (60) days after receipt of written notice from the other party by certified mail, return receipt requested, as specified in Section 12, below, specifying such failure or, in the event that such material failure cannot be cured within such period, commence and pursue diligent efforts to cure within such time period.

Either party may terminate this Agreement without cause upon one hundred-twenty (120) days prior written notice of termination to the other party by certified mail, return receipt requested, as specified in Section 12, below.

9. Assignment. No party may assign its rights and obligations under this Agreement without the prior written consent of the other party.
10. Amendment. The terms of this Agreement may only be changed by a written modification to this Agreement, signed by duly authorized representatives of the parties or by the parties adopting a new agreement.
11. Notices. Notices shall be sent by electronic mail or, where indicated, by certified mail, return receipt requested, or hand delivered to the addresses set forth below.

STATE:

Kristin McClure
Deputy Secretary of
Agency of Human
Services
280 State Dr. – Building E,
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kristin.mcclure@vermont.gov
802-798-2668

VITL:

Beth Anderson
President & CEO
150 Dorset Street
Suite 245, RMB 358
South Burlington, VT 05403
banderson@vitl.net
802-861-1800

12. Counterparts/Facsimiles. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. Facsimile and electronically scanned copies hereof shall be deemed to be originals.

IN WITNESS WHEREOF, VITL and State have executed this Agreement effective as of Effective Date.

STATE OF VERMONT
DEPARTMENT OF VERMONT HEALTH ACCESS


Signed by:

11/26/2024
AAE9E7992536479...

DASHAWN GROVES
COMMISSIONER
NOB 1 SOUTH, 280 STATE DRIVE
WATERBURY, VT 05671
EMAIL: DASHAWN.GROVES@VERMONT.GOV

DATE

CONTRACTOR
VERMONT INFORMATION TECHNOLOGY LEADERS

DocuSigned by:

11/26/2024
79BE3F9AE223445...

BETH ANDERSON
PRESIDENT & CEO
150 DORSET STREET
SUITE 245, PMB 358
SOUTH BURLINGTON, VT 05403
EMAIL: BANDERSON@VITL.NET

DATE