

CHAPTER 144A

NURSING HOMES AND HOME CARE

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144A.04 QUALIFICATIONS FOR LICENSE.

[For text of subs 1 to 4a, see M S 1998]

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. Notwithstanding sections 144A 18 to 144A 27, in any nursing home of less than 32 beds, the director of nursing services may also serve as the licensed nursing home administrator without being licensed as a nursing home administrator, provided the director of nursing services has passed the state law and rules examination administered by the board of examiners for nursing home administrators and maintains evidence of completion of 20 hours of continuing education each year on topics pertinent to nursing home administration. Two nursing homes under common ownership or management pursuant to a lease or management contract having a total of 150 beds or less and located within 75 miles of each other may share the services of a licensed administrator if the administrator divides the 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. In the absence of rules adopted by the commissioner governing the division of an administrator's time between two nursing homes, the administrator shall designate and post the times the administrator will be on site in each home on a regular basis. 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.

[For text of subs 5a to 7, see M S 1998]

Subd 7a **Director of nursing services.** Except as otherwise provided by this subdivision and subdivision 5, a nursing home must have a full-time director of nursing services who is assigned full time to the nursing services of the nursing home. For nursing homes with less than 32 beds, the director of nursing services may also serve as the licensed nursing home administrator without being licensed by the board of examiners for nursing home administrators under sections 144A 19 to 144A 27. For purposes of this requirement, "full time" means working at least 35 hours per week. The director of nursing services of a nursing home may also serve as the director of nursing services of a physically attached hospital if

- (1) the hospital has an average daily census of ten patients or less in the most recent reporting year for which data is available,
- (2) the total combined beds of the hospital and nursing home do not exceed 100, and
- (3) the management of the two facilities is under the control and direction of the same governing body

[For text of subs 8 to 10, see M S 1998]

History: 1999 c 17 s 1,2

144A.073 REVIEW OF PROPOSALS REQUIRING EXCEPTIONS TO THE MORATORIUM.

[For text of subs 1 to 4, see M S 1998]

Subd 5 Replacement restrictions. (a) Proposals submitted or approved under this section involving replacement must provide for replacement of the facility on the existing site except as allowed in this subdivision

(b) Facilities located in a metropolitan statistical area other than the Minneapolis–St Paul seven–county metropolitan area may relocate to a site within the same census tract or a contiguous census tract

(c) Facilities located in the Minneapolis–St Paul seven–county metropolitan area may relocate to a site within the same or contiguous health planning area as adopted in March 1982 by the metropolitan council

(d) Facilities located outside a metropolitan statistical area may relocate to a site within the same city or township, or within a contiguous township

(e) A facility relocated to a different site under paragraph (b), (c), or (d) must not be relocated to a site more than six miles from the existing site

(f) The relocation of part of an existing first facility to a second location, under paragraphs (d) and (e), may include the relocation to the second location of up to four beds from part of an existing third facility located in a township contiguous to the location of the first facility. The six–mile limit in paragraph (e) does not apply to this relocation from the third facility

(g) For proposals approved on January 13, 1994, under this section involving the replacement of 102 licensed and certified beds, the relocation of the existing first facility to the new location under paragraphs (d) and (e) may include the relocation of up to 75 beds of the existing facility. The six–mile limit in paragraph (e) does not apply to this relocation

[For text of subs 6 to 9, see M S 1998]

History: 1999 c 245, art 3 s 1

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

[For text of subd 1, see M S 1998]

Subd 1a Training and education for nursing facility providers. The commissioner of health must establish and implement a prescribed process and program for providing training and education to providers licensed by the department of health, either by itself or in conjunction with the industry trade associations, before using any new regulatory guideline, regulation, interpretation, program letter or memorandum, or any other materials used in surveyor training to survey licensed providers. The process should include, but is not limited to, the following key components

(1) facilitate the implementation of immediate revisions to any course curriculum for nursing assistants which reflect any new standard of care practice that has been adopted or referenced by the health department concerning the issue in question,

