MEDICAL RECORDS ACCESS GUIDE
Minnesota

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Introduction: Individual and Third-Party Access to Medical Records

The Health Insurance Portability and Accountability Act of 1996, or HIPAA, is federal legislation that serves to protect the privacy of individuals who are patients of health care providers and members of insurance or government health insurance benefit programs. HIPAA compliance extends to covered entities such as health care providers and health care plans. Physicians, hospitals, pharmacies as well as health care programs, private health insurers, and the health care benefit plans offered by employers all qualify as covered entities under HIPAA.

In 2013, the Health Information Technology for Economic and Clinical Health Act (HITECH) and new U.S. Department of Health and Human Services (DHHS) regulations extended the definition of a covered entity to include "business associates" who must also comply with certain HIPAA rules. A "Business associate" is an entity that provides services to the health care industry where the execution of those services involves the use and or disclosure of patient information.

Additionally, because the healthcare industry experiences more data breaches by cybercriminals than any other industry, DHHS promulgated the HIPAA Security Rule, which establishes national standards to protect individuals' electronic personal health information (PHI). The Security Rule requires covered entities to have administrative, physical and technical safeguards to ensure the privacy of electronic protected health information.

A covered entity *must* disclose protected health information in only two situations:

(1) To individuals (or their personal representatives) specifically when they request access to, or an accounting of disclosures of, their protected health information; and

(2) to HHS when it is undertaking a compliance investigation or review or enforcement action.

The Privacy Rule provides exceptions to the general rule of federal preemption for contrary State laws that:

(1) relate to the privacy of individually identifiable health information and provide greater privacy protections or privacy rights with respect to such information,

(2) provide for the reporting of disease or injury, child abuse, birth, or death, or for public health surveillance, investigation, or intervention, or

(3) require certain health plan reporting, such as for management or financial audits.

As a result, the following entities need to be concerned directly with compliance obligations and potential enforcement as a result of the HIPAA Rules:

- Health care providers, such as hospitals, physicians, and pharmacies;
- Health insurers and government health care programs;
- Any employer that provides health care benefits to its employees (with the employer's "health plan" being the covered entity)

- A service provider to any of these entities; and
- A service provider to a service provider of any of these entities

Because HIPAA is a federal law, it supersedes state law. When a healthcare provider supplies medical records directly to the individual patient or personal representative for health care, the HIPAA restrictions will generally apply instead of state statutes. If a third-party requests access to an individual's PHI, state law governs. Under Minnesota law, the form and format, timeliness, and the amount a covered entity may charge individuals for copies of medical records are outlined in various statutes. However, if an individual is requesting records on their own behalf, HIPAA will control, and a covered entity will likely want to charge the permitted flat fee of $6.50/request that is allowed by HITECH. Covered entities are authorized to charge more under HITECH, but should consider the administrative effort to calculate that time and the associated costs; the additional guidance below regarding permissible costs will be useful.

Requests for medical records for use in judicial or administrative proceedings commonly take the form of, but are not limited to, an authorization from the patient consenting to release of the medical record, an order from the presiding court or administrative agency, or a subpoena from the opposing party in a civil proceeding. Included in this guide are the requirements of a health care provider under HIPAA and Minnesota state law when not otherwise preempted by HIPAA. However, if Minnesota state laws provide greater privacy protections or privacy rights with respect to individually identifiable health information than HIPAA does, the state law will prevail. Please note that there are special rules and regulations regarding records containing information related to mental health, psychotherapy notes, substance abuse treatment, and communicable and sexually transmitted diseases. As a result, specific sections have been included for medical records containing those various types of information.

Minnesota

Minnesota law will apply to the issues to be considered when responding to a records request, unless preempted by HIPAA. As an example, for requests from third parties, the application of Minnesota law will govern the costs that can be charged for a records request, as outlined below. Requests can take many forms, some within the jurisdiction of courts conducting civil or criminal proceedings. Strict compliance is required, and the treatment of specific situations may differ.

I. Covered Entities Response to a Third-Party Request

If a third party makes the request itself, and is not forwarding a request from the patient, the fee limitations under HIPAA do not apply; rather, the limitations under Minnesota law will control. Minnesota §144.292 subdivision 6 states that when a patient requests a copy of the patient's record for purposes of reviewing current medical care, the provider must not charge a fee. However, "when a provider or its representative makes copies of patient records upon a patient's request under this section, the provider or its representative may charge the patient or the patient's representative no more than"

- $1.41 per page for copy, plus

- $18.80 for time spent retrieving and copying the records (unless other law or a rule or contract provide for a lower maximum charge. This limitation does not apply to x-rays. The provider may charge a patient no more than the actual cost of

producing x-rays, plus no more than $10 for the time spent retrieving and copying the x-rays).

