



Conformance with the "Federal Medical Privacy Rule" (HIPAA) Will Undo Minnesota's Medical Privacy Laws and Patient Consent Requirements

The so-called "Federal Medical Privacy Rule" (45 CFR Parts 160/164)—from the 1996 Health Insurance Portability and Accountability Act (HIPAA)—permits *broad use and disclosure* of individually-identifiable "protected health information" without patient consent. It is often referred to as the "HIPAA Privacy Rule" or just "HIPAA." Minnesota's medical privacy law (M.S. 144.335) more often *requires patient consent* before use and disclosure (see also M.S. 62J.55).

Importantly, Congress allows States to enact and impose stronger privacy protection laws. These laws supercede the authority of HIPAA, and must be followed. Minnesota is such a State.

To contrast HIPAA's broad authority to share data with Minnesota's strong patient consent requirements, find below quotes from sections of the federal rule, and the Mayo Clinic's Notice of Privacy Practices—which best specifies the differences between HIPAA and the MN law.

Disclosures Without Consent - HIPAA

Under "Uses and disclosures for which an authorization or opportunity to agree or object is not required" (§164.512), HIPAA allows access to individually-identifiable "personal health information" for:

- a) uses and disclosures required by law
- b) public health activities
- c) disclosures about victims of abuse, neglect or domestic violence
- d) health oversight activities
- e) judicial and administrative proceedings
- f) law enforcement purposes
- g) disclosures about decedents
- h) uses and disclosures for cadaveric organ, eye or tissue donation purposes
- i) research purposes
- j) to avert a serious threat to health or safety
- k) specialized government functions
- l) workers' compensation

Health Oversight - MN

"Minnesota law requires that patient-identifying information be removed from most disclosures for health-oversight activities, unless you have provided written consent for access to your protected health information." (*Mayo Clinic notice, 2003*)

Judicial Proceedings - MN

"Minnesota law permits disclosures in response to a valid Minnesota court order, but requires written consent from the patient to release information in response to court orders from other states, subpoenas (except grand jury subpoenas) and discovery requests..." (*Mayo Clinic notice, 2003*)

Law Enforcement - MN

"Minnesota law generally does not allow the release of information from the health record without a valid court order or warrant..." (*Mayo Clinic notice, 2003*)

Medical Research

HIPAA: "Board Approval of A Waiver of Authorization": "A covered

entity may use or disclose protected health information for research, regardless of the source of funding of the research, provided that...a waiver...has been approved by either an Institutional Review Board...or a privacy board..."

HIPAA: "Limited Data Set:" "A covered entity may use or disclose a limited data set...only for the purposes of *research, public health, or health care operations.*" (*our emphasis*)

NOTE: "We agree...that the limited data set is not deidentified information, as retention of geographical and date identifiers measurably increase the risk of identification of the individual through matching of data with other public (or private) data sets." (*HHS, Final Rule, 8/14/02*)

Minnesota: "Minnesota law generally requires a written consent before Mayo Clinic can disclose any medical information about you for medical research to an *outside* researcher." (*Mayo Clinic; our emphasis*)

Treatment

HIPAA: "A covered entity may use or disclose protected health information for its own treatment, payment, or health care operations...[and] for treatment activities of a health care provider."

Minnesota: "Minnesota law requires Mayo Clinic to obtain your written consent to disclose your medical information *outside of* Mayo Clinic for related entities for treatment..." (*Mayo Clinic; our emphasis*)

Payment

HIPAA: "A covered entity may use or disclose protected health information for its own treatment, payment, or health care operations" and to other providers for payment activities.

Minnesota: "[State] law requires your written consent to disclose information *outside of* Mayo Clinic for payment..." (*Mayo Clinic; our emphasis*)

Health Care Operations (HCO)

HIPAA: "A covered entity may use or disclose protected health information for its own treatment, payment, or health care operations" and for HCO activities of another covered entity if that entity has a relationship with the individual who is the subject of data.

Minnesota: "Minnesota law requires specific written consent to disclose information for health-care operations to others *outside* Mayo Clinic. This includes things like sharing information with your insurance company for billing." (*Mayo Clinic; our emphasis*)

Definition: The HIPAA definition of "health care operations" is 390 words long. It includes such activities as quality assessment, outcomes evaluation, fundraising, training non-health care providers, accreditation, premium rating, auditing, protocol and formulary development, case management, guideline development, contacting providers and patients with information on treatment alternatives, underwriting, legal services, customer service, data analyses, mergers, resolution of internal grievances, creating limited data sets and provider performance evaluations. (*see CCHC Brief "HIPAA Definitions: Treatment, Payment and Health Care Operations," April 2005*)

No Accounting of Disclosures - HIPAA

"An individual has a right to receive an accounting of disclosures...*except for* disclosures: (i) To carry out treatment, payment and health care operations..." (*our emphasis*)

HIPAA Source: OCR/HIPAA Privacy Regulation Text, October 2002.