



Privacy and Consent Primer

Bob Johnson | e-Health Project Manager, Minnesota Department of Health

Stacie Christensen | Director, Information Policy Analysis Division, Minnesota Department of Administration

Arden Fritz | Legal Affairs Coordinator, Minnesota Department of Health



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- Understanding e-Health
- Relevant Statutes and Regulations
 - Government Data Practices Act
 - Minnesota Health Records Act
 - HIPAA
 - 42 CFR Part 2
- Focus on Public Health and Minor Health Services
 - Health Records
 - Public Health Reporting
 - Minor Consent
- Use Cases
- Resources



Learning Objectives

- Recognize e-health's connection to privacy and consent
- Develop additional understanding of relevant statutes and regulations around privacy and consent, public health, and minor health services
- Identify resources to support privacy and consent activities

Coming in October: Privacy and Consent Primer: Part II

Understanding e-Health

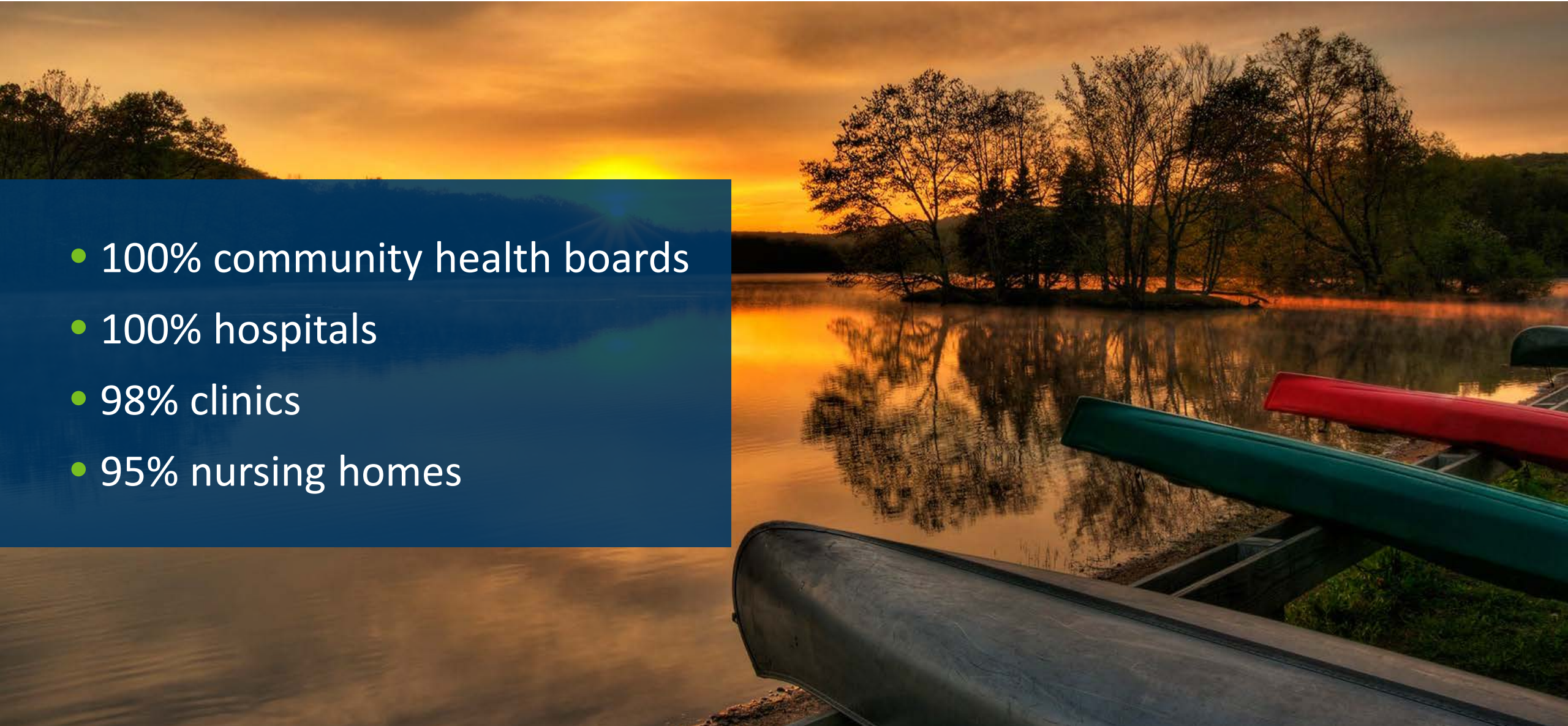
Bob Johnson | e-Health Project Manager, Minnesota Department of Health

