

Act No. 308  
Public Acts of 1988  
Approved by the Governor  
August 11, 1988  
Filed with the Secretary of State  
August 12, 1988

**STATE OF MICHIGAN  
84TH LEGISLATURE  
REGULAR SESSION OF 1988**

Introduced by Reps. Harrison, Muxlow, Joe Young, Sr., Bartnik, Hickner, Middaugh, Hayes, Palamara, DeMars, Fitzgerald, Kosteva, Saunders, Bankes, Power, Sofio, Miller, Allen, Hoffman, Browne, Johnson, Dobronski, Gilmer, Pridnia, Webb, Emmons, Bender, Walberg, Van Singel, Hoekman, Trim and Dunaskiss

## **ENROLLED HOUSE BILL No. 4525**

AN ACT to amend Act No. 368 of the Public Acts of 1978, entitled as amended "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for penalties and remedies; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," as amended, being sections 333.1101 to 333.25211 of the Michigan Compiled Laws, by adding sections 22208 and 22210; and to repeal certain parts of the act on specific dates.

*The People of the State of Michigan enact:*

Section 1. Act No. 368 of the Public Acts of 1978, as amended, being sections 333.1101 to 333.25211 of the Michigan Compiled Laws, is amended by adding sections 22208 and 22210 to read as follows:

Sec. 22208. "Short-term nursing care" means nursing care provided in a hospital to a patient who has been discharged from an acute care bed and cannot be placed in a nursing home bed or hospital long-term care unit located within a 50-mile radius of the patient's residence.

Sec. 22210. (1) A hospital that applies to the department for a certificate of need and meets all of the following criteria shall be granted a certificate of need for a short-term nursing care program with up to 10 licensed, identifiable hospital beds:

(a) Is eligible for, and in compliance with, the swing-bed provisions of section 1883 of title XVIII of the social security act, 42 U.S.C. 1395tt, except for the certificate of need requirement.

- (b) Subject to subsection (2), has under 100 licensed beds, not counting beds used for newborns, psychiatric patients, and inpatient substance abuse patients.
- (c) Does not have uncorrected licensing, certification, or safety deficiencies for which the department or the state fire marshal, or both, has not accepted a plan of correction.
- (d) Provides evidence satisfactory to the department that the hospital has had difficulty in placing patients in skilled nursing home beds during the 12 months immediately preceding the date of the application.
- (2) The criteria set forth in subsection (1)(b) may be modified by the commission, using the procedure set forth in section 22215(3), upon the expiration of 2 years after the effective date of this part. The department shall not charge a fee for processing a certificate of need application to initiate a short-term nursing care program.
- (3) A hospital that is granted a certificate of need for a short-term nursing care program under subsection (1) shall comply with all of the following:
- (a) Not charge for or otherwise attempt to recover the cost of a length of stay for a patient in the short-term nursing care program that exceeds 20 days for each hospital admission.
- (b) Admit patients to the short-term nursing care program only pursuant to an admissions contract approved by the department.
- (c) Not discharge a patient from an acute care bed and admit that patient to the short-term nursing care program unless determined medically appropriate by the attending physician.
- (d) Permit access to a representative of an organization approved under section 21764 to patients admitted to the short-term nursing care program, for all of the purposes described in section 21763.
- (e) Subject to subsection (8), not allow the number of patient days for the short-term nursing care program to exceed the equivalent of 1,825 patient days for a single state fiscal year.
- (f) Transfer a patient in the short-term nursing care program to an appropriate nursing home bed or hospital long-term care unit located within a 50-mile radius of the patient's residence within 5 business days after the hospital has been notified, either orally or in writing, that a nursing home bed has become available.
- (g) Not charge or collect from a patient admitted to the short-term nursing care program, for services rendered as part of the short-term nursing care program, an amount in excess of the reasonable charge for the services as determined by the United States secretary of health and human services under title XVIII of the social security act, 42 U.S.C. 1395l, 1395n to 1395cc, 1395ff to 1395zz.
- (h) Assist a patient who has been denied coverage for services received in a short-term nursing care program under title XVIII of the social security act to file an appeal with the medicare recovery project operated by the office of services to the aging.
- (i) Operate the short-term nursing care program in accordance with this section and the requirements of the swing bed provisions of section 1883 of title XVIII of the social security act, 42 U.S.C. 1395tt.
- (j) Provide data to the department considered necessary by the department to evaluate the short-term nursing care program. The data shall include, but is not limited to, all of the following:
- (i) The total number of patients admitted to the hospital's short-term nursing care program during the period specified by the department.
- (ii) The total number of patient days for the period specified by the department.
- (iii) Information identifying the type of care to which patients in the short-term care nursing program are released.
- (k) As part of the hospital's policy describing the rights and responsibilities of patients admitted to the hospital, as required under section 20201, incorporate all of the following additional rights and responsibilities for patients in the short-term nursing care program:
- (i) The policy shall be provided to each short-term nursing care patient upon admission, and the staff of the hospital shall be trained and involved in the implementation of the policy.
- (ii) Each short-term nursing care patient may associate and communicate privately with persons of his or her choice. Reasonable, regular visiting hours, which shall take into consideration the special circumstances of each visitor, shall be established for short-term nursing care patients to receive visitors. A short-term nursing care patient may be visited by the patient's attorney or by representatives of the departments named in section 20156 during other than established visiting hours. Reasonable privacy shall be afforded for visitation of a short-term nursing care patient who shares a room with another short-term nursing care patient. Each short-term nursing care patient shall have reasonable access to a telephone.
- (iii) A short-term nursing care patient is entitled to retain and use personal clothing and possessions as space permits, unless medically contraindicated, as documented by the attending physician in the medical record.

