

HOUSE BILL No. 5647

March 29, 1990, Introduced by Reps. Muxlow, Pridnia, Bennane, Middaugh, Giese, Walberg, DeMars, Munsell, Martin, Ouwinga and Stupak and referred to the Committee on Public Health.

A bill to amend sections 22208, 22209, 22210, and 22223 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code,"

sections 22208 and 22210 as added by Act No. 308 of the Public Acts of 1988 and sections 22209 and 22223 as added by Act No. 332 of the Public Acts of 1988, being sections 333.22208, 333.22209, 333.22210, and 333.22223 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 22208, 22209, 22210, and 22223 of Act
2 No. 368 of the Public Acts of 1978, sections 22208 and 22210 as
3 added by Act No. 308 of the Public Acts of 1988 and
4 sections 22209 and 22223 as added by Act No. 332 of the Public
5 Acts of 1988, being sections 333.22208, 333.22209, 333.22210, and
6 333.22223 of the Michigan Compiled Laws, are amended to read as
7 follows:

1 Sec. 22208. "Short-term nursing care" means nursing care
2 provided in a hospital to a patient who has been discharged OR IS
3 READY FOR TRANSFER from ~~an acute care~~ A LICENSED HOSPITAL bed
4 OTHER THAN A HOSPITAL LONG-TERM CARE UNIT BED and cannot be
5 placed in a nursing home bed, COUNTY MEDICAL CARE FACILITY BED,
6 or hospital long-term care unit BED located within a 50-mile
7 radius of the patient's residence.

8 Sec. 22209. (1) Except as otherwise provided under this
9 part, a person shall not do any of the following without first
10 obtaining a certificate of need:

- 11 (a) Acquire or begin operation of a new health facility.
- 12 (b) Make a change in the bed capacity of a health facility.
- 13 (c) Initiate a new service.
- 14 (d) Acquire covered medical equipment.
- 15 (e) Make a covered capital expenditure.

16 (2) For purposes of evaluating the effect of this part, the
17 department shall require persons to report capital expenditures
18 and single projects that were subject to former part 221. The
19 reports shall be made in conjunction with the annual survey of
20 hospitals conducted by the department and according to procedures
21 approved by the commission. The department, with the concurrence
22 of the commission, may require that reports for specific types of
23 capital expenditures or projects be reported on other than an
24 annual basis, as necessary to evaluate the effect of this part.

25 (3) SUBSECTION (1)(B) DOES NOT APPLY TO A HOSPITAL WITH
26 FEWER THAN 150 BEDS THAT CLOSSES, CONSOLIDATES OR REDUCES ITS

1 SERVICES, OR MERGES WITH ANOTHER HOSPITAL THAT HAS FEWER THAN 150
2 BEDS.

3 (4) SUBSECTION (1)(D) DOES NOT APPLY TO 2 OR MORE HOSPITALS,
4 EACH WITH FEWER THAN 150 BEDS, THAT ENTER INTO AN AGREEMENT TO
5 JOINTLY PURCHASE MOBILE COVERED MEDICAL EQUIPMENT.

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

11 (a) Is eligible TO APPLY for ~~and in compliance with, the~~
12 CERTIFICATION AS A PROVIDER OF swing-bed ~~provisions of~~ SERVICES
13 UNDER section 1883 of title XVIII of the social security act,
14 42 U.S.C. 1395tt. ~~except for the certificate of need~~
15 ~~requirement.~~

16 (b) Subject to subsection (2), has ~~under~~ FEWER THAN 100
17 licensed beds ~~not counting beds used for newborns, psychiat-~~
18 ~~ric patients, and inpatient substance abuse patients~~ EXCLUDED
19 UNDER SECTION 1883 OF TITLE XVIII OF THE SOCIAL SECURITY ACT.

20 (c) Does not have uncorrected licensing, certification, or
21 safety deficiencies for which the department or the state fire
22 marshal, or both, has not accepted a plan of correction.

23 (d) Provides evidence satisfactory to the department that
24 the hospital has had difficulty in placing patients in skilled
25 nursing home beds during the 12 months immediately preceding the
26 date of the application.

1 (2) ~~The~~ AFTER OCTOBER 1, 1990, THE criteria set forth in
2 subsection (1)(b) may be modified by the commission, using the
3 procedure set forth in section 22215(3). ~~, upon the expiration~~
4 ~~of 2 years after the effective date of this part.~~ The department
5 shall not charge a fee for processing a certificate of need
6 application to initiate a short-term nursing care program.

7 (3) A hospital that is granted a certificate of need for a
8 short-term nursing care program under subsection (1) shall comply
9 with all of the following:

10 (a) Not charge for or otherwise attempt to recover the cost
11 of a length of stay for a patient in the short-term nursing care
12 program that exceeds ~~20 days~~ THE LENGTH OF TIME ALLOWED for
13 each hospital admission UNDER TITLE XVIII OF THE SOCIAL SECURITY
14 ACT, 42 U.S.C. 1395 TO 1395b, 1395c TO 1395i, AND 1395i-2 TO
15 1395xx.

16 (b) Admit patients to the short-term nursing care program
17 only pursuant to an admissions contract approved by the
18 department.

19 (c) Not ~~discharge~~ TRANSFER a patient from an acute care
20 bed ~~and admit that patient~~ to the short-term nursing care pro-
21 gram OR ADMIT A PATIENT TO THE SHORT-TERM NURSING CARE PROGRAM
22 unless THE TRANSFER OR ADMISSION IS determined medically appro-
23 priate by the attending physician.

24 (d) Permit access to a representative of an organization
25 approved under section 21764 to patients admitted to the
26 short-term nursing care program, for all of the purposes
27 described in section 21763.

