



# **HIE Consent Addendum to the 2019-2020 HIE Plan FY2020 VITL Budget Adjustment**

**Staff Recommendation**

February 5, 2020

# HIE Consent Addendum to the 2019-2020 Health Information Exchange (HIE) Strategic Plan

# GMCB Oversight of Health Information Exchange Plan

## ➤ Review and approve Vermont Health Information Exchange Strategic Plan (HIE Plan)

- 18 V.S.A. § 9375: The Board is charged to review and approve Vermont's statewide Health Information Technology Plan – now known as the Health Information Exchange Strategic Plan (HIE Plan) – “to ensure that the necessary infrastructure is in place to enable the State to achieve the principles expressed in section 9371 of this title [Principles for Health Care Reform].” 18 V.S.A. § 9351(a): The HIE Plan “shall include 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” and “shall include standards and protocols designed to promote patient education, patient privacy, physician best practices, electronic connectivity to health care data, and, overall, a more efficient and less costly means of delivering quality health care in Vermont.”
- The Board approved the 2019-2020 HIE Strategic Plan on 11/20 with one condition: To comply with Sec. 4 of Act 53 (2019), DVHA shall return to the Board prior to March 1, 2020, to propose an addendum to the 2019-2020 HIE Plan (eff. 3/1/2020) to reflect opt-out consent and document how opt-out consent will be managed.
- Proposed amended HIE Plan includes an addendum on Protocols for Provider Access to Protected Health Information on VHIE (Appendix D).

## ➤ Review and approve Connectivity Criteria

- Proposed amended HIE Plan also includes additional Connectivity Criteria documentation (Appendix B).

# Revised Proposal

On January 22, DVHA proposed an amendment to the HIE Plan, including an addendum on HIE Consent. In response to Board member questions regarding commercial use of data, including de-identified data, GMCB and DVHA staff have developed the following revised language:

## **Original:**

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 such information is permitted.

## **Replace with:**

De-identified patient information may be used for research, quality review, population health management and public health purposes. No re-identification of de-identified information shall be permitted, and de-identified information shall not be made available for any commercial use, including but not limited to the sale of such information or the use of such information for marketing purposes.

# Reminder: Principles for HIE Plan Review

In 2018, staff suggested four principles for review of the HIE Plan, building on the statutory requirements discussed above; these were also used to assess the 2019-2020 Plan.

1. \*\* Is the HIE Plan consistent with the requirements of V.S.A. 18 § 9351?
2. Is the HIE Plan consistent with the Principles for Health Care Reform in V.S.A. 18 § 9371, and will it help achieve the State's health reform goals?
3. Is the HIE Plan consistent with other relevant legislation?  
\*\* See Sections 4 and 5 of Act 53 of 2019
4. \*\* Does the HIE Plan incorporate national best practices and expertise as well as feedback from Vermonters, including key HIE constituents (VITL, State of Vermont HIE stakeholders, and other private HIE providers), health care providers, and individuals seeking care?

\*\* = *Principles most relevant to HIE Consent changes*

# Assessing the HIE Consent Addendum to the HIE Plan

## 1. Alignment with Statutory Requirements

18 V.S.A. § 9351(a): The HIE Plan “shall include standards and protocols designed to promote patient education, patient privacy, physician best practices, electronic connectivity to health care data, and, overall, a more efficient and less costly means of delivering quality health care in Vermont” and, effective March 1, “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.”

- The HIE Consent Addendum establishes the standards and protocols necessary to protect patient privacy while complying with statutory requirements in 18 V.S.A. § 9351(a).

# Assessing the HIE Consent Addendum to the HIE Plan

3 and 4. Alignment with Relevant Legislation and Stakeholder Engagement.

Act 53 and the Board's principles for review also both emphasize stakeholder engagement in HIE Plan development and opt-out consent implementation; Act 53 specifies terms for stakeholder engagement and public communication in opt-out implementation.

- DVHA and partners have worked closely with the HIE Steering Committee, advocates, and other key stakeholders to ensure that stakeholder concerns are addressed throughout the opt-out consent policy implementation.
- DVHA's stakeholder engagement efforts are described in DVHA's Act 53 Sec. 5 reports, submitted August 1, November 1, and January 15.
- The Board has heard favorable public comment regarding DVHA's work to engage diverse constituencies and vulnerable populations in this effort at prior meetings, including its hearing to review the 2019-2020 HIE Plan.

# Public Comment: HIE Consent Addendum

- Special public comment period was posted Wednesday, 1/22 to Sunday, 2/2.
  - 0 public comments received



# Staff Recommendation

- Staff recommend **approving the revised 2019-2020 HIE Plan, effective March 1, 2020**, with the following change to Sec. 3.A. of the HIE Plan Addendum:

## **Original:**

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 such information is permitted.

