

HOUSE BILL No. 6099

September 25, 1990, Introduced by Rep. Gubow and referred to the Committee on Public Health.

A bill to amend sections 20165, 20166, 20177, and 20199 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," section 20165 as amended by Act No. 179 of the Public Acts of 1990 and section 20166 as amended by Act No. 332 of the Public Acts of 1988, being sections 333.20165, 333.20166, 333.20177, and 333.20199 of the Michigan Compiled Laws; and to add part 219.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 20165, 20166, 20177, and 20199 of Act
2 No. 368 of the Public Acts of 1978, section 20165 as amended by
3 Act No. 179 of the Public Acts of 1990 and section 20166 as
4 amended by Act No. 332 of the Public Acts of 1988, being sections
5 333.20165, 333.20166, 333.20177, and 333.20199 of the Michigan
6 Compiled Laws, are amended and part 219 is added to read as
7 follows:

1 Sec. 20165. (1) Except as otherwise provided in this
2 section, after notice of intent to an applicant, ~~or~~ licensee,
3 OR REGISTRANT to deny, limit, suspend, or revoke a license, ~~or~~
4 certification, OR REGISTRATION and an opportunity for a hearing,
5 the department may deny, limit, suspend, or revoke the license,
6 ~~or~~ certification, OR REGISTRATION if any of the following
7 exist:

8 (a) Fraud or deceit in obtaining or attempting to obtain a
9 license, ~~or~~ certification, OR REGISTRATION or in operation of
10 the licensed health facility or agency OR REGISTERED NURSING
11 POOL.

12 (b) A violation of this article or the rules promulgated
13 under this article.

14 (c) False or misleading advertising.

15 (d) Negligence or failure to exercise due care, including
16 negligent supervision of employees and subordinates.

17 (e) Permitting a license or certificate to be used by an
18 unauthorized health facility or agency OR PERMITTING A REGISTRA-
19 TION TO BE USED BY AN UNAUTHORIZED NURSING POOL.

20 (f) Evidence of abuse regarding patient health, welfare, or
21 safety or a denial of rights.

22 (g) Failure to comply with section 10102a(7).

23 (h) Failure to comply with part 222 or a term, condition, or
24 stipulation of a certificate of need issued under part 222, or
25 both.

26 (2) An application for a license or certification may be
27 denied on a finding of ~~any~~ A condition or practice ~~which~~ THAT

1 would constitute a violation of this article if the applicant
2 were a licensee. AN APPLICATION FOR REGISTRATION MAY BE DENIED
3 ON A FINDING OF A CONDITION OR PRACTICE THAT WOULD CONSTITUTE A
4 VIOLATION OF THIS ARTICLE IF THE APPLICANT WERE A REGISTRANT.

5 (3) Denial, suspension, or revocation of an individual emer-
6 gency medical services personnel license under part 209 is gov-
7 erned by section 20958.

8 Sec. 20166. (1) Notice of intent to deny, limit, suspend,
9 or revoke a license, ~~or~~ certification, OR REGISTRATION shall be
10 given by certified mail or personal service, shall set forth the
11 particular reasons for the proposed action, and shall fix a date,
12 not less than 30 days after the date of service, on which the
13 applicant, ~~or~~ licensee, OR REGISTRANT shall be given the oppor-
14 tunity for a hearing before the director or the director's autho-
15 rized representative. The hearing shall be conducted in accord-
16 ance with the administrative procedures act of 1969 and rules
17 promulgated by the department. A full and complete record shall
18 be kept of the proceeding and shall be transcribed when requested
19 by an interested party, who shall pay the cost of preparing the
20 transcript.

21 (2) On the basis of a hearing or on the default of the
22 applicant, ~~or~~ licensee, OR REGISTRANT, the department may
23 issue, deny, limit, suspend, or revoke a license, ~~or~~
24 certification, OR REGISTRATION. A copy of the determination
25 shall be sent by certified mail or served personally upon the
26 applicant, ~~or~~ licensee, OR REGISTRANT. The determination
27 becomes final 30 days after it is mailed or served, unless the

1 applicant, ~~or~~ licensee, OR REGISTRANT within the 30 days
2 appeals the decision to the circuit court in the county of juris-
3 diction or to the Ingham county circuit court.

