



HOUSE BILL No. 5660

April 18, 2000, Introduced by Rep. Richner and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 16221, 16226, 20165, 20201, 21515, and 22210 (MCL 333.16221, 333.16226, 333.20165, 333.20201, 333.21515, and 333.22210), sections 16221 and 16226 as amended by 2000 PA 29, section 20165 as amended by 1998 PA 108, section 20201 as amended by 1998 PA 88, and section 22210 as amended by 1993 PA 88, and by adding sections 16279 and 20195.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 16221. The department may investigate activities
2 related to the practice of a health profession by a licensee, a
3 registrant, or an applicant for licensure or registration. The
4 department may hold hearings, administer oaths, and order
5 relevant testimony to be taken and shall report its findings to
6 the appropriate disciplinary subcommittee. The disciplinary

1 subcommittee shall proceed under section 16226 if it finds that 1
2 or more of the following grounds exist:

3 (a) A violation of general duty, consisting of negligence or
4 failure to exercise due care, including negligent delegation to
5 or supervision of employees or other individuals, whether or not
6 injury results, or any conduct, practice, or condition which
7 impairs, or may impair, the ability to safely and skillfully
8 practice the health profession.

9 (b) Personal disqualifications, consisting of 1 or more of
10 the following:

11 (i) Incompetence.

12 (ii) Subject to sections 16165 to 16170a, substance abuse as
13 defined in section 6107.

14 (iii) Mental or physical inability reasonably related to and
15 adversely affecting the licensee's ability to practice in a safe
16 and competent manner.

17 (iv) Declaration of mental incompetence by a court of compe-
18 tent jurisdiction.

19 (v) Conviction of a misdemeanor punishable by imprisonment
20 for a maximum term of 2 years; a misdemeanor involving the ille-
21 gal delivery, possession, or use of a controlled substance; or a
22 felony. A certified copy of the court record is conclusive evi-
23 dence of the conviction.

24 (vi) Lack of good moral character.

25 (vii) Conviction of a criminal offense under sections 520a
26 to 520l of the Michigan penal code, 1931 PA 328, MCL 750.520a to

1 750.520l. A certified copy of the court record is conclusive
2 evidence of the conviction.

3 (viii) Conviction of a violation of section 492a of the
4 Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy
5 of the court record is conclusive evidence of the conviction.

6 (ix) Conviction of a misdemeanor or felony involving fraud
7 in obtaining or attempting to obtain fees related to the practice
8 of a health profession. A certified copy of the court record is
9 conclusive evidence of the conviction.

10 (x) Final adverse administrative action by a licensure, reg-
11 istration, disciplinary, or certification board involving the
12 holder of, or an applicant for, a license or registration regu-
13 lated by another state or a territory of the United States, by
14 the United States military, by the federal government, or by
15 another country. A certified copy of the record of the board is
16 conclusive evidence of the final action.

17 (xi) Conviction of a misdemeanor that is reasonably related
18 to or that adversely affects the licensee's ability to practice
19 in a safe and competent manner. A certified copy of the court
20 record is conclusive evidence of the conviction.

21 (c) Prohibited acts, consisting of 1 or more of the
22 following:

23 (i) Fraud or deceit in obtaining or renewing a license or
24 registration.

25 (ii) Permitting the license or registration to be used by an
26 unauthorized person.

1 (iii) Practice outside the scope of a license.

2 (iv) Obtaining, possessing, or attempting to obtain or
3 possess a controlled substance as defined in section 7104 or a
4 drug as defined in section 7105 without lawful authority; or
5 selling, prescribing, giving away, or administering drugs for
6 other than lawful diagnostic or therapeutic purposes.

7 (d) Unethical business practices, consisting of 1 or more of
8 the following:

9 (i) False or misleading advertising.

10 (ii) Dividing fees for referral of patients or accepting
11 kickbacks on medical or surgical services, appliances, or medica-
12 tions purchased by or in behalf of patients.

13 (iii) Fraud or deceit in obtaining or attempting to obtain
14 third party reimbursement.

15 (e) Unprofessional conduct, consisting of 1 or more of the
16 following:

17 (i) Misrepresentation to a consumer or patient or in obtain-
18 ing or attempting to obtain third party reimbursement in the
19 course of professional practice.

20 (ii) Betrayal of a professional confidence.

21 (iii) Promotion for personal gain of an unnecessary drug,
22 device, treatment, procedure, or service.

