

CHAPTER 144A

NURSING HOMES

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144A.01 DEFINITIONS.

Subdivision 1. For the purposes of sections 144A.01 to 144A.27, the terms defined in this section have the meanings given them.

Subd. 2. "Commissioner of health" means the state commissioner of health established by section 144.011.

Subd. 3. "Board of examiners" means the board of examiners for nursing home administrators established by section 144A.19.

Subd. 4. "Controlling person" means any public body, governmental agency, business entity, officer, nursing home administrator, or director whose responsibilities include the direction of the management or policies of a nursing home. "Controlling person" also means any person who, directly or indirectly, beneficially owns any interest in:

- (a) Any corporation, partnership or other business association which is a controlling person;
- (b) The land on which a nursing home is located;
- (c) The structure in which a nursing home is located;
- (d) Any mortgage, contract for deed, or other obligation secured in whole or part by the land or structure comprising a nursing home; or
- (e) Any lease or sublease of the land, structure, or facilities comprising a nursing home.

"Controlling person" does not include:

- (a) A bank, savings bank, trust company, building and loan association, savings and loan association, credit union, industrial loan and thrift company, investment banking firm, or insurance company unless the entity directly or through a subsidiary operates a nursing home;
- (b) An individual state official or state employee, or a member or employee of the governing body of a political subdivision of the state which operates one or more nursing homes, unless the individual is also an officer or director of a nursing home, receives any remuneration from a nursing home, or owns any of the beneficial interests not excluded in this subdivision;

(c) A natural person who is a member of a tax-exempt organization under section 290.05, subdivision 1, clause (i), unless the individual is also an officer or director of a nursing home, or owns any of the beneficial interests not excluded in this subdivision; and

(d) A natural person who owns less than five percent of the outstanding common shares of a corporation:

(1) whose securities are exempt by virtue of section 80A.15, subdivision 1, clause (f); or

(2) whose transactions are exempt by virtue of section 80A.15, subdivision 2, clause (b).

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.

Subd. 6. "Nursing care" means health evaluation and treatment of patients and residents who are not in need of an acute care facility but who require nursing supervision on an inpatient basis. The commissioner of health may by rule establish levels of nursing care.

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.

Subd. 8. "Managerial employee" means an employee of a nursing home whose duties include the direction of some or all of the management or policies of the nursing home.

Subd. 9. "Nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a nursing home, whether or not the individual has an ownership interest in the home, and whether or not the person's functions and duties are shared with one or more individuals, and who is licensed pursuant to section 144A.21.

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: 1976 c 173 s 1; 1977 c 305 s 45; 1980 c 509 s 43; 1Sp1981 c 4 art 1 s 79; 1982 c 633 s 1; 1Sp1985 c 3 s 5-7; 1986 c 444

144A.02 LICENSURE; PENALTY.

Subdivision 1. No facility shall be used as a nursing home to provide nursing care unless the facility has been licensed as a nursing home. The commissioner of health may license a facility as a nursing home if the facility meets the criteria established by sections 144A.02 to 144A.10, and the rules promulgated thereunder. A license shall describe the facility to be licensed by address and by legal property description. The license shall specify the location and square footage of the floor space constituting the facility and shall incorporate by reference the plans and specifications of the facility, which plans and specifications shall be kept on file with the commissioner of health. The license may also specify the level or levels of nursing care which the facility is licensed to provide and shall state any conditions or limitations imposed on the facility in accordance with the rules of the commissioner of health.

Subd. 2. A controlling person of a nursing home in violation of this section 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 related to the operation of the nursing home.

History: 1976 c 173 s 2; 1977 c 305 s 45

144A.03 LICENSE APPLICATION.

Subdivision 1. The commissioner of health by rule shall establish forms and procedures for the processing of nursing home license applications. An application for a nursing home license shall include the following information:

(a) The names and addresses of all controlling persons and managerial employees of the facility to be licensed;

(b) The address and legal property description of the facility;

(c) A copy of the architectural and engineering plans and specifications of the facility as prepared and certified by an architect or engineer registered to practice in this state; and

(d) Any other relevant information which the commissioner of health by rule or otherwise may determine is necessary to properly evaluate an application for license.

A controlling person which is a corporation shall submit copies of its articles of incorporation and bylaws and any amendments thereto as they occur, together with the names and addresses of its officers and directors. A controlling person which is a foreign corporation shall furnish the commissioner of health with a copy of its certificate of authority to do business in this state. An application on behalf of a controlling person which is a corporation, association or a governmental unit or instrumentality shall be signed by at least two officers or managing agents of that entity.

Subd. 2. Each application for a nursing home license or for renewal of a nursing home license shall specify one or more controlling persons or managerial employees as agents:

(a) Who shall be responsible for dealing with the commissioner of health on all matters provided for in sections 144A.01 to 144A.17; and

(b) On whom personal service of all notices and orders shall be made, and who shall be authorized to accept service on behalf of all of the controlling persons of the facility, in proceedings under sections 144A.06; 144A.10, subdivisions 4, 5, and 7; 144A.11, subdivision 3; and 144A.15. Notwithstanding any law to the contrary, personal service on the designated person or persons named in an application shall be deemed to be service on all of the controlling persons or managerial employee of the facility, and it shall not be a defense to any action arising under sections 144A.06; 144A.10, subdivisions 4, 5 and 7; 144A.11, subdivision 3; and 144A.15, that personal service was not made on each controlling person or managerial employee of the facility. The designation of one or more controlling persons or managerial employees pursuant to this subdivision shall not affect the legal responsibility of any other controlling person or managerial employee under sections 144A.01 to 144A.17.

History: 1976 c 173 s 3; 1977 c 305 s 45

144A.04 QUALIFICATIONS FOR LICENSE.

Subdivision 1. No nursing home license shall be issued to a facility unless the commissioner of health determines that the facility complies with the requirements of this section.

Subd. 2. The controlling persons of the facility must comply with the application requirements specified by section 144A.03 and the rules of the commissioner of health.

Subd. 2a. The commissioner shall not adopt any rule unconditionally prohibiting locks on patient room doors in nursing homes. The commissioner may adopt a rule requiring locks to be consistent with the applicable rules enforced by the state fire marshal.

Subd. 3. The facility must meet the minimum health, sanitation, safety and comfort standards prescribed by the rules of the commissioner of health with respect to the construction, equipment, maintenance and operation of a nursing home. The commissioner of health may temporarily waive compliance with one or more of the standards if the commissioner determines that:

(a) Temporary noncompliance with the standard will not create an imminent risk of harm to a nursing home resident; and

(b) A controlling person on behalf of all other controlling persons:

(1) Has entered into a contract to obtain the materials or labor necessary to meet the standard set by the commissioner of health, but the supplier or other contractor has failed to perform the terms of the contract and the inability of the nursing home to meet the standard is due solely to that failure; or

(2) Is otherwise making a diligent good faith effort to meet the standard.

The commissioner of health shall allow, by rule, a nursing home to provide fewer hours of nursing care to intermediate care residents of a nursing home than required by the present rules of the commissioner if the commissioner determines that the needs of the residents of the home will be adequately met by a lesser amount of nursing care.

