

347.1 Minnesota Rules, part 4610.2800, is repealed.

347.2 **ARTICLE 10**

347.3 **DEPARTMENT OF HEALTH**

347.4 Section 1. Minnesota Statutes 2006, section 62Q.80, is amended by adding a
347.5 subdivision to read:

347.6 Subd. 1a. **Demonstration project.** The commissioner of health shall award a
347.7 demonstration project grant to a community-based health care initiative to develop and
347.8 operate a community-based health care coverage program to operate within Carlton, Cook,
347.9 Lake, and St. Louis County. The demonstration project shall extend for five years and
347.10 must comply with the requirements of this section.

347.11 Sec. 2. **[144.291] MINNESOTA HEALTH RECORDS ACT.**

347.12 Subdivision 1. **Short title.** Sections 144.291 to 144.298 may be cited as the
347.13 Minnesota Health Records Act.

347.14 Subd. 2. **Definitions.** For the purposes of sections 144.291 to 144.298, the following
347.15 terms have the meanings given.

347.16 (a) **Group purchaser.** "Group purchaser" has the meaning given in section 62J.03,
347.17 subdivision 6.

347.18 (b) **Health information exchange.** "Health information exchange" means a legal
347.19 arrangement between health care providers and group purchasers to enable and oversee the
347.20 business and legal issues involved in the electronic exchange of health records between
347.21 the entities for the delivery of patient care.

347.22 (c) **Health record.** "Health record" means any information, whether oral or recorded
347.23 in any form or medium, that relates to the past, present, or future physical or mental health
347.24 or condition of a patient; the provision of health care to a patient; or the past, present, or
347.25 future payment for the provision of health care to a patient.

347.26 (d) **Identifying information.** "Identifying information" means the patient's name,
347.27 address, date of birth, gender, parent's or guardian's name regardless of the age of the
347.28 patient, and other nonclinical data which can be used to uniquely identify a patient.

347.29 (e) **Individually identifiable form.** "Individually identifiable form" means a form in
347.30 which the patient is or can be identified as the subject of the health records.

347.31 (f) **Medical emergency.** "Medical emergency" means medically necessary care
347.32 which is immediately needed to preserve life, prevent serious impairment to bodily
347.33 functions, organs, or parts, or prevent placing the physical or mental health of the patient
347.34 in serious jeopardy.

348.1 (g) **Patient.** "Patient" means a natural person who has received health care services
348.2 from a provider for treatment or examination of a medical, psychiatric, or mental
348.3 condition, the surviving spouse and parents of a deceased patient, or a person the patient
348.4 appoints in writing as a representative, including a health care agent acting according to
348.5 chapter 145C, unless the authority of the agent has been limited by the principal in the
348.6 principal's health care directive. Except for minors who have received health care services
348.7 under sections 144.341 to 144.347, in the case of a minor, patient includes a parent or
348.8 guardian, or a person acting as a parent or guardian in the absence of a parent or guardian.

348.9 (h) **Provider.** "Provider" means:

348.10 (1) any person who furnishes health care services and is regulated to furnish the
348.11 services under chapter 147, 147A, 147B, 147C, 147D, 148, 148B, 148C, 148D, 150A,
348.12 151, 153, or 153A;

348.13 (2) a home care provider licensed under section 144A.46;

348.14 (3) a health care facility licensed under this chapter or chapter 144A;

348.15 (4) a physician assistant registered under chapter 147A; and

348.16 (5) an unlicensed mental health practitioner regulated under sections 148B.60 to
348.17 148B.71.

348.18 (i) **Record locator service.** "Record locator service" means an electronic index of
348.19 patient identifying information that directs providers in a health information exchange to
348.20 the location of patient health records held by providers and group purchasers.

348.21 (j) **Related health care entity.** "Related health care entity" means an affiliate, as
348.22 defined in section 144.6521, subdivision 3, paragraph (b), of the provider releasing the
348.23 health records.

348.24 **Sec. 3. [144.292] PATIENT RIGHTS.**

348.25 Subdivision 1. **Scope.** Patients have the rights specified in this section regarding the
348.26 treatment the patient receives and the patient's health record.

