



Department of Health & Human Services  
Office of the National Coordinator for  
Health Information Technology

HEALTH INFORMATION SECURITY & PRIVACY  
COLLABORATION

# ***Health Information Security and Privacy (HISPC) National Conference***

## **State Access and Disclosure Law Project**

***March 5, 2009***

***Bethesda, MD***

**Joy Pritts**

Health Information Security & Privacy  
**COLLABORATION**



# Major Components

## State Laws Addressing:

- Patient access to medical records
- CLIA Issue: Persons authorized to receive clinical laboratory results under state law
- Disclosure of identifiable health information for treatment purposes

# Patient Access to Medical Records Project



# Patient Access to Medical Records

- General access rights
- Minors and access rights

# General Medical Record Access

- Leveraged prior project for National Library of Medicine
- Focused on records held by
  - Doctors of medicine (MDs)
  - Hospitals
- Reviewed
  - Health information access laws
  - Licensing laws
  - Evidentiary codes
  - Probate codes
  - Statutes, regulations, attorney general opinions

# General Access Issues

- Scope of access
- Response time
- Record retention periods
- Format of information provided
- Copying fees

# Scope of Access

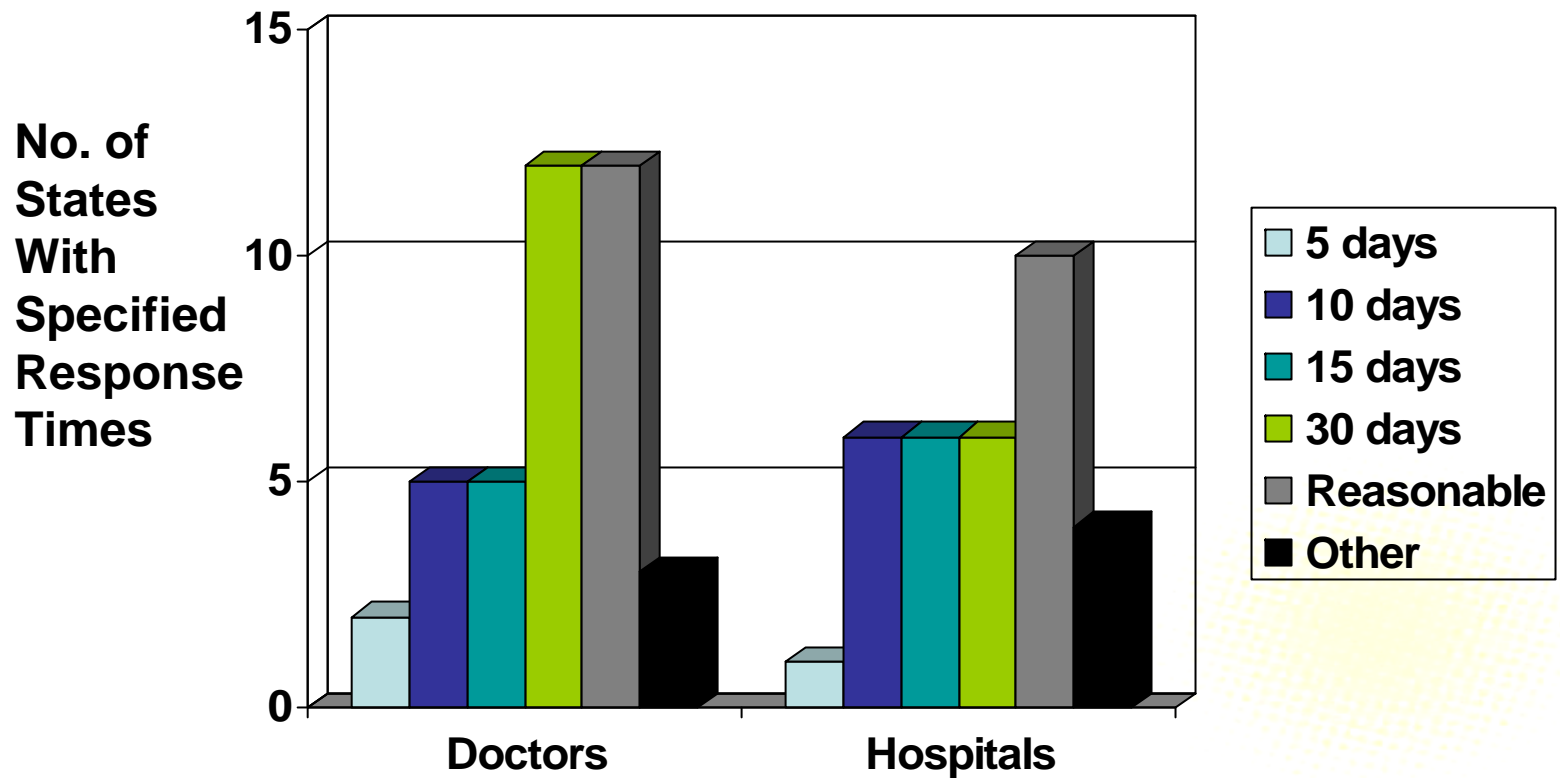
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## State laws

