

This Document can be made available in alternative formats upon request

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. 1726

March 5, 2007

Authored by Thissen, Winkler and Abeler

The bill was read for the first time and referred to the Committee on Health and Human Services

1.1 A bill for an act
1.2 relating to health; establishing the Health Records Act; providing penalties;
1.3 proposing coding for new law in Minnesota Statutes, chapter 144; repealing
1.4 Minnesota Statutes 2006, section 144.335.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. [144.291] MINNESOTA HEALTH RECORDS ACT.

1.7 Subdivision 1. Short title. Sections 144.291 to 144.298 may be cited as the
1.8 Minnesota Health Records Act.

1.9 Subd. 2. Definitions. For the purposes of sections 144.291 to 144.298, the following
1.10 terms have the meanings given.

1.11 (a) Affiliate. "Affiliate" has the meaning given in section 144.6521, subdivision 3,
1.12 paragraph (b).

1.13 (b) Group purchaser. "Group purchaser" has the meaning given in section 62J.03,
1.14 subdivision 6.

1.15 (c) Health record. "Health record" means any information, whether oral or recorded
1.16 in any form or medium, that relates to the past, present, or future physical or mental health
1.17 or condition of a patient; the provision of health care to a patient; or the past, present, or
1.18 future payment for the provision of health care to a patient.

1.19 (d) Identifying information. "Identifying information" means the patient's name,
1.20 address, date of birth, gender, parent's or guardian's name regardless of the age of the
1.21 patient, and other nonclinical data which can be used to uniquely identify a patient.

1.22 (e) Individually identifiable form. "Individually identifiable form" means a form in
1.23 which the patient is or can be identified as the subject of the health records.

2.1 (f) **Medical emergency.** "Medical emergency" means medically necessary care
 2.2 which is immediately needed to preserve life, prevent serious impairment to bodily
 2.3 functions, organs, or parts, or prevent placing the physical or mental health of the patient
 2.4 in serious jeopardy.

2.5 (g) **Patient.** "Patient" means a natural person who has received health care services
 2.6 from a provider for treatment or examination of a medical, psychiatric, or mental
 2.7 condition, the surviving spouse and parents of a deceased patient, or a person the patient
 2.8 appoints in writing as a representative, including a health care agent acting according to
 2.9 chapter 145C, unless the authority of the agent has been limited by the principal in the
 2.10 principal's health care directive. Except for minors who have received health care services
 2.11 under sections 144.341 to 144.347, in the case of a minor, patient includes a parent or
 2.12 guardian, or a person acting as a parent or guardian in the absence of a parent or guardian.

2.13 (h) **Provider.** "Provider" means:

2.14 (1) any person who furnishes health care services and is regulated to furnish the
 2.15 services under chapter 147, 147A, 147B, 147C, 147D, 148, 148B, 148C, 148D, 150A,
 2.16 151, 153, or 153A;

2.17 (2) a home care provider licensed under section 144A.46;

2.18 (3) a health care facility licensed under this chapter or chapter 144A;

2.19 (4) a physician assistant registered under chapter 147A; and

2.20 (5) an unlicensed mental health practitioner regulated under sections 148B.60 to
 2.21 148B.71.

2.22 (i) **Record locator service.** "Record locator service" means an electronic index of
 2.23 patient identifying information that directs participants in a health information exchange
 2.24 to the location of patient health records held by providers and group purchasers.

2.25 (j) **Related health care entity.** "Related health care entity" means an affiliate of
 2.26 the provider releasing the health records.

2.27 **Sec. 2. [144.292] PATIENT RIGHTS.**

2.28 Subdivision 1. **Scope.** Patients have the rights specified in this section regarding the
 2.29 treatment the patient receives and the patient's health record.

2.30 Subd. 2. **Patient access.** Upon request, a provider shall supply to a patient complete
 2.31 and current information possessed by that provider concerning any diagnosis, treatment,
 2.32 and prognosis of the patient in terms and language the patient can reasonably be expected
 2.33 to understand.

