Minnesota HIE Study MHRA Modifications:
Option 2 ("partial alignment")

144.291 MINNESOTA HEALTH RECORDS ACT.¹

Subdivision 1. Short title. Sections 144.291 to 144.298 may be cited as the "Minnesota Health Records Act."

Subd. 2. Definitions. For the purposes of sections 144.291 to 144.298, the following terms have the meanings given.

(a) "Group purchaser" has the meaning given in section 62J.03, subdivision 6.

(“Health care operations” has the meaning given in Code of Federal Regulations title 45, chapter A, subchapter C, part 164, subpart E, section 164.501.)²

(b) "Health information exchange" means a legal arrangement between health care providers and group purchasers to enable and oversee the business and legal issues involved in the electronic exchange of health records between the entities for the delivery of patient care.

(c) "Health record" means any information, whether oral or recorded in any form or medium, that relates to the past, present, or future physical or mental health or condition of a patient; the provision of health care to a patient; or the past, present, or future payment for the provision of health care to a patient information that is protected health information held by a provider as defined in HIPAA.


(e) "Identifying information" means the patient’s name, address, date of birth, gender, parent’s or guardian’s name regardless of the age of the patient, and other nonclinical data which can be used to uniquely identify a patient.

(f) "Individually identifiable form" means a form in which the patient is or can be identified as the subject of the health records.

(g) "Medical emergency" means medically necessary care which is immediately needed to preserve life, prevent serious impairment to bodily functions, organs, or parts, or prevent placing the physical or mental health of the patient in serious jeopardy.

(h) "Patient" means a natural person who has received health care services from a provider for treatment or examination of a medical, psychiatric, or mental condition, the surviving spouse and parents of a deceased patient, or a person the patient appoints in writing as a representative, including a health care agent acting according to chapter 145C, unless the authority of the agent has been limited by the principal in the principal’s health care directive. Except for minors who have received health care services under sections 144.341 to 144.347, in the case of a minor, patient includes a parent or guardian, or a person acting as a parent or guardian in the absence of a parent or guardian.

¹ Aligns MHRA requirements regarding release/consent and replace with HIPAA approach to such disclosures.
Definitions align MN law with HIPAA definitions related to "health record," "provider" and “treatment” [and/or “payment” and/or “health care operations”]
² See “Health care operations” 1-pager. This definition is only needed for Option 2, alternative C.
³ This only includes HIPAA’s privacy regulations.
(h) (i) "Patient information service" means a service providing the following query options: a record locator service as defined in paragraph (j) (k) or a master patient index or clinical data repository as defined in section 62J.498, subdivision 1.

(\textbf{\textit{[\textquotedblleft Payment\textquotedblright has the meaning given in Code of Federal Regulations title 45, chapter A, subchapter C, part 164, subpart E, section 164.501.]}\textquotedblright )

(i) (j) "Provider" or "health care provider" has the meaning given in Code of Federal Regulations title 45, chapter A, subchapter C, part 160, subpart A, section 160.103 and means—

(1) any person who furnishes health care services and is regulated to furnish the services under chapter 147, 147A, 147C, 147D, 148, 148B, 148D, 148F, 150A, 151, 153, or 153A;

(2) a home care provider licensed under section 144A.471;

(3) a health care facility licensed under this chapter or chapter 144A; and

(4) a physician assistant registered under chapter 147A.

(j) (k) "Record locator service" means an electronic index of patient identifying information that directs providers in a health information exchange to the location of patient health records held by providers and group purchasers.

(k) (l) "Related health care entity" means an affiliate, as defined in section 144.6521, subdivision 3, paragraph (b), of the provider releasing the health records.

(m) "Treatment" has the meaning given in Code of Federal Regulations title 45, chapter A, subchapter C, part 164, subpart E, section 164.501.

\textbf{144.292 PATIENT RIGHTS.}^5

Subd. 4. Notice of rights; information on release. A provider shall provide to patients, in a clear and conspicuous manner, a written notice concerning practices and rights with respect to access to health records. The notice must include an explanation of:

(1) disclosures of health records that may be made without the written consent of the patient, including the type of records and to whom the records may be disclosed; and

(2) the right of the patient to have access to and obtain copies of the patient's health records and other information about the patient that is maintained by the provider.

The notice requirements of this subdivision are satisfied if the content and distribution requirements described in Code of Federal Regulations title 45, chapter A, subchapter C, part 164, subpart E, section CFR 164.520 are included, the notice is included with the notice and copy of the patient and resident bill of rights under section 144.652, or it is displayed prominently in the provider's place of business. The commissioner of health shall develop the notice required in this subdivision and publish it in the State Register.

