

CHAPTER 144

DEPARTMENT OF HEALTH

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144.0722 RESIDENT REIMBURSEMENT CLASSIFICATIONS; PROCEDURES FOR RECONSIDERATION.

Subdivision 1. Resident reimbursement classifications. The commissioner of health shall establish resident reimbursement classifications based upon the assessments of residents of nursing homes and boarding care homes conducted under sections 144.072 and 144.0721, or under rules established by the commissioner of human services under sections 256B.41 to 256B.48. The reimbursement classifications established by the commissioner must conform to the rules established by the commissioner of human services.

Subd. 2. Notice of resident reimbursement classification. The commissioner of health shall notify each resident, and the nursing home or boarding care home in which the resident resides, of the reimbursement classification established under subdivision 1. The notice must inform the resident of the classification that was assigned, the opportunity to review the documentation supporting the classification, the opportunity to obtain clarification from the commissioner, and the opportunity to request a reconsideration of the classification. The notice of resident classification must be sent by first-class mail. The individual resident notices may be sent to the resident's nursing home or boarding care home for distribution to the resident. The nursing home or boarding care home is responsible for the distribution of the notice to each resident, to the person responsible for the payment of the resident's nursing home expenses, or to another person designated by the resident. This notice must be distributed within three working days after the facility's receipt of the notices from the department.

Subd. 3. Request for reconsideration. The resident or the nursing home or boarding care home may request that the commissioner reconsider the assigned reimbursement classification. The request for reconsideration must be submitted in writing to the commissioner within 30 days of the receipt of the notice of resident classification. For reconsideration requests submitted by or on behalf of the resident, the time period for submission of the request begins as of the date the resident or the resident's representative receives the classification notice. The request for reconsideration must include the name of the resident, the name and address of the facility in which the resident resides, the reasons for the reconsideration, the requested classification changes,

and documentation supporting the requested classification. The documentation accompanying the reconsideration request is limited to documentation establishing that the needs of the resident at the time of the assessment resulting in the disputed classification justify a change of classification.

Subd. 3a. Access to information. Upon written request, the nursing home or boarding care home must give the resident or the resident's representative a copy of the assessment form and the other documentation that was given to the department to support the assessment findings. The nursing home or boarding care home shall also provide access to and a copy of other information from the resident's record that has been requested by or on behalf of the resident to support a resident's reconsideration request. A copy of any requested material must be provided within three working days of receipt of a written request for the information. If a facility fails to provide the material within this time, it is subject to the issuance of a correction order and penalty assessment under sections 144.653 and 144A.10. Notwithstanding those sections, any correction order issued under this subdivision must require that the facility immediately comply with the request for information and that as of the date of the issuance of the correction order, the facility shall forfeit to the state a \$100 fine the first day of noncompliance, and an increase in the \$100 fine by \$50 increments for each day the noncompliance continues. For the purposes of this section, "representative" includes the resident's guardian or conservator, the person authorized to pay the nursing home expenses of the resident, a representative of the nursing home ombudsman's office whose assistance has been requested, or any other individual designated by the resident.

Subd. 3b. Facility's request for reconsideration. In addition to the information required in subdivision 3, a reconsideration request from a nursing home or boarding care home must contain the following information: the date the resident reimbursement classification notices were received by the facility; the date the classification notices were distributed to the resident or the resident's representative; and a copy of a notice sent to the resident or to the resident's representative. This notice must tell the resident or the resident's representative that a reconsideration of the resident's classification is being requested, the reason for the request, that the resident's rate will change if the request is approved by the department and the extent of the change, that copies of the facility's request and supporting documentation are available for review, and that the resident also has the right to request a reconsideration. If the facility fails to provide this information with the reconsideration request, the request must be denied, and the facility may not make further reconsideration requests on that specific reimbursement classification.

Subd. 4. Reconsideration. The commissioner's reconsideration must be made by individuals not involved in reviewing the assessment that established the disputed classification. The reconsideration must be based upon the initial assessment and upon the information provided to the commissioner under subdivision 3. If necessary for evaluating the reconsideration request, the commissioner may conduct on-site reviews. In its discretion, the commissioner may review the reimbursement classifications assigned to all residents in the facility. Within 15 working days of receiving the request for reconsideration, the commissioner shall affirm or modify the original resident classification. The original classification must be modified if the commissioner determines that the assessment resulting in the classification did not accurately reflect the needs of the resident at the time of the assessment. The resident and the nursing home or boarding care home shall be notified within five working days after the decision is made. The commissioner's decision under this subdivision is the final administrative decision of the agency.

Subd. 5. Audit authority. The department of health may audit assessments of nursing home and boarding care home residents. These audits may be in addition to the assessments completed by the department under section 144.0721. The audits may be conducted at the facility, and the department may conduct the audits on an unannounced basis.

History: 1987 c 209 s 2

144.092 COORDINATED NUTRITION DATA COLLECTION.

The commissioner of health may develop and coordinate a reporting system to improve the state's ability to document inadequate nutrient and food intake of Minnesota's children and adults and to identify problems and determine the most appropriate strategies for improving inadequate nutritional status. The board on aging may develop a method to evaluate the nutritional status and requirements of the elderly in Minnesota. The commissioner of health and the board on aging may report to the legislature on each July 1, beginning in 1988, on the results of their investigation and their recommendations on the nutritional needs of Minnesotans.