2.34 Subd. 3. **Additional patient rights.** A patient's right specified in this section and
 2.35 sections 144.293 to 144.298 are in addition to the rights specified in sections 144.651 and

3.1 144.652 and any other provision of law relating to the access of a patient to the patient's
3.2 health records.

3.3 Subd. 4. **Notice of rights; information on release.** A provider shall provide to
3.4 patients, in a clear and conspicuous manner, a written notice concerning practices and
3.5 rights with respect to access to health records. The notice must include an explanation of:

3.6 (1) disclosures of health records that may be made without the written consent of the
3.7 patient, including the type of records and to whom the records may be disclosed; and

3.8 (2) the right of the patient to have access to and obtain copies of the patient's health
3.9 records and other information about the patient that is maintained by the provider.

3.10 The notice requirements of this subdivision are satisfied if the notice is included with
3.11 the notice and copy of the patient and resident bill of rights under section 144.652 or if it
3.12 is displayed prominently in the provider's place of business. The commissioner of health
3.13 shall develop the notice required in this subdivision and publish it in the State Register.

3.14 Subd. 5. **Copies of health records to patients.** Except as provided in section
3.15 144.296, upon a patient's written request, a provider, at a reasonable cost to the patient,
3.16 shall promptly furnish to the patient:

3.17 (1) copies of the patient's health record, including but not limited to laboratory
3.18 reports, x-rays, prescriptions, and other technical information used in assessing the
3.19 patient's health conditions; or

3.20 (2) the pertinent portion of the record relating to a condition specified by the patient.

3.21 With the consent of the patient, the provider may instead furnish only a summary
3.22 of the record. The provider may exclude from the health record written speculations
3.23 about the patient's health condition, except that all information necessary for the patient's
3.24 informed consent must be provided.

3.25 Subd. 6. **Cost.** (a) When a patient requests a copy of the patient's record for
3.26 purposes of reviewing current medical care, the provider must not charge a fee.

3.27 (b) When a provider or its representative makes copies of patient records upon a
3.28 patient's request under this section, the provider or its representative may charge the
3.29 patient or the patient's representative no more than 75 cents per page, plus \$10 for time
3.30 spent retrieving and copying the records, unless other law or a rule or contract provide for
3.31 a lower maximum charge. This limitation does not apply to x-rays. The provider may
3.32 charge a patient no more than the actual cost of reproducing x-rays, plus no more than
3.33 \$10 for the time spent retrieving and copying the x-rays.

3.34 (c) The respective maximum charges of 75 cents per page and \$10 for time provided
3.35 in this subdivision are in effect for calendar year 1992 and may be adjusted annually each
3.36 calendar year as provided in this subdivision. The permissible maximum charges shall

4.1 change each year by an amount that reflects the change, as compared to the previous year,
 4.2 in the Consumer Price Index for all Urban Consumers, Minneapolis-St. Paul (CPI-U),
 4.3 published by the Department of Labor.

4.4 (d) A provider or its representative must not charge a fee to provide copies of records
 4.5 requested by a patient or the patient's authorized representative if the request for copies
 4.6 of records is for purposes of appealing a denial of Social Security disability income or
 4.7 Social Security disability benefits under title II or title XVI of the Social Security Act. For
 4.8 the purpose of further appeals, a patient may receive no more than two medical record
 4.9 updates without charge, but only for medical record information previously not provided.
 4.10 For purposes of this paragraph, a patient's authorized representative does not include units
 4.11 of state government engaged in the adjudication of Social Security disability claims.

4.12 Subd. 7. **Withholding health records from patient.** (a) If a provider reasonably
 4.13 determines that the information is detrimental to the physical or mental health of the
 4.14 patient, or is likely to cause the patient to inflict self harm, or to harm another, the provider
 4.15 may withhold the information from the patient and may supply the information to an
 4.16 appropriate third party or to another provider. The other provider or third party may
 4.17 release the information to the patient.

