

CHAPTER 144A

NURSING HOMES

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144A.01 DEFINITIONS.

[For text of subds 1 to 4, see M.S.1984]

Subd. 5. "Nursing home" means a facility or that part of a facility which provides nursing care to five or more persons. "Nursing home" does not include a facility or that part of a facility which is a hospital, a hospital with approved swing beds as defined in section 144.562, clinic, doctor's office, diagnostic or treatment center, or a residential facility licensed pursuant to sections 245.781 to 245.821 or 252.28.

[For text of subd 6, see M.S.1984]

Subd. 7. "Uncorrected violation" means a violation of a statute or rule or any other deficiency for which a notice of noncompliance has been issued and fine assessed and allowed to be recovered pursuant to section 144A.10, subdivision 8.

[For text of subds 8 and 9, see M.S.1984]

Subd. 10. "Repeated violation" means the issuance of two or more correction orders, within a 12-month period, for a violation of the same provision of a statute or rule.

History: 1Sp1985 c 3 s 5-7

144A.04 QUALIFICATIONS FOR LICENSE.

[For text of subds 1 to 3a, see M.S.1984]

Subd. 4. The controlling persons of a nursing home may not include any person who was a controlling person of another nursing home during any period of time in the previous two-year period:

(a) during which time of control that other nursing home incurred the following number of uncorrected or repeated violations:

(1) two or more uncorrected violations or one or more repeated violations which created an imminent risk to direct resident care or safety; or

(2) four or more uncorrected violations or two or more repeated violations of any nature for which the fines are in the four highest daily fine categories prescribed in rule; or

(b) who was convicted of a felony or gross misdemeanor punishable by a term of imprisonment of more than 90 days that relates to operation of the nursing home or directly affects resident safety or care, during that period.

The provisions of this subdivision shall not apply to any controlling person who had no legal authority to affect or change decisions related to the operation of the nursing home which incurred the uncorrected violations.

[For text of subd 5, see M.S.1984]

Subd. 6. A nursing home may not employ as a managerial employee or as its licensed administrator any person who was a managerial employee or the licensed administrator of another facility during any period of time in the previous two-year period:

(a) During which time of employment that other nursing home incurred the following number of uncorrected violations which were in the jurisdiction and control of the managerial employee or the administrator:

(1) two or more uncorrected violations or one or more repeated violations which created an imminent risk to direct resident care or safety; or

(2) four or more uncorrected violations or two or more repeated violations of any nature for which the fines are in the four highest daily fine categories prescribed in rule; or

(b) who was convicted of a felony or gross misdemeanor punishable by a term of imprisonment of more than 90 days that relates to operation of the nursing home or directly affects resident safety or care, during that period.

History: 1Sp1985 c 3 s 8,9

144A.071 MORATORIUM ON CERTIFICATION OF NURSING HOME BEDS.

Subdivision 1. **Findings.** The legislature finds that medical assistance expenditures are increasing at a much faster rate than the state's ability to pay them; that reimbursement for nursing home care and ancillary services comprises over half of medical assistance costs, and, therefore, controlling expenditures for nursing home care is essential to prudent management of the state's budget; that construction of new nursing homes and the addition of more nursing home beds to the state's long-term care resources inhibits the ability to control expenditures; that Minnesota already leads the nation in nursing home expenditures per capita, has the fifth highest number of beds per capita elderly, and that private paying individuals and medical assistance recipients have equivalent access to nursing home care; and that in the absence of a moratorium the increased numbers of nursing homes and nursing home beds will consume resources that would otherwise be available to develop a comprehensive long-term care system that includes a continuum of care. Unless action is taken, this expansion of bed capacity is likely to accelerate with the repeal of the certificate of need program effective March 15, 1984. The legislature also finds that Minnesota's dependence on institutional care for elderly persons is due in part to the dearth of alternative services in the home and community. The legislature also finds that further increases in the number of licensed nursing home beds, especially in nursing homes not certified for participation in the medical assistance program, is contrary to public policy, because: (1) nursing home residents with limited resources may exhaust their resources more rapidly in these facilities, creating the need for a transfer to a certified nursing home, with the concomitant risk of transfer trauma; (2) a continuing increase in the number of nursing home beds will foster continuing reliance on institutional care to meet the long-term care needs of residents of the state; (3) a further expansion of nursing home beds will diminish incentives to develop more appropriate and cost-effective alternative services and divert community resources that would otherwise be available to fund alternative services; (4) through corporate reorganization resulting in the separation of certified and licensed beds, a nursing home may evade the provisions of section 256B.48, subdivision 1, clause (a); and (5) it is in the best interests of the state to ensure that the long-term care system is designed to protect the private resources of individuals as well as to use state resources most effectively and efficiently.

