

## **SETTLEMENT AGREEMENT**

### **National Grievance, NG-09/16/2021 Veterans Health Information Exchange FMCS Case No. 220217-03531**

The American Federation of Government Employees, AFL-CIO, National Veterans Affairs Council (Union) and the Department of Veterans Affairs (Agency) (collectively, the Parties) hereby agree to settle all disputes arising out of the Union's September 16, 2021, National Grievance NG-09/16/2021 (Grievance), alleging the Agency unilaterally implemented changes to the Veterans Health Information Exchange (VHIE) and unlawfully disclosed employee occupational health data.

#### **I. Terms of the Settlement**

In consideration of the obligations delineated below, the Parties agree to the following terms and conditions:

A. By execution of this Settlement Agreement (Agreement), the Union voluntarily withdraws its Grievance and any associated request for arbitration. The Union further waives any and all actions, claims, unfair labor practice charges, complaints, grievances, appeals, or proceedings of any nature, arising from the allegations contained in the Grievance, with the exception of a grievance which may arise by reason of breach of any term of this Agreement.

B. The Agency agrees to:

1. Distribute a Notice,<sup>1</sup> signed by VHA Chief Informatics Officer Charles Hume, to all Union bargaining unit employees (BUEs) via email affirming VA's recognition of and intent to comply with its statutory and contractual obligations to bargain in good faith with the Union. The Notice will be sent one time within thirty (30) calendar days of the execution of this Agreement. A copy of the email containing the Notice will be sent to the Union's undersigned representative within 10 days of its transmission.
2. Distribute Guidance, including Frequently Asked Questions (FAQs),<sup>2</sup> regarding the VHIE to all Union BUEs via email. The Guidance and FAQs will be sent one time within thirty (30) calendar days of the execution of this Agreement. A copy of the email containing the Guidance and FAQs will be sent to the Union's undersigned representative within 10 days of its transmission.

#### **II. Stipulations**

The Parties further stipulate and agree:

A. They have entered into this Agreement freely and voluntarily.

B. The Agreement constitutes a joint effort by the Parties and should not be construed against any party.

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<sup>1</sup> A copy of the Notice is attached to the Agreement as Appendix A.

<sup>2</sup> A copy of the Guidance and FAQs are attached to the Agreement as Appendix B.

C. This Agreement does not constitute an admission of guilt, fault, or wrongdoing by either party.

D. The negotiations leading up to this Agreement, the data, documents, or information exchanged between the parties in the course of the negotiations of this Agreement, may not be offered, taken, construed, or introduced as evidence of liability or as an admission or statement of wrongdoing by either party in this action or in any subsequent proceeding of any nature.

E. The obligations of the Parties specified above constitute consideration sufficient to render this Agreement enforceable by either party.

F. This Agreement addresses unique circumstances and shall not serve as precedent or past practice for resolving any other matter involving the Agency.

G. This Agreement constitutes the entire understanding between the Parties regarding the resolution and settlement of the Grievance, and there are no other terms or commitments, verbal or written, regarding this settlement. No other promises or agreements shall be binding unless placed in writing and signed by the Parties.

H. Neither party will institute any legal and/or administrative proceeding in any forum, or any sort, against any other party to this Agreement, based on the claims related to or arising from the allegations underlying this matter, other than in the case of an alleged breach of this Agreement.

I. The Agency or the Union may submit this Agreement as evidence of the withdrawal of the Grievance and all actions, claims, complaints, grievances, appeals or proceedings of whatever nature arising from the allegations contained therein.


J. The effective date of this Agreement is the date on which it becomes fully executed.


K. All the time limits in this Agreement are in calendar days. If a time limit expires on a Saturday, Sunday, or a Federal Holiday, then the time limit shall expire on the next business day. The Parties may mutually agree in writing to extend any time limits in this Agreement.

L. If a binding determination is made that any term(s) of this Agreement is/are unenforceable, such unenforceability shall not affect any other provisions of this Agreement, and the remaining terms of this Agreement shall, unless prohibited by law, remain effective as if such unenforceable provision(s) was/were never contained herein.

By their signatures below, the signatories hereby acknowledge and affirm that they have the authority to enter into this Agreement with a complete and thorough understanding of its terms, meaning, and effect and bind their respective principals to the terms herein. The Parties have read this Agreement, and each of the undersigned is signing the Agreement voluntarily and freely, without coercion.