4.18 (b) A provider shall release information upon written request unless, prior to the
 4.19 request, a provider has designated and described a specific basis for withholding the
 4.20 information as authorized by paragraph (a).

4.21 **Sec. 3. [144.293] RELEASE OR DISCLOSURE OF HEALTH RECORDS.**

4.22 Subdivision 1. **Release or disclosure of health records.** Health records can be
 4.23 released or disclosed as specified in subdivisions 2 to 9 and sections 144.294 and 144.295.

4.24 Subd. 2. **Patient consent to release of records.** A provider, or a person who
 4.25 receives health records from a provider, may not release a patient's health records to a
 4.26 person without:

4.27 (1) a signed and dated consent from the patient or the patient's legally authorized
 4.28 representative authorizing the release;

4.29 (2) specific authorization in law; or

4.30 (3) a representation from a provider that the provider holds a consent from the
 4.31 patient.

4.32 Subd. 3. **Release from one provider to another.** A patient's health record,
 4.33 including, but not limited to, laboratory reports, x-rays, prescriptions, and other technical
 4.34 information used in assessing the patient's condition, or the pertinent portion of the record
 4.35 relating to a specific condition, or a summary of the record, shall promptly be furnished to

5.1 another provider upon the written request of the patient. The written request shall specify
5.2 the name of the provider to whom the health record is to be furnished. The provider who
5.3 furnishes the health record or summary may retain a copy of the materials furnished. The
5.4 patient shall be responsible for the reasonable costs of furnishing the information.

5.5 Subd. 4. **Duration of consent.** Except as provided in this section, a consent is
5.6 valid for one year or for a lesser period specified in the consent or for a different period
5.7 provided by law.

5.8 Subd. 5. **Exceptions to consent requirement.** This section does not prohibit the
5.9 release of health records:

5.10 (1) for a medical emergency when the provider is unable to obtain the patient's
5.11 consent due to the patient's condition or the nature of the medical emergency;

5.12 (2) to other providers within related health care entities when necessary for the
5.13 current treatment of the patient; or

5.14 (3) to a health care facility licensed by this chapter, chapter 144A, or to the same
5.15 types of health care facilities licensed by this chapter and chapter 144A that are licensed
5.16 in another state when a patient:

5.17 (i) is returning to the health care facility and unable to provide consent; or

5.18 (ii) who resides in the health care facility, has services provided by an outside
5.19 resource under Code of Federal Regulations, title 42, section 483.75(h), and is unable
5.20 to provide consent.

5.21 Subd. 6. **Consent does not expire.** Notwithstanding subdivision 4, if a patient
5.22 explicitly gives informed consent to the release of health records for the purposes and
5.23 restrictions in clauses (1) and (2), the consent does not expire after one year for:

5.24 (1) the release of health records to a provider who is being advised or consulted with
5.25 in connection with the releasing provider's current treatment of the patient;

5.26 (2) the release of health records to an accident and health insurer, health service plan
5.27 corporation, health maintenance organization, or third-party administrator for purposes of
5.28 payment of claims, fraud investigation, or quality of care review and studies, provided that:

5.29 (i) the use or release of the records complies with sections 72A.49 to 72A.505;

5.30 (ii) further use or release of the records in individually identifiable form to a person
5.31 other than the patient without the patient's consent is prohibited; and

5.32 (iii) the recipient establishes adequate safeguards to protect the records from
5.33 unauthorized disclosure, including a procedure for removal or destruction of information
5.34 that identifies the patient.

6.1 Subd. 7. **Exception to consent.** Subdivision 2 does not apply to the release of health
 6.2 records to the commissioner of health or the Health Data Institute under chapter 62J,
 6.3 provided that the commissioner encrypts the patient identifier upon receipt of the data.

