Sec. 2. **EFFECTIVE DATE.**

Section 1 is effective the day following final enactment.

Presented to the governor May 20, 1991

Signed by the governor May 22, 1991, 5:50 p.m.

CHAPTER 148—S.F.No. 187

An act relating to health; authorizing competent persons to make advance declarations regarding mental health treatment; requiring certain notices to be given to the designated agency; changing the citation of the adult health care decisions act and using the term "living will"; amending Minnesota Statutes 1990, sections 145B.01; 253B.03; 253B.18, subdivisions 4b and 5; and 253B.19, subdivision 2.

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

Section 1. Minnesota Statutes 1990, section 145B.01, is amended to read:

145B.01 **CITATION.**

This chapter may be cited as the "~~adult health care decisions act~~ Minnesota living will act."

Sec. 2. Minnesota Statutes 1990, section 253B.03, is amended to read:

253B.03 **RIGHTS OF PATIENTS.**

Subdivision 1. **RESTRAINTS.** A patient has the right to be free from restraints. Restraints shall not be applied to a patient unless the head of the treatment facility or a member of the medical staff determines that they are necessary for the safety of the patient or others. Restraints shall not be applied to patients with mental retardation except as permitted under section 245.825 and rules of the commissioner of human services. Consent must be obtained from the person or person's guardian except for emergency procedures as permitted under rules of the commissioner adopted under section 245.825. Each use of a restraint and reason for it shall be made part of the clinical record of the patient under the signature of the head of the treatment facility.

Subd. 2. **CORRESPONDENCE.** A patient has the right to correspond freely without censorship. The head of the treatment facility may restrict correspondence on determining that the medical welfare of the patient requires it. For patients in regional facilities, that determination may be reviewed by the commissioner. Any limitation imposed on the exercise of a patient's correspondence rights and the reason for it shall be made a part of the clinical record of the patient. Any communication which is not delivered to a patient shall be immediately returned to the sender.

Subd. 3. **VISITORS AND PHONE CALLS.** Subject to the general rules of the treatment facility, a patient has the right to receive visitors and make phone calls. The head of the treatment facility may restrict visits and phone calls on determining that the medical welfare of the patient requires it. Any limitation imposed on the exercise of the patient's visitation and phone call rights and the reason for it shall be made a part of the clinical record of the patient.

Subd. 4. **SPECIAL VISITATION; RELIGION.** A patient has the right to meet with or call a personal physician, spiritual advisor, and counsel at all reasonable times. The patient has the right to continue the practice of religion.

Subd. 5. **PERIODIC ASSESSMENT.** A patient has the right to periodic medical assessment. The head of a treatment facility shall have the physical and mental condition of every patient assessed as frequently as necessary, but not less often than annually. If a person is committed as mentally retarded for an indeterminate period of time, the three-year judicial review must include the annual reviews for each year as outlined in Minnesota Rules, part 9525.0075, subpart 6.

Subd. 6. **CONSENT FOR MEDICAL PROCEDURE.** A patient has the right to prior consent to any medical or surgical treatment, other than ~~the~~ treatment ~~of mental illness or~~ for chemical dependency or nonintrusive treatment for mental illness. ~~A patient with mental retardation or the patient's guardian or conservator has the right to give or withhold consent before:~~

~~(1) the implementation of any aversive or deprivation procedure except for emergency procedures permitted in rules of the commissioner adopted under section 245.825; or~~

~~(2) the administration of psychotropic medication.~~

The following procedures shall be used to obtain consent for any treatment necessary to preserve the life or health of any committed patient:

(a) The written, informed consent of a competent adult patient for the treatment is sufficient.

(b) If the patient is subject to guardianship or conservatorship which includes the provision of medical care, the written, informed consent of the guardian or conservator for the treatment is sufficient.

(c) If the head of the treatment facility determines that the patient is not competent to consent to the treatment and the patient has not been adjudicated incompetent, written, informed consent for the surgery or medical treatment shall be obtained from the nearest proper relative. For this purpose, the following persons are proper relatives, in the order listed: the patient's spouse, parent, adult child, or adult sibling. If the nearest proper relatives cannot be located or refuse to consent to the procedure, the head of the treatment facility or an interested person may petition the committing court for approval for the treatment

or may petition a court of competent jurisdiction for the appointment of a guardian or conservator. The determination that the patient is not competent, and the reasons for the determination, shall be documented in the patient's clinical record.

