

CHAPTER 41—S.F.No. 1462

An act relating to health; modifying isolation and quarantine provisions and provisions for mass dispensing of medications; amending Minnesota Statutes 2008, sections 144.4195, subdivisions 1, 2, 3, 5; 144.4197; 145A.06, subdivision 7; 151.37, subdivisions 2, 10; proposing coding for new law in Minnesota Statutes, chapter 144.

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

Section 1. Minnesota Statutes 2008, section 144.4195, subdivision 1, is amended to read:

Subdivision 1. **Ex parte order for isolation or quarantine.** (a) Before isolating or quarantining a person or group of persons, the commissioner of health shall obtain a written, ex parte order authorizing the isolation or quarantine from the District Court of Ramsey County, the county where the person or group of persons is located, or a county adjoining the county where the person or group of persons is located. The evidence or testimony in support of an application may be made or taken by telephone, facsimile transmission, video equipment, or other electronic communication. The court shall grant the order upon a finding that probable cause exists to believe isolation or quarantine is warranted to protect the public health.

(b) The order must state the specific facts justifying isolation or quarantine, must state that the person being isolated or quarantined has a right to a court hearing under this section and a right to be represented by counsel during any proceeding under this section, and must be provided immediately to each person isolated or quarantined. The commissioner of health shall provide a copy of the authorizing order to the commissioner of public safety and other peace officers known to the commissioner to have jurisdiction over the site of the isolation or quarantine. If feasible, the commissioner of health shall give each person being isolated or quarantined an estimate of the expected period of the person's isolation or quarantine.

(c) If it is impracticable to provide individual orders to a group of persons isolated or quarantined, one order shall suffice to isolate or quarantine a group of persons believed to have been commonly infected with or exposed to a communicable disease. A copy of the order and notice shall be posted in a conspicuous place:

(1) in the isolation or quarantine premises, but only if the persons to be isolated or quarantined are already at the isolation or quarantine premises and have adequate access to the order posted there; or

(2) in another location where the group of persons to be isolated or quarantined is located, such that the persons have adequate access to the order posted there.

If the court determines that posting the order according to clause (1) or (2) is impractical due to the number of persons to be isolated or quarantined or the geographical area

affected, the court must use the best means available to ensure that the affected persons are fully informed of the order and notice.

(d) Any peace officer, as defined in section 144.4803, subdivision 16, may ~~use force as described by sections 609.06 and 609.066 to~~ apprehend, hold, transport, quarantine, or isolate a person subject to the order ~~if the person flees or forcibly resists the officer.~~ This subdivision is authority to carry out enforcement duties under this section. The commissioner or an agent of a local board of health authorized under section 145A.04 shall advise the peace officer on request of protective measures recommended to protect the officer from possible transmission of the communicable disease. The peace officer may act upon telephone, facsimile, or other electronic notification of the order from the court, commissioner of health, agent of a local board of health, or commissioner of public safety. ~~This paragraph expires August 1, 2009.~~

(e) No person may be isolated or quarantined pursuant to an order issued under this subdivision for longer than 21 days without a court hearing under subdivision 3 to determine whether isolation or quarantine should continue. A person who is isolated or quarantined may request a court hearing under subdivision 3 at any time before the expiration of the order.

Sec. 2. Minnesota Statutes 2008, section 144.4195, subdivision 2, is amended to read:

Subd. 2. **Temporary hold upon commissioner's directive.** (a) Notwithstanding subdivision 1, the commissioner of health may by directive isolate or quarantine a person or group of persons without first obtaining a written, ex parte order from the court if a delay in isolating or quarantining the person or group of persons would significantly jeopardize the commissioner of health's ability to prevent or limit the transmission of a communicable or potentially communicable life-threatening disease to others. The directive shall specify the known period of incubation or communicability or the estimated period under the commissioner's best medical judgment when the disease is unknown. The directive remains in effect for the period specified unless amended by the commissioner or superseded by a court order. The commissioner must provide the person or group of persons subject to the temporary hold with notice that the person has a right to request a court hearing under this section and a right to be represented by counsel during a proceeding under this section. If it is impracticable to provide individual notice to each person subject to the temporary hold, notice of these rights may be posted in the same manner as the posting of orders under subdivision 1, paragraph (c). Immediately upon executing the directive and initiating notice of the parties subject to it, the commissioner shall initiate the process to apply for a written, ex parte order pursuant to subdivision 1 authorizing the isolation or quarantine. The court must rule within 24 hours of receipt of the application or sooner if practicable or necessary. If the person is under a temporary hold, the person may not be held in isolation or quarantine after the temporary hold expires unless the court issues an ex parte order under subdivision 1. If the court does not rule within 36 hours after the execution of the directive, the directive shall expire.

