Introduction:

The 2016 Minnesota Legislature requested a study regarding the framework for Health Information Exchange (HIE) in Minnesota. HIE is defined as (1) the electronic transmission of health-related information between organizations as well as (2) an organization that facilitates information exchange. Health Information Organization (HIO) is an organization created to facilitate electronic transfer of health information between parties.

The three stages of HIE are defined as foundational HIE (information flows with the patient), Robust HIE (information used to manage patient care), and Optimal HIE (connected data used to support community health). While the majority of hospitals and some clinics have achieved Foundational HIE, most Minnesota hospitals and clinics have not achieved MDH’s goals of Robust HIE or Optimal HIE.

The recommendations of the Minnesota Department of Health, as proposed on October 6, 2017 during the Health Information Exchange Workgroup Meeting, cause serious concern.

MDH Recommendations

1. (Page 11) Create a task force that would eventually be converted to a governing body to establish rules and standard practices for HIOs and HIEs in Minnesota. MDH indicated that while legislative authorization is preferred, it is not necessarily required for the creation of this governance body that would ultimately set the standard for HIEs and HIOs in Minnesota.

2. (Page 13) Task force goals include:
   a. Establishing Membership Requirements and Connecting HIOs
   b. Oversight of HIE participation and Compliance with Rules

3. (Page 11) The Connected Networks Model includes a master patient index, an integrated prescription monitoring program, and state and federal reporting for quality measurement and public health data.

4. (Page 14) “Update Minnesota’s Health Information Exchange Oversight law” (MN Statutes 62J.498 through 62J.4982) to support the Coordinated Networks Model.

5. “Modify the MN Health Records Act”
Options range from immediate repeal of Minnesota Health Records Act (MHRA) (Minnesota Statute 144.291-144.298) to incremental changes to remove various privacy protections and consent requirements in order to streamline care.

a. Option #1 (page 19)
   i. Allows providers to share information without obtaining patient consent for purposes of payment, treatment, and health care operations.
   ii. Eliminates duration and exceptions for consent requirements
   iii. Eliminates opt-out of record locator service
   iv. Removes privacy protections of MHRA allowing for certain sharing of information to law enforcement and for research
   v. Changes provisions of the Minnesota Data Practices Act

b. Option #1A (page 19)
   i. Full repeal of MHRA

c. Option #1B (page 20)
   i. Some MHRA framework remains in place, except proposed new provision would permit all providers to no longer follow MHRA privacy requirements regarding disclosure of protected health information (PHI).

d. Option #2 (page 20)
   i. Maintains ‘some’ privacy provisions of MHRA, but removes patient consent requirement for treatment, and/or payment, and/or health care operations.
   ii. “this approach removes certain patient controls for MN patients, especially related to sensitive material”
   iii. Eliminates duration and exceptions for consent requirements
   iv. Changes requirements of opt-out of record locator service
   v. Removes privacy protections of MHRA allowing for certain sharing of information to law enforcement and for research
   vi. Changes provisions of the Minnesota Data Practices Act

CCHF’s Position:

The goal of this working group and MDH is to streamline HIE and create a governing body for HIOs participating in HIE. Each of the options presented in the report call for a partial or full repeal of the language in the Minnesota Health Records Act that protects privacy and consent rights. The cost of this can be measured in millions of dollars of infrastructure expansion, but also comes at the cost of a Minnesota patient’s privacy and control. Complete or partial repeal of the MHRA, Minnesota Data Practices Act, and MN’s HIE Oversight law would unravel decades of carefully considered and vetted legislation that protects and establishes rights of Minnesota patients in addition to requirements for providers. Minnesota patients have the right to determine how and with whom their Health Information will be Exchanged.