

SUBSTITUTE FOR
HOUSE BILL NO. 5827

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding section 21720c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 21720C. (1) SUBJECT TO SUBSECTION (2), IF A NURSING
2 HOME'S COSTS OF OPERATION ARE INCREASED AS A RESULT OF ITS COM-
3 PLIANCE WITH SECTION 21720A, THE NURSING HOME MAY ADVISE THE
4 DEPARTMENT IN WRITING OF THE INCREASED OPERATIONAL COSTS. THE
5 NURSING HOME MAY INCLUDE IN THE WRITTEN ADVISORY A REQUEST FOR
6 REIMBURSEMENT FROM THE DEPARTMENT FOR THE INCREASED COSTS. UPON
7 RECEIPT OF A WRITTEN ADVISORY FROM A NURSING HOME UNDER THIS SUB-
8 SECTION THAT INCLUDES A REQUEST FOR REIMBURSEMENT, THE DEPARTMENT
9 SHALL IMMEDIATELY ADJUST THE NURSING HOME'S PER DIEM
10 REIMBURSEMENT UNDER TITLE XVIII IN AN AMOUNT SUFFICIENT TO
11 REIMBURSE THE NURSING HOME FOR THE INCREASED COSTS. THE

1 DEPARTMENT SHALL INCREASE THE NURSING HOME'S PER DIEM
2 REIMBURSEMENT RATE UNDER THIS SUBSECTION REGARDLESS OF PREVIOUSLY
3 APPLIED COST LIMITS. IF THE DEPARTMENT FAILS TO ADJUST A NURSING
4 HOME'S PER DIEM REIMBURSEMENT RATE UNDER THIS SUBSECTION [

5
6] WITHIN 30 DAYS AFTER RECEIVING A WRITTEN ADVISORY
7 THAT INCLUDES A REQUEST FOR REIMBURSEMENT UNDER THIS SUBSECTION,
8 THEN ALL OF THE FOLLOWING SHALL OCCUR:

9 (A) THE NURSING HOME IS EXEMPT FROM THE STAFF-TO-PATIENT
10 RATIOS AND THE HOURS-PER-PATIENT-PER-DAY REQUIREMENTS OF SECTION
11 21720A UNTIL THE DEPARTMENT ADJUSTS THE NURSING HOME'S PER DIEM
12 REIMBURSEMENT RATE UNDER THIS SUBSECTION.

13 (B) THE NURSING HOME SHALL PROVIDE EACH PATIENT WITH NOT
14 LESS THAN 2.25 HOURS PER DAY OF DIRECT PATIENT CARE BY A DIRECT
15 PATIENT CARE PROVIDER AND SHALL MAINTAIN THE STAFF-TO-PATIENT
16 RATIO REQUIRED UNDER SECTION 21720A BEFORE IT WAS AMENDED IN
17 2000.

18 (C) WITHIN 30 DAYS AFTER BEING NOTIFIED BY THE DEPARTMENT
19 THAT THE NURSING HOME'S STATUS HAS CHANGED AND THAT THE NURSING
20 HOME WILL BE REIMBURSED AT THE APPROPRIATE LEVEL, THE NURSING
21 HOME SHALL RETURN TO THE STAFF-TO-PATIENT RATIO AND THE
22 HOURS-PER-PATIENT-PER-DAY REQUIREMENTS OF SECTION 21720A.

23 (2) SUBSECTION (1) IS NOT INTENDED AS A REMEDY THAT ALLOWS
24 THE DEPARTMENT TO REIMBURSE A NURSING HOME AT A RATE THAT ALLOWS
25 THE NURSING HOME TO MAINTAIN A NURSING HOME STAFF-TO-PATIENT
26 RATIO THAT IS NOT SUFFICIENT TO PROVIDE AT LEAST 3.0 HOURS OF
27 DIRECT PATIENT CARE BY A DIRECT PATIENT CARE PROVIDER PER PATIENT

