

TITLE XV.

Public Health.

CHAPTER 140

HEALTH; ADMINISTRATION AND SUPERVISION

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140.01 Definitions. As used in chs. 140 to 143, unless the context requires otherwise:

(1) "Department" means the department of health and social services.

(2) "Secretary" means the secretary of health and social services.

History: 1975 c. 39

140.02 State health officer; duties. The secretary shall appoint a state health officer in the unclassified service and may assign the health officer such duties of the secretary or department as the secretary provides. The state health officer may appoint such advisory and examining bodies as provided by law.

History: 1973 c. 90; 1975 c. 39, 199

140.05 Powers and duties. (1) The department shall have general supervision throughout the state of the health and life of citizens, and shall study especially the vital statistics of the state and endeavor to put the same to profitable

use. It shall make sanitary investigations into the causes of disease, especially epidemics, the causes of mortality, and the effect on health of localities, employments, conditions, habits and circumstances, and make sanitary inspections and surveys in all parts of the state. It may, upon due notice, enter upon and inspect private property. It shall have power to execute what is reasonable and necessary for the prevention and suppression of disease. It shall voluntarily or when required, advise public boards or officers in regard to heating and ventilation of any public building or institution. It may investigate the cause and circumstances of any special or unusual disease or mortality, or inspect any public building; and shall have full authority to do any act necessary therefor. The department shall possess all powers necessary to fulfill the duties prescribed in the statutes and to bring action in the courts for the enforcement of health laws and health rules.

(2) The department shall disseminate such health information as it deems proper. It shall recommend from time to time works of hygiene for use in the public schools and shall cooperate with the several educational institutions and the school system of this state in disseminating information to the general public in all matters pertaining to health, and shall use the research facilities of the university of Wisconsin for the preservation and improvement of the public health under such rules and regulations as may be agreed upon with the board of regents of the university of Wisconsin system, and facilitate the special instruction of students in sanitation, hygiene and vital statistics in any school or department of the university of Wisconsin in manner not inconsistent with and not interfering with the orderly and efficient administration of the public health work.

(3) The department shall have power to make and enforce such rules, regulations and orders governing the duties of all health officers and health boards, and relating to any subject matter under its supervision, as shall be necessary to provide efficient administration and to protect health, and any person violating such rule, regulation or order shall be fined not less than \$10 nor more than \$100 for each offense, unless penalty be specially provided.

(4) The department may administer oaths, certify to official acts, issue subpoenas, compel the attendance of witnesses, and production of papers, books, documents and testimony. Witness fees and mileage shall be paid by the state and charged to the appropriation for the department, but no witness subpoenaed at the instance of parties other than the department shall be entitled to fees or mileage from the state, unless the department certifies that his testimony was material.

(5) The department shall keep a full and complete record of proceedings before it on any investigation, and have all testimony taken by its stenographer.

(7) The department may make and enforce rules relating to lot size and lot elevation necessary for proper sanitary conditions in the development and maintenance of subdivisions not served by a public sewer, where provision for such service has not been made.

(9) The department may establish, equip and operate a state branch laboratory of hygiene in a city accessible to physicians and health officers in the northern part of the state for the conducting of bacteriological and chemical examinations of material from the various contagious and infectious diseases or material from suspected contagious and infectious diseases of persons and animals when public health is concerned; on condition that suitable quarters

for such laboratory shall be offered to the state free of charge for rent, light, heat and janitor service. The department may also establish and aid in maintaining in conjunction with the cities of the state not more than 7 state cooperative laboratories. All such cooperative laboratories shall be operated in such manner and under such conditions as the department may determine in its rules and regulations governing the state public health laboratories.

(11) Any physician knowing or having reason to know that a patient treated or visited by him has cancer, carcinoma, sarcoma or other malignant growths shall report the same to the department, in writing, on blanks furnished by said department and as it directs. These reports shall be confidential and not open to public inspection.

(12) The department may make transcripts of its records for governmental agencies upon their request and payment of the fees mutually agreed upon.

(14) The department may conduct investigations, studies, experiments and research pertaining to any public health problems which are a cause or potential cause of morbidity or mortality and methods for the prevention or amelioration of such public health problems. For the conduct of such investigations, studies, experiments and research, the department may on behalf of the state accept funds from any public or private agency, organization or person. It may conduct such investigations, studies, experiments and research independently or by contract or in cooperation with any public or private agency, organization or person including any political subdivision of the state.

(15) Where the use of any pesticide results in a threat to the public health, the department of health and social services shall take all measures necessary to prevent morbidity or mortality.

(16) The department shall carry out a statewide immunization program to eliminate measles, rubella (German measles), diphtheria, pertussis (whooping cough), poliomyelitis, and protect against tetanus. Evidence of completed basic and recall (booster) series as required by the department or signed permission to administer needed vaccines in public clinics must be presented prior to first time admission into any elementary school or into any day care center or nursery school. These requirements may be waived for an individual student for health or religious reasons. The department shall provide the vaccine without charge, if federal funds are available for the vaccine, upon request of the governing body of a county, city, village or town or the school boards of a school district operating a high school. The department shall provide the necessary professional consultant services to

carry out an immunization program in the requesting county, municipality or school district. There shall be no charge to the persons immunized for the cost of the vaccine furnished by the department. The department shall, by rule, prescribe the mechanisms for monitoring compliance with this section.

(17) The department may by rule fix fees for the examination and approval of plans and specifications of public swimming pools, beaches and bathhouses and collect the same.

(18) The department shall investigate any hospital which is found by a panel established under s. 655.02 or by a court to have been responsible for negligent acts.

(19) (a) In this subsection "local health department" means any board of health organized or health officer appointed under ss. 140.09, 141.01 (9), 141.015, 141.02 and 141.04; any county health commission organized under s. 141.01; and any county health committee organized under s. 141.06.

