



# HOUSE BILL No. 4261

February 17, 1993, Introduced by Reps. Baade, Rivers, Dobronski, Wallace, DeMars, Stallworth, Points, Gubow, Yokich, Gire, Anthony, Byrum, Ciaramitaro, Pitoniak and Joe Young, Jr. and referred to the Committee on Human Services and Children.

A bill to amend sections 21702, 21766, 21775, and 21799c of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," being sections 333.21702, 333.21766, 333.21775, and 333.21799c of the Michigan Compiled Laws; and to add section 21765a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 21702, 21766, 21775, and 21799c of Act  
2 No. 368 of the Public Acts of 1978, being sections 333.21702,  
3 333.21766, 333.21775, and 333.21799c of the Michigan Compiled  
4 Laws, are amended and section 21765a is added to read as  
5 follows:

6 Sec. 21702. (1) "Discharge" means the voluntary or invol-  
7 untary movement of a patient out of a nursing home regardless of  
8 the individual's destination or reason for the movement.

1       (2) "Full-time" means being usually present in the nursing  
2 home or conducting or participating in activities directly  
3 related to the nursing home during the normal 40-hour business  
4 week.

5       (3) "Involuntary transfer" means a transfer not agreed to in  
6 writing by the patient or, in the case of a plenary guardianship,  
7 by the patient's legal guardian.

8       (4) "MEDICAID" MEANS THE PROGRAM FOR MEDICAL ASSISTANCE  
9 ESTABLISHED UNDER TITLE XIX OF THE SOCIAL SECURITY ACT, CHAPTER  
10 531, 49 STAT. 620, 42 U.S.C. 1396 TO 1396f, AND 1396i TO 1396u,  
11 AND ADMINISTERED BY THE DEPARTMENT OF SOCIAL SERVICES UNDER THE  
12 SOCIAL WELFARE ACT, ACT NO. 280 OF THE PUBLIC ACTS OF 1939, BEING  
13 SECTIONS 400.1 TO 400.119B OF THE MICHIGAN COMPILED LAWS.

14       (5) ~~-(4)-~~ "Medical reasons" means a medical justification  
15 for either of the following:

16       (a) The transfer or discharge of a patient in accord with  
17 the written orders of the attending physician ~~-which-~~ THAT is  
18 written into the patient's clinical record by the physician in  
19 the progress notes.

20       (b) The transfer or discharge of a patient who is a medicaid  
21 recipient due to a change in level of care required by the  
22 patient and the fact that the nursing home or nursing care facil-  
23 ity is not certified to provide the needed level of care.

24       (6) "MEDICARE" MEANS THAT TERM AS DEFINED IN SECTION 2701.

25       (7) ~~-(5)-~~ "Modification of a license" means an action by the  
26 department to alter the number of beds, the levels of care, the  
27 portions of the physical plant ~~-which-~~ THAT may be operated or

1 maintained by a licensee in a particular nursing home, or to  
2 restrict the nursing home from engaging in activity ~~violative~~  
3 ~~of~~ THAT VIOLATES this ~~act~~ ARTICLE or a rule promulgated under  
4 this ~~act~~ ARTICLE.

5 (8) ~~(6)~~ "Negative case action" means an action taken by  
6 the department of social services to deny an application for med-  
7 ical assistance, cancel medical assistance, or reduce medical  
8 assistance coverage.

9 (9) ~~(7)~~ "Nonpayment" means:

10 (a) ~~With respect to a nonmedicaid patient, failure~~ FAILURE  
11 to collect from the patient or any other source the full amount  
12 of the facility charges to ~~the~~ A NONMEDICAID patient ~~agreed~~  
13 ~~upon in writing at admission or subsequently~~ BASED ON A WRITTEN  
14 AGREEMENT SIGNED ON OR AFTER THAT PATIENT'S ADMISSION TO THE  
15 FACILITY.

16 (b) ~~With respect to a medicaid patient, failure~~ FAILURE to  
17 collect ~~the~~ A MEDICAID patient's stipulated contribution toward  
18 his or her care.

19 (10) "PRIVATE PAY RATE" MEANS THE AMOUNT CHARGED BY A NURS-  
20 ING HOME FOR THE CARE OF A PATIENT WHO IS NOT ENTITLED TO STATE  
21 OR FEDERAL BENEFITS FOR THAT PATIENT'S NURSING HOME CARE.