23 (iv) Directing or requiring an individual to purchase or
24 secure a drug, device, treatment, procedure, or service from
25 another person, place, facility, or business in which the
26 licensee has a financial interest.

1 (f) Failure to report a change of name or mailing address
2 within 30 days after the change occurs.

3 (g) A violation, or aiding or abetting in a violation, of
4 this article or of a rule promulgated under this article.

5 (h) Failure to comply with a subpoena issued pursuant to
6 this part, failure to respond to a complaint issued under this
7 article or article 7, failure to appear at a compliance confer-
8 ence or an administrative hearing, or failure to report under
9 section 16222 or 16223.

10 (i) Failure to pay an installment of an assessment levied
11 pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100
12 to 500.8302, within 60 days after notice by the appropriate
13 board.

14 (j) A violation of section 17013 or 17513.

15 (k) Failure to meet 1 or more of the requirements for licen-
16 sure or registration under section 16174.

17 (l) A violation of section 17015 or 17515.

18 (m) A violation of section 17016 or 17516.

19 (n) Failure to comply with section 9206(3).

20 (o) A violation of section 5654 or 5655.

21 (p) A violation of section 16274.

22 (q) A violation of section 17020 or 17520.

23 (R) A VIOLATION OF SECTION 16279. THIS SUBDIVISION ALSO
24 APPLIES TO A LICENSEE OR REGISTRANT IF A PERSON AUTHORIZED BY THE
25 LICENSEE OR REGISTRANT TO RETRIEVE OR COPY, OR BOTH, MEDICAL
26 RECORDS UNDER SECTION 16279 VIOLATES SECTION 16279.

1 Sec. 16226. (1) After finding the existence of 1 or more of
 2 the grounds for disciplinary subcommittee action listed in
 3 section 16221, a disciplinary subcommittee shall impose 1 or more
 4 of the following sanctions for each violation:

5

6 Violations of Section 16221

Sanctions

7 Subdivision (a), (b)(ii),	Probation, limitation, denial,
8 (b)(iv), (b)(vi), or	suspension, revocation,
9 (b)(vii)	restitution, community service,
10	or fine.
11 Subdivision (b)(viii)	Revocation or denial.
12 Subdivision (b)(i),	Limitation, suspension,
13 (b)(iii), (b)(v),	revocation, denial,
14 (b)(ix),	probation, restitution,
15 (b)(x), or (b)(xi)	community service, or fine.
16 Subdivision (c)(i)	Denial, revocation, suspension,
17	probation, limitation, community
18	service, or fine.
19 Subdivision (c)(ii)	Denial, suspension, revocation,
20	restitution, community service,
21	or fine.

- 1 Subdivision (c)(iii) Probation, denial, suspension,
2 revocation, restitution, commu-
3 nity service, or fine.
- 4 Subdivision (c)(iv) Fine, probation, denial,
5 or restitution.
- 6 Subdivision (d)(i) Reprimand, fine, probation,
7 or (d)(ii) community service, denial,
8 or restitution.
- 9 Subdivision (e)(i) Reprimand, fine, probation,
10 limitation, suspension, community
11 service, denial, or restitution.
- 12 Subdivision (e)(ii) Reprimand, probation,
13 or (h) suspension, restitution, commu-
14 nity service, denial, or fine.
- 15 Subdivision (e)(iii) Reprimand, fine, probation,
16 or (e)(iv) suspension, revocation, limita-
17 tion, community service, denial,
18 or restitution.
- 19 Subdivision (f) Reprimand or fine.

1 Subdivision (g) Reprimand, probation, denial,
2 suspension, revocation,
3 limitation, restitution, commu-
4 nity service, or fine.

5 Subdivision (i) Suspension or fine.

6 Subdivision (j), (o), or

7 ~~-(q)-~~ (R) Reprimand or fine.

8 Subdivision (k) Reprimand, denial, or
9 limitation.

10 Subdivision (l) or (n) Denial, revocation, restitution,
11 probation, suspension, limita-
12 tion, reprimand, or fine.

13 Subdivision (m) Revocation or denial.

14 Subdivision (p) Revocation.

15 (2) Determination of sanctions for violations under this
16 section shall be made by a disciplinary subcommittee. If, during
17 judicial review, the court of appeals determines that a final
18 decision or order of a disciplinary subcommittee prejudices sub-
19 stantial rights of the petitioner for 1 or more of the grounds
20 listed in section 106 of the administrative procedures act of
21 1969, 1969 PA 306, MCL 24.306, and holds that the final decision

1 or order is unlawful and is to be set aside, the court shall
2 state on the record the reasons for the holding and may remand
3 the case to the disciplinary subcommittee for further
4 consideration.

