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**Public Comment Summary and Response to Proposed Changes
to the VHCURES Reporting Manual to Include Live Identifiers**

On June 7, 2022, the Green Mountain Care Board’s Data Governance Council proposed revisions to the reporting manual for Vermont’s APCD known as VHCURES (Vermont Health Care Uniform Reporting and Evaluation System). A marked copy of the proposed changes to the reporting manual was provided to affected submitters and posted to the Green Mountain Care Board (GMCB or the Board) website on July 1, 2022. Meetings and discussions with affected submitters took place in May and June of 2022. In accordance with GMCB Rule 8.000, §8.401, public comment was accepted on the proposed changes for at least 30 days, including a public hearing on August 2, 2022. The GMCB received two written public comments during that period, both from BlueCross BlueShield of Vermont (BCBSVT).¹ The following, prepared by GMCB staff, summarizes and responds to concerns raised by public comments.

In the 2021-2022 legislative session, the legislature passed and the governor signed Act 167 which included, among other things, a change to 18 V.S.A. § 9410 to remove the requirement that certain records be collected in a way that does not disclose the identity of the person whose records are collected. Allowing the opportunity to receive direct identifiers will substantially improve the ability to bring data together across the state, which furthers the state's goal to support an integrated and non-redundant data system and supports richer analyses and research capabilities.

¹ The letters are available on the GMCB website at the following links:

https://gmcboard.vermont.gov/sites/gmcb/files/documents/L-BCBSVT%20Comments_%20Reporting%20Manual%20Changes%20%28Privacy%29%202022-08-01%20-%20signed.pdf

and

<https://gmcboard.vermont.gov/sites/gmcb/files/documents/M-BCBSVT%20Comments%20Reporting%20Manual%20Changes%20%28technical%29%202022-08-03.pdf>



Security/Risk of Breach

Public Comments:

- It is not necessary to increase the risk of a breach at this time.
- There are no protections for Vermonters in the event of a breach.
- Individually identifiable claims data (PHI data elements) would be at risk when stored and used in the VHCURES database.

GMCB Responses:

VHCURES users and GMCB would not have access to identifiable PHI data elements. PHI data elements would be securely stored and used by only the contracting vendor for data linkage purposes. This practice is already in place today with some data.

State statute and GMCB Rule requires that the Board protect the privacy of these data; it incorporates protections from HIPAA and goes further by prohibiting all public disclosure of direct personal identifiers (See 18 V.S.A. § 9410(h)(2), 18 V.S.A. § 9410(h)(3)(D), GMCB Rule 9.000, §9.200). VHCURES is additionally protected by a variety of security standards and certifications. VHCURES is certified by, or compliant with, the following: HITRUST, HIPAA and CMS Qualified Entity Certification Program, Service Organization Center 3 (SOC-3), National Institute of Standard and Technology (NIST), Certified Information Systems Security Professional (CISSP).

State statute would continue to require that GMCB protect the privacy of these data. It prohibits public disclosure of any data that contain direct personal identifiers, even if allowed under HIPAA. So, current protections would not change. Authorized data users would still only have access to deidentified data. In addition, GMCB maintains Administrative Rules that govern data collection and authorized data release. GMCB also maintains a Data Governance Council, which is a committee of the Board responsible for overseeing GMCB's data stewardship program.

- 18 V.S.A. § 9410 (h)(3)(D) Notwithstanding HIPAA or any other provision of law, the comprehensive health care information system shall not publicly disclose any data that contain direct personal identifiers. For the purposes of this section, "direct personal identifiers" include information relating to an individual that contains primary or obvious identifiers, such as the individual's name, street address, e-mail address, telephone number, and Social Security number.

The standards in the Vermont Agency of Digital Services Information Security Standards document promote the development, implementation, and operation of more secure information systems by establishing minimum levels of due diligence for information security. These standards facilitate a more consistent, comparable, and repeatable approach for selecting and specifying security controls for information systems that meet minimum security requirements. Additionally, these standards contain "Recommended Best Practices" that have been suggested to ensure information security. While non-



mandatory, the best practices are recommended and should be considered in planning to help ensure future security and compliance. As it relates to VHCURES, we have worked to ensure compliance with these standards and best practices.

https://digitalservices.vermont.gov/sites/digitalservices/files/doc_library/SoV_Information_Security_Standard.pdf

The GMCB VHUCRES Data Use and Disclosure Manual specifies the procedures for the submission and review of applications for data from the VHCURES data set, limitations on the availability of such data, and requirements that persons seeking or receiving such data must comply with to ensure that the privacy and security of the data is maintained.

