

**STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD  
Rule 7.000: Data Release**

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## **7.100 General Provisions**

### **7.101 Authority**

The Board adopts this Rule pursuant to 18 V.S.A. §§ 9404 and 9410.

### **7.102 Purpose**

The Green Mountain Care Board (“the Board”) is charged in 18 V.S.A. § 9410 with establishing and maintaining a unified health care database reflecting health care utilization, costs, and resources in Vermont, and health care utilization and costs for services provided to Vermont residents in another state. Health insurers, health care providers, health care facilities, and governmental agencies are required to file reports, data, schedules, statistics, and other information determined by the Board to be necessary for this purpose. Subject to certain legal restrictions and limitations, the Board must make the data available as a resource for individuals and entities to review health care utilization, expenditures, and performance in Vermont. This rule establishes processes by which the Board will make data available to support legitimate and beneficial research and analysis, while maintaining appropriate protections for confidential data.

### **7.103 Applicability**

This rule applies to individuals or entities that seeking to receive or have received Healthcare Claims and Eligibility Data from the Board.

### **7.104 Definitions**

For purposes of this Rule:

- (1) “Analytic Table” means a file developed to answer specialized questions with detailed information related to claims, patients, health insurers, and/or health care providers.
- (2) “Authorized User” means a person authorized by the Board to access restricted data under the terms of a Data Use Agreement.
- (3) “Board” means the Green Mountain Care Board established in Title 18, chapter 220 of the Vermont Statutes Annotated, the Data Governance Council established by the Board, Board staff, or other designee of the Board.
- (4) “Data Governance Council” or “Council” means the committee established by the Board and given responsibility for data stewardship, data quality, data privacy and security, financial sustainability of VHCURES, and data release.
- (5) “Data set” means a collection of logical individual data records, regardless of format.
- (6) “Data Use Agreement” or “DUA” means a written agreement detailing an Authorized User’s commitment to data privacy and security and setting forth restrictions, limitations, and conditions on the use and disclosure of restricted data.
- (7) “Data Use and Disclosure Procedures Guide” means the publicly-available manual created and maintained by the Data Governance Council specifying the requirements that all persons seeking or receiving health care claims and eligibility data from the Board must comply with in order to maintain the privacy and security of the data.

- (8) “Eligibility data” means demographic information for each individual member enrolled for medical or pharmacy benefits for one or more days of coverage at any time during a reporting period.
- (9) “Council Chair” means the chair of the Data Governance Council.
- (10) “Health care” has the same meaning as in 45 C.F.R. § 160.103.
- (11) “Health care provider” has the same meaning as in 18 V.S.A. § 9432.
- (12) “Health Insurer” has the same meaning as in 18 V.S.A. § 9410(j)(1).
- (13) “Individual User Affidavit” means the form created and maintained by the Board in which Authorized Users and Principal Investigators identified on a DUA acknowledge and affirm that they have read, understand, and agree to abide by the DUA’s terms.
- (14) “Insured” has the same meaning as in 18 V.S.A. § 9418(a)(10).
- (15) “Member” means the insured subscriber and any other person(s) eligible for health care benefits under the subscriber’s policy, such as a spouse or dependent of the subscriber.
- (16) “Patient” means any person in a data set that is the subject of the activities of the claim performed by the health care provider.
- (17) “Person” means any natural person, corporation, municipality, the State of Vermont or any department, agency, or subdivision of the State, and any partnership, unincorporated association, or other legal entity.
- (18) “Personally identifiable information” means information relating to an individual that contains direct or indirect identifiers to which a reasonable basis exists to believe that the information can be used to identify an individual.
- (19) “Principal Investigator” means the individual designated by an Authorized User to be responsible for ensuring compliance with the requirements in a DUA. An Authorized User may also be a Principal Investigator.
- (20) “Public Use Data” means a data set made available to the public under section 6.304 of this rule that contains only Level 1 data.
- (21) “Secure Analytic Environment” or “SAE” means a secure, virtual remote desktop, server, or other portal that provides access to the data set(s) through individual accounts provided to Authorized Users as specified in their Individual User Affidavit.
- (22) “Standard report” means a recurring report derived from VHCURES data that is intended to provide information pertaining to claims, members, patients, health insurers, health insurance, health care providers, and/or health care services.
- (23) “State Entity” any department, agency, or subdivision of the State of Vermont that is partially or fully funded by the State; performing research directed by the State; and under the direction of a State official.
- (24) “Submission and Release Schedule” or “SRS” means the manual approved by the Data Governance Council specifying additional data submission requirements, if any, and

classifying data elements by the risk that release would pose for reidentification of individuals and disclosure of proprietary information.