(2) conduct training of long–term care providers and health department survey inspectors either jointly or during the same time frame on the department’s new expectations, and

(3) within available resources the commissioner shall cooperate in the development of clinical standards, work with vendors of supplies and services regarding hazards, and identify research of interest to the long-term care community

[For text of subsds 2 to 10, see M S 1998]

Subd 11 Facilities cited for immediate jeopardy. (a) The provisions of this subdivision apply to Minnesota nursing facilities

(1) that received immediate jeopardy citations between April 1, 1998, and January 13, 1999, for violations of regulations governing the use of physical restraints, and

(2) on whose behalf the commissioner recommended to the federal government that fines for these citations not be imposed or be rescinded

(b) The commissioner

(1) shall grant all possible waivers for the continuation of an approved nurse aide training program, an approved competency evaluation program, or an approved nurse aide training and competency evaluation program conducted by or on the site of a facility referred to in this subdivision, and

(2) shall notify the board of nursing home administrators by June 1, 1999, that the commissioner has recommended to the federal government that fines not be imposed on the facilities referred to in this subdivision or that any fines imposed on these facilities for violations of regulations governing use of physical restraints be rescinded

Subd 12 Data on follow-up surveys. (a) If requested, and not prohibited by federal law, the commissioner shall make available to the nursing home associations and the public photocopies of statements of deficiencies and related letters from the department pertaining to federal certification surveys. The commissioner may charge for the actual cost of reproduction of these documents

(b) The commissioner shall also make available on a quarterly basis aggregate data for all statements of deficiencies issued after federal certification follow-up surveys related to surveys that were conducted in the quarter prior to the immediately preceding quarter. The data shall include the number of facilities with deficiencies, the total number of deficiencies, the number of facilities that did not have any deficiencies, the number of facilities for which a resurvey or follow-up survey was not performed, and the average number of days between the follow up or resurvey and the exit date of the preceding survey

Subd 13 Nurse aide training waivers. Because any disruption or delay in the training and registration of nurse aides may reduce access to care in certified facilities, the commissioner shall grant all possible waivers for the continuation of an approved nurse aide training and competency evaluation program or nurse aide training program or competency evaluation program conducted by or on the site of any certified nursing facility or skilled nursing facility that would otherwise lose approval for the program or programs. The commissioner shall take into consideration the distance to other training programs, the frequency of other training programs, and the impact that the loss of the onsite training will have on the nursing facility's ability to recruit and train nurse aides

Subd 14 Immediate jeopardy. When conducting survey certification and enforcement activities related to regular, expanded, or extended surveys under Code of Federal Regulations, title 42, part 488, the commissioner may not issue a finding of immediate jeopardy unless the specific event or omission that constitutes the violation of the requirements of participation poses an imminent risk of life-threatening or serious injury to a resident. The commissioner may not issue any findings of immediate jeopardy after the conclusion of a regular, expanded, or extended survey unless the survey team identified the deficient practice or practices that constitute immediate jeopardy and the residents at risk prior to the close of the exit conference

Subd 15 Informal dispute resolution. The commissioner shall respond in writing to a request from a nursing facility certified under the federal Medicare and Medicaid programs for an informal dispute resolution within 30 days of the exit date of the facility's survey. The commissioner's response shall identify the commissioner's decision regarding the continuation of each deficiency citation challenged by the nursing facility, as well as a statement of

any changes in findings, level of severity or scope, and proposed remedies or sanctions for each deficiency citation

History: 1999 c 83 s 2, 1999 c 245 art 3 s 2-6

144A.102 USE OF CIVIL MONEY PENALTIES; WAIVER FROM STATE AND FEDERAL RULES AND REGULATIONS.

