

MODEL STATE LEGISLATION

CONSENT REQUIREMENTS FOR RELEASE OR DISCLOSURE OF HEALTH RECORDS.

Subdivision 1. Release or disclosure of health records.

Health records can be released or disclosed as specified in subdivisions 2 to 9.

Subd. 2. Patient consent to release of records.

A provider, or a person who receives health records from a provider, may not release a patient's health records to a person without:

- (1) a signed and dated consent from the patient or the patient's legally authorized representative authorizing the release;
- (2) specific authorization in law; or
- (3) a representation from a provider that holds a signed and dated consent from the patient authorizing the release.

Subd. 3. Release from one provider to another.

A patient's health record, including, but not limited to, laboratory reports, x-rays, prescriptions, and other technical information used in assessing the patient's condition, or the pertinent portion of the record relating to a specific condition, or a summary of the record, shall promptly be furnished to another provider upon the written request of the patient. The written request shall specify the name of the provider to whom the health record is to be furnished. The provider who furnishes the health record or summary may retain a copy of the materials furnished. The patient shall be responsible for the reasonable costs of furnishing the information.

Subd. 4. Duration of consent.

Except as provided in this section, a 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 when necessary for the current treatment of the patient; or
- (3) to a health care facility licensed by this chapter, chapter _____ (if applicable), or to the same types of health care facilities licensed by this chapter and chapter _____ (if applicable) 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.

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 _____ (state Insurance Fair Information Reporting Act, if applicable);

(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, defined as "including the Department of Human Services, local social services agencies, county welfare agencies, county public health agencies, county veteran services agencies, county housing agencies, private licensing agencies, the public authority responsible for child support enforcement, human services boards, community mental health center boards, state hospitals, state nursing homes, the ombudsman for mental health and developmental disabilities, Native American tribes to the extent a tribe provides a service component of the welfare system, and persons, agencies, institutions, organizations, and other entities under contract to any of the above agencies to the extent specified in the contract" count to the extent necessary to coordinate services for the patient.

Subd. 7. Record locator or patient information service.

(a) A provider or group purchaser may not 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. 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 does not have access to patient identifying information and information about the location of the patient's health records 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;
- (3) the date the information was accessed; and
- (4) the purpose given for the access.

(c) Upon request by a patient who is the subject of the data, a health information exchange maintaining a record locator or patient information service must make the audit log available.

(d) 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.

(e) A provider or an entity operating a record locator or patient information service must provide a consent mechanism under which patients may elect to include their identifying information and information about the location of their health records in a record locator or patient information service. At a minimum, a consent form must include a description of the information that would be included in the service and a signature line solely for signifying the patient's consent to include their information in a record locator or patient information service. A provider participating in a health information exchange with a record locator or patient information service who receives a patient's request to include all of the patient's information in the record locator or patient information service, to have a specific provider contact excluded from the record locator or patient information service, or to opt out of the record locator or patient information service is responsible for including or removing that information accordingly.

Subd. 8. Documentation of release.

(a) 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 _____ (law enforcement agency statute), 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.

(b) When a health record is released using a representation from a provider that holds a consent from the patient, the releasing provider shall document:

- (1) the provider requesting the health records;
- (2) the identity of the patient;
- (3) the health records requested; and

(4) the date the health records were requested.

Subd. 9. Warranties regarding consents, requests, and disclosures.

(a) When requesting health records using consent, a person warrants that the consent:

(1) contains no information known to the person to be false; and

(2) accurately states the patient's desire to have health records disclosed or that there is specific authorization in law.

(b) When requesting health records using consent, or a representation of holding a consent, a provider warrants that the request:

(1) contains no information known to the provider to be false;

(2) accurately states the patient's desire to have health records disclosed or that there is specific authorization in law; and

(3) does not exceed any limits imposed by the patient in the consent.

(c) When disclosing health records, a person releasing health records warrants that the person:

(1) has complied with the requirements of this section regarding disclosure of health records;

(2) knows of no information related to the request that is false; and

(3) has complied with the limits set by the patient in the consent.

(d) If a person falsely warrants any of the provisions in (a) through (c), the person is guilty of a misdemeanor.