History: 1987 c 209 s 3

144.122 LICENSE AND PERMIT FEES.

(a) The state commissioner of health, by rule, may prescribe reasonable procedures and fees for filing with the commissioner as prescribed by statute and for the issuance of original and renewal permits, licenses, registrations, and certifications issued under authority of the commissioner. The expiration dates of the various licenses, permits, registrations, and certifications as prescribed by the rules shall be plainly marked thereon. Fees may include application and examination fees and a penalty fee for renewal applications submitted after the expiration date of the previously issued permit, license, registration, and certification. The commissioner may also prescribe, by rule, reduced fees for permits, licenses, registrations, and certifications when the application therefor is submitted during the last three months of the permit, license, registration, or certification period. Fees proposed to be prescribed in the rules shall be first approved by the department of finance. All fees proposed to be prescribed in rules shall be reasonable. The fees shall be in an amount so that the total fees collected by the commissioner will, where practical, approximate the cost to the commissioner in administering the program. All fees collected shall be deposited in the state treasury and credited to the general fund unless otherwise specifically appropriated by law for specific purposes.

(b) The commissioner may charge a fee for voluntary certification of medical laboratories and environmental laboratories, and for environmental and medical laboratory services provided by the department, without complying with subdivision 1 or chapter 14. Fees charged for environment and medical laboratory services provided by the department must be approximately equal to the costs of providing the services.

History: 1987 c 403 art 2 s 7

144.123 FEES FOR DIAGNOSTIC LABORATORY SERVICES; EXCEPTIONS.

[For text of subd 1, see M.S.1986]

Subd. 2. The commissioner of health shall promulgate rules, in accordance with chapter 14, which shall specify the amount of the handling fee prescribed in subdivision 1. The fee shall approximate the costs to the department of handling specimens including reporting, postage, specimen kit preparation, and overhead costs. The fee prescribed in subdivision 1 shall be \$5 per specimen until the commissioner promulgates rules pursuant to this subdivision.

History: 1987 c 403 art 2 s 8

144.219 AMENDMENT OF VITAL RECORDS.

Upon the order of a court of this state, upon the request of a court of another state, or upon the filing of a declaration of parentage under section 257.34 with the state registrar or the appropriate court, a new birth certificate shall be registered consistent with the findings of the court or with the declaration of parentage.

History: 1987 c 403 art 3 s 1

144.226 FEES.*[For text of subds 1 and 2, see M.S.1986]*

Subd. 3. **Birth certificate copy surcharge.** In addition to any fee prescribed under subdivision 1, there shall be a surcharge of \$3 for each certified copy of a birth certificate. The local or state registrar shall forward this amount to the commissioner of finance for deposit into the account for the children's trust fund for the prevention of child abuse established under section 299A.22. This surcharge shall not be charged under those circumstances in which no fee for a certified copy of a birth certificate is permitted under subdivision 1, paragraph (a). Upon certification by the commissioner of finance that the assets in that fund exceed \$20,000,000, this surcharge shall be discontinued.

History: 1987 c 358 s 108**144.335 ACCESS TO HEALTH RECORDS.**

Subdivision 1. **Definitions.** For the purposes of this section, the following terms have the meanings given them:

(a) "Patient" means a natural person who has received health care services from a provider for treatment of a medical, psychiatric, or mental condition, or a person the patient designates in writing as a representative. Except for minors who have received health care services pursuant to sections 144.341 to 144.347, in the case of a minor, "patient" includes a parent or guardian, or a person acting as a parent or guardian in the absence of a parent or guardian.

(b) "Provider" means (1) any person who furnishes health care services and is licensed to furnish the services pursuant to chapter 147, 148, 148B, 150A, 151, or 153; (2) a home care provider licensed under section 144A.46; and (3) a health care facility licensed pursuant to this chapter or chapter 144A.

*[For text of subds 2 to 4, see M.S.1986]***History:** 1987 c 347 art 1 s 18; 1987 c 378 s 1**144.36 APPEAL TO DISTRICT COURT.**

Within five days after service of the order, any person aggrieved thereby may appeal to the district court of the county in which such polluted source of water supply is situated. During the pendency of the appeal the pollution against which the order has been issued shall not be continued and, upon violation of such order, the appeal shall forthwith be dismissed.

History: 1987 c 309 s 16**144.37 OTHER REMEDIES PRESERVED.**

Nothing in section 144.36 shall curtail the power of the courts to administer the usual legal and equitable remedies in cases of nuisances or of improper interference with private rights.

History: 1987 c 309 s 17**144.412 PUBLIC POLICY.**

The purpose of sections 144.411 to 144.417 is to protect the public health, comfort and environment by prohibiting smoking in areas where children or ill or injured persons are present, and by limiting smoking in public places and at public meetings to designated smoking areas.

History: 1987 c 399 s 1**144.414 PROHIBITIONS.**

Subdivision 1. **Public places.** No person shall smoke in a public place or at a public

meeting except in designated smoking areas. This prohibition does not apply in cases in which an entire room or hall is used for a private social function and seating arrangements are under the control of the sponsor of the function and not of the proprietor or person in charge of the place. Furthermore, this prohibition shall not apply to factories, warehouses, and similar places of work not usually frequented by the general public, except that the state commissioner of health shall establish rules to restrict or prohibit smoking in those places of work where the close proximity of workers or the inadequacy of ventilation causes smoke pollution detrimental to the health and comfort of nonsmoking employees.