\textbf{144.293 RELEASE OR DISCLOSURE OF HEALTH RECORDS.}^6

Subdivision 1. Release or disclosure of health records. Health records can be released or disclosed as specified in subdivisions 2 to 9 and sections 144.294 and 144.295.

Subd. 2. Patient consent to Disclosure or release of health records. A provider may disclose a health record if that disclosure is in compliance with Code of Federal Regulations, title 45, chapter A,

\begin{footnotesize}
\item 4 This definition is only needed for Option 2, alternative B and C.
\item 5 Only the Notice of Rights provisions are impacted in section 144.292. The other subdivisions are not included in Appendix B, but are all listed in Appendix A, for reference.
\item 6 Aligns consent requirements in MHRA with HIPAA provider disclosures for the purposes of treatment [\textit{and/or payment and/or health care operations}]. Subdivisions 3, 7, and 10 are not impacted, so language is not included. The entire section 144.293 is included in Appendix A, for reference.
\end{footnotesize}
subchapter C, part 164, subpart E, sections 164.500 to 164.514, irrespective of whether the provider is a covered entity under HIPAA, for purposes of treatment [and/or payment and/or health care operations]. Or a person who receives health records from a provider, may not release a patient’s health records to a person without: A provider may also disclose a patient’s health record to a person with:

(1) a signed and dated consent that is dated and signed in a manner permitted by law, from the patient or the patient’s legally authorized representative authorizing the release;

(2) specific authorization in law, which permits or requires the disclosure; or

(3) a representation from a provider that holds a signed and dated consent from the patient authorizing the release.

Subd. 4. Duration of consent. Except as provided in this section Unless otherwise required by law, a consent does not expire, unless an expiration date or event is specified in the consent is valid for one year or for a period specified in the consent or for a different period provided by law.

Subd. 5. Exceptions to consent requirement. (a) This section does not prohibit the release of health records:

(1) for a medical emergency when the provider is unable to obtain the patient’s consent due to the patient’s condition or the nature of the medical emergency;

(2) to other providers within related health care entities to a provider when necessary for the current treatment of the patient, including the provision, coordination or management of health care or related services, and referrals and consultations between providers;

(for payment purposes); or

(3) to a health care facility licensed by this chapter, chapter 144A, or to the same types of health care facilities licensed by this chapter and chapter 144A that are licensed in another state when a patient:

(i) is returning to the health care facility and unable to provide consent; or

(ii) who resides in the health care facility, has services provided by an outside resource under Code of Federal Regulations, title 42, section 483.75(h), and is unable to provide consent.

(b) A provider may release a deceased patient’s health care records to another provider for the purposes of diagnosing or treating the deceased patient’s surviving adult child.

(c) A provider may disclose without consent to a family member, other relative, or a close personal friend of the patient, or any other person identified by the patient, the health record directly relevant to such person’s involvement with the patient’s health care or payment related to the patient’s health care if the provider determines the disclosure is in the patient’s best interest based on professional judgment and experience, unless the patient objects.

(d) A provider may disclose health records to law enforcement, without consent, if the conditions in Code of Federal Regulations, title 45, part 164, subpart E, section 164.512(f)(1)-(6) are met, as applicable, irrespective of whether the provider is a covered entity under HIPAA.

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7 Option 2, alternative A would only allow disclosures for treatment. Alternative B would allow disclosures for treatment and payment. Alternative C would allow disclosures for treatment, payment and health care operations.

8 Allows disclosures by providers for care coordination activities and permissible disclosures to friends/family and law enforcement.

9 Optional language for Option 2, alternative B.

10 Consider whether to include other family members of deceased patient.
Subd. 6. Consent does not expire. Notwithstanding subdivision 4, if a patient explicitly gives informed consent to the release of health records for the purposes and restrictions in clause (1), (2), or (3), the consent does not expire after one year for:

(1) the release of health records to a provider who is being advised or consulted with in connection with the releasing provider’s current treatment of the patient;

(2) the release of health records to an accident and health insurer, health service plan corporation, health maintenance organization, or third party administrator for purposes of payment of claims, fraud investigation, or quality of care review and studies, provided that:
   (i) the use or release of the records complies with sections 72A.49 to 72A.505;
   (ii) further use or release of the records in individually identifiable form to a person other than the patient without the patient’s consent is prohibited; and
   (iii) the recipient establishes adequate safeguards to protect the records from unauthorized disclosure, including a procedure for removal or destruction of information that identifies the patient; or

(3) the release of health records to a program in the welfare system, as defined in section 13.46, to the extent necessary to coordinate services for the patient.\(^{11}\)