EXCEPTION: Providers are not permitted to charge Patient Requests Regarding Disability Benefits and Assistance. An exception to the permissibility of allowable charges for copies of medical records is that a health care provider may not charge a patient for copies of the patient's medical records for use in supporting an application for disability benefits or assistance.

Moreover, a provider or its representative may charge the $10 retrieval fee but must not charge a per page fee to provide copies of records requested by a patient or the patient's authorized representative if the request for copies is for purposes of appealing a denial of Social Security disability income or Social Security disability benefits under title II or title XVI of the Social Security Act.

If a patient is requesting medical records for one of the above purposes, the patient must provide the health care provider with a statement or document from the respective state or federal agency confirming the filing of the application or appeal. A health care provider is only required to provide a copy free of charge for the above purposes if the patient is the party requesting the record. If the state or federal agency overseeing the application or appeal makes the request for the patient's medical records, then the health care provider may charge the state or federal agency in the manner prescribed in subsection (iv) below, unless there is a specific state or federal law allowing such agency to obtain medical records free of charge.

II. Requests Via Court Order.

A health care provider must disclose protected health information contained in a medical record to comply with a court order, including an order of an administrative tribunal or agency. Such disclosures must be limited to the protected health information expressly authorized by the order. Do not over-disclose. If such an order requests the production of a patient's medical record, authorization from the patient is not necessary and the health care provider must comply with the requirements of the order. A health care provider may, but is not required to, notify the patient that the record must be disclosed prior to releasing the patient's medical records pursuant to the order.

III. Requests Via Criminal Subpoena, Search Warrant or Grand Jury Subpoena.

Criminal subpoenas, search warrants, and grand jury subpoenas that request a patient's medical records raise numerous legal issues. If a health care provider receives a criminal subpoena, search warrant, or grand jury subpoena, then the health care provider should contact legal counsel immediately.

IV. Requests Via Civil Subpoena, Discovery Request, or Other Lawful Process.

It is common in civil litigation involving personal injury for a party to request a patient's medical records through the use of a subpoena, discovery request, or other process without an accompanying order signed by a court or administrative tribunal or agency. The most common request will be a subpoena issued by a party's attorney for the medical records of a client. The document will generally be captioned "Subpoena" or at least contain the term "Subpoena" in the

caption, along with the names of two nongovernmental opposing parties. The subpoena should include a copy of Minnesota §§144.291 rule which will specifically set forth the health care provider's obligations under the subpoena and provide detailed instruction on how to comply with it. The subpoena should also identify the court presiding over the action. Prior to disclosing any information, the provider should verify that the court is a court of competent jurisdiction and that the subpoena is signed by one of the parties' attorneys or a notary public.

Upon receipt of a subpoena, discovery request or other lawful process requesting a patient's medical records, the health care provider should immediately send a letter to the patient informing the patient as to the existence of the subpoena, and give the patient an opportunity to object to the release of their medical records. See Appendix B for an example of such a letter to the patient. Prior to providing any medical records, the health care provider must ensure that it has received, along with the subpoena, "satisfactory assurance" that the patient whose records are being requested has received notice of the subpoena or request and has not objected to the request. A health care provider should be satisfied that reasonable efforts have been made by the requesting party to ensure that the patient has been given notice of the request or that reasonable efforts have been made to secure a qualified protective order; one of the following three types of documentation will suffice for a showing of reasonable efforts:

(i) An order from a court or administrative agency;

(ii) A written, HIPAA compliant, authorization from the patient allowing disclosure of the medical record;

(iii) A written statement from the requesting party and accompanying documentation demonstrating that:

a. The requesting party has made a good faith effort to provide written notice of the request to the patient, the notice had sufficient information to permit the patient to raise any objection to the court, the time for the patient to raise objections has lapsed and either no objections were filed or all objections filed have been resolved in favor of the requesting party;

b. All parties in the litigation have agreed to a qualified protective order that will require the parties to only use the medical records for the purpose of the litigation, followed by destruction of the copies, and have presented the order to the court presiding over the dispute; or

c. The requesting party has requested a qualified protective order from the presiding court that will require the parties to only use the medical records for the purpose of the litigation, following by destruction of the copies.

