

SENATE SUBSTITUTE FOR

HOUSE BILL NO. 5689

(As amended December 14, 2000)

A bill 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 the implementation of federal law; 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 20162 and 21799b (MCL 333.20162 and 333.21799b) and by adding sections 21332, 21716, and 21734.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 SEC. 21325. (1) IF A RESIDENT
- 2 OF A HOME FOR THE AGED IS RECEIVING CARE IN THE FACILITY IN ADDITION
- 3 TO THE ROOM, BOARD, AND SUPERVISED PERSONAL CARE SPECIFIED IN
- SECTION 20106(3), AS DETERMINED BY A PHYSICIAN, THE DEPARTMENT
- 4 SHALL NOT ORDER THE REMOVAL OF THE RESIDENT FROM THE HOME FOR THE
- 5 AGED IF BOTH OF THE FOLLOWING CONDITIONS ARE MET:
- 6 (A) THE RESIDENT, THE RESIDENT'S FAMILY, THE RESIDENT'S
- 7 PHYSICIAN, AND THE OWNER, OPERATOR, AND GOV-
- ERNING BODY OF THE HOME FOR THE AGED CONSENT TO THE RESIDENT'S
- 8 CONTINUED STAY IN THE HOME FOR THE AGED.

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1 (B) THE [REDACTED] OWNER, OPERATOR, AND
2 GOVERNING BODY OF THE HOME FOR THE AGED COMMIT TO ASSURING THAT THE
3 RESIDENT RECEIVES THE NECESSARY ADDITIONAL SERVICES.

4 SEC. 21332. A HOME FOR THE AGED SHALL OFFER EACH RESIDENT,
5 OR SHALL PROVIDE EACH RESIDENT WITH INFORMATION AND ASSISTANCE IN
6 OBTAINING, AN ANNUAL VACCINATION AGAINST INFLUENZA IN ACCORDANCE
7 WITH THE MOST RECENT RECOMMENDATIONS OF THE ADVISORY COMMITTEE ON
8 IMMUNIZATION PRACTICES OF THE FEDERAL CENTERS FOR DISEASE CONTROL
9 AND PREVENTION, AS APPROVED BY THE DEPARTMENT OF COMMUNITY
10 HEALTH.

11 SEC. 21716. A NURSING HOME SHALL OFFER EACH RESIDENT, OR
12 SHALL PROVIDE EACH RESIDENT WITH INFORMATION AND ASSISTANCE IN
13 OBTAINING, AN ANNUAL VACCINATION AGAINST INFLUENZA IN ACCORDANCE
14 WITH THE MOST RECENT RECOMMENDATIONS OF THE ADVISORY COMMITTEE ON
15 IMMUNIZATION PRACTICES OF THE FEDERAL CENTERS FOR DISEASE CONTROL
16 AND PREVENTION, AS APPROVED BY THE DEPARTMENT OF COMMUNITY
17 HEALTH.

SEC. 21734. (1) NOTWITHSTANDING SECTION 20201(2)(1), A NURSING HOME SHALL GIVE EACH RESIDENT WHO USES A HOSPITAL-TYPE BED OR THE RESIDENT'S LEGAL GUARDIAN, PATIENT ADVOCATE, OR OTHER LEGAL REPRESENTATIVE THE OPTION OF HAVING BED RAILS. A NURSING HOME SHALL OFFER THE OPTION TO NEW RESIDENTS UPON ADMISSION AND TO OTHER RESIDENTS UPON REQUEST. UPON RECEIPT OF A REQUEST FOR BED RAILS, THE NURSING HOME SHALL INFORM THE RESIDENT OR THE RESIDENT'S LEGAL GUARDIAN, PATIENT ADVOCATE, OR OTHER LEGAL REPRESENTATIVE OF ALTERNATIVES TO AND THE RISKS INVOLVED IN USING BED RAILS. A RESIDENT OR THE RESIDENT'S LEGAL GUARDIAN, PATIENT ADVOCATE, OR OTHER LEGAL REPRESENTATIVE HAS THE RIGHT TO REQUEST AND CONSENT TO BED RAILS FOR THE RESIDENT. A NURSING HOME SHALL PROVIDE BED RAILS TO A RESIDENT ONLY UPON RECEIPT OF A SIGNED CONSENT FORM AUTHORIZING BED RAIL USE AND A WRITTEN ORDER FROM THE RESIDENT'S ATTENDING PHYSICIAN THAT CONTAINS STATEMENTS AND DETERMINATIONS REGARDING MEDICAL SYMPTOMS AND THAT SPECIFIES THE CIRCUMSTANCES UNDER WHICH BED RAILS ARE TO BE USED. FOR PURPOSES OF THIS SUBSECTION, "MEDICAL SYMPTOMS" INCLUDES THE FOLLOWING:

(A) A CONCERN FOR THE PHYSICAL SAFETY OF THE RESIDENT.
(B) PHYSICAL OR PSYCHOLOGICAL NEED EXPRESSED BY A RESIDENT. A RESIDENT'S FEAR OF FALLING MAY BE THE BASIS OF A MEDICAL SYMPTOM.
(2) A NURSING HOME THAT PROVIDES BED RAILS UNDER SUBSECTION (1) SHALL DO ALL OF THE FOLLOWING:

(A) DOCUMENT THAT THE REQUIREMENTS OF SUBSECTION (1) HAVE BEEN MET.