348.27 Subd. 2. **Patient access.** Upon request, a provider shall supply to a patient complete
348.28 and current information possessed by that provider concerning any diagnosis, treatment,
348.29 and prognosis of the patient in terms and language the patient can reasonably be expected
348.30 to understand.

348.31 Subd. 3. **Additional patient rights.** A patient's right specified in this section and
348.32 sections 144.293 to 144.298 are in addition to the rights specified in sections 144.651 and
348.33 144.652 and any other provision of law relating to the access of a patient to the patient's
348.34 health records.

349.1 Subd. 4. **Notice of rights; information on release.** A provider shall provide to
349.2 patients, in a clear and conspicuous manner, a written notice concerning practices and
349.3 rights with respect to access to health records. The notice must include an explanation of:

349.4 (1) disclosures of health records that may be made without the written consent of the
349.5 patient, including the type of records and to whom the records may be disclosed; and

349.6 (2) the right of the patient to have access to and obtain copies of the patient's health
349.7 records and other information about the patient that is maintained by the provider.

349.8 The notice requirements of this subdivision are satisfied if the notice is included with
349.9 the notice and copy of the patient and resident bill of rights under section 144.652 or if it
349.10 is displayed prominently in the provider's place of business. The commissioner of health
349.11 shall develop the notice required in this subdivision and publish it in the State Register.

349.12 Subd. 5. **Copies of health records to patients.** Except as provided in section
349.13 144.296, upon a patient's written request, a provider, at a reasonable cost to the patient,
349.14 shall promptly furnish to the patient:

349.15 (1) copies of the patient's health record, including but not limited to laboratory
349.16 reports, x-rays, prescriptions, and other technical information used in assessing the
349.17 patient's health conditions; or

349.18 (2) the pertinent portion of the record relating to a condition specified by the patient.

349.19 With the consent of the patient, the provider may instead furnish only a summary
349.20 of the record. The provider may exclude from the health record written speculations
349.21 about the patient's health condition, except that all information necessary for the patient's
349.22 informed consent must be provided.

349.23 Subd. 6. **Cost.** (a) When a patient requests a copy of the patient's record for
349.24 purposes of reviewing current medical care, the provider must not charge a fee.

349.25 (b) When a provider or its representative makes copies of patient records upon a
349.26 patient's request under this section, the provider or its representative may charge the
349.27 patient or the patient's representative no more than 75 cents per page, plus \$10 for time
349.28 spent retrieving and copying the records, unless other law or a rule or contract provide for
349.29 a lower maximum charge. This limitation does not apply to x-rays. The provider may
349.30 charge a patient no more than the actual cost of reproducing x-rays, plus no more than
349.31 \$10 for the time spent retrieving and copying the x-rays.

349.32 (c) The respective maximum charges of 75 cents per page and \$10 for time provided
349.33 in this subdivision are in effect for calendar year 1992 and may be adjusted annually each
349.34 calendar year as provided in this subdivision. The permissible maximum charges shall
349.35 change each year by an amount that reflects the change, as compared to the previous year.

350.1 in the Consumer Price Index for all Urban Consumers, Minneapolis-St. Paul (CPI-U),
350.2 published by the Department of Labor.

350.3 (d) A provider or its representative must not charge a fee to provide copies of records
350.4 requested by a patient or the patient's authorized representative if the request for copies
350.5 of records is for purposes of appealing a denial of Social Security disability income or
350.6 Social Security disability benefits under title II or title XVI of the Social Security Act. For
350.7 the purpose of further appeals, a patient may receive no more than two medical record
350.8 updates without charge, but only for medical record information previously not provided.
350.9 For purposes of this paragraph, a patient's authorized representative does not include units
350.10 of state government engaged in the adjudication of Social Security disability claims.

