

[Enter Organization Logo]

## CONSENT TO DISCLOSE HEALTH INFORMATION UNDER MINNESOTA LAW

Policy Number: [Enter]

Effective Date: [Enter]

### I. Policy:

#### A. Purpose

This policy establishes consent requirements for the disclosure of health information as required by the Minnesota Health Records Act.

#### B. Background

[Organization] and its workforce are subject to many consent requirements under both state and federal law, which often creates confusion. For example, HIPAA and Minnesota law have different patient consent requirements and use different terminology. The general rule under HIPAA is that PHI may not be *used or disclosed* by [Organization] unless the use or disclosure is specifically permitted by HIPAA or authorized by the patient. “Patient Authorization” under HIPAA refers to a very specific type of patient consent. However, Minnesota Law only addresses the *disclosure* of information and generally requires patient consent prior to such disclosure (as opposed to patient authorization required by HIPAA).

[Organization] and its staff must use this policy to determine when “consent” is required under Minnesota law, understand how this is different than patient authorization required by HIPAA, and comply with other consent requirements under Minnesota law.

#### C. Policy Implementation - General Rule (Patient Consent Required)

Except as described in this policy or unless a disclosure is specifically authorized by law, [Organization] shall not disclose an individual’s health information without a signed and dated consent authorizing the disclosure from the individual or the individual’s legally authorized representative.

**Obtaining consent for the disclosure of health information as required by Minnesota Statutes does not satisfy or eliminate the requirement of the HIPAA Regulations to obtain an authorization when such an authorization is required under HIPAA for certain disclosures of PHI.**

**However, obtaining a valid authorization under the HIPAA Regulations does satisfy the consent requirements under Minnesota Law.**

#### D. Representation From Provider

[Organization] may disclose information when there is a representation from a provider that it holds a signed and dated consent from the patient authorizing the release, provided [Organization] documents:

[Enter Organization Logo]

- The provider requesting the health records;
- The identity of the patient;
- The health records requested; and
- The date the health records were requested.

#### **E. Specific Authorization in Law**

[*Organization*] may disclose health information without patient consent when it is required by law to do so. For example, birth and death records must be reported to the Department of Health. In addition, [*Organization*] is required to disclose instances of tuberculosis. [*Organization*] must document the release in the patient's health record.

#### **F. Permitted Disclosures without a Consent**

[*Organization*] may disclose health information without patient consent:

1. For a Medical Emergency when [*Organization*] is unable to obtain the individual's consent due to the individual's condition or the nature of the Medical Emergency;
2. To other health care providers within Related Health Care Entities when necessary for the current treatment of the individual;
3. To a health care facility licensed by Minnesota Statutes chapter 144, Minnesota Statutes chapter 144A, or to the same types of health care facilities licensed by chapter 144 and chapter 144A that are licensed in another state when a patient:
  - a. Is returning to the health care facility and unable to provide consent; or
  - b. Who resides in the health care facility, has services provided by an outside resource under 42 CFR section 483.75(h), and is unable to provide consent; or
4. When the disclosure is specifically authorized by law; and
5. When the disclosure is to the commissioner of health or the Health Data Institute under chapter 62J, provided that the commissioner encrypts the patient identifier upon receipt of the data.
6. When [*Organization*] is releasing a deceased patient's health care records to another provider for the purposes of diagnosing or treating the deceased patient's surviving adult child.

**If [*Organization*] discloses health information without an individual's consent, and the disclosure was authorized by law, the disclosure must be documented in the individual's health record.**

#### **G. Patient Request for Release to Provider**

[Enter Organization Logo]

If a patient requests in writing that [Organization] release the patient's health records to another provider, or a pertinent portion or summary of their health record, [Organization] must promptly comply with this request. The written request must include the name of the provider to whom the health record is to be furnished. [Organization] may retain a copy of the health records.

## **H. Duration of Consent**

**[GPM Note: Minnesota law allows providers to specify the duration of consent in their consent form. Providers can select any time period of their choosing; a period of longer than one year is permissible. However, it is generally best practice to obtain patient consent on an annual basis. The provision below is drafted to reflect this recommended practice, but can be revised if an organization is comfortable having their consent forms be valid for a period longer than one year.]**

Except as described in this policy, consent is valid for:

1. One year, for the specific purposes permitted under the law; or
2. A period less than one year as specified in the consent; or
3. A different period provided by law.

