

Dear Commissioner Ehlinger,

As you know, according to Chapter 247 of Minnesota's Laws 2012, your department is required to report "any relevant patient privacy" recommendations from this the health records access study. We certainly expect to see such recommendations based on our comments and the comments of the general public in the upcoming report.

In response to the three questions regarding consent, health records, notification of breaches and audit logs in the Minnesota Health Records Access Study, I provide the following comments on behalf of **Citizens' Council for Health Freedom**.

1) The public does not know about "representation of consent." This was created and pushed by proponents of electronic medical records and health information exchanges for the purpose of greater sharing of private medical record data, in particular electronic data, with less accountability to the public or contact with the patient whose data is being shared. As you may recall testimony last session included admissions that data is being shared for non-treatment purposes without patient consent.

2) Having audit logs in place to monitor use will not change the fact that there is little to no accountability of the use of "representation of consent" for the purpose of sharing patient data without true consent.

3) An audit log requires extensive administrative effort to determine what accesses are authorized and which are not. It will not sufficiently stop such uses under the broad "representation of consent" provision in law, and it will not rectify disclosures that should never have occurred.

4) Regarding intentional unauthorized accesses of medical records, there is plenty of objectionable wiggle room for executives and others to define the terms such as "intentional," "unintentional," "authorized," and "unauthorized." Meanwhile the unsuspecting and unknowing public have their data analyzed, shared, and used without their knowledge under circumstances they might feel are not authorized.

5) Patients should have access to information in the audit logs regarding their own data (and for parents, the data of their children), including a print-out of all information about access to their medical record, with terms, identities, and other information regarding who, when, what, where and why included for their understanding. This would help to discourage all unnecessary, inappropriate, and illegal accesses to patient data.

6) If health care institutions and clinicians are uncomfortable with patients knowing who accessed their data for what purposes, institutions should support real, defined, written and limited consent that gives them the legal assurance that the patient's data is being shared with the people approved of by the patient and used in a way that the patient finds acceptable.

7) The patient's data belongs to the patient. Institutions are mere stewards of this very private and personal property.

8) Again, according to Chapter 247 of Minnesota's Laws 2012, you are required to report "any relevant patient privacy" recommendations. We certainly expect to see such recommendations based on the real privacy concerns of real patients and individuals in the upcoming report. The department should not gloss over the fact that patient privacy is not being protected in Minnesota in a way that patients expect and the fact that patient data is being shared beyond treatment purposes under "representation of consent."

Feel free to contact me if you have any questions about this comment.

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