350.11 Subd. 7. **Withholding health records from patient.** (a) If a provider, as defined in
350.12 section 144.291, subdivision 2, paragraph (h), clause (1), reasonably determines that the
350.13 information is detrimental to the physical or mental health of the patient, or is likely to
350.14 cause the patient to inflict self harm, or to harm another, the provider may withhold the
350.15 information from the patient and may supply the information to an appropriate third party
350.16 or to another provider, as defined in section 144.291, subdivision 2, paragraph (h), clause
350.17 (1). The other provider or third party may release the information to the patient.

350.18 (b) A provider, as defined in section 144.291, subdivision 2, paragraph (h), clause
350.19 (3), shall release information upon written request unless, prior to the request, a provider,
350.20 as defined in section 144.291, subdivision 2, paragraph (h), clause (1), has designated and
350.21 described a specific basis for withholding the information as authorized by paragraph (a).

350.22 Subd. 8. **Form.** By January 1, 2008, the Department of Health must develop a form
350.23 that may be used by a patient to request access to health records under this section. A form
350.24 developed by the commissioner must be accepted by a provider as a legally enforceable
350.25 request under this section.

350.26 **Sec. 4. [144.293] RELEASE OR DISCLOSURE OF HEALTH RECORDS.**

350.27 Subdivision 1. **Release or disclosure of health records.** Health records can be
350.28 released or disclosed as specified in subdivisions 2 to 9 and sections 144.294 and 144.295.

350.29 Subd. 2. **Patient consent to release of records.** A provider, or a person who
350.30 receives health records from a provider, may not release a patient's health records to a
350.31 person without:

350.32 (1) a signed and dated consent from the patient or the patient's legally authorized
350.33 representative authorizing the release;

350.34 (2) specific authorization in law; or

351.1 (3) a representation from a provider that holds a signed and dated consent from the
351.2 patient authorizing the release.

351.3 Subd. 3. Release from one provider to another. A patient's health record,
351.4 including, but not limited to, laboratory reports, x-rays, prescriptions, and other technical
351.5 information used in assessing the patient's condition, or the pertinent portion of the record
351.6 relating to a specific condition, or a summary of the record, shall promptly be furnished to
351.7 another provider upon the written request of the patient. The written request shall specify
351.8 the name of the provider to whom the health record is to be furnished. The provider who
351.9 furnishes the health record or summary may retain a copy of the materials furnished. The
351.10 patient shall be responsible for the reasonable costs of furnishing the information.

351.11 Subd. 4. Duration of consent. Except as provided in this section, a consent is
351.12 valid for one year or for a lesser period specified in the consent or for a different period
351.13 provided by law.

351.14 Subd. 5. Exceptions to consent requirement. This section does not prohibit the
351.15 release of health records:

351.16 (1) for a medical emergency when the provider is unable to obtain the patient's
351.17 consent due to the patient's condition or the nature of the medical emergency;

351.18 (2) to other providers within related health care entities when necessary for the
351.19 current treatment of the patient; or

351.20 (3) to a health care facility licensed by this chapter, chapter 144A, or to the same
351.21 types of health care facilities licensed by this chapter and chapter 144A that are licensed
351.22 in another state when a patient:

351.23 (i) is returning to the health care facility and unable to provide consent; or

351.24 (ii) who resides in the health care facility, has services provided by an outside
351.25 resource under Code of Federal Regulations, title 42, section 483.75(h), and is unable
351.26 to provide consent.

351.27 Subd. 6. Consent does not expire. Notwithstanding subdivision 4, if a patient
351.28 explicitly gives informed consent to the release of health records for the purposes and
351.29 restrictions in clauses (1) and (2), the consent does not expire after one year for:

351.30 (1) the release of health records to a provider who is being advised or consulted with
351.31 in connection with the releasing provider's current treatment of the patient;

351.32 (2) the release of health records to an accident and health insurer, health service plan
351.33 corporation, health maintenance organization, or third-party administrator for purposes of
351.34 payment of claims, fraud investigation, or quality of care review and studies, provided that:

351.35 (i) the use or release of the records complies with sections 72A.49 to 72A.505;

352.1 (ii) further use or release of the records in individually identifiable form to a person
352.2 other than the patient without the patient's consent is prohibited; and

352.3 (iii) the recipient establishes adequate safeguards to protect the records from
352.4 unauthorized disclosure, including a procedure for removal or destruction of information
352.5 that identifies the patient.