(b) At the same time the commissioner initiates the process to apply for a written, ex parte order under paragraph (a), the commissioner shall notify the governor, the majority and minority leaders of the senate, the speaker and majority and minority leaders of the house of representatives, and the chairs and the ranking minority members of the senate and house of representatives committees having jurisdiction over health policy that a directive for a temporary hold has been issued under this subdivision. Notice under this paragraph is governed by the data privacy provisions of subdivision 6.

(c) Any peace officer, as defined in section 144.4803, subdivision 16, may assist a public health official to apprehend, hold, transport, quarantine, or isolate a person subject to the commissioner's directive. ~~The peace officer may use force as described by sections 609.06 and 609.066.~~ This subdivision is authority to carry out enforcement duties under this section. The commissioner or an agent of a local board of health authorized under section 145A.04 shall advise the peace officer on request of protective measures recommended to protect the officer from possible transmission of the communicable disease. The peace officer may act upon telephone, facsimile, or other electronic notification of the commissioner's directive or upon the request of an agent of a local board of health.

(d) If a person subject to a commissioner's directive under paragraph (a) is already institutionalized in an appropriate health care facility, the commissioner of health may direct the facility to continue to hold the person. The facility shall take all reasonable measures to prevent the person from exposing others to the communicable disease.

~~(e) This subdivision expires August 1, 2009.~~

Sec. 3. Minnesota Statutes 2008, section 144.4195, subdivision 3, is amended to read:

Subd. 3. **Court hearing.** (a) A person isolated or quarantined under an order issued pursuant to subdivision 1 or a temporary hold under subdivision 2 or the person's representative may petition the court to contest the court order or temporary hold at any time prior to the expiration of the order or temporary hold. If a petition is filed, the court must hold a hearing within 72 hours from the date of the filing. A petition for a hearing does not stay the order of isolation or quarantine. At the hearing, the commissioner of health must show by clear and convincing evidence that the isolation or quarantine is warranted to protect the public health.

(b) If the commissioner of health wishes to extend the order for isolation or quarantine past the period of time stated in subdivision 1, paragraph ~~(d)~~ (e), the commissioner must petition request the court to do so. Notice of the hearing must be served upon the person or persons who are being isolated or quarantined at least three days before the hearing. If it is impracticable to provide individual notice to large groups who are isolated or quarantined, a copy of the notice may be posted in the same manner as described under subdivision 1, paragraph (c).

(c) The notice must contain the following information:

- (1) the time, date, and place of the hearing;
- (2) the grounds and underlying facts upon which continued isolation or quarantine is sought;
- (3) the person's right to appear at the hearing; and
- (4) the person's right to counsel, including the right, ~~if indigent,~~ to be represented by counsel designated by the court ~~or county of venue.~~

(d) The court may order the continued isolation or quarantine of the person or group of persons if it finds by clear and convincing evidence that the person or persons would pose an imminent health threat to others if isolation or quarantine was lifted. In no case may the isolation or quarantine continue longer than 30 days from the date of the court order issued under this subdivision unless the commissioner petitions the court for an extension. Any hearing to extend an order is governed by this subdivision.

Sec. 4. Minnesota Statutes 2008, section 144.4195, subdivision 5, is amended to read:

Subd. 5. **Judicial procedures and decisions.** (a) Court orders issued pursuant to subdivision 3 or 4 shall be based upon clear and convincing evidence and a written record of the disposition of the case shall be made and retained.

