



Minnesota Legal Barriers To E-Health

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Goal

- ◆ Identify and eliminate legal barriers to E-Health.
- ◆ While preserving essential privacy protections.



MN Legal Barriers to E-Health

- ◆ Statutes & Rules (do not contemplate E-Health):
 - MS 144.335 – Health Records Act
 - MS 13.384 – Medical Data
 - MS 145.30 and 145.32 – Medical Record
 - MR 4642.1000 – Medical Record
 - MS 72A.502 - Insurers
 - MS 62D.145 - HMOs
 - No doubt numerous other provisions
- ◆ Overall complexity of a patchwork system



MS 144.335 – Health Records Act

- ◆ Subd. 3. Allows transfer of patient record upon written request of patient.
- ◆ Subd. 3a. Allows release of patient record without patient consent to providers within related health care entities for current treatment.



MS 13.384 – Medical Data

- ◆ Applies to patient record at government operated health care facility.
- ◆ Medical data are classified as private.
- ◆ Written consent is needed for release of private data (unless otherwise required by law).



Briefly

- ◆ MS 145.30 and 145.32 – Medical Record
- ◆ MR 4642.1000 – Medical Record
- ◆ MS 72A.502 – Insurers
- ◆ MS 62D.145 - HMOs



Other Provisions??

- ◆ There are thousands of pages of Minnesota Statutes and Minnesota Rules.
- ◆ Who knows where all the other health care privacy provisions are located?
- ◆ Collectively, we know!



Complexity of a patchwork system

- ◆ Layer upon layer of privacy protections have been added over time.
- ◆ There is no consistent plan or structure or terminology.
- ◆ Some protections may be redundant of other protections, but with a different name.
- ◆ Some protections may provide more protection.



A note about HIPAA Preemption

- ◆ HIPAA preempts state law on health care privacy.
- ◆ EXCEPT where state law gives an individual greater privacy protection or rights of access.



Options

- ◆ Amend each legal barrier to allow E-Health while preserving the rest of the language in the statute or rule.

OR

- ◆ Adopt HIPAA as a default and add more stringent privacy protections only where Legislature sees fit.



Recommendation

- ◆ Form a group to identify all Minnesota legal barriers to E-Health.
- ◆ Include representatives from all aspects of the health care system so the group collectively has experience with all the statutes and rules that may apply.
- ◆ Decide on a piecemeal patch or a system-wide solution.
- ◆ Line up key Legislators to sponsor needed legislation.



Other Issues

- ◆ Can a patient choose whether a provider stores records electronically or on paper?
- ◆ Can a provider choose to accept only patients who want electronic records?
- ◆ Provider liability for accuracy of records?
- ◆ Provider liability for relying on records?
- ◆ Is a HIPAA Business Associate Agreement needed between operator of system and EACH health care provider?