

Act No. 88
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STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

**Introduced by Senators Peters, Conroy, Gougeon, North, Bullard, Vaughn, V. Smith, A. Smith,
DeBeaussiaert, Young, Stallings, Byrum, Koivisto and Hart**

ENROLLED SENATE BILL No. 398

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending sections 5431, 5817, 9315, 20201, 21034, and 21761 (MCL 333.5431, 333.5817, 333.9315, 333.20201, 333.21034, and 333.21761), section 5431 as amended by 1992 PA 81 and sections 20201 and 21034 as amended by 1982 PA 354.

The People of the State of Michigan enact:

Sec. 5431. (1) A health professional in charge of the care of a newborn infant or, if none, the health professional in charge at the birth of an infant shall administer or cause to be administered to the infant a test for each of the following:

- (a) Phenylketonuria.
- (b) Galactosemia.
- (c) Hypothyroidism.
- (d) Maple syrup urine disease.
- (e) Biotinidase deficiency.
- (f) Sickle cell anemia.
- (g) Congenital adrenal hyperplasia.
- (h) Other treatable but otherwise disabling conditions as designated by the department.

(2) The test required under subsection (1) shall be administered and reported within a time and under conditions prescribed by the department. The department may require that the test be performed by the department.

(3) If the results of a test administered under subsection (1) are positive, the results shall be reported to the infant's parents, guardian, or person in loco parentis. A person is in compliance with this subsection if the person makes a good faith effort to report the positive test results to the infant's parents, guardian, or person in loco parentis. The department shall promulgate rules that define a good faith effort to report positive test results for purposes of this subsection.

(4) If the department performs a test required under subsection (1), the department may charge a fee for the test of not more than \$25.00. The amount stated in this subsection shall be adjusted annually by an amount determined by the state treasurer to reflect the cumulative annual percentage change in the Detroit consumer price index. As used in this subsection, "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area from the bureau of labor statistics of the United States department of labor.

(5) A person who violates this section or a rule promulgated under this part is guilty of a misdemeanor.

(6) The department shall provide for a hardship waiver of the fee authorized under subsection (4) under circumstances found appropriate by the department.

Sec. 5817. The department shall:

(a) Formulate and administer detailed plans to implement the policy stated in section 5805. The plans shall include provisions for:

(i) Financial participation by this state.

(ii) Administration of the plans including methods of administration necessary for efficient operation of the plans.

(iii) Maintenance of records and preparation of reports of services rendered.

(iv) Cooperation with medical, health, nursing, and welfare groups and organizations, and with any agency of this state charged with the administration of laws providing for vocational rehabilitation and special education of children with physical disabilities.

(b) Expend in accordance with the plans funds made available to this state by the federal government for those purposes.

(c) Cooperate with the federal government, under title V of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 701 to 716, through its appropriate agency or instrumentality, in developing, extending, and improving services, provided by this part and in the administration of the plans.

Sec. 9315. (1) The director may appoint an advisory committee consisting of health professionals in hearing and vision, physicians and optometrists, and individuals representing schools. The advisory committee shall assist the department with hearing and vision programs and shall conform to the requirements of section 2215.

(2) The department shall cooperate with any agency of the state charged with the administration of laws providing for children with disabilities, and with a local health department or other community group in encouraging remedial measures and correctional devices available for children with hearing or vision impairment.

Sec. 20201. (1) A health facility or agency which provides services directly to patients or residents and which is licensed under this article shall adopt a policy describing the rights and responsibilities of patients or residents admitted to the health facility or agency. Except for a licensed health maintenance organization which shall comply with section 21086, the policy shall be posted at a public place in the facility and shall be provided to each member of the facility staff. Patients or residents shall be treated in accordance with the policy.

(2) The policy describing the rights and responsibilities of patients or residents shall include as a minimum:

(a) A patient or resident will not be denied appropriate care on the basis of race, religion, color, national origin, sex, age, disability, marital status, sexual preference, or source of payment.

(b) An individual who is or has been a patient or resident is entitled to inspect, or receive for a reasonable fee, a copy of his or her medical record upon request. A third party shall not be given a copy of the patient's or resident's medical record without prior authorization of the patient.

(c) A patient or resident is entitled to confidential treatment of personal and medical records, and may refuse their release to a person outside the facility except as required because of a transfer to another health care facility or as required by law or third party payment contract.

(d) A patient or resident is entitled to privacy, to the extent feasible, in treatment and in caring for personal needs with consideration, respect, and full recognition of his or her dignity and individuality.