Subd. 3a. The commissioner shall not adopt any rule which unconditionally prohibits double beds in a nursing home. The commissioner may adopt rules setting criteria for when double beds will be allowed.

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.

Subd. 5. **Administrators.** Except as otherwise provided by this subdivision, a nursing home must have a full time licensed nursing home administrator serving the facility. In any nursing home of less than 25 beds, the director of nursing services may also serve as the licensed nursing home administrator. Two nursing homes having a total of 100 beds or less and located within 50 miles of each other may share the services of a licensed administrator if the administrator divides full time work week between the two facilities in proportion to the number of beds in each facility. Every nursing home shall have a person-in-charge on the premises at all times in the absence of the licensed administrator. The name of the person in charge must be posted in a conspicuous place in the facility. The commissioner of health shall by rule promulgate minimum education and experience requirements for persons-in-charge, and may promulgate rules specifying the times of day during which a licensed administrator must be on the nursing home's premises. A nursing home may employ as its administrator the administrator of a hospital licensed pursuant to sections 144.50 to 144.56 if the individual is licensed as a nursing home administrator pursuant to section 144A.20 and the nursing home and hospital have a combined total of 150 beds or less and are located within one mile of each other. A nonproprietary retirement home having fewer than 15 licensed nursing home beds may share the services of a licensed administrator with a nonproprietary nursing home, having fewer than 150 licensed nursing home beds, that is located within 25 miles of the retirement home. A nursing home which is located in a facility licensed as a hospital pursuant to sections 144.50 to 144.56, may employ as its administrator the administrator of the hospital if the individual meets minimum education and long term care experience criteria set by rule of the commissioner of health.

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: 1976 c 173 s 4; 1977 c 305 s 45; 1977 c 326 s 2; 1978 c 536 s 1; 1981 c 23 s 3; 1981 c 24 s 2; 1982 c 614 s 3; 1982 c 633 s 2,3; 1983 c 312 art 1 s 17; *ISp*1985 c 3 s 8,9; 1986 c 444

144A.05 LICENSE RENEWAL.

Unless the license expires in accordance with section 144A.06 or is suspended or revoked in accordance with section 144A.11, a nursing home license shall remain effective for a period of one year from the date of its issuance. The commissioner of health by rule shall establish forms and procedures for the processing of license renewals. The commissioner of health shall approve a license renewal application if the facility continues to satisfy the requirements, standards and conditions prescribed by sections 144A.01 to 144A.17 and the rules promulgated thereunder. Except as provided in section 144A.08, a facility shall not be required to submit with each application for a license renewal additional copies of the architectural and engineering plans and specifications of the facility. Before approving a license renewal, the commissioner of health shall determine that the facility's most recent balance sheet and its most recent statement of revenues and expenses, as audited by the state auditor, by a certified public accountant licensed by this state or by a public accountant as defined in section 412.222, have been received by the department of human services.

History: 1976 c 173 s 5; 1977 c 305 s 45; 1977 c 326 s 3; 1984 c 654 art 5 s 58

144A.06 TRANSFER OF INTERESTS.

Subdivision 1. Notice; expiration of license. Any controlling person who makes any transfer of a beneficial interest in a nursing home shall notify the commissioner of health of the transfer within 14 days of its occurrence. The notification shall identify by name and address the transferor and transferee and shall specify the nature and amount of the transferred interest. On determining that the transferred beneficial interest exceeds ten percent of the total beneficial interest in the nursing home facility, the structure in which the facility is located, or the land upon which the structure is located, the commissioner may, and on determining that the transferred beneficial interest exceeds 50 percent of the total beneficial interest in the facility, the structure in which the facility is located, or the land upon which the structure is located, the commissioner shall require that the license of the nursing home expire 90 days after the date of transfer. The commissioner of health shall notify the nursing home by certified mail of the expiration of the license at least 60 days prior to the date of expiration.

Subd. 2. Relicensure. The commissioner of health by rule shall prescribe procedures for relicensure under this section. The commissioner of health shall relicense a nursing home if the facility satisfies the requirements for license renewal established by section 144A.05. A facility shall not be relicensed by the commissioner if at the time of transfer there are any uncorrected violations. The commissioner of health may temporarily waive correction of one or more violations if the commissioner determines that:

(a) Temporary noncorrection of the violation will not create an imminent risk of harm to a nursing home resident; and

(b) A controlling person on behalf of all other controlling persons:

(1) Has entered into a contract to obtain the materials or labor necessary to correct the violation, but the supplier or other contractor has failed to perform the terms of the contract and the inability of the nursing home to correct the violation is due solely to that failure; or

(2) Is otherwise making a diligent good faith effort to correct the violation.

History: 1976 c 173 s 6; 1977 c 305 s 45; 1986 c 444

144A.07 FEES.

Each application for a license to operate a nursing home, or for a renewal of license, except an application by the Minnesota veterans home or the commissioner of human services for the licensing of state institutions, shall be accompanied by a fee to be prescribed by the commissioner of health pursuant to section 144.122. No fee shall be refunded.

History: 1976 c 173 s 7; 1977 c 305 s 45; 1984 c 654 art 5 s 58

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, including 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.

Subd. 4. Monitoring. The commissioner of health, in coordination with the commissioner of human services, shall implement mechanisms to monitor and analyze the effect of the moratorium in the different geographic areas of the state. The commissioner of health shall submit to the legislature, no later than January 15, 1984, and annually thereafter, an assessment of the impact of the moratorium by geographic area, with particular attention to service deficits or problems and a corrective action plan.

Subd. 5. Report. The director of the state planning agency, in consultation with the commissioners of health and human services, shall report to the senate health and human services committee and the house health and welfare committee by January 15, 1986 and biennially thereafter regarding:

(1) projections on the number of elderly Minnesota residents including medical assistance recipients;

(2) the number of residents most at risk for nursing home placement;

(3) the needs for long-term care and alternative home and noninstitutional services;

(4) availability of and access to alternative services by geographic region; and

(5) the necessity or desirability of continuing, modifying, or repealing the moratorium in relation to the availability and development of the continuum of long-term care services.

History: 1983 c 199 s 1; 1983 c 289 s 115 subd 1; 1984 c 654 art 5 s 58; 1984 c 655 art 1 s 28; 1Sp1985 c 3 s 10-12

144A.08 PHYSICAL STANDARDS; PENALTY.

Subdivision 1. Establishment. The commissioner of health by rule shall establish minimum standards for the construction, maintenance, equipping and operation of nursing homes. The rules shall to the extent possible assure the health, treatment, comfort, safety and well being of nursing home residents.

Subd. 1a. Corridor doors. Nothing in the rules of the commissioner of health shall require that each door entering a sleeping room from a corridor in a nursing home with an approved complete standard automatic fire extinguishing system be constructed or maintained as self-closing or automatically closing.