4 (3) The department may establish procedures, hold hearings,
5 administer oaths, issue subpoenas, or order testimony to be taken
6 at a hearing or by deposition in a proceeding pending at any
7 stage of the proceeding. A person may be compelled to appear and
8 testify and to produce books, papers, or documents in a
9 proceeding.

10 (4) In case of disobedience of a subpoena, a party to a
11 hearing may invoke the aid of the circuit court of the jurisdic-
12 tion in which the hearing is held to require the attendance and
13 testimony of witnesses. The circuit court may issue an order
14 requiring an individual to appear and give testimony. Failure to
15 obey the order of the circuit court may be punished by the court
16 as a contempt.

17 (5) The department shall not deny, limit, suspend, or revoke
18 a license on the basis of an applicant's or licensee's failure to
19 show a need for a health facility or agency unless the health
20 facility or agency has not obtained a certificate of need
21 required by part 222.

22 Sec. 20177. Notwithstanding the existence and pursuit of
23 any other remedy, the director, without posting a bond, may
24 request the prosecuting attorney or attorney general to bring an
25 action in the name of the people of this state to restrain,
26 enjoin, or prevent the establishment, maintenance, or operation

1 of a health facility or agency OR NURSING POOL in violation of
2 this article or rules promulgated under this article.

3 Sec. 20199. (1) Except as provided in subsection (2) OR (3)
4 or section 20142, a person who violates this article or a rule
5 promulgated or an order issued under this article is guilty of a
6 misdemeanor, punishable by A fine of not more than \$1,000.00 for
7 each day the violation continues or, in case of a violation of
8 sections 20551 to 20554, a fine of not more than \$1,000.00 for
9 each occurrence.

10 (2) A person who violates sections 20181 to 20184 is guilty
11 of a misdemeanor, punishable by imprisonment for not more than 6
12 months, or a fine of not more than \$2,000.00, or both.

13 (3) A PERSON WHO VIOLATES PART 219 OR A RULE PROMULGATED OR
14 AN ORDER ISSUED UNDER PART 219 IS GUILTY OF A MISDEMEANOR, PUN-
15 ISHABLE BY A FINE OF NOT MORE THAN \$5,000.00 FOR EACH DAY THE
16 VIOLATION CONTINUES.

17 PART 219. NURSING POOLS

18 SEC. 21901. (1) AS USED IN THIS PART:

19 (A) "NURSING PERSONNEL" MEANS REGISTERED PROFESSIONAL
20 NURSES, LICENSED PRACTICAL NURSES, AND NURSE AIDES.

21 (B) "NURSING POOL" MEANS A PERSON ENGAGED IN THE BUSINESS OF
22 PROVIDING OR PROCURING INDIVIDUALS TO BE EMPLOYED ON A TEMPORARY
23 BASIS IN A HEALTH FACILITY OR AGENCY AS NURSING PERSONNEL.

24 NURSING POOL DOES NOT INCLUDE ANY OF THE FOLLOWING:

25 (i) AN INDIVIDUAL WHO PROVIDES SERVICES ON A TEMPORARY BASIS
26 TO A HEALTH FACILITY ON HIS OR HER OWN AND NOT IN CONNECTION WITH
27 A NURSING POOL OR OTHER TYPE OF EMPLOYMENT AGENCY.

1 (ii) AN INDIVIDUAL WHO IS PERMANENTLY EMPLOYED BY A HEALTH
2 FACILITY OR AGENCY AND IS RESPONSIBLE FOR PERSONNEL DECISIONS.

3 (iii) A PERSON WHO PROVIDES PRIMARILY MANAGEMENT OR CONSULT-
4 ING SERVICES TO A HEALTH FACILITY OR AGENCY PURSUANT TO AN AGREE-
5 MENT UNDER WHICH THE PERSON IS PAID BY THE HEALTH FACILITY OR
6 AGENCY FOR ITS SERVICES AND THE PERSON PAYS ANY NURSING PERSONNEL
7 USED BY THE PERSON IN THE PROCESS OF PROVIDING THE MANAGEMENT OR
8 CONSULTING SERVICES.

9 (iv) A POOL OF NURSING PERSONNEL ESTABLISHED AND OPERATED BY
10 A HEALTH FACILITY OR AGENCY TO PROVIDE TEMPORARY SERVICES ONLY TO
11 THE HEALTH FACILITY OR AGENCY ON THE PREMISES OF THE HEALTH
12 FACILITY OR AGENCY.

