

Why Conformance with the “Federal Medical Privacy Rule” (HIPAA) will Undo Minnesota’s Patient Privacy Law

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

Importantly, Congress allows States with stronger, privacy-protecting laws to supersede HIPAA’s virtually non-existent privacy protections. Minnesota is such a State.

Find below quotes from sections of the federal rule, and the Mayo Clinic’s Notice of Privacy Practices to contrast HIPAA’s broad authority to share data...with Minnesota’s strong patient consent requirements.

Disclosures Without Consent

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 health data 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 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.”

Definition: The HIPAA definition of “health care operations” is **390 words**, including such activities as quality assessment, outcomes evaluation, fundraising, training non-health care providers, accreditation, premium rating, auditing, protocol and formulary development,

case management, clinical guideline development, contacting providers and patients with information about treatment alternatives, provider performance evaluations, underwriting, legal services, customer service, data analyses, mergers, resolution of internal grievances, and creating limited data sets.

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...”

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...”

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...”

Health Oversight

Minnesota: “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 notice, 2003*)

Judicial Proceedings

Minnesota: “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 notice, 2003*)

Law Enforcement

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