

## CHAPTER 144B

### RESIDENTIAL CARE HOMES

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#### 144B.01 DEFINITIONS.

Subdivision 1. **Scope.** As used in sections 144B.01 to 144B.17, the following terms have the meanings given them in this section.

Subd. 2. **Adult.** "Adult" means a person who has attained the age of 18 years.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of health or the commissioner's designee.

Subd. 4. **Department.** "Department" means the Minnesota department of health.

Subd. 5. **Residential care home or home.** "Residential care home" or "home" means an establishment with a minimum of five beds, where adult residents are provided sleeping accommodations and two or more meals per day and where supportive services are provided or offered to all residents by the facility. A "residential care home" does not include:

(1) a board and lodging establishment licensed under chapter 157 and also licensed by the commissioner of human services under chapter 245A;

(2) a boarding care home or a supervised living facility licensed under chapter 144;

(3) a home care provider licensed under chapter 144A; and

(4) any housing arrangement which consists of apartments containing a separate kitchen or kitchen equipment that will allow residents to prepare meals and where supportive services may be provided, on an individual basis, to residents in their living units either by the management of the residential care home or by home care providers under contract with the home's management.

Subd. 6. **Supportive services.** "Supportive services" means the provision of supervision and minimal assistance with independent living skills. Supportive services include assistance with transportation, arranging for meetings and appointments, arranging for medical and social services, help with laundry, managing money, and personal shopping assistance. In addition, supportive services include, if needed, assistance with walking, grooming, dressing, eating, bathing, toileting, and providing reminders to residents to take medications. Supportive services also include other health-related support services identified by the commissioner in rule.

**History:** 1991 c 292 art 2 s 14

#### 144B.02 LICENSE REQUIRED.

No person, partnership, association, or corporation, nor any state, county, or local governmental units, nor any division, department, board, or agency shall establish, operate, conduct, or maintain in the state any residential care home without first obtaining a license as required in sections 144B.01 to 144B.17. No person or entity shall advertise a home providing services required to be licensed under sections 144B.01 to 144B.17 without first obtaining a license. A violation of this section 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 home. Proceedings for securing an injunction may be brought by the attorney general or by the appropriate county attorney. The sanctions in this section do not restrict other available sanctions.

**History:** 1991 c 292 art 2 s 15

**144B.03 LICENSE APPLICATION.**

Subdivision 1. **License procedures.** The commissioner shall by rule establish forms and procedures for processing residential care home license applications. An application for a residential care home license shall include:

- (1) the name and address of the licensee and the manager of the home to be licensed;
- (2) the address of the home; and
- (3) any other relevant information which the commissioner by rule may determine is necessary to properly evaluate an application for license.

An applicant for licensure which is a corporation shall submit copies of its articles of incorporation and bylaws and any amendments as they occur, together with the names and addresses of its officers and directors. An applicant for licensure which is a foreign corporation shall furnish the commissioner with a copy of its certificate of authority to do business in this state. The application of 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. **Agents identified.** Each application for a residential care home license or for renewal of a residential care home license shall specify one or more individuals or employees as agents:

- (1) who shall be responsible for dealing with the commissioner on all matters provided for in sections 144B.01 to 144B.17; and
- (2) on whom personal service of all notices and orders shall be made, and who shall be authorized to accept service on behalf of the licensee.

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 the licensee, and it shall not be a defense to any action arising, that personal service was not made on each individual. The designation of one or more individuals pursuant to this subdivision shall not affect the legal responsibility of the licensee under sections 144B.01 to 144B.17.

**History:** 1991 c 292 art 2 s 16

**144B.04 FEES.**

Each application for a license to operate a residential care home, or for a renewal of license, shall be accompanied by a fee established by the commissioner according to section 144.122. No fee shall be refunded. The fee established must include an amount necessary to recover, over a five-year period, the commissioner's direct expenditures for adoption of the residential care home rules.

**History:** 1991 c 292 art 2 s 17

**144B.05 QUALIFICATIONS FOR LICENSE.**

Subdivision 1. **Compliance required.** No license shall be issued to a home unless the commissioner of health determines that the home complies with the requirements of this chapter.

