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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH SESSION

HOUSE FILE NO. 3086

February 22, 2010
Authored by Thissen, Simon, Hansen, Kelliher, Sertich and others
The bill was read for the first time and referred to the Committee on Health Care and Human Services Policy and Oversight
March 4, 2010
Committee Recommendation and Adoption of Report:
To Pass and re-referred to the Committee on Civil Justice
March 15, 2010
Committee Recommendation and Adoption of Report:
To Pass
Read Second Time

A bill for an act

relating to health; providing for access to health records by surviving domestic partners; including domestic partners in provisions governing health care rights, consent to autopsies, and anatomical gifts; amending Minnesota Statutes 2008, sections 144.291, subdivision 2; 144.294, subdivision 1; 144.334; 144.651, subdivisions 2, 28; 144A.161, subdivision 1; 144A.75, subdivision 7; 253B.03, subdivision 6; 390.11, subdivision 2; 390.32, subdivision 3; 525A.02, subdivision 6, by adding a subdivision; 525A.09; Minnesota Statutes 2009 Supplement, section 13.384, subdivision 3.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2009 Supplement, section 13.384, subdivision 3, is amended to read:

Subd. 3. **Classification of medical data.** Unless the data is summary data or a statute specifically provides a different classification, medical data are private but are available only to the subject of the data as provided in sections 144.291 to 144.298, and shall not be disclosed to others except:

(a) pursuant to section 13.05;

(b) pursuant to section 253B.0921;

(c) pursuant to a valid court order;

(d) to administer federal funds or programs;

(e) to the surviving spouse or domestic partner, as defined in section 144.651, subdivision 2, parents, children, siblings, and health care agent of a deceased patient or client or, if there are no surviving spouse, parents, children, siblings, or health care agent to the surviving heirs of the nearest degree of kindred;

(f) to communicate a patient's or client's condition to a family member, health care agent, or other appropriate person in accordance with acceptable medical practice, unless the patient or client directs otherwise; or

(g) as otherwise required by law.

Sec. 2. Minnesota Statutes 2008, section 144.291, subdivision 2, is amended to read:

Subd. 2. **Definitions.** For the purposes of sections 144.291 to 144.298, the following terms have the meanings given.

(a) "Group purchaser" has the meaning given in section 62J.03, subdivision 6.

(b) "Health information exchange" means a legal arrangement between health care providers and group purchasers to enable and oversee the business and legal issues involved in the electronic exchange of health records between the entities for the delivery of patient care.

(c) "Health record" means any information, whether oral or recorded in any form or medium, that relates to the past, present, or future physical or mental health or condition of a patient; the provision of health care to a patient; or the past, present, or future payment for the provision of health care to a patient.

(d) "Identifying information" means the patient's name, address, date of birth, gender, parent's or guardian's name regardless of the age of the patient, and other nonclinical data which can be used to uniquely identify a patient.

(e) "Individually identifiable form" means a form in which the patient is or can be identified as the subject of the health records.

(f) "Medical emergency" means medically necessary care which is immediately needed to preserve life, prevent serious impairment to bodily functions, organs, or parts, or prevent placing the physical or mental health of the patient in serious jeopardy.

(g) "Patient" means a natural person who has received health care services from a provider for treatment or examination of a medical, psychiatric, or mental condition, the surviving spouse or domestic partner, as defined in section 144.651, subdivision 2, and parents of a deceased patient, or a person the patient appoints in writing as a representative, including a health care agent acting according to chapter 145C, unless the authority of the agent has been limited by the principal in the principal's health care directive. Except for minors who have received health care services under sections 144.341 to 144.347, in the case of a minor, patient includes a parent or guardian, or a person acting as a parent or guardian in the absence of a parent or guardian.

(h) "Provider" means:

(1) any person who furnishes health care services and is regulated to furnish the services under chapter 147, 147A, 147B, 147C, 147D, 148, 148B, 148C, 148D, 150A, 151, 153, or 153A;

(2) a home care provider licensed under section 144A.46;

(3) a health care facility licensed under this chapter or chapter 144A;

(4) a physician assistant registered under chapter 147A; and

(5) an unlicensed mental health practitioner regulated under sections 148B.60 to 148B.71.