(b) The department shall develop a vision screening kit for testing children under 5 years of age which may be used by a parent to test a child for amblyopia, or any other vision problems as the department determines may feasibly be tested through the use of such a kit. The department shall provide the vision screening kits free of charge to any local health department which requests them in a quantity sufficient for every child under the age of 5 years who resides within the appropriate local health department's jurisdiction. The department shall reimburse each local health department for the cost of postage and envelopes necessary to mail the kits and for reasonable expenses incurred by the local health department in assisting parents in the administration of the various tests.

History: 1971 c. 100 s. 23; 1973 c. 90; 1975 c. 37, 39; 1975 c. 94 s. 91 (9); 1975 c. 292, 422

See note to art. I, sec. 7, citing 63 Atty. Gen. 176

140.055 Sanitary supervision of county institutions. (1) The department shall investigate and supervise the sanitary conditions of all the charitable, curative, reformatory and penal institutions of every county and other municipality, all detention homes for children and all industrial schools, hospitals, asylums and institutions, organized for the purposes set forth in s. 58.01.

(2) The department shall annually and oftener, if necessary, and whenever required by the governor, visit the jails, municipal prisons, houses of correction and all other places in which persons convicted or suspected of crime or insane persons are confined and ascertain the sanitary conditions thereof.

(3) Section 46.16 (8) and (9) shall apply to such investigations and visitations except that the expenses thereof shall be charged to the appropriation made to the department.

140.07 Districts; district health officers.

(1) The department shall from time to time divide the state into sanitary districts, not exceeding 10, and it shall appoint for each a district health officer, who shall hold office during efficiency and good behavior and who may be removed for cause by the department after opportunity to be heard. He shall not during his term of office engage in any occupation which would conflict with his official duties.

(2) The district health officer shall have jurisdiction throughout his district; and he shall have in pursuit of his official duties right of entry into any workshop, factory, dairy, creamery, slaughterhouse or other place of business or employment. He shall carry out the instructions of the department and make such investigations and reports as the department may require. He shall, when required by the department with the help of local health officers, inspect and report upon the sanitary conditions of streams and sources of public water supplies, schools and schoolhouses, dairies, creameries, slaughterhouses, workshops and factories, and of all places where offensive industries are conducted.

(3) The district health officer shall make careful inquiry, when required by the department, into the effects of the different kinds of employment upon the health of employes and operators, with special reference to tuberculosis and to lead and phosphorous poisoning and other industrial diseases, and in all such investigations and inquiries he shall have the power to administer oaths. He shall enforce any public health statute, or rule or regulation of the department or of any local board of health or health officer when such local board of health or health officer neglects or refuses to enforce such statute, rule or regulation, after due notice by him or by the department.

(4) The district health officer, under the direction of the department and subject to laws, rules and regulations relating to public health, shall:

(a) Keep himself informed as to the work of each local health officer.

(b) Aid each local health officer in the performance of his duties, and particularly on the appearance of communicable disease, and he shall respond promptly when called upon for advice or assistance by any board of health or health officer.

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(c) Assist each local health officer in making an annual sanitary survey and in maintaining a continuous sanitary supervision.

(d) Adjust questions of jurisdiction arising between local health officers.

(e) Study the causes of excessive mortality from any disease in any portion of his district.

(f) Promote efficient registration of marriages, births, fetal deaths and deaths.

(h) Endeavor to enlist the co-operation of all organizations of physicians within his district in the improvement of the public health therein.

History: 1971 c. 211.

140.08 Local and state conferences.

(1) The department, directly or through district health officers, may call a biennial state conference of health officers, and may call local conferences.

(2) District health officers and local health officers shall attend such conferences, but local officers need not attend more than one state and one local conference a year.

(3) The expense of attendance of local health officers shall be paid by the municipality, upon certificate of the state or district health officer, but only for one state and one local conference a year.

140.09 County, city-county and multiple county health departments.

(1) DEFINITIONS. As used in this section:
(a) "County health department" and "county board of health" refer to a single county health department or board of health, a multiple county health department or board of health, or a city-county health department or board of health.

(b) "County health officer" refers to the position of a health officer either in a county health department, multiple county health department or city-county health department.

(c) "Health department" means a full-time health department unless otherwise specified and refers to one whose personnel, other than consultants and clinicians, devote their full time to health department duties.

(2) POWER OF COUNTY BOARD. Any county board may organize a single county department of health, or a city-county department of health or may join with one or more adjacent counties to organize a multiple county department of health. But no more than 3 counties shall join in one such department without prior approval of the department of health and social services.

(3) COUNTY BOARD OF HEALTH. (a) Each single county health department shall be managed by a board of health, consisting of not less than 5 nor more than 7 members, appointed by the chairman of the county board with the

approval of the county board. One member shall be a member of the county board. Two members shall be physicians, practicing in the county, and shall be selected from a list of 5 physicians submitted by the county medical society. One member shall be a dentist, practicing in the county, and shall be selected from a list of 3 dentists submitted by the county dental society. If the county medical or dental society fails to submit such list within 60 days after request by the county board chairman, the county board may appoint 2 physicians and one dentist of its choice. The remaining members shall be residents of the county, men or women who are persons of ability and known to have a broad social viewpoint and a serious interest in the health protection of their community. The first appointee will serve one year, the second 2 years, the third 3 years, fourth 4 years, fifth 5 years, sixth, if any, one year, seventh, if any, 2 years, and their successors shall each serve for 5 years. Terms shall begin on anniversary dates of the organization of the board of health.

(b) Each multiple county health department shall be managed by a board of health consisting of 3 members appointed from each county by the chairman of the respective county board with the approval of the county board. One shall be a member of the county board. One shall be a physician practicing in the county and shall be selected from a list of 3 physicians submitted by the county medical society. The third member shall be a dentist practicing in the county and shall be selected from a list of 3 dentists submitted by the county dental society. The term of office will be for 5 years except that the first appointee of each county board will be for 2 years, the second for 4 years and the third for 5 years. Terms shall begin on the anniversary dates of the organizations of the board of health.