13 (2) IN ADDITION, ARTICLE 1 CONTAINS GENERAL DEFINITIONS AND
14 PRINCIPLES OF CONSTRUCTION APPLICABLE TO ALL ARTICLES IN THIS
15 CODE AND PART 201 CONTAINS DEFINITIONS APPLICABLE TO THIS PART.

16 SEC. 21903. (1) A PERSON SHALL NOT ESTABLISH OR MAINTAIN
17 AND OPERATE A NURSING POOL UNLESS THE PERSON IS REGISTERED UNDER
18 THIS PART.

19 (2) A PERSON SHALL OBTAIN A SEPARATE CERTIFICATE OF REGIS-
20 TRATION FOR EACH BUSINESS LOCATION FROM WHICH A NURSING POOL IS
21 OPERATED INCLUDING A BUSINESS LOCATION OUTSIDE OF THIS STATE IF
22 THAT BUSINESS LOCATION PROVIDES NURSING POOL SERVICES IN THIS
23 STATE.

24 (3) A PERSON APPLYING FOR REGISTRATION UNDER THIS PART SHALL
25 APPLY ON A FORM PROVIDED BY THE DEPARTMENT THAT CONTAINS ALL OF
26 THE FOLLOWING INFORMATION:

1 (A) THE NAME AND ADDRESS OF EACH OWNER AND OPERATOR OF THE
2 NURSING POOL.

3 (B) IF THE APPLICANT IS A CORPORATION, A COPY OF ITS ARTI-
4 CLES OF INCORPORATION, A COPY OF ITS CURRENT BYLAWS, AND THE
5 NAMES AND ADDRESSES OF EACH OFFICER AND MEMBER OF THE BOARD OF
6 DIRECTORS OF THE CORPORATION AND EACH SHAREHOLDER OWNING MORE
7 THAN 5% OF THE CORPORATION'S STOCK.

8 (C) THE PROFESSIONAL QUALIFICATIONS OF THE INDIVIDUALS
9 RESPONSIBLE FOR THE OPERATION OF THE NURSING POOL.

10 (D) A DESCRIPTION OF THE SERVICES, FACILITIES, AND PERSONNEL
11 OF THE NURSING POOL.

12 (E) ANY OTHER INFORMATION CONSIDERED NECESSARY BY THE
13 DEPARTMENT.

14 (4) AN APPLICANT FOR REGISTRATION UNDER THIS PART SHALL
15 SUBMIT WITH THE APPLICATION FORM A REGISTRATION FEE OF \$100.00.

16 (5) UPON RECEIPT OF AN APPLICATION FORM, THE DEPARTMENT
17 SHALL REVIEW THE APPLICATION AND NOTIFY THE APPLICANT WITHIN 15
18 WORKING DAYS WHETHER THE APPLICATION IS COMPLETE, AND IF NOT,
19 WHAT ADDITIONAL INFORMATION IS REQUIRED TO BE SUBMITTED. WITHIN
20 30 DAYS AFTER THE APPLICATION IS CONSIDERED BY THE DEPARTMENT TO
21 BE COMPLETE, THE DEPARTMENT SHALL GRANT OR REFUSE TO GRANT A CER-
22 TIFICATE OF REGISTRATION TO THE APPLICANT.

23 (6) A CERTIFICATE OF REGISTRATION IS NOT TRANSFERABLE AND IS
24 VALID FOR A PERIOD OF NOT MORE THAN 1 YEAR FROM THE DATE OF ITS
25 ISSUANCE, UNLESS THE REGISTRATION IS REVOKED OR SUSPENDED PURSU-
26 ANT TO SECTION 20165. IF A NURSING POOL IS SOLD OR OWNERSHIP OR
27 MANAGEMENT IS OTHERWISE TRANSFERRED TO ANOTHER PERSON, THE

1 REGISTRATION OF THE NURSING POOL IS VOID AND THE PERSON TO WHOM
2 THE NURSING POOL WAS SOLD OR TO WHOM OWNERSHIP OR MANAGEMENT WAS
3 OTHERWISE TRANSFERRED SHALL APPLY FOR REGISTRATION UNDER THIS
4 PART.

