

Sec. 8. EFFECTIVE DATE; APPLICATION.

Sections 1 to 7 are effective August 1, 2002, and apply to contested case proceedings initiated on or after that date.

Presented to the governor March 20, 2002

Signed by the governor March 21, 2002, 3:10 p.m.

CHAPTER 252—H.F.No. 2531

An act relating to health; regulating hospice care providers; providing criminal penalties; amending Minnesota Statutes 2000, sections 13.381, subdivision 10; 144A.43, subdivisions 1, 3, 4; 144A.45, subdivisions 1, 2; 144A.46, subdivisions 3a, 3b, 4; 144A.4605, subdivisions 2, 3; 145C.01, subdivision 7; 157.17, subdivision 2; 609.7495, subdivision 1; 626.5572, subdivision 6; Minnesota Statutes 2001 Supplement, section 144A.4605, subdivision 4; proposing coding for new law in Minnesota Statutes, chapter 144A; repealing Minnesota Statutes 2000, section 144A.48.

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

Section 1. Minnesota Statutes 2000, section 13.381, subdivision 10, is amended to read:

Subd. 10. **HOME CARE AND HOSPICE PROGRAM PROVIDER.** Data regarding a home care hospice program provider under sections 144A.43 to 144A.48 144A.47 are governed by section 144A.45. Data regarding a hospice provider under sections 144A.75 to 144A.755 are governed by sections 144A.752 and 144A.754.

Sec. 2. Minnesota Statutes 2000, section 144A.43, subdivision 1, is amended to read:

Subdivision 1. **APPLICABILITY.** The definitions in this section apply to sections 144.699, subdivision 2, and 144A.43 to 144A.48 144A.47.

Sec. 3. Minnesota Statutes 2000, section 144A.43, subdivision 3, is amended to read:

Subd. 3. **HOME CARE SERVICE.** "Home care service" means any of the following services when delivered in a place of residence to a person whose illness, disability, or physical condition creates a need for the service:

- (1) nursing services, including the services of a home health aide;
- (2) personal care services not included under sections 148.171 to 148.285;
- (3) physical therapy;
- (4) speech therapy;
- (5) respiratory therapy;

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(6) occupational therapy;

(7) nutritional services;

(8) home management services when provided to a person who is unable to perform these activities due to illness, disability, or physical condition. Home management services include at least two of the following services: housekeeping, meal preparation, and shopping;

(9) medical social services;

(10) the provision of medical supplies and equipment when accompanied by the provision of a home care service; and

(11) ~~the provision of a hospice program as specified in section 144A.48; and~~

~~(12) other similar medical services and health-related support services identified by the commissioner in rule.~~

“Home care service” does not include the following activities conducted by the commissioner of health or a board of health as defined in section 145A.02, subdivision 2: communicable disease investigations or testing; administering or monitoring a prescribed therapy necessary to control or prevent a communicable disease; or the monitoring of an individual’s compliance with a health directive as defined in section 144.4172, subdivision 6.

Sec. 4. Minnesota Statutes 2000, section 144A.43, subdivision 4, is amended to read:

Subd. 4. **HOME CARE PROVIDER.** “Home care provider” means an individual, organization, association, corporation, unit of government, or other entity that is regularly engaged in the delivery, directly or by contractual arrangement, of home care services for a fee. At least one home care service must be provided directly, although additional home care services may be provided by contractual arrangements. ~~“Home care provider” includes a hospice program defined in section 144A.48.~~ “Home care provider” does not include:

(1) any home care or nursing services conducted by and for the adherents of any recognized church or religious denomination for the purpose of providing care and services for those who depend upon spiritual means, through prayer alone, for healing;

(2) an individual who only provides services to a relative;

(3) an individual not connected with a home care provider who provides assistance with home management services or personal care needs if the assistance is provided primarily as a contribution and not as a business;

(4) an individual not connected with a home care provider who shares housing with and provides primarily housekeeping or homemaking services to an elderly or disabled person in return for free or reduced-cost housing;

(5) an individual or agency providing home-delivered meal services;

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(6) an agency providing senior companion services and other older American volunteer programs established under the Domestic Volunteer Service Act of 1973, Public Law Number 98-288;

(7) an employee of a nursing home licensed under this chapter or an employee of a boarding care home licensed under sections 144.50 to 144.56 who responds to occasional emergency calls from individuals residing in a residential setting that is attached to or located on property contiguous to the nursing home or boarding care home;

(8) a member of a professional corporation organized under chapter 319B that does not regularly offer or provide home care services as defined in subdivision 3;

(9) the following organizations established to provide medical or surgical services that do not regularly offer or provide home care services as defined in subdivision 3: a business trust organized under sections 318.01 to 318.04, a nonprofit corporation organized under chapter 317A, a partnership organized under chapter 323, or any other entity determined by the commissioner;

(10) an individual or agency that provides medical supplies or durable medical equipment, except when the provision of supplies or equipment is accompanied by a home care service;

(11) an individual licensed under chapter 147; or

(12) an individual who provides home care services to a person with a developmental disability who lives in a place of residence with a family, foster family, or primary caregiver.

Sec. 5. Minnesota Statutes 2000, section 144A.45, subdivision 1, is amended to read:

Subdivision 1. **RULES.** The commissioner shall adopt rules for the regulation of home care providers pursuant to sections 144A.43 to ~~144A.48~~ 144A.47. The rules shall include the following:

(a) provisions to assure, to the extent possible, the health, safety and well-being, and appropriate treatment of persons who receive home care services;

(b) requirements that home care providers furnish the commissioner with specified information necessary to implement sections 144A.43 to ~~144A.48~~ 144A.47;

(c) standards of training of home care provider personnel, which may vary according to the nature of the services provided or the health status of the consumer;

(d) standards for medication management which may vary according to the nature of the services provided, the setting in which the services are provided, or the status of the consumer. Medication management includes the central storage, handling, distribution, and administration of medications;

(e) standards for supervision of home care services requiring supervision by a registered nurse or other appropriate health care professional which must occur on site

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at least every 62 days, or more frequently if indicated by a clinical assessment, and in accordance with sections 148.171 to 148.285 and rules adopted thereunder;

(f) standards for client evaluation or assessment which may vary according to the nature of the services provided or the status of the consumer;

(g) requirements for the involvement of a consumer's physician, the documentation of physicians' orders, if required, and the consumer's treatment plan, and the maintenance of accurate, current clinical records;

(h) the establishment of different classes of licenses for different types of providers and different standards and requirements for different kinds of home care services; and

(i) operating procedures required to implement the home care bill of rights.

Sec. 6. Minnesota Statutes 2000, section 144A.45, subdivision 2, is amended to read:

Subd. 2. **REGULATORY FUNCTIONS.** (a) The commissioner shall:

(1) evaluate, monitor, and license home care providers in accordance with sections 144A.45 to ~~144A.48~~ 144A.47;

(2) inspect the office and records of a provider during regular business hours without advance notice to the home care provider;

(3) with the consent of the consumer, visit the home where services are being provided;

(4) issue correction orders and assess civil penalties in accordance with section 144.653, subdivisions 5 to 8, for violations of sections 144A.43 to ~~144A.48~~ 144A.47 or the rules adopted under those sections; and

(5) take other action reasonably required to accomplish the purposes of sections 144A.43 to ~~144A.48~~ 144A.47.

(b) In the exercise of the authority granted in sections 144A.43 to ~~144A.48~~ 144A.47, the commissioner shall comply with the applicable requirements of section 144.122, the Government Data Practices Act, and the Administrative Procedure Act.

Sec. 7. Minnesota Statutes 2000, section 144A.46, subdivision 3a, is amended to read:

Subd. 3a. **INJUNCTIVE RELIEF.** In addition to any other remedy provided by law, the commissioner may bring an action in district court to enjoin a person who is involved in the management, operation, or control of a home care provider, or an employee of the home care provider from illegally engaging in activities regulated by sections 144A.43 to ~~144A.48~~ 144A.47. The commissioner may bring an action under this subdivision in the district court in Ramsey county or in the district in which a home care provider is providing services. The court may grant a temporary restraining order in the proceeding if continued activity by the person who is involved in the management, operation, or control of a home care provider, or by an employee of the

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home care provider, would create an imminent risk of harm to a recipient of home care services.

Sec. 8. Minnesota Statutes 2000, section 144A.46, subdivision 3b, is amended to read:

Subd. 3b. **SUBPOENA.** In matters pending before the commissioner under sections 144A.43 to ~~144A.48~~ 144A.47, the commissioner may issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books, records, documents, and other evidentiary material. If a person fails or refuses to comply with a subpoena or order of the commissioner to appear or testify regarding any matter about which the person may be lawfully questioned or to produce any papers, books, records, documents, or evidentiary materials in the matter to be heard, the commissioner may apply to the district court in any district, and the court shall order the person to comply with the commissioner's order or subpoena. The commissioner of health may administer oaths to witnesses, or take their affirmation. Depositions may be taken in or outside the state in the manner provided by law for the taking of depositions in civil actions. A subpoena or other process or paper may be served upon a named person anywhere within the state by an officer authorized to serve subpoenas in civil actions, with the same fees and mileage and in the same manner as prescribed by law for process issued out of a district court. A person subpoenaed under this subdivision shall receive the same fees, mileage, and other costs that are paid in proceedings in district court.

Sec. 9. Minnesota Statutes 2000, section 144A.46, subdivision 4, is amended to read:

Subd. 4. **RELATION TO OTHER REGULATORY PROGRAMS.** In the exercise of the authority granted under sections 144A.43 to ~~144A.48~~ 144A.47, the commissioner shall not duplicate or replace standards and requirements imposed under another state regulatory program. The commissioner shall not impose additional training or education requirements upon members of a licensed or registered occupation or profession, except as necessary to address or prevent problems that are unique to the delivery of services in the home or to enforce and protect the rights of consumers listed in section 144A.44. The commissioner of health shall not require a home care provider certified under the Medicare program to comply with a rule adopted under section 144A.45 if the home care provider is required to comply with any equivalent federal law or regulation relating to the same subject matter. The commissioner of health shall specify in the rules those provisions that are not applicable to certified home care providers. To the extent possible, the commissioner shall coordinate the inspections required under sections 144A.45 to ~~144A.48~~ 144A.47 with the health facility licensure inspections required under sections 144.50 to 144.58 or 144A.10 when the health care facility is also licensed under the provisions of Laws 1987, chapter 378.

Sec. 10. Minnesota Statutes 2000, section 144A.4605, subdivision 2, is amended to read:

Subd. 2. **ASSISTED LIVING HOME CARE LICENSE ESTABLISHED.** A home care provider license category entitled assisted living home care provider is

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hereby established. A home care provider may obtain an assisted living license if the program meets the following requirements:

(a) nursing services, delegated nursing services, other services performed by unlicensed personnel, or central storage of medications under the assisted living license are provided solely for residents of one or more housing with services establishments registered under chapter 144D;

(b) unlicensed personnel perform home health aide and home care aide tasks identified in Minnesota Rules, parts 4668.0100, subparts 1 and 2, and 4668.0110, subpart 1. Qualifications to perform these tasks shall be established in accordance with subdivision 3;

(c) periodic supervision of unlicensed personnel is provided as required by rule;

(d) notwithstanding Minnesota Rules, part 4668.0160, subpart 6, item D, client records shall include:

(1) daily records or a weekly summary of home care services provided;

(2) documentation each time medications are administered to a client; and

(3) documentation on the day of occurrence of any significant change in the client's status or any significant incident, such as a fall or refusal to take medications,

All entries must be signed by the staff providing the services and entered into the record no later than two weeks after the end of the service day, except as specified in clauses (2) and (3);

(e) medication and treatment orders, if any, are included in the client record and are renewed at least every 12 months, or more frequently when indicated by a clinical assessment;

(f) the central storage of medications in a housing with services establishment registered under chapter 144D is managed under a system that is established by a registered nurse and addresses the control of medications, handling of medications, medication containers, medication records, and disposition of medications; and

(g) in other respects meets the requirements established by rules adopted under sections 144A.45 to ~~144A.48~~ 144A.47.

Sec. 11. Minnesota Statutes 2000, section 144A.4605, subdivision 3, is amended to read:

Subd. 3. **TRAINING OR COMPETENCY EVALUATIONS REQUIRED.** (a) Unlicensed personnel must:

(1) satisfy the training or competency requirements established by rule under sections 144A.45 to ~~144A.48~~ 144A.47; or

(2) be trained or determined competent by a registered nurse in each task identified under Minnesota Rules, part 4668.0100, subparts 1 and 2, when offered to clients in a housing with services establishment as described in paragraphs (b) to (e).

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(b) Training for tasks identified under Minnesota Rules, part 4668.0100, subparts 1 and 2, shall use a curriculum which meets the requirements in Minnesota Rules, part 4668.0130.

(c) Competency evaluations for tasks identified under Minnesota Rules, part 4668.0100, subparts 1 and 2, must be completed and documented by a registered nurse.

(d) Unlicensed personnel performing tasks identified under Minnesota Rules, part 4668.0100, subparts 1 and 2, shall be trained or demonstrate competency in the following topics:

(1) an overview of sections 144A.43 to ~~144A.48~~ 144A.47 and rules adopted thereunder;

(2) recognition and handling of emergencies and use of emergency services;

(3) reporting the maltreatment of vulnerable minors or adults under sections 626.556 and 626.557;

(4) home care bill of rights;

(5) handling of clients' complaints and reporting of complaints to the office of health facility complaints;

(6) services of the ombudsman for older Minnesotans;

(7) observation, reporting, and documentation of client status and of the care or services provided;

(8) basic infection control;

(9) maintenance of a clean, safe, and healthy environment;

(10) communication skills;

(11) basic elements of body functioning and changes in body function that must be reported to an appropriate health care professional; and

(12) physical, emotional, and developmental needs of clients, and ways to work with clients who have problems in these areas, including respect for the client, the client's property, and the client's family.

(e) Unlicensed personnel who administer medications must comply with rules relating to the administration of medications in Minnesota Rules, part 4668.0100, subpart 2, except that unlicensed personnel need not comply with the requirements of Minnesota Rules, part 4668.0100, subpart 5.

Sec. 12. Minnesota Statutes 2001 Supplement, section 144A.4605, subdivision 4, is amended to read:

Subd. 4. **LICENSE REQUIRED.** (a) A housing with services establishment registered under chapter 144D that is required to obtain a home care license must obtain an assisted living home care license according to this section or a class A or class E license according to rule. A housing with services establishment that obtains a class E license under this subdivision remains subject to the payment limitations in sections 256B.0913, subdivision 5, paragraph (h), and 256B.0915, subdivision 3, paragraph (g).

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(b) A board and lodging establishment registered for special services as of December 31, 1996, and also registered as a housing with services establishment under chapter 144D, must deliver home care services according to sections 144A.43 to 144A.48 144A.47, and may apply for a waiver from requirements under Minnesota Rules, parts 4668.0002 to 4668.0240, to operate a licensed agency under the standards of section 157.17. Such waivers as may be granted by the department will expire upon promulgation of home care rules implementing section 144A.4605.

(c) An adult foster care provider licensed by the department of human services and registered under chapter 144D may continue to provide health-related services under its foster care license until the promulgation of home care rules implementing this section.

(d) An assisted living home care provider licensed under this section must comply with the disclosure provisions of section 325F.72 to the extent they are applicable.

Sec. 13. [144A.75] DEFINITIONS.

Subdivision 1. APPLICABILITY. For the purposes of sections 144A.75 to 144A.756, the following terms have the meanings given them.

Subd. 2. COMMISSIONER. "Commissioner" means the commissioner of health.

Subd. 3. CORE SERVICES. "Core services" means physician services, registered nursing services, medical social services, and counseling services. A hospice must ensure that at least two core services are regularly provided directly by hospice employees. A hospice provider may use contracted staff if necessary to supplement hospice employees in order to meet the needs of patients during peak patient loads or under extraordinary circumstances.

Subd. 4. COUNSELING SERVICES. "Counseling services" includes bereavement counseling provided after the patient's death and spiritual and other counseling services for the individual and the family while enrolled in hospice care. Bereavement services must be provided according to a plan of care that reflects the needs of the family for up to one year following the death of the patient.

Subd. 5. HOSPICE PROVIDER. "Hospice provider" means an individual, organization, association, corporation, unit of government, or other entity that is regularly engaged in the delivery, directly or by contractual arrangement, of hospice services for a fee to terminally ill hospice patients. A hospice must provide all core services.

Subd. 6. HOSPICE PATIENT. "Hospice patient" means an individual who has been diagnosed as terminally ill, with a probable life expectancy of under one year, as documented by the individual's attending physician and hospice medical director, who alone or, when unable, through the individual's family has voluntarily consented to and received admission to a hospice provider.

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Subd. 7. HOSPICE PATIENT'S FAMILY. "Hospice patient's family" means relatives of the hospice patient, the hospice patient's guardian or primary caregiver, or persons identified by the hospice patient as having significant personal ties.

Subd. 8. HOSPICE SERVICES; HOSPICE CARE. "Hospice services" or "hospice care" means palliative and supportive care and other services provided by an interdisciplinary team under the direction of an identifiable hospice administration to terminally ill hospice patients and their families to meet the physical, nutritional, emotional, social, spiritual, and special needs experienced during the final stages of illness, dying, and bereavement. These services are provided through a centrally coordinated program that ensures continuity and consistency of home and inpatient care that is provided directly or through an agreement.

Subd. 9. INTERDISCIPLINARY TEAM. "Interdisciplinary team" means a group of qualified individuals with expertise in meeting the special needs of hospice patients and their families, including, at a minimum, those individuals who are providers of core services.

Subd. 10. MEDICAL DIRECTOR. "Medical director" means a licensed physician who is knowledgeable about palliative medicine and assumes overall responsibility for the medical component of the hospice care program.

Subd. 11. OTHER SERVICES. "Other services" means physical therapy, occupational therapy, speech therapy, nutritional counseling, and volunteers.

Subd. 12. PALLIATIVE CARE. "Palliative care" means the total active care of patients whose disease is not responsive to curative treatment. Control of pain, of other symptoms, and of psychological, social, and spiritual problems is paramount. The goal of palliative care is the achievement of the best quality of life for patients and their families.

Subd. 13. RESIDENTIAL HOSPICE FACILITY. "Residential hospice facility" means a facility that resembles a single-family home located in a residential area that directly provides 24-hour residential and support services in a home-like setting for hospice patients as an integral part of the continuum of home care provided by a hospice and that houses:

- (1) no more than eight hospice patients; or
- (2) at least nine and no more than 12 hospice patients with the approval of the local governing authority, notwithstanding section 462.357, subdivision 8.

Subd. 14. VOLUNTEER SERVICES. "Volunteer services" means services by volunteers who provide a personal presence that augments a variety of professional and nonprofessional services available to the hospice patient, the hospice patient's family, and the hospice provider.

Sec. 14. [144A.751] HOSPICE BILL OF RIGHTS.

Subdivision 1. STATEMENT OF RIGHTS. An individual who receives hospice care and the individual's family have the right to:

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(1) receive written information about rights in advance of receiving hospice care or during the initial evaluation visit before the initiation of hospice care, including what to do if rights are violated;

(2) receive care and services according to a suitable hospice plan of care and subject to accepted hospice care standards and to take an active part in creating and changing the plan and evaluating care and services;

(3) be told in advance of receiving care about the services that will be provided, the disciplines that will furnish care, the frequency of visits proposed to be furnished, other choices that are available, and the consequence of these choices, including the consequences of refusing these services;

(4) be told in advance, whenever possible, of any change in the hospice plan of care and to take an active part in any change;

(5) refuse services or treatment;

(6) know, in advance, any limits to the services available from a provider, and the provider's grounds for a termination of services;

(7) know in advance of receiving care whether the services are covered by health insurance, medical assistance, or other health programs, the charges for services that will not be covered by Medicare, and the charges that the individual may have to pay;

(8) know what the charges are for services, no matter who will be paying the bill;

(9) know that there may be other services available in the community, including other end of life services and other hospice providers, and know where to go for information about these services;

(10) choose freely among available providers and change providers after services have begun, within the limits of health insurance, medical assistance, or other health programs;

(11) have personal, financial, and medical information kept private and be advised of the provider's policies and procedures regarding disclosure of such information;

(12) be allowed access to records and written information from records according to section 144.335;

(13) be served by people who are properly trained and competent to perform their duties;

(14) be treated with courtesy and respect and to have the patient's property treated with respect;

(15) be free from physical and verbal abuse;

(16) reasonable, advance notice of changes in services or charges, including at least ten days' advance notice of the termination of a service by a provider, except in cases where:

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(i) the recipient of services engages in conduct that alters the conditions of employment as specified in the employment contract between the hospice provider and the individual providing hospice services, or creates an abusive or unsafe work environment for the individual providing home care services; or

(ii) an emergency for the informal caregiver or a significant change in the recipient's condition has resulted in service needs that exceed the current service provider agreement and that cannot be safely met by the hospice provider;

(17) a coordinated transfer when there will be a change in the provider of services;

(18) voice grievances regarding treatment or care that is, or fails to be, furnished, or regarding the lack of courtesy or respect to the patient or the patient's property;

(19) know how to contact an individual associated with the provider who is responsible for handling problems and to have the provider investigate and attempt to resolve the grievance or complaint;

(20) know the name and address of the state or county agency to contact for additional information or assistance;

(21) assert these rights personally, or have them asserted by the hospice patient's family when the patient has been judged incompetent, without retaliation; and

(22) have pain and symptoms managed to the patient's desired level of comfort.

Subd. 2. INTERPRETATION AND ENFORCEMENT OF RIGHTS. The rights under this section are established for the benefit of individuals who receive hospice care. A hospice provider may not require a person to surrender these rights as a condition of receiving hospice care. A guardian or conservator or, when there is no guardian or conservator, a designated person, may seek to enforce these rights. This statement of rights does not replace or diminish other rights and liberties that may exist relative to persons receiving hospice care, persons providing hospice care, or hospice providers licensed under section 144A.753.

Subd. 3. DISCLOSURE. A copy of these rights must be provided to an individual at the time hospice care is initiated. The copy shall contain the address and telephone number of the office of health facility complaints and the office of the ombudsman for older Minnesotans and a brief statement describing how to file a complaint with these offices. Information about how to contact the office of the ombudsman for older Minnesotans shall be included in notices of change in client fees and in notices where hospice providers initiate transfer or discontinuation of services.

Sec. 15. [144A.752] REGULATION OF HOSPICE CARE.

Subdivision 1. RULES. The commissioner shall adopt rules for the regulation of hospice providers according to sections 144A.75 to 144A.755. The rules shall include the following:

(1) provisions to ensure, to the extent possible, the health, safety, well-being, and appropriate treatment of persons who receive hospice care;

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(2) requirements that hospice providers furnish the commissioner with specified information necessary to implement sections 144A.75 to 144A.755;

(3) standards of training of hospice provider personnel;

(4) standards for medication management, which may vary according to the nature of the hospice care provided, the setting in which the hospice care is provided, or the status of the patient;

(5) standards for hospice patient and hospice patient's family evaluation or assessment, which may vary according to the nature of the hospice care provided or the status of the patient; and

(6) requirements for the involvement of a patient's physician; documentation of physicians' orders, if required, and the patient's hospice plan of care; and maintenance of accurate, current clinical records.

Subd. 2. REGULATORY FUNCTIONS. (a) The commissioner shall:

(1) evaluate, monitor, and license hospice providers according to sections 144A.75 to 144A.755;

(2) inspect the office and records of a hospice provider during regular business hours without advance notice to the hospice provider;

(3) with the consent of the patient, visit the home where services are being provided;

(4) issue correction orders and assess civil penalties according to section 144.653, subdivisions 5 to 8, for violations of sections 144A.75 to 144A.755 or rules adopted thereunder; and

(5) take other action reasonably required to accomplish the purposes of sections 144A.75 to 144A.755.

(b) In the exercise of the authority granted under this section, the commissioner shall comply with the applicable requirements of the Government Data Practices Act, the Administrative Procedure Act, and other applicable law.

Subd. 3. RELATION TO OTHER REGULATORY PROGRAMS. In the exercise of the authority granted under sections 144A.75 to 144A.755, the commissioner shall not duplicate or replace standards and requirements imposed under another regulatory program of the state. The commissioner shall not impose additional training or education requirements upon members of a licensed or registered occupation or profession, except as necessary to address or prevent problems that are unique to the delivery of hospice care or to enforce and protect the rights of patients listed under section 144A.751. The commissioner shall not require a hospice care provider certified under the Medicare program and surveyed and enforced by the Minnesota department of health, to comply with a rule adopted under this section if the hospice provider is required to comply with any equivalent federal law or regulation relating to the same subject matter. The commissioner shall specify in the rules those provisions that are not applicable to certified hospice providers.

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Subd. 4. MEDICAID REIMBURSEMENT. Certification by the federal Medicare program must not be a requirement of Medicaid payment for room and board services delivered in a residential hospice facility.

Sec. 16. [144A.753] LICENSURE.

Subdivision 1. LICENSE REQUIRED; APPLICATION. (a) A hospice provider may not operate in the state without a valid license issued by the commissioner.

(b) Within ten days after receiving an application for a license, the commissioner shall acknowledge receipt of the application in writing. The acknowledgment must indicate whether the application appears to be complete or whether additional information is required before the application is considered complete. Within 90 days after receiving a complete application, the commissioner shall either grant or deny the license. If an applicant is not granted or denied a license within 90 days after submitting a complete application, the license must be deemed granted. An applicant whose license has been deemed granted must provide written notice to the commissioner before providing hospice care.

(c) Each application for a hospice provider license, or for a renewal of a license, shall be accompanied by a fee as follows:

- (1) for revenues no more than \$25,000, \$125;
 - (2) for revenues greater than \$25,000 and no more than \$100,000, \$312.50;
 - (3) for revenues greater than \$100,000 and no more than \$250,000, \$625;
 - (4) for revenues greater than \$250,000 and no more than \$350,000, \$937.50;
 - (5) for revenues greater than \$350,000 and no more than \$450,000, \$1,250;
 - (6) for revenues greater than \$450,000 and no more than \$550,000, \$1,562.50;
 - (7) for revenues greater than \$550,000 and no more than \$650,000, \$1,875;
 - (8) for revenues greater than \$650,000 and no more than \$750,000, \$2,187.50;
 - (9) for revenues greater than \$750,000 and no more than \$850,000, \$2,500;
 - (10) for revenues greater than \$850,000 and no more than \$950,000, \$2,812.50;
 - (11) for revenues greater than \$950,000 and no more than \$1,100,000, \$3,125;
 - (12) for revenues greater than \$1,100,000 and no more than \$1,275,000, \$3,750;
 - (13) for revenues greater than \$1,275,000 and no more than \$1,500,000, \$4,375;
- and
- (14) for revenues greater than \$1,500,000, \$5,000.

Subd. 2. LICENSING REQUIREMENTS. The commissioner shall license hospice providers using the authorities under sections 144A.75 to 144A.755. To receive a license, a hospice provider must:

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(1) provide centrally coordinated core services in the home and inpatient settings and make other services available, which may be provided by employees or contracted staff;

(2) require that the medical components of the hospice care program be under the direction of a licensed physician who serves as medical director;

(3) require that the palliative care provided to a hospice patient be under the direction of a licensed physician;

(4) utilize an interdisciplinary team that meets regularly to develop, implement, and evaluate the hospice provider's plan of care for each hospice patient and the patient's family. Within 48 hours of admission, a licensee must enter a written service agreement with the patient or the patient's responsible person describing the cost of services. Services are provided in accordance to the plan of care developed by the interdisciplinary team. Changes in the services provided which do not cause a change in fees do not require a written modification of the service plan agreed to by the patient or the patient's responsible person;

(5) provide accessible hospice care, 24 hours a day, seven days a week;

(6) utilize an ongoing system of quality assurance;

(7) require that volunteer services be provided by individuals who have completed a hospice volunteer training program and are trained to provide the services required;

(8) provide a planned program of supportive services and bereavement counseling available to patients and families during hospice care and the bereavement period following the death of the hospice patient; and

(9) require that inpatient services be provided directly or by arrangement in a licensed hospital or nursing home or residential hospice.

Subd. 3. NOMENCLATURE. A hospice provider may not operate in the state or use the words "hospice," "hospice care," "hospice care program," or "hospice provider" without a valid license issued by the commissioner. St. Anne Hospice in Winona county may continue to use the name "hospice."

Sec. 17. [144A.754] ENFORCEMENT.

Subdivision 1. ENFORCEMENT. (a) The commissioner may refuse to grant or renew a license, or may suspend or revoke a license, for violation of statutes or rules relating to hospice or for conduct detrimental to the welfare of a patient. Prior to any suspension, revocation, or refusal to renew a license, the hospice provider is entitled to notice and a hearing as provided by chapter 14.

(b) In addition to any other remedy provided by law, the commissioner may, without a prior contested case hearing, temporarily suspend a license or prohibit delivery of hospice care by a provider for not more than 60 days if the commissioner determines that the health or safety of a patient is in imminent danger, provided:

(1) advance notice is given to the provider;

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(2) after notice, the provider fails to correct the problem;

(3) the commissioner has reason to believe that other administrative remedies are not likely to be effective; and

(4) there is an opportunity for a contested case hearing within the 60 days.

(c) The process of suspending or revoking a license must include a plan for transferring affected patients to other providers.

(d) The owner and managerial officials of a hospice provider, the license of which has not been renewed or has been revoked because of noncompliance with applicable law, are not eligible to apply for and shall not be granted a license for five years following the effective date of the nonrenewal or revocation.

(e) The commissioner shall not issue a license to a hospice provider if an owner or managerial official includes an individual who was an owner or managerial official of a hospice provider or other type of licensed home care provider whose license was not renewed or was revoked as described in paragraph (d) for five years following the effective date of nonrenewal or revocation.

(f) Notwithstanding the provisions of paragraph (a), the commissioner shall not renew or shall suspend or revoke the license of a hospice provider that includes an individual as an owner or managerial official who was an owner or managerial official of a hospice provider whose license was not renewed or was revoked as described in paragraph (d) for five years following the effective date of the nonrenewal or revocation.

(g) The commissioner shall notify the hospice provider 30 days in advance of the date of nonrenewal, suspension, or revocation of the license. Within ten days after the receipt of this notification, the hospice provider may request, in writing, that the commissioner stay the nonrenewal, revocation, or suspension of the license. The hospice provider shall specify the reasons for requesting the stay; the steps that will be taken to attain or maintain compliance with the licensure laws; any limits on the authority or responsibility of the owners or managerial officials whose actions resulted in the notice of nonrenewal, revocation, or suspension; and any other information to establish that the continuing affiliation with these individuals will not jeopardize patient health, safety, or well-being. The commissioner shall determine whether the stay will be granted within 30 days of receiving the provider's request. The commissioner may propose additional restrictions or limitations on the provider's license and require that the granting of the stay be contingent upon compliance with those provisions. The commissioner shall take into consideration the following factors when determining whether the stay should be granted:

(1) the threat that continued involvement of the owners and managerial officials in the hospice provider poses to patient health, safety, and well-being;

(2) the compliance history of the hospice provider; and

(3) the appropriateness of any limits suggested by the hospice provider.

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(h) If the commissioner grants the stay, the order shall include any restrictions or limitations on the provider's license. The failure of the provider to comply with any restrictions or limitations shall result in the immediate removal of the stay and the commissioner shall take immediate action to suspend, revoke, or not renew the license.

(i) The provisions contained in paragraphs (d) and (e) apply to any nonrenewal or revocation of a hospice provider license occurring after the effective date of the rules adopted under section 144A.752.

(j) For the purposes of this subdivision, owners of a hospice provider are those individuals whose ownership interest provides sufficient authority or control to affect or change decisions related to the operation of the hospice provider. An owner includes a sole proprietor, a general partner, or any other individual whose individual ownership interest can affect the management and direction of the policies of the hospice provider. For the purposes of this subdivision, managerial officials are those individuals who had the responsibility for the ongoing management or direction of the policies, services, or employees of the hospice provider relating to the areas of noncompliance that led to the license revocation or nonrenewal.

Subd. 2. **INJUNCTIVE RELIEF.** In addition to any other remedy provided by law, the commissioner may bring an action in district court to enjoin a person who is involved in the management, operation, or control of a hospice provider or an employee of the hospice provider from illegally engaging in activities regulated under sections 144A.75 to 144A.755. The commissioner may bring an action under this subdivision in the district court in Ramsey county or in the district in which a hospice provider is providing hospice care. The court may grant a temporary restraining order in the proceeding if continued activity by the person who is involved in the management, operation, or control of a hospice provider or an employee of the hospice provider would create an imminent risk of harm to a recipient of hospice care.

Subd. 3. **SUBPOENA.** In matters pending before the commissioner under sections 144A.75 to 144A.755, the commissioner may issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books, records, documents, and other evidentiary material. If a person fails or refuses to comply with a subpoena or order of the commissioner to appear or testify regarding any matter about which the person may be lawfully questioned or to produce any papers, books, records, documents, or evidentiary materials in the matter to be heard, the commissioner may apply to the district court in any district and the court shall order the person to comply with the commissioner's order or subpoena. The commissioner may administer oaths to witnesses or take their affirmation. Depositions may be taken in or outside the state in the manner provided by law for the taking of depositions in civil actions. A subpoena or other process or paper may be served upon a named person anywhere within the state by an officer authorized to serve subpoenas in civil actions, with the same fees and mileage and in the same manner as prescribed by law for process issued out of a district court. A person subpoenaed under this subdivision shall receive the same fees, mileage, and other costs that are paid in proceedings in district court.

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Subd. 4. TIME LIMITS FOR APPEALS. To appeal the assessment of civil penalties under section 144A.752, subdivision 2, clause (4), a denial of a waiver or variance, and an action against a license under subdivision 1, a hospice provider must request a hearing no later than 15 days after the provider receives notice of the action.

Subd. 5. PRIOR CRIMINAL CONVICTIONS. (a) Before the commissioner issues an initial or renewal license, an owner or managerial official is required to complete a background study under section 144.057. No person may be involved in the management, operation, or control of a hospice provider if the person has been disqualified under the provisions of chapter 245A. Individuals disqualified under these provisions may request a reconsideration, and if the disqualification is set aside, are then eligible to be involved in the management, operation, or control of the provider. For purposes of this section, owners of a hospice provider subject to the background check requirement are those individuals whose ownership interest provides sufficient authority or control to affect or change decisions related to the operation of the hospice provider. An owner includes a sole proprietor, a general partner, or any other individual whose individual ownership interest can affect the management and direction of the policies of the hospice provider. For the purposes of this section, managerial officials subject to the background check requirement are those individuals who provide "direct contact" as defined in section 245A.04 or those individuals who have the responsibility for the ongoing management or direction of the policies, services, or employees of the hospice provider. Data collected under this subdivision are classified as private data under section 13.02, subdivision 12.

(b) Employees, contractors, and volunteers of a hospice provider are subject to the background study required by section 144.057. These individuals shall be disqualified under the provisions of chapter 245A. Nothing in this section shall be construed to prohibit a hospice provider from requiring self-disclosure of criminal conviction information.

(c) Termination of an employee in good faith reliance on information or records obtained under paragraph (a) or (b) regarding a confirmed conviction does not subject the hospice provider to civil liability or liability for unemployment benefits.

Sec. 18. [144A.755] INFORMATION AND REFERRAL SERVICES.

The commissioner shall ensure that information and referral services relating to hospice care are available in all regions of the state. The commissioner shall collect and make available information about available hospice care, sources of payment, providers, and the rights of patients. The commissioner may require hospice providers to provide information requested for the purposes of this section as a condition of licensure. The commissioner may publish and make available:

- (1) general information describing hospice care in the state;
- (2) limitations on hours, availability of services, and eligibility for third-party payments, applicable to individual providers; and
- (3) other information the commissioner determines to be appropriate.

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Sec. 19. [144A.756] PENALTY.

A person involved in the management, operation, or control of a hospice provider who violates section 144A.753, subdivision 1, paragraph (a), is guilty of a misdemeanor. This section does not apply to a person who had no legal authority to affect or change decisions related to the management, operation, or control of a hospice provider.

Sec. 20. Minnesota Statutes 2000, section 145C.01, subdivision 7, is amended to read:

Subd. 7. **HEALTH CARE FACILITY.** "Health care facility" means a hospital or other entity licensed under sections 144.50 to 144.58, a nursing home licensed to serve adults under section 144A.02, or a home care provider licensed under sections 144A.43 to ~~144A.48~~ 144A.47, or a hospice provider licensed under sections 144A.75 to 144A.755.

Sec. 21. Minnesota Statutes 2000, section 157.17, subdivision 2, is amended to read:

Subd. 2. **REGISTRATION.** At the time of licensure or license renewal, a boarding and lodging establishment or a lodging establishment that provides supportive services or health supervision services must be registered with the commissioner, and must register annually thereafter. The registration must include the name, address, and telephone number of the establishment, the name of the operator, the types of services that are being provided, a description of the residents being served, the type and qualifications of staff in the facility, and other information that is necessary to identify the needs of the residents and the types of services that are being provided. The commissioner shall develop and furnish to the boarding and lodging establishment or lodging establishment the necessary form for submitting the registration.

Housing with services establishments registered under chapter 144D shall be considered registered under this section for all purposes except that:

- (1) the establishments shall operate under the requirements of chapter 144D; and
- (2) the criminal background check requirements of sections 299C.66 to 299C.71 apply. The criminal background check requirements of section 144.057 apply only to personnel providing home care services under sections 144A.43 to ~~144A.48~~ 144A.47 and personnel providing hospice care under sections 144A.75 to 144A.755.

Sec. 22. Minnesota Statutes 2000, section 609.7495, subdivision 1, is amended to read:

Subdivision 1. **DEFINITIONS.** For the purposes of this section, the following terms have the meanings given them.

- (a) "Facility" means any of the following:
 - (1) a hospital or other health institution licensed under sections 144.50 to 144.56;
 - (2) a medical facility as defined in section 144.561;

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(3) an agency, clinic, or office operated under the direction of or under contract with the commissioner of health or a community health board, as defined in section 145A.02;

(4) a facility providing counseling regarding options for medical services or recovery from an addiction;

(5) a facility providing emergency shelter services for battered women, as defined in section 611A.31, subdivision 3, or a facility providing transitional housing for battered women and their children;

(6) a facility as defined in section 626.556, subdivision 2, paragraph (f);

(7) a facility as defined in section 626.5572, subdivision 6, where the services described in that paragraph are provided;

(8) a place to or from which ambulance service, as defined in section 144E.001, is provided or sought to be provided; and

(9) a hospice ~~program~~ provider licensed under section 144A.48 144A.753.

(b) "Aggrieved party" means a person whose access to or egress from a facility is obstructed in violation of subdivision 2, or the facility.

Sec. 23. Minnesota Statutes 2000, section 626.5572, subdivision 6, is amended to read:

Subd. 6. **FACILITY.** (a) "Facility" means a hospital or other entity required to be licensed under sections 144.50 to 144.58; a nursing home required to be licensed to serve adults under section 144A.02; a residential or nonresidential facility required to be licensed to serve adults under sections 245A.01 to 245A.16; a home care provider licensed or required to be licensed under section 144A.46; a hospice provider licensed under sections 144A.75 to 144A.755; or a person or organization that exclusively offers, provides, or arranges for personal care assistant services under the medical assistance program as authorized under sections 256B.04, subdivision 16, 256B.0625, subdivision 19a, and 256B.0627.

(b) For home care providers and personal care attendants, the term "facility" refers to the provider or person or organization that exclusively offers, provides, or arranges for personal care services, and does not refer to the client's home or other location at which services are rendered.

Sec. 24. **EFFECTIVE DATE.**

(a) Section 15, subdivision 1, is effective the day following final enactment.

(b) Sections 1 to 23, except section 15, subdivision 1, are effective upon adoption of licensure rules. Minnesota Rules, chapters 4668 and 4669, govern the licensure of hospices until new rules are adopted. With enactment of Minnesota Statutes, sections 144A.75 to 144A.756, licensure orders issued to licensed hospices under Minnesota Statutes, section 144A.45, and Minnesota Rules, chapters 4668 and 4669, shall remain valid and shall be subject to the issuance of a penalty assessment for failure to correct, under Minnesota Statutes, section 144A.752 (section 15).

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Sec. 25. **REPEALER.**

Minnesota Statutes 2000, section 144A.48, is repealed effective upon adoption of licensure rules under Minnesota Statutes, section 144A.752, subdivision 1.

Presented to the governor March 20, 2002

Signed by the governor March 22, 2002, 2:05 p.m.

CHAPTER 253—S.F.No. 2932

An act relating to the environment; encouraging citizen water quality monitoring; amending Minnesota Statutes 2000, section 115.06, by adding a subdivision.

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

Section 1. Minnesota Statutes 2000, section 115.06, is amended by adding a subdivision to read:

Subd. 4. CITIZEN MONITORING OF WATER QUALITY. (a) The agency may encourage citizen monitoring of ambient water quality for public waters by:

(1) providing technical assistance to citizen and local group water quality monitoring efforts;

(2) integrating citizen monitoring data into water quality assessments and agency programs, provided that the data adheres to agency quality assurance and quality control protocols; and

(3) seeking public and private funds to:

(i) collaboratively develop clear guidelines for water quality monitoring procedures and data management practices for specific data and information uses;

(ii) distribute the guidelines to citizens, local governments, and other interested parties;

(iii) improve and expand water quality monitoring activities carried out by the agency; and

(iv) continue to improve electronic and Web access to water quality data and information about public waters that have been either fully or partially assessed.

(b) This subdivision does not authorize a citizen to enter onto private property for any purpose.

(c) By January 15 of each odd-numbered year, the commissioner shall report to the senate and house of representatives committees with jurisdiction over environmental policy and finance on activities under this section.

(d) This subdivision shall sunset June 30, 2005.

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