Subd. 2. **Application required.** The applicant for a license under sections 144B.01 to 144B.17 must comply with the application requirements specified by section 144B.03.

Subd. 3. **Health; safety standards.** The home must meet the minimum health, safety, comfort, and well-being standards prescribed by the rules of the commissioner with respect to the construction, equipment, maintenance, and operation of a residential care home.

Subd. 4. **Licensure conditions or limitations.** The commissioner may attach to the license any conditions or limitations necessary to assure compliance with the laws or rules governing the operation of the home or to protect the health, safety, comfort, or well-being of the residents. A condition or limitation may be attached to the license

when first issued, when renewed, or during the course of the licensure year. The commissioner shall adopt rules governing the procedures for issuing conditions or limitations.

**History:** 1991 c 292 art 2 s 18

#### **144B.06 LICENSE RENEWAL.**

Unless the license is suspended or revoked according to section 144B.08, a residential care home license is effective for one year from the date of its issuance. The commissioner shall by rule establish forms and procedures for the processing of license renewals. The commissioner shall approve a license renewal application if the home continues to satisfy the requirements, standards, and conditions of sections 144B.01 to 144B.17, and the rules adopted under those sections.

**History:** 1991 c 292 art 2 s 19

#### **144B.07 TRANSFERABILITY OF LICENSE.**

**Subdivision 1. Transfers prohibited; change of ownership.** A license shall be issued only for the premise identified in the application for license and may not be transferred or assigned to another party. Prior to any change of licensee of a home, the prospective licensee must apply for a license according to subdivision 2. "Change of licensee" means a transfer of the legal responsibility to operate the home to a different individual or entity.

**Subd. 2. Notification.** At least 60 days prior to the final change of license, the prospective licensee shall notify the department of the intended change of licensee and shall file an application for a license. The original licensee shall notify the department of the intended change at least 90 days prior to the change. The original licensee remains responsible for the operation of the home until the date a new license is issued by the department. The original licensee is liable for all penalties assessed against the home and for all violations occurring prior to the transfer of operation. The commissioner may not issue a license to the prospective licensee if, at the time of the requested transfer, there are any uncorrected violations of sections 144B.01 to 144B.17 or rules adopted under those sections unless the commissioner determines that the violations will not create an imminent risk of harm to the residents and that the prospective licensee has submitted an acceptable plan of correction to the commissioner.

**History:** 1991 c 292 art 2 s 20

#### **144B.08 LICENSE SUSPENSION, REVOCATION, OR REFUSAL TO ISSUE; HEARING; RELICENSING.**

**Subdivision 1. Proceedings.** The commissioner may institute proceedings to suspend or revoke a residential care home license, or may refuse to grant or renew the license of a residential care home if any action by a licensee or employee of the residential care home:

- (1) violates any of the provisions of sections 144B.01 to 144B.17, or the rules adopted under those sections;
- (2) permits, aids, or abets the commission of any illegal act in the residential care home or relating to the operation of the home;
- (3) performs any act contrary to the welfare of the residential care home; or
- (4) obtains, or attempts to obtain, a license by fraudulent means or misrepresentation.

**Subd. 2. Hearing.** No residential care home license may be suspended or revoked, and renewal may not be denied, without a hearing held as a contested case in accordance with chapter 14. If the individual designated under section 144B.03, subdivision 2, as an agent to accept service on behalf of the licensee has been notified by the commissioner that the home will not receive an initial license or that a license renewal has been denied, the licensee or a legal representative on behalf of the residential care 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. 3. Mandatory revocation or refusal to issue a license.** Notwithstanding subdivision 2, the commissioner shall revoke or refuse to issue a residential care home license if the applicant, licensee, or manager of the licensed home is convicted of a felony or gross misdemeanor that is punishable by a term of imprisonment of not more than 90 days and that relates to operation of the residential care home or directly affects resident safety or care. The commissioner shall notify the residential care home 30 days before the date of revocation.