E-health is the adoption and effective use of electronic health record (EHR) systems and other health information technology (HIT) to improve health care quality, increase patient safety, reduce health care costs, and enable individuals and communities to make the best possible health decisions



Minnesota Electronic Health Record Adoption

- 100% community health boards
- 100% hospitals
- 98% clinics
- 95% nursing homes



A legislatively chartered public-private collaborative

- Coordinates and recommends statewide policy on e-health to Commissioner of Health
- Develops and acts on statewide e-health priorities
- Reflects the health community's strong commitment to act in a coordinated, systematic and focused way



Relevant Statutes and Regulations

Stacie Christensen | Director, Information Policy Analysis Division, Minnesota Department of Administration

Government Data Practices Act

- Minnesota Statutes, Chapter 13
 - Applies to government entities in Minnesota
 - Presumes government data are public
 - Classifies data that are not public
 - Provides rights for the public and data subjects
 - Requires that data on individuals are accurate, complete, current, and secure
 - Informed consent required when sharing private data without authority
- Minnesota Rules, Chapter 1205

Minnesota Health Records Act (MHRA): Definitions (1 of 2)

- Minnesota Statutes, section 144.291-144.298
- Applies to “providers”
- “Health record”
 - Oral or recorded information in any form
 - Past, present, or future physical or mental health or condition
 - Past, present, or future payment for health care

Minnesota Health Records Act (MHRA): Definitions (2 of 2)

- Minnesota Statutes, section 144.291-144.298
- “Patient”
 - Natural person who has received health care services, or
 - The surviving spouse and parents of a deceased patient, or
 - a person the patient appoints in writing as a representative, including a health care agent, or
 - Patient includes a parent or guardian of a minor except for minors receiving services under the consent of minors for health services statutes.

Minnesota Health Records Act (MHRA): Consent

- Releasing records to an outside provider or other persons requires:
 - Signed and dated consent, or
 - Representation from the provider that holds a patient's consent, or
 - Specific authorization in law
- A state law that is “more stringent” trumps HIPAA
 - Provides greater privacy protections or greater rights for an individual to access their information (45 C.F.R. 160.202)

Minnesota Health Records Act (MHRA): No Consent

- Consent is not required:
 - Medical emergency and unable to obtain consent
 - Other providers within related health care entities when necessary for the current treatment of the patient.
 - To a health care facility when a patient:
 - Is returning to the facility and unable to provide consent, or
 - Patient resides in the facility, has services provided by an outside source and is unable to provide consent
 - Record locator service
 - Information about the location of patient's records and the patient has not opted out

Minnesota Health Records Act (MHRA): Social Services Agencies

- The “welfare system” may provide private data, including mental health records, to a health care provider “to the extent necessary to coordinate services” without consent
 - Government entities subject to Minn. Stat. 13.46 such as local social services, county welfare agencies, etc.
 - 13.46, subd. 2 and 7

Minnesota Health Records Act (MHRA): Violations

- May be grounds for discipline by appropriate licensing board;
- Liability for compensatory damages, plus costs and attorney's fees;
- A private right of action – MDH does not enforce the Minnesota Health Records Act on behalf of individual patients.