(b) Any person subject to isolation or quarantine has the right to be represented by counsel. Persons not otherwise represented may request the court to appoint counsel at the expense of the Department of Health or of a local public health board that has entered into a written delegation agreement with the commissioner under subdivision 7. The court shall appoint counsel when so requested and may have one counsel represent a group of persons similarly situated. The appointments shall be only for representation under subdivisions 3 and 4 and for appeals of orders under subdivisions 3 and 4. On counsel's request, the commissioner or an agent of a local board of health authorized under section 145A.04 shall advise counsel of protective measures recommended to protect counsel from possible transmission of the communicable disease. Appointments shall be made and counsel compensated according to procedures developed by the Supreme Court. The Supreme Court shall also develop procedures for compensating language interpreters and medical experts reasonably necessary to defense preparations. The procedures shall provide standards for determining indigency for purposes of appeal. ~~A person seeking an appeal who does not meet the indigency standard may,~~ Upon motion by the commissioner of health or local public health board ~~and subsequent court order,~~ the court may order a person who is not indigent to, reimburse the Department of Health or local public health board for the attorney fees and costs ~~incurred~~ paid on behalf of the person in the person's appeal. Counsel appointed for a respondent must be allowed to withdraw from representation and is not required to pursue an appeal if, in the opinion of counsel, there is insufficient basis for proceeding.

(c) The court may choose to conduct a hearing under subdivision 3 or 4 by telephonic, interactive video, or other electronic means to maintain isolation or quarantine precautions and reduce the risk of spread of a communicable disease. Otherwise, the manner in which the request for a hearing is filed and acted upon shall be in accordance with the existing laws and rules of the courts of this state or, if the isolation or quarantine occurs during a national security or peacetime emergency, any rules that are developed by the courts for use during a national security or peacetime emergency.

Sec. 5. Minnesota Statutes 2008, section 144.4197, is amended to read:

144.4197 EMERGENCY VACCINE ADMINISTRATION; LEGEND DRUG.

~~(a)~~ When a mayor, county board chair, or legal successor to such official has declared a local emergency under section 12.29 or the governor has declared an emergency under section 12.31, subdivision 1 or 2, or a local board of health or its appointed agent under chapter 145A has requested the commissioner's assistance in response to an event threatening public health in its jurisdiction, the commissioner of health may authorize any person, including, but not limited to, any person licensed or otherwise credentialed under chapters 144E, 147 to 148, 150A, 151, 153, or 156, to administer vaccinations or dispense legend drugs if the commissioner determines that such action is necessary to protect the health and safety of the public. The authorization shall be in writing and shall contain the categories of persons included in the authorization, any additional training required before performance of the vaccination or drug dispensing by such persons, any supervision required for performance of the vaccination or drug dispensing, and the duration of the

authorization. The commissioner may, in writing, extend the scope and duration of the authorization as the emergency warrants. Any person authorized by the commissioner under this section shall not be subject to criminal liability, administrative penalty, professional discipline, or other administrative sanction for good faith performance of the vaccination or drug dispensing duties assigned according to this section.

~~(b) This section expires August 1, 2009.~~

Sec. 6. **[144.4198] MASS DISPENSING UNDER AUTHORITY OF COMMISSIONER OF HEALTH.**

Subdivision 1. Definition. "Closed point of dispensing (POD)" means a dispensing or vaccinating location, including but not limited to a business, nonprofit, governmental, correctional, educational, health care, religious, or other entity that dispenses to a limited group such as employees and their household members, residents, business guests, students, or inmates. A closed POD is not open to the public.

Subd. 2. Alternative and expedited mass dispensing. (a) When the commissioner of health has determined that a pandemic influenza, other life-threatening disease, or terrorist, accidental, or natural event requires urgent treatment or prophylactic measures, the commissioner may designate persons and entities to expedite legend drug dispensing, by means of any of the methods in paragraphs (b), (c), and (d), or any method the commissioner deems warranted.

(b) Legend drugs may be distributed and dispensed to a household representative by the commissioner, or by a local public health or tribal public health agency authorized by the commissioner. The household representative shall convey medical information and distribute legend drugs to individuals who have entrusted the household representative with drug collection responsibilities. Each individual must meet medical protocol criteria established by the commissioner. The household representative may be a mature minor who appears able to understand and carry out the responsibility of legend drug distribution.

(c) Legend drugs from the United States Department of Health and Human Services, from state or regional pharmaceutical caches, or from other sources available to the commissioner may be distributed by United States Postal Service postal carriers to residences designated by the commissioner.