## **Replace with:**

De-identified patient information may be used for research, quality review, population health management and public health purposes. No re-identification of de-identified information shall be permitted, and de-identified information shall not be made available for any commercial use, including but not limited to the sale of such information or the use of such information for marketing purposes.

- Staff recommend **sunsetting the 2014 HIE Consent Policy on February 29, 2020**.

# FY2020 VITL Budget Adjustment

# GMCB Oversight of VITL

- **Review and approve VITL budget.**

- **18 V.S.A. § 9375(b)(2)(C):** The Board is required to “Annually review and approve the budget, consistent with available funds, of the Vermont Information Technology Leaders, Inc. (VITL). This review shall take into account VITL's responsibilities pursuant to section 9352 of this title and the availability of funds needed to support those responsibilities.”
  - Under 18 V.S.A. § 9352(c)(1), VITL is “designated... to operate the exclusive statewide health information exchange network.” GMCB first reviewed and approved VITL’s budget in 2016.
- Prior to 2018, GMCB also reviewed VITL’s core activities; this was removed from the Board’s duties by Act 187 of 2018.

# Summary: VITL FY2020 Budget Adjustment

**VITL's request for an amended budget order reflects its expanded scope of work. The key areas of increase include State funding for:**

- Collaborative Services
  - Phase 1: \$1,410,05
  - Phase 2: \$93,750
- Consent management: \$162,500
- EMS/Emergency Services: \$200,00

**Revenue: \$7,567,133 (an increase of \$1.5 million over approved Budget)**

- State funding increase of \$1.8 million
- OneCare Vermont funding increase of \$26,000
- Collaborative Services funding decrease of \$399,667
  - Offset by increase in State funding

# Summary: VITL FY2020 Budget Adjustment

## Expenses: \$7,750,158 (an increase of \$1.5 million over approved Budget)

- Consulting and Legal expenses increase to support expanded scope of work
  - Consulting expense increase of \$801,775
  - Legal expenses increase of \$154,098
  - Increase of \$157,720 for network services
  - Additional staffing costs of \$180,087
- Contingency expense of \$150,000 added to support unknowns of Collaborative Services project expansion

## FY2020 Operating Loss

- Revenue and Expense increase approximately equal, slight decrease in operating loss
  - Original FY20 Budget -\$186,488; Amended FY20 Budget -\$183,025
- Days Cash on Hand decrease due to timing of Collaborative Services Phase 2 implementation. Expectation that DCOH will replenish in next budget cycle.
  - Original FY20 budget 117 DCOH; Amended FY20 budget 84 DCOH

# Budget Review Criteria

The Board has in the past adopted specific principles to assess VITL's budgets, described on the GMCB website. Staff recommend that the Board utilize these criteria in their review of VITL's budget, focusing on Transparency, Alignment with HIE Goals, and Stakeholder Recommendation:

1. The review process will be transparent and will incorporate public input.
2. The Board will review VITL's budget in order to determine whether they reflect a strategy and priorities consistent with the State's health care reform goals and the Health Information Exchange (HIE) Plan. The Board will not direct the technical details of VITL's work or the details of VITL's contractual relationship with the State.
3. The Board's review process must be structured and timed in order to assist the Department of Vermont Health Access (DVHA) and VITL in negotiating timely, effective grant agreements each year.
4. The process must result in Board decisions that are sufficiently clear to enable VITL to do its work and DVHA to support that work without requiring repeated clarification or intervention by the Board.

# Assessing the FY2020 VITL Budget Adjustment

1. Transparency: VITL complied with initial FY2020 budget guidance and presented updated financials in August and November, indicating the need for a budget adjustment at public GMCB meetings. A special public comment period will be open from Wednesday, 1/22, through Sunday, 2/2.
2. Alignment with HIE Plan Goals: Alignment is assessed relative to the goals of the HIE Strategic Plan (approved in November, available at <https://gmcboard.vermont.gov/hit/plan>). Staff find that VITL's adjusted budget will advance the goals of the HIE Plan: 1) Create one health record for every person; 2) Improve health care operations; and 3) Use data to enable investment and policy decisions; this budget adjustment is in response to changes in VITL's contracts with DVHA, which are built on HIE Plan goals, and specifically supports foundational and exchange services.
3. Review Process Timing: The review process for this budget adjustment was developed in partnership with DVHA and VITL, around the DVHA-VITL contracting timeline.
4. Order Clarity: The Board will ensure that written decisions stemming from this budget adjustment are sufficiently clear.

# Public Comment: FY2020 VITL Budget Adjustment

- Special public comment period was posted Wednesday, 1/22 to Sunday, 2/2.
  - 0 public comments received



# Staff Recommendation

- Staff recommend **approving the adjusted VITL FY2020 budget as presented**, with one condition (remaining from original budget approval order):
  - VITL shall present quarterly to the Board for the duration of FY2020. VITL's quarterly presentations should include updated information regarding Governance and Operations; Finances; and Technology; and the Collaborative Services Initiative.