Subd. 2. **Day care premises.** Smoking is prohibited in a day care center licensed under Minnesota Rules, parts 9545.0510 to 9545.0650 during its hours of operation.

Subd. 3. **Health care facilities and clinics.** (a) Smoking is prohibited in any area of a hospital, health care clinic, doctor's office, or other health care-related facility, other than a nursing home, boarding care facility, or licensed residential facility, except as allowed in this subdivision.

(b) Smoking by patients in a chemical dependency treatment program or mental health program may be allowed in a separated well-ventilated area pursuant to a policy established by the administrator of the program that identifies circumstances in which prohibiting smoking would interfere with the treatment of persons recovering from chemical dependency or mental illness.

(c) Smoking by a patient may be allowed if authorized in writing by the patient's attending physician.

History: 1987 c 399 s 2

NOTE: This section, as amended by Laws 1987, chapter 399, section 2, is effective January 1, 1990. See Laws 1987, chapter 399, section 6.

HEALTH THREAT PROCEDURES

144.4171 SCOPE.

Subdivision 1. **Authority.** Under the powers and duties assigned to the commissioner in sections 144.05 and 144.12, the commissioner shall proceed according to sections 144.4171 to 144.4186 with respect to persons who pose a health threat to others or who engage in noncompliant behavior.

Subd. 2. **Preemption.** Sections 144.4171 to 144.4186 preempt and supersede any local ordinance or rule concerning persons who pose a health threat to others or who engage in noncompliant behavior.

History: 1987 c 209 s 4

144.4172 DEFINITIONS.

Subdivision 1. **Carrier.** "Carrier" means a person who serves as a potential source of infection and who harbors or who the commissioner reasonably believes to be harboring a specific infectious agent whether or not there is present discernible clinical disease. In the absence of a medically accepted test, the commissioner may reasonably believe an individual to be a carrier only when a determination based upon specific facts justifies an inference that the individual harbors a specific infectious agent.

Subd. 2. **Communicable disease.** "Communicable disease" means a disease or condition that causes serious illness, serious disability, or death, the infectious agent of which may pass or be carried, directly or indirectly, from the body of one person to the body of another.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of health.

Subd. 4. **Contact notification program.** "Contact notification program" means an ongoing program established by the commissioner to encourage carriers of a communicable disease whose primary route of transmission is through an exchange of blood, semen, or vaginal secretions, such as *treponema pallidum*, *neisseria gonorrhea*, *chlamy-*

dia trachomatis, and human immunodeficiency virus, to identify others who may be at risk by virtue of contact with the carrier.

Subd. 5. **Directly transmitted.** "Directly transmitted" means predominately:

- (1) sexually transmitted;
- (2) blood-borne; or
- (3) transmitted through direct or intimate skin contact.

Subd. 6. **Health directive.** "Health directive" means a written statement, or, in urgent circumstances, an oral statement followed by a written statement within three days, from the commissioner, or local board of health with delegated authority from the commissioner, issued to a carrier who constitutes a health threat to others. A health directive must be individual, specific, and cannot be issued to a class of persons. The directive may require a carrier to cooperate with health authorities in efforts to prevent or control transmission of communicable disease, including participation in education, counseling, or treatment programs, and undergoing medical tests necessary to verify the person's carrier status. The written directive shall be served in the same manner as a summons and complaint under the Minnesota Rules of Civil Procedure.

Subd. 7. **Licensed health professional.** "Licensed health professional" means a person licensed in Minnesota to practice those professions described in section 214.01, subdivision 2.

Subd. 8. **Health threat to others.** "Health threat to others" means that a carrier demonstrates an inability or unwillingness to act in such a manner as to not place others at risk of exposure to infection that causes serious illness, serious disability, or death. It includes one or more of the following:

- (1) with respect to an indirectly transmitted communicable disease:

(a) behavior by a carrier which has been demonstrated epidemiologically to transmit or which evidences a careless disregard for the transmission of the disease to others; or

(b) a substantial likelihood that a carrier will transmit a communicable disease to others as is evidenced by a carrier's past behavior, or by statements of a carrier that are credible indicators of a carrier's intention.

- (2) With respect to a directly transmitted communicable disease:

(a) repeated behavior by a carrier which has been demonstrated epidemiologically to transmit or which evidences a careless disregard for the transmission of the disease to others;

(b) a substantial likelihood that a carrier will repeatedly transmit a communicable disease to others as is evidenced by a carrier's past behavior, or by statements of a carrier that are credible indicators of a carrier's intention;

(c) affirmative misrepresentation by a carrier of the carrier's status prior to engaging in any behavior which has been demonstrated epidemiologically to transmit the disease; or

(d) the activities referenced in clause (1) if the person whom the carrier places at risk is: (i) a minor, (ii) of diminished capacity by reason of mood altering chemicals, including alcohol, (iii) has been diagnosed as having significantly subaverage intellectual functioning, (iv) has an organic disorder of the brain or a psychiatric disorder of thought, mood, perception, orientation, or memory which substantially impairs judgment, behavior, reasoning, or understanding; (v) adjudicated as an incompetent; or (vi) a vulnerable adult as defined in section 626.557.

