

Consent To Release Medical Records Under HIPAA And Minnesota Law:

A Quick Reference Guide

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule became effective on April 14, 2001. Most health plans and health care providers that are covered by the rule were required to comply with the new requirements by April 2003.

The HIPAA Privacy Rule establishes a federal floor of safeguards to protect the confidentiality of medical information and for the first time creates national standards to protect individuals' medical records and other personal health information. State laws that provide stronger privacy protections continue to apply over and above the new federal privacy standards.

Minnesota law requiring consent to release medical records is generally stronger than HIPAA, which means that both Minnesota law and federal law should be considered prior to release of medical records. As a general rule, HIPAA allows for the release of records without patient authorization in order to carry out treatment, payment or health care operations. However under Minnesota law, patient consent is generally required prior to release of records for these purposes.

The following table outlines the differences between the federal Privacy Standards and Minnesota law regarding the release of medical information.

Authorization Requirements Under Minnesota Law and HIPAA

For a release of records to third parties, for purposes other than treatment, payment, or health care operations, Federal law requires "authorization" from the patient.¹ Minnesota law does not distinguish between "consent" and "authorization." As with the consent requirements described above, in order for an authorization to be valid, in addition to be signed and dated, Minnesota law must be supplemented with the additional federal requirements as to form and procedure. A valid authorization must contain at least the following elements, some of which overlap with Minnesota law:

1. A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;
2. The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure;
3. The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure;

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4. An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure;
5. A statement of the individual's right to revoke the authorization in writing and the exceptions to the right to revoke, together with a description of how the individual may revoke the authorization;
6. A statement that information used or disclosed pursuant to the authorization may be subject to redisclosure by the recipient and no longer be protected by this rule;
7. Signature of the individual and date; and
8. If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual.²

Minnesota law is more stringent with respect to the period for which the consent remains valid. A signed consent for purposes other than treatment, payment, or health care operations is valid for one year, or a lesser period of time if specified, unless otherwise provided by law.³ The federal rule does not impose any particular time limit, but requires an expiration date or an expiration event. Taking the two statutes together, it is clear that in order to release records for purposes other than treatment, payment, or health care operations (as defined in Minnesota law), the eight elements above must be satisfied. In addition, the authorization will expire in a year or a lesser period of time specified in the authorization unless law provides a different period.

² 45 C.F.R. § 164.508(c)(1) (2001).

³ See Minn. Stat. § 144.335, subd. 3a(a) (2000).

TYPE OF DISCLOSURE UNDER MINNESOTA LAW	HIPAA LAW	WHICH LAW APPLIES?	NOTES
Minnesota law provides patient access to his or her own record.	HIPAA law states that the patient has a right of access to inspect, copy records—some limitations apply. 164.524	Both MN and HIPAA apply. Both allow the patient to have access to their own information. HIPAA permits providers to charge “reasonable cost” for copying records—MN law provides annual maximum charges for copying. It is likely that MN rates will be considered “reasonable.”	Both laws have provisions providing that disclosure is not required if doing so will endanger the health or safety of the individual.
Minnesota law allows disclosure without consent to other providers within a clinic/hospital or other “related entities” when necessary for current treatment.	Disclosure to other providers is permitted by HIPAA if for treatment purposes, IF first provider gets general consent. 164.502(a)(ii); 164.506(a)(1)	HIPAA. <u>Consent</u> is necessary, even for current treatment.	
Minnesota law allows release without consent in emergencies .	Providers may use/disclose information in emergencies, but need to try to get consent after emergency is over 164.506(a)(3)	Both. HIPAA allows disclosure without consent (as does MN), but HIPAA requires that providers attempt to get consent after the emergency treatment is provided.	
Minnesota law allows release when necessary within “related entities” for current treatment .	Use and disclosure for current treatment require a consent 164.502(a)	HIPAA. HIPAA requires consent, while MN law permits disclosure without consent if for current treatment purposes.	For any disclosure that requires an authorization, HIPAA provides that there must be an expiration date contained in the authorization; under MN law, this expiration date generally must be one year or less.
Minnesota law allows disclosure for research purposes with certain notification and objection requirements.	Use and disclosure for research purposes requires authorization 164.512(i)	HIPAA requires an authorization. Some stricter requirements than current MN law.	Consult your legal counsel.
Minnesota law provides that consents expire after 1 year (except for disclosures to other providers for current treatment and release to 3 rd party payors, HMO, etc.);	Requires authorizations to expire on a set expiration date/event 164.508(c)(iv)	MN law will apply to the extent that consent will expire after 1 year for <u>certain</u> disclosures (HIPAA has no mandated expiration for consents.) HIPAA will apply to the extent that authorizations must have a specified expiration date.	