By January 2000, the commissioner of health shall work with providers to examine state and federal rules and regulations governing the provision of care in licensed nursing facilities and apply for federal waivers and identify necessary changes in state law to

(1) allow the use of civil money penalties imposed upon nursing facilities to abate any deficiencies identified in a nursing facility's plan of correction, and

(2) stop the accrual of any fine imposed by the health department when a follow-up inspection survey is not conducted by the department within the regulatory deadline

History: 1999 c 245 art 3 s 7

144A.13 COMPLAINTS; RESIDENT'S RIGHTS.

[For text of subd 1, see M S 1998]

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 504B.

History: 1999 c 199 art 2 s 4

144A.19 BOARD OF EXAMINERS FOR ADMINISTRATORS.

Subdivision 1 **Creation; membership.** 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) a designee of the commissioner of human services 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

[For text of subd 2, see M S 1998]

Subd 3 [Repealed, 1999 c 102 s 7]

History: 1999 c 102 s 1

144A.20 ADMINISTRATOR QUALIFICATIONS.

Subdivision 1 **Criteria.** 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 21 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 [Repealed, 1999 c 102 s 7]

History: 1999 c 102 s 2

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 be in the unclassified service and shall not be a member of the board of examiners.

History: 1999 c 102 s 3

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 and permits 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 and investigate complaints and take appropriate action consistent with chapter 214, to revoke or suspend the license or permit of a nursing home administrator or acting 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: 1999 c 102 s 4

144A.252 IMMUNITY.

Members of the board of examiners for nursing home administrators and persons employed by the board or engaged in the investigation of violations and in the preparation and management of charges of violations of sections 144A 18 to 144A 27, or of rules adopted pursuant to sections 144A 18 to 144A 27 on behalf of the board, are immune from civil liability and criminal prosecution for any actions, transactions, or publication in execution of, or relating to, their duties under sections 144A 18 to 144A 27 provided they are acting in good faith.

History: 1999 c 102 s 5

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 shall secure an acting administrator's permit within 30 days of appointment as the acting administrator

History: 1999 c 102 s 6

144A.29 [Repealed, 1999 c 102 s 7]

144A.46 LICENSURE.

[For text of subd 1, see M S 1998]

Subd 2 Exemptions. The following individuals or organizations are exempt from the requirement to obtain a home care provider license

(1) a person who is licensed as a registered nurse under sections 148 171 to 148 285 and who independently provides nursing services in the home without any contractual or employment relationship to a home care provider or other organization,

(2) a personal care assistant who provides services to only one individual under the medical assistance program as authorized under sections 256B 0625, subdivision 19, and 256B 04, subdivision 16,

(3) a person or organization that exclusively offers, provides, or arranges for personal care assistant services to only one individual under the medical assistance program as authorized under sections 256B 0625, subdivision 19, and 256B 04, subdivision 16,

(4) a person who is licensed under sections 148 65 to 148 78 and who independently provides physical therapy services in the home without any contractual or employment relationship to a home care provider or other organization,

(5) a provider that is licensed by the commissioner of human services to provide semi-independent living services under Minnesota Rules, parts 9525 0500 to 9525 0660 when providing home care services to a person with a developmental disability,

(6) a provider that is licensed by the commissioner of human services to provide home and community-based services under Minnesota Rules, parts 9525 2000 to 9525 2140 when providing home care services to a person with a developmental disability,

(7) a person or organization that provides only home management services, if the person or organization is registered under section 144A 461, or

(8) a person who is licensed as a social worker under sections 148B 18 to 148B 289 and who provides social work services in the home independently and not through any contractual or employment relationship with a home care provider or other organization

An exemption under this subdivision does not excuse the individual from complying with applicable provisions of the home care bill of rights

[For text of subs 3 and 4, see M S 1998]

