

## CHAPTER 144A

## NURSING HOMES AND HOME CARE

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## 144A.04 QUALIFICATIONS FOR LICENSE.

*[For text of subs 1 to 2a, see M.S.2002]*

Subd. 3. **Standards.** (a) The facility must meet the minimum health, sanitation, safety and comfort standards prescribed by the rules of the commissioner of health with respect to the construction, equipment, maintenance and operation of a nursing home. The commissioner of health may temporarily waive compliance with one or more of the standards if the commissioner determines that:

(1) temporary noncompliance with the standard will not create an imminent risk of harm to a nursing home resident; and

(2) a controlling person on behalf of all other controlling persons:

(i) has entered into a contract to obtain the materials or labor necessary to meet the standard set by the commissioner of health, but the supplier or other contractor has failed to perform the terms of the contract and the inability of the nursing home to meet the standard is due solely to that failure; or

(ii) is otherwise making a diligent good faith effort to meet the standard.

The commissioner shall make available to other nursing homes information on facility-specific waivers related to technology or physical plant that are granted. The commissioner shall, upon the request of a facility, extend a waiver granted to a specific facility related to technology or physical plant to the facility making the request, if the commissioner determines that the facility also satisfies clauses (1) and (2) and any other terms and conditions of the waiver.

The commissioner of health shall allow, by rule, a nursing home to provide fewer hours of nursing care to intermediate care residents of a nursing home than required by the present rules of the commissioner if the commissioner determines that the needs of the residents of the home will be adequately met by a lesser amount of nursing care.

(b) A facility is not required to seek a waiver for room furniture or equipment under paragraph (a) when responding to resident-specific requests, if the facility has discussed health and safety concerns with the resident and the resident request and discussion of health and safety concerns are documented in the resident's patient record.

*[For text of subs 3a to 10, see M.S.2002]*

Subd. 11. **Incontinent residents.** Notwithstanding Minnesota Rules, part 4658.0520, an incontinent resident must be checked according to a specific time interval written in the resident's care plan. The resident's attending physician must authorize in writing any interval longer than two hours unless the resident, if competent, or a family member or legally appointed conservator, guardian, or health care agent of a resident who is not competent, agrees in writing to waive physician involvement in determining this interval, and this waiver is documented in the resident's care plan.

**History:** 2003 c 55 s 1,2; 1Sp2003 c 14 art 2 s 7,8,57

**144A.071 MORATORIUM ON CERTIFICATION OF NURSING HOME BEDS.**

*[For text of subs 1 to 4b, see M.S.2002]*

Subd. 4c. **Exceptions for replacement beds after June 30, 2003.** (a) The commissioner of health, in coordination with the commissioner of human services, may approve the renovation, replacement, upgrading, or relocation of a nursing home or boarding care home, under the following conditions:

(1) to license and certify an 80-bed city-owned facility in Nicollet County to be constructed on the site of a new city-owned hospital to replace an existing 85-bed facility attached to a hospital that is also being replaced. The threshold allowed for this project under section 144A.073 shall be the maximum amount available to pay the additional medical assistance costs of the new facility; and

(2) to license and certify 29 beds to be added to an existing 69-bed facility in St. Louis County, provided that the 29 beds must be transferred from active or layaway status at an existing facility in St. Louis County that had 235 beds on April 1, 2003.

The licensed capacity at the 235-bed facility must be reduced to 206 beds, but the payment rate at that facility shall not be adjusted as a result of this transfer. The operating payment rate of the facility adding beds after completion of this project shall be the same as it was on the day prior to the day the beds are licensed and certified. This project shall not proceed unless it is approved and financed under the provisions of section 144A.073.

(b) Projects approved under this subdivision shall be treated in a manner equivalent to projects approved under subdivision 4a.

Subd. 5. *[Repealed, 1Sp2003 c 14 art 2 s 57]*

*[For text of subs 5a to 8, see M.S.2002]*

**History:** 2003 c 16 s 1; 1Sp2003 c 14 art 2 s 9

**144A.073 REVIEW OF PROPOSALS REQUIRING EXCEPTIONS TO THE MORATORIUM.**

*[For text of subs 1 to 9, see M.S.2002]*

Subd. 10. **Extension of approval of moratorium exception.** Notwithstanding subdivision 3, the commissioner of health shall extend project approval for an additional 18 months for any proposed exception to the nursing home licensure and certification moratorium if the proposal was approved under this section between July 1, 2001, and June 30, 2003.