(i) "Record locator service" means an electronic index of patient identifying information that directs providers in a health information exchange to the location of patient health records held by providers and group purchasers.

(j) "Related health care entity" means an affiliate, as defined in section 144.6521, subdivision 3, paragraph (b), of the provider releasing the health records.

Sec. 3. Minnesota Statutes 2008, section 144.294, subdivision 1, is amended to read:

Subdivision 1. **Provider inquiry.** Upon the written request of a spouse or domestic partner, as defined in section 144.651, subdivision 2, parent, child, or sibling of a patient being evaluated for or diagnosed with mental illness, a provider shall inquire of a patient whether the patient wishes to authorize a specific individual to receive information regarding the patient's current and proposed course of treatment. If the patient so authorizes, the provider shall communicate to the designated individual the patient's current and proposed course of treatment. Section 144.293, subdivisions 2 and 4, apply to consents given under this subdivision.

Sec. 4. Minnesota Statutes 2008, section 144.334, is amended to read:

144.334 RIGHT TO REQUEST PATIENT INFORMATION.

Upon an oral or written request by a spouse or domestic partner as defined in section 144.651, subdivision 2, parent, child, or sibling for information about a patient who is being evaluated for or diagnosed with mental illness, a provider must notify the requesting individual of the right under section 144.294 to have the provider request the patient's authorization to release information about the patient to a designated individual.

Sec. 5. Minnesota Statutes 2008, section 144.651, subdivision 2, is amended to read:

Subd. 2. **Definitions.** ~~For the purposes of this section,~~ (a) The definitions in this subdivision apply to this section.

(b) "Domestic partners" means two persons who:

(1) are the same sex;

(2) are adults and mentally competent to enter into legally binding contracts;

(3) have assumed responsibility for each other's basic common welfare, financial obligations, and well-being;

(4) share a common domicile and primary residence with each other on a permanent basis;

(5) have a committed interdependent relationship with each other, intend to continue that relationship indefinitely, and do not have this type of relationship with any other person;

(6) are not married to another person and have not entered into a domestic partnership arrangement with another person that is currently in effect; and

(7) are not related by blood or adoption so that a marriage between them would be prohibited under section 517.03, subdivision 1, paragraph (a), clause (2) or (3).

(c) "Patient" means a person who is admitted to an acute care inpatient facility for a continuous period longer than 24 hours, for the purpose of diagnosis or treatment bearing on the physical or mental health of that person. For purposes of subdivisions 4 to 9, 12, 13, 15, 16, and 18 to 20, "patient" also means a person who receives health care services at an outpatient surgical center. "Patient" also means a minor who is admitted to a residential program as defined in section 253C.01. For purposes of subdivisions 1, 3 to 16, 18, 20 and 30, "patient" also means any person who is receiving mental health treatment on an outpatient basis or in a community support program or other community-based program.

(d) "Resident" means a person who is admitted to a nonacute care facility including extended care facilities, nursing homes, and boarding care homes for care required because of prolonged mental or physical illness or disability, recovery from injury or disease, or advancing age. For purposes of all subdivisions except subdivisions 28 and 29, "resident" also means a person who is admitted to a facility licensed as a board and lodging facility under Minnesota Rules, parts 4625.0100 to 4625.2355, or a supervised living facility under Minnesota Rules, parts 4665.0100 to 4665.9900, and which operates a rehabilitation program licensed under Minnesota Rules, parts 9530.4100 to 9530.4450.

Sec. 6. Minnesota Statutes 2008, section 144.651, subdivision 28, is amended to read:

Subd. 28. **Married residents and domestic partners.** Residents, if they are married or domestic partners, shall be assured privacy for visits by their spouses or domestic partners and, if both spouses or domestic partners are residents of the facility, they shall be permitted to share a room, unless medically contraindicated and documented by their physicians in the medical records.