(B) MONITOR THE RESIDENT'S USE OF THE BED RAILS.
(C) IN CONSULTATION WITH THE RESIDENT, RESIDENT'S FAMILY, RESIDENT'S ATTENDING PHYSICIAN, AND INDIVIDUAL WHO CONSENTED TO THE BED RAILS, PERIODICALLY REEVALUATE THE RESIDENT'S NEED FOR THE BED RAILS.

(3) THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES SHALL DEVELOP CLEAR AND UNIFORM GUIDELINES TO BE USED IN DETERMINING WHAT

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CONSTITUTES EACH OF THE FOLLOWING:

(A) ACCEPTABLE BED RAILS FOR USE IN A NURSING HOME IN THIS STATE. THE DEPARTMENT SHALL CONSIDER THE RECOMMENDATIONS OF THE HOSPITAL BED SAFETY WORK GROUP ESTABLISHED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION. IF THOSE ARE AVAILABLE, IN DETERMINING WHAT CONSTITUTES AN ACCEPTABLE BED RAIL.

(B) PROPER MAINTENANCE OF BED RAILS.

(C) PROPERLY FITTED MATTRESSES.

(D) OTHER HAZARDS CREATED BY IMPROPERLY POSITIONED BED RAILS, MATTRESSES, OR BEDS.

(4) THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES SHALL DEVELOP THE GUIDELINES UNDER SUBSECTION (3) IN CONSULTATION WITH THE LONG TERM CARE WORK GROUP. AN INDIVIDUAL REPRESENTING MANUFACTURERS OF BED RAILS, 2 RESIDENTS OR FAMILY MEMBERS, AND AN INDIVIDUAL WITH EXPERTISE IN BED RAIL INSTALLATION AND USE SHALL BE ADDED TO THE LONG TERM CARE WORK GROUP FOR PURPOSES OF THIS SUBSECTION. THE DEPARTMENT SHALL CONSIDER AS PART OF ITS REPORT TO THE LEGISLATURE THE RECOMMENDATIONS OF THE HOSPITAL BED SAFETY WORK GROUP ESTABLISHED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION. IF THOSE RECOMMENDATIONS ARE AVAILABLE AT THE TIME OF THE SUBMISSION OF THE REPORT. NOT LATER THAN 6 MONTHS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION, THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES SHALL SUBMIT ITS REPORT TO THE LEGISLATURE. THE DEPARTMENT MAY DELAY SUBMISSION OF ITS REPORT BY UP TO 3 MONTHS SO THAT ITS REPORT MAY REFLECT THE RECOMMENDATIONS OF THE HOSPITAL BED SAFETY WORK GROUP ESTABLISHED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION.

(5) A NURSING HOME THAT COMPLIES WITH SUBSECTIONS (1) AND (2) AND THE GUIDELINES DEVELOPED UNDER THIS SECTION IN PROVIDING BED RAILS TO A RESIDENT IS NOT SUBJECT TO ADMINISTRATIVE PENALTIES IMPOSED BY THE DEPARTMENT BASED SOLELY ON PROVIDING THE BED RAILS. NOTHING IN THIS SUBSECTION PRECLUDES THE DEPARTMENT FROM CITING SPECIFIC STATE OR FEDERAL DEFICIENCIES FOR IMPROPERLY MAINTAINED BED RAILS, IMPROPERLY FITTED MATTRESSES, OR OTHER HAZARDS CREATED BY IMPROPERLY POSITIONED BED RAILS, MATTRESSES, OR BEDS.

(6) THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES SHALL CONSULT WITH REPRESENTATIVES OF THE NURSING HOME INDUSTRY TO EXPEDITIOUSLY DEVELOP INTERIM GUIDELINES ON BED RAIL USAGE THAT ARE TO BE USED UNTIL THE DEPARTMENT DEVELOPS THE GUIDELINES REQUIRED UNDER SUBSECTION (4).

