



HOUSE BILL No. 4404

March 2, 1993, Introduced by Reps. Owen, Jondahl, Barns, Pitoniak and Harder and referred to the Committee on Judiciary.

A bill to amend Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," as amended, being sections 333.1101 to 333.25211 of the Michigan Compiled Laws, by adding sections 20204, 21581, 21582, 21583, and 21584.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 368 of the Public Acts of 1978, as
2 amended, being sections 333.1101 to 333.25211 of the Michigan
3 Compiled Laws, is amended by adding sections 20204, 21581, 21582,
4 21583, and 21584 to read as follows:

5 SEC. 20204. (1) NOTWITHSTANDING CONTRARY STATUTES OR COMMON
6 LAW OF THIS STATE, BEGINNING ON THE EFFECTIVE DATE OF THE
7 AMENDATORY ACT THAT ADDED THIS SECTION, A LICENSED HEALTH
8 FACILITY OR AGENCY IS LIABLE FOR ANY INJURY OR DEATH OCCASIONED

1 BY THE FAILURE TO EXERCISE ORDINARY CARE, THE NEGLIGENCE, THE
2 MALPRACTICE, OR THE PROFESSIONAL NEGLIGENCE OF A PHYSICIAN; A
3 NURSE; A RESIDENT; AN INTERN; LABORATORY, TECHNICAL, AND SUPPORT
4 PERSONNEL; DIAGNOSTIC AND TREATMENT PERSONNEL; AND ALL OTHER
5 HEALTH CARE PROVIDERS DIRECTLY OR INDIRECTLY PROVIDING HEALTH
6 CARE AT THE HEALTH FACILITY OR AGENCY.

7 (2) A HEALTH FACILITY OR AGENCY SHALL ESTABLISH A MEANS OF
8 DETERMINING CLAIMS FOR CONTRIBUTION OR INDEMNIFICATION THAT
9 RESULT FROM AN ACT OR OMISSION OF A PHYSICIAN; A NURSE; A RESI-
10 DENT; AN INTERN; LABORATORY, TECHNICAL, AND SUPPORT PERSONNEL;
11 DIAGNOSTIC AND TREATMENT PERSONNEL; OR ANOTHER HEALTH CARE PRO-
12 VIDER DIRECTLY OR INDIRECTLY PROVIDING HEALTH CARE AT THE HEALTH
13 FACILITY OR AGENCY BY DOING 1 OR MORE OF THE FOLLOWING:

14 (A) INDEMNIFYING THE HEALTH CARE PERSONNEL DESCRIBED IN THIS
15 SECTION.

16 (B) ENTERING INTO CONTRACTS TO ESTABLISH A BINDING ARBITRA-
17 TION PROCESS TO SETTLE LIABILITY DISPUTES BETWEEN THE HEALTH
18 FACILITY OR AGENCY AND THE HEALTH CARE PERSONNEL DESCRIBED IN
19 THIS SECTION.

20 (C) ENTERING INTO CONTRACTS TO AGREE TO A CERTAIN METHOD OF
21 APPORTIONING LIABILITY BETWEEN THE HEALTH FACILITY OR AGENCY AND
22 THE HEALTH CARE PERSONNEL DESCRIBED IN THIS SECTION WHICH SHALL
23 BE BINDING ON ALL PARTIES IN THE EVENT THAT AN ACT OR OMISSION BY
24 THE HEALTH CARE PERSONNEL DESCRIBED IN THIS SECTION RESULTS IN
25 THE NECESSITY FOR PAYMENT OF DAMAGES FOR AN INJURY RESULTING FROM
26 FAILURE TO EXERCISE ORDINARY CARE, NEGLIGENCE, MALPRACTICE, OR
27 PROFESSIONAL NEGLIGENCE.

1 (3) THE METHODS PRESCRIBED IN SUBSECTION (2) ARE THE SOLE
2 REMEDIES THAT A HEALTH FACILITY OR AGENCY MAY EMPLOY AGAINST THE
3 HEALTH CARE PERSONNEL DESCRIBED IN THIS SECTION AS A MEANS OF
4 APPORTIONING LIABILITY FOR FAILURE TO EXERCISE DUE CARE, NEGLIGENCE,
5 MALPRACTICE, OR PROFESSIONAL NEGLIGENCE AND COLLECTING
6 PROPORTIONATE SHARES OF DAMAGES FOR THAT LIABILITY.

7 SEC. 21581. (1) BEGINNING WITH STATE FISCAL YEAR 1993-94
8 AND IN EACH FOLLOWING STATE FISCAL YEAR, EACH HOSPITAL SHALL HAVE
9 AN INDEPENDENT FINANCIAL AUDIT PERFORMED BY A CERTIFIED PUBLIC
10 ACCOUNTANT. THE HOSPITAL SHALL SUBMIT THE RESULTS OF THE AUDIT
11 TO EACH OF THE FOLLOWING WITHIN 30 DAYS AFTER THE AUDIT IS
12 COMPLETED:

13 (A) THE DEPARTMENT.