If the subpoena satisfies one of the above requirements, or the party requesting the medical records by subpoena subsequently satisfies one of the above requirements, the health care provider must provide the medical records, but only to the extent specifically identified in the subpoena.

If, however, the subpoena is not accompanied by any of the supporting documentation, the health care provider should not disclose the medical records but rather should immediately send a letter to the requesting third party informing them of the health care provider's policy

regarding the release of medical records. See Appendix C for an example of a letter to the third party who is requesting the medical records.

NOTE: All court orders, subpoenas, and warrants should be issued from a court of competent jurisdiction. This means the court has jurisdiction over the health care provider and/or the health care provider's medical practice. For example, a Texas court does not have jurisdiction over a Minnesota medical practice. A Texas court, therefore, cannot order or subpoena documents from a Minnesota medical practice and the proper method to address such an order or subpoena can get complicated. In the event a health care provider receives a subpoena or court order from a jurisdiction in which the health care provider does not practice medicine, then the health care provider should immediately contact legal counsel.

V. Requests from the Workers' Compensation Court, Workers' Compensation Insurance Carrier, Employers or Employees.

A health care provider can disclose an injured or ill patient's protected health information contained in a medical record without his or her authorization when requested for purposes of adjudicating such individual's workers' compensation claim. Medical records "relevant" to workers' compensation cases are to be made available upon request to the patient's employer, workers' compensation insurance carrier, third-party administrator of workers' compensation benefits, and the Minnesota Workers' Compensation Court. There will often be a dispute over what portion of the employee's medical record is "relevant" to the workers' compensation proceeding.

In such a situation, the health care provider may want to use the same approach as discussed above for handling civil subpoenas. In addition, individuals do not have a right to request that a health care provider restrict a disclosure of protected health information about them for workers' compensation purposes. If a requested disclosure is required by law or authorized by, and necessary to comply with, a workers' compensation or similar law, the relevant documents must be provided.

Allowable fees for health records relating to workers' compensation claims are established in Minnesota Rules 5219.0300. Heath care providers may charge for copies of any records or report regarding work injury claims for which payment is sought. Charges for copies provided must be reasonable and, for the first request, the charge must not exceed:

- $0.75 per page, and
- Other requests for copies of existing medical records or data may be charged a $10 retrieval fee and $0.75 per page.
- The provider may charge fees different than what is stated above but the combination of retrieval fee and per page copy may not exceed the sum established by the above rule.

HIPAA

VI. Patient Request for Access to or Copies of Medical Records.

Patients have a statutory right to examine and request copies of any records maintained by a health care provider regarding their health history and treatment rendered. Unless there is a

court order, any treating physician, psychologist, or mental health practitioner can refuse to release records of a patient if they determine doing so would not be in the "best interest" of the patient. The request by the patient and authorization given by a medical practitioner must be in writing.

Patient requests for medical records come in one of two forms: requests for access and request for copies.

Under HIPAA, a health care provider has no more than 30 days from receipt of request to grant a patient's request for copies of the PHI. If the covered entity cannot respond within 30 calendar days, the entity is allowed a one-time 30-day extension. The covered entity must inform the individual in writing of the reasons for the delay and provide the date that they will be received. While technology allows that some individual access requests can be fulfilled almost instantaneously, the HIPAA Privacy Rule also recognizes that there may be other circumstances where additional time and effort may be necessary to locate the PHI that is requested, or to provide the PHI in the format requested.

Moreover, under §144.292 subdivision 4, Minnesota stipulates that a healthcare provider must provide to patients, in a clear and conspicuous manner, a written notice concerning practices and rights with respect to access to health records. The notice must include an explanation of:

- Disclosures of health records that may be made without the written consent of the patient, including the type of records and to whom the records may be disclosed; and

- The right of the patient to access to and obtain copies of the patient's health records and other information about the patient that is maintained by the provider.

VII. Patient Authorization to Provide Medical Records to Third Parties.

A patient may request that a health care provider make available the patient's medical records to a third party. If the patient requests that their medical records be turned over to a third party, such as the patient's attorney, and the health care provider determines that disclosure is not likely to endanger the life or physical safety of the patient or another person, then the health care provider should provide the record if the patient has executed a valid written authorization. Only information that may be disclosed and is specifically designated by the patient on the authorization form, is the information that may be disclosed. Do not over-disclose. When permitting the use of a patient authorization, a health care provider must use a HIPAA-compliant authorization.

