

HOUSE BILL No. 5320

November 6, 1991, Introduced by Rep. Harder and referred to the Committee on Public Health.

A bill to amend sections 21771 and 21799c of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," being sections 333.21771 and 333.21799c of the Michigan Compiled Laws; and to add section 21799f.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 21771 and 21799c of Act No. 368 of the
2 Public Acts of 1978, being sections 333.21771 and 333.21799c of
3 the Michigan Compiled Laws, are amended and section 21799f is
4 added to read as follows:

5 Sec. 21771. (1) A licensee, nursing home administrator, or
6 employee of a nursing home shall not physically, mentally, or
7 emotionally abuse, mistreat, or harmfully neglect a patient.

1 (2) A nursing home employee who becomes aware of an act
2 prohibited by this section immediately shall report the matter to
3 the nursing home administrator or nursing director. ~~A~~

4 (3) A LICENSEE SHALL INFORM ALL NURSING HOME PERSONNEL OF
5 THEIR OBLIGATIONS UNDER THIS SECTION.

6 (4) A LICENSEE, nursing home administrator, or nursing
7 director who becomes aware of an act prohibited by this section
8 immediately shall report the matter by telephone to the depart-
9 ment of public health, which in turn shall notify the department
10 of social services. THE LICENSEE, NURSING HOME ADMINISTRATOR,
11 AND NURSING DIRECTOR SHALL TAKE AFFIRMATIVE STEPS TO PREVENT SIM-
12 ILAR OCCURRENCES.

13 (5) ~~(3)~~ Any person may report a violation of this section
14 to the department.

15 (6) ~~(4)~~ A physician or other licensed health care person-
16 nel of a hospital or other health care facility to which a
17 patient is transferred who becomes aware of an act prohibited by
18 this section shall report the act to the department.

19 (7) ~~(5)~~ Upon receipt of a report made under this section,
20 the department shall make an investigation. The department may
21 require the person making the report to submit a written report
22 or to supply additional information, or both.

23 (8) ~~(6)~~ A licensee, ~~or~~ nursing home administrator, OR
24 NURSING DIRECTOR shall not evict, harass, dismiss, or retaliate
25 against a patient, a patient's representative, or an employee who
26 makes a report under this section.

1 (9) A LICENSEE, NURSING HOME ADMINISTRATOR, OR NURSING
 2 DIRECTOR WHO IN GOOD FAITH COMPLIES WITH THIS SECTION AND HAS NOT
 3 AFFIRMATIVELY ACTED TO CAUSE PHYSICAL, MENTAL, OR EMOTIONAL HARM
 4 TO A PATIENT IS IMMUNE FROM CRIMINAL LIABILITY THAT MIGHT OTHER-
 5 WISE BE INCURRED FOR THAT HARM.

6 Sec. 21799c. (1) ~~A~~ EXCEPT AS OTHERWISE PROVIDED IN SEC-
 7 TION 21771 (9), A person who violates 1 OR MORE OF the following
 8 sections is guilty of a misdemeanor, punishable by imprisonment
 9 for not more than 1 year, or a fine of not less than \$1,000.00 ~~7~~
 10 ~~nor~~ OR more than ~~\$10,000.00~~ \$50,000.00, or both:

11 (a) Section 21711.

12 (b) Section 21712.

13 (c) Section 21771(1), ~~or (6)~~ (4), OR (8).

14 (d) Section 21791.

15 (2) EXCEPT AS OTHERWISE PROVIDED IN SECTION 21771(9), A
 16 PERSON WHO VIOLATES SECTION 21771(3) IS GUILTY OF A MISDEMEANOR,
 17 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR, OR A FINE OF
 18 NOT LESS THAN \$1,000.00 OR MORE THAN \$10,000.00, OR BOTH.

19 (3) ~~(2)~~ For the purpose of computing civil penalties under
 20 this section, the number of patients per day shall be based on
 21 the ~~average number of patients in~~ LICENSED CAPACITY OF the
 22 nursing home ~~during the 30 days preceding~~ AT THE TIME OF the
 23 discovery of the violation.

24 (4) ~~(3) When~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION
 25 (6), IF the department finds a violation of section 20201 as to a
 26 particular nursing home patient, the department shall issue an
 27 order requiring the nursing home to pay to the patient \$100.00,

1 or to reimburse the patient for costs incurred or injuries
 2 sustained, whichever is greater. ~~and~~ IN ADDITION, the nurs-
 3 ing home shall be assessed a civil penalty, not to exceed
 4 \$1,500.00, or \$15.00 per patient bed, whichever is ~~lesser~~
 5 LESS.

