

Policy on Participating Health Care Provider
Policies and Procedures for the VHIE

Definitions –

“Consent” means an individual’s act of giving permission to a Participating Health Care Provider in the Vermont Health Information Exchange (“VHIE” or “Exchange”) to make the individual’s protected health information (“PHI”) available on the Exchange to, or to permit access to it by Participating Health Care Providers who are also involved in the treatment of the individual.

“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 administrative and management activities all as defined in the HIPAA Privacy Regulations, 45 CFR §164.501.

A “Participating Health Care Provider” shall mean a health care provider, including any health care organization, that has executed an effective VHIE Data Services and Participation Agreement with VITL.

“Treatment” shall mean the provision, coordination, or management of health care and related services by one or more health care providers.

Policy –

1. Each Participating Health Care Provider shall, at all times, comply with all applicable federal and state laws and regulations, including, but not limited to those protecting the confidentiality and security of protected health information (“PHI”) and establishing individual privacy rights. Each Participating Health Care Provider shall comply with changes or updates to interpretations of such law and regulations to ensure compliance. Each Participating Health Care Provider shall update its Notice of Privacy Practices to describe its participation in the Exchange when an individual has consented to opt in and make his or her PHI available on the Exchange. Participating Health Care Providers shall be aware of the provisions of certain state laws, for instance, the Vermont patient privilege, 12 VSA §1612, which are more stringent than, and not preempted by, the HIPAA Privacy and Security Regulations. No Participating Health Care Provider shall permit access to PHI from the VHIE for purposes other than treatment, payment for treatment or necessary Health Care Operations without patient authorization, a court order or express requirement of law.

2. Each Participating Health Care Provider shall, at all times, comply with all applicable Exchange policies and procedures (“VHIE Policies”). These VHIE Policies may be revised and updated from time to time upon reasonable written notice to all Participating Health Care Providers. Each Participating Health Care Provider is responsible for ensuring it has, and is in compliance with, the most recent version of these VHIE Policies.

3. Each Participating Health Care Provider is responsible for ensuring that it has the requisite, appropriate, and necessary internal policies for compliance with applicable laws and VHIE Policies, including, without limitation, a sanctions policy. In the event of a conflict between VHIE Policies and Participating Health Care Provider’s own policies and procedures, the Participating Health Care Provider shall comply with the policy that is more protective of individual privacy and security. Participating Health Care Provider shall enforce its policies and procedures by appropriately sanctioning individuals within its workforce and staff who violate its policies, VHIE Policies, or federal or state law.

4. Each Participating Health Care Provider shall have policies and procedures to promote the integrity of the PHI it maintains and makes available to the VHIE and the accuracy, relevance and completeness of such PHI. In the event PHI is amended either at the request of the Individual pursuant to the HIPAA privacy regulations or Vermont law or to otherwise correct inaccuracies, the Participating Health Care Provider making the amendment shall notify the VHIE and other Participating Health Care Providers who have accessed such PHI of such amendments.

5. Each Participating Health Care Provider shall designate individuals who may access the VHIE to retrieve PHI for the treatment of patients. With regard to its designated workforce or staff members, the policies of the Participating Health Care Provider shall require that they:

- i. have or receive training regarding the confidentiality of PHI under the HIPAA Privacy and Security Regulation and all other applicable federal and state laws and they are obligated to protect PHI in compliance with such laws and VHIE Policies;
- ii only access the Exchange for purposes of treatment of an individual or necessary health care operations;
- iii hold any passwords, or other means for accessing the Exchange, in a confidential manner and to release them to no other individual;
- iv comply with both VHIE Policies and those of the Participating Health Care Provider and that their workforce and staff members understand that their failure to do so may result in

their exclusion from the Exchange and may constitute cause for disciplinary action.

6. Each Participating Health Care Provider shall include in its policies and procedures that an individual shall not be denied treatment on the basis that he or she chooses not to consent to make his or her PHI available to the VHIE or who refuses to provide consent to the access by a Participating Health Care Provider to PHI made available by the individual to the VHIE.

