



SENATE BILL No. 1145

September 17, 1996, Introduced by Senators GEAKE, SHUGARS, SCHWARZ, MC MANUS, STILLE and BULLARD and referred to the Committee on Health Policy and Senior Citizens.

A bill to amend sections 21763 and 21799c of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," section 21799c as amended by Act No. 73 of the Public Acts of 1994, being sections 333.21763 and 333.21799c of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 21763 and 21799c of Act No. 368 of the
2 Public Acts of 1978, section 21799c as amended by Act No. 73 of
3 the Public Acts of 1994, being sections 333.21763 and 333.21799c
4 of the Michigan Compiled Laws, are amended to read as follows:

5 Sec. 21763. (1) A nursing home shall permit a representa-
6 tive of an approved organization, who is known by the nursing
7 home administration to be authorized to represent the
8 organization or who carries identification showing that the

1 representative is authorized to represent the organization, to
2 have access to nursing home patients ~~to~~ FOR 1 OR MORE OF THE
3 FOLLOWING PURPOSES:

4 (a) Visit, talk with, and make personal, social, and legal
5 services available to the patients.

6 (b) Inform patients of their rights and entitlements, and
7 their corresponding obligations, under federal and state laws by
8 means of the distribution of educational materials and discussion
9 in groups and with individual patients.

10 (c) Assist patients in asserting their legal rights regard-
11 ing claims for public assistance, medical assistance, and social
12 services benefits, as well as in all matters in which patients
13 are aggrieved. Assistance may be provided individually or on a
14 group basis and may include organizational activity and counsel-
15 ing and litigation.

16 (d) Engage in other methods of assisting, advising, and rep-
17 resenting patients so as to extend to them the full enjoyment of
18 their rights.

19 (2) Access ~~7~~ as ~~provided~~ PRESCRIBED in subsection (1)
20 ~~7~~ shall be permitted during regular visiting hours each day. A
21 representative OF AN APPROVED ORGANIZATION entering a nursing
22 home under this ~~subsection~~ SECTION promptly shall advise the
23 nursing home administrator or the acting administrator or other
24 available agent of the ~~facility~~ NURSING HOME of the
25 representative's presence. A representative shall not enter the
26 living area of a patient without identifying himself or herself
27 to the patient and without receiving the patient's permission to

1 enter. A representative shall use only patient areas of the home
2 to carry out the ~~purposes of this subsection~~ ACTIVITIES
3 DESCRIBED IN SUBSECTION (1).

4 (3) ~~Individual patients shall have the complete right to~~ A
5 PATIENT MAY terminate a visit by a representative ~~having~~
6 PERMITTED access under subsection (1). Communications between a
7 patient and the representative ~~shall be~~ ARE confidential,
8 unless OTHERWISE AUTHORIZED BY the patient. ~~authorizes the~~
9 ~~release of information.~~

10 (4) If a nursing home ADMINISTRATOR OR EMPLOYEE believes
11 that an individual or organization ~~assured~~ PERMITTED access
12 under this ~~subsection~~ SECTION is acting or has acted in a
13 manner detrimental to the health or safety of patients in the
14 NURSING home, the nursing home ADMINISTRATOR OR EMPLOYEE may file
15 a complaint with the task force established under section 20127.
16 Upon receipt of a complaint, ~~an investigation shall be made by~~
17 ~~department staff on the basis of which~~ DEPARTMENT STAFF SHALL
18 INVESTIGATE THE ALLEGATIONS MADE IN THE COMPLAINT. THE TASK FORCE
19 SHALL MAKE a determination ~~shall be made by the task force~~
20 regarding proper resolution of the complaint BASED ON THE RESULTS
21 OF THE INVESTIGATION. Written notification of the task force
22 determination and of ~~any~~ recommendations adopted by the task
23 force shall be given to the complainant and the individual or
24 organization against whom the complaint was made.

25 (5) AN INDIVIDUAL SHALL NOT ENTER UPON THE PREMISES OF A
26 NURSING HOME FOR THE PURPOSE OF ENGAGING IN AN ACTIVITY THAT
27 WOULD CAUSE A REASONABLE PERSON TO FEEL TERRORIZED, FRIGHTENED,

1 INTIMIDATED, THREATENED, HARASSED, OR MOLESTED AND THAT ACTUALLY
2 CAUSES A NURSING HOME EMPLOYEE, PATIENT, OR VISITOR TO FEEL TER-
3 RORIZED, FRIGHTENED, INTIMIDATED, THREATENED, HARASSED, OR
4 MOLESTED.

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

9 (a) Section 21711.

10 (b) Section 21712.

11 (c) SECTION 21763(5).

12 (D) ~~(c)~~ Section 21765a(1) or (2).

13 (E) ~~(d)~~ Section 21771(1) or (6).

14 (F) ~~(e)~~ Section 21791.

15 (2) A person who violates section 21765a(1) or (2) is liable
16 to an applicant or patient in a civil action for treble the
17 amount of actual damages or \$1,000.00, whichever is greater,
18 together with costs and reasonable attorney fees.

19 (3) For the purpose of computing ~~civil~~ ADMINISTRATIVE pen-
20 alties under this section, the number of patients per day is
21 based on the average number of patients in the nursing home
22 during the 30 days IMMEDIATELY preceding the discovery of the
23 violation.

24 (4) If the department finds a violation of section 20201 as
25 to a particular nursing home patient, the department shall issue
26 an order requiring the nursing home to pay to the patient
27 \$100.00, or to reimburse the patient for costs incurred or

1 injuries sustained AS A RESULT OF THE VIOLATION, whichever is
2 greater. ~~, and the~~ THE department ALSO shall assess the nursing
3 home ~~a civil~~ AN ADMINISTRATIVE penalty that is the lesser of
4 the following:

5 (a) Not more than \$1,500.00.

6 (b) \$15.00 per patient bed.

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

16 (6) The department shall not assess ~~a civil~~ AN
17 ADMINISTRATIVE penalty under subsection (4) for a violation of
18 this part for which a nursing home's reimbursement is withheld
19 under subsection (5).