

West on the Section line 160 rods, more or less, to the Northwest Quarter corner of said Section 24; thence South on the center line of said Section 24, eighty rods more or less; thence in a southwesterly direction to the center of the Southeast Quarter of Section 23; thence South eighty rods more or less to the south section line of said Section 23; thence East on said south line of said Section 23, to a point one rod West of the meandered line of Johnson Island; thence southerly and easterly on a line parallel with and one rod distant, from said meandered line of Johnson Island to a point where said line intersects the north and south center line of Section 25 in said Township and Range; thence 200 feet South; thence East to the east line of Section 25 in said Township and Range; thence running North on the east line of said Sections 25 and 24, to the point of commencement.

### Sec. 3. REPEAL OF COMMISSIONER'S ORDER.

The order from the commissioner of conservation dated September 26, 1955, designating the migratory waterfowl refuge on Swan lake is repealed.

Presented to the governor April 16, 1999

Signed by the governor April 20, 1999, 9:25 a.m.

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## CHAPTER 82—S.F.No. 1188

### VETOED

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## CHAPTER 83—H.F.No. 40

*An act relating to health; allowing a nursing home resident to request and consent to the use of a physical restraint; requiring certain actions by the commissioner of health with respect to immediate jeopardy citations; amending Minnesota Statutes 1998, sections 144.651, by adding a subdivision; and 144A.10, by adding a subdivision.*

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

Section 1. Minnesota Statutes 1998, section 144.651, is amended by adding a subdivision to read:

Subd. 33. **RESTRAINTS.** (a) Competent nursing home residents, family members of residents who are not competent, and legally appointed conservators, guardians, and health care agents as defined under section 145C.01, have the right to request and consent to the use of a physical restraint in order to treat the medical symptoms of the resident.

(b) Upon receiving a request for a physical restraint, a nursing home shall inform the resident, family member, or legal representative of alternatives to and the risks involved with physical restraint use. The nursing home shall provide a physical restraint to a resident only upon receipt of a signed consent form authorizing restraint use and a written order from the attending physician that contains statements and determinations regarding medical symptoms and specifies the circumstances under which restraints are to be used.

New language is indicated by underline, deletions by strikeout.

(c) A nursing home providing a restraint under paragraph (b) must:

(1) document that the procedures outlined in that paragraph have been followed;

(2) monitor the use of the restraint by the resident; and

(3) periodically, in consultation with the resident, the family, and the attending physician, reevaluate the resident's need for the restraint.

(d) A nursing home shall not be subject to fines, civil money penalties, or other state or federal survey enforcement remedies solely as the result of allowing the use of a physical restraint as authorized in this subdivision. Nothing in this subdivision shall preclude the commissioner from taking action to protect the health and safety of a resident if:

(1) the use of the restraint has jeopardized the health and safety of the resident; and

(2) the nursing home failed to take reasonable measures to protect the health and safety of the resident.

(e) For purposes of this subdivision, "medical symptoms" include:

(1) a concern for the physical safety of the resident; and

(2) physical or psychological needs expressed by a resident. A resident's fear of falling may be the basis of a medical symptom.

A written order from the attending physician that contains statements and determinations regarding medical symptoms is sufficient evidence of the medical necessity of the physical restraint.

(f) When determining nursing facility compliance with state and federal standards for the use of physical restraints, the commissioner of health is bound by the statements and determinations contained in the attending physician's order regarding medical symptoms. For purposes of this order, "medical symptoms" include the request by a competent resident, family member of a resident who is not competent, or legally appointed conservator, guardian, or health care agent as defined under section 145C.01, that the facility provide a physical restraint in order to enhance the physical safety of the resident.

Sec. 2. Minnesota Statutes 1998, section 144A.10, is amended by adding a subdivision to read:

Subd. 11. FACILITIES CITED FOR IMMEDIATE JEOPARDY. (a) The provisions of this subdivision apply to Minnesota nursing facilities:

(1) that received immediate jeopardy citations between April 1, 1998, and January 13, 1999, for violations of regulations governing the use of physical restraints; and

(2) on whose behalf the commissioner recommended to the federal government that fines for these citations not be imposed or be rescinded.

(b) The commissioner:

(1) shall grant all possible waivers for the continuation of an approved nurse aide training program, an approved competency evaluation program, or an approved nurse aide training and competency evaluation program conducted by or on the site of a facility referred to in this subdivision; and

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

(2) shall notify the board of nursing home administrators by June 1, 1999, that the commissioner has recommended to the federal government that fines not be imposed on the facilities referred to in this subdivision or that any fines imposed on these facilities for violations of regulations governing use of physical restraints be rescinded.

**Sec. 3. EFFECTIVE DATE.**

Sections 1 and 2 are effective the day following final enactment.

Presented to the governor April 19, 1999

Signed by the governor April 22, 1999, 9:20 a.m.

**CHAPTER 84—H.F.No. 463**

*An act relating to health; providing for review of ambulance services and first responders; amending Minnesota Statutes 1998, section 145.61, subdivision 5; proposing coding for new law in Minnesota Statutes, chapter 144E.*

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

**Section 1. [144E.32] REVIEW ORGANIZATION.**

Subdivision 1. APPLICABLE LAW. The provisions of sections 145.61 to 145.67 apply to an ambulance service or first responder review organization.

Subd. 2. REVIEW ORGANIZATION DEFINED. A review organization, as defined under section 145.61, includes a committee of an ambulance service provider, a physician medical director, a medical advisor, or ambulance supervisory personnel who gather, create, and review information relating to the care and treatment of patients in providing emergency medical care, including employee performance reviews, quality assurance data, and other ambulance service or first responder performance data for ambulance services licensed under section 144E.10 or 144E.12 or first responders registered under section 144E.27, for the purposes specified under section 145.61, subdivision 5.

Sec. 2. Minnesota Statutes 1998, section 145.61, subdivision 5, is amended to read:

**Subd. 5. REVIEW ORGANIZATION.** "Review organization" means a nonprofit organization acting according to clause (k), a committee as defined under section 144E.32, subdivision 2, or a committee whose membership is limited to professionals, administrative staff, and consumer directors, except where otherwise provided for by state or federal law, and which is established by one or more of the following: a hospital, a clinic, a nursing home, an ambulance service or first responder service regulated under chapter 144E, one or more state or local associations of professionals, an organization of professionals from a particular area or medical institution, a health maintenance organization as defined in chapter 62D, a nonprofit health service plan corporation as defined in chapter 62C, a preferred provider organization, a professional standards review organization established pursuant to United States Code, title 42, section 1320c-1 et seq., a medical review agent established to meet the requirements of section 256B.04, subdivision 15, or 256D.03, subdivision 7, paragraph (b), the department of human services, a

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