(d) Consent to treatment of any minor patient shall be secured in accordance with sections 144.341 to 144.346, except that a minor 16 years of age or older may give valid consent for hospitalization, routine diagnostic evaluation, and emergency or short-term acute care.

(e) In the case of an emergency when the persons ordinarily qualified to give consent cannot be located, the head of the treatment facility may give consent.

No person who consents to treatment pursuant to the provisions of this subdivision shall be civilly or criminally liable for the performance or the manner of performing the treatment. No person shall be liable for performing treatment without consent if written, informed consent was given pursuant to this subdivision. This provision shall not affect any other liability which may result from the manner in which the treatment is performed.

Subd. 6a. **CONSENT FOR TREATMENT FOR MENTAL RETARDATION.** A patient with mental retardation, or the patient's guardian or conservator, has the right to give or withhold consent before:

(1) the implementation of any aversive or deprivation procedure except for emergency procedures permitted in rules of the commissioner adopted under section 245.825; or

(2) the administration of psychotropic medication.

Subd. 6b. **CONSENT FOR MENTAL HEALTH TREATMENT.** A competent person admitted or committed to a treatment facility may be subjected to intrusive mental health treatment only with the person's written informed consent. For purposes of this section, "intrusive mental health treatment" means electroshock therapy and neuroleptic medication and does not include treatment for mental retardation. An incompetent person who has prepared a directive under subdivision 6d regarding treatment with intrusive therapies must be treated in accordance with this section, except in cases of emergencies.

Subd. ~~6a.~~ 6c. **ADMINISTRATION OF NEUROLEPTIC MEDICATIONS.** (a) Neuroleptic medications may be administered to persons committed as mentally ill or mentally ill and dangerous only as described in this subdivision.

(b) A neuroleptic medication may be administered to a patient who is competent to consent to neuroleptic medications if the patient has given written, informed consent to administration of the neuroleptic medication.

(c) A neuroleptic medication may be administered to a patient who is not competent to consent to neuroleptic medications if the patient, when competent, prepared a declaration under subdivision 6d requesting the treatment or autho-

rizing a proxy to request the treatment or if a court approves the administration of the neuroleptic medication.

(d) A neuroleptic medication may be administered without court review to a patient who has not prepared a declaration under subdivision 6d and who is not competent to consent to neuroleptic medications if:

(1) the patient does not object to or refuse the medication;

(2) a guardian ad litem appointed by the court with authority to consent to neuroleptic medications gives written, informed consent to the administration of the neuroleptic medication; and

(3) a multidisciplinary treatment review panel composed of persons who are not engaged in providing direct care to the patient gives written approval to administration of the neuroleptic medication.

(e) A neuroleptic medication may be administered without judicial review and without consent in an emergency situation for so long as the emergency continues to exist if the treating physician determines that the medication is necessary to prevent serious, immediate physical harm to the patient or to others. The treatment facility shall document the emergency in the patient's medical record in specific behavioral terms.

(f) A person who consents to treatment pursuant to this subdivision is not civilly or criminally liable for the performance of or the manner of performing the treatment. A person is not liable for performing treatment without consent if written, informed consent was given pursuant to this subdivision. This provision does not affect any other liability that may result from the manner in which the treatment is performed.

(g) The court may allow and order paid to a guardian ad litem a reasonable fee for services provided under paragraph (c), or the court may appoint a volunteer guardian ad litem.

(h) A medical director or patient may petition the committing court, or the court to which venue has been transferred, for a hearing concerning the administration of neuroleptic medication. A hearing may also be held pursuant to section 253B.08, 253B.09, 253B.12, or 253B.18. The hearing concerning the administration of neuroleptic medication must be held within 14 days from the date of the filing of the petition. The court may extend the time for hearing up to an additional 15 days for good cause shown.

Subd. 6d. **ADULT MENTAL HEALTH TREATMENT.** (a) A competent adult may make a declaration of preferences or instructions regarding intrusive mental health treatment. These preferences or instructions may include, but are not limited to, consent to or refusal of these treatments.

(b) A declaration may designate a proxy to make decisions about intrusive mental health treatment. A proxy designated to make decisions about intrusive

mental health treatments and who agrees to serve as proxy may make decisions on behalf of a declarant consistent with any desires the declarant expresses in the declaration.