Under HIPAA, a patient's written authorization to disclose their PHI to a third party must, by its terms, expire either upon a) the occurrence of a specified event or b) a date certain. HIPAA does not put a limit on how long these periods can be. Minnesota law, however, sets a limit in which the patient's authorization to release medical records will expire after twelve months from the date of signature. This Minnesota law is not preempted by HIPAA.

The following are essential elements that your HIPAA authorization form must include:

- Specify the type of PHI you will share or disclose
- Explain the purpose of the disclosure of the PHI

- Identify the entity and/or persons who the PHI will be shared
- Include a date by which the patient's consent will expire
- Patient's dated signature accompanying all of the above requirements. If a patient is having a PR sign on their behalf, you must also obtain a description of their relationship to the patient and documentation of their authority to act on behalf of the individual.

The following important information should also be communicated to a patient regarding their authorization:

- Patients have the right to revoke the authorization for disclosures, including procedures for how they might revoke their authorization.
- Exceptions to a patient's right to revoke their authorization.
- Any applicable information included in your Notice of Privacy Practices regarding revoking authorization for disclosures.
- The provider cannot retaliate or penalize the patient for failing sign the authorization.
- If PHI is shared under a patient's authorization with a third party, that third party may redisclose that PHI. If the third party rediscloses that PHI, it will no longer be protected under the HIPAA Privacy Rule.

At the end of this document, *Appendix A* provides an example of an Authorization Form. On the form, the individual must check what sensitive information, if any, they want to disclose. Significantly, in order to authorize the use or disclosure of **psychotherapy notes** a completely separate box must be checked. That means authorization for the use and disclosure of other health record information MAY NOT be made in conjunction with authorization pertaining to psychotherapy notes. <u>If the psychotherapy notes box is checked, another authorization will be required to authorize the use or disclosure of psychotherapy notes only.</u>

VIII. Covered Entities Response to an Individual's Access Request

A covered entity can require that all requests be in writing, in a form provided by the clinic, and we recommend this practice. The form must not interfere with or cause undue delay in processing the individual's request for their medical records.

A covered entity should take reasonable steps to verify the identity of the person making the request. They can include information in the form that allows the patient to provide enough identifying information so as to verify the patient's identity.

If a law firm is forwarding a request from a patient, the firm's letter should include a statement that the lawyer or firm represents the patient, in addition to an authorization form signed by the patient, and the request from the patient (not the third party).

Again, HIPAA regulations apply to copies made for and sent to the individual, or their personal representative for health care purposes. A reasonable cost-based fee may be charged, and can include the following:

- Labor for copying the PHI requested by the individual, whether in paper or electronic form;
- Supplies for creating the paper copy or electronic media (e.g., CD or USB drive) if the individual requests that the electronic copy be provided on portable media;

- Postage, when the individual requests that the copy, or the summary or explanation, be mailed; and
- Preparation of an explanation or summary of the PHI, if agreed to by the individual. See 45 CFR 164.524(c)(4).

Specific costs that can be included are as follows;

- Photocopying paper records.
- Scanning/converting paper records into an electronic format.
- Converting electronic records from one format to another to comply with the form requested by the patient.
- Transferring the records to portable media, email, or other manner of deliver, such as uploading to a web portal.
- Preparing and sending the records by mail, or email.
- The fee charged cannot include time for reviewing the request, locating the records, or retrieving them. A covered entity may not require a person to purchase portable media such as a flash drive or CD; email or mail can always be used. Guidance suggests that providers should (but are not required to) provide free access to medical records, particularly where the patient is unable to afford the fee.
- A provider may not charge a "handling" fee or charge for the costs of retrieving the record. In addition, the charges cannot exceed:

    a. 50 cents per page for copies of regular medical records that can be copied on a standard photocopy machine;

    b. Reasonable copy charges for medical records that cannot routinely be copied on a standard photocopy machine; and

    c. The cost of labor and materials involved in furnishing copies of X-rays and similar special medical records. If the provider is unable to reproduce X-rays or other requested records, the person making the request may arrange, at his or her expense, for the reproduction of such records.