6.4 Subd. 8. **Record locator service.** A provider or group purchaser may send patient
 6.5 identifying information and information about the location of the patient's health records
 6.6 to a record locator service without consent from the patient. Except in the case of a
 6.7 medical emergency, a provider participating in a health information exchange using a
 6.8 record locator service cannot access patient identifying information and information
 6.9 about the location of the patient's health records until the patient has provided consent.
 6.10 The consent does not expire and may be revoked by the patient at any time by providing
 6.11 written notice of the revocation to the provider.

6.12 Subd. 9. **Documentation of release.** In cases where a provider releases health
 6.13 records without patient consent as authorized by law, the release must be documented in
 6.14 the patient's health record. In the case of a release under section 144.294, subdivision 2, the
 6.15 documentation must include the date and circumstances under which the release was made,
 6.16 the person or agency to whom the release was made, and the records that were released.

6.17 **Sec. 4. [144.294] RECORDS RELATING TO MENTAL HEALTH.**

6.18 Subdivision 1. **Provider inquiry.** Upon the written request of a spouse, parent,
 6.19 child, or sibling of a patient being evaluated for or diagnosed with mental illness, a
 6.20 provider shall inquire of a patient whether the patient wishes to authorize a specific
 6.21 individual to receive information regarding the patient's current and proposed course of
 6.22 treatment. If the patient so authorizes, the provider shall communicate to the designated
 6.23 individual the patient's current and proposed course of treatment. Section 144.293,
 6.24 subdivisions 2 and 4, apply to consents given under this subdivision.

6.25 Subd. 2. **Disclosure to law enforcement agency.** Notwithstanding section 144.293,
 6.26 subdivisions 2 and 4, a provider must disclose health records relating to a patient's mental
 6.27 health to a law enforcement agency if the law enforcement agency provides the name
 6.28 of the patient and communicates that the:

6.29 (1) patient is currently involved in an emergency interaction with the law
 6.30 enforcement agency; and

6.31 (2) disclosure of the records is necessary to protect the health or safety of the patient
 6.32 or of another person.

6.33 The scope of disclosure under this subdivision is limited to the minimum necessary
 6.34 for law enforcement to respond to the emergency. A law enforcement agency that obtains
 6.35 health records under this subdivision shall maintain a record of the requestor, the provider

7.1 of the information, and the patient's name. Health records obtained by a law enforcement
7.2 agency under this subdivision are private data on individuals as defined in section 13.02,
7.3 subdivision 12, and must not be used by law enforcement for any other purpose.

7.4 Subd. 3. **Records release for family and caretaker; mental health care.** (a)
7.5 Notwithstanding section 144.293, a provider providing mental health care and treatment
7.6 may disclose health record information described in paragraph (b) about a patient to a
7.7 family member of the patient or other person who requests the information if:

7.8 (1) the request for information is in writing;

7.9 (2) the family member or other person lives with, provides care for, or is directly
7.10 involved in monitoring the treatment of the patient;

7.11 (3) the involvement under clause (2) is verified by the patient's mental health care
7.12 provider, the patient's attending physician, or a person other than the person requesting the
7.13 information, and is documented in the patient's medical record;

7.14 (4) before the disclosure, the patient is informed in writing of the request, the name
7.15 of the person requesting the information, the reason for the request, and the specific
7.16 information being requested;

7.17 (5) the patient agrees to the disclosure, does not object to the disclosure, or is
7.18 unable to consent or object, and the patient's decision or inability to make a decision is
7.19 documented in the patient's medical record; and

7.20 (6) the disclosure is necessary to assist in the provision of care or monitoring of the
7.21 patient's treatment.

7.22 (b) The information disclosed under this paragraph is limited to diagnosis, admission
7.23 to or discharge from treatment, the name and dosage of the medications prescribed, side
7.24 effects of the medication, consequences of failure of the patient to take the prescribed
7.25 medication, and a summary of the discharge plan.