Subd. 2. Report. The controlling persons of a nursing home shall, in accordance with rules established by the commissioner of health, within 14 days of the occurrence, notify the commissioner of health of any change in the physical structure of a nursing home, which change would affect compliance with the rules of the commissioner of health or with sections 144A.01 to 144A.17.

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: 1976 c 173 s 8; 1977 c 305 s 45; 1981 c 360 art 2 s 5; 1982 c 633 s 4; 1Sp1985 c 3 s 13

144A.09 FACILITIES EXCLUDED.

Subdivision 1. No rule established under sections 144A.01 to 144A.17 other than a rule relating to sanitation and safety of premises, to cleanliness of operation or to physical equipment, shall apply to a nursing home conducted in accordance with the teachings of the body known as the Church of Christ, Scientist.

Subd. 2. The provisions of sections 144A.01 to 144A.27 shall not apply to a facility operated by a religious society or order to provide nursing care to 20 or fewer nonlay members of the order or society.

History: 1976 c 173 s 9

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

Subdivision 1. **Enforcement authority.** The commissioner of health is the exclusive state agency charged with the responsibility and duty of inspecting all facilities required to be licensed under section 144A.02. The commissioner of health shall enforce the rules established pursuant to sections 144A.01 to 144A.17, subject only to the authority of the department of public safety respecting the enforcement of fire and safety standards in nursing homes and the responsibility of the commissioner of human services under sections 245.781 to 245.821 or 252.28.

Subd. 2. **Inspections.** The commissioner of health shall inspect each nursing home to ensure compliance with sections 144A.01 to 144A.17 and the rules promulgated to implement them. The inspection shall be a full inspection of the nursing home. If upon a reinspection provided for in subdivision 5 the representative of the commissioner of health finds one or more uncorrected violations, a second inspection of the facility shall be conducted. The second inspection need not be a full inspection. No prior notice shall be given of an inspection conducted pursuant to this subdivision. Any employee of the commissioner of health who willfully gives or causes to be given any advance notice of an inspection required or authorized by this subdivision shall be subject to suspension or dismissal in accordance with chapter 43A. An inspection required by a federal rule or statute may be conducted in conjunction with or subsequent to any other inspection. Any inspection required by this subdivision may be in addition to or in conjunction with the reinspections required by subdivision 5. Nothing in this subdivision shall be construed to prohibit the commissioner of health from making more than one unannounced inspection of any nursing home during its license year. The commissioner of health shall coordinate inspections of nursing homes with inspections by other state and local agencies.

The commissioner shall conduct inspections and reinspections of health facilities with a frequency and in a manner calculated to produce the greatest benefit to residents within the limits of the resources available to the commissioner. In performing this function, the commissioner may devote proportionately more resources to the inspection of those facilities in which conditions present the most serious concerns with respect to resident health, treatment, comfort, safety, and well-being.

These conditions include but are not limited to: change in ownership; frequent change in administration in excess of normal turnover rates; complaints about care, safety, or rights; where previous inspections or reinspections have resulted in correction orders related to care, safety, or rights; and, where persons involved in ownership or administration of the facility have been indicted for alleged criminal activity. Any facility that has none of the above conditions or any other condition established by the commissioner that poses a risk to resident care, safety, or rights shall be inspected once every two years.

Subd. 3. **Reports; posting.** After each inspection or reinspection required or authorized by this section, the commissioner of health shall, by certified mail, send copies of any correction order or notice of noncompliance to the nursing home. A copy of each correction order and notice of noncompliance, and copies of any documentation supplied to the commissioner of health or the commissioner of human services under section 144A.03 or 144A.05 shall be kept on file at the nursing home and shall

be made available for viewing by any person upon request. Except as otherwise provided by this subdivision, a copy of each correction order and notice of noncompliance received by the nursing home after its most recent inspection or reinspection shall be posted in a conspicuous and readily accessible place in the nursing home. No correction order or notice of noncompliance need be posted until any appeal, if one is requested by the facility, pursuant to subdivision 8, has been completed. All correction orders and notices of noncompliance issued to a nursing home owned and operated by the state or political subdivision of the state shall be circulated and posted at the first public meeting of the governing body after the order or notice is issued. Confidential information protected by section 13.05 or 13.46, shall not be made available or posted as provided in this subdivision unless it may be made available or posted in a manner authorized by chapter 13.

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 the 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.

Subd. 5. Reinspections. A nursing home issued a correction order under this section shall be reinspected at the end of the period allowed for correction. The reinspection may be made in conjunction with the next annual inspection or any other scheduled inspection. If upon reinspection the representative of the commissioner of health determines that the facility has not corrected a violation identified in the correction order, a notice of noncompliance with the correction order shall be mailed by certified mail to the nursing home. The notice shall specify the violations not corrected and the fines assessed in accordance with subdivision 6.

Subd. 6. Fines. A nursing home which is issued a notice of noncompliance with a correction order shall be assessed a civil fine in accordance with a schedule of fines established by the commissioner of health before December 1, 1983. In establishing the schedule of fines, the commissioner shall consider the potential for harm presented to any resident as a result of noncompliance with each statute or rule. The fine shall be assessed for each day the facility remains in noncompliance and until a notice of correction is received by the commissioner of health in accordance with subdivision 7. No fine for a specific violation may exceed \$500 per day of noncompliance.

Subd. 6a. Schedule of fines. The commissioner of health shall propose for adoption the schedule of fines by publishing it in the State Register and allowing a period of 60 days from the publication date for interested persons to submit written comments on the schedule. Within 60 days after the close of the comment period, and after considering any comments received, the commissioner shall adopt the schedule in final form.

The schedule of fines is exempt from the definition of "rule" in section 14.02, subdivision 4, and has the force and effect of law upon compliance with section 14.38,

subdivision 7. The effective date of the schedule of fines is five days after publication, as provided in section 14.38, subdivision 8. The provisions of any rule establishing a schedule of fines for noncompliance with correction orders issued to nursing homes remain effective with respect to nursing homes until repealed, modified, or superseded by the schedule established in accordance with this subdivision.

Subd. 7. Accumulation of fines. A nursing home shall promptly notify the commissioner of health in writing when a violation noted in a notice of noncompliance is corrected. Upon receipt of written notification by the commissioner of health, the daily fine assessed for the deficiency shall stop accruing. The facility shall be reinspected within three working days after receipt of the notification. If upon reinspection the representative of the commissioner of health determines that a deficiency has not been corrected as indicated by the notification of compliance the daily fine assessment shall resume and the amount of fines which otherwise would have accrued during the period prior to resumption shall be added to the total assessment due from the nursing home. The commissioner of health shall notify the nursing home of the resumption by certified mail. The nursing home may challenge the resumption as a contested case in accordance with the provisions of chapter 14. Recovery of the resumed fine shall be stayed if a controlling person or a legal representative on behalf of the nursing home makes a written request for a hearing on the resumption within 15 days of receipt of the notice of resumption. The cost of a reinspection conducted pursuant to this subdivision shall be added to the total assessment due from the nursing home.