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

**History:** 1991 c 292 art 2 s 21

### **144B.09 RULES.**

The commissioner shall establish by rule minimum standards for the construction, maintenance, equipping, and operation of residential care homes. To the extent possible, the rules shall assure the health, safety, comfort, and well-being of residential care home residents. The rules shall include, but not be limited to the following provisions:

- (1) the supportive services that can be provided;
- (2) special service permit requirements for medication or other supportive services;
- (3) staffing requirements;
- (4) training and qualifications of staff;
- (5) criteria for admission and continued stay of a resident;
- (6) resident rights;
- (7) fire safety and physical plant requirements that are based on the size of the home, and the resident's ability to ambulate, taking into consideration the need for differing standards for existing physical plants and for new construction; and
- (8) procedures for granting variances or waivers from the rules.

**History:** 1991 c 292 art 2 s 22

### **144B.10 INSPECTIONS; ENFORCEMENT.**

**Subdivision 1. Enforcement.** The department is the exclusive state agency charged with the responsibility and duty of inspecting all homes required to be licensed under sections 144B.01 to 144B.17. The commissioner shall enforce its rules subject only to the authority of the department of public safety respecting the enforcement of fire and safety standards in licensed residential care homes.

**Subd. 2. Periodic inspection.** (a) All homes required to be licensed under sections 144B.01 to 144B.17 shall be periodically inspected by the commissioner to ensure compliance with rules and standards. Inspections shall occur at different times throughout the calendar year.

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

- (1) change in ownership;
- (2) frequent change in management or staff;

- (3) complaints about care, safety, or rights;
- (4) previous inspections or reinspections which have resulted in correction orders related to care, safety, or rights; and
- (5) indictment of persons involved in ownership or operation of the home for alleged criminal activity.

(c) A home that does not have any of the conditions in paragraph (b) 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. Authority.** The commissioner may request and must be given access to relevant information, records, incident reports, or other documents in the possession of a home 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.

**Subd. 4. Inspections without notice.** No prior notice shall be given of an inspection or reinspection conducted under this section.

**Subd. 5. Correction orders.** Whenever a duly authorized representative of the commissioner determines that a home is not in compliance with the provisions of this chapter or the rules adopted under it, a correction order shall be issued to the home. The correction order shall state the deficiency, cite the specific law or rule violated, and specify the time allowed for correction.

**Subd. 6. Reinspections; fines.** If, upon reinspection, it is found that the home has not corrected deficiencies specified in the correction order, a notice of noncompliance shall be issued stating all deficiencies not corrected. Unless a hearing is requested under subdivision 8, the home shall forfeit to the state, within 15 days after receiving the notice of noncompliance, up to \$1,000 for each deficiency not corrected. For each subsequent reinspection, the home may be fined an additional amount for each deficiency which has not been corrected. All forfeitures shall be paid into the general fund. The commissioner shall adopt by rule a schedule of fines applicable for each type of uncorrected deficiency.

**Subd. 7. Recovery.** Any unpaid forfeitures may be recovered by the attorney general.

**Subd. 8. Hearings.** A licensee is entitled to a hearing on any notice of noncompliance provided that the licensee makes a written request within 15 days after receiving the notice of noncompliance. Failure to request a hearing shall result in the forfeiture of a penalty as determined by the commissioner according to subdivision 6. During the hearing and review process a request for a hearing shall operate as a stay of the payment of any forfeiture provided for in this section. The hearing shall be conducted as a contested case proceeding under the provisions of chapter 14.

**Subd. 9. Records of inspections.** After each inspection or reinspection required or authorized by this section, the commissioner shall, by certified mail, send copies of any correction order or notice of noncompliance to the home. A copy of each correction order and notice of noncompliance shall be kept on file at the home and shall be made available for viewing by any person upon request.

**Subd. 10. Powers not limited.** Nothing in this section shall be construed to limit the powers granted to the commissioner in this chapter.

**History:** 1991 c 292 art 2 s 23

## **144B.11 INJUNCTIVE RELIEF; SUBPOENAS.**

**Subdivision 1. Injunctive relief.** In addition to any other remedy provided by law, the commissioner may bring an action in the district court in Ramsey or Hennepin county or in the district in which a home is located to enjoin the licensee or an employee of the home from illegally engaging in activities regulated by sections 144B.01 to

144B.17. A temporary restraining order may be granted by the court in the proceeding if continued activity by the licensee 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 144B.01 to 144B.17, the commissioner shall have the power to issue subpoenas, and to 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 refusing 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 or by a subpoena of the commissioner to do so may, upon application by the commissioner to the district court in any district, be ordered by the court to comply with the subpoena or order. The commissioner 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, 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 for persons subpoenaed by the commissioner shall be paid in the same manner as for proceedings in district court.

