Minnesota Department of Health and Minnesota e-Health Advisory Committee

Minnesota Health Records Access Legislative Study 2012

Public Meeting

December 6, 2012

Moderator: Marty LaVenture, PhD, MPH, FACMI
Director, Office of Health Information Technology and e-Health
Minnesota Department of Health

Welcome

Purpose:

To provide an opportunity for public comment from the consumer perspective on the Health Record Access Legislative Study

Public Comment can be submitted by:

1. Sharing of personal perspective at todays meeting
2. Written comments
3. Email sent to MN.ehealth@state.mn.us

Please note: This is not a public hearing and information shared at today's meeting on behalf of MDH is preliminary and likely to change as more information is obtained through the course of the study.

Public Meeting Agenda

- **Welcome, Purpose of the Meeting, Procedure for Participation**
  Marty LaVenture, Director, Office of Health Information Technology, Minnesota Department of Health
- **Minnesota Health Records Access Study**
  - Overview and MDH Approach to Legislative Questions
    Lisa Moon, Minnesota Department of Health
  - Preliminary Observations
    Kate Chaffee, Subject Matter Expert
- **Receive Public Comments**
  Moderator: Marty LaVenture
- **Closing Remarks**

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Ground Rules

- **Be courteous.** We ask that you not have conversations in the meeting room. If you need to have a private conversation, please quietly step out into the hallway.
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Background and Purpose

- 2012 Legislative Session
  - Patient consent practices for the release of health information and the use of Representation of Consent (ROC) were discussed.
  - The Legislature was interested in understanding "when" , "how" and in "what form" are patients notified, when unauthorized access of their health information occurs.
  - To answer those questions, information is being gathered from the larger community of hospitals, clinics and health systems to understand the current state of patient privacy and confidentiality of health information.

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The Legislature's Charge:

HEALTH RECORD ACCESS STUDY
The commissioner of health, in consultation with the Minnesota e-Health Advisory Committee, shall study the following:

(1) the extent to which providers have audit procedures in place to monitor use of representation of consent and unauthorized access to a patient's health records in violation
of Minnesota Statutes, sections 144.291 to 144.297;

(2) the feasibility of informing patients if an intentional, unauthorized access of their health records occurs; and

(3) the feasibility of providing patients with a copy of a provider's audit log showing who has accessed their health records.

The commissioner shall report study findings and any relevant patient privacy and other recommendations to the legislature by February 15, 2013.

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Project Key Stakeholders:

Key Project Stakeholders	Roles/Participants
Study Implementation Team (MDH-OHIT)	Responsible for overall completion of the project including project leadership, management, implementation and deliverables.
Study Steering Team	Advise the implementation team members on study methodology, interpretation of findings, and considerations and recommendations of next steps.
Minnesota e-Health Advisory Committee	Review progress and provide advice on study approach at September 27th 2012 meeting . Review and comment on the draft of reports on December meeting
e-Health Workgroup on Privacy and Security	Members will review and provide advice on methods and preliminary findings
Minnesota e-Health community of practice	Participants are invited to the public meeting
General public	Specific targeted opportunities include the following: • Minnesota e-Health Consumer Representative feedback at Advisory Committee Meetings • MN e-Health Privacy and Security Workgroup public participation • Public meeting to review findings

Study Design Methods

STUDY METHOD	DESCRIPTION
Survey	Electronic Survey of 25% of Hospitals and Clinics- launched November 7, 2012
Focus Group (Health Systems)	Bloomington, MN at Health Partners on November 8, 2012
Focus Group (Hospitals and Clinics)	Willmar, MN at Rice Memorial Hospital on November 13, 2012
Focus Group (Hospitals and Clinics)	Duluth, MN at St. Luke's Hospital on November 16, 2012
Public Meeting	December 6, 2012
Literature Review	Environmental scan and key word search of existing data and literature
Deliverable: Legislative Report	Key findings and recommendations from analysis of collected data- February 2013

The Legislatures Questions:

Presenter: Kate Chaffee, Attorney and Privacy Expert

(1) the extent to which providers have audit procedures in place to monitor use of representation of consent and unauthorized access to a patient's health record

(2) the feasibility of informing patients if an intentional, unauthorized access of their health records occurs

(3) the feasibility of providing patients with a copy of a provider's audit log showing who has accessed their health records

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Preliminary Observations

- Literature Review
- Online Survey Tool
- Focus Group Meetings

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Literature Review

Scope and Focus

- Conduct key word searches
- Identify and use of relevant information from National/Federal sources
- Limited relevant information

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Health Record Access Study Study- Focus Groups

Bloomington, MN

Willmar, MN

Duluth, MN

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Focus Groups- Topic 1

Process for Monitoring Unauthorized Access to Patient Health Records

- Describe how your organization knows when there has been unauthorized access of a patient's electronic health records.
- What are the challenges associated with monitoring for unauthorized access into a patient health record?
- Compare paper-based and electronic methods for detecting unauthorized access. Which is more reliable? More vulnerable to breaches or fraud?