352.6 Subd. 7. **Exception to consent.** Subdivision 2 does not apply to the release of health
352.7 records to the commissioner of health or the Health Data Institute under chapter 62J,
352.8 provided that the commissioner encrypts the patient identifier upon receipt of the data.

352.9 Subd. 8. **Record locator service.** (a) A provider or group purchaser may release
352.10 patient identifying information and information about the location of the patient's health
352.11 records to a record locator service without consent from the patient, unless the patient
352.12 has elected to be excluded from the service under paragraph (d). The Department of
352.13 Health may not access the record locator service or receive data from the record locator
352.14 service. Only a provider may have access to patient identifying information in a record
352.15 locator service. Except in the case of a medical emergency, a provider participating in a
352.16 health information exchange using a record locator service does not have access to patient
352.17 identifying information and information about the location of the patient's health records
352.18 unless the patient specifically consents to the access. A consent does not expire but may
352.19 be revoked by the patient at any time by providing written notice of the revocation to the
352.20 provider.

352.21 (b) A health information exchange maintaining a record locator service must
352.22 maintain an audit log of providers accessing information in a record locator service that
352.23 at least contains information on:

352.24 (1) the identity of the provider accessing the information;

352.25 (2) the identity of the patient whose information was accessed by the provider; and

352.26 (3) the date the information was accessed.

352.27 (c) No group purchaser may in any way require a provider to participate in a record
352.28 locator service as a condition of payment or participation.

352.29 (d) A provider or an entity operating a record locator service must provide
352.30 a mechanism under which patients may exclude their identifying information and
352.31 information about the location of their health records from a record locator service. At
352.32 a minimum, a consent form that permits a provider to access a record locator service
352.33 must include a conspicuous check-box option that allows a patient to exclude all of the
352.34 patient's information from the record locator service. A provider participating in a health
352.35 information exchange with a record locator service who receives a patient's request to
352.36 exclude all of the patient's information from the record locator service or to have a specific

353.1 provider contact excluded from the record locator service is responsible for removing that
353.2 information from the record locator service.

353.3 Subd. 9. **Documentation of release.** (a) In cases where a provider releases health
353.4 records without patient consent as authorized by law, the release must be documented in
353.5 the patient's health record. In the case of a release under section 144.294, subdivision 2, the
353.6 documentation must include the date and circumstances under which the release was made,
353.7 the person or agency to whom the release was made, and the records that were released.

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

353.10 (1) the provider requesting the health records;

353.11 (2) the identity of the patient;

353.12 (3) the health records requested; and

353.13 (4) the date the health records were requested.

353.14 Subd. 10. **Warranties regarding consents, requests, and disclosures.** (a) When
353.15 requesting health records using consent, a person warrants that the consent:

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

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

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

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

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

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

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

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

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

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

353.31 Sec. 5. **[144.294] RECORDS RELATING TO MENTAL HEALTH.**

353.32 Subdivision 1. **Provider inquiry.** Upon the written request of a spouse, parent,
353.33 child, or sibling of a patient being evaluated for or diagnosed with mental illness, a
353.34 provider shall inquire of a patient whether the patient wishes to authorize a specific
353.35 individual to receive information regarding the patient's current and proposed course of

354.1 treatment. If the patient so authorizes, the provider shall communicate to the designated
354.2 individual the patient's current and proposed course of treatment. Section 144.293,
354.3 subdivisions 2 and 4, apply to consents given under this subdivision.

354.4 Subd. 2. **Disclosure to law enforcement agency.** Notwithstanding section 144.293,
354.5 subdivisions 2 and 4, a provider must disclose health records relating to a patient's mental
354.6 health to a law enforcement agency if the law enforcement agency provides the name
354.7 of the patient and communicates that the:

354.8 (1) patient is currently involved in an emergency interaction with the law
354.9 enforcement agency; and

354.10 (2) disclosure of the records is necessary to protect the health or safety of the patient
354.11 or of another person.

