



Freedom to Breathe Smoking by Patients in Locked Psychiatric Units

Background

The Freedom to Breathe (FTB) provisions amended the Minnesota Clean Indoor Air Act (MCIAA) to further protect employees and the public from the health hazards of secondhand smoke. The FTB amendments became effective October 1, 2007.

In 2014, the Minnesota Legislature amended the MCIAA provisions related to licensed healthcare facilities to include use of electronic cigarettes in the definition of smoking.

The MCIAA describes where smoking is prohibited, outlines the responsibilities of employers, managers and other persons in charge and lists exemptions that affect their workplaces and facilities. This fact sheet explains how the law applies to locked psychiatric units.

Definition of “Smoking”

“Smoking” means inhaling or exhaling smoke from a lighted tobacco product or any other lighted plant product intended for inhalation. Carrying a lighted tobacco product or lighted plant product is also considered smoking.

In licensed healthcare facilities (including locked psychiatric units) the definition of smoking includes inhaling and exhaling of vapor from electronic cigarettes or any other electronic delivery device as defined in Minnesota Statutes, section 609.685, subdivision 1.

Definition of “Indoor Area”

“Indoor Area” means all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes [wall space] constituting the

perimeter of the area, whether temporary or permanent. A [standard] window screen is not considered a wall.

Prohibited smoking

Minnesota Statutes, Section 246.0141, prohibits the possession or use of tobacco by patients, staff, guests and visitors “on the grounds or in a state regional treatment center, the Minnesota Security Hospital, the Minnesota sex offender program, or the Minnesota extended treatment options program”.

Permitted smoking

With the exception of the facilities and circumstances described above, smoking by patients in a locked psychiatric unit may be allowed if all of the following criteria are met:

1. The administrator of the program must establish a policy that allows the treating physician to approve smoking if, in their professional opinion, the benefits to be gained in obtaining patient cooperation with treatment outweigh the negative impacts of smoking
2. Smoking may only be allowed in a designated, separated, well-ventilated area in the unit
3. Smoking must be prohibited throughout all indoor areas of the unit, other than in approved, designated smoking rooms
4. A sign must be posted at the entrance to the locked psychiatric unit that states: “Smoking is prohibited, except in designated areas”
5. A sign must be posted at the entrance to designated smoking rooms that displays the international smoking-permitted symbol or states: “Smoking Permitted.”

Outdoor smoking

The MCIAA does not prohibit outdoor smoking, regardless of distance from building openings such as doors and windows.

Compliance and Enforcement

MDH has compliance authority over the MCIAA and may delegate compliance activities to local units of government. MDH, a local board of health or any affected person can request a court order directing a repeat MCIAA violator to stop.

In addition to the compliance authority provided to MDH and local units of government, local law enforcement has the authority to issue petty misdemeanor citations to proprietors or individuals who knowingly fail to comply with the MCIAA.

Local government ordinances

Local governments retain the authority to adopt and enforce more stringent measures to protect individuals from secondhand smoke.

Retaliation prohibited

An employer, manager or other person in charge cannot fire, refuse to hire, penalize, discriminate or retaliate against an employee, applicant, or customer who exercises any right to a smoke-free environment provided under the MCIAA.

For more information

Contact the Minnesota Department of Health to receive a copy of the MCIAA, or to receive additional educational materials please visit the MDH website at:

www.health.state.mn.us/freedomtobreathe