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MEMORANDUM

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TO: STEPHEN KLEIN AND CATHERINE BENHAM, LEGISLATIVE JOINT FISCAL OFFICE  
FROM: DANIEL SMITH, IT CONSULTANT FOR THE JOINT FISCAL OFFICE  
SUBJECT: ACT 187 - AN ACT RELATING TO HEALTH INFORMATION TECHNOLOGY AND HEALTH INFORMATION EXCHANGE  
DATE: JANUARY 25, 2019

During the 2018 Legislative Session the Legislature passed [Act 187, “An act relating to health information technology and health information exchange”](#). Originating as H.901, this Act is focused on improving the operations and performance of the Vermont Health Information Exchange (VHIE), which is operated by Vermont Information Technology Leaders (VITL) and supervised by the Vermont Department of Health Access (DVHA). The purpose of this memo is to briefly describe the background and contents of Act 187, summarize the actions performed by DVHA and VITL in response to the Act, identify those decisions that remain to be made by the Legislature, and provide a recommendation for the path forward.

## 1. Background

In 2017 a growing concern over the performance of the Vermont Health Information Exchange as operated by VITL resulted in statutory language in [Act 73, “An act relating to miscellaneous tax changes”](#). Section 15 of this Act required DVHA to have prepared a “Health Information Technology Report” that among other things reviewed the Health IT Fund, the Health Information Technology Plan, VITL, and the Health Information Exchange. [This report](#) was completed in November of 2017 by HealthTech Solutions, Inc., and was presented to the Legislature in January of 2018. The findings of the report were that:

- HIE is expensive and difficult for all states;
- HIE systems are essential;
- Vermont is not organized in a way that increases its chances for success;
- Stakeholders lack confidence and there is clear room for improvement;

The report recommended that in order to address the findings DVHA and VITL should:

- Implement an effective governance model;
- Develop and manage to a strong HIE strategic plan;

- Transparently tie program goals to financial decisions;
- Define outcomes and performance measures for all HIE investments;
- Make HIE operations accountable to all customers, including the state;
- Create an HIE Board of Directors consisting of a mix of stakeholders including subject matter experts and users; and
- Ensure that the HIE operator is focused and delivers upon its core mission:

## **2. Act 187 As Enacted**

During the 2018 session the House Committee on Health Care heard testimony from DVHA, VITL, and others regarding the Act 73 report, and enacted [Act 187](#), which required the following actions from DVHA and VITL:

- On or before May 1, 2018, the development and submission of “a work plan detailing the process by which the Department and VITL shall implement the recommendations of the Health Information Technology Report”;
- On or before September 1, 2018, the development and submission of “a contingency plan for health information technology to be used if the Department and VITL are unable to implement the recommendations from the Act 73 report”;
- On or before October 15, 2018, the development and submission of “an evaluation, which shall be conducted by an independent entity with expertise in health information technology, of the work plan, the contingency plan, and the Department’s and VITL’s progress toward implementing the recommendations in the Act 73 report”;
- On or before May 1, July 1, September 1, and November 1, 2018 and January 1, 2019, the development and submission of “written updates on their progress toward implementing the recommendations contained in the Act 73 report”;
- On or before November 1 2018, the development an submission of the Health Information Technology Plan (to be submitted to the Green Mountain Care Board for approval);
- On or before January 15, 2019, the development of the VITL Annual Report, including “an assessment of progress in implementing health information technology in Vermont and recommendations for additional funding and legislation required”;

- On or before January 15, 2019, the development and submission of recommendations “regarding whether individual consent to the exchange of health care information through the Vermont Health Information Exchange should be on an opt-in or opt-out basis”;
- On or before January 15, 2019, the development and submission of a report “regarding ways to improve the utility and interoperability of electronic health records and health information exchange in Vermont”.

Section 6 of Act 187 stressed the importance of DVHA/VITL’s successfully responding in a thorough and timely manner to the recommendations of the Health Information Technology Report, and included the following statement: “If they are not successfully implemented pursuant to the timeline adopted in the work plan described in Sec. 1 of this act, it is the intent of the General Assembly to eliminate the designation of Vermont Information Technology Leaders, Inc. to operate the exclusive statewide health information exchange network for Vermont pursuant to 18 V.S.A. § 9352.”

### **3. Actions Taken in Response to Act 187**

During the summer and fall of 2018 DVHA and VITL embarked on a series of actions in response to the requirements of Act 187. These included the development and submission of the various required items which describe in detail the actions taken by both DVHA and VITL in addressing the recommendations in the Act 73 report:

- The [Work Plan](#);
- The [Contingency Plan](#) (contracted);
- The independent [Progress Evaluation Report](#) of progress made (contracted);
- The bimonthly Status Updates ([May 1](#) which includes the work plan, [July 1](#), [September 1](#), and [November 1](#) 2018, and [January 1](#) 2019).
- The [Health Information Technology Plan](#). With regards to this plan, some clarification is in order: the plan required by 18 V.S.A. § 9351 is referred to as the “Health Information Technology Plan”. The actual plan submitted and approved is referred to variously as the “Health Information Exchange Plan” and the “Health Information Exchange Strategic Plan”. Regardless of the title, the plan does meet the requirements of 18 V.S.A. § 9351. However, it should not be confused with the VITL Strategic Plan, which is a separate document intended to show how VITL will operate successfully over the period 2019 to 2021;
- The [VITL Annual Report](#);

- The [Consent Policy Report](#);
- The [Interoperability Report](#).

