

## Are your medical records safe?



### New statewide patient database raises privacy concerns

By Mary Elizabeth Fratini  
Special to the *Vermont Guardian*

**Editor's note:** This is the first of a two-part look at the privacy of medical records in Vermont. This story takes a look at the current state of electronic medical records management, while the second part will focus on the existing privacy and security of medical records, paper-based and electronic, and pending legislation at the state and federal levels.

In light of the multiple breaches of personal information held by state agencies in recent months, should Vermonters be concerned about the privacy and security of their medical records as the state moves forward with pilot programs in electronic medical records (EMRs)

and health care information exchange?

"We have concerns any time medical records are aggregated into electronic databases," said Allen Gilbert, executive director of the Vermont chapter of the American Civil Liberties Union. "Most people feel medical records are some of the most private information that exists about them. Once it is put into an electronic format, you run into all the problems you have with any electronic record, which is hackers getting in even when you've done everything you can to make it as secure as you possibly can."

In April, the 120-bed Rutland Regional Medical Center and the 25-bed Northeastern Vermont Regional Hospital in St. Johnsbury will begin using an emergency room medication history database based on claims data from insurance companies. In June, the 91-bed Mount Ascutney Hospital in Windsor will launch a disease man-

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## It's Madam Chair in Brattleboro

By Christian Avard  
*Vermont Guardian*

BRATTLEBORO — Voters wanted a change and they got one.

An important election that went under the radar on Town Meeting Day was the race for seats on the Brattleboro Selectboard.

In recent years, mentioning the word selectboard in Brattleboro brought a common refrain: "The Old Boys' Club."

But on Town Meeting Day, Audrey Garfield was reelected to a one-year term along with Dora Bouboulis. Rich Garant

was elected to a three-year seat. They join Steve Steidle and Dick DeGray, both of whom are serving three-year terms.

When the board reorganized, Garfield was elected chairwoman and along with Bouboulis and acting Town Manager Barbara Sondag, this trio represents the greatest number of women ever to be in control of Brattleboro's policies and budget.

This particular election was important to Brattleboro residents and, more importantly, many believe this new make-up could lead the community on a different course.

"This change in the board is

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## Putting the public in public records

By Shay Totten  
*Vermont Guardian*

MONTPELIER — Access is the key in an open government — access to elected officials and the documents they create that shape the policies, and programs, which affect the lives of thousands.

While Gov. Jim Douglas, and others, like to point out how high Vermont ranks in terms of tax burdens, it's not likely you'll hear much from this administration, or any other, about the fact that Vermont ranks near the bottom of being open and accessible to the public in terms of access to government records.

A bill under consideration in the Senate Government Operations Committee would begin to change that; however, it is unlikely at this time that legislation will pass this year. The committee is working diligently on other key bills, including a revision to the state's campaign finance law. And, the crossover date — the day when bills need to move between the chambers in order to be passed into law — is Friday.

The committee has been working on a bill that takes its lead from a 2005 report commissioned by the Legislature to examine the state of Vermont's public records system.

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agement program as part of the Blueprint for Health's Chronic Care Initiative.

Vermont Information Technology Leaders, Inc. (VITL), a non-profit founded in July of 2005 with the a vision of sharing real-time clinical information among health care providers across the state, is a driving force behind both projects, although the medication history pilot will initially be funded by a hospital-paid per use charge and the disease management program is part of a five-year contract with the state Department of Health (DOH).

Both pilot programs will require patients to consent, or opt-in, to the systems. Access is governed both by the federal Health Insurance Portability and Accountability Act (HIPAA) as well as Vermont's Patient Privilege Statute that requires patient consent for any type of transaction.

"The goals of the prescription drug program are quite good. The question is, will patients' privacy be adequately protected?" Gilbert said.

According to Greg Farnum, VITL's president, opting in to the medication history program requires both a verbal agreement and separate signed consent form. Once permission is given, a triage nurse electronically retrieves a list of all medications paid for through insurance claims for that patient in the last six months and reviews the list with the patient.

"If there is an inaccuracy, and because this is claims data it is possible that there might be, the nurse notes that on the paper and that goes into the patient's medical chart for the physician," said Steve Larose, VITL's communications manager. "The only people who see the information are the nurse and the physician."

VITL's contract with DOH is to provide data services for the Chronic Care Initiative, beginning with a diabetes management program at Mount Ascutney Hospital in June. Physicians will use an EMR system from GE Healthcare (formerly IDX) in conjunction with disease management applications from Orion Health to collect and analyze lab results for diabetic patients who choose to participate in the program. DOH listed expanding the Chronic Care Initiative to six of the state's 14 hospitals as one of their goals for this year in a report to the Legislature in January.

Deb Richter, MD, founder



### Recent breaches in computer security

**A** laptop computer belonging to a Vermont state colleges staff member was stolen in Montreal in February 2006. It contained up to 20,000 names and Social Security numbers for faculty, staff, and students of the colleges, past and present.

Then, in the span of only a few months in late 2006 and early 2007, several additional security breaches were made public.

A contractor working with the Department of Human Resources posted claims history that contained Social Security numbers for an estimated 1,100 doctors and other health professionals to a state website.