Subd. 8. Recovery of fines; hearing. Fines assessed under this section shall be payable 15 days after receipt of the notice of noncompliance and at 15 day intervals thereafter, as the fines accrue. Recovery of an assessed fine shall be stayed if a controlling person or a legal representative on behalf of the nursing home makes a written request for a hearing on the notice of noncompliance within 15 days after the home's receipt of the notice. A hearing under this subdivision shall be conducted as a contested case in accordance with chapter 14. If a nursing home, after notice and opportunity for hearing on the notice of noncompliance, or on the resumption of the fine, does not pay a properly assessed fine in accordance with this subdivision, the commissioner of health shall notify the commissioner of human services who shall deduct the amount from reimbursement moneys due or to be due the facility under chapter 256B. The commissioner of health may consolidate the hearings provided for in subdivisions 7 and 8 in cases in which a facility has requested hearings under both provisions. The hearings provided for in subdivisions 7 and 8 shall be held within 30 days after the request for the hearing. If a consolidated hearing is held, it shall be held within 30 days of the request which occurred last.

Subd. 9. Nonlimiting. Nothing in this section shall be construed to limit the powers granted to the commissioner of health by section 144A.11.

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: 1976 c 173 s 10; 1977 c 305 s 45; 1977 c 326 s 4,5; 1980 c 509 s 44; 1981 c 210 s 54; 1981 c 311 s 39; 1Sp1981 c 4 art 1 s 12; 1982 c 424 s 130; 1982 c 545 s 24; 1982 c 633 s 5; 1983 c 199 s 2-4; 1983 c 312 art 1 s 18; 1984 c 654 art 5 s 58; 1Sp1985 c 3 s 14-16; 1986 c 444

144A.11 LICENSE SUSPENSION OR REVOCATION; HEARING; RELICENSING.

Subdivision 1. Optional proceedings. The commissioner of health may institute proceedings to suspend or revoke a nursing home license, or may refuse to grant or renew the license of a nursing home if any action by a controlling person or employee of the nursing home:

(a) Violates any of the provisions of sections 144A.01 to 144A.08, 144A.13 or 144A.16, or the rules promulgated thereunder;

(b) Permits, aids, or abets the commission of any illegal act in the nursing home;

(c) Performs any act contrary to the welfare of a patient or resident of the nursing home; or

(d) Obtains, or attempts to obtain, a license by fraudulent means or misrepresentation.

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.

Subd. 3. Hearing. No nursing home license may be suspended or revoked without a hearing held as a contested case in accordance with chapter 14. If the controlling person designated under section 144A.03, subdivision 2, as an agent to accept service on behalf of all of the controlling persons of the nursing home has been notified by the commissioner of health that the facility will not receive an initial license or that a license renewal has been denied, the controlling person or a legal representative on behalf of the nursing home may request and receive a hearing on the denial. This hearing shall be held as a contested case in accordance with chapter 14.

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.

Subd. 4. Relicensing. If a nursing home license is revoked a new application for license may be considered by the commissioner of health when the conditions upon which revocation was based have been corrected and satisfactory evidence of this fact has been furnished to the commissioner of health. A new license may be granted after an inspection has been made and the facility has been found to comply with all provisions of sections 144A.01 to 144A.17 and the rules promulgated thereunder.

History: 1976 c 173 s 11; 1977 c 305 s 45; 1982 c 424 s 130; 1982 c 633 s 6, 7; 1Sp1985 c 3 s 17, 18; 1986 c 444

144A.12 INJUNCTIVE RELIEF; SUBPOENAS.

Subdivision 1. Injunctive relief. In addition to any other remedy provided by law, the commissioner of health may bring an action in the district court in Ramsey county or in the district in which a nursing home is located to enjoin a controlling person or an employee of the nursing home from illegally engaging in activities regulated by sections 144A.01 to 144A.17. A temporary restraining order may be granted by the court in the proceeding if continued activity by the controlling person or employee would create an imminent risk of harm to a resident of the facility.

Subd. 2. Subpoenas. In all matters pending before the commissioner under sections 144A.01 to 144A.17, the commissioner of health shall have the power to issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books, records, documents and other evidentiary material. Any person failing or refusing to appear or testify regarding any matter about which that person may be lawfully questioned or to produce any papers, books, records, documents or evidentiary materials in the matter to be heard, after having been required by order of the commissioner of health or by a subpoena of the commissioner of health to do so may, upon application by the commissioner of health to the district court in any district, be

ordered by the court to comply therewith. The commissioner of health may issue subpoenas and may administer oaths to witnesses, or take their affirmation. Depositions may be taken within or without the state in the manner provided by law for the taking of depositions in civil actions. A subpoena or other process or paper may be served upon any named person anywhere within the state by any officer authorized to serve subpoenas in civil actions, with the same fees and mileage and in the same manner as prescribed by law for process issued out of the district court of this state. Fees and mileage and other costs of persons subpoenaed by the commissioner of health shall be paid in the same manner as for proceedings in district court.

History: 1976 c 173 s 12; 1977 c 305 s 45; 1986 c 444

144A.13 COMPLAINTS; RESIDENT'S RIGHTS.

Subdivision 1. Processing. All matters relating to the operation of a nursing home which are the subject of a written complaint from a resident and which are received by a controlling person or employee of the nursing home shall be delivered to the facility's administrator for evaluation and action. Failure of the administrator within seven days of its receipt to resolve the complaint, or alternatively, the failure of the administrator to make a reply within seven days after its receipt to the complaining resident stating that the complaint did not constitute a valid objection to the nursing home's operations, shall be a violation of section 144A.10. If a complaint directly involves the activities of a nursing home administrator, the complaint shall be resolved in accordance with this section by a person, other than the administrator, duly authorized by the nursing home to investigate the complaint and implement any necessary corrective measures.

Subd. 2. Resident's rights. The administrator of a nursing home shall inform each resident in writing at the time of admission of the right to complain to the administrator about facility accommodations and services. A notice of the right to complain shall be posted in the nursing home. The administrator shall also inform each resident of the right to complain to the commissioner of health. No controlling person or employee of a nursing home shall retaliate in any way against a complaining nursing home resident and no nursing home resident may be denied any right available to the resident under chapter 566.

History: 1976 c 173 s 13; 1977 c 305 s 45; 1986 c 444

144A.14 VOLUNTARY RECEIVERSHIP.

A majority in interest of the controlling persons of a nursing home may at any time request the commissioner of health to assume the operation of the nursing home through appointment of a receiver. Upon receiving a request for a receiver, the commissioner of health may, if the commissioner deems receivership desirable, enter into an agreement with a majority in interest of the controlling persons, providing for the appointment of a receiver to take charge of the facility under conditions deemed appropriate by both parties. The agreement shall specify all terms and conditions of the receivership and shall preserve all rights of the facility residents as granted by law. A receivership initiated in accordance with this section shall terminate at the time specified by the parties or at the time when either party notifies the other in writing that the party wishes to terminate the receivership agreement.

History: 1976 c 173 s 14; 1977 c 305 s 45; 1986 c 444

144A.15 INVOLUNTARY RECEIVERSHIP.