Sec. 7. Minnesota Statutes 2008, section 144A.161, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** The definitions in this subdivision apply to subdivisions 2 to 10.

(a) "Closure" means the cessation of operations of a facility and the delicensure and decertification of all beds within the facility.

(b) "Curtailment," "reduction," or "change" refers to any change in operations which would result in or encourage the relocation of residents.

(c) "Facility" means a nursing home licensed pursuant to this chapter, or a certified boarding care home licensed pursuant to sections 144.50 to 144.56.

(d) "Licensee" means the owner of the facility or the owner's designee or the commissioner of health for a facility in receivership.

(e) "County social services agency" means the county or multicounty social service agency authorized under sections 393.01 and 393.07, as the agency responsible for providing social services for the county in which the nursing home is located.

(f) "Plan" means a process developed under subdivision 3, paragraph (b), for the closure, curtailment, reduction, or change in operations in a facility and the subsequent relocation of residents.

(g) "Relocation" means the discharge of a resident and movement of the resident to another facility or living arrangement as a result of the closing, curtailment, reduction, or change in operations of a nursing home or boarding care home.

(h) "Family" includes a domestic partner, as defined in section 144.651, subdivision 2.

Sec. 8. Minnesota Statutes 2008, section 144A.75, subdivision 7, is amended to read:

Subd. 7. **Hospice patient's family.** "Hospice patient's family" means relatives of the hospice patient, including a domestic partner, as defined in section 144.651, subdivision 2, the hospice patient's guardian or primary caregiver, or persons identified by the hospice patient as having significant personal ties.

Sec. 9. Minnesota Statutes 2008, section 253B.03, subdivision 6, is amended to read:

Subd. 6. **Consent for medical procedure.** A patient has the right to prior consent to any medical or surgical treatment, other than treatment for chemical dependency or nonintrusive treatment for mental illness.

The following procedures shall be used to obtain consent for any treatment necessary to preserve the life or health of any committed patient:

(a) The written, informed consent of a competent adult patient for the treatment is sufficient.

(b) If the patient is subject to guardianship which includes the provision of medical care, the written, informed consent of the guardian for the treatment is sufficient.

(c) If the head of the treatment facility determines that the patient is not competent to consent to the treatment and the patient has not been adjudicated incompetent, written, informed consent for the surgery or medical treatment shall be obtained from the nearest proper relative. For this purpose, the following persons are proper relatives, in the order listed: the patient's spouse or domestic partner, as defined in section 144.651, subdivision 2, parent, adult child, or adult sibling. If the nearest proper relatives cannot be located, refuse to consent to the procedure, or are unable to consent, the head of the treatment facility or an interested person may petition the committing court for approval for the treatment or may petition a court of competent jurisdiction for the appointment of a guardian. The determination that the patient is not competent, and the reasons for the determination, shall be documented in the patient's clinical record.

(d) Consent to treatment of any minor patient shall be secured in accordance with sections 144.341 to 144.346. A minor 16 years of age or older may consent to hospitalization, routine diagnostic evaluation, and emergency or short-term acute care.

(e) In the case of an emergency when the persons ordinarily qualified to give consent cannot be located, the head of the treatment facility may give consent.

No person who consents to treatment pursuant to the provisions of this subdivision shall be civilly or criminally liable for the performance or the manner of performing the treatment. No person shall be liable for performing treatment without consent if written, informed consent was given pursuant to this subdivision. This provision shall not affect any other liability which may result from the manner in which the treatment is performed.