If an entity does not want to calculate actual or allowable costs to determine the cost for a request, they may charge a flat fee that does not exceed $6.50 per request, inclusive of all labor, supplies, and any postage. Under HIPAA, per page fees are not permitted if the records are stored electronically.

NOTE: A per-page fee is not permitted for medical records that are maintained electronically. The Office of Civil Rights (OCR) does not consider per page fees for copies of protected information maintained electronically to be "reasonable" for purposes of complying with the HIPAA rules. A provider may also decide to charge a flat fee of up to $6.50, inclusive of labor, supplies, and any applicable postage, for requests for electronic copies of medical records maintained electronically. If the health care provider and patient agree that the health care provider will provide the patient with a summary or explanation of the patient's medical record, then the health care provider may charge preparatory fees for the summary, so long as the parties agree to the preparatory fees up front.

NOTE: Although this Section has focused on the allowable fees for the production of documents, to the extent a health care provider is asked to provide expert testimony, deposition, or a narrative report on a specific subject, the health care provider may set a fee for such services in advance, pursuant to a contract or fee schedule.

IX. Requests For Deceased or Incapacitated Patients' Medical Records.

For individuals who are legally or otherwise incapable of exercising their rights, or who designate to another the responsibility to act on their behalf, the HIPAA Privacy Rule allows this designated person control to certain uses and disclosures of the individual's PHI, as well as the individual's rights under the rule. This individual is known as a "personal representative." A personal representative is defined as a person who is authorized, under State or other applicable law, to act on behalf of the individual in making health care related decisions. In certain instances, family members, or other persons who are involved in the individual's health care, or payment for care, may receive protected health information about the individual even if they are not expressly authorized to act on the individual's behalf. A provider or plan may choose not to treat a person as a personal representative if the provider or plan reasonably believes that the person might endanger the individual in situations of domestic violence, abuse, or neglect.

X. "Super-Confidential" Medical Records: Records Pertaining to Mental Health, Psychotherapy Notes, Substance Abuse, Communicable Diseases, and Sexually Transmitted Diseases.

Medical records regarding mental health, substance abuse, communicable and sexually transmitted diseases, often called "super-confidential" records, are subject to a higher standard of confidentiality and release due to their highly sensitive and private nature. Below is a brief description of the requirements for disclosure of such sensitive materials.

(i) **Mental Health**. "Mental health records" include any records of mental health treatment or time spent in a mental health facility or program. Generally, "mental health records" may be released directly to the patient upon a court order or to the patient's authorized representative upon written request by the patient or the patient's authorized representative. Mental health records may also be disclosed to a third party pursuant to a written authorization signed by the patient or the patient's authorized representative. However, in either case, if the treating psychiatrist, psychologist, or mental health practitioner determines that release of the mental health records would not be in the best interests of the patient or that disclosure is reasonably likely to endanger the life or physical safety of the patient or another person, then the mental health records can be withheld.

(ii) **Psychotherapy Notes.** HIPAA provides increased standards for release of "psychotherapy notes", defined as notes recorded by a health care provider who is a mental health professional documenting or analyzing the contents of the conversation during a private counseling session and that are separated from the rest of the individual's medical record. A health care provider must obtain an authorization specific to psychotherapy notes for any use or disclosure of psychotherapy notes, except: (i) use by the originator of the psychotherapy notes for treatment; (ii) use or disclosure by the health care provider for its own training programs; (iii) use or disclosure by the health care provider to defend itself in a legal action or other proceeding brought by the individual; (iv) a disclosure require by law; or (v) to prevent a threat to a person or the public.

(iii) **Substance Abuse.** Substance abuse treatment records can be disclosed to the patient or the patient's authorized representative upon written request by the patient or the patient's authorized representative. Substance abuse treatment records can also be disclosed to a third party pursuant to a written authorization signed by the patient or the patient's authorized representative. However, in either case, disclosure is subject to the health care provider's determination that disclosure is not likely to endanger the life or physical safety of the patient or another person. Absent a HIPAA-compliant authorization for release, substance abuse treatment records may only be released to a third party pursuant to a court order.

(iv) **Federally Funded Substance Abuse Programs**. Substance abuse records of persons treated in federally funded programs may be disclosed to the patient or the patient's authorized representative upon written request by the patient or the patient's authorized representative. Substance abuse treatment records of persons treated in federally funded programs may also be disclosed to a third party pursuant to a written authorization signed by the patient or the patient's authorized representative, if the authorization contains the following special clause pertaining to redisclosure:

> This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

Absent such an authorization, substance abuse records of persons treated in federally funded programs may only be disclosed pursuant to court order. Wrongful disclosure of information of persons treated in federally funded substance abuse programs is a criminal offense.

