



June 2, 2020

Dear Administrator,

On April 2, 2020, the Minnesota Department of Health (MDH) notified every hospital in Minnesota of a new syndromic surveillance system, which includes the establishment of a permanent electronic interface between hospitals and MDH. The MDH letter falsely suggests that all hospitals need to connect to MDH and submit comprehensive admission, discharge, and transfer (ADT) data on all patients, regardless of a COVID-19 positive diagnosis.

In a letter dated April 29, 2020, the Citizens' Council for Health Freedom challenged the authority of MDH to mandate the reporting of this data on all patients, to establish this surveillance system, and to do it without obtaining the patient consent required by Minnesota Statute 144.293 Subd. 2. **[See enclosed CCHF letter to MDH.]**

State legislators are also concerned about MDH's attempt to establish this surveillance system. Senator Michelle Benson (R-Ham Lake) and Representative Peggy Scott (R-Andover) held a press conference on May 12, 2020 to voice opposition to the reporting and collection of this medical information without patient consent or statutory authorization. Rep. Peggy Scott, Republican Lead of the House Committee on Judiciary Finance and Civil Law, stated:

“Any interest the Minnesota Department of Health has in a new surveillance system, should be proposed in full to the legislature. Failure to do so is an overstep of the executive branch and prohibits a robust analysis and debate with public hearings and input about costs of such a plan, the full list of conditions MDH might want to surveil, a comprehensive accounting for the patient data sets that will be included, patient consent, and the plan to maintain security and integrity of private, personal data. **We strongly urge hospitals to obtain patient consent before sharing any patient data with MDH** and we strongly urge the department to re-evaluate the measures outlined for this current COVID database and future plans for unauthorized surveillance of Minnesotans and their private medical data.”
[emphasis added]

Regarding her communications with MDH general counsel on MDH's lack of statutory authority to require hospitals to submit patient data for this surveillance system, Senator Benson, Chair of the Senate Committee on Health and Human Services Finance and Policy, stated:

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CCHF supports patient and doctor freedom, medical innovation and the right of citizens to a confidential patient-doctor relationship.

“They refer to section 144.05 and a broad general authority. **But if they had broad general authority, then why are there so many sections of statute where the legislature grants specific authority to do data collection activities?** 62U, for example, has a number of examples where the department has come to the legislature to ask for specific authority. And so, if they have broad authority, why have they asked in the past for specific authority?” [emphasis added]

Chairwoman Benson also remarked:

“The letter from MDH asks for admission, discharge, and transfer [data] of all patients, not of just COVID patients... I think **it’s important that they come to the legislature with these proposals.**” [emphasis added]

We agree with these state legislators that this data cannot be shared by hospitals without obtaining patient consent. MN Statute 144.293 Subd. 2 clearly requires patient consent prior to sharing information with anyone – including MDH – unless specifically authorized in law. Furthermore, MDH’s claims that HIPAA allows this sharing of patient data for public health purposes are false because: 1) the limited 144.293 exceptions to consent requirements are for specific state laws, not federal rules, and 2) HIPAA clearly states in 45 CFR 160.203(b) that a state privacy law that is more protective of privacy requirements preempts the federal rule and must be applied. Therefore, hospitals are legally required to obtain patient consent prior to sharing patient medical information with MDH for this purpose. Patients also agree. More than 1600 signatures on a “Stop Surveillance” petition were sent to Governor Walz in May.

In addition, we agree that this data cannot be collected by MDH without obtaining *specific* statutory authorization. If MN Statute 144.05 (General Duties of Commissioner) grants broad authority for data collection to MDH, the many other state laws granting MDH specific data-collection authority would be unnecessary – or superfluous. The rule against surplusage dictates that laws mean something; that they are not superfluous (surplus).

Therefore, because the Minnesota Department of Health lacks specific authority in Minnesota law to mandate the reporting and collection of ADT data on all hospitalized patients, we strongly urge all Minnesota hospitals to refuse to set up the interface requested by MDH and to refuse to submit any data unrelated to a COVID-19 diagnosis. We also strongly urge hospitals to comply with the legal requirement of Minnesota law by refusing to share this patient data without obtaining express patient consent, as required by Minnesota Statute 144.293.

Sincerely,



Twila Brase, RN, PHN
President and Co-founder