(3) Violation by a carrier of any part of a court order issued pursuant to this chapter.

Subd. 9. **Indirectly transmitted.** "Indirectly transmitted" means any transmission not defined by subdivision 5.

Subd. 10. **Noncompliant behavior.** "Noncompliant behavior" means a failure or refusal by a carrier to comply with a health directive.

Subd. 11. **Respondent.** "Respondent" means any person against whom an action is commenced under sections 144.4171 to 144.4186.

History: 1986 c 444; 1987 c 209 s 5

144.4173 CAUSE OF ACTION.

Subdivision 1. **Compliance with directive.** Failure or refusal of a carrier to comply with a health directive is grounds for proceeding under subdivision 2.

Subd. 2. **Commencement of action.** The commissioner, or a local board of health with express delegated authority from the commissioner, may commence legal action against a carrier who is a health threat to others and, unless a court order is sought under section 144.4182, who engages in noncompliant behavior, by filing with the district court in the county in which respondent resides, and serving upon respondent, a petition for relief and notice of hearing.

History: 1987 c 209 s 6

144.4174 STANDING.

Only the commissioner, or a local board of health, with express delegated authority from the commissioner, may commence an action under sections 144.4171 to 144.4186.

History: 1987 c 209 s 7

144.4175 REPORTING.

Subdivision 1. **Voluntary reporting.** Any licensed health professional or other human services professional regulated by the state who has knowledge or reasonable cause to believe that a person is a health threat to others or has engaged in noncompliant behavior, as defined in section 144.4172, may report that information to the commissioner.

Subd. 2. **Liability for reporting.** A licensed health professional or other human services professional regulated by the state who has knowledge or reasonable cause to believe that a person is a health threat to others or has engaged in noncompliant behavior, and who makes a report in good faith under subdivision 1, is not subject to liability for reporting in any civil, administrative, disciplinary, or criminal action.

Subd. 3. **Falsified reports.** Any person who knowingly or recklessly makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury.

Subd. 4. **Waiver of privilege.** Any privilege otherwise created in section 595.02, clauses (d), (e), (g), and (j), with respect to persons who make a report under subdivision 1, is waived regarding any information about a carrier as a health threat to others or about a carrier's noncompliant behavior in any investigation or action under sections 144.4171 to 144.4186.

History: 1987 c 209 s 8

144.4176 PETITION; NOTICE.

Subdivision 1. **Petition.** The petition must set forth the following:

(1) the grounds and underlying facts that demonstrate that the respondent is a health threat to others and, unless an emergency court order is sought under section 144.4182, has engaged in noncompliant behavior;

(2) the petitioner's efforts to alleviate the health threat to others prior to the issuance of a health directive, unless an emergency court order is sought under section 144.4182;

(3) the petitioner's efforts to issue the health directive to the respondent in person, unless an emergency court order is sought under section 144.4182;

(4) the type of relief sought; and

(5) a request for a court hearing on the allegations contained in the petition.

Subd. 2. **Hearing notice.** The notice must contain the following information:

(1) the time, date, and place of the hearing;

(2) respondent's right to appear at the hearing;

(3) respondent's right to present and cross-examine witnesses; and

(4) respondent's right to counsel, including the right, if indigent, to representation by counsel designated by the court or county of venue.

History: 1987 c 209 s 9

144.4177 TIME OF HEARING AND DUTIES OF COUNSEL.

Subdivision 1. **Time of hearing.** A hearing on the petition must be held before the district court in the county in which respondent resides as soon as possible, but no later than 14 days from service of the petition and hearing notice.

Subd. 2. **Duties of counsel.** In all proceedings under this section, counsel for the respondent shall (1) consult with the person prior to any hearing; (2) be given adequate time to prepare for all hearings; (3) continue to represent the person throughout any proceedings under this charge unless released as counsel by the court; and (4) be a vigorous advocate on behalf of the client.

History: 1987 c 209 s 10

144.4178 CRIMINAL IMMUNITY.

In accordance with section 609.09, subdivision 2, no person shall be excused in an action under sections 144.4171 to 144.4186 from giving testimony or producing any documents, books, records, or correspondence, tending to be self-incriminating; but the testimony or evidence, or other testimony or evidence derived from it, must not be used against the person in any criminal case, except for perjury committed in the testimony.

History: 1987 c 209 s 11

144.4179 STANDARD OF PROOF; EVIDENCE.

Subdivision 1. **Clear and convincing.** The commissioner must prove the allegations in the petition by clear and convincing evidence.

Subd. 2. **All relevant evidence.** The court shall admit all reliable relevant evidence. Medical and epidemiologic data must be admitted if it otherwise comports with section 145.30, chapter 600, Minnesota Rules of Evidence 803(6), or other statutes or rules that permit reliable evidence to be admitted in civil cases.

Subd. 3. **Carrier status.** Upon a finding by the court that the commissioner's suspicion of carrier status is reasonable as established by presentation of facts justifying an inference that the respondent harbors a specific infectious agent, there shall exist a rebuttable presumption that the respondent is a carrier. This presumption may be rebutted if the respondent demonstrates noncarrier status after undergoing medically accepted tests.

Subd. 4. **Failure to appear.** If a party fails to appear at the hearing without prior court approval, the hearing may proceed without the absent party and the court may make its determination on the basis of all reliable evidence submitted at the hearing.