Policy on Patient Consent to Opt In to VHIE

Definitions

“Consent” shall mean an individual’s act of giving permission to a Participating Health Care Provider in the Vermont Health Information Exchange (“VHIE” or “Exchange”) to make the individual’s protected health information (“PHI”) available on the Exchange to, or to permit access to it by, Participating Health Care Providers who are also involved in the treatment of the individual.

“De-identified” shall mean that all identifying information related to an individual as set forth in the HIPAA Privacy and Security Rule, 45 CFR § 164.514(b), are removed from the protected health information.

“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 administrative and management activities all as defined in the HIPAA Privacy Regulations, 45 CFR §164.501.

A “Participating Health Care Provider” shall mean a health care provider, including any health care organization, that has executed an effective VHIE Data Services and Participation Agreement with VITL.

“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.

“Treatment” shall mean the provision, coordination, or management of health care and related services by one or more health care providers.

Policy

Consent to Opt In

No protected health information (“PHI”) of any individual shall be made available over the Exchange unless the individual has specifically consented in writing to make his or her PHI available to treating Participating Health Care Providers on the Exchange for the purposes of treatment, payment for treatment and health care operations. VITL shall only make available on the Exchange the PHI of individuals who have a current written consent for such availability on record.

The individual shall be provided educational information from VITL regarding the Exchange and its use by Participating Health Care Providers for treatment purposes. This information shall advise individuals of the ability of Participating Health Care Providers to access their PHI for treatment and also that VITL will

provide individuals with the ability to direct access to their PHI to Participating Health Care Providers if they consent to make their PHI available on the Exchange. 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. The individual shall be provided a Notice of Privacy Practices by the Participating Health Care Providers, as well.

Consent to access or to make PHI available on the Exchange may be revoked pursuant to the Participating Health Care Provider's Procedures as set forth in its Notice of Privacy Practices. The Participating Health Care Provider will promptly notify VITL in the event that an individual has revoked consent for his or her PHI to be available on the Exchange.

Consent to Opt In Procedure

VITL shall provide educational materials about the Exchange to Participating Health Care Providers, who shall make it available to patients. Participating Health Care Providers shall seek written or digital consent from patients to opt in and participate in the Exchange, and if consent to opt in is obtained, either enter that consent into their electronic health records system, which will then automatically notify the Exchange that the patient has opted in, or send the written consent form to VITL to enter with the Exchange. Participating Health Care Providers who include drug or alcohol treatment programs will specify an expiration date for the consents obtained from their patients. VITL shall establish a mechanism for Participating Health Care Providers to confirm that an individual has consented to opt in and shall facilitate the renewal of consents which have expiration dates.

Form of Consent to Opt In

An individual's consent to opt in to participate in the Exchange (1) shall be in writing, (2) shall be effective indefinitely unless it specifies an expiration date or is revoked and (3) shall include statements substantially similar to the following:

- I give my consent to all Participating Health Care Providers involved in my health care, including mental health, and substance abuse treatment providers, to access and use or disclose my protected health information to the Exchange for my treatment, for payment for my treatment and for health care operations consistent with the federal HIPAA privacy regulations and Vermont law.
- I consent to the disclosure of my protected health information by my Participating Health Care Provider electronically through the Exchange to any health care providers, including mental health and substance abuse treatment providers, for the purpose of my treatment, and I understand that I may direct that my Participating Health Care Providers obtain access to my protected health information on the Exchange.
- My consent includes the re-disclosure of protected health information received from a drug or alcohol treatment program for my treatment.

- I have received information from VITL regarding the Exchange and am aware that the privacy practices of my Participating Health Care Provider are described in its Notice of Privacy Practices.
- I am aware that de-identified information taken from my protected health information may be used for research, quality improvement and public health purposes.
- This consent is subject to my revocation/termination at any time except to the extent it has already been accessed by Participating Health Care Providers, including the inclusion of my information from the Exchange in the records of Participating Health Care Providers who are providing treatment to me.
- My consent is effective indefinitely unless either it relates to PHI from a drug or alcohol treatment program, or I choose to revoke or terminate my consent at an earlier date.
- I understand that I will be notified no less than once every five years of my right to revoke my consent.

Consent may be given in writing by an Individual's legal Representative as authorized by law.