HIPAA Privacy, Security and Breach Notification Rules (1 of 2)

- Regulations under the Health Insurance Portability and Accountability Act of 1996
- Applies to health plans, health-care clearing houses, and health care providers
- Defines protected health information (PHI) as individually identifiable health information that
 - Identifies an individual and is created or received by a covered entity, and
 - Relates to the past, present, or future physical or mental health or condition, or
 - Health care, or
 - Past, present, or future payment

HIPAA Privacy, Security and Breach Notification Rules (2 of 2)

- Privacy
 - Consent not required for treatment, payment and health care operations
 - Authorization required for some uses and disclosures
 - Notice of Privacy Practices
- Security standards and administrative, physical and technical safeguards
- Breach notification required for breach of unsecured PHI

Alcohol and Drug Abuse Patient Records

- 42 CFR Part 2: Restricts disclosures of patient identifying information by federally assisted alcohol and drug abuse programs
- Key requirements:
 - Confidentiality
 - Security for records
 - Notice
 - Consent for disclosures
 - Court orders/law enforcement inquiries
- Proposed Rule: 81 FR 6987 (February 9, 2016) allows for “general consent” rather than individualized, written consent

Health records, PHI & Government data (1 of 2)

- Private government data = PHI = health record
 - PHI: Protected Health Information under HIPAA
 - Definitions of PHI and health record are essentially the same
- Relevant private government data
 - Public health data (Minn. Stat. 13.3805)
 - Data on individuals...maintained by... the Department of Health, political subdivisions relating to the identification, description, prevention, and control of disease or as part of an epidemiologic investigation the commissioner designates as necessary to analyze, describe, or protect the public health

Health records, PHI & Government data (2 of 2)

- Welfare data (Minn. Stat. 13.46)
 - Data on individuals...maintained...by the welfare system are private data on individuals
 - Welfare system includes local social services agencies, county welfare agencies, child support enforcement, human services boards, community mental health center boards

Notice of Privacy Practices

- What is it?
 - A notice that describes how medical information about a patient may be used/disclosed and how patients can access their information
 - MDH model NPP:
<http://www.health.state.mn.us/e-health/privacy/docs/ps102114npp.pdf>
- Some MN specific requirements
 - Treatment, payment, operation releases/uses require consent
 - Health research only with consent

Privacy & Security: Minimum Necessary (1 of 2)

- Minnesota requirement
 - Collection and storage of private/confidential data is limited to that necessary for administration and management of a program
- HIPAA requirement
 - A covered entity or business associate must make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request, except:
 - Disclosures to or requests by a health care provider for treatment
 - Uses or disclosures made to the individual
 - Uses or disclosures made pursuant to an authorization
 - Certain other uses or disclosures required by law

Privacy & Security: Minimum Necessary (2 of 2)

- Minimum necessary tips
 - Access files you maintain about a client only within professional work obligations
 - Limit discussion with colleagues
 - Never discuss private data outside of work

Focus on Public Health and Minor Health Services

Arden Fritz | Legal Affairs Coordinator, Minnesota Department of Health



HIPAA, PRIVACY, AND PUBLIC HEALTH

- Under Health Records Act, patient consent not required to release medical records to MDH under disease reporting and investigation rules, and statutory authority to conduct studies and investigations.
- Health Data (§13.3805) are private data on individuals, but may be disclosed by MDH Commissioner under circumstances set forth in Subd. 1(b)(2) and (3).
- Under HIPAA, patient consent not required for disclosure to public health authorities (MDH and LPH).
- Covered entity may reply upon the minimum necessary determination made by public health authorities.

Minor Consent – Minn. Stat. § 144.341-347

Minnesota law guarantees minors the right to confidential health care services, without parental consent, in certain situations:

- A minor who is or has been married, or borne a child (§ 144.342);
- Reproductive care, contraceptives, sexually transmitted diseases, alcohol and drug abuse (§144.343);
- Mental health care if over 16 (§253B.04);
- Emergencies (§144.344);
- Hepatitis B vaccinations (§144.3441); and
- Abortions, in limited situations (§144.343).

Minor Consent - Minn. Stat. §144.341

- Notwithstanding any other law, a minor:
 - living separate and apart from parents,
 - with or without parental consent,
 - regardless of the duration of the separation,
 - managing their own personal financial affairs regardless of source or extent of income:
may give effective consent to personal medical, dental, mental and other health services, and the consent of no other person is required.
- Note: Minnesota does not have a statute establishing “emancipation.”

