MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF VERMONT HEALTH ACCESS AND THE GREEN MOUNTAIN CARE BOARD

A. Purpose

The Department of Vermont Health Access (DVHA) and The Green Mountain Care Board (GMCB) are entering into this Memorandum of Understanding (MOU) to effectuate the provisions of Title 18, Chapters 220 and 221 of the Vermont Statutes, including 18 V.S.A. § 9375 ("Duties"); § 9410 ("Health care database"); § 9382 ("Oversight of Accountable Care Organizations") (*eff.* 01/01/2018). This MOU shall supplement and provide guidance for the forthcoming DUA between DVHA and GMCB.

The purpose of this MOU is to meet two statutory duties:

1. DVHA and the GMCB shall exchange certain data and information involved in the current negotiation between DVHA and OneCare Vermont Accountable Care Organization for DVHA's Next Generation Model contract (Requisition Number: 03410-175-16; Release Date: April 7, 2016). Following the exchange of such data and information, the GMCB shall conduct a review and issue a nonbinding, advisory Medicaid rate opinion no later than December 31, 2016, in accordance with Section 13 of Act 113 (2016).
2. Under 18 V.S.A. § 9410(c), governmental agencies are required to submit to the GMCB reports, data, schedules, statistics, and other information regarding claims and enrollment data that the GMCB determines is necessary for purposes of establishing and maintaining a unified health care database. Such data submission is strictly governed by the provisions of Section 9410 and does not permit the public disclosure of any data that contains direct personal identifiers. 18 V.S.A. § 9410(h)(3)(D).

B. Agreement

1) DVHA and GMCB agree to and acknowledge the following:
   a) The information referenced in this MOU and in the accompanying DUA may be confidential under federal or state law, is currently used for negotiating a contract with OneCare Vermont ACO, and may contain health information protected under HIPAA, Medicaid, or both.
   b) The information referenced in this MOU and in the accompanying DUA may be protected health information, the disclosure of which is governed by 45 CFR §§ 164.502(a) *et seq*.
   c) The information referenced in this MOU and in the accompanying DUA is protected under Medicaid data sharing regulations, and its disclosure is governed by 42 CFR §§ 431.300(a) *et seq*.
   d) The GMCB agrees to comply with all HIPAA and Medicaid disclosure and security requirements and with all state and federal statutes, rules and regulations, as they apply to the exchange of data and information under this MOU and the accompanying DUA.
   e) Prior to the completion of contract negotiations between DVHA and OneCare as discussed in this MOU, but no later than December 31, 2016, the GMCB shall not

disclose, without DVHA's consent, information or analysis relating to the Medicaid advisory rate case for ACO services, as set forth in Act 113 (2016), that may impede such contract negotiations, unless the disclosure is required by law.

f) Notwithstanding ¶ 5, above, DVHA shall continue to provide the GMCB with such claims and enrollment data and information required by the GMCB to carry out its duties under Chapters 220 and 221 of Title 18, and Title 8 of the Vermont Statutes Annotated, and in accordance with 18 V.S.A. § 9410.

2) Amendments to this MOU, including changes in its terms or duration, must be in writing and executed by the Commissioner of DVHA and the Executive Director of the GMCB. All formal notices, amendments, questions, and contractual matters related to this MOU shall be sent to the signatories or their successors and shall be sent by e-mail.

3) This MOU is effective when fully executed and shall continue in full force and effect until terminated by one of the parties to the contract.

4) This MOU may be terminated under any of the following conditions:

   a) At any time by mutual written agreement of DVHA and the GMCB;
   b) By either party, with thirty (30) days written notice; or
   c) If federal or state laws, regulations or guidelines are modified or changed in such a manner that render this MOU unlawful or inappropriate.

Signatures

The provisions of this Memorandum of Understanding are hereby entered into and agreed to by virtue of the authorized signatures below:

Howard J. Pallotta General Counsel Department of Vermont Health Access 9/22/16 Date	Susan Barrett Executive Director Green Mountain Care Board 9/22/16 Date

DATA USE AGREEMENT

This Data Use Agreement ("Agreement") is entered into by and between **the State of Vermont, Agency of Human Services, by and through its Department of Vermont Health Access** ("Covered Entity") and **the State of Vermont, Green Mountain Care Board** ("Data User"), as of **September 23, 2016** ("Effective Date").