(d) Legend drugs may be dispensed or administered via the closed POD according to a plan approved by the commissioner or by local or tribal public health agencies, and the medical protocol criteria established by the commissioner.

(e) The methods in this subdivision shall be carried out under the commissioner's powers in section 151.37, subdivisions 2 and 10.

Subd. 3. Liability protections for closed POD's. A person, corporation, charitable organization, government entity, religious entity, nonprofit entity, or other legal entity, or an employee or agent of the person, corporation, charitable organization, or entity, who, during the preparation for and setup, operation, and demobilization of a closed POD, acts in good faith and under the direction of a closed POD plan that has been approved by the commissioner of health, local public health agency, or tribal public health authority, shall not be liable for civil damages or administrative sanctions for causing the death or injury of a person, or for damage to property. This section does not apply in case of malfeasance or willful or wanton actions.

Subd. 4. **Continuing benefits.** This section does not affect the right of any person to receive benefits to which the person otherwise would be entitled under the workers' compensation law or under any pension law, nor does it affect entitlement to any other benefits or compensation authorized by state law. This section does not affect the right of any person to receive benefits to which the person would otherwise be entitled under federal law, including, but not limited to, the injury compensation fund under the Public Readiness and Preparedness Act, United States Code, title 42, section 247d-6e.

Sec. 7. Minnesota Statutes 2008, section 145A.06, subdivision 7, is amended to read:

Subd. 7. ~~**Requests to Commissioner requests for health volunteers.**~~ (a) When the commissioner receives a request for health volunteers from:

- (1) a local board of health according to section 145A.04, subdivision 6c;
- (2) the University of Minnesota Academic Health Center;
- (3) another state or a territory through the Interstate Emergency Management Assistance Compact authorized under section 192.89;
- (4) the federal government through ESAR-VHP or another similar program; or
- (5) a tribal or Canadian government;

the commissioner shall determine if deployment of Minnesota Responds Medical Reserve Corps volunteers from outside the requesting jurisdiction is in the public interest. If so, the commissioner may ask for Minnesota Responds Medical Reserve Corps volunteers to respond to the request. The commissioner may also ask for Minnesota Responds Medical Reserve Corps volunteers if the commissioner finds that the state needs health volunteers.

(b) The commissioner may request Minnesota Responds Medical Reserve Corps volunteers to work on the Minnesota Mobile Medical Unit (MMU), or on other mobile or temporary units providing emergency patient stabilization, medical transport, or ambulatory care. The commissioner may utilize the volunteers for training, mobilization or demobilization, inspection, maintenance, repair, or other support functions for the MMU facility or for other emergency units, as well as for provision of health care services.

(c) A volunteer's rights and benefits under this chapter as a Minnesota Responds Medical Reserve Corps volunteer is not affected by any vacation leave, pay, or other compensation provided by the volunteer's employer during volunteer service requested by the commissioner. An employer is not liable for actions of an employee while serving as a Minnesota Responds Medical Reserve Corps volunteer.

~~(b)~~ (d) If the commissioner matches the request under paragraph (a) with Minnesota Responds Medical Reserve Corps volunteers, the commissioner shall facilitate deployment of the volunteers from the sending Minnesota Responds Medical Reserve Corps units to the receiving jurisdiction. The commissioner shall track volunteer deployments and assist sending and receiving jurisdictions in monitoring deployments, and shall coordinate efforts with the division of homeland security and emergency management for out-of-state deployments through the Interstate Emergency Management Assistance Compact or other emergency management compacts.

~~(c)~~ (e) Where the commissioner has deployed Minnesota Responds Medical Reserve Corps volunteers within or outside the state, the provisions of paragraphs ~~(d) to (e)~~ (f) and (g) must apply. Where Minnesota Responds Medical Reserve Corps volunteers were deployed across jurisdictions by mutual aid or similar agreements prior

to a commissioner's call, the provisions of paragraphs ~~(d)~~ to ~~(e)~~ (f) and (g) must apply retroactively to volunteers deployed as of their initial deployment in response to the event or emergency that triggered a subsequent commissioner's call.

