Assessment of the Feasibility of the House Committee on Health Care's Consent Proposal

May 3, 2019

General Impressions

- DVHA and VITL agree with the essence of the “guardrails” proposed by the Committee and the Vermont AIDS Services Organization, et. al.

- Based on a comparison of language from the House Committee on Health Care, Senate Health & Welfare, and the HIE Steering Committee, and an assessment of feasibility, we are providing language.

HIE Steering Committee Proposed Implementation Process

1. DVHA proposes a draft consent policy.
2. DVHA facilitates stakeholder workgroups to determine how best to implement policy; stakeholder workgroups result in a recommendation.
    - Stakeholders include the HCA, ACLU, disability advocates, provider and patient representatives, and others
3. The HIE Steering Committee reviews the stakeholder workgroup recommendation and maps out how to successfully implement a change in the consent policy.
4. The GMCB reviews/approves the consent policy and the implementation strategy as part of the Health Information Technology Plan.
5. DVHA, in consultation with the HIE Steering Committee, reports to stakeholders, the General Assembly, and the GMCB frequently as plans are developed and executed.

What We Heard Yesterday: Committee Language

- DVHA/VITL shall create an implementation plan for the transitions (including defining opt-out that is “easy”)
  - Planning shall include all stakeholders and substantial public education
- Implementation shall include:
  - Written (standardized, as needed per specific patient population) materials must be developed for health care practitioners to provide to every patient at least once per year or at their next appointment, whichever comes first, that clearly explains:
    - The process for opting out
    - Highlight, simply, patient’s rights to opt out
    - What health care information is and will be shared
    - With whom their health care information will be shared
    - For what purpose their health care information will be shared, and
    - How they can switch from opt in to opt out in the future.
    - Process for getting questions answers (contact with HCA).

What We Heard Yesterday: Committee Language

- DVHA/VITL must create a method by which providers can acknowledge that this conversation happened. Acknowledgment shall be [put into] WVHI so that this data can be collected along with the opt-out data.
- There should be a report back to the legislature in 2020 regarding:
  - Update on the state of the implementation plan
  - The informative written materials
  - How the materials are being disseminated so that all patients are informed of the opt out policy
  - How many patients have opted out, and how many providers acknowledge that they had the conversation with the patient
- Need to convey to patients what can be done with patient information (e.g., can it be bought/sold?)
- Need to unify existing HIPAA processes and the state’s processes – relying as much as possible on what already happens
- Simple communications are key about how data is shared and what the VHIE is
- The focus should be on improving communications about consent, generally

What SH&W Proposed Yesterday

- *SH&W letter underscores the need for*:
  - Clear, uniform, up front communication to support informed decision making
  - Maintaining protections of patient information in the VHIE
  - Placing the consent policy in the Health Information Technology Plan
  - Consultation with stakeholders
  - Transparent reporting throughout the process

What the Steering Committee Discussed: Guiding Principles for Implementation

- Build on the consent policy management successes of other states and systems
- Prioritize patient education and access to information
- Work to reduce or limit burden associated with consent management and envelop changes to processes into broader consent management practices
- Respect existing state and federal law regarding sharing of specific types of health data
- Honor consent preferences that have already been expressed by Vermont patients
- Assess feasibility of different consent management practices and plan implementation strategies accordingly (e.g., consent collected and transmitted by health providers, self-service consent management, consent transmitted by payers)

How We Pulled it Together

- ***Options:*** Require DVHA, in consultation with the HIE Steering Committee, to:
  - Administer a stakeholder engagement process to produce a recommendation regarding implementation of an opt-out policy;
  - Present the GMCB and the General Assembly with a report on the outcomes of the stakeholder engagement process and the resulting implementation strategy, as well as periodic updates on progress toward developing and implementing a consent policy implementation strategy.
  - The stakeholder engagement process and implementation strategy report is due to the GMCB and the General Assembly no later than January 15, 2020. The periodic updates shall take place in person on or before August 1, 2019, November 1, 2019, and January 15, 2020.

How We Pulled it Together

- ***Options:*** The implementation strategy must:
  - Include substantial opportunities for public input.
  - Focus on the creation of patient education mechanisms and methods that:
    - Unify new information with existing patient education obligations, such as disclosure requirements under HIPAA;
    - Aim to address the diversity of needs regarding information delivery;
    - Clearly explain how patient data is currently collected and how and with whom records may be shared using the Vermont Health Information Exchange and for what purpose; and
    - Enable patients to fully understand their rights with regards to sharing of health information and how to find answers to associated questions.
  - Include plans for developing or augmenting consent management processes at the Vermont Health Information Exchange to fully reflect the needs of patients and providers.

How We Pulled it Together

- ***Options***: Require DVHA, in consultation with the HIE Steering Committee, to develop an opt-out consent policy for inclusion in the State's Health Information Technology Plan, requiring review and approval by the GMCB as directed by 18 V.S.A. § 9351. The policy must:
  - Not add undue data collection burden to the provider community.
  - Focus on three main principles:
    - Every patient has the power to decide how their personally identifiable data is shared;
    - Patient records are deemed exchangeable unless the patient decides to "opt-out"; and
    - Access to patient records is limited to permissible purposes.
  - Clarify that data collected by the Vermont Health Information Exchange is only to be used for payment, treatment, and operational purposes. *Note: these are HIPAA definitions of permissible purposes.*

Feasibility Assessment

- ***Options:*** Reconsider the following because they are not feasible -
  - Requirement for annual or at next appointment obligations
    - Require DVHA to develop within the plan, multi-sector communication strategies to reach Vermonters, including specific strategies for target populations
  - Requirement that providers acknowledge that a consent conversation happened
    - Require DVHA to identify methodology for evaluating the penetration of the consent messaging/collection
- Both are redundant with HIPAA, which requires privacy disclosures from provider to patient

REFERENCE: STEERING COMMITTEE IMPLEMENTATION PROCESS

HIE Steering Committee Proposal
Implementation Planning

CONSENT POLICY

STAKEHOLDER WORKGROUPS
Produce a Recommendation on Communication and Management of Policy Change

HIE STEERING COMMITTEE
Define & Execute the Implementation Strategy

HIE Steering Committee Proposal
Roles: Stakeholder Workgroup

- DVHA will convene stakeholders who can represent a diversity of needs and interests from across the health care system. Stakeholders who have expressed an interest in the consent policy will be asked to join this group.
- Stakeholders will act as an “ad hoc” workgroup focused on the best ways to communicate the change in policy to patients and providers.
- DVHA will staff the group to support research and logistical needs. VITL will be asked to join to provide perspectives on current consent management practices.
- The workgroup will contribute to an implementation strategy recommendation, which will be presented to the HIE Steering Committee for consideration.

HIE Steering Committee Proposal
Roles: HIE Steering Committee

- The Steering Committee will assess the recommendations from the workgroup and input from Committee members and develop an implementation approach based on these recommendations. The implementation approach will consider:
  - The need to define success or the ideal state that will be achieved when the policy has been effectively put into practice;
  - Current methods of consent management in Vermont and in other states;
  - Mechanisms for engaging providers and patients not engaged in the work group or Committee;
  - Feasibility of technical solutions required for a variety of consent management methods; and
  - Timing strategies for the greatest up-front impact, targeting policy effectuation by the end of the year.
- The Committee will oversee implementation and individual members will support implementation specific to their sector or constituents they represent.
- The Committee will also support DVHA in providing updates to the General Assembly, GMCB, and other stakeholder groups.