(e) A patient or resident is entitled to receive adequate and appropriate care, and to receive, from the appropriate individual within the facility, information about his or her medical condition, proposed course of treatment, and prospects for recovery, in terms that the patient or resident can understand, unless medically contraindicated as documented by the attending physician in the medical record.

(f) A patient or resident is entitled to refuse treatment to the extent provided by law and to be informed of the consequences of that refusal. When a refusal of treatment prevents a health facility or its staff from providing appropriate care according to ethical and professional standards, the relationship with the patient or resident may be terminated upon reasonable notice.

(g) A patient or resident is entitled to exercise his or her rights as a patient or resident and as a citizen, and to this end may present grievances or recommend changes in policies and services on behalf of himself or herself or others to the facility staff, to governmental officials, or to another person of his or her choice within or outside the facility, free from restraint, interference, coercion, discrimination, or reprisal. A patient or resident is entitled to information about the facility's policies and procedures for initiation, review, and resolution of patient or resident complaints.

(h) A patient or resident is entitled to information concerning an experimental procedure proposed as a part of his or her care and shall have the right to refuse to participate in the experiment without jeopardizing his or her continuing care.

(i) A patient or resident is entitled to receive and examine an explanation of his or her bill regardless of the source of payment and to receive, upon request, information relating to financial assistance available through the facility.

(j) A patient or resident is entitled to know who is responsible for and who is providing his or her direct care, is entitled to receive information concerning his or her continuing health needs and alternatives for meeting those needs, and to be involved in his or her discharge planning, if appropriate.

(k) A patient or resident is entitled to associate and have private communications and consultations with his or her physician, attorney, or any other person of his or her choice and to send and receive personal mail unopened on the same day it is received at the health facility or agency, unless medically contraindicated as documented by the attending physician in the medical record. A patient's or resident's civil and religious liberties, including the right to independent personal decisions and the right to knowledge of available choices, shall not be infringed and the facility shall encourage and assist in the fullest possible exercise of these rights. A patient or resident may meet with, and participate in, the activities of social, religious, and community groups at his or her discretion, unless medically contraindicated as documented by the attending physician in the medical record.

(l) A patient or resident is entitled to be free from mental and physical abuse and from physical and chemical restraints, except those restraints authorized in writing by the attending physician for a specified and limited time or as are necessitated by an emergency to protect the patient or resident from injury to self or others, in which case the restraint may only be applied by a qualified professional who shall set forth in writing the circumstances requiring the use of restraints and who shall promptly report the action to the attending physician. In case of a chemical restraint a physician shall be consulted within 24 hours after the commencement of the restraint.

(m) A patient or resident is entitled to be free from performing services for the facility that are not included for therapeutic purposes in the plan of care.

(n) A patient or resident is entitled to information about the health facility rules and regulations affecting patient or resident care and conduct.

(3) The following additional requirements for the policy described in subsection (2) shall apply to licensees under parts 213 and 217:

(a) The policy shall be provided to each nursing home patient or home for the aged resident upon admission, and the staff of the facility shall be trained and involved in the implementation of the policy.

(b) Each nursing home patient may associate and communicate privately with persons of his or her choice. Reasonable, regular visiting hours, which shall be not less than 8 hours per day, and which shall take into consideration the special circumstances of each visitor, shall be established for patients to receive visitors. A patient may be visited by the patient's attorney or by representatives of the departments named in section 20156, during other than established visiting hours. Reasonable privacy shall be afforded for visitation of a patient who shares a room with another patient. Each patient shall have reasonable access to a telephone. A married nursing home patient or home for the aged resident is entitled to meet privately with his or her spouse in a room which assures privacy. If both spouses are residents in the same facility, they are entitled to share a room unless medically contraindicated and documented by the attending physician in the medical record.

(c) A nursing home patient or home for the aged resident is entitled to retain and use personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other patients or residents, or unless medically contraindicated as documented by the attending physician in the medical record. Each nursing home patient or home for the aged resident shall be provided with reasonable space. At the request of a patient, a nursing home shall provide for the safekeeping of personal effects, funds, and other property of a patient in accordance with section 21767, except that a nursing home shall not be required to provide for the safekeeping of a property which would impose an unreasonable burden on the nursing home.

(d) A nursing home patient or home for the aged resident is entitled to the opportunity to participate in the planning of his or her medical treatment. A nursing home patient shall be fully informed by the attending physician of the

patient's medical condition unless medically contraindicated as documented by a physician in the medical record. Each nursing home patient shall be afforded the opportunity to discharge himself or herself from the nursing home.