BACKGROUND INFORMATION

A. Covered Entity possesses Individually Identifiable Health Information that is protected under the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 (the "Privacy Rule"), promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA");

B. Data User has offered to perform certain Activities (as defined below) for Covered Entity, as set forth in Section 13 of Act 113 (2016) and performing certain Activities (as defined below) under 18 V.S.A. § 9410;

C. Covered Entity wishes to disclose a Limited Data Set (as defined below) to Data User for use by Data User in performance of the Activities;

D. Covered Entity wishes to ensure that Data User will appropriately safeguard the Limited Data Set in accordance with the HIPAA Privacy Rule; and

E. Data User agrees to protect the privacy of the Limited Data Set in accordance with the terms and conditions of this Agreement and the Privacy Rule.

Covered Entity and Data User agree as follows:

1. **Definitions.** All capitalized terms in this Agreement have the meanings identified in this Agreement or the Privacy Rule. The term "Individual" includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g). All references to PHI mean Protected Health Information.

2. **Obligations of Covered Entity.**

a. *Limited Data Set.* Covered Entity agrees to disclose information and data (the "Limited Data Set") to Data User as outlined in Exhibit A ("Initial Data Request"), and relating to:

(1) Data User's legislative charge to review the contractual arrangement between Covered Entity and OneCare Vermont Accountable Care Organization, LLC, and provide an advisory opinion, in accordance with Section 13 of Act 113 (2016);

and

(2) Data User's legislative charge to establish and maintain Vermont's All-Payer claims database (APCD) or the Vermont Health Care Uniform Reporting and Evaluation System (VHCURES), in accordance with 18 V.S.A. § 9410 and BISHCA Regulation H-2008-01.

3. **Obligations of Data User.**

a. *Performance of Activities.* Data User may use and disclose the Limited Data Set only in connection with:

(1) the performance of its legislative charge pursuant to Section 13 of Act 113 (2016), as it relates to contractual matters between Covered Entity and OneCare Vermont Accountable Care Organization, LLC, Requisition Number: 03410-175-16 (Release Date: April 7, 2016); and

(2) the performance of its legislative charge pursuant to 18 V.S.A. § 9410 and BISHCA Regulation H-2008-01, as it relates to establishing and maintaining Vermont's All-Payer claims database (APCD) or the Vermont Health Care Uniform Reporting and Evaluation System (VHCURES).

b. *Nondisclosure Except As Provided In Agreement.* Data User shall not use or further disclose the Limited Data Set except as permitted or required by this Agreement.

c. *Use Or Disclosure As If Covered Entity.* Data User may not use or disclose the Limited Data Set in any manner that would violate the requirements of the Privacy Rule if Data User were a Covered Entity.

d. *Identification Of Individual.* Data User may not use the Limited Data Set to identify or contact any Individual who is the subject of the PHI from which the Limited Data Set was created.

e. *Disclosures Required By Law.* Data User shall not, without the prior written consent of Covered Entity, disclose the Limited Data Set on the basis that such disclosure is required by law without notifying Covered Entity so that Covered Entity shall have an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, Data User shall refrain from disclosing the Limited Data Set until Covered Entity has exhausted all alternatives for relief.

f. *Safeguards.* Data User shall use any and all appropriate safeguards to prevent use or disclosure of the Limited Data Set other than as provided by this Agreement.

g. *Data User's Agents.* Data User may disclose the Limited Data Set to its contracted actuary, Lewis & Ellis, Inc., which shall be bound by the restrictions and conditions contained in this Agreement. Data User shall not disclose the Limited Data Set to any other agent or subcontractor of Data User except with the prior written consent of Covered Entity. Data User shall ensure that such agents, including subcontractors, to whom it provides the Limited Data Set agree in writing to be bound by the same restrictions and conditions that apply to Data User with respect to such Limited Data Set.

h. *Reporting. Data User* shall report in writing to Covered Entity any use or disclosure of the Limited Data Set in violation of this Agreement by Data User or its agents (including subcontractors). Data User shall provide such written report promptly after it becomes

aware of any such use or disclosure, and shall provide Covered Entity with the information necessary for Covered Entity to investigate any such use or disclosure.

