

# Freedom to Breathe Smoking in Licensed Residential Healthcare Facilities

## 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 licensed residential healthcare facilities.

## 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 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

Except as described in the next section, smoking is prohibited throughout all indoor areas of healthcare-related facilities, including licensed residential facilities for children.

Note: The MCIAA does not prohibit smoking in private residences that provide foster care for children or adults. However, Department of Human Services licensing regulations do prohibit children in foster care (including private homes) from being exposed to secondhand smoke.

## Permitted smoking

Unless a facility has adopted a facility-wide smoke-free policy or is subject to a local ordinance that has more stringent prohibitions, patients or residents of nursing homes, boarding care facilities and licensed residential facilities for adults are permitted to smoke within a designated separate, enclosed room maintained in accordance with applicable state and federal laws.

The following requirements apply to all such licensed residential healthcare facilities:

1. Smoking is allowed only for patients and residents of a facility. Facility staff, volunteers and guests are prohibited from smoking throughout the entirety of the indoor areas of the facility.
2. Smoking must be prohibited throughout all indoor areas of the facility, other than in a designated separate, enclosed room.
3. If smoking is permitted anywhere within a facility, a sign must be posted at each

entrance to the facility that states: “Smoking is prohibited, except in designated areas”

4. A sign must be posted at the entrance to a designated room where smoking is permitted that displays the international smoking-permitted symbol or states: “Smoking Permitted.”

### **Applicable state and federal requirements**

Nursing Homes are permitted to be either "smoking- permitted" or "smoke-free." Where smoking is permitted, smoking is restricted to a designated room that includes mechanical ventilation in accordance with Minnesota Rules, parts 4658.4515 and 4658.4520.

Boarding Care homes follow the same protocols as nursing homes. The basis for this is rooted in Minnesota Rules, part 4655.9000.

Supervised Living Facilities may permit smoking in a designated separate, enclosed room. Mechanical ventilation is required in order to comply with Minnesota Rules 4665.0200, subparts 2 and 5, and Minnesota Rules, part 4665.1400.

Residential Hospices may permit smoking within the facility (Minnesota Rules, part 4664.0520). The licensure rule references the MCIAA and Minnesota Rules, part 4620.1200. The rule permits smoking in a bedroom provided that complying mechanical ventilation is installed in the bedroom (refer to Minnesota Rules, part 4664.0520, subpart 3.) If the facility chooses not to permit smoking in the bedrooms, it may construct a designated smoking room. MDH requires the same mechanical ventilation in a designated smoking room as is required in a smoking-permitted bedroom.

Adult Foster Care facilities are regulated by the Minnesota Department of Human Services (DHS) and by Minnesota Rules, Chapter 9555 (Rule 203). There is no specific rule language regarding smoking in adult foster care facilities, therefore, smoking is permissible in accordance with the MCIAA (in a designated separate, enclosed room).

### **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](http://www.health.state.mn.us/freedomtobreathe)