(e) A home for the aged resident may be transferred or discharged only for medical reasons, for his or her welfare or that of other residents, or for nonpayment of his or her stay, except as provided by title XVIII of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1395 to 1395b, 1395b-2, 1395c to 1395i, 1395i-2 to 1395i-4, 1395j to 1395t, 1395u to 1395w-2, 1395w-4 to 1395yy, and 1395bbb to 1395ddd, or by title XIX of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f and 1396g-1 to 1396w. A nursing home patient may be transferred or discharged only as provided in sections 21773 to 21777. A nursing home patient or home for the aged resident is entitled to be given reasonable advance notice to ensure orderly transfer or discharge. Those actions shall be documented in the medical record.

(f) A nursing home patient or home for the aged resident is entitled to be fully informed before or at the time of admission and during stay of services available in the facility, and of the related charges including any charges for services not covered under title XVIII, or not covered by the facility's basic per diem rate. The statement of services provided by the facility shall be in writing and shall include those required to be offered on an as-needed basis.

(g) A nursing home patient or home for the aged resident is entitled to manage his or her own financial affairs, or to have at least a quarterly accounting of personal financial transactions undertaken in his or her behalf by the facility during a period of time the patient or resident has delegated those responsibilities to the facility. In addition, a patient or resident is entitled to receive each month from the facility an itemized statement setting forth the services paid for by or on behalf of the patient and the services rendered by the facility. The admission of a patient to a nursing home does not confer on the nursing home or its owner, administrator, employees, or representatives the authority to manage, use, or dispose of a patient's property.

(h) A nursing home patient or a person authorized by a patient in writing may inspect and copy the patient's personal and medical records. The records shall be made available for inspection and copying by the nursing home within a reasonable time, not exceeding 1 week, after the receipt of a written request.

(i) If a nursing home patient desires treatment by a licensed member of the healing arts, the treatment shall be made available unless it is medically contraindicated, and the medical contraindication is justified in the patient's medical record by the attending physician.

(j) A nursing home patient has the right to have his or her parents, if a minor, or his or her spouse, next of kin, or patient's representative, if an adult, stay at the facility 24 hours a day if the patient is considered terminally ill by the physician responsible for the patient's care.

(k) Each nursing home patient shall be provided with meals which meet the recommended dietary allowances for that patient's age and sex and which may be modified according to special dietary needs or ability to chew.

(l) Each nursing home patient has the right to receive representatives of approved organizations as provided in section 21763.

(4) A nursing home, its owner, administrator, employee, or representative shall not discharge, harass, or retaliate or discriminate against a patient because the patient has exercised a right protected under this section.

(5) In the case of a nursing home patient, the rights enumerated in subsection (2)(c), (g), and (k) and subsection (3)(d), (g), and (h) may be exercised by the patient's representative as defined in section 21703.

(6) A nursing home patient or home for the aged resident is entitled to be fully informed, as evidenced by the patient's or resident's written acknowledgment, before or at the time of admission and during stay, of the policy required by this section. The policy shall provide that if a patient or resident is adjudicated incompetent and not restored to legal capacity, the rights and responsibilities set forth in this section shall be exercised by a person designated by the patient or resident. The facility or agency shall provide proper forms for the patient or resident to provide for the designation of this person at the time of admission.

(7) This section shall not be construed to prohibit a health facility or agency from establishing and recognizing additional patients' rights.

Sec. 21034. The department, with the concurrence of the insurance bureau, shall issue a license to a health maintenance organization upon being satisfied that:

(a) Based on acceptable accounting procedures approved by the insurance bureau, the proposed or operating organization is financially and actuarially sound and has adequate working capital, statutory deposits, and reserves as defined by the following:

(i) After the date of this subparagraph takes effect, an applicant for an initial license shall have and maintain a net worth of not less than \$100,000.00. As used in this subparagraph, "net worth" includes capital paid up, gross paid in and contributed surplus, statutory reserve, unassigned funds, and other surplus funds including surplus notes, guaranty capital funds, and other similar instruments repayable only from earned surplus and with prior insurance bureau approval.

(ii) An applicant shall make a deposit of \$100,000.00 with the state treasurer or with a federally or state chartered financial institution under a trust indenture acceptable to the commissioner for the sole benefit of the subscribers and enrollees in case of insolvency. The deposit shall consist of cash or securities as provided in sections 910 and 912 of the insurance code of 1956, 1956 PA 218, MCL 500.910 and 500.912. Interest earned from this deposit is the property of the health maintenance organization.

