Privacy and Confidentiality Case #5:

Crossing State Lines

Minnesota patient information sent to Florida

A health information exchange in Florida wishes to engage in an exchange relationship with a similar effort in Minneapolis both as part of a National Health Information Infrastructure and because so many Minnesotans and travel to Florida for the winter (and rent their Minnesota lake houses to Canadians seeking warmer climes). There is an understanding that health care providers in Minnesota cannot release a patient’s health records to anyone without the patient’s signed and dated consent, unless the release is specifically authorized by law and that this consent is generally thought to mean patients must “opt in” before any care-focused health-information exchange initiative can be pursued. Others argue that the one year time limit does not apply “for the release of records to a provider who is being advised or consulted with in connection with the current treatment of the patient.”

The Florida health information exchange has a more open understanding of this approach. Indeed, some participants do not allow individuals to “opt out” except through fairly extraordinary means.

Questions:

1. What privacy protections are applicable to this situation?
   - What would be the understanding of a patient from Minnesota who is of the belief that their information cannot be transmitted to Florida without their explicit consent?

2. Does the complexity of legislation argue for an architectures and technology model that is based more on secure, point-to-point, authorized messaging than on repositories?
   - Does a model based on explicit patient consent (e.g., eHealthTrust) simplify this challenge? If so, are their offsetting costs, complexities, or consequences?
   - Does a central database that argues consent is not needed because of protection under HIPAA present an acceptable alternative?
   - Does the situation change if the database contains only medical claims and not clinical data values?

3. How can patients be notified of these issues? How do they give consent? When applicable by state law, to whom does the patient go to exercise their legal right to obtain access to the identity of individuals requesting their information?

4. How does one address privacy breaches and what remedies are available?
   - Who is liable for a privacy breach in Florida that includes information accessed from Minnesota?

5. What legal and policy issues must be resolved before data can be exchanged between these two regional initiatives?

---

Note: Minnesota and Florida are used for example purposes only. This case does not purport to provide legal or informal opinion on Minnesota or Florida state laws or policies within their states. Both are great resources in support of their state and HHS-funded activities.
• How does one reconcile variations in individual choice with variations in public health reporting requirements?

• If a Minnesota resident with a recent reportable disease (e.g., tuberculosis) presents to a care institution in Florida for a chronic illness, is there now a burden on Florida to determine whether or not the patient’s disease is under control.