<https://gmcbboard.vermont.gov/sites/gmcb/files/documents/VHCURES%20Data%20Use%20and%20Disclosure%20Manual-Final2022.pdf>

GMCB's contract with Onpoint Health Data for VHCURES outlines steps to be taken in the event of a data breach and minimum requirements for data security that must be met.

<https://gmcbboard.vermont.gov/sites/gmcb/files/documents/FINAL%20SIGNED%20VHCURES.3.0.Onpoint.Contract%2038739.pdf>

Concern for Public

Public Comments:

- BCBS members and subscribers expect their PHI data elements to be protected by BCBS and disclosed only as de-identified data.
- Public trust may be eroded as people realize their once-deidentified PHI data elements would be collected, stored, and used in the VHCURES database as identifiable data.
- Self-funded employers will be less likely to participate in VHCURES.
- Individuals have no right to opt out of supplying identifiable and sensitive claims data to the government.

GMCB Responses:

There are many benefits for ERISA self-insured employers when their claims are included in VHCURES, such as improved analyses with cross-payer and provider data, a more robust picture of the cost of health care services than employers can produce by reviewing claims reports just for their employees, and analytic reports produced with VHCURES data to improve consumer understanding of health care spending and choices about access and quality of health care services. The benefit of VHCURES overall is its function as a comprehensive data repository. Enrollment and claims data from all payers for their enrolled members provide a robust data set for transparency and informed decision-making.

Submitting to VHCURES is secure and if the hashing requirement prior to submission were to be lifted submission would still be secure. All submissions—whether they are encrypted or in clear, readable text—are sent over a secure connection called Secure File Transfer Protocol (SFTP). When files are received, security protocols are completed before the data are stored in the secured data warehouse.



The proposed change would apply only to some data and only relates to the submission of data. Protections related to the authorized release of deidentified data would remain unchanged.

While it is true that individuals cannot opt out of claims data submission this has always been true, and the purpose of an all-payer claims database remains the same which is to provide reliable data for health care research, evaluation and reporting on health system spending, utilization, and performance. APCD's enhance state policy and regulatory analysis, inform the public about health care prices and quality, and support public health monitoring and improvement.

HIPAA Concerns

Public Comments:

- Statutory legal protections are vague and subject to abuse. The VHCURES data can be used "to the extent allowed by HIPAA" 18 V.S.A. § 9410(h)(3)(B). However, HIPAA does not apply to the GMCB.

GMCB Responses:

Vermont statute 18 V.S.A. § 9410 requires the GMCB to protect the privacy of data in its All-Payer Claims Database (APCD). While GMCB is not a HIPAA covered entity, state law requires GMCB to follow HIPAA rules with regard to data privacy. See 18 V.S.A. § 9410(h)(2).

Race/Ethnicity

Public Comments:

- Comments around best practices for collecting and utilizing race and ethnicity data.

GMCB Responses:

The proposed changes utilize standardized codes. HIPAA protections will be applied, no individual would be identified, and cell sizes less than 11 are suppressed. GMCB would not require new collection of R&E data, only reporting of data that is collected. Data can only be released to authorized users and only in deidentified format.

Actuarial Value

Public Comments:

- Costly, introduces errors
- Individual and small group market are publicly available and static
- Effects BCBS-VT and MVP only because sell insurance in the individual and small group market



GMCB Responses:

Yes, GMCB does receive some information on actuarial values for the qualified health plans. GMCB rate review team deals with plans in a combined way: individual vs. small group. The actuarial values associated with separate plans are inputs to the work that the actuaries complete; this isn't generalizable to the higher-level categorization of "individual plan" or "small group plan". Although having AV at the plan-level in VHCURES would be helpful, we can make do with the information we have. We have withdrawn this recommended change.

Total Monthly Premium Amount

Public Comments:

- Requires average monthly fee paid by a subscriber and/or employee. Does this amount include subsidies paid by the government?

GMCB Responses:

GMCB is interested in understanding the premium amount, rather than the source. We would be looking for the total month premium amount which would include the subsidies paid by the government.

No Changes to Market Category and Insurance Type Data Element

Public Comments:

- Recommending changes to Insurance Type/Product codes available
- Recommending changes to Market Category Code

GMCB Responses:

GMCB is working toward implementing the standardized common data layout developed by NAHDO and the APCD Council. We may consider customization of the value set in the future but at this time we would like to work towards standardization.