Notification of Individual's Right to Revoke Consent

No less than once every five years, VITL shall notify and remind individuals who have consented to have their PHI accessible over the Exchange of his or her consent and of his or her right to revoke consent.

Individual Access to PHI on Exchange

An individual shall be provided the right of access to his or her PHI available on the Exchange through his or her Participating Health Care Provider or through VITL on behalf of a Participating Health Care Provider where so arranged. Individuals may direct that certain Participating Health Care Providers obtain access to his or her protected health information on the Exchange in addition to any Participating Health Care Providers being able to access the PHI for treatment of that individual.

Access by Treating Participating Health Care Providers Only

All Participating Health Care Providers on the Exchange shall have policies and procedures 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 Exchange. Participating Health Care Providers shall comply with the HITECH Act of 2009 and HIPAA privacy and security rule and all applicable state laws.

Re-disclosure Prohibition Notice

The Exchange shall provide notification to Participating Health Care Providers who access PHI on the Exchange substantially similar to the following statements:

- Information disclosed to you on the Exchange may include PHI received from a drug or alcohol treatment program protected by

Federal confidentiality rules, 42 CFR Part 2, which prohibit you from making further disclosure unless it is expressly permitted by a specific written consent from the subject individual or as otherwise permitted by the Rule. The Federal rules restrict use of information protected under 42 CFR Part 2 from criminal investigations or prosecutions of an alcohol or drug abuse patient.

Patient Request for Audit Report

An individual may request an Audit Report of access to his or her PHI on the Exchange by contacting VITL's Privacy Officer. VITL shall provide the requested Audit Report within 10 calendar days.

Revocation

An individual who has signed a written consent to permit his or her PHI to be available on the Exchange for treatment purposes shall be entitled to revoke such consent by providing written notice of revocation to VITL or to a Participating Health Care Provider with whom he or she has a provider/patient relationship. The Participating Health Care Provider shall promptly forward any such written notice of revocation to VITL. VITL shall effect such revocation of an individual's consent to opt in to the Exchange no later than 5 business days after receiving the notice of revocation.

Policy on Secondary Use of Identifiable PHI on VHIE

Definitions:

“Authorization” shall mean an individual’s act of giving specific written permission for the use or disclosure of his or her protected health information in a form which meets all of the requirements set forth in the HIPAA Privacy Regulations, 45 CFR § 164.508.

“*De-identified*” shall mean that all identifying information related to an individual as set forth in the HIPAA Privacy and Security Rule, 45 CFR Section 164.514 (b), are removed from the protected health information.

“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.

A “Participating Health Care Provider” means a health care provider, including any health care organization, who has executed an effective VHIE Data Services and Participation Agreement with VITL.

“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.

“Treatment” shall mean the provision, coordination, or management of health care and related services by one or more health care providers.

Policy

Identifiable protected health information (“PHI”) shall not be made available on the Exchange for any purposes other than the treatment of the subject individual, payment related to that treatment or necessary health care operations of the Participating Health Care Provider who accesses PHI for treatment purposes. Consequently, *Identifiable* PHI on the Exchange shall not be made available by VITL without the patient’s specific authorization:

- To any insurance carrier or other third party payer for payment or any purpose;
- To an employer for any purpose, unless the employer is a Participating Health Care Provider providing

treatment to the individual, and the individual has provided consent to opt in to the Exchange;

- To anyone for the purpose of marketing products or services or for any other commercial purpose;
- To anyone for the purpose of research; or
- To any member of law enforcement without a court order or express requirement of law.

De-identified PHI

In the event that *de-identified* PHI is requested for clinical research from data maintained for the Exchange, VITL, through its Executive Committee, or its designee Committee, shall review the request to determine if it should be approved. In making its determination, the Committee may consider any Institutional Review Board approval supporting the request. If approved, VITL, through an approved Data Subcontractor, shall prepare the *de-identified* PHI requested and shall be reimbursed for its expenses by the requesting party. The requesting party shall be required to provide contract assurances that no attempt shall be made by it to "identify" the *de-identified* PHI from the Exchange provided for the approved research.

VITL shall make available upon request an annual report of all approved requests for de-identified PHI from the Exchange, including the date of the de-identified data release, the entity to which the data was released, and a summary of the research involved.