4. **Material Breach, Enforcement and Termination.**

a. *Term.* This Agreement shall be effective as of the Effective Date, and shall continue until it is terminated in accordance with the provisions of Section 4.c.

b. *Covered Entity's Rights of Access and Inspection.* From time to time upon reasonable notice, or upon a reasonable determination by Covered Entity that Data User has breached this Agreement, Covered Entity may inspect the facilities, systems, books and records of Data User to monitor compliance with this Agreement. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Data User's facilities, systems and procedures does not relieve Data User of its responsibility to comply with this Agreement, nor does Covered Entity's (1) failure to detect or (2) detection of, but failure to notify Data User or require Data User's remediation of, any unsatisfactory practices constitute acceptance of such practice or a waiver of Covered Entity's enforcement or termination rights under this Agreement.

c. *Termination.* Covered Entity may terminate this Agreement:
(1) immediately if Data User is named as a defendant in a criminal proceeding for violation of HIPAA or the Privacy Rule;
(2) immediately if a finding or stipulation that Data User has violated any standard or requirement of HIPAA or the Privacy Rule, or any other security or privacy laws is made in any administrative or civil proceeding in which Data User has been joined; or
(3) pursuant to Section 4.d.(3) of this Agreement.

d. *Remedies.* If Covered Entity determines that Data User has breached or violated a material term of this Agreement, Covered Entity may, at its option, pursue any and all of the following remedies:
(1) exercise any of its rights of access and inspection under Section 4.b. of this Agreement;
(2) take any other reasonable steps that Covered Entity, in its sole discretion, shall deem necessary to cure such breach or end such violation; and/or
(3) terminate this Agreement immediately.

e. *Knowledge of Non-Compliance.* Any noncompliance by Data User with this Agreement or with HIPAA or the Privacy Rule will be considered a breach or violation of a material term of this Agreement if Data User knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance.

f. *Reporting to United States Department of Health and Human Services.* If Covered Entity's efforts to cure any breach or end any violation are unsuccessful, and if termination of this Agreement is not feasible, Covered Entity shall report Data User's

breach or violation to the Secretary of the United States Department of Health and Human Services, and Data User agrees that it shall not have or make any claim(s), whether at law, in equity, or under this Agreement, against Covered Entity with respect to such report(s).

g. *Return or Destruction of Records.* Upon termination of this Agreement for any reason, Data User shall return or destroy, as specified by Covered Entity, the Limited Data Set that Data User still maintains in any form, and shall retain no copies of such Limited Data Set. If Covered Entity, in its sole discretion, requires that Data User destroy the Limited Data Set, Data User shall certify to Covered Entity that the Limited Data Set has been destroyed. If return or destruction is not feasible, Data User shall inform Covered Entity of the reason it is not feasible and shall continue to extend the protections of this Agreement to such Limited Data Set and limit further use and disclosure of such Limited Data Set to those purposes that make the return or destruction of such Limited Data Set infeasible.

h. *Injunctions.* Covered Entity and Data User agree that any violation of the provisions of this Agreement may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law, in equity, or under this Agreement, in the event of any violation by Data User of any of the provisions of this Agreement, or any explicit threat thereof, Covered Entity shall be entitled to an injunction or other decree of specific performance with respect to such violation or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.