HB5827, As Passed House, May 30, 2000

House Bill No. 5827

3

1 PER DAY AS REQUIRED UNDER SECTION 21720A. IT IS THE INTENT OF
2 THE LEGISLATURE THAT THE DEPARTMENT REIMBURSE NURSING HOMES UNDER
3 TITLE XVIII IN AN AMOUNT SUFFICIENT TO MAINTAIN THE
4 STAFF-TO-PATIENT RATIO AND THE NUMBER OF DIRECT PATIENT CARE
5 HOURS PER PATIENT PER DAY REQUIRED UNDER SECTION 21720A. IF THE
6 DEPARTMENT FAILS TO ADJUST A NURSING HOME'S REIMBURSEMENT RATE
7 UNDER SUBSECTION (1) WITHIN THE 30-DAY TIME PERIOD REQUIRED UNDER
8 SUBSECTION (1), THE DEPARTMENT IMMEDIATELY SHALL FILE A WRITTEN
9 REPORT WITH THE STANDING APPROPRIATIONS COMMITTEES OF THE SENATE
10 AND THE HOUSE OF REPRESENTATIVES AND WITH THE APPROPRIATE
11 SUBCOMMITTEES. THE DEPARTMENT SHALL INCLUDE IN THE REPORT ITS
12 REASONS FOR FAILING TO ADJUST THE NURSING HOME'S REIMBURSEMENT
13 RATE IN COMPLIANCE WITH THIS SECTION.

14 (3) THE DEPARTMENT SHALL DETERMINE WHETHER A NURSING HOME'S
15 OPERATIONAL COSTS WERE ACTUALLY INCREASED AS DESCRIBED IN SUBSEC-
16 TION (1) DURING THE DEPARTMENT'S AUDIT OF THE NURSING HOME'S
17 ANNUAL COST REPORT. IF THE DEPARTMENT DETERMINES AS A RESULT OF
18 THE AUDIT THAT THE NURSING HOME'S COSTS WERE NOT IN FACT
19 INCREASED, THE DEPARTMENT MAY RETROACTIVELY DISALLOW THE
20 INCREASED COSTS CLAIMED BY THE NURSING HOME IN AN AMOUNT EQUAL TO
21 THE AMOUNT OF COSTS DETERMINED BY THE DEPARTMENT NOT TO HAVE BEEN
22 INCURRED BY THE NURSING HOME. A RETROACTIVE DISALLOWANCE BY THE
23 DEPARTMENT UNDER THIS SUBSECTION IS AN "ADVERSE ACTION" AS THAT
24 TERM IS DEFINED IN R 400.3401 OF THE MICHIGAN ADMINISTRATIVE CODE
25 AND IS SUBJECT TO APPEAL UNDER R 400.3401 TO R 400.3425 OF THE
26 MICHIGAN ADMINISTRATIVE CODE.

HB5827, As Passed House, May 30, 2000

House Bill No. 5827

4

1 (4) A NURSING HOME MAY FILE WITH THE DEPARTMENT A PETITION
2 FOR TEMPORARY, EMERGENCY RATE RELIEF FROM THE STAFF-TO-PATIENT
3 RATIO AND THE DIRECT PATIENT CARE HOURS-PER-PATIENT-PER-DAY
4 REQUIREMENT OF SECTION 21720A(2) OR THE MINIMUM HOURS OF DIRECT
5 PATIENT CARE REQUIRED UNDER SECTION 21720A(5), OR BOTH. THE
6 DEPARTMENT MAY GRANT THE NURSING HOME'S PETITION FOR TEMPORARY,
7 EMERGENCY RATE RELIEF IF THE NURSING HOME DEMONSTRATES TO THE
8 SATISFACTION OF THE DEPARTMENT THAT THE STAFF-TO-PATIENT RATIO
9 AND THE DIRECT PATIENT CARE HOURS-PER-PATIENT-PER-DAY REQUIREMENT
10 OF SECTION 21720A(2) OR THE MINIMUM NUMBER OF HOURS OF DIRECT
11 PATIENT CARE REQUIRED UNDER SECTION 21720A(5), OR BOTH, HAS A
12 SUBSTANTIAL EFFECT ON THE NURSING HOME'S OPERATING COSTS. THE
13 DEPARTMENT SHALL ISSUE A DECISION ON A PETITION FILED UNDER THIS
14 SUBSECTION WITHIN 90 DAYS AFTER RECEIPT OF THE PETITION. IF THE
15 DEPARTMENT DENIES THE PETITION, THE DEPARTMENT SHALL PROVIDE THE
16 NURSING HOME, IN WRITING, WITH THE REASONS FOR THE DENIAL. IF
17 THE DEPARTMENT FAILS TO ISSUE A DECISION ON A PETITION WITHIN THE
18 90-DAY TIME LIMIT, THE PETITION IS GRANTED.