5 SEC. 21905. (1) A NURSING POOL SHALL COMPLY WITH THE
6 REQUIREMENTS OF THIS ARTICLE AND THE RULES OF THE DEPARTMENT
7 RELATING TO THE HEALTH AND OTHER QUALIFICATIONS OF PERSONNEL
8 EMPLOYED IN HEALTH FACILITIES OR AGENCIES.

9 (2) A NURSING POOL SHALL DO ALL OF THE FOLLOWING:

10 (A) ASSURE THAT EACH TEMPORARY EMPLOYEE PROVIDED TO A HEALTH
11 FACILITY OR AGENCY CURRENTLY MEETS THE MINIMUM LICENSING, CERTI-
12 FICATION, TRAINING, AND CONTINUING EDUCATION STANDARDS FOR THE
13 POSITION IN WHICH THE EMPLOYEE WILL BE WORKING.

14 (B) ASSURE THAT EACH TEMPORARY EMPLOYEE PROVIDED TO A NURS-
15 ING HOME OR HOSPITAL LONG-TERM CARE UNIT TO FUNCTION AS A NURSE
16 AIDE HAS COMPLETED A STATE-APPROVED NURSE AIDE TRAINING PROGRAM
17 AND STATE ADMINISTERED COMPETENCY EVALUATION PROGRAM, IS REGIS-
18 TERED WITH THE STATE NURSE AIDE REGISTRY, AND HAS NO RECORD OF A
19 SUBSTANTIATED ACT OF PATIENT ABUSE IN THIS STATE.

20 (C) ASSURE THAT EACH TEMPORARY EMPLOYEE LICENSED UNDER ARTI-
21 CLE 15 AS A REGISTERED PROFESSIONAL NURSE OR A LICENSED PRACTICAL
22 NURSE PROVIDED TO A NURSING HOME OR HOSPITAL LONG-TERM CARE UNIT
23 HAS A VALID LICENSE AND IS A LICENSEE IN GOOD STANDING. A NURS-
24 ING POOL MAY COMPLY WITH THIS SUBDIVISION BY CONTACTING THE
25 DEPARTMENT OF LICENSING AND REGULATION FOR THE INFORMATION
26 REQUIRED UNDER THIS SUBDIVISION.

1 (D) ASSURE THAT EACH TEMPORARY EMPLOYEE RECEIVES AN
2 ORIENTATION TO A HEALTH FACILITY OR AGENCY BEFORE BEING PROVIDED
3 TO THE HEALTH FACILITY OR AGENCY.

4 (E) ASSURE THAT EACH TEMPORARY EMPLOYEE PROVIDED TO A HEALTH
5 FACILITY HAS EVIDENCE OF A CURRENT NEGATIVE TUBERCULIN SKIN TEST
6 OR CHEST X RAY.

7 (F) ASSURE THAT EACH TEMPORARY EMPLOYEE PROVIDED TO A HEALTH
8 FACILITY OR AGENCY PRESENTS APPROPRIATE PROOF OF COMPLIANCE WITH
9 SUBDIVISION (B) OR (C) TO THE HEALTH FACILITY OR AGENCY UPON
10 REPORTING FOR ASSIGNMENT.

11 (3) A NURSING POOL SHALL NOT:

12 (A) REQUIRE, AS A CONDITION OF EMPLOYMENT, THAT AN EMPLOYEE
13 OF THE NURSING POOL RECRUIT NEW EMPLOYEES FOR THE NURSING POOL
14 FROM AMONG INDIVIDUALS EMPLOYED AS PERMANENT EMPLOYEES BY THE
15 HEALTH FACILITY OR AGENCY TO WHICH THE NURSING POOL EMPLOYEE HAS
16 BEEN ASSIGNED.

17 (B) REQUIRE IN A CONTRACT WITH AN EMPLOYEE OR HEALTH FACIL-
18 ITY OR AGENCY THE PAYMENT OF LIQUIDATED DAMAGES, EMPLOYMENT FEES,
19 OR OTHER COMPENSATION PAYABLE TO THE NURSING POOL IF THE EMPLOYEE
20 IS HIRED AS A PERMANENT EMPLOYEE OF A HEALTH CARE FACILITY OR
21 AGENCY.

22 (C) RESTRICT EMPLOYMENT OPPORTUNITIES FOR EMPLOYEES OF THE
23 NURSING POOL IN ANY MANNER.