(c) A county board and a city council for a city located in a county may organize a joint city-county department of health. Such city-county health department shall be managed by a board of health consisting of 7 members. One member shall be a member of the city council and shall be appointed by the mayor or city manager with the approval of the council. One member shall be a member of the county board and shall be appointed by the chairman of the county board with the approval of the board. Two members shall be physicians practicing in the county selected from a list of 5 physicians furnished by the county medical society. One such physician shall be appointed by the chairman of the county board with the approval of the board and one by the mayor or city manager with approval of the council. One member shall be a dentist practicing in the county and shall be appointed by the chairman of the county board with

approval of the board from a list of 3 dentists submitted by the county dental society. Two members shall be residents of the county and shall be persons of ability and known to have a broad social viewpoint and a serious interest in the health protection of the community. The chairman of the county board, with the approval of the county board, shall appoint one such member and the mayor or city manager, with the approval of the council, shall appoint the other. The first member appointed shall hold office for one year, the second member for 2 years, the third member 3 years, the fourth member 4 years, the fifth member 5 years, the sixth member one year and the seventh member 2 years. Their successors shall each hold office for 5 years. Terms shall begin on anniversary dates of the organization of the board of health.

(4) HEALTH OFFICER, ELIGIBILITY, DUTIES. The board of health shall appoint a county health officer who shall be a licensed physician especially trained in public health administration, or in lieu thereof shall be a person, other than a physician, with training or experience in public health administration, and in either case, except in counties covered by ss. 63.01 to 63.17, said health officer shall meet training and experience requirements established by the department; provided that if the appointee is not a physician, the local board of health shall arrange for and provide in addition, such service of a licensed physician as may be necessary on either a part-time or full-time basis and provide reasonable compensation therefor. The health officer shall be appointed for a term agreed upon by the board and shall be subject to removal by a two-thirds vote of the board. The county department of health shall be under the immediate direction of the county health officer, who shall give his entire time to the work.

(5) ORGANIZATION OF BOARD OF HEALTH. The board of health of each county, multiple county or city-county unit shall immediately after appointment meet and organize by the election of one of its members as president and one as secretary, to hold office for a term of one year. The county board may determine appropriate compensation or reimbursement for expenses of board of health members.

(6) BOARD'S POWERS. The county board of health when established in any county shall have all the powers and authority now vested in local boards of health and local health officers and shall have authority to enforce such rules and regulations as may be adopted by the department under the laws of the state. It may adopt such rules for its own guidance and for the government of the health department as may be deemed necessary to protect and improve public health, not inconsistent with state law nor with

rules and regulations of the department. The county board of supervisors shall determine compensation of health department employes.

(7) DUTIES OF THE COUNTY HEALTH OFFICER. The county health officer shall have charge of the county department of health and perform the duties prescribed by the county board of health. He shall enforce this section and the regulations of the department of health and social services and local boards of health and have supervisory power over all officers or employes of the county health department. He shall submit to the board of health, county board of supervisors and city council an annual report of the administration of his department.

(8) LOCAL EMPLOYEES. The county health officer shall appoint, subject to the approval of the county board of health, all necessary subordinate personnel.

(9) PUBLICATION AND EFFECTIVE DATE OF REGULATIONS. The orders and regulations of the county board of health shall be published as a class 1 notice, under ch. 985, and shall take effect immediately after publication.

(10) LOCAL BOARDS AND OFFICERS ABOLISHED. Whenever a county board provides for a county department of health, the boards of health and health officers in all towns, cities and villages within such county shall be abolished, except as provided in subsection (11).

(11) JURISDICTION OF COUNTY; LOCAL OPTION. The jurisdiction of the county department of health shall extend to all towns, villages and cities within the county, other than those having a full-time health department. Towns, cities and villages having full-time health departments may by vote of their governing bodies determine to come under such jurisdiction. No part of any expense incurred under this subsection shall be levied against any property within any city, village or town which has a full-time health department and which has not determined to come under the jurisdiction of the county department.

(12) OFFICES, APPROPRIATIONS. Whenever provision is made for a single county department of health, the county is empowered to provide office facilities and appropriate funds necessary for the maintenance of the work. The board of health of such department shall annually prepare a budget of its proposed expenditures for the ensuing fiscal year.

(13) GIFTS; COUNTY CO-OPERATING. The county board of health may receive gifts and donations for the purpose of carrying out the provisions of this section.

(14) JOINT HEALTH DEPARTMENTS, HOW FINANCED. The board of health of every multiple county health department and of every city-county health department created under this

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section shall annually prepare a budget of its proposed expenditures for the ensuing fiscal year and determine the proportionate cost to each participating county and city on the basis of equalized valuation. A certified copy of such budget, which shall include a statement of the amount required from each county and city, shall be delivered to the county board of each participating county and to the mayor or city manager of each participating city. The appropriation to be made by each participating county and municipality shall be determined by the governing body thereof. No part of the cost apportioned to the county shall be levied against any property within such city.

(15) JOINT HEALTH DEPARTMENT FUNDS. In the treasurer's office of the county wherein is located the principal office of each multiple county or city-county health department, or in the office of the city treasurer of a participating city, as determined by the board of health, there shall be created a joint health department fund. The treasurer of each county and city participating in such health department shall annually pay or cause to be paid into said fund the share of such county or city. This fund shall be expended by the treasurer in whose office said fund is kept in the manner prescribed by the county board of health pursuant to properly authenticated vouchers of such health department signed by the county health officer.

(16) COUNTY NURSES. When a county health department is established county nurses shall be transferred to the jurisdiction of the county health department and county health committees shall cease functioning.