The legislature declares that a moratorium on the licensure and medical assistance certification of new nursing home beds is necessary to control nursing home expenditure growth and enable the state to meet the needs of its elderly by providing high quality services in the most appropriate manner along a continuum of care.

Subd. 2. Moratorium. The commissioner of health, in coordination with the commissioner of human services, shall deny each request by a nursing home or boarding care home, except an intermediate care facility for the mentally retarded, for addition of new certified beds or for a change or changes in the certification status of existing beds except as provided in subdivision 3. The total number of certified beds in the state shall remain at or decrease from the number of beds certified on May 23, 1983, except as allowed under subdivision 3. "Certified bed" means a nursing home bed or a boarding care bed certified by the commissioner of health for the purposes of the medical assistance program, under United States Code, title 42, sections 1396 et seq.

The commissioner of human services, in coordination with the commissioner of health, shall deny any request to issue a license under sections 245.781 to 245.812 and 252.28 to a nursing home or boarding care home, if that license would result in an increase in the medical assistance reimbursement amount. The commissioner of health shall deny each request for licensure of nursing home beds except as provided in subdivision 3.

Subd. 3. Exceptions. The commissioner of health, in coordination with the commissioner of human services, may approve the addition of a new certified bed or the addition of a new licensed nursing home bed, under the following conditions:

(a) to replace a bed decertified after May 23, 1983 or to address an extreme hardship situation, in a particular county that, together with all contiguous Minnesota counties, has fewer nursing home beds per 1,000 elderly than the number that is ten percent higher than the national average of nursing home beds per 1,000 elderly individuals. For the purposes of this section, the national average of nursing home beds shall be the most recent figure that can be supplied by the federal health care financing administration and the number of elderly in the county or the nation shall be determined by the most recent federal census or the most recent estimate of the state demographer as of July 1, of each year of persons age 65 and older, whichever is the most recent at the time of the request for replacement. In allowing replacement of a decertified bed, the commissioners shall ensure that the number of added or recertified beds does not exceed the total number of decertified beds in the state in that level of care. An extreme hardship situation can only be found after the county documents the existence of unmet medical needs that cannot be addressed by any other alternatives;

(b) to certify a new bed in a facility that commenced construction before May 23, 1983. For the purposes of this section, "commenced construction" means that all of the following conditions were met: the final working drawings and specifications were approved by the commissioner of health; the construction contracts were let; a timely construction schedule was developed, stipulating dates for beginning, achieving various stages, and completing construction; and all zoning and building permits were secured;

(c) to certify beds in a new nursing home that is needed in order to meet the special dietary needs of its residents, if: the nursing home proves to the commissioner's satisfaction that the needs of its residents cannot otherwise be met; elements of the special diet are not available through most food distributors; and proper preparation of the special diet requires incurring various operating expenses, includ-

ing extra food preparation or serving items, not incurred to a similar extent by most nursing homes;

(d) to license a new nursing home bed in a facility that meets one of the exceptions contained in clauses (a) to (c);

(e) to license nursing home beds in a facility that has submitted either a completed licensure application or a written request for licensure to the commissioner before March 1, 1985, and has either commenced any required construction as defined in clause (b) before May 1, 1985, or has, before May 1, 1985, received from the commissioner approval of plans for phased-in construction and written authorization to begin construction on a phased-in basis. For the purpose of this clause, "construction" means any erection, building, alteration, reconstruction, modernization, or improvement necessary to comply with the nursing home licensure rules; or

(f) to certify or license new beds in a new facility that is to be operated by the commissioner of veterans' affairs or when the costs of constructing and operating the new beds are to be reimbursed by the commissioner of veterans' affairs or the United States Veterans Administration.

[For text of subds 4 and 5, see M.S.1984]

History: *1Sp1985 c 3 s 10-12*

144A.08 PHYSICAL STANDARDS; PENALTY.

[For text of subds 1 to 2, see M.S.1984]

Subd. 3. Penalty. Any controlling person who establishes, conducts, manages or operates a nursing home which incurs the following number of uncorrected or repeated violations, in any two-year period:

(a) two or more uncorrected violations or one or more repeated violations which created an imminent risk to direct resident care or safety; or

(b) four or more uncorrected violations or two or more repeated violations of any nature for which the fines are in the four highest daily fine categories prescribed in rule, is guilty of a misdemeanor.

