

Green Mountain Care Board Rule 9.000 Data Release Rule (21-P020)

Legislative Committee on Administrative Rules

December 16, 2021



Summary of the Rule

- Subject to certain restrictions and limitations, the Board may make available information from the health care databases.
- Information may be made available as a resource to review and analyze health care utilization, expenditures, and performance in Vermont.
- The rule establishes processes by which the Board will make data in the health care database available to support legitimate and beneficial research and analysis.

Changes to the Rule

Based on review and comments from Legislative Counsel, GMCB will modify the Rule from what was filed with the Committee as follows:

- On the Adopting Page of the APA filing forms, the filing will be classified as a New Rule instead of an Amendment.
- The effective date of the Rule in Section 9.703 will be modified to read: “This rule shall become effective fifteen (15) days after adoption.” This replaces the blank date currently in Section 9.703 of the Rule.

Authority / Legal Context



- 18 V.S.A. § 9410 directs the GMCB to maintain a “unified health care database” to carry out its statutory duties and to make data in the database available to support analyses of health care utilization, expenditures, and performance in VT.
- Under 18 V.S.A. § 9410(3)(B), the data collected by the Board in the databases, “[t]o the extent allowed by HIPAA, the data shall be available as a resource for insurers, employers, providers, purchasers of health care, and State agencies to continuously review health care utilization, expenditures, and performance in Vermont.”
- Under 18 V.S.A. § 9410(j)(2), the Board is authorized to adopt rules to carry out the provisions of the subsection.

Confidentiality and Public Records Act



- The GMCB is not a “covered entity” that is subject to HIPAA, but it looks to HIPAA on issues of data release.
 - “To the extent allowed by HIPAA, the data shall be available as a resource . . . to continuously review . . .”
 - The release of health care data and statistical information that are subject to HIPAA “shall be governed exclusively by the regulations adopted thereunder in parts 45 C.F.R. Parts 160 and 164.”
- In addition to HIPAA, 18 V.S.A. § 9410 prohibits the GMCB from releasing “direct personal identifiers,” including names, street addresses, email addresses, phone numbers, and SSNs.
- Rule specifies standards and processes for making data public. Includes securing an enforceable agreement from the recipient of the data to keep the data confidential and safe (Data Use Agreement).

Confidentiality and Public Records Act (continued)



- Besides HIPAA, other laws may prevent or caution against release of data (e.g., detailed pricing information may be proprietary and release may cause antitrust concerns).
- Under 18 V.S.A. § 9410, the GMCB must adopt a “confidentiality code” to ensure that the information submitted is handled in an ethical way.
- The GMCB has data use agreements (DUAs) with the Centers for Medicare and Medicaid Services and the Department of Vermont Health Access to incorporate Medicare and Medicaid claims data into the database.
 - The GMCB must comply with the terms of these DUAs.

Necessity for the Rule

- Combining disclosure requirements for both data sets into one rule (currently VHCURES governed by Regulation H-2008-01 and VUHDDS by contractual terms).
- Update to reflect new technology and methods for data disclosure.
- Update to increase flexibility to modify data disclosure requirements to respond to changes in the health care industry.
- Rule and disclosure manuals are needed to tell potential users what process to follow to apply for access to datasets.

Content of the Rule

- Release of Data
 - Availability; Modes of Access; Secure Analytic Environment; Public Use Data, Analytic Tables, and Standard Reports
- Data Use Agreements; Application and Review
 - Application; Review; DUAs.
- Costs of Data and Services
 - Analytic and Information Services; Costs; Waivers
- Special Considerations
 - Data Linkage; Data Redisclosure
- Enforcement; Sanctions for Violations

Affected Parties and Impact

- Parties affected: Any entity that requests access to the data contained in the database would be affected by the rule.
 - Most frequent users: State agencies and instrumentalities; Research and academic institutions; Commercial entities
- Economic cost on non-state entities that apply and receive access to the data (cost paid directly to vendor for datasets). No additional cost to other state agencies, access covered by Board's contract with vendor.
- Economic benefit to the state because research and analysis can be used by Vermont regulators, policymakers, insurers, health care providers, and health care consumers to improve the quality, cost, and coverage of health care in the state.
- No environmental impact

Outreach and public engagement



- Board has engaged in multi-step process for more than a year developing the proposed rule:
- On February 2, 2021, the draft reviewed and discussed at a public meeting of the Data Governance Council of the Board.
- On February 11, 2021, the draft circulated to specific stakeholders, including payers and other data submitters, soliciting their review and comment.
- On April 21, 2021, the draft reviewed at a public meeting of the Board.
- On May 5, 2021, Board approved draft in public meeting.
- Public hearing on August 2, 2021 (no additional public comments received).