Subd. 11. **Funding from expired and canceled proposals.** The commissioner shall monitor the status of projects approved under this section to identify, in consultation with each facility with an approved project, if projects will be canceled or will expire. For projects that have been canceled or have expired, if originally approved after June 30, 2001, the commissioner's approval authority for the estimated annual state cost to medical assistance shall carry forward and shall be available for the issuance of a new moratorium round later in that fiscal year or in either of the following two fiscal years.

**History:** 2003 c 72 s 1,2

**144A.10 INSPECTION; COMMISSIONER OF HEALTH; FINES.**

*[For text of subs 1 to 15, see M.S.2002]*

Subd. 16. **Independent informal dispute resolution.** (a) Notwithstanding subdivision 15, a facility certified under the federal Medicare or Medicaid programs may request from the commissioner, in writing, an independent informal dispute resolution process regarding any deficiency citation issued to the facility. The facility must specify in its written request each deficiency citation that it disputes. The commissioner shall provide a hearing under sections 14.57 to 14.62. Upon the written request of the

facility, the parties must submit the issues raised to arbitration by an administrative law judge.

(b) Upon receipt of a written request for an arbitration proceeding, the commissioner shall file with the Office of Administrative Hearings a request for the appointment of an arbitrator and simultaneously serve the facility with notice of the request. The arbitrator for the dispute shall be an administrative law judge appointed by the Office of Administrative Hearings. The disclosure provisions of section 572.10 and the notice provisions of section 572.12 apply. The facility and the commissioner have the right to be represented by an attorney.

(c) The commissioner and the facility may present written evidence, depositions, and oral statements and arguments at the arbitration proceeding. Oral statements and arguments may be made by telephone.

(d) Within ten working days of the close of the arbitration proceeding, the administrative law judge shall issue findings regarding each of the deficiencies in dispute. The findings shall be one or more of the following:

(1) Supported in full. The citation is supported in full, with no deletion of findings and no change in the scope or severity assigned to the deficiency citation.

(2) Supported in substance. The citation is supported, but one or more findings are deleted without any change in the scope or severity assigned to the deficiency.

(3) Deficient practice cited under wrong requirement of participation. The citation is amended by moving it to the correct requirement of participation.

(4) Scope not supported. The citation is amended through a change in the scope assigned to the citation.

(5) Severity not supported. The citation is amended through a change in the severity assigned to the citation.

(6) No deficient practice. The citation is deleted because the findings did not support the citation or the negative resident outcome was unavoidable. The findings of the arbitrator are not binding on the commissioner.

(e) The commissioner shall reimburse the Office of Administrative Hearings for the costs incurred by that office for the arbitration proceeding. The facility shall reimburse the commissioner for the proportion of the costs that represent the sum of deficiency citations supported in full under paragraph (d), clause (1), or in substance under paragraph (d), clause (2), divided by the total number of deficiencies disputed. A deficiency citation for which the administrative law judge's sole finding is that the deficient practice was cited under the wrong requirements of participation shall not be counted in the numerator or denominator in the calculation of the proportion of costs.

**History:** *1Sp2003 c 14 art 2 s 10*

#### **144A.2511 COSTS; PENALTIES.**

If the Board of Examiners has initiated proceedings under section 144A.24 or 144A.251 or chapter 214, and upon completion of the proceedings has found that a nursing home administrator has violated a provision or provisions of sections 144A.18 to 144A.27, it may impose a civil penalty not exceeding \$10,000 for each separate violation, with all violations related to a single event or incident considered as one violation. The amount of the civil penalty shall be fixed so as to deprive the nursing home administrator of any economic advantage gained by reason of the violation charged or to reimburse the board for the cost of the investigation and proceeding. For purposes of this section, the cost of the investigation and proceeding may include, but is not limited to, fees paid for services provided by the Office of Administrative Hearings, legal and investigative services provided by the Office of the Attorney General, court reporters, witnesses, and reproduction of records.

**History:** *2003 c 66 s 1*

**144A.35** [Repealed, *1Sp2003 c 14 art 2 s 57*]

**144A.351 BALANCING LONG-TERM CARE: REPORT REQUIRED.**

The commissioners of health and human services, with the cooperation of counties and regional entities, shall prepare a report to the legislature by January 15, 2004, and biennially thereafter, regarding the status of the full range of long-term care services for the elderly in Minnesota. The report shall address:

- (1) demographics and need for long-term care in Minnesota;
- (2) summary of county and regional reports on long-term care gaps, surpluses, imbalances, and corrective action plans;
- (3) status of long-term care services by county and region including:
  - (i) changes in availability of the range of long-term care services and housing options;
  - (ii) access problems regarding long-term care; and
  - (iii) comparative measures of long-term care availability and progress over time;
- and
- (4) recommendations regarding goals for the future of long-term care services, policy changes, and resource needs.