354.12 The scope of disclosure under this subdivision is limited to the minimum necessary
354.13 for law enforcement to respond to the emergency. A law enforcement agency that obtains
354.14 health records under this subdivision shall maintain a record of the requestor, the provider
354.15 of the information, and the patient's name. Health records obtained by a law enforcement
354.16 agency under this subdivision are private data on individuals as defined in section 13.02,
354.17 subdivision 12, and must not be used by law enforcement for any other purpose.

354.18 Subd. 3. **Records release for family and caretaker; mental health care.** (a)
354.19 Notwithstanding section 144.293, a provider providing mental health care and treatment
354.20 may disclose health record information described in paragraph (b) about a patient to a
354.21 family member of the patient or other person who requests the information if:

354.22 (1) the request for information is in writing;

354.23 (2) the family member or other person lives with, provides care for, or is directly
354.24 involved in monitoring the treatment of the patient;

354.25 (3) the involvement under clause (2) is verified by the patient's mental health care
354.26 provider, the patient's attending physician, or a person other than the person requesting the
354.27 information, and is documented in the patient's medical record;

354.28 (4) before the disclosure, the patient is informed in writing of the request, the name
354.29 of the person requesting the information, the reason for the request, and the specific
354.30 information being requested;

354.31 (5) the patient agrees to the disclosure, does not object to the disclosure, or is
354.32 unable to consent or object, and the patient's decision or inability to make a decision is
354.33 documented in the patient's medical record; and

354.34 (6) the disclosure is necessary to assist in the provision of care or monitoring of the
354.35 patient's treatment.

355.1 (b) The information disclosed under this paragraph is limited to diagnosis, admission
355.2 to or discharge from treatment, the name and dosage of the medications prescribed, side
355.3 effects of the medication, consequences of failure of the patient to take the prescribed
355.4 medication, and a summary of the discharge plan.

355.5 (c) If a provider reasonably determines that providing information under this
355.6 subdivision would be detrimental to the physical or mental health of the patient or is
355.7 likely to cause the patient to inflict self harm or to harm another, the provider must not
355.8 disclose the information.

355.9 (d) This subdivision does not apply to disclosures for a medical emergency or
355.10 to family members as authorized or required under subdivision 1 or section 144.293,
355.11 subdivision 5, clause (1).

355.12 **Sec. 6. [144.295] DISCLOSURE OF HEALTH RECORDS FOR EXTERNAL**
355.13 **RESEARCH.**

355.14 Subdivision 1. **Methods of release.** (a) Notwithstanding section 144.293,
355.15 subdivisions 2 and 4, health records may be released to an external researcher solely for
355.16 purposes of medical or scientific research only as follows:

355.17 (1) health records generated before January 1, 1997, may be released if the patient
355.18 has not objected or does not elect to object after that date;

355.19 (2) for health records generated on or after January 1, 1997, the provider must:

355.20 (i) disclose in writing to patients currently being treated by the provider that health
355.21 records, regardless of when generated, may be released and that the patient may object, in
355.22 which case the records will not be released; and

355.23 (ii) use reasonable efforts to obtain the patient's written general authorization that
355.24 describes the release of records in item (i), which does not expire but may be revoked or
355.25 limited in writing at any time by the patient or the patient's authorized representative;

355.26 (3) the provider must advise the patient of the rights specified in clause (4); and

355.27 (4) the provider must, at the request of the patient, provide information on how the
355.28 patient may contact an external researcher to whom the health record was released and
355.29 the date it was released.

355.30 (b) Authorization may be established if an authorization is mailed at least two
355.31 times to the patient's last known address with a postage prepaid return envelope and a
355.32 conspicuous notice that the patient's medical records may be released if the patient does
355.33 not object, and at least 60 days have expired since the second notice was sent.