(iii) In addition to the minimum net worth required by subparagraph (i) and before beginning operations, a health maintenance organization shall have working capital of \$250,000.00 or an amount deemed adequate by the commissioner for the kind of health care delivery system the organization proposes to operate, whichever is greater. This working capital may be acquired through equity or debt.

(iv) A health maintenance organization shall maintain a minimum deposit of 5% of that organization's annual subscription income with the state treasurer or with a federally or state chartered financial institution under a trust indenture acceptable to the commissioner, including the initial deposit required in subparagraph (ii), up to a maximum of \$500,000.00 if the organization has a positive net worth or \$1,000,000.00 if the organization has a negative net worth. The deposit shall be held for the sole benefit of the subscribers and enrollees in case of insolvency. The deposit shall consist of cash or securities as provided in sections 910 and 912 of the insurance code of 1956, 1956 PA 218, MCL 500.910 and 500.912. Interest earned from this deposit is the property of the health maintenance organization. As used in this subparagraph, and in subparagraphs (v) and (vi), "net worth" means net worth as defined according to generally accepted accounting procedures.

(v) If a health maintenance organization's net worth changes from negative to positive and the organization has accumulated a deposit required under subparagraph (iv) in excess of \$500,000.00, the organization may reduce the deposit by \$100,000.00 for each \$100,000.00 positive net worth to a minimum of \$500,000.00.

(vi) Within 5 years after the date this subparagraph takes effect or after the beginning of operations, whichever is later, a health maintenance organization shall have a net worth of \$500,000.00 excluding land, buildings, and equipment or \$1,000,000.00 including land, buildings, and equipment. Failure to meet this requirement constitutes reasonable cause under section 21025(1)(d) but is not necessarily grounds for limitation or revocation of a license.

(b) The proposed contract and the proposed rates thereof, including any nominal payments, between the organization and its subscribers are fair, sound, and reasonable in relation to the services provided, and do not discriminate on the basis of race, color, creed, national origin, residence within the approved service area of the health maintenance organization, lawful occupation, sex, handicap, or marital status, except that marital status may be used to classify individuals or risks for the purpose of insuring family units. The commissioner may approve a rate differential based on sex, age, residence, disability, marital status, or lawful occupation, if the differential is supported by sound actuarial principles, a reasonable classification system, and is related to the actual and credible loss statistics or reasonably anticipated experience in case of new coverages.

(c) Solicitation of enrollment subscriptions will not work a fraud on the individual solicited.

(d) The proposed health maintenance contracts to be issued by the health maintenance organization include, as a minimum, the primary health maintenance services specified in section 21007(1) during the period for which the initial license will be issued, and the contracts issued or in effect after the date of the first renewal of the license shall include, as a minimum, the basic health services specified in section 21003.

(e) The person proposes to establish and operate a bona fide health maintenance organization able to provide, as appropriate, health maintenance services in a manner which assures continuity and imparts quality health care under conditions the department deems to be in the public interest.

(f) Within the geographic area served by the health maintenance organization, the services will be available, accessible, and provided as promptly as appropriate to each of its enrollees in a manner which assures continuity, and will be available and accessible to enrollees 24 hours a day and 7 days a week for the treatment of emergency episodes of illness or injury.

(g) The arrangements for continuing evaluation of the quality of health care are adequate.

(h) Reasonable provisions exist to provide or obtain emergency health services both within and outside of the geographic area served by the health maintenance organization.

(i) A reasonable procedure exists for resolving enrollee grievances as required by this part.

(j) The health maintenance organization is incorporated as a distinct legal entity under the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098, or the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.

(k) The health maintenance organization maintains financial records for its health maintenance activities separate from the financial records of any other operation or activity carried on by the person licensed under this part to operate the health maintenance organization.

(l) The health maintenance organization has a governing body that meets the requirements of section 21051.

Sec. 21761. (1) In addition to the requirements of section 20152, a licensee shall certify annually to the department, as part of its application for licensure and certification, that all phases of its operation, including its training program, are without discrimination against persons or groups of persons on the basis of race, religion, color, national origin, sex, age, disability, marital status, sexual preference, or the exercise of rights guaranteed by law, including freedom of speech and association. If the department finds a violation of rights enumerated in this section, the department shall direct the administrator of the nursing home to take the necessary action to assure that the nursing home is, in fact, operated in accordance with the rights listed in this section.

(2) This section shall not be construed to prevent a nursing home operated, supervised, or controlled by a religious or fraternal institution or organization from giving preference to applicants who are members of that religious or fraternal institution or organization.

This act is ordered to take immediate effect.



Secretary of the Senate.



Clerk of the House of Representatives.

Approved _____

Governor.