Subd. 8. Record locator or patient information service.\(^{12}\) (a) In addition to release or disclosure of health records authorized under subdivision 2, a provider or group purchaser may release patient identifying information and information about the location of the patient’s health records to a record locator or patient information service without consent from the patient, unless the patient has elected to be excluded from the service under paragraph (d). The Department of Health may not access the record locator or patient information service or receive data from the service. Only a provider may have access to patient identifying information in a record locator or patient information service. Except in the case of a medical emergency, a provider participating in a health information exchange using a record locator or patient information service has access to patient identifying information and information about the location of the patient’s health records in a medical emergency or for purposes of treatment [and/or payment and/or health care operations]\(^{13}\) unless the patient specifically consents to the access. A consent does not expire but may be revoked by the patient at any time by providing written notice of the revocation to the provider.

(b) A health information exchange maintaining a record locator or patient information service must maintain an audit log of providers accessing information in the service that at least contains information on:

   (1) the identity of the provider accessing the information;
   (2) the identity of the patient whose information was accessed by the provider; and
   (3) the date the information was accessed.

(c) No group purchaser may in any way require a provider to participate in a record locator or patient information service as a condition of payment or participation.

(d) A provider or an entity operating a record locator or patient information service must provide a mechanism under which patients may exclude their identifying information and information about the location of their health records from a record locator or patient information service. At a minimum, a consent form that permits a provider to access a record locator or patient information service must include a conspicuous check-box option that allows a patient to exclude all of the patient’s information.

\(^{11}\) Consent expirations are no longer applicable.

\(^{12}\) Amends HIE language to align with HIPAA for purposes of treatment [and/or payment and/or health care operations].

\(^{13}\) Option 2, alternative A would only allow disclosures for treatment. Alternative B would allow disclosures for treatment and payment. Alternative C would allow disclosures for treatment, payment and health care operations.
from the service. A provider participating in a health information exchange with a record locator or
patient information service who receives a patient's request to exclude all of the patient's information—

Minnesota Statutes 2016, section 144.293, subdivision 9, is amended to read:

Subd. 9. Documentation of release. (a) Except for releases permitted or required by HIPAA, in cases
where a provider releases health records without patient consent as authorized by law, the release must
be documented in the patient's health record. In the case of a release under section 144.294,
subdivision 2, the documentation must include the date and circumstances under which the release was
made, the person or agency to whom the release was made, and the records that were released.

144.294 RECORDS RELATING TO MENTAL HEALTH.

Subd. 1. Provider inquiry. Upon the written request of a spouse, parent, child, or sibling of
a patient being evaluated for or diagnosed with mental illness, a provider shall inquire of a patient—
whether the patient wishes to authorize a specific individual to receive information regarding the
patient's current and proposed course of treatment. If the patient so authorizes, the provider shall—
communicate to the designated individual the patient's current and proposed course of treatment.

Section 144.293, subdivisions 2 and 4, apply to consents given under this subdivision.

Subd. 2. Disclosure to law enforcement agency. Notwithstanding section 144.293, subdivisions 2 and 4,
A provider must disclose health records relating to a patient's mental health to a law enforcement
agency if the law enforcement agency provides the name of the patient and communicates that the:

(1) patient is currently involved in an emergency interaction with the law enforcement agency; and
(2) disclosure of the records is necessary to protect the health or safety of the patient or of another
person.

The scope of disclosure under this subdivision is limited to the minimum necessary for law enforcement
to respond to the emergency. A law enforcement agency that obtains health records under this
subdivision shall maintain a record of the requestor, the provider of the information, and the patient's
name. Health records obtained by a law enforcement agency under this subdivision are private data on
individuals as defined in section 13.02, subdivision 12, and must not be used by law enforcement for any
other purpose.

Subd. 3. Records release for family and caretaker; mental health care. (a) Notwithstanding section
144.293, a provider providing mental health care and treatment may disclose health record information
described in paragraph (b) about a patient to a family member of the patient or other person who
requests the information if:

(1) the request for information is in writing;
(2) the family member or other person lives with, provides care for, or is directly involved in monitoring
the treatment of the patient;
(3) the involvement under clause (2) is verified by the patient's mental health care provider, the
patient’s attending physician, or a person other than the person requesting the information, and is
documented in the patient’s medical record;

14 Exact language here would depend on other provisions.
15 Aligns provider disclosures related to law enforcement with HIPAA.
16 Replaced by permissible law enforcement disclosure in 144.293, subd. 5(d)
before the disclosure, the patient is informed in writing of the request, the name of the person requesting the information, the reason for the request, and the specific information being requested; 
(5) the patient agrees to the disclosure, does not object to the disclosure, or is unable to consent or object, and the patient's decision or inability to make a decision is documented in the patient's medical record; and 
(6) the disclosure is necessary to assist in the provision of care or monitoring of the patient's treatment.
(b) The information disclosed under this paragraph is limited to diagnosis, admission to or discharge from treatment, the name and dosage of the medications prescribed, side effects of the medication, consequences of failure of the patient to take the prescribed medication, and a summary of the discharge plan.
(c) If a provider reasonably determines that providing information under this subdivision would be detrimental to the physical or mental health of the patient or is likely to cause the patient to inflict self-harm or to harm another, the provider must not disclose the information.
(d) This subdivision does not apply to disclosures for a medical emergency or to family members as authorized or required under subdivision 1 or section 144.293, subdivision 5, clause (1).