(17) WITHDRAWAL OF COUNTIES AND CITIES. After establishment of a multiple county health department any participating county may withdraw by giving written notice to its board of health and the county board of supervisors of all other participating counties. Such notice shall be given at least one year prior to commencement of the fiscal year at which it takes effect. Cities having full-time health departments prior to their decision to participate in a city-county health department may withdraw therefrom in the same manner. Whenever any county or city shall withdraw from any health department established under this section all provisions of law relating to local boards of health and health officers shall immediately become applicable within such county or city.

History: 1971 c. 164; 1975 c. 234.

140.10 to 140.29 are not printed.

Note: Sections 140.10 to 140.29 were renumbered 50.20 to 50.39 by Ch. 413, laws of 1975, which was published on June 5, 1976. The effective date of Ch. 413 was stated in section 20 as follows: "The department shall promulgate rules under section 50.01 within one year of the effective date of this act. The act

shall take effect upon implementation of the rules so promulgated."

140.42 Abortion refused; no liability; no discrimination. (1) No hospital shall be required to admit any patient or to allow the use of the hospital facilities for the purpose of performing a sterilization procedure or removing a human embryo or fetus. A physician or any other person who is a member of or associated with the staff of a hospital, or any employe of a hospital in which such a procedure has been authorized, who shall state in writing his objection to the performance of or providing assistance to such a procedure on moral or religious grounds shall not be required to participate in such medical procedure, and the refusal of any such person to participate therein shall not form the basis of any claim for damages on account of such refusal or for any disciplinary or recriminatory action against such person.

(2) No hospital or employe of any hospital shall be liable for any civil damages resulting from a refusal to perform sterilization procedures or remove a human embryo or fetus from a person, if such refusal is based on religious or moral precepts.

(3) No hospital or employer shall discriminate against any employe or applicant for employment with regard to hiring or firing, tenure or term or condition or privilege of employment, on the ground that such employe or applicant refuses to perform sterilization procedures or to remove or aid in the removal of a human embryo or fetus, if such refusal is based on religious or moral precepts.

(4) The receipt of any grant, contract, loan or loan guarantee under any state or federal law does not authorize any court or any public official or other public authority to require:

(a) Such individual to perform or assist in the performance of any sterilization procedure or removal of a human embryo or fetus if his performance or assistance in the performance of such a procedure would be contrary to his religious beliefs or moral convictions; or

(b) Such entity to:

1. Make its facilities available for the performance of any sterilization procedure or removal of a human embryo or fetus if the performance of such a procedure in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions; or

2. Provide any personnel for the performance or assistance in the performance of any sterilization procedure or assistance if the performance or assistance in the performance of such procedure or the removal of a human embryo or fetus by such personnel would be

contrary to the religious beliefs or moral convictions of such personnel.

History: 1973 c. 159; 1973 c. 336 s. 54

A county hospital rule prohibiting elective abortions based on (1) (first sentence) is enjoined as violative of the Fourteenth Amendment Doe v Mundy, 514 F (2d) 1179.

See note to 49 19, citing Doe v. Ceci, 517 F (2d) 1203

140.45 Sanitarians; qualifications, duties, registration. (1) **DEFINITIONS.** When used in this section:

(a) "Sanitarian" is a person trained in the field of sanitary science and technology who is qualified to carry out educational and inspectional duties or to enforce the law in the field of sanitation.

(c) "Municipality" is a county, city, village or town.

(2) **REGISTRATION.** In order to safeguard life, health and property, to promote public welfare and to establish the status of those persons whose duties in environmental sanitation call for knowledge of the physical, the biological and social sciences, the department may establish minimum qualifications for the registration of sanitarians.

(3) **PUBLIC BODIES MAY EMPLOY SANITARIANS.** Any pertinent agency of the state and any municipality may employ, on a full-time basis, one or more sanitarians, registered as provided in this section, who shall enforce laws and rules (as defined in s. 227.01 (9)) of the state and municipalities, relative to environmental sanitation.

(4) **SANITARIANS EXAMINING COUNCIL.** The sanitarians examining council shall conduct examinations in various parts of the state for the purpose of determining the qualifications of persons who desire to act as registered sanitarians pursuant to minimum standards and qualifications established by the department. The examining council shall act in an advisory capacity in establishing minimum standards and qualifications.

(5) **CERTIFICATION OF REGISTRATION.** The department, upon application (on forms prescribed by it) and payment of the prescribed fee, shall certify as a registered sanitarian any person who has satisfied it by satisfactory evidence that:

(a) He has passed the examination given pursuant to sub. (4), or

(b) He, on or before July 1, 1957, has passed a civil service examination given by the state or any municipality as certified by the state, or by any city, village, town or county personnel agency, qualifying him as a sanitarian; food, meat, milk, market or restaurant inspector; sanitary inspector; or housing inspector, or

(c) He has been employed for not less than 2 years prior to July 1, 1957 as a sanitarian; food, meat, milk, market or restaurant inspector;

sanitary inspector; or housing inspector by the state, any municipality of this state.

(6) **FEES; RENEWAL OF CERTIFICATE; DELINQUENCY AND REINSTATEMENT.** A fee of \$10 shall accompany the application under sub. (5). Every sanitarian who desires to continue his registration shall pay to the department an annual fee of \$5, which shall be paid on or before the date fixed by the department for renewing the certificate of registration for the current year. All fees collected shall be paid into the general fund. Certificates of registration revoked for failure to pay renewal fees shall be reinstated under the rules of the department.

(7) **RECIPROCITY.** Agreements for reciprocity with those states having a registered sanitarian's act may be entered into by the department at its discretion and under such rules as the department prescribes.

(8) **REVOCAION OF CERTIFICATE.** The department may revoke the certificate of registration of any registrant for unprofessional conduct or the practice of any fraud or deceit in obtaining registration, or any gross negligence, incompetency or misconduct in the practice of professional sanitation, but no such revocation of certificate shall be permitted until after a hearing, duly noticed, is held and the person affected given the opportunity to answer the charges that have been filed against him with the department.

