What are the basic requirements of the MHRA?
MHRA requirements fall into three broad categories:

Patient rights
The MHRA generally grants patients with the right to access their health records upon request. Additionally, providers must provide written notice of their health records practices and written notice of patients' rights to access their records.

Disclosure of health records
Under the MHRA, health records may only be disclosed to a third party with a signed and dated consent or as a result of a specific authorization in law. The signed and dated consent is generally valid for one year unless otherwise specified.

Penalties
Minnesota providers may face licensing action or civil liability for failure to comply with the MHRA. MHRA violations may be grounds for disciplinary action by the Board of Medical Practice. Additionally, a physician may be liable for damages, costs, and attorney fees if a physician releases medical records in violation of the MHRA.

Who can access a patient’s health record?
Under the MHRA, upon request, a patient may have access to complete and current information possessed by the provider or physician concerning the diagnosis, treatment, and prognosis of the patient in terms and language that the patient can reasonably be expected to understand. In addition to the patient him- or herself, the following individuals also have the same access rights afforded to the patient:

- The surviving spouse and parents of a deceased patient
- A person appointed in writing by the patient as representative
- A health care agent, unless the agent's authority has been limited by the principal's health care directive
- A minor patient's parent, guardian, or person acting as a parent or guardian, unless the minor has received certain health services for which parental consent is not required

Is consent always required to share a patient’s health records?
Patient health care information is considered confidential and may be released only in accordance with a health care information

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Minnesota Medical Records Privacy

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disclosure policy developed by the physician or clinic and other applicable state and federal laws.

In addition to the requirements under the HIPAA Privacy Rule, Minnesota law prohibits a provider or a person who receives health records from a provider from releasing a patient's health records to any person without (1) a signed and dated consent from the patient or the patient's legally authorized representative authorizing the release; (2) specific authorization in law; or (3) a representation from a provider that holds a signed and dated consent from the patient authorizing the release.

Health records may only be released without consent: (1) for a medical emergency when the provider is unable to obtain the patient's consent due to the patient's condition or the nature of the medical emergency; (2) to other providers within related health care entities when necessary for the current treatment of the patient; or (3) to a health care facility in certain circumstances when a patient is returning to a healthcare facility and is unable to provide consent.

In 2007, revisions to the Minnesota Health Records Act (MHRA) were passed by the Minnesota legislature. One of the key provisions passed at that time was a mandate for the Minnesota Department of Health to develop a standard consent form to access health records. This form complies with the consent requirements of the MHRA and any patient or legal representative of a patient, health care provider, or organization can use this form. The Standard Consent Form does not replace organizations' existing consent forms to release health information, but an organization can adopt the form in whole or in part. In addition, if a person elects to use the form to request the release of his or her health records and completes it properly, it is a legally enforceable request and organizations must honor it.

May a parent access his or her child’s medical records?

Under the Minnesota Health Records Act, a parent may access his or her child’s medical records, unless the child is receiving a select subset of services for which parental consent is not required. These services include any personal medical services to a child that has been married or has given birth, services relating to pregnancy, venereal disease, substance use disorder treatment, abortion, emergency services, and Hepatitis B vaccination.

Following the death of a patient, who can access the patient’s medical record?

Under state law, the surviving spouse and parents of a deceased patient have the same rights under the Minnesota Health Records Act as the patient him- or herself. The patient's personal representative, such as the executor or estate administrator, also has the right to access the deceased patient's medical record. Additionally, a provider may release a deceased patient's health care records to another provider for the purposes of diagnosing or treating the deceased patient's surviving adult child.

Are mental health records treated differently than other health records?

Health records relating to the treatment of a patient’s mental health are treated the same as other types of information in the medical record under Minnesota law, including psychotherapy notes. Psychotherapy notes, as defined in federal regulations, are notes that are recorded by a health care provider who is a mental health professional that document or analyze the contents of conversations during a counseling session and are separate from the rest of the patient’s medical record. Unlike other states, Minnesota law considers psychotherapy notes to be part of the patient’s health record and, therefore, patients have the right to access these notes in the same way that they may access the rest of their health record. Unless information in the psychotherapy notes is “detrimental to the physical or mental health of the patient, or is likely to cause the patient to inflict self harm, or to harm another,” a provider may not withhold psychotherapy notes from a patient.

Where can I find additional information?

- American Medical Association: Principles of Medical Ethics Chapter 3: Opinions on Privacy, Confidentiality & Medical Records
- U.S. Department of Health and Human Services: HIPAA FAQs for Professionals
- Centers for Medicare & Medicaid Services: Covered Entity Guidance Tool
- Minnesota Health Information Clearinghouse: Medical Records Information
- Minnesota Access to Health Records Notice of Rights
- Minnesota Health Records Act: §§144.291-144.34
- Minnesota Board of Medical Practice: Patients’ Access to their Medical Records
- Medicare Learning Network Health Care Professionals’ Privacy Guide

Disclaimer

The information in this document is intended to provide general education only, and does not provide specific legal advice. This document does not create an attorney-client relationship and is not a substitute for the advice of an attorney. It is always best practice to obtain legal advice from an attorney with expertise in the relevant subject matter and jurisdiction. Contract law varies from state-to-state, and this document is not intended to address each state’s laws. The Minnesota Medical Association makes no guarantee as to the completeness of the information in this document.

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