6 (5) ~~(4)~~ The department of social services, with the advice
 7 of the department of public health, shall promulgate rules for a
 8 quality of care allowance formula ~~which~~ THAT is consistent with
 9 the recommendations of the ~~fiscal incentives subcommittee to the~~
 10 ~~committee on nursing home reimbursement established pursuant to~~
 11 ~~Act No. 241 of the Public Acts of 1975, as described in the~~
 12 ~~November 24, 1975 interim report, in the December 3, 1975 final~~
 13 ~~report, and the November 24, 1976 report of the committee recom-~~
 14 ~~mending appropriate changes in the procedures utilized~~ NURSING
 15 HOME REIMBURSEMENT TASK FORCE ESTABLISHED PURSUANT TO SECTION 48
 16 (4) OF ACT NO. 257 OF THE PUBLIC ACTS OF 1982, AS DESCRIBED IN
 17 THE APRIL, 1984 FINAL REPORT OF THE NURSING HOME REIMBURSEMENT
 18 TASK FORCE. THE RULES REQUIRED BY THIS SUBSECTION SHALL BE SUB-
 19 MITTED NO LATER THAN JANUARY 1, 1992 FOR PUBLIC HEARING UNDER THE
 20 ADMINISTRATIVE PROCEDURES ACT OF 1969.

21 (6) ~~(5)~~ A civil penalty shall not be assessed under sub-
 22 section ~~(3)~~ (4) for a violation of this part for which a nurs-
 23 ing home's reimbursement is withheld PURSUANT TO A RULE
 24 PROMULGATED under subsection ~~(4)~~ (5).

25 SEC. 21799F. (1) THE ATTORNEY GENERAL OR A PROSECUTING
 26 ATTORNEY HAVING JURISDICTION MAY CONDUCT AN INVESTIGATION OF AN
 27 ALLEGED VIOLATION OF SECTION 21711, 21712, 21771, OR 21791.

1 (2) IF THE ATTORNEY GENERAL OR A PROSECUTING ATTORNEY HAVING
2 JURISDICTION HAS REASONABLE CAUSE TO BELIEVE THAT A PERSON HAS
3 INFORMATION OR IS IN POSSESSION, CUSTODY, OR CONTROL OF ANY DOCU-
4 MENT OR OTHER TANGIBLE OBJECT RELEVANT TO AN INVESTIGATION FOR
5 VIOLATION OF A SECTION LISTED IN SUBSECTION (1), THE ATTORNEY
6 GENERAL, OR PROSECUTING ATTORNEY AFTER NOTIFYING THE ATTORNEY
7 GENERAL, MAY SERVE UPON THE PERSON, BEFORE BRINGING ANY CRIMINAL
8 ACTION, A WRITTEN DEMAND TO APPEAR AND BE EXAMINED UNDER OATH,
9 AND TO PRODUCE THE DOCUMENT OR OBJECT FOR INSPECTION AND
10 COPYING. THE DEMAND SHALL MEET ALL OF THE FOLLOWING:

11 (A) BE SERVED UPON THE PERSON IN THE MANNER REQUIRED FOR
12 SERVICE OF PROCESS IN THIS STATE.

13 (B) DESCRIBE THE NATURE OF THE CONDUCT CONSTITUTING THE VIO-
14 LATION UNDER INVESTIGATION.

15 (C) DESCRIBE THE DOCUMENT OR OBJECT WITH SUFFICIENT DEFINI-
16 TENESS TO PERMIT IT TO BE FAIRLY IDENTIFIED.

17 (D) CONTAIN A COPY OF ANY WRITTEN INTERROGATORIES.

18 (E) PRESCRIBE A REASONABLE TIME AT WHICH THE PERSON MUST
19 APPEAR TO TESTIFY, WITHIN WHICH TO ANSWER THE WRITTEN INTERROGA-
20 TORIES, AND WITHIN WHICH THE DOCUMENT OR OBJECT MUST BE PRODUCED,
21 AND ADVISE THE PERSON THAT OBJECTIONS TO OR REASONS FOR NOT COM-
22 PLYING WITH THE DEMAND MAY BE FILED WITH THE ATTORNEY GENERAL OR
23 PROSECUTING ATTORNEY MAKING THE DEMAND, ON OR BEFORE THAT TIME.