1 (e) Subject to subsection (8), not allow the number of
 2 patient days for the short-term nursing care program to exceed
 3 the equivalent of 1,825 patient days for a single state fiscal
 4 year.

5 (f) Transfer a patient in the short-term nursing care pro-
 6 gram to an ~~appropriate~~ APPROPRIATELY CERTIFIED nursing home
 7 bed, COUNTY MEDICAL CARE FACILITY BED, or hospital long-term care
 8 unit BED located within a 50-mile radius of the patient's resi-
 9 dence within 5 business days after the hospital has been noti-
 10 fied, either orally or in writing, that a ~~nursing home~~ bed has
 11 become available.

12 (g) Not charge or collect from a patient admitted to the
 13 short-term nursing care program, for services rendered as part of
 14 the short-term nursing care program, an amount in excess of the
 15 reasonable charge for the services as determined by the United
 16 States secretary of health and human services under title XVIII
 17 of the social security act. ~~, 42 U.S.C. 1395 to 1395t, 1395n to~~
 18 ~~1395cc, 1395ff to 1395zz.~~

19 (h) Assist a patient who has been denied coverage for serv-
 20 ices received in a short-term nursing care program under title
 21 XVIII of the social security act to file an appeal with the medi-
 22 care recovery project operated by the office of services to the
 23 aging.

24 (i) Operate the short-term nursing care program in accord-
 25 ance with this section and the requirements of the swing bed pro-
 26 visions of section 1883 of title XVIII of the social security
 27 act, 42 U.S.C. 1395tt.

1 (j) Provide data to the department considered necessary by
2 the department to evaluate the short-term nursing care program.
3 The data shall include, but is not limited to, all of the
4 following:

5 (i) The total number of patients admitted to the hospital's
6 short-term nursing care program during the period specified by
7 the department.

8 (ii) The total number of SHORT-TERM NURSING CARE patient
9 days for the period specified by the department.

10 (iii) Information identifying the type of care to which
11 patients in the short-term care nursing program are released.

12 (k) As part of the hospital's policy describing the rights
13 and responsibilities of patients admitted to the hospital, as
14 required under section 20201, incorporate all of the following
15 additional rights and responsibilities for patients in the
16 short-term nursing care program:

17 (i) ~~The~~ A COPY OF THE HOSPITAL'S policy shall be provided
18 to each short-term nursing care patient upon admission, and the
19 staff of the hospital shall be trained and involved in the imple-
20 mentation of the policy.

21 (ii) Each short-term nursing care patient may associate and
22 communicate privately with persons of his or her choice.
23 Reasonable, regular visiting hours, which shall take into consid-
24 eration the special circumstances of each visitor, shall be
25 established for short-term nursing care patients to receive
26 visitors. A short-term nursing care patient may be visited by
27 the patient's attorney or by representatives of the departments

1 named in section 20156 during other than established visiting
2 hours. Reasonable privacy shall be afforded for visitation of a
3 short-term nursing care patient who shares a room with another
4 short-term nursing care patient. Each short-term nursing care
5 patient shall have reasonable access to a telephone.

6 (iii) A short-term nursing care patient is entitled to
7 retain and use personal clothing and possessions as space per-
8 mits, unless medically contraindicated, as documented by the
9 attending physician in the medical record.

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

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

26 (vi) A patient in a short-term nursing care program or a
27 person authorized in writing by the patient may, upon submission

1 to the hospital of a written request, inspect and copy the
2 patient's personal or medical records. The hospital shall make
3 the records available for inspection and copying within a reason-
4 able time, not exceeding 7 days, after the receipt of the written
5 request.

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

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

17 (ix) Each short-term nursing care patient has the right to
18 receive a representative of an organization approved under
19 section 21764, for all of the purposes described in section
20 21763.

21 (4) ACHIEVE AND MAINTAIN MEDICARE CERTIFICATION UNDER TITLE
22 XVIII OF THE SOCIAL SECURITY ACT.

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

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

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

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

18 (8) Upon application, the department may grant a variation
19 from the maximum number of patient days established under subsec-
20 tion ~~(2)(e)~~ (3)(E), to an applicant hospital that demonstrates
21 to the satisfaction of the department that there is an immediate
22 need for skilled nursing beds within a 100-mile radius of the
23 hospital. A variation granted under this subsection shall be
24 valid for not more than 1 year after the date variation is
25 granted. The department shall promulgate rules to implement this
26 subsection including, at a minimum, a definition of immediate
27 need and the procedure for applying for a variation.

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

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

6 (11) ~~Within 2 years after the effective date of this~~
7 ~~section~~ BY OCTOBER 1, 1990, the department shall collect data
8 from hospitals operating short-term nursing care programs and
9 report to the legislature on the status of short-term nursing
10 care programs in this state. The report shall include a recom-
11 mendation as to whether or not short-term nursing care programs
12 should continue.

13 (12) This section is repealed ~~effective upon the expiration~~
14 ~~of 5 years after its effective date~~ OCTOBER 1, 1993.

15 Sec. 22223. (1) An applicant for a certificate of need
16 shall include as part of the application a statement addressing
17 each of the review criteria listed in section 22225.

18 (2) This section does not apply to an application for a cer-
19 tificate of need made under section 22210.

20 (3) IF 2 OR MORE HOSPITALS, EACH WITH FEWER THAN 150 BEDS,
21 ENTER INTO A JOINT VENTURE FOR A PROJECT THAT REQUIRES A CERTIFI-
22 CATE OF NEED, THE HOSPITALS MAY JOINTLY FILE 1 APPLICATION FOR
23 THE CERTIFICATE OF NEED.