19 (5) A NURSING HOME MAY APPEAL A DENIAL OF A PETITION FOR
20 TEMPORARY, EMERGENCY RATE RELIEF UNDER SUBSECTION (4). THE
21 DEPARTMENT SHALL HOLD A HEARING ON THE APPEAL. THE DEPARTMENT OR
22 THE DEPARTMENT'S DESIGNEE SHALL CONDUCT THE HEARING IN A LESS
23 FORMAL MANNER THAN IT WOULD CONDUCT A CONTESTED CASE HEARING
24 UNDER THE ADMINISTRATIVE PROCEDURES ACT OF 1969. THE DEPARTMENT
25 SHALL ALLOW A REPRESENTATIVE OF THE NURSING HOME TO PRESENT
26 INFORMATION, DATA, AND OTHER EVIDENCE IN SUPPORT OF GRANTING THE
27 PETITION UNDER SUBSECTION (4). THE DEPARTMENT OR THE

1 DEPARTMENT'S DESIGNEE SHALL PRESENT THE DEPARTMENT'S REASONS FOR
2 DENYING THE PETITION. THE DEPARTMENT SHALL ISSUE A WRITTEN DECI-
3 SION ON THE APPEAL WITHIN 30 DAYS AFTER THE HEARING HELD UNDER
4 THIS SUBSECTION. THE DEPARTMENT SHALL INCLUDE IN THE WRITTEN
5 DECISION THE REASONS FOR DENYING THE APPEAL. A DENIAL OF AN
6 APPEAL BY THE DEPARTMENT UNDER THIS SUBSECTION HAS THE EFFECT OF
7 CREATING AN EMERGENCY UNDER SECTION VII, ENTITLED "EXCEPTION
8 PROCEDURE", OF THE POLICY AND METHODS FOR ESTABLISHING PAYMENT
9 RATES IN THE STATE PLAN REQUIRED UNDER TITLE XIX, WHICH DOCUMENT
10 IS INCORPORATED BY REFERENCE FOR PURPOSES OF THIS SUBSECTION.

11 (6) A NURSING HOME MAY APPEAL AN ADVERSE DECISION UNDER SUB-
12 SECTION (5) TO THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE
13 NURSING HOME IS LOCATED OR THE CIRCUIT COURT FOR INGHAM COUNTY.
14 IF THE NURSING HOME PREVAILS ON THE APPEAL, THE COURT MAY AWARD
15 COMPENSATORY DAMAGES TO THE NURSING HOME FOR THE COST OF PROVID-
16 ING CARE TO ITS RESIDENTS DURING THE PERIOD FROM THE FILING OF A
17 PETITION WITH THE DEPARTMENT UNDER SUBSECTION (4) TO THE DECISION
18 ON THE APPEAL UNDER THIS SUBSECTION. THE COURT MAY ALSO AWARD
19 COSTS TO THE NURSING HOME IF IT PREVAILS ON THE APPEAL.

20 (7) IN ORDER TO NOTIFY PATIENTS AND THEIR FAMILIES REGARDING
21 THE REQUIREMENTS OF THIS SECTION AND SECTION 21720A, A NURSING
22 HOME SHALL POST THE NAME OF THE DIRECT PATIENT CARE PROVIDER WHO
23 IS ASSIGNED TO A PARTICULAR PATIENT EITHER IN A CONSPICUOUS PLACE
24 NEAR THE NURSES' STATION OR OUTSIDE THE PATIENT'S DOOR NEAR THE
25 PATIENT'S NAME.

[(8) THE DEPARTMENT OF COMMUNITY HEALTH SHALL INCLUDE WITHIN
ITS ANNUAL BUDGET REQUEST A RECOMMENDATION FOR FUNDS SUFFICIENT TO
COVER PREDICTED AND ACTUAL INCREASED COSTS NECESSARY TO ADJUST
NURSING HOME PER DIEM REIMBURSEMENTS AS REQUIRED BY THIS AMENDATORY
ACT. A COPY OF THE RECOMMENDATION SHALL BE PROVIDED TO ALL MEMBERS
OF THE HOUSE AND SENATE APPROPRIATIONS COMMITTEES AND THE STANDING
COMMITTEES THAT OVERSEE SENIOR CITIZEN ISSUES AND TO THE HOUSE AND
SENATE FISCAL AGENCIES.]

26 Enacting section 1. This amendatory act takes effect [October]
27 1, 2000.

HB5827, As Passed House, May 30, 2000

House Bill No. 5827

6

1 Enacting section 2. This amendatory act does not take
2 effect unless House Bill No. 4362 of the 90th Legislature is
3 enacted into law.