5 (3) A disciplinary subcommittee may impose a fine of up to,
6 but not exceeding, \$250,000.00 for a violation of
7 section 16221(a) or (b).

8 (4) A disciplinary subcommittee may require a licensee or
9 registrant or an applicant for licensure or registration who has
10 violated this article or article 7 or a rule promulgated under
11 this article or article 7 to satisfactorily complete an educa-
12 tional program, a training program, or a treatment program, a
13 mental, physical, or professional competence examination, or a
14 combination of those programs and examinations.

15 SEC. 16279. (1) UPON RECEIPT OF A WRITTEN REQUEST FROM A
16 PATIENT, THE PATIENT'S AGENT, OR OTHER LEGALLY AUTHORIZED INDI-
17 VIDUAL TO EXAMINE OR COPY ALL OR PART OF THE INFORMATION CON-
18 TAINED IN THE PATIENT'S MEDICAL RECORD, A LICENSEE OR REGISTRANT
19 OR A PERSON AUTHORIZED BY THE LICENSEE OR REGISTRANT TO RETRIEVE
20 OR COPY, OR BOTH, MEDICAL RECORDS, AS PROMPTLY AS REQUIRED UNDER
21 THE CIRCUMSTANCES, BUT NOT LATER THAN 30 BUSINESS DAYS AFTER
22 RECEIPT OF THE WRITTEN REQUEST, SHALL DO 1 OR MORE OF THE FOLLOW-
23 ING, AS APPROPRIATE:

24 (A) MAKE THE MEDICAL RECORD AVAILABLE FOR EXAMINATION DURING
25 REGULAR BUSINESS HOURS AND PROVIDE A COPY, IF REQUESTED, TO THE
26 PATIENT, THE PATIENT'S AGENT, OR OTHER LEGALLY AUTHORIZED
27 INDIVIDUAL OF ALL OR PART OF THE MEDICAL RECORD, AS DETERMINED BY

1 THE PATIENT, THE PATIENT'S AGENT, OR OTHER LEGALLY AUTHORIZED
2 INDIVIDUAL.

3 (B) IF THE MEDICAL RECORD DOES NOT EXIST OR CANNOT BE FOUND,
4 SO INFORM THE PATIENT, THE PATIENT'S AGENT, OR OTHER LEGALLY
5 AUTHORIZED INDIVIDUAL.

6 (C) IF THE LICENSEE OR REGISTRANT TO WHOM THE REQUEST IS
7 DIRECTED DOES NOT MAINTAIN THE MEDICAL RECORD, SO INFORM THE
8 PATIENT, THE PATIENT'S AGENT, OR OTHER LEGALLY AUTHORIZED INDI-
9 VIDUAL AND PROVIDE THE NAME AND ADDRESS, IF KNOWN, OF THE LICENS-
10 EE, REGISTRANT, HEALTH FACILITY OR AGENCY, OR OTHER ENTITY THAT
11 MAINTAINS THE MEDICAL RECORD.

12 (D) IF THE LICENSEE OR REGISTRANT IS UNAVAILABLE DURING THE
13 PERIOD OF 30 BUSINESS DAYS, UPON BECOMING AVAILABLE IMMEDIATELY
14 NOTIFY THE PATIENT, THE PATIENT'S AGENT, OR OTHER LEGALLY AUTHO-
15 RIZED INDIVIDUAL OF THE LICENSEE'S OR REGISTRANT'S RETURN AND
16 COMPLETE THE REQUEST PURSUANT TO THIS SUBSECTION WITHIN 30 BUSI-
17 NESS DAYS AFTER THE LICENSEE OR REGISTRANT BECOMES AVAILABLE.

18 (2) IF A PATIENT, THE PATIENT'S AGENT, OR OTHER LEGALLY
19 AUTHORIZED INDIVIDUAL REQUESTS TO EXAMINE OR COPY, OR BOTH, THE
20 INFORMATION CONTAINED IN THE PATIENT'S MEDICAL RECORD, THE
21 LICENSEE OR REGISTRANT OR A PERSON AUTHORIZED BY THE LICENSEE OR
22 REGISTRANT TO RETRIEVE OR COPY, OR BOTH, MEDICAL RECORDS MAY
23 CHARGE THE PATIENT, THE PATIENT'S AGENT, OR OTHER LEGALLY AUTHO-
24 RIZED INDIVIDUAL 1 OR MORE OF THE FOLLOWING:

25 (A) A RETRIEVAL FEE NOT TO EXCEED \$15.00 PER REQUEST.