Subd. 5. **Records.** The court shall take and preserve an accurate stenographic record of the proceedings.

History: 1987 c 209 s 12

144.4180 REMEDIES.

Subdivision 1. **Remedies available.** Upon a finding by the court that the commissioner has proven the allegations set forth in the petition, the court may order that the respondent must:

(1) participate in a designated education program;

- (2) participate in a designated counseling program;
- (3) participate in a designated treatment program;
- (4) undergo medically accepted tests to verify carrier status or for diagnosis, or undergo treatment that is consistent with standard medical practice as necessary to make respondent noninfectious;
- (5) notify or appear before designated health officials for verification of status, testing, or other purposes consistent with monitoring;
- (6) cease and desist the conduct which constitutes a health threat to others;
- (7) live part time or full time in a supervised setting for the period and under the conditions set by the court;
- (8) subject to the provisions of subdivision 2, be committed to an appropriate institutional facility for the period and under the conditions set by the court, but not longer than six months, until the respondent is made noninfectious, or until the respondent completes a course of treatment prescribed by the court, whichever occurs first, unless the commissioner shows good cause for continued commitment; and
- (9) comply with any combination of the remedies in clauses (1) to (8), or other remedies considered just by the court. In no case may a respondent be committed to a correctional facility.

Subd. 2. Commitment review panel. The court may not order the remedy specified in subdivision 1, clause (8), unless it first considers the recommendation of a commitment review panel appointed by the commissioner to review the need for commitment of the respondent to an institutional facility.

The duties of the commitment review panel shall be to:

- (1) review the record of the proceeding;
- (2) interview the respondent. If the respondent is not interviewed, the reasons must be documented; and
- (3) identify, explore, and list the reasons for rejecting or recommending alternatives to commitment.

Subd. 3. Construction. This section shall be construed so that the least restrictive alternative is used to achieve the desired purpose of preventing or controlling communicable disease.

Subd. 4. Additional requirements. If commitment or supervised living is ordered, the court shall require the head of the institutional facility or the person in charge of supervision to submit: (a) a plan of treatment within ten days of initiation of commitment or supervised living; and (b) a written report, with a copy to both the commissioner and the respondent, at least 60 days, but not more than 90 days, from the start of respondent's commitment or supervised living arrangement, setting forth the following:

- (1) the types of support or therapy groups, if any, respondent is attending and how often respondent attends;
- (2) the type of care or treatment respondent is receiving, and what future care or treatment is necessary;
- (3) whether respondent has been cured or made noninfectious, or otherwise no longer poses a threat to public health;
- (4) whether continued commitment or supervised living is necessary; and
- (5) other information the court considers necessary.

History: 1987 c 209 s 13

144.4181 APPEAL.

The petitioner or respondent may appeal the decision of the district court. The court of appeals shall hear the appeal within 30 days after service of the notice of appeal. However, respondent's status as determined by the district court remains unchanged, and any remedy ordered by the district court remains in effect while the appeal is pending.

History: 1987 c 209 s 14

144.4182 TEMPORARY EMERGENCY HOLD.

Subdivision 1. **Apprehend and hold.** To protect the public health in an emergency, the court may order a health officer or peace officer to take a person into custody and transport the person to an appropriate emergency care or treatment facility for observation, examination, testing, diagnosis, care, treatment, and, if necessary, temporary detention. If the person is already institutionalized, the court may order the institutional facility to hold the person. These orders may be issued in an ex parte proceeding upon an affidavit of the commissioner or a designee of the commissioner. An order shall issue upon a determination by the court that reasonable cause exists to believe that the person is: (a) for indirectly transmitted diseases, an imminent health threat to others; or (b) for directly transmitted diseases, a substantial likelihood of an imminent health threat to others.

The affidavit must set forth the specific facts upon which the order is sought and must be served on the person immediately upon apprehension or detention. An order under this section may be executed on any day and at any time.

Subd. 2. **Duration of hold.** No person may be held under subdivision 1 longer than 72 hours, exclusive of Saturdays, Sundays, and legal holidays, without a court hearing to determine if the emergency hold should continue.

History: 1987 c 209 s 15

144.4183 EMERGENCY HOLD HEARING.

Subdivision 1. **Time of notice.** Notice of the emergency hold hearing must be served upon the person held under section 144.4182, subdivision 1, at least 24 hours before the hearing.

Subd. 2. **Contents of notice.** The notice must contain the following information:

- (1) the time, date, and place of the hearing;
- (2) the grounds and underlying facts upon which continued detention is sought;
- (3) the person's right to appear at the hearing;
- (4) the person's right to present and cross-examine witnesses; and
- (5) the person's right to counsel, including the right, if indigent, to representation by counsel designated by the court or county of venue.

Subd. 3. **Order for continued emergency hold.** The court may order the continued holding of the person if it finds, by a preponderance of the evidence, that the person would pose an imminent health threat to others if released. However, in no case may the emergency hold continue longer than five days, unless a petition is filed under section 144.4173. If a petition is filed, the emergency hold must continue until a hearing on the petition is held under section 144.4177. That hearing must occur within five days of the filing of the petition, exclusive of Saturdays, Sundays, and legal holidays.