Subdivision 1. Petition, notice. In addition to any other remedy provided by law, the commissioner of health may petition the district court in Ramsey county or in the district in which a nursing home is located for an order directing the controlling persons of the nursing home to show cause why the commissioner of health or a designee should not be appointed receiver to operate the facility. The petition to the district court shall contain proof by affidavit that the commissioner of health has either commenced

license suspension or revocation proceedings, suspended or revoked a license, or decided not to renew the nursing home license. The order to show cause shall be returnable not less than five days after service is completed and shall provide for personal service of a copy to the nursing home administrator and to the persons designated as agents by the controlling persons to accept service on their behalf pursuant to section 144A.03, subdivision 2.

Subd. 2. Appointment of receiver, rental. If, after hearing, the court finds that involuntary receivership is necessary as a means of protecting the health, safety or welfare of a resident of a nursing home, the court shall appoint the commissioner of health, or any other person designated by the commissioner of health, as a receiver to take charge of the facility. The court shall determine a fair monthly rental for the facility, taking into account all relevant factors including the condition of the facility. This rental fee shall be paid by the receiver to the appropriate controlling persons for each month that the receivership remains in effect. Notwithstanding any other law to the contrary, no payment made to a controlling person by any state agency during a period of involuntary receivership shall include any allowance for profit or be based on any formula which includes an allowance for profit.

Subd. 3. Powers and duties of receiver. A nursing home receiver appointed pursuant to this section shall with all reasonable speed, but in any case, within 18 months after the receivership order, provide for the orderly transfer of all the nursing home's residents to other facilities or make other provisions for their continued safety and health care. The receiver may correct or eliminate those deficiencies in the facility which seriously endanger the life, health or safety of the residents unless the correction or elimination of deficiencies involves major alterations in the physical structure of the nursing home. The receiver shall, during this period, operate the nursing home in a manner designed to guarantee the safety and adequate health care of the residents. The receiver shall take no action which impairs the legal rights of a resident of the nursing home. The receiver shall have power to make contracts and incur lawful expenses. The receiver shall collect incoming payments from all sources and apply them to the cost incurred in the performance of the receiver's functions. No security interest in any real or personal property comprising the nursing home or contained within it, or in any fixture of the facility, shall be impaired or diminished in priority by the receiver. The receiver shall pay all valid obligations of the nursing home and shall deduct these expenses, if appropriate, from rental payments owed to any controlling person by virtue of the receivership.

Subd. 4. Receiver's fee; liability; commissioner assistance. A nursing home receiver appointed pursuant to this section shall be entitled to a reasonable receiver's fee as determined by the court. The receiver shall be liable only in an official capacity for injury to person and property by reason of the conditions of the nursing home. The receiver shall not be personally liable, except for gross negligence and intentional acts. The commissioner of health shall assist the receiver in carrying out these duties.

Subd. 5. Termination. An involuntary receivership imposed pursuant to this section shall terminate 18 months after the date on which it was ordered or at any other time designated by the court or upon the occurrence of any of the following events:

- (a) A determination by the commissioner of health that the nursing home's license should be renewed or should not be suspended or revoked;
- (b) The granting of a new license to the nursing home; or
- (c) A determination by the commissioner of health that all of the residents of the nursing home have been provided alternative health care, either in another facility or otherwise.

History: 1976 c 173 s 15; 1977 c 305 s 45; 1986 c 444

144A.16 CESSATION OF OPERATIONS.

If a nursing home plans to cease operations or to curtail operations to the extent that relocation of residents is necessary, the controlling persons of the facility shall

notify the commissioner of health at least 90 days prior to the scheduled cessation or curtailment. The commissioner of health shall cooperate with and advise the controlling persons of the nursing home in the resettlement of residents. Failure to comply with this section shall be a violation of section 144A.10.

History: 1976 c 173 s 16; 1977 c 305 s 45

144A.17 [Repealed, 1983 c 260 s 68]

144A.18 ADMINISTRATOR'S LICENSES; PENALTY.

No person shall act as a nursing home administrator or purport to be a nursing home administrator unless that person is licensed by the board of examiners for nursing home administrators. A violation of this section is a misdemeanor.

History: 1976 c 173 s 18; 1986 c 444

144A.19 BOARD OF EXAMINERS FOR ADMINISTRATORS; CREATION, MEMBERSHIP.

Subdivision 1. There is hereby created the board of examiners for nursing home administrators which shall consist of the following members:

- (a) A designee of the commissioner of health who shall be a nonvoting member;
- (b) The commissioner of human services, or a designee who shall be a nonvoting member; and
- (c) The following members appointed by the governor:
 - (1) Two members actively engaged in the management, operation, or ownership of proprietary nursing homes;
 - (2) Two members actively engaged in the management or operation of nonprofit nursing homes;
 - (3) One member actively engaged in the practice of medicine;
 - (4) One member actively engaged in the practice of professional nursing; and
 - (5) Three public members as defined in section 214.02.

Subd. 2. Membership terms, compensation of members, removal of members, the filling of membership vacancies, fiscal year and reporting requirements, the provision of staff, administrative services and office space, the review and processing of complaints, the setting of board fees and other provisions relating to board operations for the board of examiners shall be as provided in chapter 214.

Subd. 3. The provision of staff, administrative services and office space, the review and processing of complaints; the setting of board fees; and other provisions relating to board operations shall be as provided in chapter 214.

History: 1976 c 173 s 19; 1977 c 305 s 45; 1977 c 347 s 24; 1977 c 444 s 10; 1984 c 654 art 5 s 58; 1986 c 444

144A.20 ADMINISTRATOR QUALIFICATIONS.

Subdivision 1. The board of examiners may issue licenses to qualified persons as nursing home administrators, and shall establish qualification criteria for nursing home administrators. No license shall be issued to a person as a nursing home administrator unless that person:

- (a) Is at least 18 years of age and otherwise suitably qualified;
- (b) Has satisfactorily met standards set by the board of examiners, which standards shall be designed to assure that nursing home administrators will be individuals who, by training or experience are qualified to serve as nursing home administrators; and
- (c) Has passed an examination approved by the board and designed to test for competence in the subject matters referred to in clause (b), or has been approved by the board of examiners through the development and application of other appropriate techniques.

Subd. 2. Notwithstanding any law to the contrary, no person desiring to be licensed to administer a nursing home operated exclusively in accordance with the teachings of the body known as the Church of Christ, Scientist, shall be required to demonstrate proficiency in any medical technique or meet any medical educational qualification or medical standard which is not in accord with the type of remedial care and treatment provided in a nursing home operated exclusively in accordance with the teachings of that body.

History: 1976 c 173 s 20; 1986 c 444

144A.21 ADMINISTRATOR LICENSES.

Subdivision 1. A nursing home administrator's license shall not be transferable.

Subd. 2. The board of examiners by rule shall establish forms and procedures for the processing of license renewals. A nursing home administrator's license may be renewed only in accordance with the standards adopted by the board of examiners pursuant to section 144A.24.