**For the Union:**

 9/11/2023  
\_\_\_\_\_  
William Wetmore Date  
Chair, Grievance and Arbitration Committee  
AFGE/NVAC


 9/11/2023  
\_\_\_\_\_  
Sarah Hasan Date  
Staff Counsel, National VA Council  
AFGE, AFL-CIO

**For the Agency:**

**CHARLES HUME**  Digitally signed by CHARLES HUME  
Date: 2023.09.12 08:40:01 -04'00'

\_\_\_\_\_  
Charles Hume Date  
Chief Informatics Officer  
Veterans Health Administration  
U.S. Department of Veterans Affairs

**As to Form Only:**

 9/12/23  
\_\_\_\_\_  
Alexandra K. R. Schule Date  
Attorney, Office of General Counsel  
U.S. Department of Veterans Affairs

APPENDIX A:

**NOTICE TO ALL EMPLOYEES**

**POSTED PURSUANT TO A SETTLEMENT AGREEMENT BETWEEN THE AMERICAN  
FEDERATION OF GOVERNMENT EMPLOYEES (AFGE) AND U.S. DEPARTMENT OF  
VETERANS AFFAIRS (VA)**

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This notice is being sent to AFGE bargaining unit employees because of a recent Settlement Agreement executed between AFGE and VA. For background, AFGE filed a National Grievance on September 16, 2021, against VA related to its implementation of the Veterans Health Information Exchange. You are receiving this email because you are an AFGE bargaining unit employee.

No further action is required by local union officials or local management. In the future, VA agrees to fulfill its statutory and contractual obligations to provide notice and an opportunity to bargain to AFGE concerning changes in conditions of employment. VA further agrees to comply with the 2023 Master Agreement unless and until that agreement is superseded or terminated.

Please do not reply to this email. If you have any questions about this notification, please contact your local AFGE representative.

VA will not interfere with, restrain, or coerce employees, or their designated representatives, in the exercise of rights assured by law.

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Charles Hume  
VHA Chief Informatics Officer

Date

## APPENDIX B:

### **GUIDANCE ON ELECTRONIC HEALTH DATA SHARING What VA Employees Need to Know**

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The Veterans Health Information Exchange (VHIE) Program Office, on behalf of the Department of Veteran Affairs (VA), and in conjunction with the Department of Defense (DoD), manages the joint Health Information Exchange (joint HIE). Electronic Health Information Exchanges, like the joint HIE, are a tool commonly used across the health care industry to share electronic clinical information securely and efficiently and improve care coordination. Through the joint HIE, participating external partners/providers who are a part of a patient's care team can safely and securely receive VA health information electronically.

In 2018, Congress passed the MISSION Act, which removed certain restrictions on electronic health information sharing, enabling VA to seamlessly and securely share VA Patient health information with participating external partners/providers who are a part of a VA Patient's care team. **Specifically, the MISSION Act amended 38 U.S.C. § 7332 by adding a provision to allow VA to disclose § 7332-protected information to participating external partners/providers for treatment and health care services without a signed, written authorization from the Veteran.** On April 18, 2020, the VHIE Program Office implemented system changes so Veteran patients' electronic health information is now shared with their external providers unless the patient opts out of the joint HIE.

At the time these system changes were implemented for Veterans, measures were also created to prevent non-Veteran employees' electronic health information from being shared. Using a Primary Eligibility Code, a designation which is listed in non-Veteran employees' registration records and notated in VA's electronic health record (EHR), VA can separate non-Veteran employee health information from Veteran health information. These measures were implemented to prevent non-Veteran employees' electronic health information from being shared.

**If you have questions or concerns about your eligibility or enrollment in the joint HIE, you can pursue one or both of the following options:**

**1. Remain Opt-In and Confirm Eligibility Information:**

Contact the Registration/Eligibility Office at your local VA health care facility to confirm your Primary Eligibility Code (e.g., "Employee Only" (i.e., non-Veteran Employee)). If your Primary Eligibility Code does not reflect "Employee Only" and you do not want to participate in the joint HIE or you believe you were incorrectly included in the joint HIE, then, using the directions below, opt-out of the joint HIE to ensure your health information is not shared.

**2. Opt-Out of Electronic Health Information Sharing:**

Any VA employee may opt out of the joint HIE by submitting [VA Form 10-10164](#) by mail, or in person, to their facility's Release of Information (ROI) Office, or online through My HealthVet. A non-Veteran employee who is concerned their electronic health information is being shared can always opt-out as an extra precaution.