Sec. 10. Minnesota Statutes 2008, section 390.11, subdivision 2, is amended to read:

Subd. 2. **Autopsies.** The coroner or medical examiner may order an autopsy, at the coroner or medical examiner's sole discretion, in the case of any human death referred to in subdivision 1, when, in the judgment of the coroner or medical examiner the public interest would be served by an autopsy. The autopsy shall be performed without unnecessary delay. A report of the facts developed by the autopsy and findings of the person performing the autopsy shall be made promptly and filed in the office of the coroner or medical examiner. When further investigation is deemed advisable, a copy of the report shall be delivered to the county attorney. Every autopsy performed pursuant to this subdivision shall, whenever practical, be performed in the county morgue. Nothing

herein shall require the coroner or medical examiner to order an autopsy upon the body of a deceased person if the person died of known or ascertainable causes or had been under the care of a licensed physician immediately prior to death or if the coroner or medical examiner determines the autopsy to be unnecessary.

Autopsies performed pursuant to this subdivision may include the removal, retention, testing, or use of organs, parts of organs, fluids or tissues, at the discretion of the coroner or medical examiner, when removal, retention, testing, or use may be useful in determining or confirming the cause of death, mechanism of death, manner of death, identification of the deceased, presence of disease or injury, or preservation of evidence. Such tissue retained by the coroner or medical examiner pursuant to this subdivision shall be disposed of in accordance with standard biohazardous hospital or surgical material and does not require specific consent or notification of the legal next of kin. When removal, retention, testing, and use of organs, parts of organs, fluids, or tissues is deemed beneficial, and is done only for research or the advancement of medical knowledge and progress, written consent or documented oral consent shall be obtained from the legal next of kin, if any, of the deceased person prior to the removal, retention, testing, or use. For purposes of this subdivision, "legal next of kin" includes a domestic partner, as defined in section 144.651, subdivision 2.

Sec. 11. Minnesota Statutes 2008, section 390.32, subdivision 3, is amended to read:

Subd. 3. **Other deaths; autopsies; exhumation consent.** The medical examiner may conduct an autopsy in the case of any human death of any type referred to in subdivision 1, clause (3) or (4), or may exhume any human body and perform an autopsy in the case of any human death of any type referred to in subdivision 1 when in the judgment of the medical examiner the public interest requires an autopsy. No such autopsy shall be conducted unless the surviving spouse or domestic partner, as defined in section 144.651, subdivision 2, or next of kin if there is no surviving spouse or domestic partner, consents, or unless the district court of the county where the body is located or buried, upon notice as the court directs, enters its order authorizing an autopsy or an exhumation and autopsy. Application for an order may be made by the medical examiner or the county attorney of the county where the body is located or buried, upon a showing that the court deems appropriate.

Sec. 12. Minnesota Statutes 2008, section 525A.02, subdivision 6, is amended to read:

Subd. 6. **Disinterested witness.** "Disinterested witness" means a witness other than the spouse or domestic partner, child, parent, sibling, grandchild, grandparent, or guardian

of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under section 525A.11.

Sec. 13. Minnesota Statutes 2008, section 525A.02, is amended by adding a subdivision to read:

Subd. 7a. **Domestic partners.** For purposes of this section, "domestic partners" has the meaning given in section 144.651, subdivision 2.

Sec. 14. Minnesota Statutes 2008, section 525A.09, is amended to read:

525A.09 WHO MAY MAKE ANATOMICAL GIFT OF DECEDENT'S BODY OR PART.

(a) Subject to paragraphs (b) and (c) and unless barred by section 525A.07 or 525A.08, an anatomical gift of a decedent's body or part for the purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(1) an agent of the decedent at the time of death who could have made an anatomical gift under section 525A.04, clause (2), immediately before the decedent's death;

(2) the spouse or domestic partner, as defined in section 144.651, subdivision 2, of the decedent;

(3) adult children of the decedent;

(4) parents of the decedent;

(5) adult siblings of the decedent;

(6) adult grandchildren of the decedent;

(7) grandparents of the decedent;

(8) the persons who were acting as the guardians of the person of the decedent at the time of death;

(9) an adult who exhibited special care and concern for the decedent; and

(10) any other person having lawful authority to dispose of the decedent's body.

(b) If there is more than one member of a class listed in paragraph (a), clause (1), (3), (4), (5), (6), (7), or (9), entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under section 525A.11 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under paragraph (a) is reasonably available to make or to object to the making of an anatomical gift.