24 (F) SPECIFY A PLACE FOR THE TAKING OF TESTIMONY OR FOR PRO-
25 Duction OF THE DOCUMENT OR OBJECT, AND DESIGNATE THE PERSON WHO
26 SHALL BE CUSTODIAN OF THE DOCUMENT OR OBJECT.

1 (G) CONTAIN A NOTICE DESCRIBING THE PROCEEDINGS POSSIBLE
2 UNDER SUBSECTION (3).

3 (3) IF A PERSON OBJECTS TO OR OTHERWISE FAILS TO COMPLY WITH
4 THE WRITTEN DEMAND SERVED UPON HIM OR HER UNDER SUBSECTION (2),
5 THE ATTORNEY GENERAL, OR A PROSECUTING ATTORNEY HAVING JURISDIC-
6 TION AFTER NOTIFYING OR AT THE REQUEST OF THE ATTORNEY GENERAL,
7 MAY FILE AN ACTION TO ENFORCE THE DEMAND IN THE CIRCUIT COURT OF
8 THE COUNTY IN WHICH THE PERSON RESIDES OR IN WHICH THE PERSON
9 MAINTAINS A PRINCIPAL PLACE OF BUSINESS WITHIN THIS STATE. A
10 NOTICE OF HEARING AND A COPY OF ALL PLEADINGS SHALL BE SERVED
11 UPON THE PERSON, WHO MAY APPEAR IN OPPOSITION. IF THE COURT
12 FINDS THAT THE DEMAND IS PROPER, THAT THERE IS REASONABLE CAUSE
13 TO BELIEVE THAT THERE MAY HAVE BEEN OR IS PRESENTLY OCCURRING A
14 VIOLATION OF A SECTION LISTED IN SUBSECTION (1), AND THAT THE
15 INFORMATION SOUGHT OR DOCUMENT OR OBJECT DEMANDED IS RELEVANT TO
16 THE INVESTIGATION, THE COURT SHALL ORDER THE PERSON TO COMPLY
17 WITH THE DEMAND. THE DEMAND IS SUBJECT TO MODIFICATION BY THE
18 COURT. UPON MOTION BY THE PERSON AND FOR GOOD CAUSE SHOWN, THE
19 COURT MAY MAKE ANY FURTHER ORDER IN THE PROCEEDINGS THAT JUSTICE
20 REQUIRES TO PROTECT THE PERSON FROM UNREASONABLE ANNOYANCE,
21 EMBARRASSMENT, OPPRESSION, BURDEN, OR EXPENSE.

22 (4) EXCEPT AS REQUIRED BY FEDERAL LAW, ANY PROCEDURE, TESTI-
23 MONY TAKEN, OR MATERIAL PRODUCED SHALL BE KEPT CONFIDENTIAL BY
24 THE ATTORNEY GENERAL OR A PROSECUTING ATTORNEY BEFORE BRINGING AN
25 ACTION AGAINST A PERSON FOR THE VIOLATION UNDER INVESTIGATION,
26 UNLESS CONFIDENTIALITY IS WAIVED BY BOTH THE PERSON BEING
27 INVESTIGATED AND THE PERSON WHO HAS TESTIFIED, ANSWERED

1 INTERROGATORIES, OR PRODUCED MATERIAL, OR UNLESS DISCLOSURE IS
2 AUTHORIZED BY THE COURT.

3 (5) FOR PURPOSES OF ENFORCING THIS SECTION, THE ATTORNEY
4 GENERAL MAY APPOINT CERTIFIED PEACE OFFICERS AS INVESTIGATORS.
5 THE INVESTIGATORS' DUTIES INCLUDE, BUT ARE NOT LIMITED TO, THE
6 FOLLOWING:

7 (A) THE EXECUTION AND SERVICE OF SEARCH WARRANTS, ARREST
8 WARRANTS, SUBPOENAS, ADMINISTRATIVE WARRANTS, AND SUMMONSES
9 ISSUED UNDER THE AUTHORITY OF THE STATE.

10 (B) THE SEIZURE OF PROPERTY UNDER THE LAWS OF THIS STATE.

11 (6) INVESTIGATORS APPOINTED BY THE ATTORNEY GENERAL MAY
12 EXERCISE THE POWERS PROVIDED IN SUBSECTION (5) IN CONJUNCTION
13 WITH LOCAL LAW ENFORCEMENT AGENCIES OR THE DEPARTMENT OF STATE
14 POLICE.