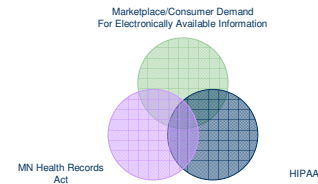


Implementing Privacy & Confidentiality Laws

A Comparison of State and Federal Privacy Laws

The Intersection of Privacy Protection and Need for Immediately Available Information



HIE = Cornerstone of the Future of Healthcare

- key strategies to achieve the goals
 - of better health care outcomes,
 - efficiencies in the delivery of healthcare, and
 - strengthening our emergency and disaster response preparedness

Speed Bumps v. Roadblock

- *“Making privacy and security an upfront and integral part of adopting new information technology has the potential to decrease costs and increase the likelihood of successful implementation.”*
- If individuals are not confident in the privacy protections in place, the HIE foundation will not be solid.

MN Health Records Act and HIEs

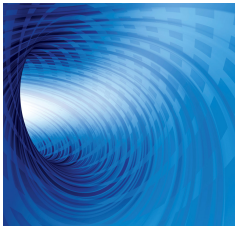
- MN HRA governs many aspects of HIEs
 - Who can supply information and when;
 - Who can access information
 - Who cannot access
 - Consents
 - Auditing
 - Opt out

Release of Patient Information

- Providers and Group Purchasers may release patient identifying information and information about location of patient records unless patient elects to be excluded.
- HIPAA allows use and disclosure for TPO



Who Cannot Access RLS?



- MN HRA strictly forbids the Department of Health from accessing the RLS or receiving data from the RLS.
- HIPAA would allow the exchange between CEs if the purpose was TPO.

Who Can Access the RLS?



- Only a provider can access the RLS.

When Can Provider Access?

- A provider must obtain a consent from a patient to access the RLS.
- Except in cases of Medical emergency



What is a Medical Emergency?

- **Medical Emergency** –

“means medically necessary care which is immediately needed to preserve life, prevent serious impairment to bodily functions, organs or parts or preventing placing the physical or mental health of the patient in serious jeopardy.”

Consent to Access



- More stringent than HIPAA
- Doesn't expire
- Can be revoked by patient at any time by providing written notice to provider.
- Different from “retrieval consent”
- Access consent must contain a conspicuous check box to opt out.

Auditing Requirements

- HIE that maintains an RLS must maintain an audit log of providers that access information in the RLS:
 - 1. *identity of provider*
 - 2. *identity of patient whose information was accessed by the provider; and*
 - 3. *date of access.*

Opt Out

- Providers or HIE must provide a mechanism under which patients may exclude their identifying information and information about the location of their health records from a record locator service.
- HIPAA – request for restrictions



Provider Obligations for Opt Out

- Consent form must have opt out check box
- If provider receives opt out on a consent, provider is responsible for removing the information from the RLS.



Provider obligations for Releasing

- HIPAA allows CE to rely on other CE request to be minimum necessary.
- **State Law: if a provider releases patient information, the provider must document:**
 - The provider that requested the information;
 - The identity of the patient;