(v) **Communicable Diseases and Sexually Transmitted Infections.** Reports of communicable diseases, including but not limited to sexually transmitted infections and HIV/AIDS, that are required by law to be made to the Minnesota Department of Health and Human Services or other governmental agencies, are confidential, not subject to subpoena, and not admissible in any court action. Such information, however, may be disclosed to other governmental agencies, pursuant to applicable law, for the protection of public health if all personal information that could be used to determine the patient's identity has been removed.

In addition, medical records containing information related to communicable and sexually transmitted infections can be disclosed to the patient or the patient's authorized representative, or to a third party, pursuant to a written request by the patient or the patient's authorized representative, subject to the health care provider's determination that disclosure is not likely to endanger the life or physical safety of the patient or another person. Patient information and test results concerning communicable and sexually transmitted diseases are confidential and are not subject to subpoena, search warrant, or discovery process.

If the services are funded by Title X, then Title X confidentiality rules govern. Title X programs required health care providers to keep personal information regarding Title X funded services confidential and require that clinics obtain written authorization to release that information. Parents cannot access or obtain information about their minor child's Title X services without their child's written permission.

As an alternative to withholding records, a health care provider may elect to produce the otherwise properly requested record with the "super-confidential" portions of the record redacted. The redacted record can then be produced with an accompanying letter stating that the health care provider is in possession of additional records that cannot be released absent a court order or the patient's written consent.

XI. Limits on Parent and/or Guardian Access to Information About Minors

When a minor consent to their own health care, HIPAA stipulates that a parent or guardian's right to inspect the related medical records is determined by state and otherwise applicable federal law (such as Title X), not HIPAA. Absent a state law, including case law, specifying whether or not a parent may have access to the information, the HIPAA regulations give discretion to the health care provider and their use of professional judgment to allow or deny access to a parent or guardian.

When providing Title X funded care, health care providers must follow federal Title X law and regulations. Parents cannot access or obtain information about their minor child's Title X services without their child's written permission. Moreover, Title X funded services are confidential and require written authorization from patient before that information can be released. Title X regulations preempt state law, if the state law limits access or eligibility to the services provided under Title X.

Appendix A

Authorization Form

Instructions for Minnesota Standard Consent Form to Release Health Information

Important: Please read all instructions and information before completing and signing the form.

An incomplete form might not be accepted. Please follow the directions carefully. If you have any questions about the release of your health information or this form, please contact the organization you will list in section 3.

This standard form was developed by the Minnesota Department of Health as required by the Minnesota Health Records Act of 2007, Minnesota Statutes, section 144.292, subdivision 8. The form must be accepted by a Minnesota provider as a legally enforceable request under the Minnesota Health Records Act. If completed properly, this form must be accepted by the health care organization(s), specific health care facility(ies), or specific professional(s) identified in section 3.

A fee may be charged for the release of the health information.

The following are instructions for each section. Please type or print as clearly and completely as possible.

1 Include your full and complete name. If you have a suffix after your last name (Sr., Jr., III), please provide it in the "last name" blank with your last name. If you used a previous name(s), please include that information. If you know your medical record or patient identification number, please include that information. All these items are used to identify your health information and to make certain that only your information is sent.

2 If there are questions about how this form was filled out, this section gives the organization that will provide the health information permission to speak to the person listed in this section. **Completing this section is optional.**

3 In this section, state who is sending your health information. **Please be as specific as possible.** If you want to limit what is sent, you can name a specific facility, for example Main Street Clinic. Or name a specific professional, for example chiropractor John Jones. Please use the specific lines. Providing location information may help make your request more clear. Please print "All my health care providers" in this section if you want health information from all of your health care providers to be released.

4 Indicate where you would like the requested health information sent. It is best to provide a complete mailing address as not everyone will fax health information. A place has been provided to indicate a deadline for providing the health information. **Providing a date is optional.**

5 Indicate what health information you want sent. If you want to limit the health information that is sent to a particular date(s) or year(s), indicate that on the line provided.

For your protection, it is recommended that you initial instead of check the requested categories of health information.