24 (4) A NURSING POOL SHALL ESTABLISH AND IMPLEMENT WRITTEN
25 POLICIES AND PROCEDURES THAT REQUIRE, AT A MINIMUM:

1 (A) THAT EACH TEMPORARY EMPLOYEE TO BE PROVIDED TO A HEALTH
2 FACILITY RECEIVES A PERSONAL INTERVIEW, REFERENCE CHECK, AND
3 ANNUAL EVALUATION.

4 (B) THAT A COMPLAINT RECEIVED BY THE NURSING POOL REGARDING
5 A TEMPORARY EMPLOYEE PROVIDED TO A HEALTH FACILITY OR AGENCY BY
6 THE NURSING POOL IS INVESTIGATED BY THE NURSING POOL, AND THAT A
7 RESPONSE IS PROVIDED TO THE COMPLAINANT WITHIN 10 DAYS AFTER
8 RECEIPT OF THE COMPLAINT.

9 SEC. 21907. (1) A NURSING POOL SHALL CARRY MEDICAL MALPRAC-
10 TICE INSURANCE, OR PROVIDE OTHER FINANCIAL SECURITY SUITABLE TO
11 THE DIRECTOR, TO ENSURE AGAINST LOSS, DAMAGE, OR EXPENSE INCIDENT
12 TO A CLAIM ARISING OUT OF THE DEATH OR INJURY OF AN INDIVIDUAL AS
13 A RESULT OF NEGLIGENCE OR MALPRACTICE IN PROVIDING HEALTH SERV-
14 ICES BY THE NURSING POOL OR ITS EMPLOYEES, AND PROVIDE PROOF OF
15 THE MEDICAL MALPRACTICE INSURANCE OR OTHER FINANCIAL SECURITY TO
16 ANY PERSON TO WHOM NURSING POOL SERVICES ARE SUPPLIED.

17 (2) A NURSING POOL THAT DOES NOT PROVIDE ITS OWN EMPLOYEES
18 TO HEALTH FACILITIES OR AGENCIES AND REFERS ONLY SELF-EMPLOYED,
19 INDEPENDENT CONTRACTORS TO HEALTH FACILITIES OR AGENCIES SHALL
20 CARRY PROFESSIONAL AND GENERAL LIABILITY INSURANCE TO COVER ITS
21 OWN LIABILITY AS A NURSING POOL, AND SHALL REQUIRE THAT
22 SELF-EMPLOYED, INDEPENDENT CONTRACTORS REFERRED BY THE NURSING
23 POOL CARRY PROFESSIONAL AND GENERAL LIABILITY INSURANCE TO INSURE
24 AGAINST LOSS OR DAMAGE RESULTING FROM THEIR OWN ACTS COMMITTED IN
25 THE COURSE OF THEIR SERVICE AT A HEALTH FACILITY OR AGENCY.

26 SEC. 21909. (1) THE DEPARTMENT SHALL PROMULGATE AND ENFORCE
27 RULES TO IMPLEMENT THIS PART AND TO PROTECT THE HEALTH, SAFETY,

1 AND WELFARE OF PATIENTS. AT A MINIMUM, THE RULES SHALL ESTABLISH
2 ALL OF THE FOLLOWING:

3 (A) STANDARDS FOR THE EMPLOYMENT OF COMPETENT AND QUALIFIED
4 NURSING PERSONNEL BY NURSING POOLS.

5 (B) PROCEDURES RELATING TO THE REGISTRATION AND OPERATION OF
6 NURSING POOLS INCLUDING, BUT NOT LIMITED TO, PROCEDURES FOR THE
7 RENEWAL OF REGISTRATION.

8 (2) EACH NURSING POOL BIENNIALY SHALL SUBMIT TO THE DEPART-
9 MENT ON A FORM PROVIDED BY THE DEPARTMENT THE AVERAGE, MINIMUM,
10 AND MAXIMUM HOURLY CHARGES TO NURSING HOMES AND HOSPITAL
11 LONG-TERM CARE UNITS FOR REGISTERED PROFESSIONAL NURSES, LICENSED
12 PRACTICAL NURSES, AND NURSE AIDES SUPPLIED BY THE NURSING POOL.
13 THE DEPARTMENT SHALL COMPILE THIS INFORMATION AND MAKE IT AVAIL-
14 ABLE TO THE PUBLIC.