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Draft Example Emerging Themes -Topic 1

Process for Monitoring Unauthorized Access to Patient Health Records

1. Healthcare organizations commonly engage in both proactive and reactive monitoring for unauthorized access
2. Monitoring for unauthorized access to electronic health records is often complex and resource intensive
3. Current technological tools are generally of limited value in reducing the need for resource-intensive manual unauthorized access monitoring and detection processes
4. The ability to monitor the access and disclosure or **electronic** health records is robust
5. The ability to monitor access and disclosure of **paper health records** is limited

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Focus Groups- Topic 2

Feasibility: Patient Review of Audit Logs to Detect Possible Unauthorized Access

- Describe your organization's ability to generate an audit log for a patient to identify possible unauthorized access to their own records.
- What are the overall benefits and risks associated with providing an audit log?
- What are some additional or desired ways to successfully detect unauthorized access?

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Draft Example Emerging Themes- Topic 2

Feasibility: Patient Review of Audit Logs to Detect Possible Unauthorized Access

1. Most electronic health record systems can generate audit logs
2. Audit logs are seldom requested by patients
3. Unauthorized access generally cannot be readily detected (by patients or workforce members) by reviewing information generated in the audit logs capable of being produced by current electronic health record systems
4. Providing audit logs to patients can create risk to healthcare organizations and their workforce

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Focus Groups-Topic 3

Feasibility: Notifying Patients When Unauthorized Access is Detected

- What are examples of current practices used in your organization for notifying a patient when an unauthorized access of their health record is detected?
- Are there any notification practices that your organization uses, that go beyond what is currently required by law or regulation?
- What other processes do you see emerging in the industry for notifying patients of unauthorized access of their health records?

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Draft Example Emerging Themes- Topic 3

Feasibility: Notifying Patients When Unauthorized Access is Detected

1. Healthcare organizations' standards and practices for patient notification of unauthorized access are based on legal requirements
2. Organizations sometimes provide notice to patients in situations where such notice is not required by laws or regulations
3. A range of notification practices exist across healthcare organizations
4. As national policies are emerging vendor upgrades will need to be included in future enhancements

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Focus Groups-Topic 4

Monitoring Representation of Consent (ROC)

- How do you currently use ROC in your requests for or release of protected health information?
- How do you monitor/audit use of ROC?
- What are the challenges associated with ROC?

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Draft Emerging Themes- Topic 4

Monitoring Representation of Consent (ROC)

1. Understanding of ROC varies significantly across healthcare organizations
2. A limited number of organizations use ROC as part of their standard processes for requesting and releasing health information
3. Healthcare organizations broadly recognize that ROC is critical for the advancement of Minnesota's efforts to enable the electronic exchange of health information

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Health Record Access (HRA) Study Survey

Launched November 7, 2012

The Survey will remain open until

December 14, 2012

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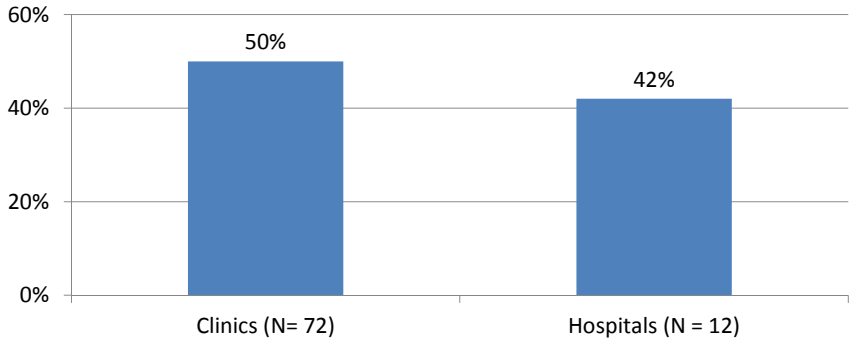
Minnesota HRA Survey Methods

- Online survey with option to complete paper copy
- Request to participate sent to 265 organizations: (31 hospitals, and 234 clinics)
  - 94 returned for 36% response **rate to date**
- Survey Tool Launched
  - November 7, 2012
  - Expect to close December 14, 2012

Preliminary Results – Do Not Publish

Survey Q 2.1

Do providers working in this hospital or clinic request a copy of patient electronic health records by using representation of consent?