To learn more about VA and electronic health information sharing, visit VHIE's Training and Education Site, located at <https://dvagov.sharepoint.com/sites/vhie> or [www.va.gov.vhie](http://www.va.gov.vhie). [For more information or if you still have questions, please email \[vhavhiepublicaffairs@va.gov\]\(mailto:vhavhiepublicaffairs@va.gov\).](mailto:vhavhiepublicaffairs@va.gov)

## Frequently Asked Questions Related to the Veterans Health Information Exchange:

### **Q: What is VHIE?**

**A:** Veteran Health Information Exchange (VHIE) tools give your health care providers a more complete view of your electronic health information to help inform treatment decisions. Through a secure gateway, called the Joint Health Information Exchange (joint HIE), VA, DoD, and other participating external partners/providers who are a part of your care team can safely and securely send and receive your VA health information electronically. **VA only shares your health information with participating external partners/providers when they are treating you.**

### **Q: What changed?**

**A:** The VA MISSION Act of 2018 removed certain restrictions on electronic health information sharing, enabling VA to seamlessly and securely share VA Patient health information with participating external partners/providers who are a part of a VA Patient's care team. The change took effect April 17, 2020. Previously, patients had to complete a form to opt in or elect to share their electronic health information. VA Patients do not need to take any action for VA to start coordinating their care to receive electronic health information. VA Patients (active duty excluded) may opt out of electronic health information sharing. **VA employees who are not veterans have had no change to how their electronic health information is shared.** However, VA employees, who are veterans, may choose to opt out of sharing if they so choose.

### **Q: How do I opt out?**

**A:** If you would prefer that VA not share your health information electronically, you must complete and submit [VA Form 10-10164](#) to your facility's Release of Information Office (ROI). You may also submit this form online via [My HealtheVet](#) using a Premium Account. Please note: If you have not already done so, you will need to upgrade your My HealtheVet account to Premium status in order to securely submit this form. **There is no deadline to opt out and you may do so at any time.** If you previously opted out but want to resume secure and seamless sharing, you may also opt back in at any time by completing [VA Form 10-10163](#).

### **Q: What happens if I opt out?**

**A:** Choosing to opt out will not affect your access to care from participating external partners/providers. However, if you opt out, your external partners/providers will not receive your electronic medical records in real-time, which would be used to better coordinate your care. This may put your care coordination at risk. There is no deadline to opt out and you may do so at any time. Choosing to opt out will not affect your access to care from external partners/providers.

### **Q: What are participating external partners/providers?**

**A:** Participating external partners/providers are external to the VA health system and are part of your health care team. These participating external partners/providers can provide care to all VA Patients and can include single-physical offices to multi-hospital systems outside of the federal health care system. The federal health care system can also provide care to VA Patients, and includes VA, DoD, and USCG.

### **Q: What are the benefits of information sharing using joint HIE?**

**A:** The more information your health care providers have about your medical history, the better. Sharing your electronic health information using the joint HIE can help you avoid carrying paper copies of your health record back and forth between providers. The instant exchange of

information made possible by the joint HIE can also dramatically improve patient safety, especially during emergency situations. Secure, seamless sharing using joint HIE also means your care teams will be able to:

- Better understand your health history so they can focus more time on what is important to you
- Develop a safer and more effective treatment plan
- Work together to improve your overall health

**Q: Is sharing my electronic health information safe?**

**A:** VA is committed to protecting your privacy. VHIE uses secure systems that comply with all federal privacy laws. Only external partners/providers (i.e., health care providers and organizations outside of VA, that are a part of VA's approved, trusted network), may receive your electronic health information. Additionally, all VA and participating external partners/providers work to protect your electronic health information and only share the appropriate electronic health information when it is needed.

**Q: What kinds of health information can be shared via the joint HIE?**

**A:** Currently, VA and participating providers can electronically share a variety of electronic health information including:

- Prescriptions and medications
- Allergies
- Illnesses
- Laboratory and radiology results
- Immunizations
- Procedures
- Clinical notes
- Other relevant medical information

Employee occupational health data cannot be shared via the joint HIE.

Still have questions? Call the toll free VHIE Information Line at 1-877-771-8537 Monday-Friday 7 a.m.-9 p.m. CST or email us at [VHAVHIEPublicAffairs@va.gov](mailto:VHAVHIEPublicAffairs@va.gov).