

Six Facts About the MDH Request for Information (RFI) on Minnesota Health Privacy Law

1. **Minnesota Law vs. Federal HIPAA Rule:** Under the Minnesota Health Records Act, doctors, clinics, and hospitals are required to ask for your consent for use, sharing, and disclosure of your private medical record information including purposes of treatment, payment, and health care operations (*390-word definition*). *And you are allowed to say “No.” But under HIPAA, most sharing of your data is permitted without your consent. And they do not have to ask you for permission.*
2. **MN Law is Better:** [The Mayo Clinic Notice of Privacy Practices \(NPP\)](#) highlights the protective differences between Minnesota’s privacy law and HIPAA’s “no-privacy” rule.
3. **RFI geared toward industry not patients:** The Minnesota Department of Health (MDH), in this RFI, has given the health care industry much more latitude to comment and provide opinions than it has given the patient – you – as you fill out the form. The industry supports the permissive federal HIPAA rule, not the privacy-protecting MN law.
4. **Questions are designed to manipulate:** MDH drafted the RFI questions so the average person would respond only in the way that MDH wants — the way that MDH can use to take away your privacy rights. They ask how much an individual values, “allowing my doctor/health provider to share my necessary health information with other providers I need to visit, such as referrals to specialists.” (question B-4a)

Most people’s knee-jerk reaction would be to say “this is very important.” However, **this answer can be used to say that the MN law imposes an unnecessary burden on providers to get your consent for sharing your data.** They will be able to tell MN legislators that ‘everyone says they want their information to be shared.’ Thus, we suggest you choose, “Not at all important” for B-4a if you want to protect your privacy and “very important” for B-4b and B-4c which give YOU control over your data.

5. **MDH does not discuss the lack of privacy under HIPAA:** Under HIPAA more than 2.2 million entities can potentially have access to your data without your consent for untold purposes. But HIPAA *does* allow stronger state privacy law and thus MN law gives patients the right to say “no” to data-sharing in eight areas (see Mayo NPP link). MDH phrases the questions to make the average person think that sharing data only means sharing to other doctors to coordinate your care. That’s not true.
6. **MDH Hopes to Argue that Getting Your Consent is too Expensive:** In the RFI, MDH asks for specifics from the industry regarding the cost per year of asking for patient consent as required by the MHRA. This industry will likely provide high numbers. This will be used to say that the MHRA is too burdensome and increases the costs of health care. Your response can counter this attempt to undo your privacy rights.