

Sample Statutory Language for Discussion Patient Consent Subgroup Meeting December 20, 2006

Note: Possible amendments to statutory language are shown using ~~strikeout~~ for deletions and underline for new language.

Definition of “related health care entity”

New definitions in section 144.335, subdivision 1:

“Related health care entity” means an affiliate of the provider releasing the health information.

“Affiliate” has the meaning given in section 144.6521, subdivision 3(b).

Section 144.6521, subdivision 3(b) states:

b) "Affiliate" means an entity that controls, is controlled by, or is under common control with another entity.

Provider Liability re: Obtaining Consent

Option One: Current statutory language – responsibility on disclosing provider

From Minnesota Statutes, section 144.335, subdivision 3a:

(e) A person who negligently or intentionally releases a health record in violation of this subdivision, or who forges a signature on a consent form, or who obtains under false pretenses the consent form or health records of another person, or who, without the person's consent, alters a consent form, is liable to the patient for compensatory damages caused by an unauthorized release, plus costs and reasonable attorney's fees.

Option Two: Opposite of current statutory language – responsibility on requester

New language for Minnesota Statutes, section 144.335, subdivision 3a:

(e) A person who negligently or intentionally requests a health record in violation of this subdivision, or who forges a signature on a consent form, or who obtains under false pretenses the consent form or health records of another person, or who, without the person's consent, alters a consent form, is liable to the patient for compensatory damages caused by an unauthorized release, plus costs and reasonable attorney's fees.

Option Three: Division of responsibility/liability

Draft is neutral regarding technology

Draft assumes that "health record" is a defined term

New language for Minnesota Statutes, section 144.335, add a definition and a new subdivision 3e and amend existing language in subdivision 3a(e):

Add a definition to Minnesota Statutes, section 144.335, subdivision 1:

"Request" means a patient consent or a communication of a patient's permission to release health information.

Amend Minnesota Statutes, section 144.335, subdivision 3a:

Subd. 3a. **Patient consent to release of records; liability.** (a) A provider, or a person who receives health records from a provider, may not release a patient's health records to a person without

- (i) a signed and dated consent from the patient or the patient's legally authorized representative authorizing the release; ;
- (ii) ~~unless the release is specifically authorized by specific authorization in law; or~~
- (iii) a representation from a provider that they hold a request.

Except as provided in paragraph (c) or (d), a consent is valid for one year or for a lesser period specified in the consent or for a different period provided by law.

Add to Minnesota Statutes, section 144.335:

Subdivision 3e. In adjudicating a dispute involving the disclosure of patient health records, a court will use the following in determining how liability will be allocated.

(a) By issuing a request for health records, a person warrants to the disclosing provider that:

- (1) the request contains no information known to the person to be false;
- (2) the request accurately states the patient's desire to have health records disclosed or that there is specific authorization in law; and
- (3) the request does not exceed any limits imposed by the patient who consented to the release of the health record.

(b) By complying with a request, a provider warrants that:

- (1) the provider has complied with the requirements of this subdivision regarding disclosure of health records;
- (2) the request contained no information known to the provider to be false; and
- (3) the provider has complied with the limits set by the patient as stated in the request.

(c) No person or provider may disclaim or contractually limit the application of this subdivision, nor obtain indemnity for its effects, if the disclaimer, limitation, or indemnity restricts liability for misrepresentation as against persons reasonably relying on the request or disclosure.

(d) A court of this state presumes that:

(i) A request made by a person that complies with the provisions of this subdivision is valid and represents the wishes of the patient.

(ii) The information listed in a request is accurate.

(iii) The recipient of a request has no knowledge or notice that the person making the request:

 (A) breached a duty to the patient; or

 (B) does not rightfully have a request.

(e) A court of this state shall give effect to liability allocations between the parties provided by contract to the extent not inconsistent with the requirements of this chapter.

(Based on Minnesota Statutes, sections 325K.11, 325K.12 and 325K.24)