**History:** 1991 c 292 art 2 s 24

#### 144B.12 PLACEMENT OF A MONITOR.

**Subdivision 1. Authority.** The commissioner may place a person to act as a monitor in a residential care home when the commissioner determines that violations of this chapter, or the rules adopted under it, require extended surveillance to enforce compliance or to protect the health, safety, or welfare of the residents.

**Subd. 2. Duties of the monitor.** The monitor shall observe the operation of the home, provide advice to the home on methods of complying with state law and rules, where documented deficiencies for the regulations exist, and periodically shall submit a written report to the commissioner on the ways in which the home meets or fails to meet state rules.

**Subd. 3. Selection of the monitor.** The commissioner may select as monitor an employee of the department or may contract with any other individual to serve as a monitor. The commissioner shall publish a notice in the State Register that requests proposals from individuals who wish to be considered for placement as monitors and that sets forth the criteria for selecting individuals as monitors. The commissioner shall maintain a list of individuals who are not employees of the department who are interested in serving as monitors. The commissioner may contract with those individuals determined to be qualified.

**Subd. 4. Payment of the monitor.** A residential care home in which a monitor is placed shall pay to the department the actual costs associated with the placement, unless the payment would create an undue hardship for the home.

**History:** 1991 c 292 art 2 s 25

#### 144B.13 FREEDOM FROM ABUSE AND NEGLECT.

Residents shall be free from abuse and neglect as defined in section 626.557, subdivision 2. The commissioner shall by rule develop procedures for the reporting of alleged incidents of abuse or neglect in residential care homes. The office of health facility complaints shall investigate reports of alleged abuse or neglect according to sections 144A.51 to 144A.54.

**History:** 1991 c 292 art 2 s 26

**NOTE:** This section, as added by Laws 1991, chapter 292, article 2, section 26, is effective upon the effective date of rules adopted by the commissioner of health for licensure of residential care homes. See Laws 1991, chapter 292, article 2, section 76.

**144B.14 CESSATION OF OPERATIONS.**

If a residential care home voluntarily plans to cease operations or to curtail operations to the extent that relocation of residents is necessary, the licensee of the home shall notify the commissioner at least 90 days prior to the scheduled cessation or curtailment. The commissioner shall cooperate with and advise the licensee of the home in the resettlement of residents. Failure to comply with this section shall be subject to the issuance of a correction order and fine under section 144B.10.

*History: 1991 c 292 art 2 s 27*

**144B.15 HUMAN SERVICES LICENSURE EXCLUSION.**

Notwithstanding section 245A.03, subdivision 2, board and lodging establishments licensed by the commissioner and registered under section 157.031, subdivision 2, that provide services for five or more persons whose primary diagnosis is mental illness and who have refused a residential program offered by a county agency are exempt from licensure under sections 245A.01 to 245A.16, until one year after the residential care home licensure rules required under sections 144B.01 to 144B.17 are adopted by the commissioner of health. At that time, these establishments shall be licensed under sections 245A.01 to 245A.16, or as residential care homes.

*History: 1991 c 292 art 2 s 28*

**144B.16 TRANSITIONAL PERIOD.**

Except as provided for in section 157.031, subdivision 4, the requirement to obtain a residential care home license is effective as of the effective date of the rules adopted by the commissioner. Until that time, board and lodging establishments that are required to be registered under the provisions of section 157.031 shall continue to meet the requirements contained in that section.

*History: 1991 c 292 art 2 s 29*

**144B.17 ADVISORY WORK GROUP.**

The commissioner shall convene a work group to advise, consult with, and make recommendations to the commissioner regarding the development of rules required under sections 144B.01 to 144B.16. The work group must include consumers and providers of the services described in sections 144B.01 to 144B.16 and other interested parties.

*History: 1991 c 292 art 2 s 30*