(c) A declaration is effective only if it is signed by the declarant and two witnesses. The witnesses must include a statement that they believe the declarant understands the nature and significance of the declaration. A declaration becomes operative when it is delivered to the declarant's physician or other mental health treatment provider. The physician or provider must comply with it to the fullest extent possible, consistent with reasonable medical practice, the availability of treatments requested, and applicable law. The physician or provider shall continue to obtain the declarant's informed consent to all intrusive mental health treatment decisions if the declarant is capable of informed consent. A treatment provider may not require a person to make a declaration under this subdivision as a condition of receiving services.

(d) The physician or other provider shall make the declaration a part of the declarant's medical record. If the physician or other provider is unwilling at any time to comply with the declaration, the physician or provider must promptly notify the declarant and document the notification in the declarant's medical record. If the declarant has been committed as a patient under this chapter, the physician or provider may subject a declarant to intrusive treatment in a manner contrary to the declarant's expressed wishes, only upon order of the committing court. If the declarant is not a committed patient under this chapter, the physician or provider may subject the declarant to intrusive treatment in a manner contrary to the declarant's expressed wishes, only if the declarant is committed as mentally ill or mentally ill and dangerous to the public and a court order authorizing the treatment has been issued.

(e) A declaration under this subdivision may be revoked in whole or in part at any time and in any manner by the declarant if the declarant is competent at the time of revocation. A revocation is effective when a competent declarant communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the declarant's medical record.

(f) A provider who administers intrusive mental health treatment according to and in good faith reliance upon the validity of a declaration under this subdivision is held harmless from any liability resulting from a subsequent finding of invalidity.

(g) In addition to making a declaration under this subdivision, a competent adult may delegate parental powers under section 524.5-505 or may nominate a guardian or conservator under section 525.544.

Subd. 7. **PROGRAM PLAN.** A person receiving services under this chapter has the right to receive proper care and treatment, best adapted, according to contemporary professional standards, to rendering further custody, institutionalization, or other services unnecessary. The treatment facility shall devise a writ-

ten program plan for each person which describes in behavioral terms the case problems, the precise goals, including the expected period of time for treatment, and the specific measures to be employed. Each plan shall be reviewed at least quarterly to determine progress toward the goals, and to modify the program plan as necessary. The program plan shall be devised and reviewed with the designated agency and with the patient. The clinical record shall reflect the program plan review. If the designated agency or the patient does not participate in the planning and review, the clinical record shall include reasons for nonparticipation and the plans for future involvement. The commissioner shall monitor the program plan and review process for regional centers to insure compliance with the provisions of this subdivision.

Subd. 8. **MEDICAL RECORDS.** A patient has the right to access to personal medical records. Notwithstanding the provisions of section 144.335, subdivision 2, every person subject to a proceeding or receiving services pursuant to this chapter shall have complete access to all medical records relevant to the person's commitment.

Subd. 9. **RIGHT TO COUNSEL.** A patient has the right to be represented by counsel at any proceeding under this chapter. The court shall appoint counsel to represent the proposed patient if neither the proposed patient nor others provide counsel. Counsel shall be appointed at the time a petition is filed pursuant to section 253B.07. Counsel shall have the full right of subpoena. In all proceedings under this chapter, counsel shall: (1) consult with the person prior to any hearing; (2) be given adequate time to prepare for all hearings; (3) continue to represent the person throughout any proceedings under this charge unless released as counsel by the court; and (4) be a vigorous advocate on behalf of the client.

Subd. 10. **NOTIFICATION.** All persons admitted or committed to a treatment facility shall be notified in writing of their rights under this chapter at the time of admission.

Sec. 3. Minnesota Statutes 1990, section 253B.18, subdivision 4b, is amended to read:

Subd. 4b. **PASS-ELIGIBLE STATUS; NOTIFICATION.** The following patients committed to the Minnesota security hospital shall not be placed on pass-eligible status unless that status has been approved by the medical director of the Minnesota security hospital:

(a) a patient who has been committed as mentally ill and dangerous and who

(1) was found incompetent to proceed to trial for a felony or was found not guilty by reason of mental illness of a felony immediately prior to the filing of the commitment petition;

(2) was convicted of a felony immediately prior to or during commitment as mentally ill and dangerous; or

(3) is subject to a commitment to the commissioner of corrections; and

(b) a patient who has been committed as a psychopathic personality, as defined in section 526.09.