7.26 (c) If a provider reasonably determines that providing information under this
7.27 subdivision would be detrimental to the physical or mental health of the patient or is
7.28 likely to cause the patient to inflict self harm or to harm another, the provider must not
7.29 disclose the information.

7.30 (d) This subdivision does not apply to disclosures for a medical emergency or
7.31 to family members as authorized or required under subdivision 1 or section 144.293,
7.32 subdivision 5, clause (1).

7.33 Sec. 5. **[144.295] DISCLOSURE OF HEALTH RECORDS FOR EXTERNAL**
7.34 **RESEARCH.**

8.1 Subdivision 1. **Methods of release.** (a) Notwithstanding section 144.293,
8.2 subdivisions 2 and 4, health records may be released to an external researcher solely for
8.3 purposes of medical or scientific research only as follows:

8.4 (1) health records generated before January 1, 1997, may be released if the patient
8.5 has not objected or does not elect to object after that date;

8.6 (2) for health records generated on or after January 1, 1997, the provider must:

8.7 (i) disclose in writing to patients currently being treated by the provider that health
8.8 records, regardless of when generated, may be released and that the patient may object, in
8.9 which case the records will not be released; and

8.10 (ii) use reasonable efforts to obtain the patient's written general authorization that
8.11 describes the release of records in item (i), which does not expire but may be revoked or
8.12 limited in writing at any time by the patient or the patient's authorized representative;

8.13 (3) the provider must advise the patient of the rights specified in clause (4); and

8.14 (4) the provider must, at the request of the patient, provide information on how the
8.15 patient may contact an external researcher to whom the health record was released and
8.16 the date it was released.

8.17 (b) Authorization may be established if an authorization is mailed at least two
8.18 times to the patient's last known address with a postage prepaid return envelope and a
8.19 conspicuous notice that the patient's medical records may be released if the patient does
8.20 not object, and at least 60 days have expired since the second notice was sent.

8.21 Subd. 2. **Duties of researcher.** In making a release for research purposes, the
8.22 provider shall make a reasonable effort to determine that:

8.23 (1) the use or disclosure does not violate any limitations under which the record
8.24 was collected;

8.25 (2) the use or disclosure in individually identifiable form is necessary to accomplish
8.26 the research or statistical purpose for which the use or disclosure is to be made;

8.27 (3) the recipient has established and maintains adequate safeguards to protect the
8.28 records from unauthorized disclosure, including a procedure for removal or destruction of
8.29 information that identifies the patient; and

8.30 (4) further use or release of the records in individually identifiable form to a person
8.31 other than the patient without the patient's consent is prohibited.

8.32 Sec. 6. **[144.296] COPIES OF VIDEOTAPES.**

8.33 A provider may not release a copy of a videotape of a child victim or alleged victim
8.34 of physical or sexual abuse without a court order under section 13.03, subdivision 6, or

9.1 as provided in section 611A.90. This section does not limit the right of a patient to view
9.2 the videotape.

9.3 **Sec. 7. [144.297] INDEPENDENT MEDICAL EXAMINATION.**

9.4 This section applies to the subject and provider of an independent medical
9.5 examination requested by or paid for by a third party. Notwithstanding section 144.293, a
9.6 provider may release health records created as part of an independent medical examination
9.7 to the third party who requested or paid for the examination.

9.8 **Sec. 8. [144.298] PENALTIES.**

9.9 Subdivision 1. **Licensing action.** A violation of sections 144.291 to 144.298 may
9.10 be grounds for disciplinary action against a provider by the appropriate licensing board
9.11 or agency.

9.12 Subd. 2. **Allocation of liability.** In adjudicating a dispute involving the disclosure
9.13 of patient health records, a court shall use the criteria in this subdivision in determining
9.14 how liability will be allocated.

9.15 (a) When requesting health records using consent, a person warrants that the consent:

9.16 (1) contains no information known to the person to be false; and

9.17 (2) accurately states the patient's desire to have health records disclosed or that there
9.18 is specific authorization in law.