History: 1987 c 209 s 16

144.4184 CONTACT DATA.

Identifying information voluntarily given to the commissioner, or an agent of the commissioner, by a carrier through a contact notification program must not be used as evidence in a court proceeding to determine noncompliant behavior.

History: 1987 c 209 s 17

144.4185 COSTS.

Subdivision 1. **Costs of care.** The court shall determine what part of the cost of care or treatment ordered by the court, if any, the respondent can pay. The respondent shall provide the court documents and other information necessary to determine financial ability. If the respondent cannot pay the full cost of care, the rest must be paid by the county in which respondent resides. If the respondent provides inaccurate or misleading information, or later becomes able to pay the full cost of care, the respondent becomes liable to the county for costs paid by the county.

Subd. 2. **Court-appointed counsel.** If the court appoints counsel to represent respondent free of charge, counsel must be compensated by the county in which respondent resides, except to the extent that the court finds that the respondent is financially able to pay for counsel's services. In these situations, the rate of compensation for counsel shall be determined by the court.

Subd. 3. **Report.** The commissioner shall report any recommendations for appropriate changes in the modes of financing of services provided under subdivision 1 by January 15, 1988.

History: 1987 c 209 s 18

144.4186 DATA PRIVACY.

Subdivision 1. **Nonpublic data.** Data contained in a health directive are classified as protected nonpublic data under section 13.02, subdivision 13, in the case of data not on individuals, and private under section 13.02, subdivision 12, in the case of data on individuals. Investigative data shall have the classification accorded it under section 13.39.

Subd. 2. **Protective order.** Once an action is commenced, any party may seek a protective order to protect the disclosure of portions of the court record identifying individuals or entities.

Subd. 3. **Records retention.** A records retention schedule for records developed under sections 144.4171 to 144.4186 shall be established pursuant to section 138.17, subdivision 7.

History: 1987 c 209 s 19

144.422 [Repealed, 1987 c 209 s 40]

144.424 [Repealed, 1987 c 209 s 40]

144.425 [Repealed, 1987 c 209 s 40]

144.471 [Repealed, 1987 c 209 s 40]

144.49 VIOLATIONS; PENALTIES.

[For text of subd 1, see M.S.1986]

Subd. 5. [Repealed, 1987 c 209 s 40]

[For text of subds 6 to 8, see M.S.1986]

144.50 HOSPITALS, LICENSES; DEFINITIONS.

Subdivision 1. (a) No person, partnership, association, or corporation, nor any state, county, or local governmental units, nor any division, department, board, or agency thereof, shall establish, operate, conduct, or maintain in the state any hospital, sanatorium or other institution for the hospitalization or care of human beings without first obtaining a license therefor in the manner provided in sections 144.50 to 144.56. No person or entity shall advertise a facility providing services required to be licensed under sections 144.50 to 144.56 without first obtaining a license.

(b) A violation of this subdivision is a misdemeanor punishable by a fine of not more than \$300. The commissioner may seek an injunction in the district court against the continuing operation of the unlicensed institution. Proceedings for securing an injunction may be brought by the attorney general or by the appropriate county attorney.

(c) The sanctions in this subdivision do not restrict other available sanctions.

Subd. 2. Hospital, sanatorium or other institution for the hospitalization or care of human beings, within the meaning of sections 144.50 to 144.56 shall mean any institution, place, building, or agency, in which any accommodation is maintained, furnished, or offered for five or more persons for: the hospitalization of the sick or injured; the provision of care in a swing bed authorized under section 144.562; elective

outpatient surgery for preexamined, prediagnosed low risk patients; emergency medical services offered 24 hours a day, seven days a week, in an ambulatory or outpatient setting in a facility not a part of a licensed hospital; or the institutional care of human beings. Nothing in sections 144.50 to 144.56 shall apply to a clinic, a physician's office or to hotels or other similar places that furnish only board and room, or either, to their guests.

[For text of subds 3 and 5, see M.S.1986]

History: 1987 c 209 s 20,21

144.55 LICENSES; ISSUANCE, SUSPENSION AND REVOCATION BY COMMISSIONER.

[For text of subds 1 to 5, see M.S.1986]

Subd. 6. Suspension, revocation, and refusal to renew. (a) The commissioner may refuse to grant or renew, or may suspend or revoke, a license on any of the following grounds:

- (1) Violation of any of the provisions of sections 144.50 to 144.56 or the rules or standards issued pursuant thereto;
- (2) Permitting, aiding, or abetting the commission of any illegal act in the institution;
- (3) Conduct or practices detrimental to the welfare of the patient; or
- (4) Obtaining or attempting to obtain a license by fraud or misrepresentation.

(b) The commissioner shall not renew a license for a boarding care bed in a resident room with more than four beds.

[For text of subds 7 to 11, see M.S.1986]

History: 1987 c 403 art 4 s 1

NOTE: Subdivision 6, as amended by Laws 1987, chapter 403, article 4, section 1, is effective July 1, 1989. See Laws 1987, chapter 403, article 4, section 15.

144.555 HOSPITAL CLOSINGS; PATIENT RELOCATIONS.

Subdivision 1. Notice of closing or curtailing service. If a facility licensed under sections 144.50 to 144.56 voluntarily plans to cease operations or to curtail operations to the extent that patients or residents must be relocated, the controlling persons of the facility must notify the commissioner of health at least 90 days before the scheduled cessation or curtailment. The commissioner shall cooperate with the controlling persons and advise them about relocating the patients or residents.