26 (B) SUBJECT TO SUBSECTION (4), IF THE LICENSEE OR REGISTRANT
27 OR A PERSON AUTHORIZED BY THE LICENSEE OR REGISTRANT TO RETRIEVE

1 OR COPY, OR BOTH, MEDICAL RECORDS COPIES THE MEDICAL RECORD FOR
2 THE PATIENT, THE PATIENT'S AGENT, OR OTHER LEGALLY AUTHORIZED
3 INDIVIDUAL AND IF THE NUMBER OF PAGES TO BE COPIED DOES NOT
4 EXCEED 20, A COPYING FEE OF NOT MORE THAN \$1.00 PER PAGE.

5 (C) SUBJECT TO SUBSECTION (4), IF THE LICENSEE OR REGISTRANT
6 OR A PERSON AUTHORIZED BY THE LICENSEE OR REGISTRANT TO RETRIEVE
7 OR COPY, OR BOTH, MEDICAL RECORDS COPIES THE MEDICAL RECORD FOR
8 THE PATIENT, THE PATIENT'S AGENT, OR OTHER LEGALLY AUTHORIZED
9 INDIVIDUAL AND IF THE NUMBER OF PAGES IS MORE THAN 20, BUT FEWER
10 THAN 60, A COPYING FEE OF NOT MORE THAN 75 CENTS PER PAGE.

11 (D) SUBJECT TO SUBSECTION (4), IF THE LICENSEE OR REGISTRANT
12 OR A PERSON AUTHORIZED BY THE LICENSEE OR REGISTRANT TO RETRIEVE
13 OR COPY, OR BOTH, MEDICAL RECORDS COPIES THE MEDICAL RECORD FOR
14 THE PATIENT, THE PATIENT'S AGENT, OR OTHER LEGALLY AUTHORIZED
15 INDIVIDUAL AND IF THE NUMBER OF PAGES IS MORE THAN 60, A COPYING
16 FEE OF NOT MORE THAN 25 CENTS PER PAGE.

17 (E) IF THE LICENSEE OR REGISTRANT OR A PERSON AUTHORIZED BY
18 THE LICENSEE OR REGISTRANT TO RETRIEVE OR COPY, OR BOTH, MEDICAL
19 RECORDS COPIES THE MEDICAL RECORD UPON THE REQUEST OF A PROSECUT-
20 ING ATTORNEY, THE LICENSEE OR REGISTRANT OR PERSON AUTHORIZED BY
21 THE LICENSEE OR REGISTRANT TO RETRIEVE OR COPY, OR BOTH, MEDICAL
22 RECORDS MAY CHARGE A RETRIEVAL FEE OF NOT MORE THAN \$15.00 PLUS
23 THE ACTUAL COST OF DELIVERY.

24 (F) IF THE LICENSEE OR REGISTRANT OR A PERSON AUTHORIZED BY
25 THE LICENSEE OR REGISTRANT TO RETRIEVE OR COPY, OR BOTH, MEDICAL
26 RECORDS COPIES THE MEDICAL RECORD UPON THE REQUEST OF A STATE
27 EXECUTIVE AGENCY, THE LICENSEE OR REGISTRANT OR PERSON AUTHORIZED

1 BY THE LICENSEE OR REGISTRANT TO RETRIEVE OR COPY, OR BOTH,
2 MEDICAL RECORDS MAY NOT CHARGE A RETRIEVAL FEE OR ANY OTHER FEE,
3 UNLESS SUCH A FEE IS PERMITTED UNDER STATE EXECUTIVE AGENCY RULE
4 OR GUIDELINES.

5 (G) IF THE LICENSEE OR REGISTRANT OR A PERSON AUTHORIZED BY
6 THE LICENSEE OR REGISTRANT TO RETRIEVE OR COPY, OR BOTH, MEDICAL
7 RECORDS COPIES THE MEDICAL RECORD FOR THE PURPOSE OF SUPPORTING A
8 CLAIM FOR MEDICARE, MEDICAID, OR OTHER NEED-BASED PROGRAMS, AND
9 THE PURPOSE OF THE REQUEST IS CLEARLY SHOWN BY THE PARTY MAKING
10 THE REQUEST, THE LICENSEE OR REGISTRANT MAY CHARGE A RETRIEVAL
11 FEE OF NOT MORE THAN \$25.00 PLUS THE ACTUAL COST OF DELIVERY.