14 (B) IF THE HOSPITAL HAS PROFESSIONAL LIABILITY COVERAGE
15 THROUGH EITHER SELF-INSURANCE OR A RISK RETENTION PLAN, THE COM-
16 MISSIONER OF INSURANCE.

17 (2) A HOSPITAL MAY USE AN INDEPENDENT FINANCIAL AUDIT PRE-
18 PARED FOR CERTIFICATION OR ACCREDITATION PURPOSES TO COMPLY WITH
19 SUBSECTION (1), IF THE AUDIT MEETS ALL OF THE REQUIREMENTS OF
20 SUBSECTION (1).

21 SEC. 21582. (1) THE DEPARTMENT SHALL CONTRACT WITH AN INDE-
22 PENDENT AUDITOR FOR PURPOSES OF THIS SECTION. THE CONTRACT SHALL
23 REQUIRE THE AUDITOR TO ANNUALLY AUDIT EACH HOSPITAL TO DETERMINE
24 IF PROCEDURES HAVE BEEN PERFORMED IN THE HOSPITAL THAT ARE OUT-
25 SIDE THE SCOPE OF THE HOSPITAL'S LICENSE.

26 (2) IN ADDITION TO THE SANCTIONS AVAILABLE UNDER
27 SECTION 20165, IF AN AUDIT PERFORMED UNDER SUBSECTION (1)

1 INDICATES THAT A PROCEDURE OUTSIDE THE SCOPE OF A HOSPITAL'S
2 LICENSE HAS BEEN PERFORMED IN THE HOSPITAL, THE DEPARTMENT MAY
3 ISSUE A CEASE AND DESIST ORDER FOR THAT PROCEDURE AND, AFTER
4 NOTICE AND AN OPPORTUNITY FOR A HEARING, MAY IMPOSE AN ADMINIS-
5 TRATIVE FINE ON THE HOSPITAL OF NOT MORE THAN \$5,000.00 FOR EACH
6 TIME THE PROCEDURE WAS PERFORMED. IF THE HOSPITAL CONTINUES TO
7 ALLOW THE PROCEDURE TO BE PERFORMED AFTER THE DEPARTMENT HAS
8 ISSUED A CEASE AND DESIST ORDER FOR THAT PROCEDURE OR AFTER THE
9 DEPARTMENT HAS IMPOSED AN INITIAL FINE UNDER THIS SUBSECTION, THE
10 DEPARTMENT, AFTER NOTICE AND AN OPPORTUNITY FOR A HEARING, MAY
11 IMPOSE AN ADMINISTRATIVE FINE OF NOT MORE THAN \$50,000.00 FOR
12 EACH TIME THE PROCEDURE IS PERFORMED.

13 SEC. 21583. (1) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF
14 THIS SECTION AND BIENNIALY THEREAFTER, EACH HOSPITAL SHALL
15 REPORT ALL OF THE FOLLOWING INFORMATION TO THE DEPARTMENT ON A
16 FORM PROVIDED BY THE DEPARTMENT:

17 (A) EACH MEDICAL MALPRACTICE CLAIM BROUGHT AGAINST THE HOS-
18 PITAL DURING THE 10 YEARS IMMEDIATELY PRECEDING THE EFFECTIVE
19 DATE OF THIS SECTION OR DURING A SUBSEQUENT 2-YEAR REPORTING
20 PERIOD, EITHER IN A CIVIL ACTION OR BY ARBITRATION, INCLUDING
21 CLAIMS THAT ARE DISMISSED.

22 (B) THE AMOUNT PAID BY THE HOSPITAL FOR EACH CLAIM, ITEMIZED
23 INTO THE AMOUNT PAID FOR A JUDGMENT, AWARD, OR SETTLEMENT AND THE
24 COST OF PROCESSING AND DEFENDING THE CLAIM.

25 (C) THE COURT FILE NUMBER OR ARBITRATION FILE NUMBER OF EACH
26 CLAIM.

1 (D) WHETHER OR NOT LICENSURE FOR A MEDICAL PROCEDURE THAT IS
2 A BASIS FOR THE CLAIM WAS AN ISSUE UNDER THE CLAIM.

3 (E) THE MEDICAL DIAGNOSES AND PROCEDURES THAT ARE THE
4 SUBJECT OF OR BASIS FOR EACH CLAIM.

5 (F) THE METHOD OF SETTLEMENT OR OTHER MEANS OF DISPOSING OF
6 EACH CLAIM.

7 (2) EACH HOSPITAL SHALL MAKE A COPY OF THE REPORT REQUIRED
8 UNDER SUBSECTION (1) AVAILABLE UPON REQUEST TO THE COMMISSIONER
9 OF INSURANCE.

10 SEC. 21584. A HOSPITAL SHALL NOT USE FINANCIAL CONSIDERA-
11 TION IN CREDENTIALING OR GRANTING ADMITTING PRIVILEGES TO A
12 PHYSICIAN.