

CHAPTER 5620
BOARD OF MEDICAL PRACTICE
FEE SPLITTING

- 5620.0100 PURPOSE.
5620.0110 DEFINITIONS.
5620.0120 INCORPORATION BY REFERENCE OF CRITERIA TO DEFINE DEVICE.
5620.0130 DISCLOSURE REQUIREMENTS AND FORMATS.
5620.0140 EVIDENCE OF DISCLOSURE.
5620.0150 DISCLOSURE OF PROPRIETARY INFORMATION.
5620.0160 DIVISION OF FEES.

5620.0100 PURPOSE.

The purpose of Minnesota Statutes, section 147.091, subdivision 1, paragraph (p), and parts 5620.0110 to 5620.0160 is to protect consumers against medical-economic arrangements, practices, and relationships by physicians that unnecessarily increase the cost of health care to consumers, restrict consumer access to goods and services, and otherwise present harm to consumer interests. The board shall comply with Minnesota Statutes, section 147.091, subdivision 1, paragraph (p), and parts 5620.0110 to 5620.0160 in evaluating complaints received by the board relating to medical-economic arrangements, practices, or relationships among health care providers.

Statutory Authority: *MS s 147.01*

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5620.0110 DEFINITIONS.

Subpart 1. **Scope.** As used in Minnesota Statutes, section 147.091, subdivision 1, paragraph (p), the following terms have the meanings given them.

Subp. 2. **Device.** "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article including a component, part, or accessory, that as a completely assembled article exceeds \$99 in cost and is:

- A. recognized in the official United States Pharmacopoeia and National Formulary and its supplements;
- B. intended for use in diagnosing disease or other conditions, or in curing, mitigating, treating, or preventing disease in a person;
- C. intended to affect the structure or function of the body of a person, and that does not achieve any of its principal intended purposes through chemical action within or on the body of a person and is not dependent upon being metabolized for the achievement of any of its principal intended purposes; or
- D. restricted under federal law to sale by or on the order of a licensed practitioner.

Nondurable medical equipment, meaning a supply or piece of equipment that is used to treat a health condition and cannot be reused, is excluded from this definition of device.

Subp. 3. **Drugs.** "Drugs" has the meaning in part 5600.0100, subpart 8.

Subp. 4. **Financial interest.** "Financial interest" means an asset that is directly owned or controlled by an individual or business and that has the potential to produce a monetary return.

Financial interest does not include the ownership of a building by a physician where space is leased to an individual or organization at the prevailing rate in a straight lease agreement or any interest held by a physician in a publicly traded stock.

Subp. 5. **Profit interest.** "Profit interest" means a financial amount received by the physician that exceeds the acquisition cost of a drug or device plus the cost of having the drug or device available.

Subp. 6. **Significant financial interest.** "Significant financial interest" means any financial interest as defined in subpart 4 that is equal to or greater than five percent of the whole or \$5,000, whichever is the lesser amount.

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5620.0120 INCORPORATION BY REFERENCE OF CRITERIA TO DEFINE DEVICE.

The most recent edition of the United States Pharmacopoeia and National Formulary and its supplements are incorporated by reference. The publication is issued by the United States Pharmacopoeial Convention, Inc., 12601 Twinbrook Parkway, Rockville, Maryland, 20852. It is available for inspection and copying through the Minitex interlibrary loan system. The publication is subject to change.

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5620.0130 DISCLOSURE REQUIREMENTS AND FORMATS.

Subpart 1. **Written disclosure required.** The disclosure requirements in Minnesota Statutes, section 147.091, subdivision 1, paragraph (p), are met if the written disclosure is made before a referral. The written disclosure must reasonably apprise the patient or patient's guardian of the physician's financial and profit interest in the individual or entity to which the physician is making the referral, and contain a statement that the patient is free to choose providers other than the one recommended by the physician. The written disclosure must consist of one of the formats in items A to D.

A. The posting of a conspicuous sign in an area that is likely to be seen by the patients and patients' guardians who use the physician's facility.

B. The incorporation of a conspicuous written notice in existing office documents used by the physician. Office documents may include, but are not limited to, prescription sheets, office information or policy booklets, referral forms, and any similar regularly distributed information handout.

C. The use of a written disclosure document that is given to a patient or patient's guardian for review. A copy of the document must be provided to the patient or patient's guardian.

D. A combination of the written disclosure formats described in items A to C.

Subp. 2. **Unwritten disclosure; when allowed.** A nonwritten disclosure format may be used to satisfy the disclosure requirements of Minnesota Statutes, section 147.091, subdivision 1, paragraph (p), when necessary to accommodate the physical condition of a patient or the patient's guardian that makes use of written disclosure alone unworkable.

Subp. 3. **Information must be updated.** The disclosure information shall be updated to show any change in the circumstances regarding the physician's financial or profit interest.

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5620.0140 EVIDENCE OF DISCLOSURE.

When the board investigates a violation of Minnesota Statutes, section 147.091, subdivision 1, paragraph (p), the burden of proof is on the physician investigated to show evidence the physician complied with disclosure requirements in part 5620.0130.

Statutory Authority: *MS s 147.01*

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5620.0150 DISCLOSURE OF PROPRIETARY INFORMATION.

Specific contract terms or similar proprietary information relating to a physician's financial and profit interest is not required to be part of the information provided in a disclosure under part 5620.0130.

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5620.0160 DIVISION OF FEES.

In reviewing a division of fees as described in Minnesota Statutes, section 147.091, subdivision 1, paragraph (p), clause (2), the board may consider, but is not limited to, the following factors regarding the reasonableness of a proportional division of fees:

- A. the value of professional services;
- B. overhead costs;
- C. time and distance traveled; and
- D. the availability of the service or product elsewhere in the local trade area.

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