12 (3) A LICENSEE OR REGISTRANT OR A PERSON AUTHORIZED BY THE
13 LICENSEE OR REGISTRANT TO RETRIEVE OR COPY, OR BOTH, MEDICAL
14 RECORDS MAY REFUSE TO RETRIEVE OR COPY A MEDICAL RECORD FOR A
15 PATIENT OR PATIENT'S AGENT UNTIL THE APPLICABLE FEE UNDER THIS
16 SECTION IS PAID.

17 (4) THE COPYING CHARGE LIMIT SET FORTH IN SUBSECTION (2)
18 DOES NOT APPLY TO COPIES OF MICROFILM, X-RAYS, ELECTROENCEPHALO-
19 GRAM TRACINGS, OR OTHER RADIOGRAPHIC OR PHOTOGRAPHIC RECORDS. A
20 LICENSEE OR REGISTRANT OR A PERSON AUTHORIZED BY THE LICENSEE OR
21 REGISTRANT TO RETRIEVE OR COPY, OR BOTH, MEDICAL RECORDS MAY
22 CHARGE THE ACTUAL COST OF COPYING A MEDICAL RECORD DESCRIBED IN
23 THIS SUBSECTION.

24 (5) A LICENSEE OR REGISTRANT OR A PERSON AUTHORIZED BY THE
25 LICENSEE OR REGISTRANT TO RETRIEVE OR COPY, OR BOTH, MEDICAL
26 RECORDS MAY CHARGE THE ACTUAL COSTS OF SHIPPING AND DELIVERY FOR

1 MEDICAL RECORDS COPIED, SHIPPED, AND DELIVERED UNDER THIS
2 SECTION.

3 (6) BEGINNING UPON THE EXPIRATION OF 1 YEAR AFTER THE EFFEC-
4 TIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION, THE
5 DIRECTOR OF THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES MAY
6 ANNUALLY ADJUST THE DOLLAR AND CENTS PER PAGE LIMITS SET FORTH IN
7 SUBSECTION (2) BY AN AMOUNT DETERMINED BY THE STATE TREASURER TO
8 REFLECT THE ANNUAL PERCENTAGE CHANGE IN THE DETROIT CONSUMER
9 PRICE INDEX.

10 (7) THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND INDUSTRY
11 SERVICES SHALL DEVELOP A MODEL REQUEST FORM FOR PURPOSES OF THIS
12 SECTION AND MAKE THE FORM AVAILABLE UPON REQUEST TO LICENSEES,
13 REGISTRANTS, AND OTHER INDIVIDUALS INCLUDING, BUT NOT LIMITED TO,
14 A PERSON AUTHORIZED BY A LICENSEE OR REGISTRANT TO RETRIEVE OR
15 COPY, OR BOTH, MEDICAL RECORDS.

16 (8) AS USED IN THIS SECTION:

17 (A) "DETROIT CONSUMER PRICE INDEX" MEANS THE MOST COMPREHEN-
18 SIVE INDEX OF CONSUMER PRICES AVAILABLE FOR THE DETROIT AREA FROM
19 THE BUREAU OF LABOR STATISTICS OF THE UNITED STATES DEPARTMENT OF
20 LABOR.

21 (B) "MEDICAID" MEANS THE PROGRAM FOR MEDICAL ASSISTANCE CRE-
22 ATED UNDER TITLE XIX AND ADMINISTERED BY THE DEPARTMENT OF COMMU-
23 NITY HEALTH UNDER THE SOCIAL WELFARE ACT, 1939 PA 280, MCL 400.1
24 TO 400.119B. AS USED IN THIS SUBDIVISION, "TITLE XIX" MEANS THAT
25 TERM AS DEFINED IN SECTION 20201(3)(E).

26 (C) "MEDICAL RECORD" INCLUDES, BUT IS NOT LIMITED TO,
27 MEDICAL HISTORIES, RECORDS, REPORTS, SUMMARIES, DIAGNOSES AND

1 PROGNoses, TREATMENT AND MEDICATION ORDERED AND GIVEN, NOTES,
2 ENTRIES, AND X-RAYS AND OTHER IMAGING RECORDS. MEDICAL RECORD
3 DOES NOT INCLUDE MENTAL HEALTH RECORDS.