(9) **PENALTY.** No person not registered under this section shall hold himself out as a registered sanitarian nor append to his name the initials "R.S.". any person violating this subsection may be fined not more than \$100 or imprisoned not more than 6 months.

History: 1975 c. 414 s. 28

140.50 Radiation protection act. Sections 140.50 to 140.60 shall be known as the radiation protection act.

140.51 Public policy. Since ionizing radiations and their sources can be instrumental in the improvement of the health and welfare of the public if properly utilized, and may be destructive or detrimental to life or health if carelessly or excessively employed or may detrimentally affect the environment of the state if improperly utilized, it is hereby declared to be the public policy of this state to encourage the constructive uses of radiation and to prohibit and prevent exposure to ionizing radiation in amounts which are or may be detrimental to health. It is further the policy to advise, consult and cooperate with the department of industry, labor and human relations and other agencies of the state, the federal government, other states and interstate agencies and with affected groups, political

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subdivisions and industries; and, in general, to conform as nearly as possible to nationally accepted standards in the promulgation and enforcement of rules.

140.52 Definitions. As used in ss. 140.50 to 140.60:

(3) "By-product material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(4) "Nuclear facility" means any reactor plant, any equipment or device used for the separation of the isotopes of uranium or plutonium, the processing or utilizing of radioactive material or handling, processing or packaging waste; any premise, structure, excavation or place of storage or disposition of waste or by-product material; or any equipment used for or in connection with the transportation of such material.

(5) "Radiation" or "ionizing radiation" as used in this chapter refers to electro-magnetic radiations such as X-rays and gamma rays, or particulate radiations such as electrons or beta particles, protons, neutrons, alpha particles, usually of high energy, but in any case it includes all radiations capable of producing ions directly or indirectly in their passage through matter.

(6) "Radiation installation" is any location or facility where radiation machines are used or where radioactive material is produced, transported, stored, disposed of or used for any purpose.

(7) "Radiation machine" is any device that produces radiation when in use.

(8) "Radioactive material" includes any solid, liquid or gaseous substance which emits radiation spontaneously.

(9) "Radiation source" means a radiation machine or radioactive material as defined herein.

(10) "Source material" means any material except special nuclear material, which contains by weight 0.05 per cent or more of uranium, thorium, or any combination thereof.

(11) "Special nuclear material" means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the atomic energy commission determines to be special nuclear material; or any material artificially enriched by any of the foregoing. Special nuclear material does not include source material.

140.53 Powers and duties. (1) The department and the department of industry, labor and human relations shall:

(a) Formulate, adopt and enforce, amend and repeal rules, including registration of sources of radiation, as may be necessary to prohibit and prevent unnecessary radiation. Such rules may incorporate by reference the recommended standards of nationally recognized bodies in the field of radiation protection and other fields of atomic energy, under the procedure established by s. 227.025.

(b) Administer ss. 140.50 to 140.60 and the rules promulgated thereunder.

(c) Develop comprehensive policies and programs for the evaluation and determination of hazards associated with the use of radiation, and for their amelioration.

(d) Advise, consult and co-operate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions and industries.

(e) Encourage, participate in or conduct studies, investigations, training, research and demonstrations relating to the control of radiation hazards, the measurement of radiation, the effects on health of exposure to radiation and related problems as it deems necessary or advisable for the discharge of its duties under ss. 140.50 to 140.60.

(f) Collect and disseminate health education information relating to radiation protection as it deems proper.

(g) Review and approve plans and specifications for radiation sources submitted pursuant to rules promulgated under ss. 140.50 to 140.60; and inspect radiation sources, their shielding and immediate surroundings and records concerning their operation for the determination of any possible radiation hazard.

(2) The department and the department of industry, labor and human relations may:

(a) Enter, at all reasonable times, any private or public property for the purpose of investigating conditions relating to radiation control.

(b) Accept and utilize grants or other funds or gifts from the federal government and from other sources, public or private, for carrying out its functions under ss. 140.50 to 140.60 such studies, investigations, training and demonstration may be conducted independently, by contract, or in co-operation with any person or any public or private agency, including any political subdivision of the state.

140.54 Registration. (1) APPLICATION. Every radiation installation in this state, not exempted by this section or the rules of the department shall be registered by the department by January 1, 1964, by the person in control thereof, and no such radiation installation shall be operated thereafter unless it has been duly

registered by January 1 of each year and a notice of such registration is possessed by the person in control. Every radiation installation established in this state after January 1, 1964, shall be registered prior to its operation. The application for registration shall be made on forms provided by the department which shall be devised to obtain any information that is considered necessary for evaluation of hazards. Multiple radiation sources at a single radiation installation and under the control of one person shall be listed on a single registration form and only one registration fee shall be required. Registration alone shall not imply approval of manufacture, storage, use, handling, operation or disposal of the radiation installation or radioactive materials, but shall serve merely to inform the department of the location and character of radiation sources. The department shall furnish the department of industry, labor and human relations with a copy of each amended and new registration. Persons engaged in manufacturing, demonstration, sale, testing or repair of radiation sources shall not be required to list such sources on the registration form.

(2) **AMENDED REGISTRATION.** Whenever the person in control increases the number of sources, source strength, rated output or energy of radiation produced in any installation, he shall notify the department of such increase prior to operation on such revised basis, and such change shall be recorded in the registration. If any installation is discontinued, the person in control shall notify the department within 30 days of such discontinuance.

(3) **FEEES.** An annual registration fee of \$5 shall be levied on every person in control of a radiation installation registering under this section. No additional fee shall be required for recording changes in the registration information.

