

# MN Legislature Puts Bureaucrats at Bedside – The Actual Language of the 2005 Law

**Chapter 4, Minnesota Laws 2005** (House File 139, Minnesota Legislature, Special Session 2005)

## **History**

Rep. Mark Olson Amendment (add expiration date to Article 8, Sec 43) fails, 7/13/05.  
HF 139 passed MN House, July 13, 2005: 88-40  
HF 139 passed MN Senate, July 13, 2005: 60 - 6  
Signed into law by Governor Tim Pawlenty, July 14, 2005

## **KEY:**

**Bold:** Titles and the words “evidence-based”

**Italics:** Patient privacy violations; private data on publicly-subsidized *and* privately-insured patients to be accessed by government; no patient consent

## **Performance Reporting on Physician Compliance with Government**

**Treatment Directives** [Article 8, Section 43, pages 373 - 375 of H.F. 139 (first and final engrossment)]:

### Sec. 43. **[256B.072] [PERFORMANCE REPORTING AND QUALITY**

#### **374.4 IMPROVEMENT SYSTEM.]**

374.5 (a) The commissioner of human services shall establish a  
374.6 performance reporting system for health care providers who  
374.7 provide health care services to public program recipients  
374.8 covered under chapters 256B, 256D, and 256L, reporting  
374.9 separately for managed care and fee-for-service recipients.  
374.10 (b) The measures used for the performance reporting system  
374.11 for medical groups shall include measures of care for asthma,  
374.12 diabetes, hypertension, and coronary artery disease and measures  
374.13 of preventive care services. The measures used for the  
374.14 performance reporting system for inpatient hospitals shall  
374.15 include measures of care for acute myocardial infarction, heart  
374.16 failure, and pneumonia, and measures of care and prevention of  
374.17 surgical infections. In the case of a medical group, the  
374.18 measures used shall be consistent with measures published by  
374.19 nonprofit Minnesota or national organizations that produce and  
374.20 disseminate health care quality measures or **evidence-based**  
374.21 **health care guidelines**. In the case of inpatient hospital  
374.22 measures, the commissioner shall appoint the Minnesota Hospital  
374.23 Association and Stratis Health to advise on the development of  
374.24 the performance measures to be used for hospital reporting. To  
374.25 enable a consistent measurement process across the community,  
374.26 the commissioner may use measures of care provided for *patients*  
374.27 *in addition to those identified in paragraph (a)*. The  
374.28 commissioner shall ensure collaboration with other health care  
374.29 reporting organizations so that the measures described in this  
374.30 section are consistent with those reported by those  
374.31 organizations and used by other purchasers in Minnesota.  
374.32 (c) The commissioner may *require providers to submit*  
374.33 information in a required format to a health care reporting

374.34 organization or to cooperate with the information collection  
374.35 procedures of that organization. The commissioner may  
374.36 collaborate with a reporting organization to collect information  
375.1 reported and to prevent duplication of reporting.  
375.2 (d) By October 1, 2007, and annually thereafter, the  
375.3 commissioner shall report through a public Web site the results  
375.4 by medical groups and hospitals, where possible, of the measures  
375.5 under this section, and shall compare the results by medical  
375.6 groups and hospitals for patients enrolled in public programs to  
375.7 *patients enrolled in private health plans*. To achieve this  
375.8 reporting, the commissioner may collaborate with a health care  
375.9 reporting organization that operates a Web site suitable for  
375.10 this purpose.  
375.11 [EFFECTIVE DATE.] This section is effective the day  
375.12 following final enactment.

**Required Use of "Evidence-Based Medicine" to Deny Access to Patient Care Before and During Patient Appeals Process** [Article 8, Section 43, pages 415-417 of H.F. 139 (first and final engrossment)]:

Sec. 82. **[LIMITING COVERAGE OF HEALTH CARE SERVICES FOR  
415.35 MEDICAL ASSISTANCE, GENERAL ASSISTANCE MEDICAL  
415.36 CARE, AND  
415.36 MINNESOTACARE PROGRAMS.]**