Source: Minnesota Department of Health, Office of Health Information Technology, 2012

Preliminary Results – Do Not Publish

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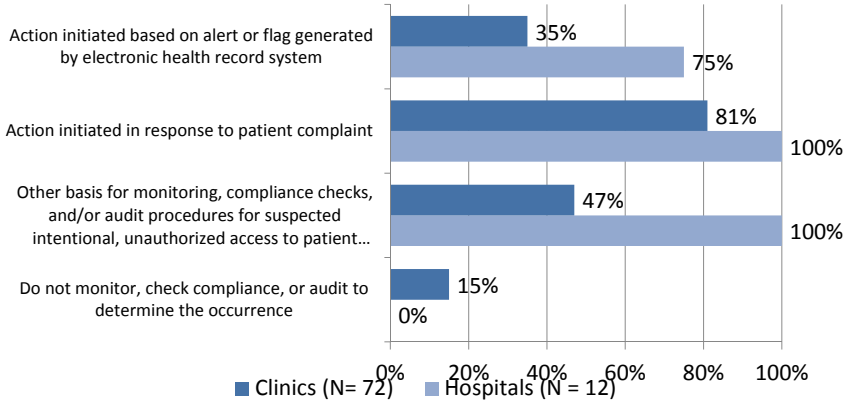
Survey Q 2.7

How does this clinic or hospital use monitoring, compliance checks and audit procedures if there has been suspected intentional, unauthorized access to patient electronic health records?



Source: Minnesota Department of Health, Office of Health Information Technology, 2012

Preliminary Results – Do Not Publish

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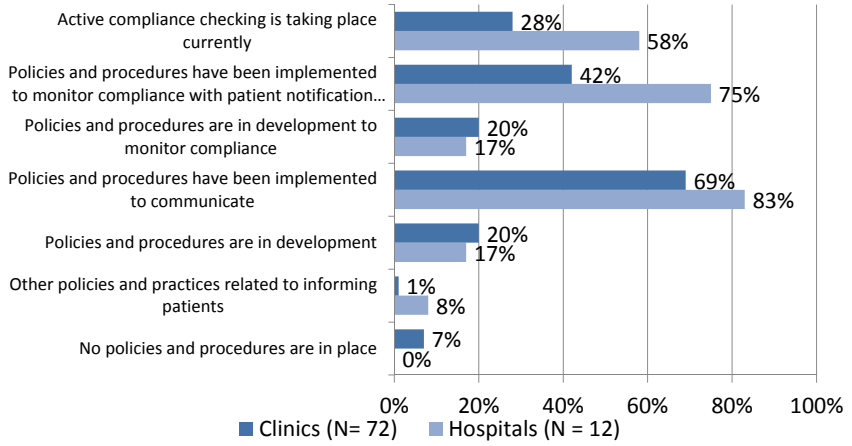
Survey Q 3.1

Which of these statements describe the policies and practices at this clinic or hospital to inform patients if intentional, unauthorized access to their health records occurs?



Source: Minnesota Department of Health, Office of Health Information Technology, 2012

Preliminary Results – Do Not Publish

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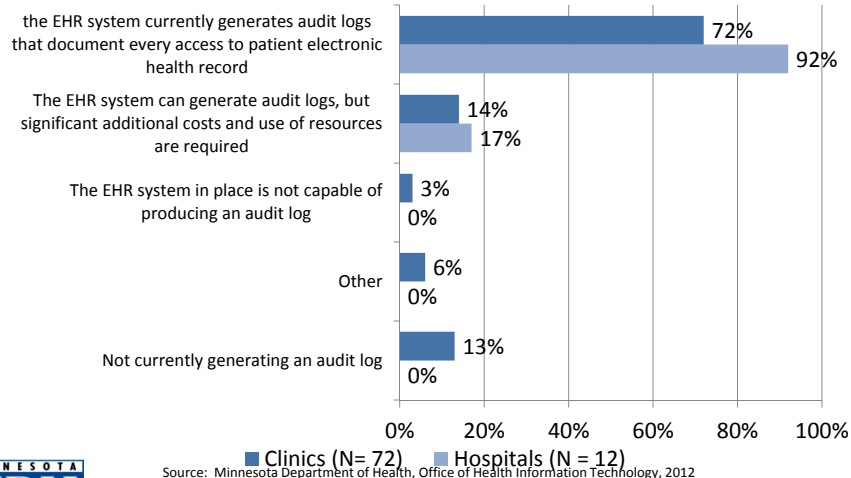
Survey Q 4.1

Does your electronic health record system currently generate an audit log that documents every access to the patient electronic health record?



Source: Minnesota Department of Health, Office of Health Information Technology, 2012

Preliminary Results – Do Not Publish

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Public Comments

Marty LaVenture, MDH
Facilitator

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The Legislatures Questions:

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Next Steps:

- Complete data collection
- Complete data / information analysis
- Prepare legislative report by End of February
- Publish on MDH web site: www.health.state.mn.us/ehealth

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Thank you!

On behalf of MDH
and the
Minnesota e-Health Advisory Committee

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