Subd. 3. [Repealed, 1977 c 444 s 21]

Subd. 4. [Repealed, 1977 c 444 s 21]

History: 1976 c 173 s 21; 1977 c 444 s 11

144A.22 ORGANIZATION OF BOARD.

The board of examiners shall elect from its membership a chair, vice-chair and secretary-treasurer, and shall adopt rules to govern its proceedings. Except as otherwise provided by law the board of examiners shall employ and fix the compensation and duties of an executive director and other necessary personnel to assist it in the performance of its duties. The executive director shall not be a member of the board of examiners.

History: 1976 c 173 s 22; 1985 c 247 s 24; 1986 c 444

144A.23 JURISDICTION OF BOARD.

Except as provided in section 144A.04, subdivision 5, the board of examiners shall have exclusive authority to determine the qualifications, skill and fitness required of any person to serve as an administrator of a nursing home. The holder of a license shall be deemed fully qualified to serve as the administrator of a nursing home.

History: 1976 c 173 s. 23

144A.24 DUTIES OF THE BOARD.

The board of examiners shall:

(a) Develop and enforce standards for nursing home administrator licensing, which standards shall be designed to assure that nursing home administrators will be individuals of good character who, by training or experience, are suitably qualified to serve as nursing home administrators;

(b) Develop appropriate techniques, including examinations and investigations, for determining whether applicants and licensees meet the board's standards;

(c) Issue licenses to those individuals who are found to meet the board's standards;

(d) Establish and implement procedures designed to assure that individuals licensed as nursing home administrators will comply with the board's standards;

(e) Receive, investigate, and take appropriate action consistent with chapter 214, to revoke or suspend the license of a nursing home administrator who fails to comply with sections 144A.18 to 144A.27 or the board's standards;

(f) Conduct a continuing study and investigation of nursing homes, and the administrators of nursing homes within the state, with a view to the improvement of the standards imposed for the licensing of administrators and improvement of the procedures and methods used for enforcement of the board's standards; and

(g) Approve or conduct courses of instruction or training designed to prepare individuals for licensing in accordance with the board's standards. Courses designed to meet license renewal requirements shall be designed solely to improve professional skills and shall not include classroom attendance requirements exceeding 50 hours per year. The board may approve courses conducted within or without this state.

History: 1976 c 173 s 24; 1980 c 509 s 45

144A.25 [Repealed, 1977 c 444 s 21]

144A.251 MANDATORY PROCEEDINGS.

In addition to its discretionary authority to initiate proceedings under section 144A.24 and chapter 214, the board of examiners shall initiate proceedings to suspend or revoke a nursing home administrator license or shall refuse to renew a license if within the preceding two year period the administrator was employed at a nursing home which during the period of employment incurred the following number of uncorrected violations, which violations were in the jurisdiction and control of the administrator and for which a fine was assessed and allowed to be recovered:

(a) Two or more uncorrected violations which created an imminent risk of harm to a nursing home resident; or

(b) Ten or more uncorrected violations of any nature.

History: 1976 c 173 s 26; 1977 c 444 s 12; 1986 c 444

144A.26 RECIPROCITY WITH OTHER STATES.

The board of examiners may issue a nursing home administrator's license, without examination, to any person who holds a current license as a nursing home administrator from another jurisdiction if the board finds that the standards for licensure in the other jurisdiction are at least the substantial equivalent of those prevailing in this state and that the applicant is otherwise qualified.

History: 1976 c 173 s 27

144A.27 ACTING ADMINISTRATORS.

If a licensed nursing home administrator is removed from the position by death or other unexpected cause, the controlling persons of the nursing home suffering the removal may designate an acting nursing home administrator who may serve without a license for no more than 90 days, unless an extension is granted by the board of examiners.

History: 1976 c 173 s 28; 1986 c 444

144A.28 SEVERABILITY.

Any part of sections 144A.18 to 144A.27 which is in conflict with any act of congress of the United States or any rule of a federal agency, so as to deprive nursing homes of this state of federal funds, shall be deemed void without affecting the remaining provisions of sections 144A.18 to 144A.27.

History: 1976 c 173 s 29

144A.29 CONTINUITY OF RULES; AUTHORITY.

Subdivision 1. The provisions of any rule affecting nursing homes or nursing home administrators heretofore promulgated in accordance with chapter 144, or hereafter promulgated in accordance with subdivision 2, shall remain effective with respect to nursing homes and nursing home administrators until repealed, modified or superseded by a rule promulgated in accordance with Laws 1976, chapter 173.

Subd. 2. Any investigation, disciplinary hearing, court action or other proceeding affecting a nursing home or nursing home administrator heretofore initiated by the commissioner of health or board of examiners in accordance with chapter 144, shall

be conducted and completed in accordance with that chapter as it existed prior to the effective date of this section. Proceedings heretofore initiated by the commissioner of health or board of examiners leading to the establishment of a rule affecting nursing homes or nursing home administrators may be continued and the rule may be promulgated in accordance with heretofore existing law, notwithstanding any other provision of Laws 1976, chapter 173.

Subd. 3. As soon as possible after the effective date of this section, the commissioner of health shall by rule establish a schedule of fines in accordance with section 144A.10, subdivision 6.

Subd. 4. Each rule promulgated by the commissioner of health pursuant to sections 144A.01 to 144A.17 shall contain a short statement of the anticipated costs and benefits to be derived from the provisions of the rule.

History: 1976 c 173 s 30; 1977 c 305 s 45

144A.30 PETS IN NURSING HOMES.

Nursing homes may keep pet animals on the premises subject to reasonable rules as to the care, type and maintenance of the pet.

History: 1979 c 38 s 1

144A.31 INTERAGENCY BOARD FOR QUALITY ASSURANCE.

Subdivision 1. **Interagency board.** The commissioners of health and human services shall establish, by July 1, 1983, an interagency board of employees of their respective departments who are knowledgeable and employed in the areas of long-term care, geriatric care, long-term care facility inspection, or quality of care assurance. The number of interagency board members shall not exceed seven; three members each to represent the commissioners of health and human services and one member to represent the commissioner of public safety in the enforcement of fire and safety standards in nursing homes. The commissioner of human services or a designee shall chair and convene the board. The board may utilize the expertise and time of other individuals employed by either department as needed. The board may recommend that the commissioners contract for services as needed. The board shall meet as often as necessary to accomplish its duties, but at least monthly. The board shall establish procedures, including public hearings, for allowing regular opportunities for input from residents, nursing homes, and other interested persons.

Subd. 2. **Inspections.** No later than January 1, 1984, the board shall develop and recommend implementation and enforcement of an effective system to ensure quality of care in each nursing home in the state. Quality of care includes evaluating, using the resident's care plan, whether the resident's ability to function is optimized and should not be measured solely by the number or amount of services provided.