(iv) A short-term nursing care patient is entitled to the opportunity to participate in the planning of his or her medical treatment. A short-term nursing care patient shall be fully informed by the attending physician of the short-term nursing care patient's medical condition, unless medically contraindicated, as documented by a physician in the medical record. Each short-term nursing care patient shall be afforded the opportunity to discharge himself or herself from the short-term nursing care program.

(v) A short-term nursing care patient is entitled to be fully informed either before or at the time of admission, and during their stay, of services available in the hospital and of the related charges for those services. The statement of services provided by the hospital shall be in writing and shall include those services required to be offered on an as needed basis.

(vi) A patient in a short-term nursing care program or a person authorized in writing by the patient may, upon submission to the hospital of a written request, inspect and copy the patient's personal or medical records. The hospital shall make the records available for inspection and copying within a reasonable time, not exceeding 7 days, after the receipt of the written request.

(vii) A short-term nursing care patient has the right to have his or her parents, if the short-term nursing care patient is a minor, or his or her spouse, next of kin, or patient's representative, if the short-term nursing care patient is an adult, stay at the facility 24 hours a day if the short-term nursing care patient is considered terminally ill by the physician responsible for the short-term nursing care patient's care.

(viii) Each short-term nursing care patient shall be provided with meals that meet the recommended dietary allowances for that patient's age and sex and that may be modified according to special dietary needs or ability to chew.

(ix) Each short-term nursing care patient has the right to receive a representative of an organization approved under section 21764, for all of the purposes described in section 21763.

(4) A hospital or the owner, administrator, an employee, or a representative of the hospital shall not discharge, harass, or retaliate or discriminate against a short-term nursing care patient because the short-term nursing care patient has exercised a right described in subsection (2)(k).

(5) In the case of a short-term nursing care patient, the rights described in subsection (2)(k)(iv) may be exercised by the patient's representative, as defined in section 21703(2).

(6) A short-term nursing care patient shall be fully informed, as evidenced by the short-term nursing care patient's written acknowledgment, before or at the time of admission and during stay, of the rights described in subsection (2)(k). The written acknowledgment shall provide that if a short-term nursing care patient is adjudicated incompetent and not restored to legal capacity, the rights and responsibilities set forth in subsection (2)(k) shall be exercised by a person designated by the short-term nursing care patient. The hospital shall provide proper forms for the short-term nursing care patient to provide for the designation of this person at the time of admission.

(7) Subsection (2)(k) does not prohibit a hospital from establishing and recognizing additional rights for short-term nursing care patients.

(8) Upon application, the department may grant a variation from the maximum number of patient days established under subsection (2)(e), to an applicant hospital that demonstrates to the satisfaction of the department that there is an immediate need for skilled nursing beds within a 100-mile radius of the hospital. A variation granted under this subsection shall be valid for not more than 1 year after the date variation is granted. The department shall promulgate rules to implement this subsection including, at a minimum, a definition of immediate need and the procedure for applying for a variation.

(9) A hospital that violates subsection (3) is subject to the penalty provisions of section 20165.

(10) A person shall not initiate a short-term nursing care program without first obtaining a certificate of need under this section.

(11) Within 2 years after the effective date of this section, the department shall collect data from hospitals operating short-term nursing care programs and report to the legislature on the status of short-term nursing care programs in this state. The report shall include a recommendation as to whether or not short-term nursing care programs should continue.

(12) This section is repealed effective upon the expiration of 5 years after its effective date.

Section 2. This amendatory act shall take effect October 1, 1988.

Section 3. This amendatory act shall not take effect unless all of the following bills of the 84th Legislature are enacted into law:

(a) Senate Bill No. 64.

(b) House Bill No. 5145.

(c) House Bill No. 5575.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.