~~(d)~~ (f)(1) A Minnesota Responds Medical Reserve Corps volunteer responding to a request for assistance at the call of the commissioner must be deemed an employee of the state for purposes of workers' compensation and tort claim defense and indemnification under section 3.736, without regard to whether the volunteer's activity is under the direction and control of the commissioner, the division of homeland security and emergency management, the sending jurisdiction, the receiving jurisdiction, or of a hospital, alternate care site, or other health care provider treating patients from the public health event or emergency.

(2) For purposes of calculating workers' compensation benefits under chapter 176, the daily wage must be the usual wage paid at the time of injury or death for similar services performed by paid employees in the community where the volunteer regularly resides, or the wage paid to the volunteer in the volunteer's regular employment, whichever is greater.

~~(e)~~ (g) The Minnesota Responds Medical Reserve Corps volunteer must receive reimbursement for travel and subsistence expenses during a deployment approved by the commissioner under this subdivision according to reimbursement limits established for paid state employees. Deployment begins when the volunteer leaves on the deployment until the volunteer returns from the deployment, including all travel related to the deployment. The Department of Health shall initially review and pay those expenses to the volunteer. Except as otherwise provided by the Interstate Emergency Management Assistance Compact in section 192.89 or agreements made thereunder, the department shall bill the jurisdiction receiving assistance and that jurisdiction shall reimburse the department for expenses of the volunteers.

~~(f)~~ (h) In the event Minnesota Responds Medical Reserve Corps volunteers are deployed outside the state pursuant to the Interstate Emergency Management Assistance Compact, the provisions of the Interstate Emergency Management Assistance Compact must control over any inconsistent provisions in this section.

~~(g)~~ (i) When a Minnesota Responds Medical Reserve Corps volunteer makes a claim for workers' compensation arising out of a deployment under this section or out of a training exercise conducted by the commissioner, the volunteer's workers compensation benefits must be determined under section 176.011, subdivision 9, clause (25), even if the volunteer may also qualify under other clauses of section 176.011, subdivision 9.

Sec. 8. Minnesota Statutes 2008, section 151.37, subdivision 2, is amended to read:

Subd. 2. **Prescribing and filing.** (a) A licensed practitioner in the course of professional practice only, may prescribe, administer, and dispense a legend drug, and may cause the same to be administered by a nurse, a physician assistant, or medical student or resident under the practitioner's direction and supervision, and may cause a person who is an appropriately certified, registered, or licensed health care professional to prescribe, dispense, and administer the same within the expressed legal scope of the person's practice as defined in Minnesota Statutes. A licensed practitioner may prescribe a legend drug, without reference to a specific patient, by directing a nurse, pursuant to section 148.235, subdivisions 8 and 9, physician assistant, or medical student or resident to adhere to a particular practice guideline or protocol when treating patients whose condition falls

within such guideline or protocol, and when such guideline or protocol specifies the circumstances under which the legend drug is to be prescribed and administered. An individual who verbally, electronically, or otherwise transmits a written, oral, or electronic order, as an agent of a prescriber, shall not be deemed to have prescribed the legend drug. This paragraph applies to a physician assistant only if the physician assistant meets the requirements of section 147A.18.

(b) The commissioner of health, if a licensed practitioner, or a person designated by the commissioner who is a licensed practitioner, may prescribe a legend drug to an individual or by protocol for mass dispensing purposes where the commissioner finds that the conditions triggering section 144.4197 or 144.4198, subdivision 2, paragraph (b), exist. The commissioner, if a licensed practitioner, or a designated licensed practitioner, may prescribe, dispense, or administer a legend drug or other substance listed in subdivision 10 to control tuberculosis and other communicable diseases. The commissioner may modify state drug labeling requirements, and medical screening criteria and documentation, where time is critical and limited labeling and screening are most likely to ensure legend drugs reach the maximum number of persons in a timely fashion so as to reduce morbidity and mortality.