Subd. 2. Penalty. Failure to notify the commissioner under subdivision 1 may result in issuance of a correction order under section 144.653, subdivision 5.

History: 1987 c 209 s 22

144.653 RULES; PERIODIC INSPECTIONS; ENFORCEMENT.

[For text of subds 1 and 2, see M.S.1986]

Subd. 3. Enforcement. With the exception of the department of public safety which has the exclusive jurisdiction to enforce state fire and safety standards, the state commissioner of health is the exclusive state agency charged with the responsibility and duty of inspecting facilities required to be licensed under the provisions of sections 144.50 to 144.58 and enforcing the rules and standards prescribed by it.

The commissioner may request and must be given access to relevant information, records, incident reports, or other documents in the possession of a licensed facility if the commissioner considers them necessary for the discharge of responsibilities. For the purposes of inspections and securing information to determine compliance with the

licensure laws and rules, the commissioner need not present a release, waiver, or consent of the individual. The identities of patients or residents must be kept private as defined by section 13.02, subdivision 12.

[For text of subds 4 to 9, see M.S.1986]

History: 1987 c 209 s 23

144.66 [Repealed, 1987 c 403 art 2 s 164]

144.67 [Repealed, 1987 c 403 art 2 s 164]

CANCER SURVEILLANCE SYSTEM

144.671 CANCER SURVEILLANCE SYSTEM; PURPOSE.

The commissioner of health shall establish a statewide population-based cancer surveillance system. The purpose of this system is to:

- (1) monitor incidence trends of cancer to detect potential public health problems, predict risks, and assist in investigating cancer clusters;
- (2) more accurately target intervention resources for communities and patients and their families;
- (3) inform health professionals and citizens about risks, early detection, and treatment of cancers known to be elevated in their communities; and
- (4) promote high quality research to provide better information for cancer control and to address public concerns and questions about cancer.

History: 1987 c 403 art 2 s 9

144.672 DUTIES OF COMMISSIONER; RULES.

Subdivision 1. **Rule authority.** The commissioner of health shall collect cancer incidence information, analyze the information, and conduct special studies designed to determine the potential public health significance of an increase in cancer incidence.

The commissioner shall adopt rules to administer the system, collect information, and distribute data. The rules must include, but not be limited to, the following:

- (1) the type of data to be reported;
- (2) standards for reporting specific types of data;
- (3) payments allowed to hospitals, pathologists, and registry systems to defray their costs in providing information to the system;
- (4) criteria relating to contracts made with outside entities to conduct studies using data collected by the system. The criteria may include requirements for a written protocol outlining the purpose and public benefit of the study, the description, methods, and projected results of the study, peer review by other scientists, the methods and facilities to protect the privacy of the data, and the qualifications of the researcher proposing to undertake the study;
- (5) specification of fees to be charged under section 13.03, subdivision 3, for all out-of-pocket expenses for data summaries or specific analyses of data requested by public and private agencies, organizations, and individuals, and which are not otherwise included in the commissioner's annual summary reports. Fees collected are appropriated to the commissioner to offset the cost of providing the data; and
- (6) establishment of a committee to assist the commissioner in the review of system activities.

Subd. 2. **Biennial report required.** The commissioner of health shall prepare and transmit to the governor and to members of the legislature a biennial report on the incidence of cancer in Minnesota and a compilation of summaries and reports from special studies and investigations performed to determine the potential public health significance of an increase in cancer incidence, together with any findings and recom-

mendations. The first report shall be delivered by February 1989, with subsequent reports due in February of each of the following odd-numbered years.

History: 1987 c 403 art 2 s 10

144.68 RECORDS AND REPORTS REQUIRED.

Subdivision 1. Person practicing healing arts. Every person licensed to practice the healing arts in any form, upon request of the commissioner of health, shall prepare and forward to the commissioner, in the manner and at such times as the commissioner designates, a detailed record of each case of cancer treated or seen by the person professionally.

Subd. 2. Hospitals and similar institutions. Every hospital, medical clinic, medical laboratory, or other institution for the hospitalization, clinical or laboratory diagnosis, or care of human beings, upon request of the commissioner of health, shall prepare and forward to the commissioner, in the manner and at the times designated by the commissioner, a detailed record of each case of cancer.

Subd. 3. Reporting without liability. The furnishing of the information required under subdivisions 1 and 2 shall not subject the person, hospital, medical clinic, medical laboratory, or other institution furnishing the information, to any action for damages or other relief.

History: 1987 c 403 art 2 s 11

144.69 CLASSIFICATION OF DATA ON INDIVIDUALS.

Notwithstanding any law to the contrary, including section 13.05, subdivision 9, data collected on individuals by the cancer surveillance system, including the names and personal identifiers of persons required in section 144.68 to report, shall be private and may only be used for the purposes set forth in this section and sections 144.671, 144.672, and 144.68. Any disclosure other than is provided for in this section and sections 144.671, 144.672, and 144.68, is declared to be a misdemeanor and punishable as such. Except as provided by rule, and as part of an epidemiologic investigation, an officer or employee of the commissioner of health may interview patients named in any such report, or relatives of any such patient, only after the consent of the attending physician or surgeon is obtained.