144.295 DISCLOSURE OF HEALTH RECORDS FOR EXTERNAL RESEARCH.  
144.296 COPIES OF VIDEOTAPES. 
144.297 INDEPENDENT MEDICAL EXAMINATION. 
144.298 PENALTIES. 

Align relevant consent provisions in the Data Practices Act with HIPAA 

Minnesota Statutes, section 13.05, subdivision 4, is amended to read:

   Subd. 4. Limitations on collection and use of data. Private or confidential data on an individual shall not be collected, stored, used, or disseminated by government entities for any purposes other than those stated to the individual at the time of collection in accordance with section 13.04, except as provided in this subdivision.

(a) Data collected prior to August 1, 1975, and which have not been treated as public data, may be used, stored, and disseminated for the purposes for which the data was originally collected or for purposes which are specifically approved by the commissioner as necessary to public health, safety, or welfare.

(b) Private or confidential data may be used and disseminated to individuals or entities specifically authorized access to that data by state, local, or federal law enacted or promulgated after the collection of the data.

(c) Private or confidential data may be used and disseminated to individuals or entities subsequent to the collection of the data when the responsible authority maintaining the data has requested approval

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17 Replaced by HIPAA provisions, and for non-CE providers, by new 144.293, subd 5(c).
18 Not impacted. If not otherwise amended, but definition of Health Records is changed to “PHI as defined by HIPAA,” consider allowing for release of a limited data set (which is PHI) without consent, for research.
19 Sections 144.295-.298 are not impacted.
20 In addition, the Minnesota Attorney General can, under current law, enforce HIPAA.
for a new or different use or dissemination of the data and that request has been specifically approved by the commissioner as necessary to carry out a function assigned by law.

(d) Private data may be used by and disseminated to any person or entity if the individual subject or subjects of the data have given their informed consent or as permitted for purposes of treatment [and/or payment and/or health care operations]21, as defined in section 144.291, subdivision 2, clause (m). Whether a data subject has given informed consent shall be determined by rules of the commissioner.

The responsible authority may require a person requesting copies of data under this paragraph to pay the actual costs of making and certifying the copies.

(e) Private or confidential data on an individual may be discussed at a meeting open to the public to the extent provided in section 13D.05.

REPEALER: Section 13.05, subdivision 4a(7); section 144.334

Align relevant insurance provisions with HIPAA

Minnesota Statutes, section 72A.501, subdivision 4, is amended to read:

Subd. 4. Authorization; noninsurers. If an authorization is submitted to an insurer, insurance-support organization, or insurance agent by a person other than an insurer, insurance-support organization, or insurance agent, the authorization must be dated, signed by the person, and obtained one year or less before the date a disclosure is sought. Unless otherwise required by law, this authorization does not expire, unless an expiration date or event is specified in the authorization.

Minnesota Statutes, section 72A.502, subdivisions 6 and 12, are amended to read:

Subd. 6. Other laws or order. Personal or privileged information may be disclosed without a written authorization if permitted or required by another state or federal law or regulation or in response to a facially valid administrative or judicial order, including a search warrant or subpoena.

Subd. 12. Notice. Whenever an insurer, insurance agent, or insurance-support organization discloses personal or privileged information about a person that requires the written authorization of that person under this section, the insurer, insurance agent, or insurance-support organization shall notify that person in writing within ten days of the date the information was disclosed. The notification must specify the identity of the person to whom information was disclosed and the nature and substance of the information that was disclosed. A notice is not required to be given under this subdivision if an insurer is disclosing personal information for underwriting purposes to another insurer, or to an insurance-support organization if the person had signed an authorization authorizing the disclosure. A notice is not required under this subdivision if the disclosing entity is subject to and complies with the provisions in Code of Federal Regulations title 45, chapter A, subchapter C, part 164, subpart D, sections 164.400 to 164.414.

21 Option 2, alternative A would only allow disclosures for treatment. Alternative B would allow disclosures for treatment and payment. Alternative C would allow disclosures for treatment, payment and health care operations.