The board shall assist the commissioner of health in ensuring that inspections and reinspections of nursing homes are conducted with a frequency and in a manner calculated to most effectively and appropriately fulfill its quality assurance responsibilities and achieve the greatest benefit to nursing home residents. The commissioner of health shall require a higher frequency and extent of inspections with respect to those nursing homes that present the most serious concerns with respect to resident health, treatment, comfort, safety, and well-being. These concerns include but are not limited to: complaints about care, safety, or rights; situations where previous inspections or reinspections have resulted in correction orders related to care, safety, or rights; instances of frequent change in administration in excess of normal turnover rates; and situations where persons involved in ownership or administration of the nursing home have been convicted of engaging in criminal activity. A nursing home that presents none of these concerns or any other concern or condition established by the board that poses a risk to resident care, safety, or rights shall be inspected once every two years for compliance with key requirements as determined by the board.

The board shall develop and recommend to the commissioners mechanisms beyond

the inspection process to protect resident care, safety, and rights, including but not limited to coordination with the office of health facility complaints and the nursing home ombudsman program.

Subd. 3. Methods for determining resident care needs. The board shall develop and recommend to the commissioners definitions for levels of care and methods for determining resident care needs for implementation on July 1, 1985 in order to adjust payments for resident care based on the mix of resident needs in a nursing home. The methods for determining resident care needs shall include assessments of ability to perform activities of daily living and assessments of medical and therapeutic needs.

Subd. 4. Enforcement. The board shall develop and recommend for implementation effective methods of enforcing quality of care standards. When it deems necessary, and when all other methods of enforcement are not appropriate, the board shall recommend to the commissioner of health closure of all or part of a nursing home or certified boarding care home and revocation of the license. The board shall develop, and the commissioner of human services shall implement, a resident relocation plan that instructs the county in which the nursing home or certified boarding care home is located of procedures to ensure that the needs of residents in nursing homes or certified boarding care homes about to be closed are met. The duties of a county under the relocation plan also apply when residents are to be discharged from a nursing home or certified boarding care home as a result of a change in certification, closure, or loss or termination of the facility's medical assistance provider agreement. The county shall ensure placement in swing beds in hospitals, placement in unoccupied beds in other nursing homes, utilization of home health care on a temporary basis, foster care placement, or other appropriate alternative care. In preparing for relocation, the board shall ensure that residents and their families or guardians are involved in planning the relocation.

Subd. 5. Reports. The board shall prepare a report and the commissioners of health and human services shall deliver this report to the legislature no later than January 15, 1984, on the board's proposals and progress on implementation of the methods required under subdivisions 2, 3, and 4. The commissioners shall recommend changes in or additions to legislation necessary or desirable to fulfill their responsibilities. The board shall prepare an annual report and the commissioners shall deliver this report annually to the legislature, beginning in January, 1985, on the implementation and enforcement of the provisions of this section.

Subd. 6. Data. The interagency board may have access to data from the commissioners of health, human services, and public safety for carrying out its duties under this section. The commissioner of health and the commissioner of human services may each have access to data on persons, including data on vendors of services, from the other to carry out the purposes of this section. If the interagency board, the commissioner of health, or the commissioner of human services receives data on persons, including data on vendors of services, that is collected, maintained, used or disseminated in an investigation, authorized by statute and relating to enforcement of rules or law, the board or the commissioner shall not disclose that information except:

- (a) pursuant to section 13.05;
- (b) pursuant to statute or valid court order; or
- (c) to a party named in a civil or criminal proceeding, administrative or judicial, for preparation of defense.

Data described in this subdivision is classified as public data upon its submission to an administrative law judge or court in an administrative or judicial proceeding.

History: 1983 c 199 s 5; 1984 c 640 s 32; 1984 c 641 s 12; 1984 c 654 art 5 s 58

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

HEALTH CARE FACILITY GRIEVANCES

144A.51 DEFINITIONS.

Subdivision 1. For the purposes of sections 144A.51 to 144A.55, the terms defined in this section have the meanings given them.

Subd. 2. "Administrative agency" or "agency" means any division, official, or employee of a state or local governmental agency, but does not include:

- (a) Any member of the senate or house of representatives;
- (b) The governor or personal staff of the governor;
- (c) Any instrumentality of the federal government of the United States; or
- (d) Any court or judge.

Subd. 3. "Director" means the director of the office of health facility complaints.

Subd. 4. "Health care provider" means any professional licensed by the state to provide medical or health care services who does provide the services to a resident of a health facility.

Subd. 5. "Health facility" means a facility or that part of a facility which is required to be licensed pursuant to sections 144.50 to 144.58, and a facility or that part of a facility which is required to be licensed under any law of this state which provides for the licensure of nursing homes.

Subd. 6. "Resident" means any resident or patient of a health facility, or the guardian or conservator of a resident or patient of a health facility, if one has been appointed.

History: 1976 c 325 s 1; 1986 c 444

144A.52 OFFICE OF HEALTH FACILITY COMPLAINTS; CREATION.

Subdivision 1. The office of health facility complaints is hereby created in the department of health. The office shall be headed by a director appointed by the state commissioner of health. The director shall report to and serve at the pleasure of the state commissioner of health.

The commissioner of health shall provide the office of health facility complaints with office space, administrative services and secretarial and clerical assistance.

Subd. 2. The director may appoint a deputy director and one personal secretary to discharge the responsibilities of the office. Any deputy director or personal secretary and all other employees of the office shall be classified employees of the state commissioner of health.

Subd. 3. The director may delegate to members of the staff any of the authority or duties of the director except the duty of formally making recommendations to the legislature, administrative agencies, health facilities, health care providers, and the state commissioner of health.

Subd. 4. The director shall attempt to include staff persons with expertise in areas such as law, health care, social work, dietary needs, sanitation, financial audits, health-safety requirements as they apply to health facilities, and any other relevant fields. To the extent possible, employees of the office shall meet federal training requirements for health facility surveyors.

History: 1976 c 325 s 2; 1977 c 305 s 45; 1982 c 560 s 48; 1986 c 444

144A.53 DIRECTOR; POWERS AND DUTIES.

Subdivision 1. **Powers.** The director may:

(a) Promulgate by rule, pursuant to chapter 14, and within the limits set forth in subdivision 2, the methods by which complaints against health facilities, health care providers or administrative agencies are to be made, reviewed, investigated, and acted upon; provided, however, that a fee may not be charged for filing a complaint;

(b) Recommend legislation and changes in rules to the state commissioner of health, legislature, governor, administrative agencies or the federal government;

(c) Investigate, upon a complaint or upon initiative of the director, any action or failure to act by a health care provider or a health facility;

(d) Request and receive access to relevant information, records, or documents in the possession of an administrative agency, a health care provider, or a health facility which the director deems necessary for the discharge of responsibilities;

(e) Enter and inspect, at any time, a health facility; provided that the director shall not unduly interfere with or disturb the activities of a resident unless the resident consents;

(f) Issue a correction order pursuant to section 144.653 or any other law which provides for the issuance of correction orders to health care facilities;

(g) Recommend the certification or decertification of health facilities pursuant to Title XVIII or Title XIX of the United States Social Security Act;

(h) Assist residents of health facilities in the enforcement of their rights under Minnesota law; and

(i) Work with administrative agencies, health facilities, health care providers and organizations representing consumers on programs designed to provide information about health facilities to the public and to health facility residents.

