

Presented to the governor May 30, 1989

Signed by the governor June 1, 1989, 11:35 p.m.

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CHAPTER 285—H.F.No. 1423

*An act relating to nursing home admission agreements; prohibiting use of blanket waivers of liability by continuing care facilities and nursing homes; requiring nursing home admission agreements to be available to the public and clarifying that such agreements are consumer contracts; prohibiting nursing homes from requiring third party guarantors; requiring nursing homes to identify their status as medical assistance providers; prohibiting use of blanket consents for treatment; requiring written acknowledgment that residents have received a copy of the patients' bill of rights; providing requirements for registration of dental assistants; including emotionally abused children among children in need of protection services; changing licensure requirements for dental assistants; providing penalties; amending Minnesota Statutes 1988, sections 80D.04, by adding a subdivision; and 150A.06, subdivision 2a; and 260.015, subdivision 2a, and by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapters 144 and 256B; repealing Minnesota Statutes 1988, section 150A.06, subdivision 7.*

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

Section 1. Minnesota Statutes 1988, section 80D.04, is amended by adding a subdivision to read:

Subd. 6. WAIVERS OF LIABILITY PROHIBITED. (a) A contract between a facility and resident or resident's representative must not include a waiver of facility liability for the health and safety or personal property of a resident while the resident is under the facility's supervision. A contract must not contain a provision that the facility knows or should know to be deceptive, unlawful, or unenforceable under state or federal law, nor any provision that requires or implies a lesser standard of care or responsibility than is required by law.

(b) This subdivision applies to new admissions to facilities on and after October 1, 1989. This subdivision does not require the execution of a new admission contract for a resident who was residing in a facility before the enactment of this subdivision. However, provisions of the admission contract that are inconsistent with or in conflict with this subdivision are voidable at the sole option of the resident. Residents must be given notice of the changes in admission contracts according to this subdivision and must be given the opportunity to execute a new contract that conforms to this subdivision.

Sec. 2. [144.6501] NURSING HOME ADMISSION CONTRACTS.

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

New language is indicated by underline, deletions by ~~strikeout~~.

(a) "Facility" means a nursing home licensed under chapter 144A or a boarding care facility licensed under sections 144.50 to 144.58.

(b) "Contract of admission," "admission contract," or "admission agreement," includes, but is not limited to, all documents that a resident or resident's representative must sign at the time of, or as a condition of, admission to the facility. Oral representations and statements between the facility and the resident or resident's representative are not part of the contract of admission unless expressly contained in writing in those documents.

(c) "Legal representative" means an attorney-in-fact under a valid power of attorney executed by the prospective resident, or a conservator or guardian of the person or of the estate, or a representative payee appointed for the prospective resident, or other agent of limited powers.

**Subd. 2. WAIVERS OF LIABILITY PROHIBITED.** An admission contract must not include a waiver of facility liability for the health and safety or personal property of a resident while the resident is under the facility's supervision. An admission contract must not include a provision that the facility knows or should know to be deceptive, unlawful, or unenforceable under state or federal law, nor any provision that requires or implies a lesser standard of care or responsibility than is required by law.

**Subd. 3. CONTRACTS OF ADMISSION.** (a) A facility shall make complete unsigned copies of its admission contract available to potential applicants and to the state or local long-term care ombudsman immediately upon request.

(b) A facility shall post conspicuously within the facility, in a location accessible to public view, either a complete copy of its admission contract or notice of its availability from the facility.

(c) An admission contract must be printed in black type of at least ten-point type size. The facility shall give a complete copy of the admission contract to the resident or the resident's legal representative promptly after it has been signed by the resident or legal representative.

(d) An admission contract is a consumer contract under sections 325G.29 to 325G.37.

(e) All admission contracts must state in bold capital letters the following notice to applicants for admission: "NOTICE TO APPLICANTS FOR ADMISSION. READ YOUR ADMISSION CONTRACT. ORAL STATEMENTS OR COMMENTS MADE BY THE FACILITY OR YOU OR YOUR REPRESENTATIVE ARE NOT PART OF YOUR ADMISSION CONTRACT UNLESS THEY ARE ALSO IN WRITING. DO NOT RELY ON ORAL STATEMENTS OR COMMENTS THAT ARE NOT INCLUDED IN THE WRITTEN ADMISSION CONTRACT."

**Subd. 4. RESIDENTS' SIGNATURES.** (a) Before or at the time of admis-

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sion, the facility shall make reasonable efforts to communicate the content of the admission contract to, and obtain on the admission contract the signature of, the person who is to be admitted to the facility. The admission contract must be signed by the prospective resident unless the resident is legally incompetent or cannot understand or sign the admission contract because of the resident's medical condition.