The Secretary of State's office posted an unspecified number of loan documents containing Social Security numbers to a business services website.

The Agency of Human Services announced that an automated hacking program broke into a computer containing names, Social Security numbers, and bank account information for people three or more months behind on child support.

An Internet security report ordered by Gov. Jim Douglas found that no further breaches had occurred, but that there were changes needed long-term to ensure that proper precautions are taken with sensitive data in the state's hands.

Those changes will include a way to continuously update agency information technology security plans.

of Primary Care Vermont, described the diabetes management program as not the way she would approach chronic care. "My feeling is that we need to address the financing issue and administration of health care first before we start dealing with changing the way we deliver care," she said. "If you want to take care of diabetes you need to ensure access to a nutritionist, to health insurance and exercise. If you want to address chronic care we have to adequately finance

the services. We are asking primary care providers to deliver more services with less capacity and less financing."

Initially, only clinicians will have access to the records and results in the program, although VITL's website states that long-term goals for an integrated electronic health records system include patients retaining ownership of their medical information.

Gilbert called the lack of patient access to the records from

"When we talk about medical records, we are in a whole different class of security. Concerns about the security of health care is quite a bit different than other records."

Steve Larose

Vermont Information Technology Leaders

the outset disturbing. "From a patient standpoint, you should always have access to your own records and know at all times who has right of access to your records and that should not be able to be passed on from one party to another — just because you give permission to your doctor doesn't mean s/he has

to believe there are cost savings in aggregating records electronically," Gilbert said. "But we don't have very many good examples in other areas about how records can be kept secure — it seems like every day there is a data breach somewhere. You wonder what is protecting sensitive information from get-

"From a patient standpoint, you should always have access to your own records and know at all times who has right of access to your records and that should not be able to be passed on from one party to another."

— Allen Gilbert

American Civil Liberties Union

the right to pass that information onto drug companies. It should be a right that rests with you solely as the owner of your records."

"There will be in the future what is called a patient portal that will allow patients who opt-in to access their information on a secure website," Larose said. "It is important for people to understand that in Vermont they have to opt-in and say, yes, they want to be part of the system; if they don't, they are not part of the system."


According to VITL, studies suggest a high return on investing in an integrated health information exchange system including a 25 percent reduction in repeated laboratory tests, 35 percent more child immunizations, 30 percent less clinical-related administrative work and overhead, 35 percent reduction in patient complaints, eight percent savings in daily operations, and fewer hospital referrals from primary care.

"I would like to say, yes, you can balance privacy concerns with efficiencies, because I think that all of us recognize there is a benefit to the patient when a doctor has quick access to medical records, especially in an emergency room, and I want

ting out. Medical records are the highest level of sensitivity and people aren't convinced there is a way to keep these records secure."

According to an Internet security report released on March 1, state government uses a federated structure, meaning that individual agencies and departments have unique computer servers, applications, staff, and systems. For VITL's programs, all data will be maintained at GE Healthcare's data center in Chittenden County.

"When we talk about medical records, we are in a whole different class of security. Concerns about the security of health care is quite a bit different than other records," Larose said. "GE Healthcare handles millions of transactions a day and are doing it in the most secure environment known to man."

"I'm not concerned that my information will be in there," Farnum added. "I think there is medical information and other private security information that should be protected with the same level of security — but we used a very deliberate process looking for the highest level of security, selecting a vendor that was the best available in the industry for handling the medical information." 

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“Access and inspection of public records are integral to government accountability,” claimed the report, written by the Office of Legislative Council.

The report found that Vermont’s management system for public records is underfunded, understaffed, and woefully inadequate in its ability to respond to public requests in a timely and efficient manner.

One of the options it recommended was consolidating the record-keeping functions under one office. In most states, the archives division is what sets policy in terms of access to public records, and their long-term storage and maintenance.

It also found that the fees Vermont charges for vital records is about half that of other states.

Electronic record keeping has helped to improve the system, but without clear guidelines, and oversight, this system is also subject to be less open than the law requires.

“Until recently, thorough review of public records could be time consuming due to both poor record keeping and the mechanics of shifting through volumes of paper. Electronic records are still subject to poor records management, but computers accelerate the ability to search and discard unnecessary or poorly managed records,” the report found. “However, the use of electronic records and the Internet has led to increased distribution and, some would argue, misuse of public records and the personal information they contain. Public records custodians are sensitive to the potential for misuse of public records and are often reluctant to disclose public records that contain personal information,” the report found.

This report, and subsequent studies, found 207 exemptions in state law that can keep a public document secret. Some public officials, and the media, are concerned that is too many.

While that is a concern, said Sen. Jeanette White, D-Windham, chairwoman of the Senate committee, the bigger problem to tackle is how to put in place a more transparent, and consistent, records-keeping policy across state government.

From there, White argues, all state agencies will be working from a consistent policy and better know what to release, what to discard, and what to archive.

While a better, more uniform, system is needed across state government, contends Sabina Haskell, president of the Vermont Press Association and editor of the *Brattleboro Reformer*, trimming back the number of exemptions will help make the system more accountable and open to the public.