9.19 (b) When requesting health records using consent or the representation authorized in
9.20 section 144.293, subdivision 2, a provider warrants that the request:

9.21 (1) contains no information known to the provider to be false;

9.22 (2) accurately states the patient's desire to have health records disclosed or that
9.23 there is specific authorization in law; and

9.24 (3) does not exceed any limits imposed by the patient in the consent.

9.25 (c) When disclosing health records, a person releasing health records warrants that
9.26 the person:

9.27 (1) has complied with the requirements of this section regarding disclosure of
9.28 health records;

9.29 (2) knows of no information related to the request that is false; and

9.30 (3) has complied with the limits set by the patient in the consent or as described
9.31 in the representation of consent.

9.32 (d) A court of this state presumes that:

9.33 (1) a request made by a person that complies with the provisions of this section is
9.34 valid and represents the wishes of the patient;

- 10.1 (2) the information listed in a consent or representation of consent is accurate;
 10.2 (3) the recipient of a consent or representation of consent has no knowledge or
 10.3 notice that the person making the request breached a duty to the patient or does not
 10.4 rightfully have a consent;
 10.5 (4) the signature on the consent or representation of consent is not forged;
 10.6 (5) the consent or representation of consent was not obtained under false pretenses;
 10.7 and
 10.8 (6) the consent or representation of consent was not altered without the patient's
 10.9 permission.
 10.10 (e) No person or provider may disclaim or contractually limit the application of this
 10.11 section, or obtain indemnity for its effects, if the disclaimer, limitation, or indemnity
 10.12 restricts liability for misrepresentation against persons reasonably relying on the consent,
 10.13 representation of consent, or disclosure.
 10.14 (f) A court of this state shall give effect to liability allocations between the parties
 10.15 provided by contract that does not allocate liability to the detriment of the patient and the
 10.16 allocation is consistent with the requirements of sections 144.291 to 144.298.
 10.17 (g) A patient is eligible to receive compensatory damages plus costs and reasonable
 10.18 attorney fees if the provisions of sections 144.291 to 144.298 are violated.

10.19 **Sec. 9. REPEALER.**

10.20 Minnesota Statutes 2006, section 144.335, is repealed.

10.21 **Sec. 10. REVISOR'S INSTRUCTION.**

10.22 In the next bound volume of Minnesota Statutes and Minnesota Rules, the revisor
 10.23 shall change the references in column A with the references in column B.

| | <u>Column A</u> | <u>Column B</u> |
|-------|---|--|
| 10.24 | | |
| 10.25 | <u>section 144.335</u> | <u>sections 144.291 to 144.298</u> |
| 10.26 | <u>section 144.335, subdivision 1</u> | <u>section 144.291, subdivision 2</u> |
| 10.27 | <u>section 144.335, subdivision 1, paragraph</u> | <u>section 144.291, subdivision 2, paragraph</u> |
| 10.28 | <u>(b)</u> | <u>(h)</u> |
| 10.29 | <u>section 144.335, subdivision 2, paragraphs</u> | |
| 10.30 | <u>(a) and (b)</u> | <u>section 144.292, subdivisions 2 and 5</u> |
| 10.31 | <u>section 144.335, subdivision 2</u> | <u>section 144.292</u> |
| 10.32 | <u>section 144.335, subdivision 3a</u> | <u>section 144.294, subdivision 2</u> |
| 10.33 | <u>section 144.335, subdivision 3a, paragraph</u> | |
| 10.34 | <u>(d)</u> | <u>section 144.295</u> |
| 10.35 | <u>section 144.335, subdivision 3a, paragraph</u> | |
| 10.36 | <u>(f)</u> | <u>section 144.294</u> |
| 10.37 | <u>section 144.335, subdivision 3b</u> | <u>section 144.293, subdivision 7</u> |