5. **Miscellaneous Terms.**

a. *State Law.* Nothing in this Agreement shall be construed to require Data User to use or disclose the Limited Data Set without a written authorization from an Individual who is a subject of the PHI from which the Limited Data Set was created, or written authorization from any other person, where such authorization would be required under state law for such use or disclosure. Further, in addition to applicable state law, the parties shall rely on applicable federal law (e.g., HIPAA and the Privacy Rule) in construing the meaning and effect of this Agreement.

b. *Amendment.* Data User shall cooperate with Covered Entity to amend this Agreement from time to time as is necessary for Covered Entity to comply with the Privacy Rule, or any other standards promulgated under HIPAA. This Agreement may be amended or modified, and any right under this Agreement may be waived, only by a writing signed by an authorized representative of each party.

c. *No Third Party Beneficiaries.* Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Covered Entity and Data User, and their respective successors and assigns, any rights, obligations, remedies or liabilities. Notwithstanding the foregoing, the Covered Entity in this Agreement is the Agency of Human Services, operating by and through its Department of Vermont Health

Access. Covered Entity and Data User agree that the term "Covered Entity", as used in this Agreement, also means any other Department, Division or Office of the Agency of Human Services, to the extent that such other Department, Division, or Office has a relationship with Data User that would require, pursuant to the Privacy Rule, entry into an agreement of this type.

d. *Ambiguities.* Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, or any other standards promulgated under HIPAA.

e. *Primacy.* To the extent that any provisions of this Agreement conflict with the provisions of any other agreement or understanding between the parties, this Agreement shall control with respect to the subject matter of this Agreement. Further, and notwithstanding anything to the contrary in any such other agreement or understanding, in no event shall any provision limiting Data User's liability to Covered Entity, including, but not limited to, provisions creating a cap on damages, excluding certain types of damages, limiting available remedies, or shortening a statute of limitations, present in any such other agreement or understanding, apply with respect to any breach by Data User of any term of this Agreement.

f. *Mitigation.* Data User shall mitigate, to the extent practicable, any harmful effect that is known to it of a use or disclosure of a Limited Data Set in violation of any provision of this Agreement.

g. *Survival.* The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example, the provisions of this Agreement shall continue to apply if it would be infeasible for Data User to return or destroy the Limited Data Set, as provided in Section 4.g.

h. *Entire Agreement.* This Agreement constitutes the entire agreement of the parties with respect to its subject matter, superseding all prior oral and written agreements between the parties in such respect, except as modified by subsection (i).

i. *Memorandum of Understanding.* This Agreement hereby incorporates and references the Memorandum of Understanding (MOU) (MOU # 03410-01-17) attached to this Agreement. Data User hereby acknowledges and agrees to be bound by the terms and conditions as set forth in the attached MOU # 03410-01-17.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the Effective Date.

Howard J. Pallotta — 9/22/16

Howard J. Pallotta
General Counsel
Department of Vermont Health Access
NOB 1 South, 280 State Drive
Waterbury, VT 05671-1010

Susan Barrett — 9/22/16

Susan Barrett
Executive Director
Green Mountain Care Board
3rd Floor City Center
89 Main Street
Montpelier, VT 05620-3601

EXHIBIT A - Initial Data Request

In regards to Sections 2(a)(1) and 3(a)(1) of this Agreement:		
Section	**Topic**	**Description**
1	Rating Period	Identify the Rating Period(s) covered by the filing and certification
2	Eligibility	Describe individuals eligible for coverage under the program - Identify any significant enrollment or eligibility changes that could materially impact the population
3	Covered Services	General description of covered services - Identify any significant changes to services covered compared to prior coverage years - Identify any carveouts that are excluded from the capitation rates
4	Data	Description of data used - Types of data - Time period of data - Source of data - Justification of outside data used and explain how the data was appropriate and adjusted
5	Data Quality	Describe the steps taken to ensure the quality of the data used. Show how the actuary validated the data: - Completeness - Accuracy - Consistency
6	Adjustments	Describe adjustments made to the data: - Credibility - Completion Factors (reserves) - Errors in data - Changes in benefits - Other changes in data for enrollment, networks, etc.
7	Projection Costs	Description of data, methodology, and adjustments made to project costs - Trends: changes in price and utilization; source of assumption; how the trend is varied in projection
8	Non-Benefit Costs	Description of the data, assumptions, and methodology used to set non-benefit expenses - Note any significant changes from the prior time periods - Administrative costs - Care coordination and care management - Contribution to surplus - Taxes, fees, and assessments - Utilization management programs- Quality improvement initiatives - Other
9	Risk Mitigation	Description of Risk Mitigation Strategies, if applicable - Note any changes from prior time periods