Subd. 2. **Complaints.** The director may receive a complaint from any source concerning an action of an administrative agency, a health care provider, or a health facility. The director may require a complainant to pursue other remedies or channels of complaint open to the complainant before accepting or investigating the complaint.

The director shall keep written records of all complaints and any action upon them. After completing an investigation of a complaint, the director shall inform the complainant, the administrative agency having jurisdiction over the subject matter, the health care provider and the health facility of the action taken.

Subd. 3. **Recommendations.** If, after duly considering a complaint and whatever material the director deems pertinent, the director determines that the complaint is valid, the director may recommend that an administrative agency, a health care provider or a health facility should:

- (a) Modify or cancel the actions which gave rise to the complaint;
- (b) Alter the practice, rule or decision which gave rise to the complaint;
- (c) Provide more information about the action under investigation; or
- (d) Take any other step which the director considers appropriate.

If the director requests, the administrative agency, a health care provider or health facility shall, within the time specified, inform the director about the action taken on a recommendation.

Subd. 4. Referral of complaints. If a complaint received by the director relates to a matter more properly within the jurisdiction of an occupational licensing board or other governmental agency, the director shall forward the complaint to that agency and shall inform the complaining party of the forwarding. The agency shall promptly act in respect to the complaint, and shall inform the complaining party and the director of its disposition. If a governmental agency receives a complaint which is more properly within the jurisdiction of the director, it shall promptly forward the complaint to the director, and shall inform the complaining party of the forwarding. If the director has reason to believe that an official or employee of an administrative agency or health facility has acted in a manner warranting criminal or disciplinary proceedings, the director shall refer the matter to the state commissioner of health, the commissioner of human services, an appropriate prosecuting authority, or other appropriate agency.

History: 1976 c 325 s 3; 1977 c 305 s 45; 1982 c 424 s 130; 1983 c 289 s 98; 1984 c 654 art 5 s 58; 1986 c 444

144A.54 PUBLICATION OF RECOMMENDATIONS; REPORTS.

Subdivision 1. Except as otherwise provided by this section, the director may determine the form, frequency, and distribution of the conclusions and recommendations. The director shall transmit the conclusions and recommendations to the state commissioner of health and the legislature. Before announcing a conclusion or recommendation that expressly or by implication criticizes an administrative agency, a health care provider or a health facility, the director shall consult with that agency, health care provider or facility. When publishing an opinion adverse to an administrative agency, a health care provider or a health facility, the director shall include in the publication any statement of reasonable length made to the director by that agency, health care provider or health facility in defense or explanation of the action.

Subd. 2. In addition to whatever other reports the director may make, the director shall, at the end of each year, report to the state commissioner of health and the legislature concerning the exercise of the director's functions during the preceding year. The state commissioner of health may, at any time, request and receive information, other than resident records, from the director.

Subd. 3. In performing the duties under Laws 1976, chapter 325, the director shall preserve the confidentiality of resident records. The director may release a resident's records with the written approval of the resident who is the subject of the records.

History: 1976 c 325 s 4; 1977 c 305 s 45; 1986 c 444

144A.55 [Repealed, 1983 c 260 s 68]

144A.61 NURSING ASSISTANT TRAINING.

Subdivision 1. Purpose. The purpose of this section and section 144A.611 is to improve the quality of care provided to patients of nursing homes by assuring that approved programs for the training of nursing assistants are established as necessary throughout the state.

Subd. 2. Nursing assistants. For the purposes of this section and section 144A.611 "nursing assistant" means a nursing home employee, including a nurse's aide or an orderly, who is assigned by the director of nursing to provide or assist in the provision of direct patient care services under the supervision of a registered nurse. The commissioner of education may, by rule, establish categories of nursing assistants

who are not required to comply with the educational requirements of this section and section 144A.611.

Subd. 3. Curricula; test. The commissioner of education shall develop curricula and a test to be used for nursing assistant training programs for employees of nursing homes. The curricula, as reviewed and evaluated by the board of nursing, shall be utilized by all facilities, institutions, or programs offering nursing assistant training programs. The test may be given by any area vocational technical institute or community college in accordance with instructions from the commissioner of education. The commissioner of education may prescribe a fee for the administration of the test not to exceed \$30.

Subd. 4. Technical assistance. The commissioner of education shall, upon request, provide necessary and appropriate technical assistance in the development of nursing assistant training programs.

Subd. 5. [Repealed, 1977 c 326 s 18]

Subd. 6. Training program. Each nursing assistant hired to work in a nursing home on or after January 1, 1979, shall have successfully completed an approved nursing assistant training program or shall be enrolled in the first available approved training program which is scheduled to commence within 60 days of the date of the assistant's employment. Approved training programs shall be offered at the location most reasonably accessible to the enrollees in each class.

Subd. 7. Violation, penalty. Violation of this section and section 144A.611 by a nursing home shall be grounds for the issuance of a correction order to the nursing home by the state commissioner of health. The failure of the nursing home to correct the deficiency or deficiencies specified in the correction order shall result in the assessment of a fine in accordance with the schedule of fines promulgated by rule of the state commissioner of health.

Subd. 8. Exceptions. Employees of nursing homes conducted in accordance with the teachings of the body known as the Church of Christ, Scientist, shall be exempt from the requirements of this section and section 144A.611.

History: 1976 c 310 s 1; 1977 c 305 s 45; 1977 c 326 s 6,7; 1977 c 453 s 26; 1981 c 359 s 17

144A.611 REIMBURSABLE EXPENSES PAYABLE TO NURSING ASSISTANTS.

Subdivision 1. Nursing homes. The actual costs of tuition and reasonable expenses for that approved program deemed by the commissioner of education to be minimally necessary to protect the health and welfare of nursing home residents, which are paid to nursing home assistants pursuant to subdivision 2, shall be a reimbursable expense for nursing homes under the provisions of chapter 256B and the rules promulgated thereunder.

Subd. 2. Nursing assistants. A nursing assistant who has completed an approved training program shall be reimbursed by the nursing home for actual costs of tuition and reasonable expenses for the training program 90 days after the date of employment, or upon completion of the approved training program, whichever is later.

Subd. 3. Rules. The commissioner of human services shall promulgate any rules necessary to implement the provisions of this section. The rules shall include, but not be limited to:

(a) Provisions designed to prevent reimbursement by the commissioner under this section and section 144A.61 to a nursing home or a nursing assistant for the assistant's training in more than one approved program;

(b) Provisions designed to prevent reimbursement by the commissioner under this section and section 144A.61 to more than one nursing home for the training of any individual nursing assistant; and

(c) Provisions permitting the reimbursement by the commissioner to nursing

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homes and nursing assistants for the retraining of a nursing assistant after an absence from the labor market of not less than five years.

History: 1976 c 310 s 2; 1977 c 326 s 9; 1984 c 654 art 5 s 58; 1986 c 444

144A.65 MS1980 [Expired]

144A.66 MS1980 [Expired]

144A.67 MS1980 [Expired]