The provisions of this subdivision shall not apply to any controlling person who had no legal authority to affect or change decisions as to the operation of the nursing home which incurred the uncorrected or repeated violations.

History: *1Sp1985 c 3 s 13*

144A.10 INSPECTION; COMMISSIONER OF HEALTH; FINES.

[For text of subds 1 to 3, see M.S.1984]

Subd. 4. Correction orders. Whenever a duly authorized representative of the commissioner of health finds upon inspection of a nursing home, that the facility or a controlling person or an employee of the facility is not in compliance with sections 144.651, 144A.01 to 144A.17, or 626.557 or the rules promulgated thereunder, a correction order shall be issued to the facility. The correction order shall state the deficiency, cite the specific rule or statute violated, state the suggested method of correction, and specify the time allowed for correction. If the commissioner finds that the nursing home had uncorrected or repeated violations which create a risk to resident care, safety, or rights, the commissioner shall notify the commissioner of human services who shall (1) review reimbursement to the nursing home to determine the extent to which the state has paid for substandard care and, (2)

furnish his or her findings and disposition to the commissioner of health within 30 days of notification.

Subd. 4a. **Suspension of admissions.** If the commissioner issues a penalty assessment or if the nursing home has a repeated violation of that portion of Minnesota Rules, part 4655.5600, subdivision 2, establishing minimum nursing personnel requirements, the nursing home shall be prohibited from admitting new residents until correction is verified by a duly authorized representative of the commissioner. A nursing home shall notify the commissioner of health in writing when the violation is corrected. The facility shall be reinspected within three working days after the receipt of the notification.

[For text of subds 5 to 9, see M.S.1984]

Subd. 10. **Reporting to a medical examiner or coroner.** Whenever a duly authorized representative of the commissioner of health has reasonable cause to believe that a resident has died as a direct or indirect result of abuse or neglect, the representative shall report that information to the appropriate medical examiner or coroner and police department or county sheriff. The medical examiner or coroner shall complete an investigation as soon as feasible and report the findings to the police department or county sheriff, and to the commissioner of health.

History: 1Sp1985 c 3 s 14-16

144A.11 LICENSE SUSPENSION OR REVOCATION; HEARING; RELI-CENSING.

[For text of subd 1, see M.S.1984]

Subd. 2. **Mandatory proceedings.** The commissioner of health shall initiate proceedings within 60 days of notification to suspend or revoke a nursing home license or shall refuse to renew a license if within the preceding two years the nursing home has incurred the following number of uncorrected or repeated violations:

- (1) two or more uncorrected violations or one or more repeated violations which created an imminent risk to direct resident care or safety; or
- (2) four or more uncorrected violations or two or more repeated violations of any nature for which the fines are in the four highest daily fine categories prescribed in rule.

[For text of subd 3, see M.S.1984]

Subd. 3a. **Mandatory revocation.** Notwithstanding the provisions of subdivision 3, the commissioner shall revoke a nursing home license if a controlling person is convicted of a felony or gross misdemeanor punishable by a term of imprisonment of more than 90 days that relates to operation of the nursing home or directly affects resident safety or care. The commissioner shall notify the nursing home 30 days in advance of the date of revocation.

[For text of subd 4, see M.S.1984]

History: 1Sp1985 c 3 s 17,18

144A.33 RESIDENT AND FAMILY ADVISORY COUNCIL EDUCATION.

Subdivision 1. **Educational program.** Each resident and family council authorized under section 144.651, subdivision 27, shall be educated and informed about the following:

- (1) care in the nursing home or board and care home;
- (2) resident rights and responsibilities;
- (3) resident and family council organization and maintenance;
- (4) laws and rules that apply to homes and residents;
- (5) human relations; and
- (6) resident and family self-help methods to increase quality of care and quality of life in a nursing home or board and care home.

Subd. 2. **Providing educational services.** The Minnesota board on aging shall provide a grant-in-aid to a statewide, independent, nonprofit, consumer-sponsored agency to provide educational services to councils.

Subd. 3. **Funding of advisory council education.** A license application or renewal fee for nursing homes and boarding care homes under section 144.53 or 144A.07 must be increased by \$1.73 per bed to fund the development and education of resident and family advisory councils.

Subd. 4. **Special account.** All money collected by the commissioner of health under subdivision 3 must be deposited in the state treasury and credited to a special account called the nursing home advisory council fund.

Subd. 5. **Report; evaluation.** The Minnesota board on aging shall evaluate the programs and funding sources established under this section and report to the legislature by February 1 of each year concerning the programs established and the effectiveness of the programs.

History: 1985 c 267 s 1