**History:** *1Sp2003 c 14 art 2 s 11*

**144A.36** [Repealed, 1Sp2003 c 14 art 7 s 89]

**144A.38** [Repealed, 1Sp2003 c 14 art 7 s 89]

**144A.45 REGULATION OF HOME CARE SERVICES.**

*[For text of subs 1 to 4, see M.S.2002]*

**Subd. 5. Home care providers that serve persons with Alzheimer's disease or related disorders.** (a) If a home care provider licensed under section 144A.46 or 144A.4605 markets or otherwise promotes services for persons with Alzheimer's disease or related disorders, the facility's direct care staff and their supervisors must be trained in dementia care.

(b) Areas of required training include:

- (1) an explanation of Alzheimer's disease and related disorders;
- (2) assistance with activities of daily living;
- (3) problem solving with challenging behaviors; and
- (4) communication skills.

(c) The licensee shall provide to consumers in written or electronic form a description of the training program, the categories of employees trained, the frequency of training, and the basic topics covered.

**History:** *2003 c 37 s 2*

**144A.46 LICENSURE.**

*[For text of subs 1 to 4, see M.S.2002]*

**Subd. 5. Prior criminal convictions.** (a) Before the commissioner issues an initial or renewal license, an owner or managerial official shall be required to complete a background study under section 144.057. No person may be involved in the management, operation, or control of a provider, if the person has been disqualified under the provisions of chapter 245C. Individuals disqualified under these provisions can request a reconsideration, and if the disqualification is set aside are then eligible to be involved in the management, operation or control of the provider. For purposes of this section, owners of a home care provider subject to the background check requirement are those individuals whose ownership interest provides sufficient authority or control to affect or change decisions related to the operation of the home care provider. An owner includes a sole proprietor, a general partner, or any other individual whose individual ownership interest can affect the management and direction of the policies of the home

care provider. For the purposes of this section, managerial officials subject to the background check requirement are those individuals who provide "direct contact" as defined in section 245C.02, subdivision 11, or those individuals who have the responsibility for the ongoing management or direction of the policies, services, or employees of the home care provider. Data collected under this subdivision shall be classified as private data under section 13.02, subdivision 12.

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

(c) [Repealed by amendment, 1997 c 248 s 2]

(d) [Repealed by amendment, 1997 c 248 s 2]

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

**History:** 2003 c 15 art 1 s 33

#### 144A.4605 ASSISTED LIVING HOME CARE PROVIDER.

*[For text of subs 1 to 3, see M.S.2002]*

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

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

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

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

*[For text of subs 5 and 6, see M.S.2002]*

**History:** 1Sp2003 c 14 art 2 s 12

#### 144A.70 REGISTRATION OF SUPPLEMENTAL NURSING SERVICES AGENCIES; DEFINITIONS.

*[For text of subs 1 to 5, see M.S.2002]*

Subd. 6. **Supplemental nursing services agency.** "Supplemental nursing services agency" means a person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in health care facilities for nurses, nursing assistants, nurse aides, and orderlies. Supplemental nursing services agency does not include an individual who only engages in providing the individual's services on a temporary basis to health care facilities. Supplemental nursing services agency does not include a professional home care agency licensed as a Class A

provider under section 144A.46 and rules adopted thereunder that only provides staff to other home care providers.

**History:** 2003 c 55 s 3

#### **144A.754 ENFORCEMENT.**

*[For text of subs 1 to 4, see M.S.2002]*

Subd. 5. **Prior criminal convictions.** (a) Before the commissioner issues an initial or renewal license, an owner or managerial official is required to complete a background study under section 144.057. No person may be involved in the management, operation, or control of a hospice provider if the person has been disqualified under the provisions of chapter 245C. Individuals disqualified under these provisions may request a reconsideration, and if the disqualification is set aside, are then eligible to be involved in the management, operation, or control of the provider. For purposes of this section, owners of a hospice provider subject to the background check requirement are those individuals whose ownership interest provides sufficient authority or control to affect or change decisions related to the operation of the hospice provider. An owner includes a sole proprietor, a general partner, or any other individual whose individual ownership interest can affect the management and direction of the policies of the hospice provider. For the purposes of this section, managerial officials subject to the background check requirement are those individuals who provide "direct contact" as defined in section 245C.02, subdivision 11, or those individuals who have the responsibility for the ongoing management or direction of the policies, services, or employees of the hospice provider. Data collected under this subdivision are classified as private data under section 13.02, subdivision 12.

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

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

**History:** 2003 c 15 art 1 s 33