22 SEC. 21765A. (1) A NURSING HOME SHALL NOT REQUIRE AN APPLI-  
23 CANT, AS A CONDITION OF ADMISSION, TO WAIVE HIS OR HER RIGHT TO  
24 BENEFITS UNDER MEDICARE OR MEDICAID, TO GIVE ORAL OR WRITTEN  
25 ASSURANCE THAT THE APPLICANT IS NOT ELIGIBLE FOR MEDICARE OR  
26 MEDICAID, OR TO GIVE ORAL OR WRITTEN ASSURANCE THAT THE APPLICANT  
27 WILL NOT APPLY FOR BENEFITS UNDER MEDICARE OR MEDICAID.

1 (2) A NURSING HOME SHALL NOT REQUIRE ANY OF THE FOLLOWING AS  
2 A CONDITION OF AN APPLICANT'S ADMISSION OR A PATIENT'S CONTINUED  
3 RESIDENCY AT THAT NURSING HOME:

4 (A) THAT AN APPLICANT OR PATIENT REMAIN A PRIVATE PAY  
5 PATIENT FOR A SPECIFIED PERIOD OF TIME BEFORE APPLYING FOR  
6 MEDICAID.

7 (B) THAT A PERSON PAY ON BEHALF OF AN APPLICANT OR PATIENT  
8 THE PRIVATE PAY RATE FOR A SPECIFIED PERIOD OF TIME BEFORE THE  
9 APPLICANT OR PATIENT APPLIES FOR MEDICAID.

10 (C) THAT AN APPLICANT, PATIENT, OR OTHER PERSON MAKE A GIFT  
11 OR DONATION ON BEHALF OF THAT APPLICANT OR PATIENT.

12 (3) AS OF THE EFFECTIVE DATE OF THIS SECTION, A CONTRACT  
13 PROVISION OR AGREEMENT IN CONFLICT WITH SUBSECTION (1) OR (2),  
14 WHETHER MADE BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS SEC-  
15 TION, IS UNENFORCEABLE.

16 (4) NOT LATER THAN 30 DAYS AFTER THE EFFECTIVE DATE OF THIS  
17 SECTION, A NURSING HOME THAT PARTICIPATES IN MEDICAID SHALL PRO-  
18 VIDE WRITTEN NOTICE TO EACH PRIVATE PAY PATIENT SUBJECT TO A CON-  
19 TRACT PROVISION OR AGREEMENT IN CONFLICT WITH SUBSECTION (1) OR  
20 (2) THAT THE CONTRACT PROVISION OR AGREEMENT IS NO LONGER A BAR  
21 TO THE PATIENT APPLYING FOR MEDICAID.

22 Sec. 21766. (1) A NURSING HOME SHALL EXECUTE A written con-  
23 tract ~~shall be executed before~~ SOLELY WITH AN APPLICANT OR  
24 PATIENT OR THAT APPLICANT'S OR PATIENT'S GUARDIAN, AT EACH OF THE  
25 FOLLOWING TIMES:

26 (A) BEFORE the time ~~a person~~ AN INDIVIDUAL is admitted to  
27 a nursing home. ~~at~~

1 (B) AT the expiration of the term of a previous contract.

2 ~~, or at~~

3 (C) AT the time the source of payment for the patient's care  
4 changes.

5 (2) A ~~patient shall not be discharged or transferred~~

6 NURSING HOME SHALL NOT DISCHARGE OR TRANSFER A PATIENT at the  
7 expiration of the term of a contract, except as provided in sec-  
8 tion 21773.

9 ~~(2) The contract shall be executed between the person seek-~~  
10 ~~ing admission or the person's guardian and the nursing home.~~

11 (3) A NURSING HOME SHALL PROVIDE A copy of the contract  
12 ~~shall be given~~ to the patient, ~~or to~~ the patient's  
13 representative, or THE PATIENT'S legal guardian at the time ~~of~~  
14 ~~the patient's admission to the nursing home~~ THE CONTRACT IS  
15 EXECUTED.

16 (4) ~~A copy of the contract for~~ FOR a patient supported by  
17 funds other than the patient's own funds, A NURSING HOME shall  
18 ~~be made~~ MAKE A COPY OF THE CONTRACT available to the person  
19 providing the funds for the patient's support.

20 (5) ~~A copy of the contract for~~ FOR a patient whose care is  
21 reimbursed with public funds administered by the department of  
22 social services, A NURSING HOME SHALL MAINTAIN A COPY OF THE CON-  
23 TRACT IN THE PATIENT'S FILE AT THE NURSING HOME AND UPON REQUEST  
24 ~~shall be given~~ MAKE A COPY OF THE CONTRACT AVAILABLE to the  
25 department of social services.

26 (6) The NURSING HOME SHALL ENSURE THAT THE contract ~~shall~~  
27 ~~be~~ IS written in clear and unambiguous language and ~~shall be~~

1 IS printed in not less than 12-point type. The form of the  
2 contract shall be prescribed by the department.

3 (7) The contract shall specify ALL OF THE FOLLOWING:

4 (a) The term of the contract.