Minor Consent – Other Statutes

- If a minor claims to be able to give effective consent for purposes of receiving medical, dental, mental or other health services but who may not in fact do so, their consent shall be deemed effective if the person rendering the service relied in good faith upon the minor's representations (§144.345).
- A health care provider may inform parent/legal guardian of treatment given or needed for a minor when, in the judgment of the professional, failure to inform the parent/guardian would seriously jeopardize the health of the minor patient (§144.346).

Minor Consent – Other Considerations (1 of 2)

- A minor consenting for health services assumes financial responsibility (§144.347);
- HIPAA, in general, defers to state law to determine what rights a minor has and what discretion a health care provider can exercise regarding disclosure of the minor's HIPAA "Protected Health information" to a parent or guardian.

Minor Consent – Other Considerations (2 of 2)

- Where a minor has statutory authority to consent to their own medical treatment, they are considered the “patient” under the Minnesota Health Records Act, and their health records – including any information regarding their health conditions, health care provided, or payments for health care – may not be disclosed to anyone, including parents, absent the minor’s valid consent or a specific authorization under the law.
- The penalties under the Health Records Act may apply to any health record of a minor disclosed to a parent without the minor’s authorization.

Sample of Use Cases: Application of relevant laws to hypothetical scenarios

Stacie Christensen | Director, Information Policy Analysis Division, Minnesota Department of Administration

Patient in a health care home receiving county social services

- Issues
 - Release of information by a provider
 - Release of information by a non-provider (social services agency)
- Providers must comply with MHRA even if HIPAA allows for use and disclosure of PHI for treatment, payment and health care operations
 - Required: NPP and consent when sharing
- Government providers must also comply with the Data Practices Act
 - Required: Tennessee warning and consent when sharing
 - Social services agency must comply with Minn. Stat. 13.46

Coordinating care among various providers and entities

- Adolescent with diabetes and mental health concerns in rural setting
 - Seen by:
 - Primary care provider and diabetes nurse educator in small town clinic
 - Public health nurse (follow-up care)
 - School nurse (follow-up care)
 - Psychotherapist at county mental health center (unstable moods)
 - Emergency department in a different town (uncontrolled blood sugars)
 - Psychiatrist (clinical depression)
 - School social worker (suicidal thoughts)
 - County crisis team (additional mental health treatment)
 - Providers did not communicate directly with one another so education effort not coordinated
 - Consent to share is generally required, but there could also have been some legal sharing without consent

Resources

Bob Johnson | e-Health Project Manager, Minnesota Department of Health

MDH's e-Health Privacy and Security Webpage

- [Minnesota Standard Consent Form to Release Health Information \(PDF\)](#)
A standard patient consent form for a person to release their health information.
 - [Q & A: Standard Consent Form to Release Health Information \(PDF\)](#)
For general questions regarding the Minnesota Standard Consent Form to Release Health Information.
- [Minnesota Model Notice of Privacy Practices \(NPP\) \(PDF\)](#)
(Adapted for Minnesota from U.S. Department of Health and Human Services Model NPP)
- [Summary of Proactive Monitoring Procedures for Secure Individual Identifiable Health Information \(PDF\)](#)
- [Security Risk Analysis Tip Sheet \(PDF\)](#)
- [HIPAA, Minnesota's Health Records Act, and Psychotherapy Notes \(PDF\)](#)
- [Foundations in Privacy Toolkit](#)

e-Health: www.health.state.mn.us/e-health/

- Visit MDH's e-Health webpage to learn about:
 - Privacy and Security Workgroup
 - Participate in the workgroup
 - Minnesota e-Health Weekly Update
 - Stay up-to-date on e-health activities
 - Minnesota e-Health Summit
 - Network and learn about e-health in Minnesota
 - Resources

Coming in October: Privacy and Consent Primer: Part II

- Tentative focus on stories and lessons learned from county attorneys
- Volunteer to share your e-health story or lessons learned
- Suggest additional e-health topics
- Email MN.eHealth@state.mn.us

Thank you!

Comments or Questions: MN.eHealth@state.mn.us