(4) **EXEMPTIONS.** The department shall exempt from registration any source licensed by the atomic energy commission and may exempt from registration any source of radiation installation which the department finds to be without undue radiation hazard as determined by standards established by the national committee on radiation protection and measurements or any comparable nationally recognized agency established for the purpose of recommending standards for radiation protection, and after the initial registration may exempt from subsequent annual radiation requirements any source of radiation devoted primarily to industrial purposes.

140.56 Radiation protection council. (1) The radiation protection council shall provide the department with technical advice and

assistance in the administration of ss. 140.50 to 140.60 and in the development of rules.

(2) The department shall, on the recommendation of the council promulgate a radiation protection code. Other departments and agencies of state government and local governmental units may adopt the identical code, but no other codes or ordinances relating to this subject shall be promulgated or enacted.

140.58 Enforcement. (1) **NOTIFICATION OF VIOLATION AND ORDER OF ABATEMENT.** Whenever the department or department of industry, labor and human relations finds, upon inspection and examination, that a source of radiation as constructed, operated or maintained results in a violation of ss. 140.50 to 140.60 or of any rules promulgated thereunder, it shall notify the person in control that is causing, allowing or permitting such violation as to the nature thereof and order that, prior to a specified time such person in control shall cease and abate causing, allowing or permitting such violation and take such action as may be necessary to have the source of radiation constructed, operated, or maintained in compliance with ss. 140.50 to 140.60 and rules promulgated thereunder.

(2) **ORDERS.** The department or department of industry, labor and human relations shall issue and enforce such orders or modifications of previously issued orders as may be required in connection with proceedings under ss. 140.50 to 140.60. Such orders shall be subject to review by the department upon petition of the persons affected. Whenever the department or department of industry, labor and human relations finds that a condition exists which constitutes an immediate threat to health due to violation of ss. 140.50 to 140.60 or any rule or order promulgated thereunder it may issue an order reciting the existence of such threat and the findings pertaining thereto. The department or department of industry, labor and human relations may summarily cause the abatement of such violation.

(3) **RULES.** The department shall enforce the rules pertaining to ionizing radiation in establishments principally engaged in furnishing medical, surgical, chiropractic and other health services to persons and animals. The department of industry, labor and human relations shall enforce the rules pertaining to ionizing radiation in industrial establishments. The department shall notify the department of industry, labor and human relations and deliver to it a copy of each new registration and at such time a decision shall be made as to which state agency shall enforce the rules pertaining to ionizing radiation. The department and the department of industry, labor and human relations are directed to consult

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with the radiation protection council in case of jurisdictional problems.

(4) **ENFORCEMENT.** All orders issued pursuant to ss. 140.50 to 140.60 shall be enforced by the attorney general. The circuit court of Dane county shall have jurisdiction to enforce such orders by injunctive and other appropriate relief.

140.59 Impounding materials. The department or department of industry, labor and human relations may impound or order the sequestration of sources of ionizing radiation in the possession of any person who is not equipped to observe or who fails to observe such safety standards to protect health as may have been established by rule.

140.595 Exceptions. (1) Nothing in ss. 140.50 to 140.60 shall be interpreted as limiting intentional exposure of persons to radiation for the purpose of analysis, diagnosis, therapy, and medical, chiropractic or dental research as authorized by law.

(2) Sections 140.50 to 140.60 shall not apply to on site activities of any nuclear reactor plant licensed or operated by the atomic energy commission.

140.60 Penalties. Any person who violates any provision of ss. 140.50 to 140.60 or any rule or order of the department, or department of industry, labor and human relations issued pursuant thereto shall forfeit and pay into the state treasury not less than \$10 nor more than \$500. Each day of continued violation after notice of the fact that a violation is being committed shall be considered a separate offense. Should injury or death of an employee ensue, due to a failure of an employer to observe or enforce any rule issued under ss. 140.50 to 140.60, compensation and death benefits shall be increased by 15 per cent as provided in s. 102.57.

140.65 Title. Sections 140.65 to 140.76 may be cited as the "Wisconsin Mental Retardation Facilities and Community Mental Health Centers Construction Act".

140.66 Definitions. As used in ss. 140.65 to 140.76 unless the context requires otherwise:

(1m) "Act" means ss. 140.65 to 140.76.

(2) "The federal act" means the mental retardation facilities and community mental health centers construction act of 1963 (P.L. 88-164), as now and hereafter amended.

(3) "The secretary" means the secretary of health, education and welfare of the U. S., or his delegate to administer the federal act.

(4) "Facility for the mentally retarded" means a facility specially designed for the diagnosis, treatment, education, training or custodial care of the mentally retarded; including facilities for training specialists and sheltered workshops for the mentally retarded, but only if such workshops are part of facilities which provide or will provide comprehensive services for the mentally retarded.

(5) "Community mental health center" means a facility providing services for the prevention or diagnosis of mental illness, or care and treatment of mentally ill patients, or rehabilitation of such persons, which services are provided principally for persons residing in a particular community in or near which the facility is situated.

(6) "Nonprofit facility for the mentally retarded", and "nonprofit community mental health center" mean, respectively, a facility for the mentally retarded, and a community mental health center which is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

140.67 Construction of mental retardation facilities and community mental health centers. (2) The department shall constitute the sole agency of the state for the purpose of:

(a) Making inventories of existing facilities, surveying the need for construction for facilities for the mentally retarded and community mental health centers, and developing programs of construction, and

(b) Developing and administering a state plan for the construction of public and other nonprofit facilities for the mentally retarded, and a state plan for the construction of public and other nonprofit community mental health centers.

(3) The department, in carrying out the purposes of this act, is authorized to:

(a) Require such reports, make such inspections and investigations and prescribe such rules as it deems necessary;

(b) Provide such methods of administration, appoint personnel, and take such other action as necessary to comply with the requirements of the federal act and regulations thereunder;

(c) Procure the temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part-time or fee-for-service basis and do not involve the performance of administrative duties;

(d) The extent that it considers desirable to effectuate the purposes of this act, enter into agreements for the utilization of facilities and

services of other departments, agencies and institutions, public or private;

(e) Accept on behalf of the state and deposit with the state treasurer any grant, gift or contribution made to assist in meeting the cost of carrying out the purposes of this act, and to expend the same for such purposes;

(f) Do all other things on behalf of the state necessary to obtain full benefits under the federal act as now and hereafter amended.