“How can anybody know anything with that many exemptions?” asks Haskell. “While I think the management problem is real and does need to be tackled — and I use [White’s] own example of the state not being able to find the original Vermont Yankee contract — I think the exemptions and the fact that there are no punitive damages for withholding records are, in my mind, more important.”

Without consequences to a public official who stalls the release, or knowingly withholds a document, no public record system will work, Haskell said.

The state should create a public records commission, or appoint a person, to handle appeals, or stymied requests, and eke out punishments if state law is broken. This

person, or panel, would also be able to help citizens recoup all expenses if their claim is upheld.

The only way for a citizen, or the media, to appeal a records denial in Vermont today is to go through the courts, not any office of state government.

“That’s not the way it’s supposed to be,” said Haskell. “They win when they stall.”

Secretary of State Deb Markowitz agrees that the state needs to winnow its exemptions, and that any new law needs “teeth.”

“Is there a way to put teeth in a new law, because under the current law nobody enforces — only the courts do, not the secretary of state’s office or the attorney general’s office,” said Markowitz.

White said enforcement will come along once there is a better structure for how to create, manage, and store records.

“What we’ve found is sometimes its not being obstructionist, it’s that they can’t find the record,” said White. “There is no unified system for dealing with records in the state, which seems ludicrous. The other part we have to deal with is what do we do with these 207 exemptions.”

White said the committee has talked about putting the oversight of all public records under the purview of the archives division of the secretary of state’s office.

Currently, records management and storage is handled by two parts of state government — the archives division and the Department of Buildings and General Services.


“Nobody has really focused before on records management from the bottom up in our system,” said Markowitz, whose office houses the state archives.


Merging all management of public records into the archives division would allow the state to put in policies that would cover a record from its creation to long-term preservation, Markowitz noted.

“We would know what we should be throwing away or keeping for how long and how we need to store it,” said Markowitz. “It’s not just the press who needs it, it’s the government who needs it, too. With new players every few years and without consistent standards and policies in place, you’ll be destined to make the same mistakes over and over again.”

White said they are also looking at establishing a standing committee that would review all of the exemptions and determine what ones are necessary and which ones are not. And, it would provide ongoing oversight and evaluation of any proposed exemptions. Some of the exemptions, as White understands it, were thrown in during conference committees that occur at the end of each session.

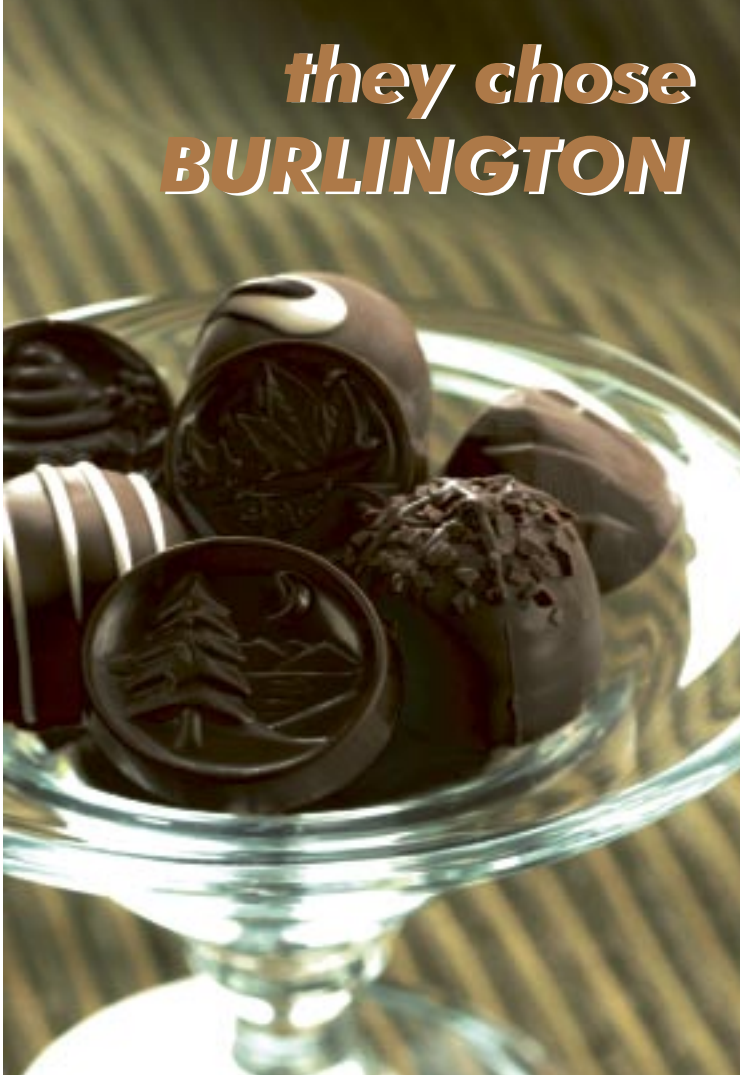
However, White doesn’t expect anything to happen this session, although her committee may get the bill out of the committee.

“Nothing will happen this session unless we feel we really need to do it, and put it on some other bill that comes over that might be germane,” said White. 




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