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**MN Health Dept. Illegally Demands Data on Every Hospitalized Patient**

MDH Tries Using COVID-19 Crisis to Set up Permanent Hospital-Based Surveillance System

ST. PAUL, Minn. — Citizens’ Council for Health Freedom (CCHF) is challenging the Minnesota Department of Health’s unprecedented Notification Letter requiring all hospitals in Minnesota to submit Admission, Discharge, and Transfer (ADT) data on all hospitalized patients to the government—**with or without a COVID-19 diagnosis.**

“To the extent Minnesota hospitals have felt compelled by your letter to provide MDH with anything other than data that specifically relates to COVID-19, we believe you have abused your authority and infringed upon Minnesotans’ health privacy rights,” wrote CCHF in an April 29 letter to Jan Malcolm, Minnesota Commissioner of Health.

In an April 2, 2020 letter to hospitals, Commissioner Malcolm wrote, “MDH’s goal is to have 100% of Minnesota hospitals sending ADTs for the total population of patients receiving care in their facilities as soon as possible.”

This private information transmitted in “near real-time” through the electronic interface MDH demands will include names, addresses, birth date, symptoms, diagnosis, age, gender, race and ethnicity, city, zip code, county, facility, admit date and time and potential census tract data. MDH says patient name, address, and birth date will not be used in its analysis. According to the department’s FAQ, which is not clear on this point, the data will be deidentified before MDH receives it or the patient identifier will be encrypted after MDH receives it.
While MDH uses three laws -- two state and one federal -- to claim authority, CCHF says no such laws authorize the broad health data collection demanded by MDH. Furthermore, no state law allows MDH to require a permanent electronic interchange system between hospitals and MDH contractors for the ongoing collection and reporting of “all patient” data.

“The Commissioner of Health is trying to goad Minnesota hospitals into helping them build an illegal hospital-based surveillance system under cover of the COVID-19 crisis,” says Twila Brase, president and co-founder of Citizens’ Council for Health Freedom.

“But the Commissioner’s letter itself shows its lack of authority. Despite claims of statutory power, there’s no deadline, it uses the word ‘strongly encourage’ and says its ‘goal’ is 100% compliance. However, MDH can use its government power to try to scare hospitals into compliance, exposing these hospitals to lawsuits for failure to follow Minnesota’s strong patient consent requirements,” she continues.

A troubling aspect of the MDH FAQ is the claim that the federal HIPAA rule supersedes state privacy laws, thus MDH says no patient consent for the mass transfer of data is required.

“The HIPAA law specifically authorizes stronger, privacy-protecting state laws to supersede the federal HIPAA rule. Since the Minnesota Health Records Act is the strongest patient privacy and consent law in the nation, MDH cannot dismiss the consent requirements in state law, and has no authority to compel hospitals to turn these medical records over to the government without patient consent,” says Brase.

“MDH has year-long surveillance in mind,” she stated. Once hospital medical record systems are electronically connected to the health department, MDH writes, “It may be possible to use this approach in the future for other related activities. . . Other conditions MDH might want to expand to after COVID-19 are trends in drug overdoses, traumatic brain injury, spinal cord injury, vaping-related lung injury, or other current or emerging public health threats.”

“We’re asking Commissioner Malcolm to immediately rescind her Notification Letter and to notify all hospitals that got the letter. If she refuses, Governor Walz and the Minnesota state legislature should order Commissioner Malcolm to rescind the letter before this unlawful ‘all patient” hospital surveillance system is set up in perpetuity,” Brase says.

CCHF maintains a patient-centered, privacy-focused, free-market perspective. CCHF has worked in its home state of Minnesota and at the national level for more than 20 years to protect health care choices, individualized patient care, and medical and genetic privacy rights. In 2016, CCHF launched The Wedge of Health Freedom, an online directory of direct-pay practices (JointheWedge.com)

Twila Brase, RN, PHN has been named by Modern Healthcare as one of the “100 Most Powerful People in Health Care.” She is the host of the daily Health Freedom Minute radio program heard by over 5 million weekly listeners on more than 800 radio stations nationwide, and the author of the four-time award-winning book, Big Brother in the Exam Room: The Dangerous Truth About Electronic Health Records.