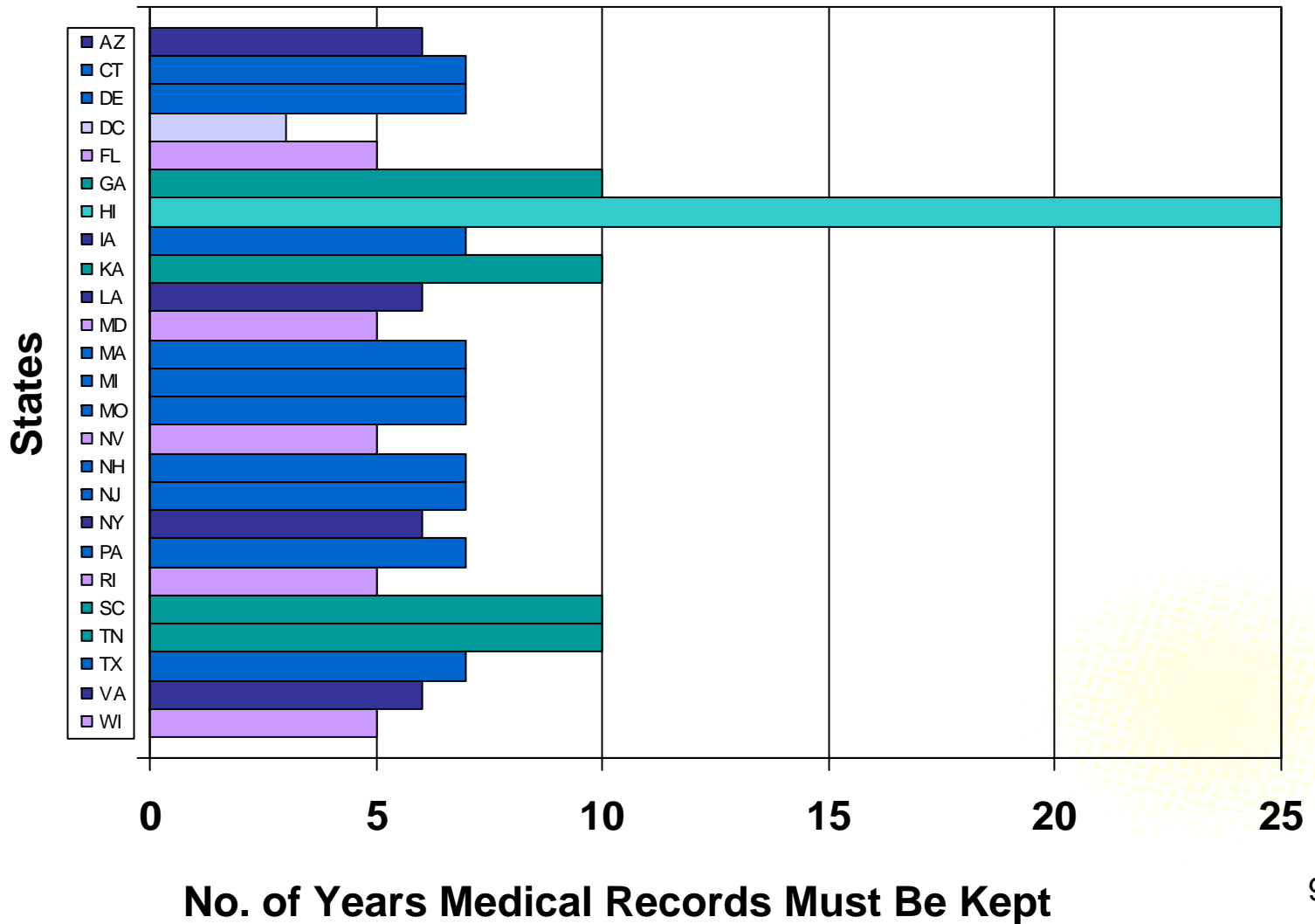
- Often fail to define “medical record” or scope of information covered by individual right of access
- Apparently interpreted as being limited to information created by that specific provider



