



State of Vermont
Agency of Human Services
Office of the Secretary
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To: Rep. Michael Marcotte, Chair, House Committee on Commerce & Economic Development
Rep. Monique Priestley, Clerk, House Committee on Commerce & Economic Development
Members of the Vermont House Committee on Commerce & Economic Development

From: Jenney Samuelson, Secretary, Agency of Human Services

Date: March 11, 2024

Re: Request for Clarification in H.121 for HIPAA-Covered Entities and Business Associates

The Agency of Human Services (AHS) requests adding clarifying language in H.121 to strengthen the critical role H.121 could have in advancing data privacy within our state. In addition, AHS would like to underscore the importance of integrated care coordination which involves health data known as social determinants of health (SDOH). As defined by the Centers for Disease Control and Prevention (CDC), social determinants of health are nonmedical factors that influence health outcomes. They are the conditions in which people are born, grow, work, live, and age, and the wider set of forces and systems shaping the conditions of daily life. These are critical components to ensuring Vermonters receive the best care possible. To underscore the importance of health data privacy and protections, AHS supports the letter from a coalition of Vermont Health Care Organizations which include: Vermont Medical Society; VITL; Vermont Association for Hospitals and Health Systems; Vermont Academy of Family Physicians; American Academy of Pediatrics – Vermont Chapter; Bi-State Primary Care Association; Vermont Health Care Association; and Vermont Care Partners.

To fully realize the intent of H.121 and to ensure that our state laws are as effective and clear as possible, AHS would like to address specific areas that would benefit from further definition alignment and clarification. These refinements are vital to eliminate any ambiguity and to provide unequivocal guidance to all entities that handle consumer health data.

1. Alignment with HIPAA Definition of “Consumer Health Data”

The definition of “consumer health data” proposed by H.121, is narrowly construed and does not capture the full spectrum of potential misuse of health information. To rectify this, AHS proposes expanding the definition to be consistent with the federal Health Insurance Portability and Accountability Act (HIPAA) definition of “individually identifiable health information” as outlined in 45 C.F.R. § 160.103. This would encompass all information related to an individual's health, healthcare services, or payment for healthcare services, ensuring a comprehensive safeguard for consumer health data.



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2. Clarification on Applicability to Electronic and Paper Records

The language of § 2415 (12) and the definitions of “controller” and “process” in (29) currently leave room for interpretation regarding the applicability of the bill to both electronic and paper records. It is imperative to clarify this scope to ensure that all forms of personal data, regardless of the format they are stored in, receive equal protection under the law. This clarification will significantly impact various entities within Vermont and will promote uniformity in data protection practices.

3. Align with HIPAA to continue to enable clinical care coordination and continuity of operations

Allow HIPAA-covered entities and business associates, whose focus is commitment to healthcare and appropriate protection of private health data, to continue to operate under the federal rules and regulations required by HIPAA and 42 CFR Part 2. This clarity will allow HIPAA and 42 CFR Part 2 protections to continue and provide Vermonters the predictability and protections necessary. The protections afforded by HIPAA provide strong safeguards for consumer health data, resulting in HIPAA compliance encompassing the goals of the proposed statute. Intermingling these two standards (H.121 and HIPAA) for protection would create confusion for Vermonters on what data can be accessed and how that data is protected. As such, AHS is requesting the following exemption in § 2417 (a)(1):

The exemption for protected health information should be rewritten to exempt HIPAA-covered entities and business associates, as follows:

§ 2417. EXEMPTIONS

(a) This chapter does not apply to:

(1) a covered entity or business associate, as defined in 45 CFR 160.10 as long as the entity’s primary function involves operating as a covered entity or business associate, and the entity’s operations that are unrelated to its functions as a covered entity or business associate do not represent a material part of its operations.

...

(7) information that originates from and that is intermingled so as to be indistinguishable with, or information treated in the same manner as, information that is exempt under subdivisions (1) through (6) of this subsection (a) that is maintained by a covered entity, business associate, or a qualified service organization, as defined herein.

The proposed exemption would apply only to specific entities whose primary functions are those operating as a covered entity or business associate. These entities are already bound by federal data protections to ensure the protection of Vermonters’ individually identifiable health information. It is



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essential that Vermont's health system continue to be enabled and supported in a way to provide continued protections to Vermonters. The enhancements proposed are not merely procedural but are fundamental to the protection of Vermonters' rights. Aligning with federal standards and clarifying the scope of the bill will create a more reliable and secure environment for managing sensitive data.

The Agency of Human Services appreciates your attention to these critical items and your commitment to the welfare of all Vermonters. AHS is available to engage in further discussion regarding these proposals and looks forward to your support in implementing these essential modifications.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Jenney Samuelson".

Jenney Samuelson

Secretary, Agency of Human Services