This helps prevent others from changing your form.

EXAMPLE:  All health information

If you select **all health information**, this will include any information about you related to mental health evaluation and treatment, concerns about drug and/or alcohol use, HIV/AIDS testing and treatment, sexually transmitted diseases and genetic information.

Important: There are certain types of health information that require special consent by law.

Chemical dependency program information comes from a program or provider that specifically assesses and treats alcohol or drug addictions and receives federal funding. This type of health information is different from notes about a conversation with your physician or therapist about alcohol or drug use. To have this type of health information sent, mark or initial on the line at the bottom of page 1.

Psychotherapy notes are kept by your psychiatrist, psychologist or other mental health professional in a separate filing system in their office and not with your other health information. **For the release of psychotherapy notes, you must complete a separate form noting only that category. You must also name the professional who will release the psychotherapy notes in section 3.**

6 Health information includes both written and oral information. If you do not want to give permission for persons in section 3 to talk with persons in section 4 about your health information, you need to indicate that in this section.

7 Please indicate the reason for releasing the health information. If you indicate marketing, please contact the organization in section 4 to determine if payment or compensation is involved. If payment or compensation to the organization is involved, indicate the amount.

8 This consent will expire one year from the date of your signature, unless you indicate a different date or event. Examples of an event are: "60 days after I leave the hospital," or "once the health information is sent."

9 Please sign and date this form. If you are a legally authorized representative of the patient, please sign, date and indicate your relationship to the patient. You may be asked to provide documents showing that you are the patient or the patient's legally authorized representative.

MINNESOTA MDH DEPARTMENT of HEALTH

This form was approved by the Commissioner of the Minnesota Department of Health on January 30, 2008 and updated in August 2015.

THE GREAT SEAL OF THE STATE OF MINNESOTA L'ETOILE DU NORD 1858

AUGUST2015

Minnesota Standard Consent Form to Release Health Information

1 Patient information

First name _____ Middle name _____ Last name _____

Patient date of birth ___ / ___ / _____ (MM / DD / YYYY) Previous name(s) _____

Home address _____

City _____ State _____ Zip code _____

Daytime phone _____ E-mail address (optional) _____

Medical Record/patient ID number (optional) _____

2 Contact for information about how this form was filled out (optional):

I give permission for the organization(s) listed in section 3 permission to talk to

First name _____ Last name _____ about how this form was completed,

this person can be reached at: Daytime phone _____ E-mail address (optional) _____

3 I am requesting health information be released from at least one of the following:

Organization(s) name _____

Specific health care facility or location(s) _____

Specific health care professional's name(s) _____

4 I am requesting that health information be sent to:

Organization(s) name _____

And/or person: First name _____ Last name _____

Mailing address _____

City _____ State _____ Zip code _____

Phone (optional) _____ Fax (optional) _____

Information needed by (date) ___ / ___ / _____ (MM / DD / YYYY) (optional)

5 Information to be released

IMPORTANT: indicate only the information that you are authorizing to be released.

☐ Specific dates/years of treatment _____

☐ All health information *(see description in instructions for what is included)*

OR to only release specific portions of your health information, indicate the categories to be released:

☐ History/Physical
☐ Laboratory report
☐ Emergency room report
☐ Surgical report
☐ Medications
☐ Mental health
☐ Discharge summary
☐ Progress notes
☐ Care plan
☐ Immunizations
☐ HIV/AIDS testing
☐ Radiology report
☐ Radiology image(s)
☐ Photographs, video, digital or other images
☐ Billing records

☐ Other information or instructions _____

The following information requires special consent by law. Even if you indicate **all health information,** you must specifically request the following information in order for it to be released:

☐ Chemical dependency program *(see definition in instructions)*

☐ Psychotherapy notes *(this consent cannot be combined with any other; see instructions)*

Minnesota Standard Consent Form to Release Health Information

Patient's name _____

6 Health information includes written and oral information

By indicating any of the categories in section 5, you are giving permission for written information to be released **and** for a person in section 3 to talk to a person in section 4 about your health information.