140.69 Construction programs. The department is directed to develop construction programs for facilities for the mentally retarded and community mental health centers for the mentally ill, which shall be based respectively on state-wide inventories of existing facilities for the mentally retarded and the mentally ill and surveys of need, and which shall provide in accordance with regulations prescribed under the federal act; for facilities which will provide adequate services for the mentally retarded and adequate community mental health services for the people residing in this state and for furnishing needed services to persons unable to pay therefor.

140.70 State plans. The department shall prepare and submit to the secretary, state plans which shall include the programs for construction of facilities developed under this act and which shall provide for the establishment, administration and operation of such construction activities in accordance with the requirements of the federal act and regulations thereunder. The department shall from time to time, but not less often than annually, review the state plans and submit to the secretary any modifications thereof which it considers necessary and may submit to the secretary such modifications of the state plan not inconsistent with the requirements of the federal act, as it deems advisable.

140.71 Standards for maintenance and operation. The department shall by regulation prescribe, and shall be authorized to enforce, standards for the maintenance and operation of facilities for the mentally retarded, and community mental health centers which receive federal aid for construction under the state plans.

140.72 Priority of projects. The state plans shall set forth the relative need and feasibility for the several projects included in the construction programs determined in accordance with the regulations prescribed pursuant to the federal act, and shall provide for the construction insofar as financial resources are available therefor in the order of such relative need and feasibility.

140.73 Applications. Applications for mental retardation facility or community mental health center construction projects for which federal funds are requested shall be submitted to the department by the state, a political subdivision thereof or by a public or other nonprofit agency. Each application for a construction project shall conform to federal and state requirements.

140.74 Hearing; forwarding of applications. The department shall afford to every applicant for a construction project an opportunity for a fair hearing. If the department, after affording reasonable opportunity for development and submission of applications, finds that a project application complies with the requirements of this act and is otherwise in conformity with the state plan, it shall approve such application and shall recommend and forward it to the secretary.

140.75 Inspection of projects. From time to time the department or its duly authorized agents shall inspect each construction project approved by the secretary, and if the inspection so warrants, the department shall certify to the secretary that work has been performed upon the project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment of federal funds is due to the applicant.

140.76 Mental retardation facilities and community mental health centers construction funds. The department may receive federal funds in behalf of, and transmit them to, such applicants. In the general fund there is hereby established, separate and apart from all public moneys of this state, a mental retardation facilities construction fund and a community mental health centers construction fund. Money received from the federal government for a construction project under this act approved by the secretary shall be deposited to the credit of the appropriate fund and shall be used solely for payments to applicants for work performed, or purchases made, in carrying out approved project.

140.77 Pesticide review board. (1) The pesticide review board created by s. 15.195 shall collect, analyze and interpret information, and make recommendations to and coordinate the regulatory and informational responsibilities to the state agencies, on matters relating to the use of pesticides, particularly recommendations for limiting pesticide use to those materials and amounts thereof found necessary and effective in the control of pests and which are not unduly

hazardous to persons, animals or plants. Pesticide rules authorized by ss. 29.29 (4) and 94.69 are not effective until approved by the review board.

(2) The pesticide review board shall appoint a council not to exceed 6 members of technical or professional experts composed of one representative each from the department of agriculture, department of health and social services, department of natural resources, college of agricultural and life sciences of the university of Wisconsin, water resources center of the university of Wisconsin, school of natural resources of the university of Wisconsin, and in addition 3 public members appointed by the governor and confirmed by the senate for staggered 3-year terms who shall be technical or professional experts in the use of pesticides, one of whom shall be a representative of the pesticide industry, one of whom shall be a representative of the agricultural industry and one of whom shall be a person of broad knowledge and experience in the conservation and wise use of natural resources. The council shall generally assist the review board and shall assist particularly in obtaining scientific data and coordinating pesticide regulatory, enforcement, research and educational functions of the state.

(3) The pesticide review board shall report to the governor and the legislature any pesticide matters it finds are of vital concern for the protection of the health and well-being of people or for the protection of fish, wildlife, plants, soil, air and water from pesticide pollution. Such report may include its recommendations for legislative or other governmental action.

History: 1975 c. 94 s. 91 (10)

Cross Reference: See 134.67 for prohibition of use of DDT and exceptions to the prohibition.

140.81 Drug dependence program. (1) In this section:

(a) "Drug dependence" means a condition arising from the periodic or continuous use of a drug which may result in psychic or physical dependence which would affect or potentially affect the public health, safety or welfare.

(b) "Drug abuse" means the use of a drug in such a manner as to endanger the public health, safety or welfare.

(c) "Drug" means a controlled substance, as defined in s. 161.01 (4).

(2) A drug dependence and drug abuse program is established in the department. The secretary may develop and carry out programs concerned with education about and prevention of drug dependence and drug abuse, and programs concerned with treatment and rehabilitation of drug dependent persons and persons who abuse drugs. The secretary shall

appoint a drug dependence program coordinator to handle liaison with other departments and agencies, including the council on alcohol and other drug abuse. These programs may include, but shall not be limited to:

(a) Education regarding use of drugs and the prevention of drug dependence and drug abuse.

(b) Diagnosis, treatment and rehabilitation of patients who are drug dependent persons or persons who abuse drugs.

(c) Development of standards and provision of consultation for local drug dependence and drug abuse programs.

(d) Evaluation of programs conducted pursuant to the authority of this subsection as to their effectiveness and relationship to the public health, safety and welfare and the development of improved techniques for the prevention and treatment of drug dependence and drug abuse.