~~(b)~~ (c) A licensed practitioner that dispenses for profit a legend drug that is to be administered orally, is ordinarily dispensed by a pharmacist, and is not a vaccine, must file with the practitioner's licensing board a statement indicating that the practitioner dispenses legend drugs for profit, the general circumstances under which the practitioner dispenses for profit, and the types of legend drugs generally dispensed. It is unlawful to dispense legend drugs for profit after July 31, 1990, unless the statement has been filed with the appropriate licensing board. For purposes of this paragraph, "profit" means (1) any amount received by the practitioner in excess of the acquisition cost of a legend drug for legend drugs that are purchased in prepackaged form, or (2) any amount received by the practitioner in excess of the acquisition cost of a legend drug plus the cost of making the drug available if the legend drug requires compounding, packaging, or other treatment. The statement filed under this paragraph is public data under section 13.03. This paragraph does not apply to a licensed doctor of veterinary medicine or a registered pharmacist. Any person other than a licensed practitioner with the authority to prescribe, dispense, and administer a legend drug under paragraph (a) shall not dispense for profit. To dispense for profit does not include dispensing by a community health clinic when the profit from dispensing is used to meet operating expenses.

~~(c)~~ (d) A prescription or drug order for the following drugs is not valid, unless it can be established that the prescription or order was based on a documented patient evaluation, including an examination, adequate to establish a diagnosis and identify underlying conditions and contraindications to treatment:

- (1) controlled substance drugs listed in section 152.02, subdivisions 3 to 5;
- (2) drugs defined by the Board of Pharmacy as controlled substances under section 152.02, subdivisions 7, 8, and 12;
- (3) muscle relaxants;
- (4) centrally acting analgesics with opioid activity;
- (5) drugs containing butalbital; or
- (6) phosphodiesterase type 5 inhibitors when used to treat erectile dysfunction.

~~(d)~~ (e) For the purposes of paragraph ~~(c)~~ (d), the requirement for an examination shall be met if an in-person examination has been completed in any of the following circumstances:

(1) the prescribing practitioner examines the patient at the time the prescription or drug order is issued;

(2) the prescribing practitioner has performed a prior examination of the patient;

(3) another prescribing practitioner practicing within the same group or clinic as the prescribing practitioner has examined the patient;

(4) a consulting practitioner to whom the prescribing practitioner has referred the patient has examined the patient; or

(5) the referring practitioner has performed an examination in the case of a consultant practitioner issuing a prescription or drug order when providing services by means of telemedicine.

~~(c)~~ (f) Nothing in paragraph ~~(c)~~ or (d) or (e) prohibits a licensed practitioner from prescribing a drug through the use of a guideline or protocol pursuant to paragraph (a).

~~(f)~~ (g) Nothing in this chapter prohibits a licensed practitioner from issuing a prescription or dispensing a legend drug in accordance with the Expedited Partner Therapy in the Management of Sexually Transmitted Diseases guidance document issued by the United States Centers for Disease Control.

~~(g)~~ (h) Nothing in paragraph ~~(c)~~ or (d) or (e) limits prescription, administration, or dispensing of legend drugs through a public health clinic or other distribution mechanism approved by the commissioner of health or a board of health in order to prevent, mitigate, or treat a pandemic illness, infectious disease outbreak, or intentional or accidental release of a biological, chemical, or radiological agent.

~~(h)~~ (i) No pharmacist employed by, under contract to, or working for a pharmacy licensed under section 151.19, subdivision 1, may dispense a legend drug based on a prescription that the pharmacist knows, or would reasonably be expected to know, is not valid under paragraph ~~(c)~~ (d).

~~(i)~~ (j) No pharmacist employed by, under contract to, or working for a pharmacy licensed under section 151.19, subdivision 2, may dispense a legend drug to a resident of this state based on a prescription that the pharmacist knows, or would reasonably be expected to know, is not valid under paragraph ~~(c)~~ (d).

Sec. 9. Minnesota Statutes 2008, section 151.37, subdivision 10, is amended to read:

Subd. 10. **Purchase of drugs for ~~communicable diseases~~ and other agents by commissioner of health.** The commissioner of health, in preparation for and in carrying out the duties of ~~section~~ sections 144.05, 144.4197, and 144.4198 may purchase, store, and distribute antituberculosis drugs, biologics, ~~and~~ vaccines, antitoxins, serums, immunizing agents, antibiotics, antivirals, antidotes, other pharmaceutical agents, and medical supplies to treat and prevent communicable disease.

Sec. 10. **EFFECTIVE DATE.**

Sections 1 to 9 are effective the day following final enactment.

Presented to the governor May 5, 2009

Signed by the governor May 7, 2009, 3:36 p.m.