At least ten days prior to a determination on the status, the medical director shall notify the committing court, the county attorney of the county of commitment, the designated agency, an interested person, the petitioner, and the petitioner's counsel of the proposed status, and their right to request review by the special review board. If within ten days of receiving notice any notified person requests review by filing a notice of objection with the commissioner and the head of the treatment facility, a hearing shall be held before the special review board. The proposed status shall not be implemented unless it receives a favorable recommendation by a majority of the board and approval by the commissioner. The order of the commissioner is appealable as provided in section 253B.19.

Nothing in this subdivision shall be construed to give a patient an affirmative right to seek pass-eligible status from the special review board.

Sec. 4. Minnesota Statutes 1990, section 253B.18, subdivision 5, is amended to read:

Subd. 5. **PETITION; NOTICE OF HEARING; ATTENDANCE; ORDER.** A petition for an order of transfer, discharge, provisional discharge, or revocation of provisional discharge shall be filed with the commissioner and may be filed by the patient or by the head of the treatment facility. The special review board shall hold a hearing on each petition prior to making any recommendation. Within 45 days of the filing of the petition, the committing court, the county attorney of the county of commitment, the designated agency, an interested person, the petitioner and petitioner's counsel shall be given written notice by the commissioner of the time and place of the hearing before the special review board. Only those entitled to statutory notice of the hearing or those administratively required to attend may be present at the hearing. The commissioner shall issue an order no later than 14 days after receiving the recommendation of the special review board. A copy of the order shall be sent by certified mail to every person entitled to statutory notice of the hearing within five days after it is issued. No order by the commissioner shall be effective sooner than 15 days after it is issued.

Sec. 5. Minnesota Statutes 1990, section 253B.19, subdivision 2, is amended to read:

Subd. 2. **PETITION; HEARING.** The committed person or the county attorney of the county from which a patient as mentally ill and dangerous to the public was committed may petition the appeal panel for a rehearing and reconsideration of a decision by the commissioner. The petition shall be filed with the supreme court within 30 days after the decision of the commissioner. The supreme court shall refer the petition to the chief judge of the appeal panel. The

chief judge shall notify the patient, the county attorney of the county of commitment, the designated agency, the commissioner, the head of the treatment facility, any interested person, and other persons the chief judge designates, of the time and place of the hearing on the petition. The notice shall be given at least 14 days prior to the date of the hearing. The hearing shall be within 45 days of the filing of the petition. Any person may oppose the petition. The appeal panel may appoint examiners and may adjourn the hearing from time to time. It shall hear and receive all relevant testimony and evidence and make a record of all proceedings. The patient, patient's counsel, and the county attorney of the committing county may be present and present and cross-examine all witnesses.

Sec. 6. **INSTRUCTION TO REVISOR.**

In Minnesota Statutes 1992 and subsequent editions of the statutes, the revisor of statutes shall change the term "declaration" to "living will" wherever that term appears in Minnesota Statutes, chapter 145B.

Presented to the governor May 20, 1991

Signed by the governor May 22, 1991, 5:51 p.m.

CHAPTER 149—H.F.No. 132

An act relating to energy; improving energy efficiency by prohibiting incandescent lighting in certain exit signs; requiring amendments to building codes and standards to increase energy efficiency; requiring state agencies to use funds allocated for utility expenditures to buy certain replacement bulbs; amending Minnesota Statutes 1990, sections 16B.61, subdivision 3; and 299F.011, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 16B.

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

Section 1. **[16B.126] FUNDS FOR ENERGY EFFICIENT BULBS.**

State agencies in the executive, legislative, and judicial branches that purchase replacement bulbs in accordance with section 16B.61, subdivision 3, paragraph (k), must use money allocated for utility expenditures for the purchase.

Sec. 2. Minnesota Statutes 1990, section 16B.61, subdivision 3, is amended to read:

Subd. 3. **SPECIAL REQUIREMENTS.** (a) **SPACE FOR COMMUTER VANS.** The code must require that any parking ramp or other parking facility constructed in accordance with the code include an appropriate number of spaces suitable for the parking of motor vehicles having a capacity of seven to 16 persons and which are principally used to provide prearranged commuter transportation of employees to or from their place of employment or to or from a transit stop authorized by a local transit authority.