## **I. Consent That Does Not Expire After One Year**

The consent does not expire after one year if an individual explicitly gives informed consent to the disclosure of health information for the following purposes and subject to the following restrictions:

1. The disclosure of health information to a provider who is being advised or consulted in connection with the releasing provider's current treatment of the individual; or
2. The disclosure of health information to an accident and health insurer, health service plan corporation, health maintenance organization, or third-party administrator for the purposes of payment of claims, fraud investigation, or quality of care review and studies, provided that:
  - a. The disclosure of the health information complies with the Minnesota Insurance Fair Information Reporting Act at Minnesota Statutes § 72A.49 to 72A.505;
  - b. The further use or release of the health information to a person other than the individual who is the subject of the data is prohibited without the individual's consent; and
  - c. The recipient of the PHI establishes adequate safeguards to protect the health information from unauthorized disclosure, including a procedure for removal or destruction of information that identifies the patient.

[Enter Organization Logo]

## **J. Disclosure of Health Information for Medical or Scientific Research**

When disclosing information for research purposes, [Organization] and its staff should follow policy number [Enter], Using and Disclosing Information for Research Purposes.

## **K. Record Locator Service**

[Organization] may participate in a record locator service (“RLS”), which is an electronic index of patient information that directs providers in a health information exchange to the location of patient records.

### **1. Releasing Information**

[Organization] may release patient information, including the location of an individual’s health records, to an RLS without prior consent from the patient, provided each patient has had the opportunity to opt out of the RLS. [Organization] allows patients to opt out via its Notice of Privacy Practices and template consent form.

If a patient has elected to be excluded from the RLS, [Organization] and its staff must obtain patient consent prior to releasing any information to an RLS.

### **2. Obtaining Information**

If [Organization] participates in a health information exchange that uses an RLS, [Organization] generally must obtain patient consent to access patient information and information about the location of the patient’s health records from the RLS. However, [Organization] may access such information without patient consent during a Medical Emergency.

If a patient does consent to such access the consent does not expire, but the patient may revoke the consent at any time by providing written notice of the revocation to [Organization].

### **3. Excluding Patient Information from the RLS**

[Organization]’s template consent form includes a check-box option that allows a patient to exclude all of the patient’s information from the record locator service. If [Organization] receives a request to exclude all of the patient’s information from the RLS, [Organization] and its staff must honor this request and may not release information to the RLS. In addition, if patient information was already released [Organization] must work with the entity operating the RLS to have the patient’s information removed from the RLS.

## **L. [Organization] Warranties Regarding Consents, Requests, and Disclosures**

When [Organization] and its workforce request health records on the basis that the patient provided signed and dated consent to the release, [Organization] and its workforce warrant that the consent:

[Enter Organization Logo]

1. Contains no information that is known to be false;
2. Accurately states the patient's desire to have health records disclosed or that there is specific authorization in law; and
3. Does not exceed any limits imposed by the patient.

When [Organization] and its workforce disclose health records, [Organization] and its workforce warrant that it:

1. Has complied with the requirements of the Minnesota Health Records Act regarding disclosure of health records;
2. Knows of no information related to the request that is false; and
3. Has complied with the limits set by the patient in the consent.

#### **M. Documentation of Release**

In addition to the documentation requirements specifically identified in this policy and other [Organization] policies, [Organization] must:

1. When releasing health records without patient consent as authorized by law, document the release in the patient's health record; and
2. When releasing mental health records to law enforcement according to Minn. Stat. § 144.294, subdivision 2, document the release in the patient's health record along with:
  - a. The date and circumstances for the disclosure;
  - b. The person or agency to whom the release was made; and
  - c. The records that were released.

## **II. Procedure:**

Except for disclosures permitted without consent, [Organization] shall obtain prior written consent for the disclosure of health information prior to disclosing such information. [Organization] workforce shall otherwise comply with this policy when using and disclosing information.