

# Injunctive Relief Actions in Housing With Services Establishments

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**Minnesota Department of Health**

**January 2007**



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## Introduction

Minnesota Laws 2006, Chapter 282, Article 22, section 3, subdivision 2, requires the Minnesota Department of Health (MDH) to report to the Legislature about injunctive relief actions and the cost to fund these activities.

Minnesota Laws 2006, Chapter 282, Article 22, section 3, subdivision 2, states:

Injunctive Relief. The commissioner of health shall present to the 2007 legislature, by December 15, 2006, recommendations to fund the cost of bringing actions for injunctive relief.

## Background

There are approximately 1,100 entities registered as “housing with services” in Minnesota. The registration requirements are contained in Minnesota Statutes Chapter 144D and detail the Department’s responsibilities in this area. At the time that the Fiscal Note was developed it was estimated that approximately half of these housing with services establishments would choose to register and thus be subject to the provisions of the Assisted Living Title Protection Statute 144G.

**To date approximately 800 housing with services establishments have registered and will be subject to enforcement. The enforcement mechanism provided for in the legislation is that MDH may seek injunctive relief in District Court. MDH established a process to determine if housing with services establishments have complied with the legislative requirements. MDH and trade associations provided joint education concerning the implementation of the legislative requirements.**

Attachment A is the Fiscal Note for the Assisted Living Title Protection explaining the calculations based on earlier projections.

## Cost of Bringing Actions

Since the Injunctive Relief requirements were not effective until January 1, 2007, MDH has not had the opportunity to pursue an injunctive relief action. The timeframes for completing the analysis were prior to the effective date of the legislation. Therefore, MDH has not had an opportunity to gather information as to the scope, number and cost of injunctive relief actions that may be conducted.

The \$140,000 State Government Special Revenue appropriation increase was effective January 1, 2007. The appropriation will be used to offset expenditures incurred by enforcing the registration requirements. As authorized by Minnesota Statute 144D.03, subdivision 1A, a surcharge will be established with a sliding scale based on client capacity. However, MDH needs to gain experience in this area prior to establishment of the surcharge. To date there are no complaints nor known violations.

As MDH gains experience with injunctive relief actions and develops the surcharge, the stakeholders will be kept informed.



## **Bill Description**

Limits the use of the term assisted living; specifies procedures for terminating services for assisted living clients; modifies the home care bill of rights for purposes of assisted living; establishes the Class F home care provider category; eliminates the Class E assisted living programs license; and requires the use of a uniform format for presenting information on assisted living and informing assisted living clients of legal rights.

## **Assumptions**

Section 1. through Section 12: No Fiscal Impact

Section 13. Assisted Living; Protected Title; Restriction on Use; Regulatory Functions:

### **Subd1. Protected Title:**

Training workshops will be conducted for Registered Housing With Services Establishments (1058 registered), Assisted Living Home Care Providers (478 licensed), Class A Home Care Providers (322 licensed), Advocates and Ombudsman concerning the provisions of the new requirements to use the term assisted living. It is estimated that approximately 1,500 interested individuals will attend. The workshops will be conducted statewide with 4 out-state and 2 metro sites identified. A registration fee of \$20 will be charged to cover the costs of the workshop facilities, development and printing of materials, and staff development time. Workshop materials will be placed on the MDH web-site. No additional funding will be requested for these training workshops.

### **Subd2. Authority of Commissioner:**

There are approximately 1,050 entities registered as "housing with services". It is estimated that at least 500 of these will be subject to the new requirements. The enforcement mechanism provided in the bill is that MDH may seek injunctive relief in District Court. MDH will need to establish criteria for possible violations and determine when to proceed. It is estimated that during the time period from January 1, 2007 through June 30, 2007 that approximately 10 actions will proceed forward with injunctive relief.

MDH estimates that approximately 5 cases will be identified during the survey process and that an additional 5 will be the result of complaints received by the Office of Health Facility Complaints. The estimated average cost for attorney general involvement is \$14,000 for a total of \$140,000. The SGSR appropriation will need to be increased by \$140,000.

There is a current surplus in the Home Care SGSR account and by increasing the appropriation by \$140,000 MDH would have the funds available to proceed with the necessary enforcement actions during the period of January 1, 2007 through June 30, 2007. Home Care licensure and/or Housing With Services registration fees would need to be adjusted to cover these costs in the 2008-2009 biennium.

Section 14. Assisted Living Requirements: No Fiscal Impact

Subd. 1. The application will be modified to incorporate the new verification requirements. Data system modifications will be scheduled to allow for development, testing and implementation in ample time for the licensure and renewal cycle.

Subd. 2,3,4 and 5. The new survey requirements can be implemented by updating the assisted living licensure forms and when providers are renewing or applying for a new license there will be a check off list of the new requirements that will be verified during the survey. These requirements will be incorporated into the survey process by slightly increasing survey time by approximately 1 hour. The current average survey and follow-up time will be monitored closely to ensure that the number of surveys performed can be maintained within the number of available hours. No additional funding will be requested for these requirements.

Section 15 through 19: No Fiscal Impact.

**Expenditure and/or Revenue Formula**

<b>EXPENDITURES</b>	Sfy05	SFY06	SFY07	SFY08	SFY09
Salary – pos description					
Salary – pos description					
Fringe 30%					
Subtotal Sal & Fringe					
<b>Supplies &amp; Exp:</b>					
Communications					
Travel expenses					
Supplies					
Desktop computer					
Equipment					
Prof/Tech Contracts			140,000	280,000	280,000
Grants					
Other					
Other					
Operation Support					
Services 9.7%					
<b>OR Indirect Cost 19.4%</b>					
Subtotal S & E					
<b>TOTAL EXPENSES</b>			140,000	280,000	280,000

**Long-Term Fiscal Considerations**

The number of injunctive relief cases for SFY07 are estimates for 6 months. Annually the anticipated cost is \$280,000.

**References/Sources**

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 651-201-3700