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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 53 - HEALTH INFORMATION TECHNOLOGY CONSENT POLICY REPORT SUMMARY  
DATE: JANUARY 21, 2020

On January 21, 2020 you requested that I review the “Final Report on the Stakeholder Engagement Process and Consent Policy Implementation Plan” that was submitted by DVHA on January 15, 2020 in accordance with [Act 53](#)<sup>1</sup>. The following represents my thoughts and recommendations based on that document.

1. Overall: Very Good
  - a. DVHA and VITL have met all of the requirements of Act 53.
  - b. Based on the content of the report and the work to date I would expect that the transition from opt-in to opt-out will proceed smoothly.
  
2. Opt-In vs. Opt-Out Reminder
  - a. Opt-In (old policy): Healthcare data that is stored at VITL **is not shared** with authorized providers unless the patient specifically elects to allow it.
  - b. Opt-Out (new policy): Healthcare data that is stored at VITL **is shared** with authorized providers unless the patient specifically declines to allow it.
  - c. Authorized providers are “health care facilities, professionals, and payers” that are directly involved in that patient’s care.
  
3. Required Reports and Submissions
  - a. (b)(1) The Department of Vermont Health Access shall provide updates on the stakeholder engagement process and the consent policy implementation strategy to the House Committee on Health Care, the Senate Committee on Health and Welfare, the Health Reform Oversight Committee, and the Green Mountain Care Board on or before [August 1](#)<sup>2</sup> and [November 1](#)<sup>3</sup>, 2019. **(Done)**

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<sup>1</sup> <https://legislature.vermont.gov/Documents/2020/Docs/ACTS/ACT053/ACT053%20As%20Enacted.pdf>

<sup>2</sup> [https://legislature.vermont.gov/assets/Legislative-Reports/Act-53-Consent-Policy-Implementation-1-August-2019-Progress-Report\\_DVHA\\_FINAL.pdf](https://legislature.vermont.gov/assets/Legislative-Reports/Act-53-Consent-Policy-Implementation-1-August-2019-Progress-Report_DVHA_FINAL.pdf)

<sup>3</sup> [https://legislature.vermont.gov/assets/Legislative-Reports/Act-53-Consent-Policy-1-November-2019-Progress-Report\\_DVHA\\_FINAL.pdf](https://legislature.vermont.gov/assets/Legislative-Reports/Act-53-Consent-Policy-1-November-2019-Progress-Report_DVHA_FINAL.pdf)

- b. (2) The Department of Vermont Health Access shall provide a final report on the outcomes of the stakeholder engagement process and the consent policy implementation strategy to the House Committee on Health Care, the Senate Committee on Health and Welfare, and the Green Mountain Care Board on or before [January 15, 2020](#)<sup>4</sup>. **(Done)**
    - c. All updates and reports were submitted on time as required.
4. Green Mountain Care Board and the Vermont Health Information Technology Plan
  - a. The GMCB unanimously voted to [approve](#)<sup>5</sup> the [2019-2020 HIE Plan](#)<sup>6</sup> on November 20, 2019
  - b. In the approval the GMCB imposed a condition that DVHA return to the Board prior to March 1, 2020, to “propose an addendum to the 2019-2020 HIE Plan (effective 3/1/2020) to reflect opt-out consent and document how opt-out consent will be managed.” The Board imposed this condition to ensure that the 2019-2020 HIE Plan remains consistent with state law through the VHIE’s transition from an opt-in to opt-out consent model.
5. Notes on the Final Report Content
  - a. The change to the consent policy is effective March 1, 2020.
  - b. Stakeholder engagement efforts, analysis, and reporting will continue past March 1.
  - c. VITL is ready to handle patient requests to opt-out via fax, telephone, web form and US Mail.
  - d. **Clarification required:** Report page 8: “people who have opted out under the existing policy will remain opted out when the new policy goes into effect on March 1, 2020.” This needs clarification; the old policy was opt-in, not opt-out, so does this mean that a person who did not opt-in under the old policy is treated as though they have opted-out under the new policy?
  - e. VITL has started posting notices of the upcoming consent policy change in various venues, including Front Porch Forum.
  - f. Substance abuse and disorder treatment will not be transmitted, regardless of patient consent.

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<sup>4</sup> [https://legislature.vermont.gov/assets/Legislative-Reports/Act-53-Consent-Policy-15-January-2020\\_DVHA-Final-Report.pdf](https://legislature.vermont.gov/assets/Legislative-Reports/Act-53-Consent-Policy-15-January-2020_DVHA-Final-Report.pdf)

<sup>5</sup> <https://gmcboard.vermont.gov/sites/gmcb/files/documents/2019-2020%20HIE%20Plan%20Approval.pdf>

<sup>6</sup> [https://gmcboard.vermont.gov/sites/gmcb/files/documents/DVHA\\_HIE%20Plan\\_10.31.19\\_FINAL.pdf](https://gmcboard.vermont.gov/sites/gmcb/files/documents/DVHA_HIE%20Plan_10.31.19_FINAL.pdf)

g. For legislative committee members it is worth reviewing the focus group notes on pages 12 and 13 of the report. This section will provide insight into the concerns of the public regarding the consent policy change.

6. **Recommendation:** Neither Act 53, the VHITP, or the GMCB HITP approval require any follow up reports after the consent policy change. While the Act 53 final report submitted by DVHA describes a “Consent Policy Evaluation Committee” that will provide a report in 2021, I would like to see an interim report provided to the legislature late in the current session, and a more detailed report included in the next VHITP. My goal from such a report would be to determine whether the policy change of March 1 went as smoothly as expected, at least initially.