(b) If the resident cannot sign the admission contract, the reason must be documented in the resident's medical record by the admitting physician.

(c) If the determination under paragraph (b) has been made, the facility may request the signature of another person on behalf of the applicant, subject to the provisions of paragraph (d). The facility must not require the person to disclose any information regarding the person's personal financial assets, liabilities, or income, unless the person voluntarily chooses to become financially responsible for the resident's care.

(d) A person other than the resident or a spouse who is financially responsible for the resident who signs an admission contract must not be required by the facility to assume financial responsibility for the resident's care. A person who desires to assume financial responsibility for the resident's care may contract with the facility to do so.

(e) The admission contract must include written notice, in bold capital letters, that a person other than the resident or financially responsible spouse may not be required by the facility to assume financial responsibility for the resident's care.

(f) This subdivision does not preclude the facility from obtaining the signature of a legal representative, if applicable.

**Subd. 5. PUBLIC BENEFITS ELIGIBILITY.** An admission contract must clearly and explicitly state whether the facility participates in the Medicare, medical assistance, or Veterans Administration programs. If the facility's participation in any of those programs is limited for any reason, the admission contract must clearly state the limitation and whether the facility is eligible to receive payment from the program for the person who is considering admission or who has been admitted to the facility.

**Subd. 6. MEDICAL ASSISTANCE PAYMENT.** (a) An admission contract for a facility that is certified for participation in the medical assistance program must state that neither the prospective resident, nor anyone on the resident's behalf, is required to pay privately any amount for which the resident's care at the facility has been approved for payment by medical assistance or to make any kind of donation, voluntary or otherwise. An admission contract must state that the facility does not require as a condition of admission, either in its admission contract or by oral promise before signing the admission contract, that residents remain in private pay status for any period of time.

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(b) The admission contract must state that upon presentation of proof of eligibility, the facility will submit a medical assistance claim for reimbursement and will return any and all payments made by the resident, or by any person on the resident's behalf, for services covered by medical assistance, upon receipt of medical assistance payment.

(c) A facility that participates in the medical assistance program shall not charge for the day of the resident's discharge from the facility or subsequent days.

(d) If a facility's charges incurred by the resident are delinquent for 30 days, and no person has agreed to apply for medical assistance for the resident, the facility may petition the court under chapter 525 to appoint a representative for the resident in order to apply for medical assistance for the resident.

(e) The remedy provided in this subdivision does not preclude a facility from seeking any other remedy available under other laws of this state.

Subd. 7. CONSENT TO TREATMENT. An admission contract must not include a clause requiring a resident to sign a consent to all treatment ordered by any physician. An admission contract may require consent only for routine nursing care or emergency care. An admission contract must contain a clause that informs the resident of the right to refuse treatment.

Subd. 8. WRITTEN ACKNOWLEDGMENT. An admission contract must contain a written acknowledgment that the resident has been informed of the patient's bill of rights, as required in section 144.652.

Subd. 9. VIOLATIONS; PENALTIES. (a) Violation of this section is grounds for issuance of a correction order, and if uncorrected, a penalty assessment issued by the commissioner of health, under section 144A.10. The civil fine for noncompliance with a correction order issued under this section is \$250 per day.

(b) Unless otherwise expressly provided, the remedies or penalties provided by this subdivision do not preclude a resident from seeking any other remedy and penalty available under other laws of this state.

Subd. 10. APPLICABILITY. This section applies to new admissions to facilities on and after October 1, 1989. This section does not require the execution of a new admission contract for a resident who was residing in a facility before the enactment of this section. However, provisions of the admission contract that are inconsistent with or in conflict with this section are voidable at the sole option of the resident. Residents must be given notice of the changes in admission contracts according to this section and must be given the opportunity to execute a new admission contract that conforms to this section.

Sec. 3. Minnesota Statutes 1988, section 150A.06, subdivision 2a, is amended to read:

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Subd. 2a. **REGISTERED DENTAL ASSISTANT.** A person of good moral character, who has submitted an application and fee as prescribed by the board and the diploma or equivalent awarded to the person by a training school for dental assistants or its equivalent approved by the board, may be examined by the board or by an agency pursuant to section 150A.03, subdivision 1, in a manner to test the applicant's fitness to perform as a registered dental assistant. ~~The diploma or its equivalent must evidence compliance with the time limit requirement of subdivision 7.~~ In the case of examinations conducted pursuant to section 150A.03, subdivision 1, applicants may take the examination before applying to the board for registration. The examination shall include an examination of the applicant's knowledge of the laws of Minnesota relating to dentistry and the rules of the board. An applicant is ineligible to retake the clinical examination required by the board after failing it twice until further education and training are obtained as specified by the board by rule. A separate, non-refundable fee may be charged for each time a person applies. An applicant who passes the examination in compliance with subdivision 2b and meets all the other requirements of the board shall be registered as a dental assistant. The examination fee set by the board in rule is the application fee until the board amends, repeals, or otherwise changes the rules pursuant to chapter 14.