Subd 5 Prior criminal convictions. (a) Before the commissioner issues an initial or renewal license, an owner or managerial official shall be required to complete a background study under section 144 057 No person may be involved in the management, operation, or control of a provider, if the person has been disqualified under the provisions of chapter 245A Individuals disqualified under these provisions can request a reconsideration, and if the disqualification is set aside are then eligible to be involved in the management, operation or control of the provider For purposes of this section, owners of a home care provider subject to the background check requirement are those individuals whose ownership interest provides sufficient authority or control to affect or change decisions related to the operation of the home care provider An owner includes a sole proprietor, a general partner, or any other individual whose individual ownership interest can affect the management and direction of the policies of the home care provider For the purposes of this section, managerial officials subject to the background check requirement are those individuals who provide "direct contact" as defined in section 245A 04 or those individuals who have the responsibility for the ongoing management or direction of the policies, services, or employees of the home care provider Data collected under this subdivision shall be classified as private data under section 13 02, subdivision 12

(b) Employees, contractors, and volunteers of a home care provider or hospice are subject to the background study required by section 144 057 These individuals shall be disqual-

ified under the provisions of chapter 245A and Minnesota Rules, parts 9543 3000 to 9543 3090 Nothing in this section shall be construed to prohibit a home care provider from requiring self-disclosure of criminal conviction information

(c) [Repealed by amendment, 1977 c 248 s 2]

(d) [Repealed by amendment, 1977 c 248 s 2]

(e) Termination of an employee in good faith reliance on information or records obtained under paragraph (a) or (b) regarding a confirmed conviction does not subject the home care provider to civil liability or liability for reemployment compensation benefits

History: 1999 c 107 s 66, 1999 c 245 art 9 s 3

144A.4605 ASSISTED LIVING HOME CARE PROVIDER.

[For text of subd 1, see M S 1998]

Subd 2 **Assisted living home care license established.** A home care provider license category entitled assisted living home care provider is hereby established A home care provider may obtain an assisted living license if the program meets the following requirements

(a) nursing services, delegated nursing services, other services performed by unlicensed personnel, or central storage of medications under the assisted living license are provided solely for residents of one or more housing with services establishments registered under chapter 144D,

(b) unlicensed personnel perform home health aide and home care aide tasks identified in Minnesota Rules, parts 4668 0100, subparts 1 and 2, and 4668 0110, subpart 1 Qualifications to perform these tasks shall be established in accordance with subdivision 3,

(c) periodic supervision of unlicensed personnel is provided as required by rule,

(d) notwithstanding Minnesota Rules, part 4668 0160, subpart 6, item D, client records shall include

(1) daily records or a weekly summary of home care services provided,

(2) documentation each time medications are administered to a client, and

(3) documentation on the day of occurrence of any significant change in the client's status or any significant incident, such as a fall or refusal to take medications

All entries must be signed by the staff providing the services and entered into the record no later than two weeks after the end of the service day, except as specified in clauses (2) and (3),

(e) medication and treatment orders, if any, are included in the client record and are renewed at least every 12 months, or more frequently when indicated by a clinical assessment,

(f) the central storage of medications in a housing with services establishment registered under chapter 144D is managed under a system that is established by a registered nurse and addresses the control of medications, handling of medications, medication containers, medication records, and disposition of medications, and

(g) in other respects meets the requirements established by rules adopted under sections 144A 45 to 144A 48

[For text of subs 3 to 6, see M S 1998]

History: 1999 c 245 art 2 s 30

144A.61 NURSING ASSISTANT TRAINING.

[For text of subd 1, see M S 1998]

Subd 2 **Nursing assistants.** For the purposes of this section and section 144A 611 "nursing assistant" means a nursing home or certified boarding care 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 nursing or nursing-related services under the supervision of a registered nurse "Nursing assistant" includes nursing assistants employed by nursing pool companies but does not include a licensed health professional

[For text of subd 3, see M S 1998]

Subd 3a **Competency evaluation program.** The commissioner of health shall approve the competency evaluation program. A competency evaluation must be administered to persons who desire to be listed in the nursing assistant registry. The tests may only be administered by technical colleges, community colleges, or other organizations approved by the department of health. The commissioner of health shall approve a nursing assistant for the registry without requiring a competency evaluation if the nursing assistant is in good standing on a nursing assistant registry in another state.

[For text of subs 4 to 8, see M S 1998]

History: 1999 c 210 s 1,2