- (25) “Subscriber” means the individual responsible for payment of premiums or whose employment is the basis for eligibility for membership in a health benefit plan.
- (26) “Vermont Health Care Uniform Reporting and Evaluation System” or “VHCURES” means the system for the collection, management and reporting of eligibility, claims and related data.
- (27) “Vermont Uniform Hospital Discharge Data Set” or “VUHDDS” means the data set consisting of inpatient discharge data, outpatient procedures and services data, and emergency department data.

## **7.200 Release of Health Care Claims and Eligibility Data Sets**

### **7.201 Principles**

- (a) The Board, through its Data Governance Council, shall make its Data Use and Disclosure Procedures Guide and Data Stewardship Principles and Policies available on its website to help guide decision-making on requests for DUAs and data disclosure.
- (b) The requirements, procedures, and conditions under which Persons other than the State of Vermont may have access to health care claims and eligibility Data and related information received or generated by the Board pursuant to this Rule shall depend on the requestor and the characteristics of the particular information presented.

### **7.202 Categories of Data and Information for Use and Disclosure**

- (a) The Data Governance Council shall, in the Submission and Release Schedule classify data elements as “unrestricted,” “restricted,” or “unavailable” based on the level of risk that release of the data elements would pose for re-identification of individuals and disclosure of proprietary information.
- (b)(1) Level 1: Data elements identified as “unrestricted” and Analytic Tables that include or are derived from such data elements may be available for general use and public release as Public Use Data, Analytic Tables, or Standard Reports under section 6.304 of this Rule.
- (2) Level 2: Data elements identified as “restricted” shall not be available for use or release outside the Board unless permitted under the terms of an executed DUA.
- (3) Level 3: Analytic Tables that include or are derived from Level 2 data elements shall not be available for use or release outside the Board unless permitted under the terms of an executed DUA.
- (4) Level 4: Data elements or Analytic Tables identified as “unavailable,” or which are not designated as either Level 1, 2, or 3 shall not be available for use or release outside the Board in any data set or disclosed in publicly released reports in any circumstance.

### **7.203 Secure Analytic Environment Access**

No person outside the Board may have Secure Analytic Environment access unless permitted under the terms of an executed DUA and as specified in an Individual User Affidavit.

#### **7.204 Release of Public Use Data, Analytic Tables, and Reports**

- (a) If beneficial to the public, usable, and technically feasible, the Board may from time to time publish Public Use Data, Analytic Tables, or Standard Reports including or derived from Level 1 data elements.
- (b) Public Use Data, Analytic Tables, or Standard Reports published under subsection (a) of this section shall:
  - (1) be made available to the public for no or minimal cost by Web-based electronic data download;
  - (2) contain clear and conspicuous explanations of the characteristics of the data, such as the dates of the data contained in the files, the absence of costs of care for uninsured patients or nonresidents, underlying methodology, and other disclaimers that provide appropriate context.
- (c) Public Use Data, Analytic Tables, or Standard Reports published under subsection (a) of this section shall not:
  - (1) include any data that could be used to determine or ascertain information about insurers or providers that would be deemed proprietary, such as the amount paid by identified insurers or to identified providers for individual procedure codes;
  - (2) include any data containing personally identifiable information or that otherwise may enable the identification of members, patients, employer groups, purchaser groups, providers of abortion services, or physicians; or
  - (3) reveal detailed information about insurers or providers that could be deemed confidential under 1 V.S.A. § 317(c)(9).

#### **7.205 Data Linkage**

- (a) No person outside the Board may link VCHURES or VHUDDS data, including public use data, with any data sources containing personally identifiable information or other data sources that could result in the identification of individuals in the data set without the express written consent of the Board.
- (b) A person may request authorization to link VCHURES or VHUDDS data with identifiable record data sources. Requestors must provide a list of data sources to which the data would be linked and identify which data sources include personally identifiable information including the specific identifiers within those data sources.
- (c) If the Board denies a data linkage request, it shall provide a written explanation to the requestor identifying specific reasons for the denial.

#### **7.206 Data Rediscovery**

- (a) No person outside the Board may redisclose VCHURES or VHUDDS data or extracts generated from the data to external agents such as contractors, subcontractors, grantees, and subgrantees without the express written consent of the Board.

- (b) A person may request authorization to redisclose VCHURES or VHUDDS data. Requestors must provide a full list of individuals who will have access to the data upon the effective date of an approved redisclosure. If filed with a DUA application, a redisclosure request will provide a list of data users in the application.
- (c) Principal Investigators shall ensure that individual user affidavits are submitted to the Board for all data users prior to accessing VCHURES or VHUDDS data.
- (d) If the Board denies a data linkage request, it shall provide a written explanation to the requestor identifying specific reasons for the denial.