**Sec. 4. [256B.32] FACILITY FEE FOR OUTPATIENT HOSPITAL EMERGENCY ROOM AND CLINIC VISITS.**

The commissioner shall establish a facility fee payment mechanism that will pay a facility fee to all enrolled outpatient hospitals for each emergency room or outpatient clinic visit provided on or after July 1, 1989. This payment mechanism may not result in an overall increase in outpatient payment rates. This section does not apply to federally mandated maximum payment limits, department approved program packages, or services billed using a non-outpatient hospital provider number.

Sec. 5. Minnesota Statutes 1988, section 260.015, subdivision 2a, is amended to read:

Subd. 2a. **CHILD IN NEED OF PROTECTION OR SERVICES.** "Child in need of protection or services" means a child who is in need of protection or services because the child:

- (1) is abandoned or without parent, guardian, or custodian;
- (2) has been a victim of physical or sexual abuse or resides with a victim of domestic child abuse as defined in subdivision 24, or is a victim of emotional maltreatment as defined in section 260.015, subdivision 5a;
- (3) is without necessary food, clothing, shelter, education, or other required care for the child's physical or mental health or morals because the child's parent, guardian, or custodian is unable or unwilling to provide that care;
- (4) is without the special care made necessary by a physical, mental, or

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emotional condition because the child's parent, guardian, or custodian is unable or unwilling to provide that care;

(5) is medically neglected, which includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition. The term "withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all conditions, except that the term does not include the failure to provide treatment other than appropriate nutrition, hydration, or medication to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of the treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or

(iii) the provision of the treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane;

(6) is one whose parent, guardian, or other custodian for good cause desires to be relieved of the child's care and custody;

(7) has been placed for adoption or care in violation of law;

(8) is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child's parent, guardian, or other custodian;

(9) is one whose occupation, behavior, condition, environment, or associations are such as to be injurious or dangerous to the child or others;

(10) has committed a delinquent act before becoming ten years old;

(11) is a runaway; or

(12) is an habitual truant.

Sec. 6. Minnesota Statutes 1988, section 260.015, is amended by adding a subdivision to read:

Subd. 5a. EMOTIONAL MALTREATMENT. "Emotional maltreatment" means the consistent, deliberate infliction of mental harm on a child by a person responsible for the child's care, that has an observable, sustained, and adverse effect on the child's physical, mental, or emotional development. "Emotional maltreatment" does not include reasonable training or discipline administered by the person responsible for the child's care or the reasonable exercise of authority by that person.

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**Sec. 7. REPEALER.**

Minnesota Statutes 1988, section 150A.06, subdivision 7, is repealed.

**Sec. 8. EFFECTIVE DATE.**

Section 4 is effective July 1, 1989.

Presented to the governor May 30, 1989

Signed by the governor June 1, 1989, 11:27 p.m.

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**CHAPTER 286—H.F.No. 837**

*An act relating to crimes; prohibiting the concealing of criminal proceeds; prohibiting racketeering; providing civil and criminal penalties for engaging in narcotics and violent offenses as part of an enterprise; authorizing the dissolution of a corporate charter, revocation of a license, and injunctive relief to prevent criminal activity by an enterprise; authorizing fines of three times the profit gained through racketeering; authorizing criminal forfeiture; amending Minnesota Statutes 1988, section 541.07; proposing coding for new law in Minnesota Statutes, chapters 541 and 609.*

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

Section 1. Minnesota Statutes 1988, section 541.07, is amended to read:

**541.07 TWO OR THREE YEAR LIMITATIONS.**

Except where the uniform commercial code or this section otherwise prescribes, the following actions shall be commenced within two years:

(1) For libel, slander, assault, battery, false imprisonment, or other tort, resulting in personal injury, and all actions against physicians, surgeons, dentists, other health care professionals as defined in section 145.61, and veterinarians as defined in chapter 156, hospitals, sanitariums, for malpractice, error, mistake or failure to cure, whether based on contract or tort; provided a counterclaim may be pleaded as a defense to any action for services brought by a physician, surgeon, dentist or other health care professional or veterinarian, hospital or sanitarium, after the limitations herein described notwithstanding it is barred by the provisions of this chapter, if it was the property of the party pleading it at the time it became barred and was not barred at the time the claim sued on originated, but no judgment thereof except for costs can be rendered in favor of the party so pleading it;

(2) Upon a statute for a penalty or forfeiture, except as provided in section 2;

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