History: 1987 c 403 art 2 s 12

144.692 [Repealed, 1987 c 209 s 40]

144.699 CONTINUING ANALYSIS.

[For text of subd 1, see M.S.1986]

Subd. 2. Fostering price competition. The commissioner of health shall:

(a) Encourage hospitals, outpatient surgical centers, home care providers, and professionals regulated by the health related licensing boards as defined in section 214.01, subdivision 2, and by the commissioner of health under section 214.13, to publish prices for procedures and services that are representative of the diagnoses and conditions for which citizens of this state seek treatment.

(b) Analyze and disseminate available price information and analyses so as to foster the development of price competition among hospitals, outpatient surgical centers, home care providers, and health professionals.

[For text of subds 3 and 4, see M.S.1986]

History: 1987 c 378 s 2

144.801 DEFINITIONS.

[For text of subds 1 to 7, see M.S.1986]

Subd. 8. [Repealed, 1987 c 209 s 40]

[For text of subds 9 and 10, see M.S.1986]

144.802 LICENSING.

[For text of subds 1 and 2, see M.S.1986]

Subd. 3. (a) Each prospective licensee and each present licensee wishing to offer a new type or types of life support transportation service, to establish a new base of operation, or to expand a primary service area, shall make written application for a license to the commissioner on a form provided by the commissioner.

(b) For applications for the provision of life support transportation services in a service area located within a county, the commissioner shall promptly send notice of the completed application to the county board and to each community health service board, regional emergency medical services system designated under section 144.8093, life support transportation service, and municipality in the area in which life support transportation service would be provided by the applicant. The commissioner shall publish the notice, at the applicant's expense, in the State Register and in a newspaper in the municipality in which the base of operation will be located, or if no newspaper is published in the municipality or if the service would be provided in more than one municipality, in a newspaper published at the county seat of the county in which the service would be provided.

(c) For applications for the provision of life support transportation services in a service area larger than a county, the commissioner shall promptly send notice of the completed application to the municipality in which the service's base of operation will be located and to each community health board, county board, regional emergency medical services system designated under section 144.8093, and life support transportation service located within the service area described by the applicant. The commissioner shall publish this notice, at the applicant's expense, in the State Register and in a newspaper with statewide circulation.

(d) The commissioner shall request that the chief administrative law judge appoint an administrative law judge to hold a public hearing in the municipality in which the service's base of operation will be located. The public hearing shall be conducted as contested case hearing under chapter 14.

(e) Each municipality, county, community health service, regional emergency medical services system, life support transportation service, and other person wishing to make recommendations concerning the disposition of the application shall make written recommendations to the administrative law judge within 30 days of the publication of notice of the application in the State Register.

(f) The administrative law judge shall:

(1) hold a public hearing in the municipality in which the service's base of operations is or will be located;

(2) provide notice of the public hearing in the newspaper or newspapers in which notice was published under part (b) or (c) for two successive weeks at least ten days before the date of the hearing;

(3) allow any interested person the opportunity to be heard, to be represented by counsel, and to present oral and written evidence at the public hearing;

(4) provide a transcript of the hearing at the expense of any individual requesting it.

(g) The administrative law judge shall review and comment upon the application and shall make written recommendations as to its disposition to the commissioner within 90 days of receiving notice of the application. In making the recommendations, the administrative law judge shall consider and make written comments as to whether the proposed service, change in base of operations, or expansion in primary service area is needed, based on consideration of the following factors:

(1) the relationship of the proposed service, change in base of operations or expansion in primary service area to the current community health plan as approved by the commissioner under section 145.918;

(2) the recommendations or comments of the governing bodies of the counties and municipalities in which the service would be provided;

(3) the deleterious effects on the public health from duplication, if any, of life support transportation services that would result from granting the license;

(4) the estimated effect of the proposed service, change in base of operation or expansion in primary service area on the public health;

(5) whether any benefit accruing to the public health would outweigh the costs associated with the proposed service, change in base of operations, or expansion in primary service area.

The administrative law judge shall recommend that the commissioner either grant or deny a license or recommend that a modified license be granted. The reasons for the recommendation shall be set forth in detail. The administrative law judge shall make the recommendations and reasons available to any individual requesting them.

[For text of subd 3a, see M.S.1986]

Subd. 4. Within 30 days after receiving the administrative law judge's report, the commissioner shall grant or deny a license to the applicant. In granting or denying a license, the commissioner shall consider the administrative law judge's report, the evidence contained in the application, and any hearing record and other applicable evidence. The commissioner's decision shall be based on a consideration of the factors contained in subdivision 3, clause (f). If the commissioner's decision is different from the administrative law judge's recommendations, the commissioner shall set forth in detail the reasons for differing from the recommendations.

[For text of subd 5, see M.S.1986]

History: 1987 c 209 s 24,25

144.94 [Repealed, 1987 c 209 s 40]

144.95 MOSQUITO RESEARCH PROGRAM.

[For text of subds 1 to 3, see M.S.1986]

Subd. 4. **Research trials.** Research trials of mosquito management methods and materials are subject to the following laws and rules unless a specific written exemption, license, or waiver is granted; sections 84.0895, 84.092, 97A.045, subdivision 1, 105.38, 105.41, and 105.463; and Minnesota Rules, chapters 1505, 6115, 6120, 6134, and 6140.

[For text of subds 5 to 10, see M.S.1986]

History: 1987 c 149 art 2 s 10