355.34 Subd. 2. **Duties of researcher.** In making a release for research purposes, the
355.35 provider shall make a reasonable effort to determine that:

356.1 (1) the use or disclosure does not violate any limitations under which the record
356.2 was collected;

356.3 (2) the use or disclosure in individually identifiable form is necessary to accomplish
356.4 the research or statistical purpose for which the use or disclosure is to be made;

356.5 (3) the recipient has established and maintains adequate safeguards to protect the
356.6 records from unauthorized disclosure, including a procedure for removal or destruction of
356.7 information that identifies the patient; and

356.8 (4) further use or release of the records in individually identifiable form to a person
356.9 other than the patient without the patient's consent is prohibited.

356.10 **Sec. 7. [144.296] COPIES OF VIDEOTAPES.**

356.11 A provider may not release a copy of a videotape of a child victim or alleged victim
356.12 of physical or sexual abuse without a court order under section 13.03, subdivision 6, or
356.13 as provided in section 611A.90. This section does not limit the right of a patient to view
356.14 the videotape.

356.15 **Sec. 8. [144.297] INDEPENDENT MEDICAL EXAMINATION.**

356.16 Sections 144.291 to 144.298 apply to the subject and provider of an independent
356.17 medical examination requested by or paid for by a third party. Notwithstanding section
356.18 144.293, a provider may release health records created as part of an independent medical
356.19 examination to the third party who requested or paid for the examination.

356.20 **Sec. 9. [144.298] PENALTIES.**

356.21 Subdivision 1. **Licensing action.** A violation of sections 144.291 to 144.298 may
356.22 be grounds for disciplinary action against a provider by the appropriate licensing board
356.23 or agency.

356.24 Subd. 2. **Liability of provider or other person.** A person who does any of the
356.25 following is liable to the patient for compensatory damages caused by an unauthorized
356.26 release, plus costs and reasonable attorney fees:

356.27 (1) negligently or intentionally requests or releases a health record in violation
356.28 of sections 144.291 to 144.297;

356.29 (2) forges a signature on a consent form or materially alters the consent form of
356.30 another person without the person's consent; or

356.31 (3) obtains a consent form or the health records of another person under false
356.32 pretenses.

357.1 Subd. 3. Liability for record locator service. A patient is entitled to receive
357.2 compensatory damages plus costs and reasonable attorney fees if a health information
357.3 exchange maintaining a record locator service, or an entity maintaining a record locator
357.4 service for a health information exchange, negligently or intentionally violates the
357.5 provisions of section 144.293, subdivision 8.

357.6 Sec. 10. Minnesota Statutes 2006, section 144.3345, is amended to read:

357.7 **144.3345 INTERCONNECTED ELECTRONIC HEALTH RECORD**
357.8 **GRANTS.**

357.9 Subdivision 1. **Definitions.** The following definitions are used for the purposes
357.10 of this section.

357.11 (a) "Eligible community e-health collaborative" means an existing or newly
357.12 established collaborative to support the adoption and use of interoperable electronic
357.13 health records. A collaborative must consist of at least ~~three~~ two or more eligible health
357.14 care entities in at least two of the categories listed in paragraph (b) and have a focus on
357.15 interconnecting the members of the collaborative for secure and interoperable exchange of
357.16 health care information.

357.17 (b) "Eligible health care entity" means one of the following:

357.18 (1) community clinics, as defined under section 145.9268;

357.19 (2) hospitals eligible for rural hospital capital improvement grants, as defined
357.20 in section 144.148;

357.21 (3) physician clinics located in a community with a population of less than 50,000
357.22 according to United States Census Bureau statistics and outside the seven-county
357.23 metropolitan area;

357.24 (4) nursing facilities licensed under sections 144A.01 to 144A.27;

357.25 (5) community health boards or boards of health as established under chapter 145A;

357.26 (6) nonprofit entities with a purpose to provide health information exchange
357.27 coordination governed by a representative, multi-stakeholder board of directors; and

357.28 (7) other providers of health or health care services approved by the commissioner
357.29 for which interoperable electronic health record capability would improve quality of
357.30 care, patient safety, or community health.

357.31 Subd. 2. **Grants authorized.** The commissioner of health shall award grants to:

357.32 (a) eligible community e-health collaborative projects to improve the implementation
357.33 and use of interoperable electronic health records including but not limited to the
357.34 following projects: