

CHAPTER 4668
DEPARTMENT OF HEALTH
HOME CARE LICENSURE

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4668.0002 APPLICABILITY, AUTHORITY, AND SCOPE.

This chapter implements the licensing of home care providers under Minnesota Statutes, sections 144A.43 to 144A.47, under the authority of Minnesota Statutes, sections 144A.45, subdivision 1, and 144A.4605. Unless otherwise provided, all licensed home care providers must meet the requirements of this chapter. Provisions that apply only to specified classes of licensees are identified by those provisions. The commissioner may delegate any authority or responsibility to an agent of the department. This chapter must be read together with Minnesota Statutes, sections 144A.43 to 144A.47.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48; 144A.752*

History: *17 SR 2454; 24 SR 141; 28 SR 1639*

4668.0003 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 4668.0002 to 4668.0870, the terms in subparts 2 to 45 have the meanings given them.

Subp. 2. **Ambulatory.** "Ambulatory" means the ability to move about and transfer between locations without the assistance of another person, either with or without the assistance of a walking device or wheel chair.

Subp. 2a. **Assistance with self-administration of medication.** "Assistance with self-administration of medication" means performing a task to enable a client to self-administer medication, including:

A. bringing the medication to the client;

B. opening a container containing medications set up by a nurse, physician, or pharmacist;

C. emptying the contents from the container into the client's hand;

D. providing liquids or nutrition to accompany medication that a client is self-administering; or

E. reporting information to a nurse regarding concerns about a client's self-administration of medication.

Subp. 2b. **Assisted living home care provider.** "Assisted living home care provider" has the meaning given in Minnesota Statutes, section 144A.4605, subdivision 1.

Subp. 2c. **Assisted living home care service.** "Assisted living home care service" means a nursing service, delegated nursing service, other service performed by an unlicensed person, or central storage of medications provided solely for a resident of a housing with services establishment registered under Minnesota Statutes, chapter 144D.

Subp. 3. **Assisted living services.** "Assisted living services," as provided under a class E home care license, means individualized home care aide tasks or home management tasks provided to clients of a residential center in their living units, and provided either by the management of the residential center or by providers under contract with the management. In this subpart, "individualized" means chosen and designed specifically for each client's needs, rather than provided or offered to all clients regardless of their illnesses, disabilities, or physical conditions.

Subp. 4. **Business.** "Business" means an individual or other legal entity that provides services to persons in their homes.

Subp. 5. **Client.** "Client" means a person to whom a home care provider provides home care services.

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of health.

Subp. 7. **Contract.** "Contract" means a legally binding agreement, whether in writing or not.

Subp. 8. **Department.** "Department" means the Minnesota Department of Health.

Subp. 9. **Home care aide tasks.** "Home care aide tasks" means those services specified in part 4668.0110, subpart 1.

Subp. 10. **Home care provider or provider.** "Home care provider" or "provider" has the meaning given to home care provider by Minnesota Statutes, section 144A.43, subdivision 4.

Subp. 11. **Home care service.** "Home care service" has the meaning given it in Minnesota Statutes, section 144A.43, subdivision 3.

Subp. 12. **Home health aide tasks.** "Home health aide tasks" means those tasks allowed in part 4668.0100, subpart 1.

Subp. 13. **Home management services.** "Home management services" has the meaning given it in Minnesota Statutes, section 144A.43, subdivision 3, clause (8).

Subp. 14. **Home management tasks.** "Home management tasks" means all home management services that are not home health aide or home care aide tasks.

Subp. 15. [Repealed, 28 SR 1639]

Subp. 16. **Hospital.** "Hospital" means a facility licensed as a hospital under chapter 4640 and Minnesota Statutes, sections 144.50 to 144.56.

Subp. 17. **Inpatient facility.** "Inpatient facility" means a hospital or nursing home.

Subp. 17a. **Legend drug.** "Legend drug" has the meaning given in Minnesota Statutes, section 151.01, subdivision 17.

Subp. 18. **Licensee.** "Licensee" means a home care provider that is licensed under parts 4668.0002 to 4668.0870 and Minnesota Statutes, sections 144A.43 to 144A.47.

Subp. 19. **Licensed practical nurse.** "Licensed practical nurse" has the meaning given it by Minnesota Statutes, section 148.171, subdivision 8.

Subp. 20. **Managerial official.** “Managerial official” means a director, officer, trustee, or employee of a provider, however designated, who has the authority to establish or control business policy.

Subp. 21. **Medical social work or medical social services.** “Medical social work” or “medical social services” means social work related to the medical, health, or supportive care of clients.

Subp. 21a. **Medication administration.** “Medication administration” means performing a task to ensure a client takes a medication, and includes the following tasks, performed in the following order:

- A. checking the client’s medication record;
- B. preparing the medication for administration;
- C. administering the medication to the client;
- D. documenting after administration, or the reason for not administering the medication as ordered; and
- E. reporting information to a nurse regarding concerns about the medication or the client’s refusal to take the medication.

Subp. 21b. **Medication reminder.** “Medication reminder” means providing a verbal or visual reminder to a client to take medication.

Subp. 22. **Nurse.** “Nurse” means a registered nurse or licensed practical nurse.

Subp. 23. **Nursing home.** “Nursing home” means a facility licensed under Minnesota Statutes, sections 144A.01 to 144A.16.

Subp. 24. **Nutritional services.** “Nutritional services” means the services provided by a dietitian, including evaluation of a client’s nutritional status and recommendation for changes in nutritional care; planning, organizing, and coordinating nutritional parts of other health services; adapting a medically ordered diet to the needs and understanding of the client; and translating the recommendations for nutritional care into appropriate food selection and food preparation guidelines.

Subp. 25. **Occupational therapist.** “Occupational therapist” means a person who performs occupational therapy.

Subp. 26. **Occupational therapy.** “Occupational therapy” means services designed to assist a client, who has functional disabilities related to developmental, restorative, or health needs, to adapt the client’s environment and skills to aid in the performance of daily living tasks.

Subp. 26a. **Oral hygiene.** “Oral hygiene” means care of teeth, gums, and oral prosthetic devices.

Subp. 26b. **Over-the-counter drug.** “Over-the-counter drug” means a drug that is not required by federal law to bear the statement “Caution: Federal law prohibits dispensing without prescription,” and as a result, may be sold without a prescription.

Subp. 27. **Owner.** “Owner” means a:

- A. proprietor;
- B. general partner;
- C. limited partner who has five percent or more of equity interest in a limited partnership;
- D. person who owns or controls voting stock in a corporation in an amount equal to or greater than five percent of the shares issued and outstanding; or
- E. corporation that owns an equity interest in a licensee or applicant for a license.

Subp. 28. **Paraprofessional.** “Paraprofessional” means a person who performs home health aide, home care aide, or home management tasks.

Subp. 28a. **Pharmacist.** “Pharmacist” means a person currently licensed under Minnesota Statutes, chapter 151.

Subp. 29. **Physical therapist.** “Physical therapist” has the meaning given by Minnesota Statutes, section 148.65, subdivision 2.

Subp. 30. **Physical therapy.** “Physical therapy” has the meaning given by Minnesota Statutes, section 148.65, subdivision 1.

Subp. 31. **Physician.** “Physician” means a person licensed under Minnesota Statutes, chapter 147.

Subp. 32. **Prescriber.** “Prescriber” means a person who is authorized by law to prescribe drugs.

Subp. 33. **Registered nurse.** “Registered nurse” has the meaning given it by Minnesota Statutes, section 148.171, subdivision 20.

Subp. 34. **Regularly scheduled.** “Regularly scheduled” means ordered or planned to be completed at predetermined times or according to a predetermined routine.

Subp. 35. **Residential center.** “Residential center” means a building or complex of contiguous or adjacent buildings in which clients rent or own distinct living units.

Subp. 36. **Respiratory therapist.** “Respiratory therapist” means a person who performs respiratory therapy.

Subp. 37. **Respiratory therapy.** “Respiratory therapy” means therapeutic services provided under medical orders for the assessment, treatment, management, diagnostic evaluation, and care of clients with deficiencies, abnormalities, and diseases of the cardiopulmonary system.

Subp. 38. **Responsible person.** “Responsible person” means a person who, because of the client’s incapacity, makes decisions about the client’s care on behalf of the client. A responsible person may be a guardian, conservator, attorney-in-fact, family member, or other agent of the client. Nothing in this chapter expands or diminishes the rights of persons to act on behalf of clients under other law.

Subp. 39. **Social work.** “Social work” has the meaning of “social work practice” as defined by Minnesota Statutes, section 148B.18, subdivision 11.

Subp. 40. **Speech therapy.** “Speech therapy” means diagnostic, screening, preventive, or corrective services for clients with speech, hearing, and language disorders.

Subp. 41. **Survey.** “Survey” means an inspection of a licensee or applicant for licensure for compliance with this chapter and Minnesota Statutes, sections 144A.43 to 144A.47. Surveys include investigations of complaints.

Subp. 42. **Surveyor.** “Surveyor” means a representative of the department authorized by the commissioner to conduct surveys of licensees.

Subp. 43. **Therapist.** “Therapist” means a respiratory therapist, physical therapist, occupational therapist, speech therapist, or provider of nutritional services.

Subp. 44. **Unit of government.** “Unit of government” means every city, county, town, school district, other political subdivisions of the state, and any agency of the state or the United States, and includes any instrumentality of a unit of government.

Subp. 44a. **Unlicensed person.** “Unlicensed person” means a person who is employed by the licensee and who is not a nurse. Unlicensed person does not include nonemployee family members, nonemployee significant others, and nonemployee responsible persons.

Subp. 45. **Verbal.** “Verbal” means oral and not in writing.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48; 144A.752*

History: *17 SR 2454; L 1999 c 172 s 18; 24 SR 141; 28 SR 1639*

4668.0005 PROFESSIONAL LICENSES.

Nothing in this chapter limits or expands the rights of health care professionals to provide services within the scope of their licenses or registrations, as provided by Minnesota law.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48*

History: *17 SR 2454*

4668.0008 SERVICES INCLUDED IN AND EXCLUDED FROM LICENSURE.

Subpart 1. **Purpose.** This part implements Minnesota Statutes, section 144A.43, and establishes a process for determining what businesses are subject to licensure under this chapter. This part must be read together with Minnesota Statutes, section 144A.43. A business that is not required to be licensed under this chapter may obtain a license for the purpose of excluding individual contractors under subpart 6 or for other lawful purposes.

Subp. 2. **Determination of direct services.** As defined in Minnesota Statutes, section 144A.43, subdivision 4, a home care provider is a business that provides at least one home care service directly. A service that is provided directly means a service provided to a client by the provider or employees of the provider, and not by contract with an independent contractor. The administration of a contract for home care services is not in itself a direct service. Factors that shall be considered in determining whether a business provides home care services directly include whether the business:

- A. has the right to control and does control the types of services provided;
- B. has the right to control and does control when and how the services are provided;
- C. establishes the charges;
- D. collects fees from the clients or receives payment from third party payers on the clients' behalf;
- E. pays compensation on an hourly, weekly, or similar time basis;
- F. treats the individuals as employees for purposes of payroll taxes and workers' compensation insurance; and
- G. holds itself out as a provider of services or acts in a manner that leads clients or potential clients reasonably to believe that it is a provider of services.

None of the factors listed in items A to G is solely determinative.

Subp. 3. **Contract services.** If a licensee contracts for a home care service with a business that is not subject to licensure under this chapter, it must require, in the contract, that the business comply with this chapter and Minnesota Statutes, sections 144A.43 to 144A.47.

Subp. 4. **Coordination of providers of home care services.** The coordination of home care services is not itself a home care service. Coordination of home care services means one or more of the following:

- A. Determination whether a client needs home care services, what services are needed, and whether existing services need to continue or be modified.
- B. Referral of clients to home care providers.
- C. Administration of payments for home care services.

Subp. 5. **Determination of regularly engaged.** As used in Minnesota Statutes, section 144A.43, subdivision 4, "regularly engaged" means providing, or offering to provide, home care services as a regular part of a provider's business. The following factors shall be considered by the commissioner in determining whether a person is regularly engaged in providing home care services:

- A. whether the person markets services specifically to individuals whose illnesses, disabilities, or physical conditions create needs for the services;
- B. whether the services are designed and intended specifically to assist the individuals;
- C. whether the individuals constitute a substantial part of the person's clientele; and
- D. whether the home care services are other than occasional or incidental to the provision of services that are not home care services.

None of the factors listed in items A to D is solely determinative.

Subp. 6. **Exclusion for a paraprofessional not regularly engaged in delivering home care services.** For purposes of subpart 5, an individual who performs home care

aid tasks or home management tasks for no more than 14 hours each calendar week to no more than one client, is not regularly engaged in the delivery of home care services, and is not subject to licensure under this chapter.

Subp. 7. **Exclusion of individual contractors.** An individual who is not an employee of a licensed provider need not be licensed under this chapter, if the person:

- A. only provides services as an independent contractor with one or more licensed providers;
- B. provides no services under direct agreements with clients; and
- C. is contractually bound to perform services in compliance with the contracting providers' policies and service agreements.

Individuals excluded from licensure under this subpart must comply with the same requirements of this chapter as employees of the contracting licensee.

Subp. 8. **Governmental providers.** Except as otherwise provided in this chapter or in law, home care services that are provided by the state, counties, or other units of government must be licensed under this chapter.

Subp. 9. **Exclusion of certain instructional and incidental services.** A business is not subject to Minnesota Statutes, sections 144A.43 to 144A.47, and is not required to be licensed under this chapter if the business only provides services that are primarily instructional and not medical services or health-related support services.

Subp. 10. **Temporary staffing agencies.** A business that provides staff to home care providers, such as temporary employment agencies, is not required to be licensed under this chapter if the business:

- A. only provides staff under contract to licensed or exempt providers;
- B. provides no services under direct agreements with clients; and
- C. is contractually bound to perform services under the contracting providers' direction and supervision.

Subp. 11. **Status of temporary staff.** For purposes of this chapter, staff of businesses excluded from licensure under subpart 10 shall be treated as if they are employees of the contracting licensee.

Subp. 12. **Medical equipment provider.** A provider of medical supplies and equipment is subject to this chapter only if:

- A. the provider provides a home care service;
- B. the provider makes more than one visit to a client's residence to provide the home care service; and
- C. the supplies or equipment are ordered by a physician, osteopath, dentist, podiatrist, chiropractor, or other prescriber.

In this subpart, home care service does not include maintenance of supplies or equipment or instruction in their use.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48; 144A.752*

History: *17 SR 2454; 24 SR 141; 28 SR 1639*

4668.0012 LICENSURE.

Subpart 1. **License issued.** If a provider complies with the requirements of this chapter and Minnesota Statutes, sections 144A.43 to 144A.47, the commissioner shall issue to the provider a certificate of licensure that will contain:

- A. the provider's name and address;
- B. the class of license as provided in subpart 3;
- C. the beginning and expiration dates; and
- D. a unique license number.

Subp. 2. **Multiple units.** Multiple units of a provider must share the same management that supervises and administers services provided by all units. Multiple units of a provider must be separately licensed if the commissioner determines that the

units cannot adequately share supervision and administration of services with the main office because of distinct organizational structures.

Subp. 3. Classes of licenses. In issuing a license under this part, the commissioner shall assign a license classification according to items A and B. A provider performing only home management tasks must be registered according to Minnesota Statutes, section 144A.461, and need not obtain a home care license.

A. A provider must apply for one of the classes of the home care license listed in subitems (1) to (5).

(1) Class A, or professional home care agency license. Under this license, a provider may provide all home care services in a place of residence, including a residential center, at least one of which is nursing, physical therapy, speech therapy, respiratory therapy, occupational therapy, nutritional services, medical social services, home health aide tasks, or the provision of medical supplies and equipment when accompanied by the provision of a home care service.

(2) Class B, or paraprofessional agency license. Under this license, a provider may perform home care aide tasks and home management tasks, as provided by parts 4668.0110 and 4668.0120.

(3) Class C, or individual paraprofessional license. Under this license, a provider may perform home health aide, home care aide, and home management tasks.

(4) Class E, or assisted living programs license. Under this license, a provider may only provide assisted living services to residents of a residential center.

(5) Assisted living home care provider license. Under this license, a provider may provide assisted living home care services solely for residents of one or more registered housing with services establishments, as provided by Minnesota Statutes, section 144A.4605.

B. If a provider meets the requirements of more than one license class, the commissioner shall issue to the provider a separate license for each applicable class of home care licensure.

Subp. 4. Applicability of rules to classes.

A. A class A licensee must comply with parts 4668.0002 to 4668.0180, and 4668.0218 to 4668.0240, except that one certified for Medicare as a home health agency under Code of Federal Regulations, title 42, part 484, need not comply with the requirements listed in part 4668.0180, subpart 10.

B. A class B licensee must comply with parts 4668.0002 to 4668.0080, 4668.0110 to 4668.0170, 4668.0190, and 4668.0218 to 4668.0240.

C. A class C licensee must comply with parts 4668.0002 to 4668.0035, 4668.0050 to 4668.0065, 4668.0075 to 4668.0170, 4668.0200, and 4668.0218 to 4668.0240.

D. A class E licensee must comply with parts 4668.0002 to 4668.0080, 4668.0110 to 4668.0170, 4668.0215, and 4668.0218 to 4668.0240.

E. An assisted living home care provider licensee must comply with parts 4668.0002 to 4668.0050, 4668.0065, 4668.0070, 4668.0170, 4668.0218 to 4668.0240, and 4668.0800 to 4668.0870.

Subp. 5. New license. A license shall be issued to an applicant that is not currently licensed if the applicant completes the application, pays the fee in full, and complies with this chapter and Minnesota Statutes, sections 144A.43 to 144A.47. A license is effective for one year after the date the license is issued.

Subp. 6. License application. To apply for a license under this chapter, an applicant must follow the procedures in items A and B.

A. An applicant for a license under this chapter must provide the following information on forms provided by the commissioner:

(1) the applicant's name and address, including the name of the county in which the applicant resides or has its principal place of business;

- (2) address and telephone number of the principal administrative office;
- (3) address and telephone number of each branch office, if any;
- (4) names and addresses of all owners and managerial officials;
- (5) documentation of compliance with the background study requirements of Minnesota Statutes, section 144A.46, subdivision 5, for all persons involved in the management, operation, or control of a provider;
- (6) evidence of workers' compensation coverage, as required by Minnesota Statutes, sections 176.181 and 176.182;
- (7) in the case of class C applicants, proof that the applicant is not contagious with tuberculosis, as required by part 4668.0065, subparts 1 and 2;
- (8) in the case of class C applicants, proof that the applicant has met any applicable training and supervision requirements for paraprofessionals, as provided by parts 4668.0100 and 4668.0110; and
- (9) a list of those home care services listed in Minnesota Statutes, section 144A.43, subdivision 3, or 144A.4605, that will be made available to clients.

B. An application on behalf of a corporation, association, or unit of government must be signed by an officer or managing agent.

Subp. 7. **Agent.** Each application for a home care provider license or for renewal of a home care provider license shall designate one or more owners, managerial officials, or employees, as an agent:

A. who is authorized to transact business with the commissioner of health on all matters provided for in this chapter and Minnesota Statutes, sections 144A.43 to 144A.47; and

B. upon whom all notices and orders shall be served, and who is authorized to accept service of notices and orders on behalf of the licensee, in proceedings under this chapter and Minnesota Statutes, sections 144A.43 to 144A.47.

The designation of one or more persons under this subpart shall not affect the legal responsibility of any other owner or managerial official under this chapter and Minnesota Statutes, sections 144A.43 to 144A.47.

Subp. 8. **Notification of changes in information.** The licensee shall notify the commissioner in writing within ten working days after any change in the information required to be provided by subparts 6 and 7, except for the information required by subpart 6, item A, subitem (4), which will be required at the time of license renewal, and except for services reported under subpart 6, item A, subitem (9), that are discontinued for less than 90 days.

Subp. 9. **Application processing.** The commissioner shall process an application in the manner provided by Minnesota Statutes, section 144A.46, subdivision 1, paragraph (b). No application shall be processed without payment of the license fee in full, in the amount provided by subpart 18.

Subp. 10. **Prelicensing survey.** Before granting a license, the commissioner may investigate the applicant for compliance with this chapter and Minnesota Statutes, sections 144A.43 to 144A.47.

Subp. 11. **Denial of license.** A license shall be denied if:

A. the applicant; an owner of the applicant, individually or as an owner of another home care provider; or another home care provider of which an owner of the applicant also was or is an owner; has ever been issued a correction order for failing to assist its clients, in violation of part 4668.0050, subpart 2, upon the licensee's decision to cease doing business as a home care provider;

B. the applicant is not in compliance with this chapter and Minnesota Statutes, sections 144A.43 to 144A.47;

C. the applicant is disqualified under Minnesota Statutes, sections 144.057 and 245A.04;

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D. the applicant or an owner or managerial official has been unsuccessful in having a disqualification under Minnesota Statutes, section 144.057 or 245A.04, set aside; or

E. the commissioner determines that an owner or managerial official, as an owner or managerial official of another licensee, was substantially responsible for the other licensee's failure to substantially comply with this chapter and Minnesota Statutes, sections 144A.43 to 144A.47.

Subp. 12. Change of classification. A licensee may change to a different class of license under subpart 3, by submitting a new application under subpart 6 and meeting all applicable requirements of this chapter. An application under this subpart shall be accompanied by the fee provided by subpart 18.

Subp. 13. License renewals. Except as provided in subpart 14 or 15, a license will be renewed for a period of one year if the licensee satisfies items A to C. The licensee must:

A. submit an application for renewal on forms provided by the commissioner at least 30 days before expiration of the license;

B. submit the renewal fee, in the amount provided by subpart 18; and

C. comply with this chapter and Minnesota Statutes, sections 144A.43 to 144A.47.

Subp. 14. Conditional license. If a licensee is not in full compliance with this chapter and Minnesota Statutes, sections 144A.43 to 144A.47, at the time of expiration of its license, and the violations do not warrant denial of renewal of the license, the commissioner shall issue a license for a limited period conditioned on the licensee achieving full compliance within the term of the license or the term of any correction orders.

Subp. 15. Suspension, revocation, or denial of renewal of license. The commissioner may deny renewal of a license, or may suspend, revoke, or make conditional a license, if the licensee, or an owner or managerial official of the licensee:

A. is in violation, or during the term of the license has violated, any of the requirements of this chapter or Minnesota Statutes, sections 144A.43 to 144A.47;

B. permits, aids, or abets the commission of any illegal act in the provision of home care;

C. performs any act detrimental to the welfare of a client;

D. obtained the license by fraud or misrepresentation;

E. knowingly made or makes a false statement of a material fact in the application for a license or in any other record or report required by this chapter;

F. denies representatives of the commissioner access to any part of the provider, its books, records, or files, or employees;

G. interferes with or impedes a representative of the commissioner in contacting the provider's clients;

H. interferes with or impedes a representative of the commissioner in the enforcement of this chapter and Minnesota Statutes, sections 144A.43 to 144A.47;

I. destroys or makes unavailable any records or other evidence relating to the licensee's compliance with this chapter and Minnesota Statutes, sections 144A.43 to 144A.47;

J. refuses to initiate a background study under Minnesota Statutes, section 144.057 or 245A.04; or

K. has failed to timely pay any fines assessed under part 4668.0230 or 4668.0800, subpart 6.

Subp. 16. Transfers prohibited; changes in ownership. A license issued under this part may not be transferred to another party. Before changing ownership, a prospective provider must apply for a new license under this part. A change of ownership means a transfer of operational control to a different business entity, and includes:

- A. transfer of the business to a different or new corporation;
- B. in the case of a partnership, the dissolution or termination of the partnership under Minnesota Statutes, chapter 323A, with the business continuing by a successor partnership or other entity;
- C. relinquishment of control of the provider by the licensee to another party, including to a contract management firm that is not under the control of the owner of the business' assets;
- D. transfer of the business by a sole proprietor to another party or entity; or
- E. in the case of a privately held corporation, the change in ownership or control of 50 percent or more of the outstanding voting stock.

Subp. 17. **Display of license.** The original license must be displayed in the provider's principal business office and copies must be displayed in all other offices. The licensee must provide a copy of the license to any person who requests it.

Subp. 18. **Fees.** Each application for a license must include payment in full of the fee according to the schedule in chapter 4669.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48; 144A.752*

History: *17 SR 2454; L 1997 c 174 art 12 s 70; 24 SR 141; 28 SR 1639*

4668.0016 WAIVERS AND VARIANCES.

Subpart 1. **Definitions.** For purposes of this part:

A. "waiver" means an exemption from compliance with a requirement of this chapter; and

B. "variance" means a specified alternative to a requirement of this chapter.

Subp. 2. **Criteria for waiver or variance.** Upon application of a licensee, the commissioner shall waive or vary any provision of this chapter, except for those provisions relating to criminal disqualification, part 4668.0020, and to the home care bill of rights, part 4668.0030, if the commissioner finds that:

A. the waiver or variance is necessary because of the unavailability of services or resources in the provider's geographic area; or

B. enforcement of a requirement would result in unreasonable hardship on the licensee; and

C. the waiver or variance will not adversely affect the health, safety, or welfare of any client.

Subp. 3. **Experimental variance.** A variance may be granted to allow a provider to offer home care services of a type or in a manner that is innovative, will not impair the services provided, will not adversely affect the health, safety, or welfare of the clients, and is likely to improve the services provided.

Subp. 4. **Conditions.** The commissioner may impose conditions on the granting of a waiver or variance that the commissioner considers necessary.

Subp. 5. **Duration and renewal.** The commissioner may limit the duration of any waiver or variance, and may renew a limited waiver or variance.

Subp. 6. **Applications.** An application for waiver or variance from the requirements of this chapter may be made at any time, must be made in writing to the commissioner, and must specify the following:

A. the rule from which the waiver or variance is requested;

B. the time period for which the waiver or variance is requested;

C. if the request is for a variance, the specific alternative action that the licensee proposes;

D. the reasons for the request; and

E. justification that subpart 2 or 3 will be satisfied.

The commissioner may require additional information from the licensee before acting on the request.

Subp. 7. **Grants and denials.** The commissioner shall grant or deny each request for waiver or variance in writing. Notice of a denial shall contain the reasons for the denial. The terms of a requested variance may be modified upon agreement between the commissioner and a licensee.

Subp. 8. **Violation of variances.** A failure to comply with the terms of a variance shall be deemed to be a violation of this chapter.

Subp. 9. **Revocation or denial of renewal.** The commissioner shall revoke or deny renewal of a waiver or variance if:

- A. it is determined that the waiver or variance is adversely affecting the health, safety, or welfare of the licensee's clients;
- B. the licensee has failed to comply with the terms of the variance;
- C. the licensee notifies the commissioner in writing that it wishes to relinquish the waiver or variance and be subject to the rule previously waived or varied; or
- D. the revocation or denial is required by a change in law.

Subp. 10. **Hearings.** A denial of a waiver or variance may be contested by requesting a hearing as provided by part 4668.0017. The licensee bears the burden of proving that the denial of a waiver or variance was in error.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48*

History: *17 SR 2454*

4668.0017 HEARINGS.

Subpart 1. **Hearing rights.** An applicant for a license or a licensee that has been assessed a fine under part 4668.0230 or 4668.0800, subpart 6, that has had a waiver or variance denied or revoked under part 4668.0016, or that has a right to a hearing under Minnesota Statutes, section 144A.46, subdivision 3, may request a hearing to contest that action or decision according to the rights and procedures provided by Minnesota Statutes, chapter 14, and this part.

Subp. 2. **Request for hearing.** A request for a hearing shall be in writing and shall:

- A. be mailed or delivered to the commissioner or the commissioner's designee;
- B. contain a brief and plain statement describing every matter or issue contested; and
- C. contain a brief and plain statement of any new matter that the licensee believes constitutes a defense or mitigating factor.

Subp. 3. **Informal conference.** At any time, the licensee and the commissioner may hold an informal conference to exchange information, clarify issues, or resolve any or all issues.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48*

History: *17 SR 2454; 24 SR 141*

4668.0019 ADVERTISING.

Licensees shall not use false, fraudulent, or misleading advertising in the marketing of services. For purposes of this part, advertising includes any means of communicating to potential clients the availability, nature, or terms of home care services.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48*

History: *17 SR 2454*

4668.0020 [Repealed, L 1997 c 248 s 51]

4668.0030 HOME CARE BILL OF RIGHTS.

Subpart 1. **Scope and enforcement against those exempt from licensure.** All home care providers, including those exempt from licensure under Minnesota Statutes, section 144A.46, subdivision 2, must comply with this part and the home care bill of

rights, as provided by Minnesota Statutes, section 144A.44. The commissioner shall enforce this part and the home care bill of rights against providers exempt from licensure in the same manner as against licensees.

Subp. 2. **Notification of client.** The provider shall give a written copy of the home care bill of rights, as required by Minnesota Statutes, section 144A.44, to each client or each client's responsible person.

Subp. 3. **Time of notice.** The provider shall deliver the bill of rights at the time that the provider and the client or the client's responsible person agree to a service agreement, or before services are initiated, whichever is earlier.

Subp. 4. **Content of notice.** In addition to the text of the bill of rights in Minnesota Statutes, section 144A.44, subdivision 1, the written notice to the client must include the following:

A. a statement, printed prominently in capital letters, that is substantially the same as the following:

IF YOU HAVE A COMPLAINT ABOUT THE AGENCY OR PERSON PROVIDING YOU HOME CARE SERVICES, YOU MAY CALL, WRITE, OR VISIT THE OFFICE OF HEALTH FACILITY COMPLAINTS, MINNESOTA DEPARTMENT OF HEALTH. YOU MAY ALSO CONTACT THE OMBUDSMAN FOR OLDER MINNESOTANS.

B. the telephone number, mailing address, and street address, of the Office of Health Facility Complaints;

C. the telephone number and address of the office of the ombudsman for older Minnesotans; and

D. the licensee's name, address, telephone number, and name or title of the person to whom problems or complaints may be directed.

The information required by items B and C shall be provided by the commissioner to licensees upon issuance of licenses and whenever changes are made.

Subp. 5. **Acknowledgment of receipt.** The provider shall obtain written acknowledgment of the client's receipt of the bill of rights or shall document why an acknowledgment cannot be obtained. The acknowledgment may be obtained from the client or the client's responsible person.

Subp. 6. **Documentation.** The licensee shall retain in the client's record documentation of compliance with this part.

Subp. 7. **Prohibition against waivers.** The licensee may not request nor obtain from clients any waiver of any of the rights enumerated in Minnesota Statutes, section 144A.44, subdivision 1. Any waiver obtained in violation of this subpart is void.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48*

History: *17 SR 2454*

4668.0035 HANDLING OF CLIENTS' FINANCES AND PROPERTY.

Subpart 1. **Powers-of-attorney.** A licensee may not accept powers-of-attorney from clients for any purpose, and may not accept appointments as guardians or conservators of clients, unless the licensee maintains a clear organizational separation between the home care service and the program that accepts guardianship or conservatorship appointments. This subpart does not apply to licensees that are Minnesota counties or other units of government.

Subp. 2. **Handling clients' finances.** A licensee may assist clients with household budgeting, including paying bills and purchasing household goods, but may not otherwise manage a client's property. A licensee must provide a client with receipts for all transactions and purchases paid with the clients' funds. When receipts are not available, the transaction or purchase must be documented. A licensee must maintain records of all such transactions.

Subp. 3. **Security of clients' property.** A licensee may not borrow a client's property, nor in any way convert a client's property to the licensee's possession, except in payment of a fee at the fair market value of the property.

Subp. 4. **Gifts and donations.** Nothing in this part precludes a licensee or its staff from accepting bona fide gifts of minimal value, or precludes the acceptance of donations or bequests made to a licensee that are exempt from income tax under section 501(c) of the Internal Revenue Code of 1986.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48*

History: *17 SR 2454*

4668.0040 COMPLAINT PROCEDURE.

Subpart 1. **Complaint procedure.** A licensee that has more than one direct care staff person must establish a system for receiving, investigating, and resolving complaints from its clients.

Subp. 2. **Informing clients.** The system required by subpart 1 must provide written notice to each client that includes:

- A. the client's right to complain to the licensee about the services received;
- B. the name or title of the person or persons to contact with complaints;
- C. the method of submitting a complaint to the licensee;
- D. the right to complain to the Minnesota Department of Health, Office of Health Facility Complaints; and
- E. a statement that the provider will in no way retaliate because of a complaint.

Subp. 3. **Prohibition against retaliation.** A licensee must not take any action that negatively affects a client in retaliation for a complaint made by the client.

Subp. 4. **Scope.** This part applies to all licensees except class C licensees.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48*

History: *17 SR 2454; 24 SR 141*

4668.0050 ACCEPTANCE, RETENTION, DISCONTINUATION OF SERVICES, AND DISCHARGE OF CLIENTS.

Subpart 1. **Acceptance of clients.** No licensee may accept a person as a client unless the licensee has staff, sufficient in qualifications and numbers, to adequately provide the services agreed to in the service agreement, under part 4668.0140 for class A, B, C, and E licensees, or the service plan, under part 4668.0815, for assisted living home care provider licensees.

Subp. 2. **Assistance upon discontinuance of services.** If the licensee discontinues a home care service to a client for any reason and the client continues to need the home care service, the licensee shall provide to the client a list of home care providers that provide similar services in the client's geographic area.

This subpart does not apply to a licensee that discontinues a service to a client because of the client's failure to pay for the service.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48; 144A.752*

History: *17 SR 2454; 24 SR 141; 28 SR 1639*

4668.0060 ADMINISTRATION.

Subpart 1. **Services by contract.** The licensee may contract for services to be provided to its clients. Personnel providing services under contract must meet the same requirements required by this chapter of personnel employed by the licensee.

Subp. 2. **Responsibility of licensee for contractors.** A violation of this chapter by a contractor of the licensee will be considered to be a violation by the licensee.

Subp. 3. **Fulfillment of services.** The licensee shall provide all services required by the client's service agreement, required by part 4668.0140.

Subp. 4. **Scheduled appointments for nonessential services.** If a licensee, contractor, or employee of a licensee is unable, for any reason, to keep a scheduled appointment for a service that is not essential for medical or safety reasons, the licensee shall:

- A. follow the procedure, if any, established in the service agreement;
- B. provide a replacement person; or
- C. notify the client that the appointment will not be kept, and schedule a new appointment or arrange for some other reasonable alternative.

Subp. 5. **Scheduled appointments for essential services.** If, for medical or safety reasons, a service to be provided must be completed at the scheduled time, and the licensee, contractor, or employee of a licensee is unable, for any reason, to keep the scheduled appointment, the licensee shall make arrangements to complete the service through a contract with another provider or through other reasonable means.

Subp. 6. **Availability of contact person.** Every class A, class B, or class E licensee that provides home health aide or home care aide tasks, must have a contact person available for consultation whenever a paraprofessional is performing home health aide or home care aide tasks for a client. The contact person must be available to the paraprofessional in person, by telephone, or by other means.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48; 144A.752*

History: *17 SR 2454; 28 SR 1639*

4668.0065 INFECTION CONTROL.

Subpart 1. **Tuberculosis screening.** No person who is contagious with tuberculosis may provide services that require direct contact with clients. All individual licensees and employees and contractors of licensees must document the following before providing services that require direct contact with clients:

A. the person must provide documentation of having received a negative reaction to a Mantoux test administered within the 12 months before working in a position involving direct client contact, and no later than every 24 months after the most recent Mantoux test; or

B. if the person has had a positive reaction to a Mantoux test upon employment or within the two years before working in a position involving direct client contact, or has a positive reaction to a Mantoux test in repeat testing during the course of employment, the person must provide:

(1) documentation of a negative chest x-ray administered within the three months before working in a position involving direct client contact; or

(2) documentation of a negative chest x-ray administered each 12 months, for two years after the positive reaction to a Mantoux test or documentation of completing or currently taking a course of tuberculosis preventative therapy; or

C. if the person has had a positive reaction to a Mantoux test more than two years before working in a position involving direct client contact, the person must provide documentation of a negative chest x-ray taken within the previous 12 months or documentation of completing or currently taking a course of tuberculosis preventative therapy.

In this subpart, "Mantoux test" means a Mantoux tuberculin skin test.

Subp. 2. **Exposure to tuberculosis.** In addition to the requirements of subpart 1, a person who has been exposed to active tuberculosis must document a negative result of a Mantoux test or chest x-ray administered no earlier than ten weeks and no later than 14 weeks after the exposure.

Subp. 3. **Infection control in-service training.** For each 12 months of employment, all licensees and employees and contractors of licensees who have contact with clients in their residences, and their supervisors, shall complete in-service training about infection control techniques used in the home. This subpart does not apply to a person who performs only home management tasks. The training must include:

- A. hand washing techniques;
- B. the need for and use of protective gloves, gowns, and masks;
- C. disposal of contaminated materials and equipment, such as dressings, needles, syringes, and razor blades;
- D. disinfecting reusable equipment; and
- E. disinfecting environmental surfaces.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48*

History: *17 SR 2454*

4668.0070 PERSONNEL RECORDS.

Subpart 1. **Scope.** This part applies to all licensees except class C licensees.

Subp. 2. **Personnel records.** The licensee must maintain a record of each employee, of each individual contractor excluded under part 4668.0008, subpart 7, and of other individual contractors. The record must include the following information:

- A. evidence of current professional licensure, registration, or certification, if licensure, registration, or certification is required by this chapter, statute, or other rules;
- B. records of training required by this chapter; and
- C. evidence of licensure under this chapter, if required.

Subp. 3. **Job descriptions.** The licensee shall maintain current job descriptions, including qualifications, responsibilities, and identification of supervisors, if any, for each job classification.

Subp. 4. **Retention of personnel records.** Each personnel record must be retained for at least three years after an employee or contractor ceases to be employed by the licensee.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48*

History: *17 SR 2454*

4668.0075 ORIENTATION TO HOME CARE REQUIREMENTS.

Subpart 1. **Orientation.** Every individual applicant for a license, and every person who provides direct care, supervision of direct care, or management of services for a licensee, shall complete an orientation to home care requirements before providing home care services to clients. This orientation may be incorporated into the training required of paraprofessionals under part 4668.0130. This orientation need only be completed once.

Subp. 2. **Content.** The orientation required by subpart 1 must contain the following topics:

- A. an overview of this chapter and Minnesota Statutes, sections 144A.43 to 144A.47;
- B. handling of emergencies and use of emergency services;
- C. reporting the maltreatment of vulnerable minors or adults under Minnesota Statutes, sections 626.556 and 626.557;
- D. home care bill of rights;
- E. handling of clients' complaints and reporting of complaints to the Office of Health Facility Complaints; and
- F. services of the ombudsman for older Minnesotans.

Subp. 3. **Sources of orientation.** The orientation training required by this part may be provided by the licensee or may be obtained from other sources. The commissioner shall provide a curriculum and materials that may be used to present the orientation.

Subp. 4. **Verification and documentation.** Each licensee shall retain evidence that each person required under subpart 1, has completed the orientation training required by this part.

Subp. 5. **Transferability.** Licensees may accept from another provider written verification that a person has completed the orientation.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48; 144A.752*

History: *17 SR 2454; 24 SR 141; 28 SR 1639*

4668.0080 QUALIFICATIONS OF PROFESSIONAL PERSONNEL.

Subpart 1. **Occupational therapy.** A person who provides occupational therapy as a licensee or as an employee or contractor of a licensee must:

A. have earned a baccalaureate degree from an occupational therapy program accredited jointly by the Committee on Allied Health Education and Accreditation of the American Medical Association and the American Occupational Therapy Association;

B. be registered as an occupational therapist by the American Occupational Therapy Certification Board; or

C. meet the standards established for registration by the American Occupational Therapy Certification Board, in effect on June 1, 1990.

Subp. 2. **Speech therapy.** A person who provides speech therapy as a licensee or as an employee or contractor of a licensee must be registered with the department as a speech- language pathologist, under parts 4750.0010 to 4750.0700.

Subp. 3. **Respiratory therapy.** A person who provides respiratory therapy as a licensee or as an employee or contractor of a licensee must have completed a respiratory care program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation and the Joint Review Committee for Respiratory Therapy Education or by an accrediting agency approved by the commissioner.

Subp. 4. **Dietitians.** A person who provides nutritional services as a licensee or as an employee or contractor of a licensee, must have a baccalaureate degree in nutrition or a comparable program, including at least six months of supervised experience, or be registered by the Commission on Dietetic Registration of the American Dietetic Association.

Subp. 5. **Physical therapy.** A person who provides physical therapy as an employee or contractor of a licensee must be registered as a physical therapist with the Board of Medical Practice under Minnesota Statutes, sections 148.65 to 148.78.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48*

History: *17 SR 2454*

4668.0100 HOME HEALTH AIDE TASKS.

Subpart 1. **Home health aide tasks.** For a class A or C licensee, a registered nurse may delegate medical or nursing services as tasks or a therapist may assign therapy services as tasks only to a person who satisfies the requirements of subpart 5. These delegated or assigned tasks, as set forth in this part, include home care aide tasks as set forth in part 4668.0110. Class A licensees providing home care aide tasks must satisfy the training and supervision requirements of this part, and not part 4668.0110. These tasks include:

- A. administration of medications, as provided by subpart 2;
- B. performing routine delegated medical or nursing or assigned therapy procedures, as provided by subpart 4, except items C to H;
- C. assisting with body positioning or transfers of clients who are not ambulatory;
- D. feeding of clients who, because of their condition, are at risk of choking;
- E. assistance with bowel and bladder control, devices, and training programs;
- F. assistance with therapeutic or passive range of motion exercises;
- G. providing skin care, including full or partial bathing and foot soaks; and

H. during episodes of serious disease or acute illness, providing services performed for a client or to assist a client to maintain the hygiene of the client's body and immediate environment, to satisfy nutritional needs, and to assist with the client's mobility, including movement, change of location, and positioning, and bathing, oral hygiene, dressing, hair care, toileting, bedding changes, basic housekeeping, and meal preparation. Oral hygiene means care of teeth, gums, and oral prosthetic devices.

Subp. 2. **Administration of medications.** A person who satisfies the requirements of subpart 5 may administer medications, whether oral, suppository, eye drops, ear drops, inhalant, topical, or administered through a gastrostomy tube, if:

A. the medications are regularly scheduled;

B. in the case of pro re nata medications, the administration of the medication is reported to a registered nurse either:

(1) within 24 hours after its administration; or

(2) within a time period that is specified by a registered nurse prior to the administration;

C. prior to the administration, the person is instructed by a registered nurse in the procedures to administer the medications to each client;

D. a registered nurse specifies, in writing, and documents in the clients' records, the procedures to administer the medications; and

E. prior to the administration, the person demonstrates to a registered nurse the person's ability to competently follow the procedure.

For purposes of this subpart, "pro re nata medication," commonly called p.r.n. medication, means a medication that is ordered to be administered to or taken by a client as necessary.

Subp. 3. **Limitations on administering medications.** A person who administers medications under subpart 2 may not inject medications into veins, muscle, or skin.

Subp. 4. **Performance of routine procedures.** A person who satisfies the requirements of subpart 5 may perform delegated medical or nursing and assigned therapy procedures, if:

A. prior to performing the procedures, the person is instructed by a registered nurse or therapist, respectively, in the proper methods to perform the procedures with respect to each client;

B. a registered nurse or therapist, respectively, specifies, in writing, specific instructions for performing the procedures for each client;

C. prior to performing the procedures, the person demonstrates to a registered nurse or therapist, respectively, the person's ability to competently follow the procedures; and

D. the procedures for each client are documented in the clients' records.

Subp. 5. **Qualifications for persons who perform home health aide tasks.** A person may only offer or perform home health aide tasks, or be employed to perform home health aide tasks, if the person has:

A. successfully completed the training and passed the competency evaluation required by part 4668.0130, subpart 1;

B. passed the competency evaluation required by part 4668.0130, subpart 3;

C. successfully completed training in another jurisdiction substantially equivalent to that required by item A;

D. satisfied the requirements of Medicare for training or competency of home health aides, as provided by Code of Federal Regulations, title 42, section 484.36;

E. satisfied subitems (1) and (2):

(1) meets the requirements of title XVIII of the Social Security Act for nursing assistants in nursing facilities certified for participation in the Medicare program, or has successfully completed a nursing assistant training program approved by the state; and

(2) has had at least 20 hours of supervised practical training or experience performing home health aide tasks in a home setting under the supervision of a registered nurse, or completes the supervised practical training or experience within one month after beginning work performing home health aide tasks, except that a class C licensee must have completed this supervised training or experience before a license will be issued; or

F. before April 19, 1993, completed a training course of at least 60 hours for home health aides that had been approved by the department.

Subp. 6. **In-service training and demonstration of competence.** For each person who performs home health aide tasks, the licensee must comply with items A to C.

A. For each 12 months of employment, each person who performs home health aide tasks shall complete at least eight hours of in-service training in topics relevant to the provision of home care services, including that required by part 4668.0065, subpart 3, obtained from the licensee or another source.

B. Licensees shall retain documentation of satisfying this part and shall provide documentation to persons who have completed the in-service training.

C. If a person has not performed home health aide tasks for a continuous period of 24 consecutive months, the person must demonstrate to a registered nurse competence in the skills listed in part 4668.0130, subpart 3, item A, subitem (1).

Subp. 7. **Documentation.** Class A licensees shall verify that persons employed or contracted by the licensees to perform home health aide tasks have satisfied the requirements of this part and shall retain documentation in the personnel records. Persons who perform home health aide tasks must provide documentation to the employing or contracting licensees of satisfying this part. Class C licensees shall retain documentation of satisfying this part.

Subp. 8. **Initiation of home health aide tasks.** Prior to the initiation of home health aide tasks, a registered nurse or therapist shall orient each person who is to perform home health aide tasks to each client and to the tasks to be performed.

Subp. 9. **Periodic supervision of home health aide tasks.** After the orientation required by subpart 8, a therapist or a registered nurse shall supervise, or a licensed practical nurse, under the direction of a registered nurse, shall monitor persons who perform home health aide tasks at the client's residence to verify that the work is being performed adequately, to identify problems, and to assess the appropriateness of the care to the client's needs. This supervision or monitoring must be provided no less often than the following schedule:

A. within 14 days after initiation of home health aide tasks; and

B. every 14 days thereafter, or more frequently if indicated by a clinical assessment, for home health aide tasks described in subparts 2 to 4; or

C. every 60 days thereafter, or more frequently if indicated by a clinical assessment, for all home health aide tasks other than those described in subparts 2 to 4.

If monitored by a licensed practical nurse, the client must be supervised at the residence by a registered nurse at least every other visit, and the licensed practical nurse must be under the direction of a registered nurse, according to Minnesota Statutes, sections 148.171 to 148.285.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48; 144A.752*

History: *17 SR 2454; 28 SR 1639*

4668.0110 HOME CARE AIDE TASKS.

Subpart 1. **Home care aide tasks.** For a class B, C, or E licensee, only a person who satisfies the requirements of subpart 2 or part 4668.0100, subpart 5, may perform the following services for clients:

A. preparing modified diets, such as diabetic or low sodium diets;

B. reminding clients to take regularly scheduled medications or perform exercises;

C. household chores in the presence of technically sophisticated medical equipment or episodes of acute illness or infectious disease;

D. household chores when the client's care requires the prevention of exposure to infectious disease or containment of infectious disease; and

E. assisting with dressing, oral hygiene, hair care, grooming, and bathing, if the client is ambulatory, and if the client has no serious acute illness or infectious disease. Oral hygiene means care of teeth, gums, and oral prosthetic devices.

Subp. 2. **Qualifications for persons who perform home care aide tasks.** No person may offer or perform home care aide tasks, or be employed to perform home care aide tasks, unless the person has:

A. successfully completed training and passed the competency evaluation required by part 4668.0130, subpart 1;

B. passed the competency evaluation required by part 4668.0130, subpart 3;

C. successfully completed training in another jurisdiction comparable to that required by item A; or

D. satisfied the requirements of part 4668.0100.

Subp. 3. **Documentation.** Class B and class E licensees shall verify that the persons employed or contracted by the licensees to perform home care aide tasks have satisfied the requirements of this part and shall retain documentation in the personnel records. Persons who perform home care aide tasks must provide documentation to the employing or contracting licensees of satisfying this part. Class C licensees shall retain documentation of satisfying this part.

Subp. 4. **In-service training.** For each person who performs home care aide tasks, the licensee must comply with items A to C.

A. For each 12 months of employment, each person who performs home care aide tasks must complete at least six hours of in-service training in topics relevant to the provision of home care services, including that required by part 4668.0065, subpart 3, obtained from the licensee or another source.

B. Licensees shall retain documentation of satisfying this part and shall provide documentation to persons who have completed the in-service training.

Subp. 5. **Class B supervision.** A class B licensee must have a registered nurse supervise or a licensed practical nurse monitor a person who provides home care aide tasks under this part no less often than the following schedule:

A. within 14 days after initiation of home care aide tasks; and

B. every 60 days thereafter, or more frequently if indicated by a clinical assessment.

If monitored by a licensed practical nurse, the client must be supervised at the residence by a registered nurse at least every other visit, and the licensed practical nurse must be under the direction of a registered nurse, according to Minnesota Statutes, sections 148.171 to 148.285.

Subp. 6. **Class E visits.** A class E licensee must visit the client and observe the provision of home care services every 60 days after initiation of home care aide tasks to verify that the work is being performed adequately and to identify problems.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48*

History: *17 SR 2454*

4668.0120 HOME MANAGEMENT TASKS.

Subpart 1. **Home management tasks.** Any person may perform services that are not listed in part 4668.0100, subpart 1, or part 4668.0110, subpart 1, including housekeeping, meal preparation, and shopping.

Subp. 2. **Training of persons who perform home management tasks.** Except for the orientation training required by Minnesota Statutes, section 144A.461, no training is required of persons who perform home management tasks.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48*

History: *17 SR 2454*

4668.0130 TRAINING AND COMPETENCY EVALUATION FOR PERSONS WHO PERFORM HOME HEALTH AIDE AND HOME CARE AIDE TASKS.

Subpart 1. **Scope of training course and instructor.** The training required by part 4668.0100, subpart 5, and by part 4668.0110, subpart 2, must:

A. include the topics and course requirements specified in subpart 2 and use a curriculum approved by the commissioner;

B. be taught by a registered nurse with experience or training in home care, except that specific topics required by subpart 2 may be taught by another instructor in conjunction with the registered nurse; and

C. include a competency evaluation required by subpart 3.

Subp. 2. **Curriculum.** The training required in part 4668.0100, subpart 5 for home health aide tasks must contain the topics described in items A to N, and must contain no less than 75 hours of classroom and laboratory instruction. The training required in part 4668.0110, subpart 2 for home care aide tasks, must contain the topics described in items A to G, and must contain no less than 24 hours of classroom and laboratory instruction. The required topics are:

A. those topics required in the orientation training required by part 4668.0075;

B. observation, reporting, and documentation of client status and of the care or services provided;

C. basic infection control;

D. maintenance of a clean, safe, and healthy environment;

E. medication reminders;

F. appropriate and safe techniques in personal hygiene and grooming, including bathing and skin care, the care of teeth, gums, and oral prosthetic devices, and assisting with toileting;

G. adequate nutrition and fluid intake including basic meal preparation and special diets;

H. communication skills;

I. reading and recording temperature, pulse, and respiration;

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

K. recognition of and handling emergencies;

L. 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;

M. safe transfer techniques and ambulation; and

N. range of motion and positioning.

Subp. 3. **Competency evaluation.** The competency evaluation tests must be approved by the commissioner.

A. To qualify to perform home health aide tasks, the person must pass the following:

(1) a practical skill test, administered by a registered nurse, that tests the subjects described in subpart 2, items E, F, I, M, and N; and

(2) a written, oral, or practical test of the topics listed in subpart 2, items A to D, G, H, and J to L.

B. To qualify to perform home care aide tasks, the person must pass the competency evaluation for home health aide tasks, or the following:

- (1) a practical skill test, administered by a registered nurse, that tests the subjects described in subpart 2, items E and F; and
- (2) a written, oral, or practical test of the topics in subpart 2, items A to D and G.

Subp. 4. **Evidence of qualifications.** A licensee that provides the training and the competency evaluation required by this part shall provide each person who completes the training or passes the competency evaluation with written certification of satisfying this part.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48*

History: *17 SR 2454*

4668.0140 SERVICE AGREEMENTS.

Subpart 1. **Service agreements.** No later than the second visit to a client, a licensee shall enter into a written service agreement with the client or the client's responsible person. Any modifications of the service agreement must be in writing and agreed to by the client or the client's responsible person.

Subp. 2. **Contents of service agreement.** The service agreement required by subpart 1 must include:

- A. a description of the services to be provided, and their frequency;
- B. identification of the persons or categories of persons who are to provide the services;
- C. the schedule or frequency of sessions of supervision or monitoring required, if any;
- D. fees for services;
- E. a plan for contingency action that includes:
 - (1) the action to be taken by the licensee, client, and responsible persons, if scheduled services cannot be provided;
 - (2) the method for a client or responsible person to contact a representative of the licensee whenever staff are providing services;
 - (3) who to contact in case of an emergency or significant adverse change in the client's condition;
 - (4) the method for the licensee to contact a responsible person of the client, if any; and
 - (5) circumstances in which emergency medical services are not to be summoned, consistent with the Adult Health Care Decisions Act, Minnesota Statutes, chapter 145B, and declarations made by the client under that act.

Class C licensees need not comply with items B and C and this item, subitems (2) and (5). Subitems (3) and (5) are not required for clients receiving only home management services.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48*

History: *17 SR 2454*

4668.0150 MEDICATION AND TREATMENT ORDERS.

Subpart 1. **Scope.** This part applies to medications and treatments that are ordered by a physician, osteopath, dentist, podiatrist, chiropractor, or other prescriber to be administered by the licensee.

Subp. 2. **Medication and treatment orders.** Medications and treatments must be administered by a nurse or therapist qualified to perform the order or by a person who performs home health aide tasks under the direction and supervision of the nurse or therapist consistent with part 4668.0100, subparts 2 to 4.

Subp. 3. **Authorizations.** All orders for medications and treatments must be dated and signed by the prescriber, except as provided by subpart 5.

Subp. 4. **Content of orders.** All orders for medications must contain the name of the drug, dosage, and directions for use.

Subp. 5. **Verbal orders.** Upon receiving an order verbally from a prescriber, the nurse or therapist shall:

A. record and sign the order; and

B. forward the written order to the prescriber for the prescriber's signature no later than seven days after receipt of the verbal order.

Subp. 6. **Renewal of orders.** All orders must be renewed at least every three months.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48*

History: *17 SR 2454*

4668.0160 CLIENT RECORDS.

Subpart 1. **Maintenance of client record.** The licensee shall maintain a record for each client.

Subp. 2. **Security.** The licensee shall establish written procedures to control use and removal of client records from the provider's offices and for security in client residences and to establish criteria for release of information. The client record must be readily accessible to personnel authorized by the licensee to use the client record.

Subp. 3. **Retention.** A client's record must be retained for at least five years following discharge. Arrangements must be made for secure storage and retrieval of client records if the licensee ceases business.

Subp. 4. **Transfer of client.** If a client transfers to another home care provider, other health care practitioner or provider, or is admitted to an inpatient facility, the licensee, upon request of the client, shall send a copy or summary of the client's record to the new provider or facility or to the client.

Subp. 5. **Form of entries.** All entries in the client record must be:

A. legible, permanently recorded in ink, dated, and authenticated with the name and title of the person making the entry; or

B. recorded in an electronic media in a secure manner.

Subp. 6. **Content of client record.** The client record must contain:

A. the following information about the client:

(1) name;

(2) address;

(3) telephone number;

(4) date of birth;

(5) dates of the beginning and end of services; and

(6) names, addresses, and telephone numbers of any responsible persons;

B. a service agreement as required by part 4668.0140;

C. medication and treatment orders, if any;

D. notes summarizing each contact with the client in the client's residence, signed by each individual providing service including volunteers, and entered in the record no later than two weeks after the contact;

E. names, addresses, and telephone numbers of the client's medical services providers and other home care providers, if known;

F. a summary following the termination of services, which includes the reason for the initiation and termination of services, and the client's condition at the termination of services.

Class C licensees need only include the information required by items A, B, and E. Class E licensees need only include the information required by items A, B, D, and E.

Subp. 7. Confidentiality. The licensee shall not disclose to any other person any personal, financial, medical, or other information about the client, except:

A. as may be required by law;

B. to staff, contractors of the licensee, another home care provider, other health care practitioner or provider, or inpatient facility who require information in order to provide services to the client, but only such information that is necessary to the provision of services;

C. to persons authorized in writing by the client or the client's responsible person to receive the information, including third-party payers; and

D. representatives of the commissioner authorized to survey or investigate home care providers.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48*

History: *17 SR 2454*

4668.0170 REQUEST BY CLIENT FOR DISCONTINUATION OF LIFE SUSTAINING TREATMENT.

Subpart 1. Action by person receiving request. If a client, family member, or other caregiver of the client requests that an employee or other agent of the licensee discontinue a life sustaining treatment, the employee or other agent of the licensee receiving the request:

A. shall take no action to discontinue the treatment; and

B. shall promptly inform the person's supervisor or other representative of the licensee of the client's request.

Subp. 2. Action by licensee. Upon being informed of a request for termination of treatment, the licensee shall promptly:

A. inform the client that the request will be made known to the physician who ordered the client's treatment; and

B. inform the physician of the client's request.

Subp. 3. Right to maintain treatment. This part does not require the licensee to discontinue treatment, except as may be required by law or court order.

Subp. 4. Rights of clients. This part does not diminish the rights of clients to control their treatments or terminate their relationships with providers.

Subp. 5. Health care declarations. This part shall be construed in a manner consistent with the Adult Health Care Decisions Act, Minnesota Statutes, chapter 145B, and declarations made by clients under that act.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48*

History: *17 SR 2454*

4668.0180 CLASS A PROVIDER, PROFESSIONAL HOME CARE AGENCY.

Subpart 1. Scope. This part applies only to a professional home care agency with a class A license under part 4668.0012, subpart 3.

Subp. 2. Required services. The licensee shall provide at least one of the following home care services directly:

A. professional nursing;

B. physical therapy;

C. speech therapy;

D. respiratory therapy;

E. occupational therapy;

F. nutritional services;

G. medical social services;

H. home health aide tasks; or

I. provision of medical supplies and equipment when accompanied by the provision of a home care service.

Subp. 3. **Scope of services.** The licensee may provide all home care services, except that the licensee may provide a hospice program only if licensed as a hospice program under part 4664.0010, as provided by Minnesota Statutes, section 144A.753, subdivision 1.

Subp. 4. **Medical social services.** If provided, medical social services must be provided in compliance with Minnesota Statutes, sections 148B.18 to 148B.28.

Subp. 5. **Nursing services.** If provided, nursing services must be provided according to Minnesota Statutes, sections 148.171 to 148.285.

Subp. 6. **Physical therapy.** If provided, physical therapy must be provided according to Minnesota Statutes, sections 148.65 to 148.78.

Subp. 7. **Other services.** Other services not addressed in this chapter may be provided.

Subp. 8. **Referrals.** If a licensee reasonably believes that a client is in need of another medical or health service, including that of a physician, osteopath, dentist, podiatrist, chiropractor, other health professional, or social service provider, the licensee shall:

- A. inform the client of the possible need;
- B. determine the client's preferences with respect to obtaining the service; and
- C. if the client desires the service, inform the client about available providers or referral services.

Subp. 9. **Quality assurance.** The licensee shall establish and implement a quality assurance plan, described in writing, in which the licensee must:

- A. monitor and evaluate two or more selected components of its services at least once every 12 months; and
- B. document the collection and analysis of data and the action taken as a result.

Subp. 10. **Equivalent requirements for certified providers.** A class A licensee that is certified for participation in Medicare as a home health agency under Code of Federal Regulations, title 42, part 484, need not comply with this part, or with the following items, if the Medicare certification is based on compliance with the federal conditions of participation, and on survey and enforcement by the Minnesota Department of Health as agent for the United States Department of Health and Human Services:

- A. part 4668.0040;
- B. part 4668.0050;
- C. part 4668.0060, subparts 1, 2, 3, and 6;
- D. part 4668.0070, subparts 2 and 3;
- E. part 4668.0080, subparts 1 and 2;
- F. part 4668.0100, subparts 1 and 4 to 9;
- G. part 4668.0110;
- H. part 4668.0130;
- I. part 4668.0140, subparts 1 and 2, items A to D;
- J. part 4668.0150;
- K. part 4668.0160;
- L. part 4668.0180, subparts 1 to 9.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48; 144A.752*

History: *17 SR 2454; 28 SR 1639*

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HOME CARE LICENSURE 4668.0220

4668.0190 CLASS B PROVIDER, PARAPROFESSIONAL AGENCY.

A paraprofessional agency with a class B license under part 4668.0012, subpart 3, may perform home care aide tasks and home management tasks.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48*

History: *17 SR 2454*

4668.0200 CLASS C PROVIDER, INDIVIDUAL PARAPROFESSIONALS.

Subpart 1. **Scope.** This part applies only to a paraprofessional with a class C license under part 4668.0012, subpart 3.

Subp. 2. **Services.** The licensee may perform:

- A. home health aide tasks;
- B. home care aide tasks; and
- C. home management tasks.

Subp. 3. **Training.** The licensee who performs home health aide tasks or home care aide tasks must meet the requirements of part 4668.0130 before a license will be issued.

Subp. 4. **Record of supervision.** The licensee who performs home health aide tasks must maintain a record of the supervision required by part 4668.0100, subpart 9.

Subp. 5. **Records.** The licensee must maintain a written record of the services provided at each visit to clients.

Subp. 6. **Notice of clientele.** Upon request of the commissioner, class C licensees shall provide the name, address, and telephone numbers of all or specified clients and the clients' responsible persons.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48*

History: *17 SR 2454*

4668.0210 [Repealed, 28 SR 1639]

4668.0215 CLASS E PROVIDER, ASSISTED LIVING SERVICES.

Subpart 1. **Scope.** This part applies only to an assisted living service holding a class E license.

Subp. 2. **Services.** Class E licensees may provide assisted living services.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48*

History: *17 SR 2454*

4668.0218 INFORMATION AND REFERRAL SERVICES.

The commissioner shall request from licensees information necessary to establish and maintain information and referral services required by Minnesota Statutes, section 144A.47, and licensees shall provide the requested information. This information may be required to be provided together with the licensing information required by part 4668.0012, or may be required to be provided separately.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48*

History: *17 SR 2454*

4668.0220 SURVEYS AND INVESTIGATIONS.

Subpart 1. **Surveys.** Except as provided in subpart 3 or 10, the commissioner may survey each applicant or licensee before issuing a new license or renewing an existing license. An applicant for a license that is certified and surveyed by the Minnesota Department of Health for Medicare or medical assistance shall be surveyed at the time of its next certification survey. Applicants and licensees shall provide any and all information requested by the surveyor or investigator that is within the scope of licensure.

Subp. 2. **Coordination of surveys.** If feasible, the commissioner shall survey licensees to determine compliance with this chapter at the same time as surveys for certification for Medicare and medical assistance if Medicare certification is based on compliance with the federal conditions of participation and on survey and enforcement by the Minnesota Department of Health as agent for the United States Department of Health and Human Services.

Subp. 3. **Biennial surveys.** A licensee that has been licensed for at least two consecutive years and that has been in substantial compliance with this chapter and Minnesota Statutes, sections 144A.43 to 144A.47, and has had no serious violations in that period, may be surveyed every second license term rather than during each license term.

Subp. 4. **Complaint investigations.** Upon receiving information that a licensee may be violating or may have violated a requirement of this chapter or Minnesota Statutes, sections 144A.43 to 144A.47, the commissioner shall investigate the complaint.

Subp. 5. **Scheduling surveys.** Surveys and investigations shall be conducted without advance notice to licensees. Surveyors may contact licensees on the day of a survey to arrange for someone to be available at the survey site. The contact does not constitute advance notice.

Subp. 6. **Contacting and visiting clients.** Surveyors may contact or visit a licensee's clients without notice to the licensee. Licensees shall provide a list of current and past clients and responsible persons with addresses and telephone numbers upon request of a surveyor. Before visiting a client, a surveyor shall obtain the client's or responsible person's permission by telephone, by mail, or in person. Surveyors shall inform all clients and responsible persons of their right to decline permission for a visit.

Subp. 7. **Information from clients.** The commissioner may solicit information from clients by telephone, mail, or other means.

Subp. 8. **Client information.** Upon the commissioner's request, licensees shall provide to the commissioner information identifying some or all of its clients and any other information about the licensee's services to the clients.

Subp. 9. **Sampling of clientele.** The commissioner may conduct a written survey of all or a sampling of home care clients to determine their satisfaction with the services provided.

Subp. 10. **Surveys of class C licensees.** The commissioner may survey class C licensees by telephoning, visiting, or writing to the licensees' clients. Office visits may be conducted, but are not required.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48; 144A.752*

History: *17 SR 2454; 24 SR 141; 28 SR 1639*

4668.0230 FINES FOR UNCORRECTED VIOLATIONS.

Subpart 1. **Authority.** The fines provided under this part are under the authority of Minnesota Statutes, sections 144.653, subdivision 6, and 144A.45, subdivision 2, clause (4).

Subp. 2. **Fines for license classes.** Class A, class B, and class E licensees shall be assessed fines at 100 percent of the amounts provided in subpart 3. Class C licensees shall be assessed fines at 25 percent of the amounts provided in subpart 3.

Subp. 3. **Schedule of fines for violations of statutory provisions.** For each violation of a statutory provision subject to a fine under Minnesota Statutes, section 144.653, subdivision 6, the following fines shall be assessed for the respective provision that was violated in Minnesota Statutes:

- A. section 144A.44, subdivision 1, clause (1), \$250;
- B. section 144A.44, subdivision 1, clause (2), \$250;
- C. section 144A.44, subdivision 1, clause (3), \$50;
- D. section 144A.44, subdivision 1, clause (4), \$350;

- E. section 144A.44, subdivision 1, clause (5), \$250;
- F. section 144A.44, subdivision 1, clause (6), \$250;
- G. section 144A.44, subdivision 1, clause (7), \$50;
- H. section 144A.44, subdivision 1, clause (8), \$250;
- I. section 144A.44, subdivision 1, clause (9), \$250;
- J. section 144A.44, subdivision 1, clause (10), \$250;
- K. section 144A.44, subdivision 1, clause (11), \$350;
- L. section 144A.44, subdivision 1, clause (12), \$250;
- M. section 144A.44, subdivision 1, clause (13), \$500;
- N. section 144A.44, subdivision 1, clause (14), \$250;
- O. section 144A.44, subdivision 1, clause (15), \$350;
- P. section 144A.44, subdivision 1, clause (16), \$250;
- Q. section 144A.44, subdivision 1, clause (17), \$500; and
- R. section 144A.44, subdivision 2, \$250.

Subp. 4. Schedule of fines for violations of Vulnerable Adults Act. For each violation of a statutory provision subject to a fine under Minnesota Statutes, section 626.557, the following fines shall be assessed:

- A. subdivision 3, \$250;
- B. subdivision 3a, \$100;
- C. subdivision 4, \$250;
- D. subdivision 9, \$250; and
- E. subdivision 17, \$250.

Subp. 5. Schedule of fines for violations of rules. For each violation of a rule provision subject to a fine under Minnesota Statutes, section 144.653, subdivision 6, the following fines shall be assessed for the respective rule that was violated:

- A. part 4668.0008, subpart 3, \$300;
- B. for providing false information required by part 4668.0012, subpart 6, \$500;
- C. part 4668.0012, subpart 8, \$100;
- D. part 4668.0012, subpart 17, \$50;
- E. a variance, under part 4668.0016, subpart 8, the fine shall be the amount of the fine established for the rule that was varied;
- F. part 4668.0019, \$250;
- G. part 4668.0030, subpart 2, \$250;
- H. part 4668.0030, subpart 3, \$50;
- I. part 4668.0030, subpart 4, \$50;
- J. part 4668.0030, subpart 5, \$50;
- K. part 4668.0030, subpart 6, \$50;
- L. part 4668.0030, subpart 7, \$250;
- M. part 4668.0035, subpart 1, \$250;
- N. part 4668.0035, subpart 2, \$100;
- O. part 4668.0035, subpart 3, \$100;
- P. part 4668.0040, subpart 1, \$250;
- Q. part 4668.0040, subpart 2, \$50;
- R. part 4668.0040, subpart 3, \$250;
- S. part 4668.0050, subpart 1, \$350;
- T. part 4668.0050, subpart 2, \$100;
- U. part 4668.0060, subpart 1, \$50;
- V. part 4668.0060, subpart 3, \$350;
- W. part 4668.0060, subpart 4, \$350;

X. part 4668.0060, subpart 5, \$500;
Y. part 4668.0060, subpart 6, \$300;
Z. part 4668.0065, subpart 1, \$500;
AA. part 4668.0065, subpart 2, \$500;
BB. part 4668.0065, subpart 3, \$300;
CC. part 4668.0070, subpart 2, \$50;
DD. part 4668.0070, subpart 3, \$50;
EE. part 4668.0070, subpart 4, \$50;
FF. part 4668.0075, subpart 1, \$300;
GG. part 4668.0075, subpart 2, \$100;
HH. part 4668.0075, subpart 4, \$50;
II. part 4668.0080, subpart 1, \$300;
JJ. part 4668.0080, subpart 2, \$300;
KK. part 4668.0080, subpart 3, \$300;
LL. part 4668.0080, subpart 4, \$300;
MM. part 4668.0080, subpart 5, \$300;
NN. part 4668.0100, subpart 1, \$350;
OO. part 4668.0100, subpart 2, \$350;
PP. part 4668.0100, subpart 3, \$500;
QQ. part 4668.0100, subpart 4, \$350;
RR. part 4668.0100, subpart 5, \$300;
SS. part 4668.0100, subpart 6, \$300;
TT. part 4668.0100, subpart 7, \$50;
UU. part 4668.0100, subpart 8, \$350;
VV. part 4668.0100, subpart 9, \$350;
WW. part 4668.0110, subpart 1, \$350;
XX. part 4668.0110, subpart 2, \$300;
YY. part 4668.0110, subpart 3, \$50;
ZZ. part 4668.0110, subpart 4, \$300;
AAA. part 4668.0110, subpart 5, \$350;
BBB. part 4668.0110, subpart 6, \$350;
CCC. part 4668.0120, subpart 2, \$50;
DDD. part 4668.0130, subpart 1, \$300;
EEE. part 4668.0130, subpart 2, \$300;
FFF. part 4668.0130, subpart 3, \$300;
GGG. part 4668.0130, subpart 4, \$50;
HHH. part 4668.0140, subpart 1, \$250;
III. part 4668.0140, subpart 2, \$50;
JJJ. part 4668.0150, subpart 2, \$350;
KKK. part 4668.0150, subpart 3, \$350;
LLL. part 4668.0150, subpart 4, \$350;
MMM. part 4668.0150, subpart 5, \$350;
NNN. part 4668.0150, subpart 6, \$350;
OOO. part 4668.0160, subpart 1, \$100;
PPP. part 4668.0160, subpart 2, \$100;
QQQ. part 4668.0160, subpart 3, \$50;
RRR. part 4668.0160, subpart 4, \$100;
SSS. part 4668.0160, subpart 5, \$50;

TTT. part 4668.0160, subpart 6, \$100;
 UUU. part 4668.0160, subpart 7, \$350;
 VVV. part 4668.0170, subpart 1, \$500;
 WWW. part 4668.0170, subpart 2, \$500;
 XXX. part 4668.0180, subpart 3, \$500;
 YYY. part 4668.0180, subpart 4, \$300;
 ZZZ. part 4668.0180, subpart 5, \$300;
 AAAA. part 4668.0180, subpart 6, \$300;
 BBBB. part 4668.0180, subpart 8, \$200;
 CCCC. part 4668.0180, subpart 9, \$100;
 DDDD. part 4668.0190, \$500;
 EEEE. part 4668.0200, subpart 2, \$500;
 FFFF. part 4668.0200, subpart 4, \$100;
 GGGG. part 4668.0200, subpart 5, \$50;
 HHHH. part 4668.0200, subpart 6, \$500;
 IIII. part 4668.0220, subpart 6, \$500; and
 JJJJ. part 4668.0220, subpart 8, \$500.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48; 144A.752*

History: *17 SR 2454; 24 SR 141; 28 SR 1639*

4668.0240 FAILURE TO CORRECT DEFICIENCY AFTER FINE HAS BEEN IMPOSED.

If, upon subsequent reinspection after a fine has been imposed under part 4668.0230, the deficiency has still not been corrected, another fine shall be assessed. This fine shall be double the amount of the previous fine.

Statutory Authority: *MS s 144A.45; 144A.46; 144A.47; 144A.48*

History: *17 SR 2454*

ASSISTED LIVING HOME CARE PROVIDERS

4668.0800 ASSISTED LIVING HOME CARE PROVIDER.

Subpart 1. **Scope of license.** An assisted living home care provider licensee may provide nursing services, delegated nursing services, other services performed by unlicensed personnel, or central storage of medications, solely for residents of one or more housing with services establishments registered under Minnesota Statutes, chapter 144D.

Subp. 2. **Required services.** An assisted living home care provider licensee must provide at least one of the following assisted living home care services directly:

- A. professional nursing services;
- E. delegated nursing services;
- C. non-nursing services performed by unlicensed personnel; or
- D. central storage of medications.

Subp. 3. **Fulfillment of services.** An assisted living home care provider licensee must provide all services required by a client's service plan under part 4668.0815.

Subp. 4. **Referrals.** If an assisted living home care provider licensee reasonably believes that a client is in need of another medical or health service, including that of a physician, osteopath, dentist, podiatrist, chiropractor, other health professional, or social service provider, the licensee must:

- A. inform the client of the possible need;
- B. determine the client's preferences with respect to obtaining the service; and

C. if the client desires the service, inform the client about available providers or referral services.

Subp. 5. **Availability of contact person.** An assisted living home care provider licensee must have a contact person available for consultation whenever an unlicensed person employed by the licensee is performing assisted living home care services for a client. The contact person must be available to unlicensed personnel in person, by telephone, or by other means of direct communication.

Subp. 6. **Violations of rules.** For each violation of parts 4668.0800 to 4668.0870 subject to a fine under Minnesota Statutes, section 144.653, subdivisions 5 to 8, a fine shall be assessed according to the schedules established in parts 4668.0800 to 4668.0870.

Subp. 7. **Failure to correct deficiency.** If, upon subsequent reinspection after a fine has been imposed under subpart 6, the deficiency has still not been corrected, another fine must be assessed. This fine must be double the amount of the previous fine.

Subp. 8. **Schedule of fines.** For a violation of the following subparts, the stated fine shall be assessed:

- A. subpart 3, \$350;
- B. subpart 4, \$200; and
- C. subpart 5, \$300.

Statutory Authority: *MS s 144A.45*

History: *24 SR 141*

4668.0805 ORIENTATION TO HOME CARE REQUIREMENTS.

Subpart 1. **Orientation.** An individual applicant for an assisted living home care provider license and a person who provides direct care, supervision of direct care, or management of services for a licensee must complete an orientation to home care requirements before providing home care services to clients. The orientation may be incorporated into the training of unlicensed personnel required under part 4668.0835, subpart 2. The orientation need only be completed once.

Subp. 2. **Content.** The orientation required under subpart 1 must contain the following topics:

- A. an overview of this chapter and Minnesota Statutes, sections 144A.43 to 144A.47;
- B. handling emergencies and using emergency services;
- C. reporting the maltreatment of vulnerable minors or adults under Minnesota Statutes, sections 626.556 and 626.557;
- D. the home care bill of rights, Minnesota Statutes, section 144A.44;
- E. handling of clients' complaints and how clients and staff may report complaints to the Office of Health Facility Complaints; and
- F. the services of the ombudsman for older Minnesotans.

Subp. 3. **Sources of orientation.** The orientation training required by this part may be provided by an assisted living home care provider licensee or may be obtained from other sources. The commissioner must provide a curriculum and materials that may be used to present the orientation.

Subp. 4. **Verification and documentation.** An assisted living home care provider licensee must retain evidence that each person has completed the orientation training required under this part.

Subp. 5. **Transferability.** An assisted living home care provider licensee may accept written verification from another provider that a person has completed the orientation required under this part.

Subp. 6. **Schedule of fines.** For a violation of the following subparts, the stated fine shall be assessed:

- A. subpart 1, \$300;

- B. subpart 2, \$100; and
- C. subpart 4, \$50.

Statutory Authority: *MS s 144A.45; 144A.752*

History: *24 SR 141; 28 SR 1639*

4668.0810 CLIENT RECORDS.

Subpart 1. Maintenance of client record. An assisted living home care provider licensee must maintain a record for each client at the housing with services establishment where the services are provided. The client record must be readily accessible to personnel authorized by the licensee to use the client record.

Subp. 2. Security. An assisted living home care provider licensee must establish and implement written procedures for security of client records, including:

- A. the use of client records;
- B. the removal of client records from the establishment; and
- C. the criteria for release of client information.

Subp. 3. Retention. An assisted living home care provider licensee must retain a client's record for at least five years following the client's discharge or discontinuation of services. Arrangements must be made for secure storage and retrieval of client records if the licensee ceases business.

Subp. 4. Transfer of client. If a client transfers to another home care provider or other health care practitioner or provider or is admitted to an inpatient facility, an assisted living home care provider licensee, upon request of the client, must send a copy or summary of the client's record to the new provider or facility or to the client.

Subp. 5. Form of entries. Except as required by subpart 6, items F and G, documentation of an assisted living home care service must be created and signed by the staff person providing the service no later than the end of the work period. The documentation must be entered into the client record no later than two weeks after the end of the day service was provided. All entries in the client record must be:

- A. legible, permanently recorded in ink, dated, and authenticated with the name and title of the person making the entry; or
- B. recorded in an electronic media in a manner that ensures the confidentiality and security of the electronic information, according to current standards of practice in health information management, and that allows for a printed copy to be created.

Subp. 6. Content of client record. The client record must be accurate, up to date, and available to all persons responsible for assessing, planning, and providing assisted living home care services. The record must contain:

- A. the following information about the client:
 - (1) name;
 - (2) address;
 - (3) telephone number;
 - (4) date of birth;
 - (5) dates of the beginning and end of services;
 - (6) names, addresses, and telephone numbers of any responsible persons;
 - (7) primary diagnosis and any other relevant current diagnoses;
 - (8) allergies, if any; and
 - (9) the client's advance directive, if any;
- B. an evaluation and service plan as required under part 4668.0815;
- C. a nursing assessment for nursing services, delegated nursing services, or central storage of medications, if any;
- D. medication and treatment orders, if any;
- E. the client's current tuberculosis infection status, if known;

F. documentation of each instance of assistance with self-administration of medication and of medication administration, if any;

G. documentation on the day of occurrence of any significant change in the client's status or any significant incident, including a fall or a refusal to take medications, and any actions by staff in response to the change or incident;

H. documentation at least weekly of the client's status and the home care services provided, if not addressed under item F or G;

I. the names, addresses, and telephone numbers of the client's medical services providers and other home care providers, if known;

J. a summary following the discontinuation of services, which includes the reason for the initiation and discontinuation of services and the client's condition at the discontinuation of services; and

K. any other information necessary to provide care for each individual client.

Subp. 7. **Confidentiality.** An assisted living home care provider licensee must not disclose to any other person any personal, financial, medical, or other information about the client, except:

A. as may be required by law;

B. to staff, another home care provider, a health care practitioner or provider, or an inpatient facility that requires information to provide services to the client, but only the information that is necessary to provide services;

C. to persons authorized in writing by the client or the client's responsible person to receive the information, including third-party payers; or

D. to representatives of the commissioner authorized to survey or investigate home care providers.

Subp. 8. **Schedule of fines.** For a violation of the following subparts, the stated fine shall be assessed:

A. subpart 1, \$100;

B. subpart 2, \$100;

C. subpart 3, \$50;

D. subpart 4, \$100;

E. subpart 5, \$50;

F. subpart 6, \$100; and

G. subpart 7, \$350.

Statutory Authority: *MS s 144A.45*

History: *24 SR 141*

4668.0815 EVALUATION AND SERVICE PLAN.

Subpart 1. **Evaluation; documentation.** No later than two weeks after the initiation of assisted living home care services to a client, a registered nurse must complete an individualized evaluation of the client's needs and must establish, with the client or the client's responsible person, a suitable and up-to-date service plan for providing assisted living home care services in accordance with accepted standards of practice for professional nursing. The service plan must be in writing and include a signature or other authentication by the assisted living home care provider licensee and by the client or the client's responsible person documenting agreement on the services to be provided.

Subp. 2. **Reevaluation.** A registered nurse must review and revise a client's evaluation and service plan at least annually or more frequently when there is a change in the client's condition that requires a change in services.

Subp. 3. **Modifications.** A modification of the service plan must be in writing and agreed to by the client or the client's responsible person before the modification is initiated. A modification must be authenticated by the client or the client's responsible

person and must be entered into the client's record no later than two weeks after the modification is initiated.

Subp. 4. Contents of service plan. The service plan required under subpart 1 must include:

A. a description of the assisted living home care service or services to be provided and the frequency of each service, according to the individualized evaluation required under subpart 1;

B. the identification of the persons or categories of persons who are to provide the services;

C. the schedule or frequency of sessions of supervision or monitoring required by law, rule, or the client's condition for the services or the persons providing those services, if any;

D. the fees for each service; and

E. a plan for contingency action that includes:

(1) the action to be taken by the assisted living home care provider licensee, client, and responsible person if scheduled services cannot be provided;

(2) the method for a client or responsible person to contact a representative of the assisted living home care provider licensee whenever staff are providing services;

(3) the name and telephone number of the person to contact in case of an emergency or significant adverse change in the client's condition;

(4) the method for the assisted living home care provider licensee to contact a responsible person of the client, if any; and

(5) the circumstances in which emergency medical services are not to be summoned, consistent with Minnesota Statutes, chapters 145B and 145C, and declarations made by the client under those chapters.

Subp. 5. Scheduled appointments for nonessential services. If an assisted living home care provider licensee or employee of a licensee is unable, for any reason, to keep a scheduled appointment for a service that is not essential for medical or safety reasons, the licensee must:

A. follow the procedure established in the service plan;

B. provide a replacement person; or

C. notify the client that the appointment will not be kept and schedule a new appointment or arrange for some other reasonable alternative.

Subp. 6. Scheduled appointments for essential services. If, for medical or safety reasons, a service to be provided must be completed at the scheduled time and the assisted living home care provider licensee or employee of a licensee is unable, for any reason, to keep the scheduled appointment, the licensee must make arrangements to complete the service through a contract with another provider or through other reasonable means.

Subp. 7. Schedule of fines. For a violation of the following subparts, the stated fine shall be assessed:

A. subpart 1, \$250;

B. subpart 2, \$250;

C. subpart 3, \$250;

D. subpart 4, \$50;

E. subpart 5, \$350; and

F. subpart 6, \$500.

Statutory Authority: *MS s 144A.45*

History: *24 SR 141*

4668.0820 NURSING SERVICES.

Subpart 1. **Scope.** This part applies to an assisted living home care provider licensee that provides nursing services.

Subp. 2. **Compliance with Minnesota Nurse Practice Act.** Nursing services must be provided according to Minnesota Statutes, sections 148.171 to 148.285, and rules adopted thereunder.

Statutory Authority: *MS s 144A.45*

History: *24 SR 141*

4668.0825 DELEGATED NURSING SERVICES.

Subpart 1. **Scope.** This part applies to an assisted living home care provider licensee that provides nursing services delegated to unlicensed personnel.

Subp. 2. **Nursing assessment and service plan.** Before initiating delegated nursing services for a client, a registered nurse must conduct a nursing assessment of the client's functional status and need for nursing services and must develop a service plan for providing the services according to the client's needs and preferences. The service plan must include the frequency of supervision of the task and of the person providing the service for the client according to part 4668.0845. The service plan for delegated nursing services must be maintained as part of the service plan required under part 4668.0815.

Subp. 3. **Nursing services delegated to unlicensed personnel.** A registered nurse may delegate the nursing services specified in items A to I only to a person who satisfies the requirements of part 4668.0835 and possesses the knowledge and skills consistent with the complexity of the nursing task being delegated, only in accordance with Minnesota Statutes, sections 148.171 to 148.285. Nursing services that may be delegated are:

A. performing assistance with self-administration of medication and medication administration according to part 4668.0855;

B. performing routine delegated medical or nursing procedures, as provided under subpart 4;

C. assisting with body positioning or transfer of a client;

D. feeding a client who, because of the client's condition, is at risk of choking;

E. assisting with bowel and bladder control, devices, and training programs;

F. assisting with therapeutic or passive range of motion exercises;

G. providing skin care, including full or partial bathing and foot soaks;

H. during episodes of serious disease or acute illness, providing the following services or assisting a client to:

(1) maintain the hygiene of the client's body and immediate environment;

(2) satisfy nutritional needs;

(3) assist with the client's mobility, including movement, change of location, and positioning;

(4) bathe;

(5) maintain oral hygiene;

(6) dress;

(7) care for hair;

(8) use the toilet;

(9) change bedding;

(10) perform basic housekeeping; and

(11) prepare meals; and

I. providing central storage of medications, according to part 4668.0865.

Subp. 4. **Performance of routine procedures.** A person who satisfies the requirements of part 4668.0835, subpart 2, may perform delegated nursing procedures if:

- A. before performing the procedures, the person is instructed by a registered nurse in the proper methods to perform the procedures with respect to each client;
- B. a registered nurse specifies in writing specific instructions for performing the procedures for each client;
- C. before performing the procedures, the person demonstrates to a registered nurse the person's ability to competently follow the procedures;
- D. the procedures for each client are documented in the client's record; and
- E. the assisted living home care provider licensee retains documentation by the registered nurse regarding the person's demonstrated competency.

Subp. 5. **Information to determine delegation.** The licensee must establish and implement policies to communicate up-to-date information to the registered nurse regarding the current available unlicensed personnel and their training and qualifications, so the registered nurse has sufficient information to determine the appropriateness of delegating tasks in individual situations.

Subp. 6. **Schedule of fines.** For a violation of the following subparts, the stated fine shall be assessed:

- A. subpart 2, \$250;
- B. subpart 3, \$350;
- C. subpart 4, \$350; and
- D. subpart 5, \$350.

Statutory Authority: *MS s 144A.45*

History: *24 SR 141*

4668.0830 OTHER SERVICES PERFORMED BY UNLICENSED PERSONNEL.

Subpart 1. **Scope.** This part applies to an assisted living home care provider licensee that provides other services performed by unlicensed personnel.

Subp. 2. **Other services.** A person who satisfies the requirements of part 4668.0835 may perform services in the registered housing with services establishment including:

- A. preparing modified diets, including diabetic or low sodium diets;
- B. providing medication reminders;
- C. performing household chores in the presence of technically sophisticated medical equipment or episodes of acute illness or infectious disease;
- D. performing household chores when the client's care requires the prevention of exposure to infectious disease or containment of infectious disease;
- E. assisting with dressing, oral hygiene, hair care, grooming, and bathing; and
- F. performing home management tasks.

Subp. 3. **Schedule of fines.** A fine of \$350 shall be assessed for a violation of subpart 2.

Statutory Authority: *MS s 144A.45*

History: *24 SR 141*

4668.0835 QUALIFICATIONS FOR UNLICENSED PERSONNEL WHO PERFORM ASSISTED LIVING HOME CARE SERVICES.

Subpart 1. **Scope.** This part applies to an assisted living home care provider licensee that provides assisted living home care services using unlicensed personnel.

Subp. 2. **Qualifications.** An unlicensed person may offer to perform, or be employed to perform nursing services delegated to unlicensed personnel as provided under part 4668.0825, other services performed by unlicensed personnel as provided under part 4668.0830, or central storage of medications as provided under part 4668.0865, only if the person has:

A. successfully completed the training and passed the competency evaluation according to part 4668.0840, subpart 2;

B. successfully completed the training under part 4668.0840, subpart 3, and passed a competency evaluation according to part 4668.0840, subpart 4; or

C. satisfied the requirements of part 4668.0100, subpart 5.

Subp. 3. In-service training and demonstration of competency. For each unlicensed person who performs assisted living home care services, an assisted living home care provider licensee must comply with items A to C.

A. For each 12 months of employment, a person who performs assisted living home care services must complete at least eight hours of in-service training in topics relevant to the provision of home care services, including training in infection control required under part 4668.0065, subpart 3, obtained from the licensee or another source.

B. If a person has not performed assisted living home care services for a continuous period of 24 consecutive months, the person must demonstrate to a registered nurse competence according to part 4668.0840, subpart 4, item C.

C. A licensee must retain documentation of satisfying this part and must provide documentation to a person who completes the in-service training.

Subp. 4. Documentation.

A. An unlicensed person who performs assisted living home care services must provide documentation to the employing licensee of satisfying this part.

B. An assisted living home care provider licensee must verify that unlicensed persons employed by the licensee to perform assisted living home care services have satisfied the requirements of this part, and must retain documentation in the personnel records.

Subp. 5. Initiation of services by unlicensed personnel. Before initiating delegated nursing services by unlicensed personnel, a registered nurse must orient each person who is to perform assisted living home care services to each client and to the assisted living home care services to be performed. Based on the professional judgment of the registered nurse and on the individual needs of the client, the orientation may occur onsite, verbally, or in writing.

Subp. 6. Schedule of fines. For a violation of the following subparts, the stated fine shall be assessed:

A. subpart 2, \$300;

B. subpart 3, \$300;

C. subpart 4, \$50; and

D. subpart 5, \$350.

Statutory Authority: *MS s 144A.45*

History: *24 SR 141*

4668.0840 TRAINING AND COMPETENCY EVALUATION FOR UNLICENSED PERSONNEL.

Subpart 1. Scope. This part applies to an assisted living home care provider licensee that provides assisted living home care services using unlicensed personnel.

Subp. 2. Scope of training course and instructor. The training required under part 4668.0835, subpart 2, must:

A. include each assisted living home care service offered to clients that the unlicensed person will perform, taught by a registered nurse with experience or training in the subject being taught;

B. include the core training requirements specified in subpart 3;

C. include the competency evaluation required under subpart 4; and

D. use a curriculum that meets the requirements of this chapter and Minnesota Statutes, sections 144A.43 to 144A.47.

Subp. 3. Core training of unlicensed personnel.

A. An unlicensed person performing assisted living home care services must successfully complete training or demonstrate competency in the topics described in subitems (1) to (12). The required topics are:

- (1) an overview of this chapter and Minnesota Statutes, sections 144A.43 to 144A.47;
- (2) recognizing and handling emergencies and using emergency services;
- (3) reporting maltreatment of vulnerable minors or adults under Minnesota Statutes, sections 626.556 and 626.557;
- (4) the home care bill of rights, Minnesota Statutes, section 144A.44;
- (5) handling clients' complaints and reporting complaints to the Office of Health Facility Complaints;
- (6) the services of the ombudsman for older Minnesotans;
- (7) communication skills;
- (8) observing, reporting, and documenting client status and the care or services provided;
- (9) basic infection control;
- (10) maintaining a clean, safe, and healthy environment;
- (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.

B. The core training of unlicensed personnel must be taught by a registered nurse with experience or training in home care, except that item A, subitems (1) to (7), may be taught by another instructor under the direction of the registered nurse.

C. The core training curriculum must meet the requirements of this chapter and Minnesota Statutes, sections 144A.43 to 144A.47.

Subp. 4. Competency evaluation.

A. The competency evaluation tests required under part 4668.0835, subpart 2, items A and B, must meet the requirements of this chapter and Minnesota Statutes, sections 144A.43 to 144A.47.

B. A registered nurse must complete and document each competency evaluation.

C. To qualify to perform assisted living home care services, a person must demonstrate competency by successfully completing:

- (1) a written, oral, or practical test of the topics in subpart 3; and
- (2) a written, oral, or practical test of all assisted living home care provider services that the person will perform.

Subp. 5. Evidence of qualifications. An assisted living home care provider licensee that provides the training and the competency evaluation required by this part must provide each person who successfully completes the training or passes the competency evaluation with written verification of satisfying this part.

Subp. 6. Schedule of fines. For a violation of the following subparts, the stated fine shall be assessed:

- A. subpart 2, \$300;
- B. subpart 3, \$300;
- C. subpart 4, \$300; and
- D. subpart 5, \$50.

Statutory Authority: *MS s 144A.45; 144A.752*

History: *24 SR 141; 28 SR 1639*

4668.0845 PERIODIC SUPERVISION OF UNLICENSED PERSONNEL.

Subpart 1. **Scope.** This part applies to an assisted living home care provider licensee that provides assisted living home care services using unlicensed personnel.

Subp. 2. **Services that require supervision by a registered nurse.**

A. After the orientation required under part 4668.0835, subpart 5, a registered nurse must supervise, or a licensed practical nurse under the direction of a registered nurse must monitor, unlicensed persons who perform assisted living home care services that require supervision by a registered nurse at the housing with services establishment, to verify that the work is being performed adequately, identify problems, and assess the appropriateness of the care to the client's needs. Supervision or monitoring must be provided no less often than the following schedule:

(1) within 14 days after initiation of assisted living home care services that require supervision by a registered nurse; and

(2) at least every 62 days thereafter, or more frequently if indicated by a nursing assessment and the client's individualized service plan.

B. If the unlicensed person is monitored by a licensed practical nurse, the client must be supervised by a registered nurse at the housing with services establishment at least every other visit and the licensed practical nurse must be under the direction of a registered nurse, according to Minnesota Statutes, sections 148.171 to 148.285.

Subp. 3. **Services that do not require supervision by a registered nurse.** After the orientation required under part 4668.0835, subpart 5, unlicensed persons who perform services listed under part 4668.0830, subpart 2, or other assisted living home care services that do not require supervision by a registered nurse must be supervised at the housing with services establishment, to verify that the work is being performed adequately, identify problems, and assess the appropriateness of the care to the client's needs. The service plan developed under part 4668.0815 must address the frequency of the supervision of each service and the appropriate person to perform the supervision.

Subp. 4. **Schedule of fines.** For a violation of the following subparts, the stated fine shall be assessed:

A. subpart 2, \$350; and

B. subpart 3, \$300.

Statutory Authority: *MS s 144A.45*

History: *24 SR 141*

4668.0855 MEDICATION ADMINISTRATION AND ASSISTANCE WITH SELF-ADMINISTRATION OF MEDICATION.

Subpart 1. **Scope.** This part applies to an assisted living home care provider licensee that provides medication administration or assistance with self-administration of medication by unlicensed personnel.

Subp. 2. **Nursing assessment and service plan.** For each client who will be provided with assistance with self-administration of medication or medication administration, a registered nurse must conduct a nursing assessment of each client's functional status and need for assistance with self-administration of medication or medication administration, and develop a service plan for the provision of the services according to the client's needs and preferences. The service plan must include the frequency of supervision of the task and of the person providing the service for the client according to part 4668.0845, and must be maintained as part of the service plan required under part 4668.0815.

Subp. 3. **Delegation by a registered nurse.** A registered nurse may delegate medication administration or assistance with self-administration of medication only to a person who satisfies the requirements of part 4668.0835, subpart 2, and possesses the knowledge and skills consistent with the complexity of medication administration or

assistance with self-administration of medication, only in accordance with Minnesota Statutes, sections 148.171 to 148.285.

Subp. 4. Training for assistance with self-administration of medication or medication administration. Before the registered nurse delegates the task of assistance with self-administration of medication or the task of medication administration, a registered nurse must instruct the unlicensed person on the following:

- (1) the complete procedure for checking a client's medication record;
- (2) preparation of the medication for administration;
- (3) administration of the medication to the client;
- (4) assistance with self-administration of medication;
- (5) documentation, after assistance with self-administration of medication or medication administration, of the date, time, dosage, and method of administration of all medications, or the reason for not assisting with self-administration of medication or medication administration as ordered, and the signature of the nurse or authorized person who assisted or administered and observed the same; and
- (6) the type of information regarding assistance with self-administration of medication and medication administration reportable to a nurse.

Subp. 5. Administration of medications. A person who satisfies the requirements of subpart 4 and has been delegated the responsibility by a registered nurse, may administer medications, orally, by suppository, through eye drops, through ear drops, by use of an inhalant, topically, by injection, or through a gastrostomy tube, if:

A. the medications are regularly scheduled; and

B. in the case of pro re nata medications, the administration of the medication is reported to a registered nurse either:

(1) within 24 hours after its administration; or

(2) within a time period that is specified by a registered nurse prior to the administration.

Subp. 6. Limitations on administering medications. A person who administers medications under subpart 3 may not draw up injectables. Medication administered by injection under subpart 5 is limited to insulin.

Subp. 7. Performance of routine procedures. A person who satisfies the training requirements of subpart 4 may perform assistance with self-administration of medication or medication administration if:

A. before performing the procedures, the person is instructed by a registered nurse in the proper methods to perform the procedures with respect to each client;

B. a registered nurse specifies in writing specific instructions for performing the procedures for each client;

C. before performing the procedures, the person demonstrates to a registered nurse the person's ability to competently follow the procedures;

D. the procedures for each client are documented in the client's records; and

E. the assisted living home care provider licensee retains documentation by the registered nurse regarding the person's demonstrated competency.

Subp. 8. Documentation. An assisted living home care provider licensee must retain documentation in the personnel records of the unlicensed personnel who have satisfied the training requirements of this part.

Subp. 9. Medication records. The name, date, time, quantity of dosage, and the method of administration of all prescribed legend and over-the-counter medications, and the signature and title of the authorized person who provided assistance with self-administration of medication or medication administration must be recorded in the client's record following the assistance with self-administration of medication or medication administration. If assistance with self-administration of medication or medication administration was not completed as prescribed, documentation must

include the reason why it was not completed and any follow up procedures that were provided.

Subp. 10. **Schedule of fines.** For a violation of the following subparts, the stated fine shall be assessed:

- A. subpart 2, \$350;
- B. subpart 3, \$350;
- C. subpart 4, \$300;
- D. subpart 5, \$350;
- E. subpart 6, \$500;
- F. subpart 7, \$350;
- G. subpart 8, \$50; and
- H. subpart 9, \$300.

Statutory Authority: *MS s 144A.45*

History: *24 SR 141*

4668.0860 MEDICATION AND TREATMENT ORDERS.

Subpart 1. **Scope.** This part applies to an assisted living home care provider licensee when an authorized prescriber orders a medication or treatment to be administered by the licensee.

Subp. 2. **Prescriber's order required.** There must be a written prescriber's order for a drug for which an assisted living home care provider licensee provides assistance with self-administration of medication or medication administration, including an over-the-counter drug.

Subp. 3. **Medication and treatment orders.** A medication or treatment must be administered by a nurse qualified to implement the order or by an unlicensed person under the direction of a nurse and the supervision of a registered nurse, according to part 4668.0845.

Subp. 4. **Authorizations.** An order for medication or treatment must be dated and signed by the prescriber, except as provided by subparts 6 and 7, and must be current and consistent with the nursing assessment required under part 4668.0855, subpart 2.

Subp. 5. **Content of medication orders.** An order for medication must contain the name of the drug, dosage indication, and directions for use.

Subp. 6. **Verbal orders.** Upon receiving an order verbally from a prescriber, a nurse must:

- A. record and sign the order; and
- B. forward the written order to the prescriber for the prescriber's signature no later than seven days after receipt of the verbal order.

Subp. 7. **Electronically transmitted orders.**

A. An order received by telephone, facsimile machine, or other electronic means must be kept confidential according to Minnesota Statutes, sections 144.335 and 144A.44.

B. An order received by telephone, facsimile machine, or other electronic means must be communicated to the supervising registered nurse within one hour of receipt.

C. An order received by electronic means, not including facsimile machine, must be immediately recorded or placed in the client's record by a nurse and must be countersigned by the prescriber within 62 days.

D. An order received by facsimile machine must have been signed by the prescriber and must be immediately recorded or a durable copy placed in the client's record by a person authorized by the assisted living home care provider licensee.

Subp. 8. **Implementation of order.** When an order is received, the assisted living home care provider licensee or an employee of the licensee must take action to implement the order within 24 hours of receipt of the order.

Subp. 9. **Renewal of orders.** A medication or treatment order must be renewed at least every 12 months or more frequently as indicated by the nursing assessment required under part 4668.0855, subpart 2.

Subp. 10. **Schedule of fines.** For a violation of the following subparts, the stated fine shall be assessed:

- A. subpart 2, \$350;
- B. subpart 3, \$350;
- C. subpart 4, \$350;
- D. subpart 5, \$350;
- E. subpart 6, \$350;
- F. subpart 7, item A, \$250;
- G. subpart 7, item B, \$300;
- H. subpart 7, item C, \$300;
- I. subpart 7, item D, \$300;
- J. subpart 8, \$500 per day; and
- K. subpart 9, \$100.

Statutory Authority: *MS s 144A.45*

History: *24 SR 141*

4668.0865 CENTRAL STORAGE OF MEDICATION.

Subpart 1. **Scope.** This part applies to an assisted living home care provider licensee that provides central storage of medications.

Subp. 2. **Nursing assessment and service plan.** For a client for whom medications will be centrally stored, a registered nurse must conduct a nursing assessment of a client's functional status and need for central medication storage, and develop a service plan for the provision of that service according to the client's needs and preferences. The service plan must include the frequency of supervision of the task and of the person providing the service for the client according to part 4668.0845. The service plan for central storage of medication must be maintained as part of the service plan required under part 4668.0815.

Subp. 3. **Control of medications.**

A. A registered nurse or pharmacist must establish and maintain a system that addresses the control of medications, handling of medications, medication containers, medication records, and disposition of medications.

B. The system must contain at least the following provisions:

- (1) a statement of whether the staff will provide medication reminders, assistance with self-administration of medication, medication administration, or a combination of those services;
- (2) a description of how the distribution and storage of medications will be handled, including a description of suitable storage facilities;
- (3) the procedures for recording medications that clients are taking;
- (4) the procedures for storage of legend and over-the-counter drugs;
- (5) a method of refrigeration of biological medications; and
- (6) the procedures for notifying a registered nurse when a problem with administration, record keeping, or storage of medications is discovered.

Subp. 4. **Over-the-counter drugs.** An over-the-counter drug may be retained in general stock supply and must be kept in the original labeled container.

Subp. 5. **Legend drugs.** A legend drug must be kept in its original container bearing the original prescription label with legible information stating the prescription number, name of drug, strength and quantity of drug, expiration date of a time-dated drug, directions for use, client's name, prescriber's name, date of issue, and the name and address of the licensed pharmacy that issued the medications.

Subp. 6. **Medication samples.** A sample of medication provided to a client by an authorized prescriber may be used by that client, and must be kept in its original container bearing the original label with legible directions for use. If assistance with self-administration of medication or medication administration is provided by the assisted living home care provider licensee, a client's plan of care must address the use of a medication sample.

Subp. 7. **Prohibitions.** No legend drug supply for one client may be used or saved for the use of another client.

Subp. 8. **Storage of drugs.** An assisted living home care provider licensee providing central storage of medications must store all drugs in locked compartments under proper temperature controls and permit only authorized nursing personnel to have access to keys.

Subp. 9. **Storage of Schedule II drugs.** An assisted living home care provider licensee providing central storage of medications must provide separately locked compartments, permanently affixed to the physical plant or medication cart, for storage of controlled drugs listed in Minnesota Statutes, section 152.02, subdivision 3.

Subp. 10. **Schedule of fines.** For a violation of the following subparts, the stated fine shall be assessed:

- A. subpart 2, \$350;
- B. subpart 3, \$300;
- C. subpart 4, \$300;
- D. subpart 5, \$300;
- E. subpart 6, \$300;
- F. subpart 7, \$300;
- G. subpart 8, \$300; and
- H. subpart 9, \$300.

Statutory Authority: *MS s 144A.45*

History: *24 SR 141*

4668.0870 DISPOSITION OF MEDICATIONS.

Subpart 1. **Scope.** This part applies to an assisted living home care provider licensee that provides central storage of medications.

Subp. 2. **Drugs given to discharged clients.** Current medications belonging to a client must be given to the client, or the client's responsible person, when the client is discharged or moves from the housing with services establishment. An assisted living home care provider licensee must document in the client's record to whom the medications were given.

Subp. 3. **Disposition of medications.**

A. Unused portions of a controlled substance remaining in a housing with services establishment after death or discharge of the client for whom the controlled substance was prescribed, or any controlled substance discontinued permanently, must be disposed of by contacting the Minnesota Board of Pharmacy, which shall furnish the necessary instructions and forms, a copy of which shall be kept on file by the assisted living home care provider licensee for two years.

B. Unused portions of a legend drug remaining in a housing with services establishment after the death or discharge of the client for whom the legend drug was prescribed, or any legend drug permanently discontinued, must be destroyed by the assisted living home care provider licensee or a designee of the licensee, in the

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presence of a pharmacist or nurse who shall witness the destruction. A notation of the destruction listing the date, quantity, name of drug, prescription number, signature of the person destroying the drugs, and signature of the witness to the destruction must be recorded in the client's record.

Subp. 4. **Loss or spillage.** When a loss or spillage of a Schedule II drug occurs, an explanatory notation must be made in the client's record. The notation must be signed by the person responsible for the loss or spillage and by one witness who must also observe the destruction of any remaining contaminated drug by flushing into the sewer system or wiping up the spill.

Subp. 5. **Schedule of fines.** For a violation of the following subparts, the stated fine shall be assessed:

- A. subpart 2, \$300;
- B. subpart 3, \$300; and
- C. subpart 4, \$300.

Statutory Authority: *MS s 144A.45*

History: *24 SR 141*