416.1 Subdivision 1. [PRIOR AUTHORIZATION OF SERVICES.] (a)  
416.2 Effective September 1, 2005, prior authorization is required for  
416.3 the services described in subdivision 2 for reimbursement under  
416.4 chapters 256B, 256D, and 256L.  
416.5 (b) Prior authorization shall be conducted under the  
416.6 direction of the medical director of the Department of Human  
416.7 Services in conjunction with a medical policy advisory council.  
416.8 To the extent available, the medical director **shall use** publicly  
416.9 available **evidence-based guidelines** developed by an independent,  
416.10 nonprofit organization or by the professional association of the  
416.11 specialty that typically provides the service or by a multistate  
416.12 Medicaid **evidence-based practice center**. If the commissioner  
416.13 does not have a medical director and medical policy director in  
416.14 place, the commissioner shall contract prior authorization to a  
416.15 Minnesota-licensed utilization review organization or to another  
416.16 entity such as a peer review organization eligible to operate in  
416.17 Minnesota.  
416.18 (c) A prepaid health plan shall use prior authorization for  
416.19 the services described in subdivision 2 unless the prepaid  
416.20 health plan is otherwise using **evidence-based practices** to  
416.21 address these services.  
416.22 Subd. 2. [SERVICES REQUIRING PRIOR AUTHORIZATION.] The  
416.23 following services require prior authorization:  
416.24 (1) elective outpatient high-technology imaging to include  
416.25 positive emission tomography (PET) scans, magnetic resonance

416.26 imaging (MRI), computed tomography (CT), and nuclear cardiology;  
416.27 (2) spinal fusion, unless in an emergency situation related  
416.28 to trauma;  
416.29 (3) bariatric surgery;  
416.30 (4) cesarean section or insertion of tympanostomy tubes  
416.31 except in an emergency situation;  
416.32 (5) hysterectomy; and  
416.33 (6) orthodontia.  
416.34 Subd. 3. [RATE REDUCTION.] Effective for the services  
416.35 identified in subdivision 2, rendered on or after September 1,  
416.36 2005, the payment rate shall be reduced by ten percent from the  
417.1 rate in effect on June 30, 2005. This subdivision expires July  
417.2 1, 2006, or upon the completion of the prior authorization  
417.3 system required under subdivision 1, whichever is earlier.  
417.4 Subd. 4. [APPEALS.] (a) For review of an initial  
417.5 determination not to certify conducted under section 62M.06,  
417.6 subdivision 2 or 3, of a service that is subject to prior  
417.7 authorization under this section, the health care provider  
417.8 conducting the review **must follow**, when available, published  
417.9 **evidence-based health care guidelines** as established by a  
417.10 nonprofit Minnesota quality improvement organization, a  
417.11 nationally recognized guideline development organization, or by  
417.12 the professional association of the specialty that typically  
417.13 provides the service.  
417.14 (b) For appeals conducted under section 256.045,  
417.15 subdivision 3a, of a decision by a prepaid health plan to deny,  
417.16 reduce, or terminate a health care service that is subject to  
417.17 prior authorization under this section, the referee **must base**  
417.18 the decision on the application of the publicly available  
417.19 **evidence-based health care guidelines** referred to in subdivision  
417.20 1 or **as established by the commissioner of human services**  
417.21 provided that the guidelines meet the criteria set forth in  
417.22 **section 62J.43, subdivision 2.**  
417.23 Subd. 5. [EXPIRATION.] This section expires July 1, 2007.  
417.24 [EFFECTIVE DATE.] This section is effective the day  
417.25 following final enactment.

Authors of House File 139: Reps. Fran Bradley (R-Rochester) and Tom Huntley (D-Duluth)

Authors of S.F. 107 (companion bill to HF 139): Sens. Linda Berglin (D-Minneapolis), Becky Lourey (D-Kerrick), John Hottinger (D-St. Peter), Yvonne Prettnner-Solon (D-Duluth) and Paul Koering (R-Brainerd)

**HHS Working Group** (Legislators who approved final language):

House:

Fran Bradley (R-Rochester) – co-chair  
Jim Abeler (R-Anoka)  
Mary Ellen Otremba (D-Long Prairie)  
Duke Powell (R-Burnsville)  
Tim Wilkin (R-Eagan)

Senate:

Linda Berglin (D-Minneapolis) – co-chair  
John Hottinger (D-St. Peter)  
Paul Koering (R-Brainerd)  
Becky Lourey (D-Kerrick)  
Yvonne Prettnner-Solon (D-Duluth)