5 (b) The services to be provided under the contract and the  
6 charges for the services.

7 (c) The services that may be provided to supplement the con-  
8 tract and the charges for the services.

9 (d) The sources liable for payments due under the contract.

10 (e) The amount of deposit paid AND THE GENERAL AND FORESEE-  
11 ABLE TERMS UPON WHICH THE DEPOSIT WILL BE HELD AND REFUNDED.

12 (f) The rights, duties, and obligations of the patient,  
13 except that the specification of a patient's rights may be fur-  
14 nished on a separate document ~~which~~ THAT complies with the  
15 requirements of section 20201.

16 (8) THE NURSING HOME MAY REQUIRE AN INDIVIDUAL WHO HAS LEGAL  
17 ACCESS TO A PATIENT'S INCOME OR RESOURCES AVAILABLE TO PAY FOR  
18 NURSING HOME CARE TO SIGN A CONTRACT, WITHOUT INCURRING PERSONAL  
19 FINANCIAL LIABILITY, TO PROVIDE NURSING HOME PAYMENT FROM THE  
20 PATIENT'S INCOME OR RESOURCES.

21 (9) A NURSING HOME EMPLOYEE MAY REQUEST THE APPOINTMENT OF A  
22 GUARDIAN FOR AN INDIVIDUAL APPLICANT OR PATIENT ONLY IF THE NURS-  
23 ING HOME EMPLOYEE REASONABLY BELIEVES THAT THE INDIVIDUAL MEETS  
24 THE LEGAL REQUIREMENTS FOR THE APPOINTMENT OF A GUARDIAN.

25 Sec. 21775. The department of social services shall con-  
26 tinue medicaid funding during the appeal, transfer, or discharge

1 period as provided in section 21774 for those ~~title 19~~ MEDICAID  
2 patients affected by section 21773.

3       Sec. 21799c. (1) A person who violates the following sec-  
4 tions is guilty of a misdemeanor, punishable by imprisonment for  
5 not more than 1 year or a fine of not less than \$1,000.00, nor  
6 more than \$10,000.00, or both:

7       (a) Section 21711.

8       (b) Section 21712.

9       (c) SECTION 21765A(1) OR (2).

10       (D) ~~(c)~~ Section 21771(1) or (6).

11       (E) ~~(d)~~ Section 21791.

12       (2) A PERSON WHO VIOLATES SECTION 21765A(1) OR (2) IS LIABLE  
13 TO AN APPLICANT OR PATIENT IN A CIVIL ACTION FOR TREBLE THE  
14 AMOUNT OF ACTUAL DAMAGES OR \$1,000.00, WHICHEVER IS GREATER,  
15 TOGETHER WITH COSTS AND REASONABLE ATTORNEY FEES.

16       (3) ~~(2)~~ For the purpose of computing civil penalties under  
17 this section, the number of patients per day ~~shall be~~ IS based  
18 on the average number of patients in the nursing home during the  
19 30 days preceding the discovery of the violation.

20       (4) ~~(3) When~~ IF the department finds a violation of sec-  
21 tion 20201 as to a particular nursing home patient, the depart-  
22 ment shall issue an order requiring the nursing home to pay to  
23 the patient \$100.00, or to reimburse the patient for costs  
24 incurred or injuries sustained, whichever is greater, and the  
25 DEPARTMENT SHALL ASSESS THE nursing home ~~shall be assessed~~ a  
26 civil penalty ~~not to exceed~~ THAT IS THE LESSER OF THE  
27 FOLLOWING:

1 (A) NOT MORE THAN \$1,500.00. ~~, or~~

2 (B) \$15.00 per patient bed. ~~, whichever is lesser.~~

3 (5) ~~(4)~~ The department of social services, with the advice  
4 of the department of public health, shall promulgate rules for a  
5 quality of care allowance formula ~~which~~ THAT is consistent with  
6 the recommendations of the fiscal incentives subcommittee to the  
7 committee on nursing home reimbursement established pursuant to  
8 Act No. 241 of the Public Acts of 1975, as described in the  
9 November 24, 1975 interim report, in the December 3, 1975 final  
10 report, and the November 24, 1976 report of the committee recom-  
11 mending appropriate changes in the procedures utilized.

12 (6) ~~(5) A~~ THE DEPARTMENT SHALL NOT ASSESS A civil penalty  
13 ~~shall not be assessed~~ under subsection ~~(3)~~ (4) for a viola-  
14 tion of this part for which a nursing home's reimbursement is  
15 withheld under subsection ~~(4)~~ (5).