(e) Promotion and establishment of cooperative relationship with public and private agencies which have a responsibility for the prevention and treatment of drug dependence and drug abuse.

(3) The secretary may appoint a council to meet on the call of the secretary and to advise him on broad policies and goals for the drug dependence and drug abuse program.

(4) The department may accept, receive, administer and expend any money, material or other gifts or grants of any description for purposes related to those set forth in this section. Moneys and grants received under this section shall be deposited with the state treasurer and shall be credited to the department of health and social services and expended by the department or the council on alcohol and other drug abuse for the purposes specified.

History: 1971 c. 219; 1975 c. 370

140.82 Division of health policy and planning. (1) The division of health policy and planning shall:

(a) Initiate, conduct and periodically evaluate a process for planning to effectively use the resources of the state and meet the health needs of its citizens.

(b) Annually prepare the state comprehensive health plan. The plan shall identify state health goals and priorities, determine health fund allocation priorities, provide for the coordination of federal hospital construction, mental health, alcohol, other drug abuse and developmental disability plans. In addition to coordinating the preparation of health-related federal plans, the division shall coordinate the preparation of public and private state health and health-related plans. This shall include the state facilities survey and development of the state health facilities plan.

(c) Receive and administer federal funds for state health planning and development.

(d) Receive and administer state funds for state health planning and development.

(e) Designate and provide for the development and organization of substate health planning and development agencies as established under P.L. 93-641.

(f) Ensure the development of appropriate substate health plans by providing technical assistance, preparing plan guidelines and other directives as necessary.

(g) Provide information and technical assistance to the executive office and the legislature and public and private organizations as necessary to implement the state's health plan.

(h) Contract with substate health planning and development agencies and other organizations to do analyses and studies required to formulate state health policy.

(i) Serve as the single state agency for federally assisted health facility modernization and construction.

(j) Coordinate the activities within state government for the collection, retrieval, analysis, reporting and publication of statistical and other information related to health and health care.

(2) The administrator shall appoint under the classified service the staff necessary to perform the duties of the division.

(3) Every department, independent agency and statutory council, and their officers and employes, shall cooperate with the administrator in these matters relating to his functions.

(4) Each individual and institutional provider of health services licensed or approved by the state and doing business in the state shall make statistical and other reports of information related to health and health care to the division.

History: 1973 c. 90; 1975 c. 39.

140.85 Licensing and approval fees for inpatient health care facilities. (1) DEFINITIONS.

In this section, "inpatient health care facility" means any hospital, nursing home, residential care facility except a halfway house as defined in the Wis. Adm. Code, section H 31.02 (5) which has the characteristics specified under Wis. Adm. Code section H 31.02 (2) (a) to (d), county home, county mental hospital, tuberculosis sanatoria or other place, without restriction because of enumeration, licensed or approved by the department under ss. 49.14, 49.16, 49.171, 50.02, 50.35, 51.08, 51.09, 58.06, 149.01 and 149.02.

(2) FEES: The annual fee for an inpatient health care facility shall be based on bed capacity as follows:

Number of beds	Annual license fee
3-25	\$125

26-50	\$250
51-100	\$375
101-150	\$500
151-200	\$625
201-250	\$750
251-300	\$875
301 & Over	\$1,000

(a) Such fees shall be paid to the department by the inpatient health care facility on or before October 1 for the ensuing year, beginning October 1, 1974. A new inpatient health care facility shall pay the fees under this subsection within 30 days before the opening of the facility.

(b) Any person who fails to submit the annual fee prior to October 1, or within 30 days prior to the opening of a new inpatient health care facility subject to this section shall pay an additional fee of \$10 per day for every day after the deadline.

(3) EXEMPTIONS. The central state hospital and health care facilities under ss. 45.365, 48.62, 50.06 [149.06], 51.05 and 51.06, and s. 51.36, 1971 stats., and ch. 142 are exempt from this section.

History: 1973 c. 90, 243, 333; 1975 c. 413 s. 18; 1975 c. 430 ss. 73, 80.

Duty of a private hospital to render emergency treatment 1974 WLR 279.

140.90 Preparation and distribution of formulary of drug product equivalents. (1)

In this section:

(a) "Brand name" means the name, other than the generic name, that the labeler of a drug product places on its container at the time of packaging.

(b) "Drug product" means a specific drug in a specific dosage form from a known source of manufacture, whether by brand name or generic name.

(c) "Drug product equivalent" means a drug product containing active ingredients chemically identical to another drug product, which when administered by the same route of administration and in the same amount, has comparable safety and therapeutic effects.

(d) "Formulary" means a list of drug products prepared and published by the department in accordance with this section.

(e) "Generic name" means the official or established name given a drug product by the U.S. department of health, education and welfare or the U.S. adopted names council.

(f) "Hospital formulary system" means a method used by the medical staff of a hospital, working through a pharmacy and therapeutics committee, to evaluate and select from among numerous available medicinal agents those medicinal agents considered most useful therapeutically and to list dosage forms in which they may be most effectively administered.

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(2) The department, with the advice of the drug quality council, shall prepare a formulary which lists commonly prescribed drug products by brand name together with their drug product equivalents ranked in the order of their average wholesale cost. In developing the formulary, the department may include any generic drug approved by the federal government under Titles 18 and 19 of the social security act or included in a formulary adopted by another governmental body or agency, except that whenever equivalency in therapeutic effect or bioavailability as related to toxic concentration and safety is critical for a class of drugs, a drug

product equivalent in such a class shall be listed in the formulary only if there is evidence of its equivalency satisfactory to the department.

(3) The department shall distribute the formulary to all pharmacists and persons authorized to prescribe drugs and to other persons on request. The department shall review the formulary and make necessary revisions at least twice in each calendar year.

(4) Nothing in this section shall prohibit the establishment and operation of hospital formulary systems.

History: 1975 c 168