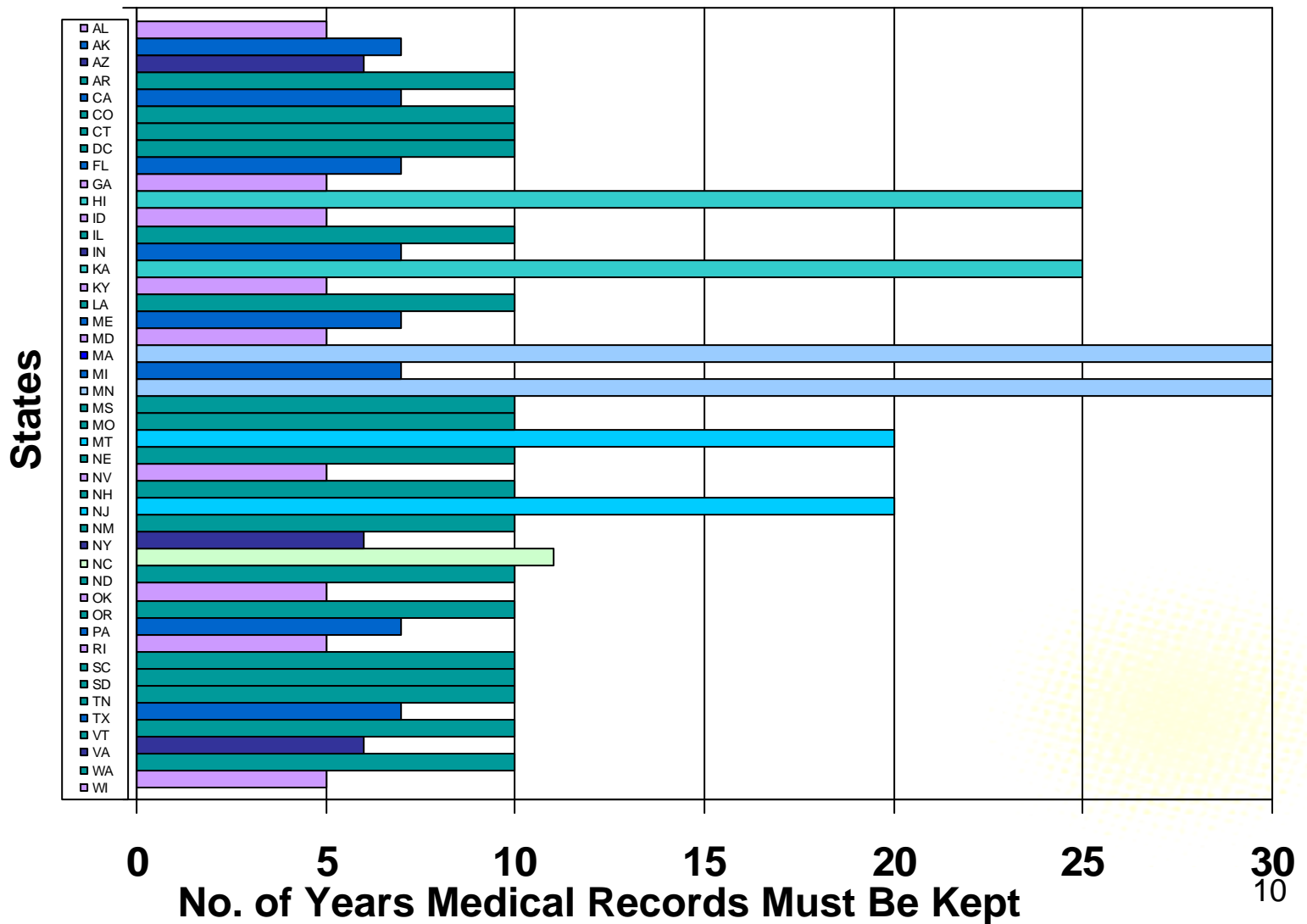
# Timeframe for Responding to Access Requests



# Medical Record Retention Requirements for Medical Doctors



# Medical Record Retention Requirements for Hospitals



# Record Retention Laws

- Tied to statutes of limitations for tort actions
- Time to shift to focus on assuring access for longitudinal care?

# Copying Fees

- HIPAA generally defers to state law
- Difficult to parse out elements
- Fee for first page
  - Range: Free to >\$40
- Fee for first 100 pages
  - Range Free to \$175
  - In 8 states > \$100
- HITECH Act (ARRA)
  - Fees for electronically copying records limited to labor costs

# Minors and Medical Records Access

- HIPAA generally defers to state law
- Central issue:
  - Who has the right of access to medical records of a minor?
- Related issue:
  - When must/may a provider notify the minors' parents of treatment or services received?

## Minors: Preliminary Issues & Research

- Age of majority
- Other means of emancipation
- General ability of unemancipated minor to consent to care in own right
  - “Life circumstances” e.g., marriage, living independently
- Statutes, regulations, attorney general opinions, related case law

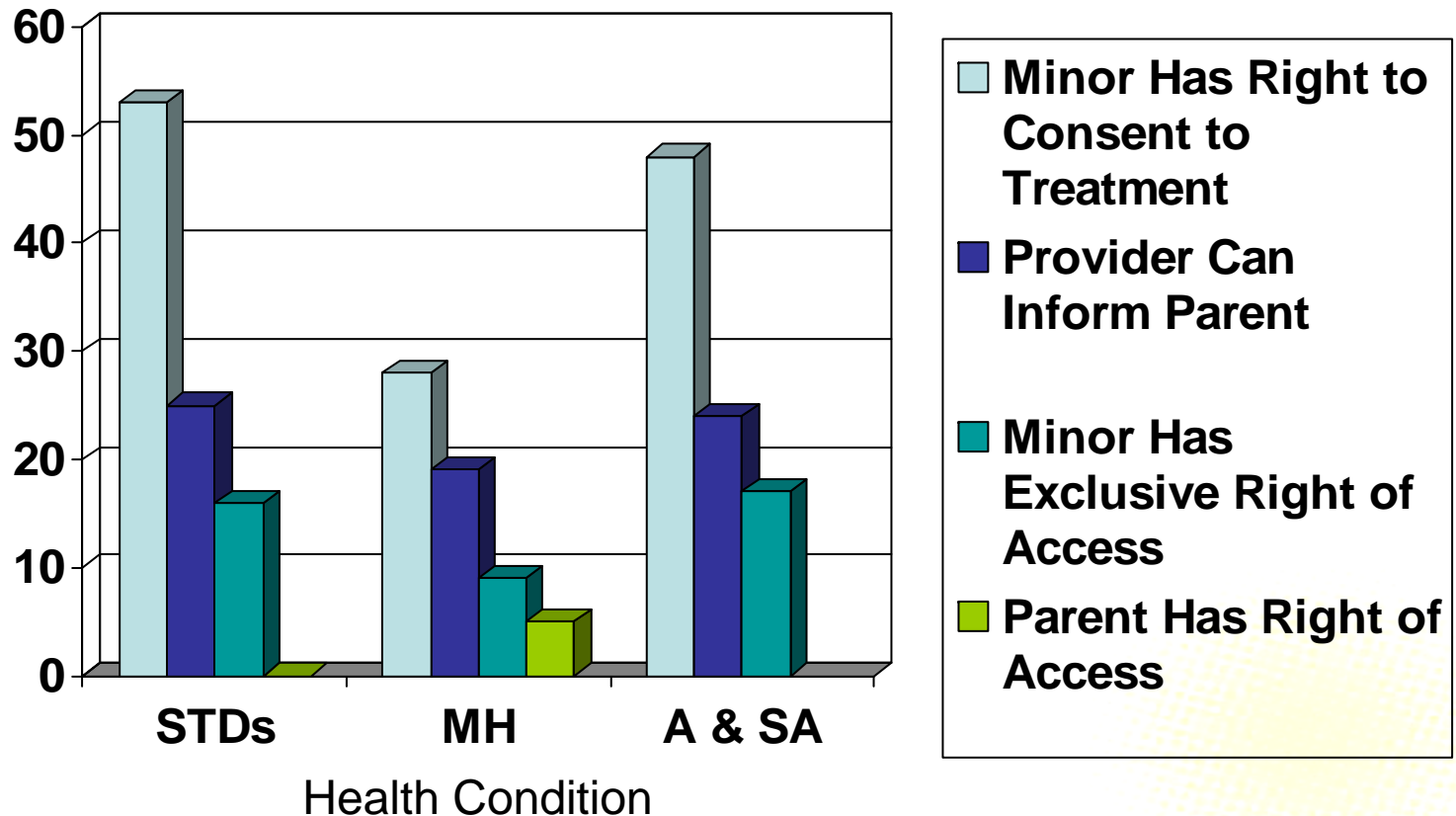
## Minors and Right to Consent to Care

Researched and summarized laws addressing:

- Outpatient mental health
- Outpatient substance abuse
- STDs
- HIV
- Due to limited resources, did *NOT* research/summarize laws regarding
  - Abortion
  - Contraceptives

# State Laws Granting Minors Right to Consent to Care and Providing Access to Related Records\*

No. of States



\* Laws **Expressly** Addressing Right of Access

## Access Project Deliverables

- Excel data collection chart for each state and territory (See App. B of Report)
- Excel combined charts with laws for all jurisdictions by
  - Doctors
  - Hospitals
- Report with summary findings



## Tables in Report

- General Overview: State Medical Records Access Laws
- Response to Access Requests (MDs and Hospitals)
- Copying Fees (MDs and Hospitals)
- Medical Record Retention Laws (MDs and Hospitals)
- Minors' Right to Consent to Health Care without Parental Permission and Access/Disclosure of Related Health Information to Parents
- For each of above
  - Overview table (Measles chart, or Y/N, or short answer)
  - Text summary of state laws with citations

## State “CLIA” Law Project



# Federal Clinical Laboratories Improvement Amendments (CLIA)

- Test results must be released only to
  - Authorized persons
  - Individual responsible for using the test results
  - Requesting lab
- “Authorized person” means “an individual *authorized under State law* to order tests or receive test results, or both.”

# CLIA

- Labs must ensure test results are accurately and reliably sent from the point of data entry to final report destination, in a timely manner.

# State Law Issues

- Who is authorized to receive test results?
  - Providers
  - Patients
  - Others ?
    - Health plans
    - Health information organizations (HIOs)
- Do states have laws that impact CLIA's "final report destination" requirement?

## State Laws Reviewed

- Clinical laboratory licensing and operating laws;
- Standards for hospital laboratories in hospital licensure and operating laws; and
- State medical record access laws

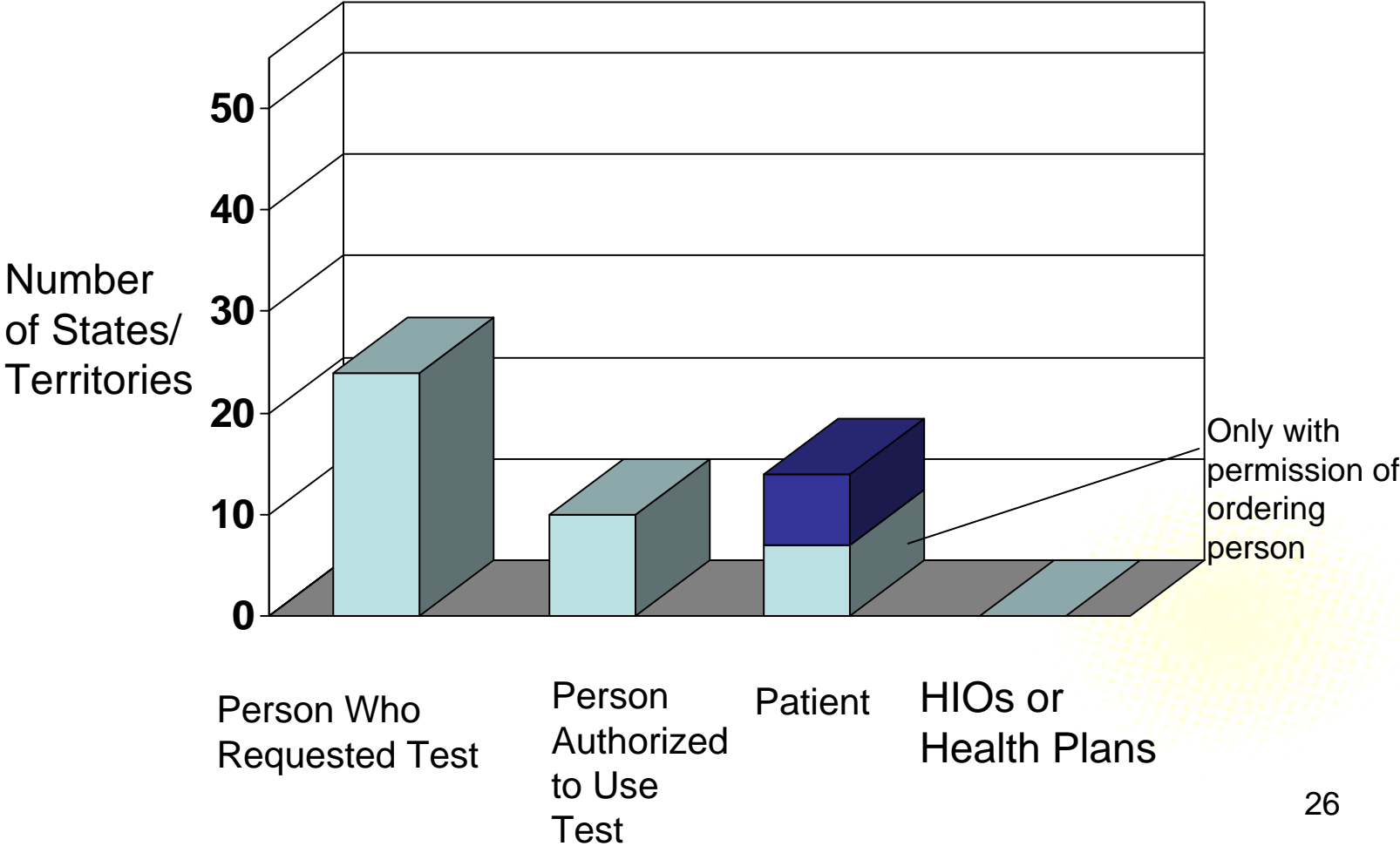
# Deliverables

- Collated state statutes and regulations using a matrix reviewed by major stakeholder
- Entered into database
- Interim report summarizing findings

## Findings: Overview

- Many state laws are silent as to who may receive laboratory test results
  - Default is CLIA
- Clinical laboratory laws intertwined with practitioner licensing laws
  - May examine at request of and report results only to providers acting within scope of their license

# States With Clinical Laboratory Licensing Laws that Expressly Authorize Release of Laboratory Test Results to Specified Categories of Persons



## “Final Report Destination”

- To extent state laws address, they incorporate CLIA

# CLIA Project Status

- Interim report finished
- Are adding restrictions on laboratories to release HIV test results as we finish disclosure project

# State Disclosure Law Project



## Laws Being Reviewed

- Major confidentiality statutes
- Provider-specific statutes
- Regulations
- Case law interpreting these statutes and regulations

# Types of Health Information

- Clinical Health Information (General)
- “Sensitive” Clinical Health Information
  - HIV/AIDS (test results/ information)
  - Mental health
  - Substance Abuse
  - Genetics (test/ information)

# Provider-specific Statutes

- Private practice physicians (MDs)
- Hospitals
- Pharmacists
- Outpatient substance abuse treatment facilities
- Inpatient mental health care providers

## Other Resources

- Coordinated with Interstate Disclosure and Patient Consent Requirements Collaborative
- Utilized HISPC Phase 1 materials
- Leveraged prior survey, *State of Health Privacy*
- Publicly available state preemption analyses

# Issues

- Is patient permission required for particular type of health care provider to disclose identifiable health information for treatment?

## Additional Details

- Exceptions/restrictions?
  - Emergency exception separate inquiry
- Specific written format required?
- Duration?
- Limits on re-disclosure?
  - Notice of limits required?

# Deliverables

- Excel sheets
- Queriable database
  - Collated statutes and regulations
  - Analysis of pertinent questions

## Disclosure Status

- Have completed initial research and charts for all states and territories
- Have reviewed about 25 states' worth of material
- RTI has designed and done preliminary run on database

# Functionality

- Cross-jurisdiction collation of statutes and regulations addressing specific topics
- Intra-jurisdiction collation of statutes and regulations on disclosing health information for treatment

## Next Steps

- What inquiries/output would be useful?