If you do not want to give your permission for a person in section 3 to talk to a person in section 4 about your health information, indicate that here (check mark or initials) _____

7 Reason(s) for releasing information

- ☐ Patient's request
- ☐ Review patient's current care
- ☐ Treatment/continued care
- ☐ Payment
- ☐ Insurance application
- ☐ Legal
- ☐ Appeal denial of Social Security Disability income or benefits
- ☐ Marketing purposes (payment or compensation involved? ☐ NO ☐ YES, amount_____)
- ☐ Sale (payment or compensation to entity maintaining the information? ☐ NO ☐ YES)
- ☐ Other (please explain) _____

8

I understand that by signing this form, I am requesting that the health information specified in Section 5 be sent to the third party named in section 4.

I may stop this consent at any time by writing to the organization(s), facility(ies) and/or professional(s) named in section 3.

If the organization, facility or professional named in section 3 has already released health information based on my consent, my request to stop will not work for that health information.

I understand that when the health information specified in section 5 is sent to the third party named in section 4, the information could be re-disclosed by the third party that receives it and may no longer be protected by federal or state privacy laws.

I understand that if the organization named in section 4 is a health care provider they will not condition treatment, payment, enrollment or eligibility for benefits on whether I sign the consent form.

If I choose not to sign this form and the organization named in section 4 is an insurance company, my failure to sign will not impact my treatment; I may not be able to get new or different insurance; and/or I may not be able to get insurance payment for my care.

This consent will end one year from the date the form is signed unless I indicate an earlier date or event here:

Date ___ / ___ / _____ Or specific event _____
MM DD YYYY

9 Patient's signature

_____ Date ___ /___ /_____
MM DD YYYY

OR legally authorized representative's signature _____ Date ___ /___ /_____
MM DD YYYY

Representative's relationship to patient (parent, guardian, etc.) _____

PRINT FORM

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of any individual or family member of the individual, except as specifically allowed by this law.

This form was approved by the Commissioner of the Minnesota Department of Health on January 30, 2008 and updated in August 2015.

Appendix B - Letter To Patient

Dear [Patient's Name]:

We value our relationship with you and want you to know that a high priority is the confidentiality of your medical record. We want to let you know that we have received a subpoena from [requesting third party] requesting this office to provide a copy of your medical records. For your convenience, we have attached a copy of the request to this letter.

This office will be, absent your written objection, required to disclose the requested medical records if certain conditions are met. You may already be aware of this request and determined that such disclosure is not objectionable; nevertheless, the purpose of this letter is to give you an additional opportunity to object to all or a portion of the requested disclosure to [requesting third party]. If this office does not receive a written objection from you within ten (10) days of the date of this letter and [requesting third party] has satisfied the conditions necessary to allow disclosure under the applicable federal and state laws, this office will proceed with the disclosure as requested.

If you have any questions about this office's disclosure policy with regard to your health care records, please feel free to contact [name and phone number of appropriate contact at your office].

Thank you,

Appendix C- Letter to Third Party

Sample Letter to a Third Party Who is Requesting Disclosure of Protected Health Care Information for Use in a Judicial Administrative Proceeding

Dear [**Requesting Third Party**]:

We have received your [insert "subpoena" etc.] requesting that this office disclose to you certain health records relating to [insert patient's name].

Pursuant to the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other applicable law, this office may not disclose health records for use in a judicial or administrative proceeding unless specified conditions have been met.

Following a review of your request, we have determined that you have not provided sufficient documentation. Federal law requires that this office receive documentation satisfying at least one of the following three conditions prior to disclosing the type of records you have requested:

(1) Written authorization from a patient meeting the requirements of 45 C.F.R. § 164.508(c);

(2) An order of a court or administrative tribunal directing that this office disclose the requested materials; or

(3) A written statement from you the requesting party, accompanied by copies of all supporting documentation, demonstrating the following:

(a) The party requesting the information has made a good faith attempt to provide written notice of the request to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address);

(b) The notice included sufficient information about the litigation or proceeding in which the information is requested to permit the individual to raise an objection to the court or administrative tribunal; and

(c) The time for the individual to raise objections to the court or administrative tribunal has elapsed and either no objections were filed by the individual or all objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.

Or

A written statement from you the requesting party, accompanied by copies of all supporting documentation, demonstrating the following:

(a) The parties to the dispute giving rise to the request for information have agreed to a "qualified protective order," as defined by 45 C.F.R. § 164.512(e)(v), and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or

(b) The party seeking the information has requested a qualified protective order, as defined by 45 C.F.R. § 164.512(e)(v) from such court or administrative tribunal.

If you have questions about this office's disclosure policy with regard to health records, please feel free to contact our office for further clarification.

Sincerely,