Minnesota's Health Records Act (MHRA) & The Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA)

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Goals of presentation

- High level overview
- Basic concepts & vocabulary
- *NOT* exhaustive

Statutory Background

MHRA

- Minnesota state law governing access to and the release of patient health records
- Minn. Stat. §§ 144.291–144.298
- Current version passed in 2007 (Ch. 147)
- Preceded by § 144.335
  - Originally created in 1977 (Ch. 380); patient consent requirement for release of records to third parties added in **1991** (Ch. 319) – *before HIPAA*

HIPAA

- Federal law governing, among other things, the use and disclosure of patient health records
  - The Privacy Rule, 45 CFR Part 164, subpart E
- Passed in 1996

General Rule

MHRA

- No release of patient health records *unless*:
  - patient consent *or*
  - specific authorization in (state) law —
    - does *not* include HIPAA

HIPAA

- No disclosure of protected health information ("PHI")
  - *except* as permitted or required by HIPAA
- Minimum necessary standard
  - Disclose only as much PHI as necessary to perform a particular function

The exceptions to the general rule are key.

HIPAA exceptions are much more broad.

Who must comply?

MHRA

- "Providers" and persons who receive health records from a provider
  - Anyone who furnishes health care services
  - Home care providers
  - Health care facilities

HIPAA

- "Covered entities"
  - Health plans
  - Health care clearinghouses
  - Health care providers
- "Business associates"
  - Contract with covered entities to perform activities that involve use or disclosure of PHI
  - Billing, practice management, data analysis, legal services

MHRA Exceptions: When can disclosure occur without consent?

- In medical emergency
- To other providers *within related health care entities* for treatment
- If patient is deceased and release is for treatment of surviving adult child
- To record locator services
- Mental health records to law enforcement for emergencies
- For external research, unless patient opts out

HIPAA Exceptions:
When can disclosure occur without consent?

- **For treatment**
- **For payment**
- **For health care operations**
- Public interest and benefit activities:
  - Required by law
  - Public health activities
  - Certain law enforcement purposes
- Serious threats to health or safety
- Research
- Internal fundraising

HIPAA does require "authorization" for:
- Disclosure of *psychotherapy notes* for treatment, payment, or health care operations;
- Marketing purposes or sale

Key takeaway:

Because HIPAA allows disclosure without consent for **treatment, payment, and healthcare operations**, PHI can be shared more easily (subject to the minimum necessary requirement)

How is the law enforced?

MHRA

- Disciplinary action by licensing boards
- Private right of action by patient
  - Compensatory damages
  - Reasonable attorney fees

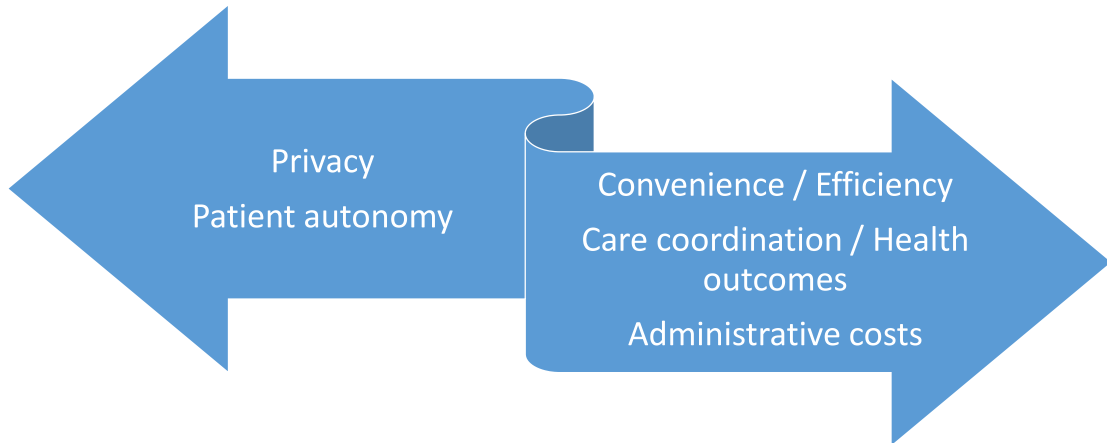
HIPAA

- *No private right of action*
- Complaint to HHS Office for Civil rights
  - Civil penalties possible
  - Max. is $1.5M per violation category per year
- Criminal penalties prosecuted by DOJ
  - Up to 10 years in jail for stealing PHI
- State Attorneys General authorized to bring civil actions on behalf of state residents

HIPAA does not preempt MHRA

- The general statutory rule is that HIPAA supersedes or preempts any "contrary" provision of state law. 42 U.S.C. § 1320d–7(a)(1).
- A state law is "contrary" to HIPAA if a health care provider "would find it impossible to comply with both the State and federal requirements" or if the state law is "an obstacle to the accomplishment and execution of the full purposes" of HIPAA. 45 C.F.R. § 160.202
- Because MHRA is *more restrictive*, and HIPAA is *more permissive*, it is possible to comply with both

Policy considerations



Policy considerations

What do patients want?

- Expectations matter
- Privacy / autonomy *vs.* convenience / efficiency

What do providers want?

What produces the best health outcomes?

- At the individual level
- At the population level

What reduces red tape and administrative costs?

What encourages innovation in health care delivery?