

Minnesota Privacy and Security Project Solutions and Implementation Plans Work Group Patient Consent Subgroup

Subgroup Charge: The Patient Consent Subgroup is charged with identifying solutions and implementation activities that eliminate or reduce barriers to:

- 1) implementing Minnesota patient consent requirements into electronic exchanges of health information, while maintaining or strengthening patient privacy protections; and
- 2) ensuring that all parties involved in the electronic exchange of health information share responsibility/liability for the appropriateness of the exchange.

Activities Based on Barriers Report:

The *Privacy and Security Barriers to the Electronic Exchange of Health Information* report identified a number of terms that need to be defined or clarified to ensure uniform implementation of the patient privacy protections in M.S. § 144.335. Specifically, the report identified the need to:

- 1) Define the term “Health Record” – including whether or not demographic data are a health record.
- 2) Define the term “Medical Emergency.”
- 3) Define the term “Related Health Care Entities.”
- 4) Define or clarify the term “Current Treatment.”
- 5) Depending on the definition of “Health Record,” there may be a need to address the expiration period for a patient consent to include demographic data and a pointer to health records in a record locator service.
- 6) Identify a framework and mechanisms that permit a provider to rely on another provider’s representations of having obtained consent – including the transfer of liability.
- 7) Depending on the definitions and changes, there may be a need to address consumer education issues.

In addition to the activities identified in the report, there may be a need to address other issues depending on the solutions generated for the barriers. Specifically, the group might want or need to:

- 1) Define the term “Record Locator Service.”
- 2) Define the term “Demographic Data.”
- 3) Define the term “Continuity of Care” – depending on the clarification of “Current Treatment.”
- 4) Identify the requirements of patient consent beyond signed, written and dated.
- 5) Define the term “Informed Consent.”

Process:

There are multiple options for defining and clarifying each of the terms or requirements. Our goal will be to:

- 1) Identify a limited number of options for each term or requirement.
- 2) Identify the advantages and disadvantages of each option.
- 3) Connect related options into a consistent coherent package of options.
- 4) Identify any issues associated with implementing various options that need to be considered.
- 5) Find consensus on options – when possible.