### **7.300 Data Use Agreements; Application and Review**

#### **7.301 Application**

- (a) Unless prohibited under subsection (b) of this section, a person may request authorization to access and use the Secure Analytic Environment, data sets containing Level 2 data elements, or Level 3 Analytic Tables by submitting an application to the Board on a form and in a format specified by the Data Governance Council in the Data Use and Disclosure Procedures Guide. The application must:
  - (1) Include the Principal Investigator's name, address, phone number, e-mail address, organizational affiliation, and professional qualifications;
  - (2) Identify all person(s) who may have access to or use the data, including, their names, addresses, phone numbers, e-mail addresses, organizational affiliations, and professional qualifications.
  - (3) Identify the data requested, including:
    - (A) Time period;
    - (B) Specific data elements;
    - (C) Specific justification of the need for each requested "Level 2" or "restricted" data element;
    - (D) Minimum needed specificity of the requested "Level 2" or "restricted" data elements, including the manner(s) in which those data may be recoded by the Board to be less specific; and
    - (E) Requested data layouts or formats.
- (b) Except for State Entities, any person that wishes to receive access to the Secure Analytic Environment, data sets containing Level 2 data elements, or Level 3 Analytic Tables must, prior to submitting an application pursuant to subsection (a) of this section, complete and submit a Limited Use Data Request Form.
- (c) The pre-application review form shall require the prospective applicant to describe its organization, the kinds of data it plans to request, and how it intends to use the data. The form will also require the prospective applicant to indicate their consent to the restrictions

and limitations on the use and disclosure of the data contained in this Rule and the DUA. The Data Governance Council may amend the form from time to time and use it to assist in determining whether to allow a prospective applicant to submit an application.

- (d) Materials submitted to the Data Governance Council in connection with an application for a DUA, including any pre-application review form, are subject to disclosure under Vermont's Access to Public Records Act, 1 V.S.A. §§ 315-320, unless specifically exempted under 1 V.S.A. § 317(c), and shall be posted to the Board's website.

### **7.302 Review of Applications**

- (a) The Data Governance Council shall approve or deny each application submitted to the Board for access to the Secure Analytic Environment, data sets containing Level 2 data elements, or Level 3 Analytic Tables. The Council shall also solicit and consider public comment relating to DUA applications.
- (b) By delegation of the Council, the Council Chair may make decisions on requests for use and disclosure of data, including whether to defer any decisions on data use and disclosure or other issues of data governance and stewardship to the Board.
- (c) The Data Governance Council may approve Secure Analytic Environment access, or release of data sets containing Level 2 data elements, or Level 3 Analytic Tables only when satisfied as to the following:
  - (1) The application submitted is complete and the Authorized User and Principal Investigator have signed the application;
  - (2) Procedures to ensure the confidentiality of any patient data or other confidential data are documented;
  - (3) The qualifications of the investigator and staff, as evidenced by:
    - (A) credentials, training and previous research; and
    - (B) an affiliation with a university, private research organization, health care facility, state agency, or other qualified institutional entity;
  - (4) No other state or federal law or regulation prohibits release of the requested information; and
  - (5) The data will be used in a way that aligns with GMCB's statutory responsibilities; federal and state data protection privacy requirements; and the data stewardship policies adopted and amended from time to time by the Data Governance Council, which the Board shall make available on its website.
- (d)(1) If the Council denies the application, it shall give written notice of the basis for denial and the requestor shall have leave to resubmit or supplement the application to address the Council's concerns. Any adverse decision regarding an application may be appealed within 30 days by filing a request for hearing with the Board.

- (2) Hearings under this section shall be conducted by the Board in accordance with 3 V.S.A. §§ 809, 809a, 809b, and 810. Decisions of the Board under this section shall comply with the requirements of 3 V.S.A. § 812 and may be appealed pursuant to 18 V.S.A. § 9381.

### **7.303 Restrictions on Use and Disclosure of Data**

An Authorized User and the Principal Investigator(s) are subject to the requirements and limitations described in this section and shall, in addition, sign a DUA acknowledging and accepting these provisions and other provisions specified by the Board:

- (1) Use of data for any purpose other than as specified in the application and approved by the Board shall be prohibited;
- (2) Appropriate safeguards to protect the confidentiality of the data and prevent unauthorized use of the data shall be established;
- (3) The use or disclosure, sale, or dissemination of the data set or statistical tabulations derived from the data set to any person or organization for any purpose other than as described in the application and as permitted by the Data Use Agreement shall be prohibited without the express written consent of the Board;
- (4) The use or disclosure, sale, or dissemination of any information contrary to law shall be prohibited;
- (5) No person shall disclose the identity of patients of enrollees, members, beneficiaries, patients, employer groups, purchaser groups, or abortion services providers and may not disclose any direct findings, listings, or other information that could be used to identify one or more of these individuals or groups;
- (6) No person shall disclose any of the information that has been encrypted or removed from the data;
- (7) Prior to calculating aggregated values based on observations or elements, the Authorized User must censor any cell in a data table with a count of 10 or fewer along with another cell in the same row and another cell in the same column to prevent the identification of the cell with a count of 10 or fewer in a table;
- (8) The publication, dissemination, or disclosure of any information that could be used to identify providers of abortion services shall be prohibited;
- (9) Any use or disclosure of the information that is contrary to a DUA or this rule shall be reported immediately to the Board and, if required by the Board under the terms of the DUA, to the Centers for Medicare and Medicaid Services;
- (10) The Board and the “Vermont Healthcare Claims Uniform Reporting and Evaluation System” or “VHCURES” shall be acknowledged as the source and steward of the data in any and all public reports, publications, or presentation generated from VHCURES data;
- (11) The Vermont Department of Health and the “Vermont Uniform Hospital Discharge Data Set” or “VUHDDS” shall be acknowledged as the source and steward of the data in any and all public reports, publications, or presentation generated from VUHDDS data;

- (12) Written materials shall prominently state that the analyses, conclusions, and recommendations drawn from the data are solely those of the requestor or principal investigator and are not necessarily those of the Board;
- (13) The Board may request a copy of any proposed report or publication containing information derived from the data prior to any publication or release to allow the Board to review the proposed report or publication and confirm that the conditions of the DUA have been applied;
- (14) Principal Investigators shall review any proposed report or publication containing information derived from the data prior to any publication or release to confirm that the conditions of the agreement have been applied.
- (15) Data elements shall not be retained for any period of time beyond that necessary to fulfill the requirements of the data request;
- (16) Within 30 days after scheduled completion date of the project, the requestor shall delete, destroy, or otherwise render the data unreadable, so certifying by submitting a written notice to the Board or by reapplying for approval if the end date of the project needs to be extended;
- (17) Failure to adhere to the DUA or the limitations and restrictions detailed above will be cause for immediate recall of the data, revocation of permission to use the data, and grounds for criminal, civil, or administrative actions under applicable law.

#### **7.400 Modes and Costs of Data and Information Access**

##### **7.401 Modes of Access**

- (a) Persons with access to VHCURES or VHUDDS data sets may receive extracts generated from the data or access the data set through a Secure Analytic Environment.
- (b) Upon request, the Board or its designated vendor may provide analytic and information services for members of the public.

##### **7.402 Prices, Fees, and Rates**

- (a) Data sets containing Level 2 data elements approved for release under this Rule shall be made available to Authorized Users at the maximum allowable cost under law to program and process the requested data set.
- (b) Level 3 Analytic Tables shall be made available to Authorized Users at the maximum allowable cost under law for time spent extracting data and performing similar tasks necessary to create the file.
- (c) Secure Analytic Environment access will be made available to Authorized Users at the maximum allowable cost under law.
- (d)(1) Payments are due in full from the Authorized User within thirty days of receipt of Board data sets, files, reports, or other released material.
  - (2) Payments are due in full prior to receiving access to the Secure Analytic Environment.

- (e) Analytic and Information services shall be made available at the maximum allowable cost under law for time spent extracting data and performing similar tasks necessary to comply with the request.
- (f) Fees shall be waived for state entities.
- (g) No later than December 31 of each year, the Data Governance Council will issue a report on prices, fees, and rates for VHCURES and VUHDDS data sets, Analytic Tables, and Secure Analytic Environment access.

## **7.500 Enforcement**

### **7.501 Sanctions for Violations**

- (a) Violations of data confidentiality requirements, data use limitations or any other provisions of 18 V.S.A. § 9410, this rule, the Submission and Release Schedule, or the DUA shall be subject to sanction by the Board as set out in 18 V.S.A. § 9410(g) and any other powers granted to the Board to investigate, subpoena, or seek other legal or equitable remedies, including the power of the Board to enforce the terms of a DUA after written notice and an opportunity for review or hearing.
- (b) Hearings under this section shall be conducted by the Board in accordance with 3 V.S.A. §§ 809, 809a, 809b, and 810. Decisions of the Board under this section shall comply with the requirements of 3 V.S.A. § 812 and may be appealed pursuant to 18 V.S.A. § 9381.

## **7.600 Other Matters**

### **7.601 Waiver of Rules**

In order to prevent unnecessary hardship or delay, in order to prevent injustice, or for other good cause, the Board may waive the application of any provision of this rule upon such conditions as it may require, unless precluded by the rule itself or by statute.

### **7.602 Conflict**

In the event this Rule or any section thereof conflicts with a Vermont statute or a federal statute, rule, or regulation, the Vermont statute or federal statute, rule, or regulation shall govern.

### **7.603 Severability**

If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provisions to other persons or circumstances shall be not affected thereby.

### **7.603 Effective Date**

This rule shall become effective \_\_\_\_\_.