



Minnesota
State Bar
Association

600 Nicollet Mall
Suite 380
Minneapolis, MN 55402

Re: HF3312/SF2975

March 6, 2018

The Health Law Section of the Minnesota State Bar Association urges you to support HF3312/SF2975. The Health Law Section includes over 500 attorneys who have deep expertise in federal and state health care laws, including the application of the MHRA and HIPAA. For the following reasons, the Health Law Section supports amending the MHRA to conform with the federal HIPAA standards:

Compliance with the MHRA Can Be Impossible or Create Insurmountable Barriers to Care. Much has changed since the 1980s when the MHRA was first enacted, and its provisions are often obsolete and unworkable in a modern healthcare setting.

The MHRA Lacks Needed Nuance and Complexity. While the MHRA comprises only a few sections of the Minnesota Statutes, the combined text of the regulations promulgated under HIPAA totals over 100 pages of the Federal Register. Unlike the blunt provisions of the MHRA, the detail contained in the HIPAA regulations carefully balances health privacy and other important interests.

The MHRA Creates Duplication and Administrative Inefficiency. The MHRA imposes administrative requirements that duplicate and contradict provisions of HIPAA in areas related to patient consent, access to medical records, and documentation of disclosures. Consequently, Minnesota health lawyers spend hundreds of hours each year untangling the interaction between HIPAA and the anachronistic provisions of the MHRA, creating an unnecessary cost burden on the health care system.

HIPAA Provisions Are Robust and Have Been Strengthened Over Time. The MHRA was passed in the 1980s, and it served an important purpose at the time because there were no federal protections. But since the original HIPAA privacy regulations were finalized in 2000, they have provided a comprehensive, uniform, and robust regulatory framework for protecting health privacy. This framework has been strengthened over time through modifications to the original privacy regulations, the passage of the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009, and additional formal guidance and enforcement actions.

For these reasons, the MSBA Health Law Section strongly encourages Minnesota lawmakers to revise the MHRA and related Minnesota statutory provisions to bring them into conformity with HIPAA.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Aafedt". The signature is stylized with large loops and a long horizontal stroke extending to the right.

David Aafedt
Chair, MSBA Health Law Section