		- Relevant experience, results, or preliminary info in reference to prior time periods

In regards to Sections 2(a)(2) and 3(a)(2) of this Agreement:	
Topic	**Description[1]**
Adjustment Records	Adjustment records shall be reported with the appropriate positive or negative fields with the medical[2] and pharmacy[3] claims file submissions.
Behavioral or Mental Health Claims	All claims related to behavioral or mental health shall be included in the medical claims file.
Capitated Service Claims	Claims for capitated services shall be reported with all medical and pharmacy claims file submissions.
Claims Records	Records for the medical and pharmacy claims file submissions shall be reported at the visit, service, or prescription level. The submission of the medical and pharmacy claims is based upon the paid dates and not upon the dates of service associated with the claims.
Co-Insurance/Co-payment	Co-insurance and co-payment are to be reported in two separate fields in the medical and pharmacy claims file submissions.
Coordination of Benefits Claims	Claims where multiple parties have financial responsibility shall be included with all medical and pharmacy claims file submissions.
Denied Claims	Denied claims shall be excluded from all medical and pharmacy claims file submissions. When a claim contains both fully processed/paid service lines and partially processed or denied service lines, only the fully processed/paid service lines shall be included as part of the health care claims data set submittal.
Eligibility Records	Records for the member eligibility file[4] submission shall be reported at the individual member level with one record submitted for each claim type. If a member is covered as both a subscriber and a dependent on two different policies during the same month, two records must be submitted. If a member has 2 contract numbers for 2

[1] The data submitted to Data User (or a contractor of Data User) by Covered Entity (or a contractor of Covered Entity) shall be in conformity with the format, type, style, and encryption requirements as specified by Regulation H-2008-01, by any Data User's policy or rule, or mutually agreed upon by Data User and Covered Entity (or a contractor of either party, if applicable). Generally, file submission shall be an ASCII file, variable field length, and asterisk delimited (when asterisks are used in any field values, the entire value shall be enclosed in double quotes).
[2] "Medical claims file" means a data file composed of service level remittance information for all non-denied adjudicated claims for each billed service including, but not limited to member demographics, provider information, charge/payment information, and clinical diagnosis and procedure codes, and shall include all claims related to behavioral or mental health.
[3] "Pharmacy claims file" means a data file containing service level remittance information from all non-denied adjudicated claims for each prescription including, but not limited to: member demographics; provider information; charge/payment information; and national drug codes.
[4] "Member eligibility file" means a data file containing demographic information for each individual member eligible for medical or pharmacy benefits for one or more days of coverage at any time during the reporting month.

	different coverage types, 2 member eligibility records shall be submitted.
Exceptions	(1) Medical Claims File Exclusions: All claims related to services provided under stand-alone health care policies shall be excluded if the services are not covered by comprehensive medical insurance policies and are provided on a stand-alone basis for: specific disease; accident; injury; hospital indemnity; disability; long-term care; student liability; vision coverage; or durable medical equipment. (2) Claims for pharmacy services containing national drug codes are to be included in the pharmacy claims file, but excluded from the medical claims file. (3) Member Eligibility File Exclusions. Members without medical or pharmacy coverage for the month reported shall be excluded.
Insured Group or Policy Number Key Look-up Table	The key look-up table shall link Insured Group or Policy Number (ME006) to the name of the group associated with each Insured group or Policy Number, but shall not identify any individual policyholders in connection with non-group policies.
Pharmacy Claims	Claims for pharmacy services shall be included (if covered under medical benefit, then included in medical claims file; if covered under prescription benefit, then included in pharmacy claims file).
Prepaid Amount	Any prepaid amounts are to be reported in a separate field in the medical and pharmacy claims file submissions.
Supplemental Health Insurance	Claims related to supplemental health insurance are to be included if the policies are for health care services entirely excluded by the Medicare, Tricare, or other publicly funded health benefit programs.