#### **4. Legislative Decision Points**

In order to respond appropriately to the contents of Act 187, Section 6 (designation of VITL as the HIE operator), the Legislature will need to consider the following decision points:

1. Did DVHA/VITL submit all items required by Act 187: the work plan, contingency plan, bimonthly status updates, Health Information Technology Plan, VITL Annual Report, consent policy report, and interoperability report?
2. Are the items submitted acceptable in form and content?
3. Were the recommendations of the Act 73 Section 15 report “successfully implemented in a thorough and timely manner”?
4. Should DVHA/VITL continue to operate the HIE in the current manner as described in existing documents and plans, or should one of the other options described in the contingency plan be chosen?
5. If one of the contingency plan options is to be chosen how will the choice be made, when will the choice be made, and when should it become effective?
6. Should the health care claims tax be extended or allowed to sunset?

#### **5. Recommendations**

Based on the contents of Act 187, DVHA/VITL’s responses to the Act, and results of the independent evaluation, I believe that the first three questions above should be answered in the affirmative. As a result, my recommendation is that DVHA and VITL should continue to execute the plans and procedures that they have developed in response to Act 187, and that VITL should remain the operator of the HIE. In this case, I would also recommend extending the health care claims tax (question 6).

If the Legislature would like to pursue a different approach, there are two possible courses of action:

1. Implement one of the contingency plan options. If this course of action is chosen the decision should come sooner rather than later, as any significant delay in identifying and implementing the right contingency plan option essentially results in maintaining the status quo. It should also be noted that this choice would

almost certainly require additional legislative action, since statute changes would be required to address the DVHA/VITL relationship, the operator of the HIE, the Health IT Fund, and other items. If the Legislature makes this choice, my recommendation is that DVHA be directed to propose the best and second best options from the contingency plan, taking into account feasibility, initial and long term cost, transition timeline, and future capability. The proposal should also consider those factors identified in section 3.23 of the independent Progress Evaluation Report. This proposal should be provided to the Legislature on or before February 28, 2019, with the understanding that barring specific direction from the Legislature DVHA would begin activities to implement the best option beginning July 1<sup>st</sup> of 2019. The proposal should include details for each option including the planning required, proposed start date, transition timeline, risks and issues, and projected cost.

2. Defer a decision. This would essentially involve giving DVHA/VITL an additional grace period to continue demonstrating improvement in the operation of the HIE. If this course of action is taken I recommend that the question be revisited in January of 2020. However, it should be noted that the same constraints will apply then as now: any decision as to the future of HIE operation will need to come quickly in order for it to be effectively implemented.

With regards to the health care claims tax, if the Legislature defers a decision until next year, then the claims tax would likely need to be extended. If the Legislature instead chooses to implement a contingency plan option, then the decision depends on the option chosen and the timeline proposed by DVHA.

## Links

### Page 1:

Act 187 As Enacted:

<https://legislature.vermont.gov/Documents/2018/Docs/ACTS/ACT187/ACT187%20As%20Enacted.pdf>

Act 73 As Enacted:

<https://legislature.vermont.gov/Documents/2018/Docs/ACTS/ACT073/ACT073%20As%20Enacted.pdf>

Health Information Technology Report:

<https://legislature.vermont.gov/assets/Legislative-Reports/VT-Evaluation-of-HIT-Activities-FinalReport-Secretary-Signature.pdf>

### Page 2:

Act 187: Same as page 1.

### Page 3:

Work Plan: <https://legislature.vermont.gov/assets/Legislative-Reports/DVHA-VITL-HITWorkPlan-Submitted05.01.18.pdf>

Contingency Plan: <https://legislature.vermont.gov/assets/Legislative-Reports/DVHA-Legislative-Report-Contingency-Plan-for-the-VHIE-08-30-18.pdf>

Progress Evaluation Report: <https://legislature.vermont.gov/assets/Legislative-Reports/DVHA-Legislative-Report-HIE-Evaluation-Review-Report-October-2-2018.pdf>

Progress Updates:

May 2018: <https://legislature.vermont.gov/assets/Legislative-Reports/DVHA-VITL-HITWorkPlan-Submitted05.01.18.pdf>

July 2018: <https://legislature.vermont.gov/assets/Legislative-Reports/DVHA-Legislative-Report-VITL-HIT-WorkPlan-Progress-Update-7.1.18.pdf>

September 2018: <https://legislature.vermont.gov/assets/Legislative-Reports/DVHA-Legislative-Report-VITL-HIT-WorkPlan-Progress-Update-9.1.18.pdf>

November 2018: <https://legislature.vermont.gov/assets/Legislative-Reports/DVHA-Legislative-Report-VITL-HIT-WorkPlan-Progress-Update-11.1.18.pdf>

January 2019: <https://legislature.vermont.gov/assets/Legislative-Reports/DVHA-VITL-HITWorkPlan-ProgressUpdate5-1.1.19-Final.pdf>

Vermont Health Information Technology Plan: <https://gmcboard.vermont.gov/hit/plan>

**Page 4:**

VITL Annual Report: <https://legislature.vermont.gov/assets/Legislative-Reports/2018-vitl-annual-report-v3.pdf>

Consent Policy Report: <https://legislature.vermont.gov/assets/Legislative-Reports/DVHA-Report-VHIE-Patient-Consent-Policy.pdf>

Interoperability Report: <https://legislature.vermont.gov/assets/Legislative-Reports/DVHA-Act187-Improving-Interoperability-of-EHR-Systems-Report-1.15.19.pdf>