18 Sec. 21799b. (1) If, upon investigation, the department of
19 ~~public health~~ CONSUMER AND INDUSTRY SERVICES finds that a
20 licensee is not in compliance with this part, a rule promulgated
21 under this part, or a federal law or regulation governing nursing
22 home certification under title ~~18 or 19 of the social security~~
23 ~~act, 42 U.S.C. 1395 to 1396k~~ XVIII OR XIX, which NONCOMPLIANCE
24 impairs the ability of the licensee to deliver an acceptable
25 level of care and services, OR IN THE CASE OF A NURSING HOME
26 CLOSURE, the department of ~~public health~~ CONSUMER AND INDUSTRY
27 SERVICES shall notify the department of ~~social services~~

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1 COMMUNITY HEALTH of the finding and MAY issue 1 or more of the
2 following correction notices to the licensee:

3 (a) Suspend the admission or readmission of patients to the
4 nursing home.

5 (b) Reduce the licensed capacity of the nursing home.

6 (c) Selectively transfer patients whose care needs are not
7 being met by the licensee.

8 (d) Initiate action to place the home in receivership as
9 prescribed in section 21751.

10 (E) REQUIRE APPOINTMENT AT THE NURSING HOME'S EXPENSE OF A
11 DEPARTMENT APPROVED TEMPORARY ADMINISTRATIVE ADVISOR OR A TEMPO-
12 RARY CLINICAL ADVISOR, OR BOTH, WITH AUTHORITY AND DUTIES SPECI-
13 FIED BY THE DEPARTMENT TO ASSIST THE NURSING HOME MANAGEMENT AND
14 STAFF TO ACHIEVE SUSTAINED COMPLIANCE WITH REQUIRED OPERATING
15 STANDARDS.

16 (F) REQUIRE APPOINTMENT AT THE NURSING HOME'S EXPENSE OF A
17 DEPARTMENT APPROVED TEMPORARY MANAGER WITH AUTHORITY AND DUTIES
18 SPECIFIED BY THE DEPARTMENT TO OVERSEE THE NURSING HOME'S
19 ACHIEVEMENT OF SUSTAINED COMPLIANCE WITH REQUIRED OPERATING STAN-
20 DARDS OR TO OVERSEE THE ORDERLY CLOSURE OF THE NURSING HOME.

21 (G) ~~-(e)-~~ Issue a correction notice to the licensee and the
22 department of ~~social services~~ COMMUNITY HEALTH describing the
23 violation and the statute or rule violated and specifying the
24 corrective action to be taken and the period of time in which the
25 corrective action is to be completed. Upon issuance, the direc-
26 tor shall cause to be published in a daily newspaper of general
27 circulation in an area in which the nursing home is located

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1 notice of the action taken and the listing of conditions upon
2 which the director's action is predicated.

3 (2) Within 72 hours after receipt of a notice issued under
4 subsection (1), the licensee shall be given an opportunity for a
5 hearing on the matter. The director's notice shall continue in
6 effect during the pendency of the hearing and any subsequent
7 court proceedings. The hearing shall be conducted in compliance
8 with the administrative procedures act of 1969.

9 (3) A licensee who believes that a correction notice has
10 been complied with may request a verification of compliance from
11 the department. Not later than 72 hours after the licensee makes
12 the request, the department shall investigate to determine
13 whether the licensee has taken the corrective action prescribed
14 in the notice under subsection ~~-(1)-(e)-~~ (1)(G). If the depart-
15 ment finds that the licensee has taken the corrective action and
16 that the conditions giving rise to the notice have been allevi-
17 ated, the department may cease taking further action against the
18 licensee, or may take other action ~~which~~ THAT the director con-
19 sider appropriate.

20 (4) AS USED IN THIS PART, "TITLE XVIII" AND "TITLE XIX" MEAN
21 THOSE TERMS AS DEFINED IN SECTION 20155.

22 (5) THE DEPARTMENT SHALL REPORT ANNUALLY TO THE HOUSE AND
23 SENATE STANDING COMMITTEES ON SENIOR ISSUES ON THE NUMBER OF
24 TIMES THE DEPARTMENT APPOINTED A TEMPORARY ADMINISTRATIVE ADVI-
25 SOR, TEMPORARY CLINICAL ADVISOR, AND TEMPORARY MANAGER AS
26 DESCRIBED IN SUBSECTION (1)(E) OR (F). THE REPORT SHALL INCLUDE
27 WHETHER THE NURSING HOME CLOSED OR REMAINED OPEN. THE DEPARTMENT

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1 MAY INCLUDE THIS REPORT WITH OTHER REPORTS MADE TO FULFILL
2 LEGISLATIVE REPORTING REQUIREMENTS.

3 (6) IF THE DEPARTMENT DETERMINES THAT A NURSING HOME'S
4 PATIENTS CAN BE SAFEGUARDED AND PROVIDED WITH A SAFE ENVIRONMENT,
5 THE DEPARTMENT SHALL MAKE ITS DECISIONS CONCERNING THE NURSING
6 HOME'S FUTURE OPERATION BASED ON A PRESUMPTION IN FAVOR OF KEEP-
7 ING THE NURSING HOME OPEN.