4 (D) "MEDICARE" MEANS BENEFITS UNDER THE FEDERAL MEDICARE
5 PROGRAM ESTABLISHED UNDER TITLE XVIII. AS USED IN THIS SUBDIVI-
6 SION, "TITLE XVIII" MEANS THAT TERM AS DEFINED IN SECTION
7 20201(3)(E).

8 (E) "MENTAL HEALTH RECORD" MEANS INFORMATION THAT IS
9 DESCRIBED AND MADE CONFIDENTIAL UNDER SECTION 748 OF THE MENTAL
10 HEALTH CODE, 1974 PA 258, MCL 330.1748.

11 (F) "PATIENT'S AGENT" OR "AGENT" MEANS 1 OR MORE OF THE
12 FOLLOWING:

13 (i) A LEGAL GUARDIAN OF THE PATIENT.

14 (ii) IF THE PATIENT IS A MINOR, A PARENT OR LEGAL GUARDIAN
15 OF THE MINOR.

16 (iii) A LEGAL REPRESENTATIVE OF THE PATIENT.

17 Sec. 20165. (1) Except as otherwise provided in this sec-
18 tion, after notice of intent to an applicant or licensee to deny,
19 limit, suspend, or revoke the applicant's or licensee's license
20 or certification and an opportunity for a hearing, the department
21 may deny, limit, suspend, or revoke the license or certification
22 or impose an administrative fine on a licensee if 1 or more of
23 the following exist:

24 (a) Fraud or deceit in obtaining or attempting to obtain a
25 license or certification or in the operation of the licensed
26 health facility or agency.

1 (b) A violation of this article or a rule promulgated under
2 this article.

3 (c) False or misleading advertising.

4 (d) Negligence or failure to exercise due care, including
5 negligent supervision of employees and subordinates.

6 (e) Permitting a license or certificate to be used by an
7 unauthorized health facility or agency.

8 (f) Evidence of abuse regarding a patient's health, welfare,
9 or safety or the denial of a patient's rights.

10 (g) Failure to comply with section 10102a(7).

11 (h) Failure to comply with part 222 or a term, condition, or
12 stipulation of a certificate of need issued under part 222, or
13 both.

14 (i) A violation of section 20197(1).

15 (2) The department may deny an application for a license or
16 certification based on a finding of a condition or practice that
17 would constitute a violation of this article if the applicant
18 were a licensee.

19 (3) Denial, suspension, or revocation of an individual emer-
20 gency medical services personnel license under part 209 is gov-
21 erned by section 20958.

22 (4) If the department determines under subsection (1) that a
23 health facility or agency has violated section 20197(1), the
24 department shall impose an administrative fine of \$5,000,000.00
25 on the health facility or agency.

26 (5) IF, AFTER NOTICE AND THE OPPORTUNITY FOR A HEARING, THE
27 DEPARTMENT DETERMINES THAT A HEALTH FACILITY OR AGENCY OR A

1 PERSON AUTHORIZED BY THE HEALTH FACILITY OR AGENCY TO RETRIEVE OR
2 COPY, OR BOTH, MEDICAL RECORDS HAS VIOLATED SECTION 20195, THE
3 DEPARTMENT SHALL IMPOSE AN ADMINISTRATIVE FINE ON THE HEALTH
4 FACILITY OR AGENCY.

5 SEC. 20195. (1) UPON RECEIPT OF A WRITTEN REQUEST FROM A
6 PATIENT, THE PATIENT'S AGENT, OR OTHER LEGALLY AUTHORIZED INDI-
7 VIDUAL TO EXAMINE OR COPY, OR BOTH, ALL OR PART OF THE INFORMA-
8 TION CONTAINED IN THE PATIENT'S MEDICAL RECORD, A HEALTH FACILITY
9 OR AGENCY OR A PERSON AUTHORIZED BY THE HEALTH FACILITY OR AGENCY
10 TO RETRIEVE OR COPY, OR BOTH, MEDICAL RECORDS, AS PROMPTLY AS
11 REQUIRED UNDER THE CIRCUMSTANCES, BUT NOT LATER THAN 30 BUSINESS
12 DAYS AFTER RECEIPT OF THE WRITTEN REQUEST, SHALL DO 1 OR MORE OF
13 THE FOLLOWING, AS APPROPRIATE:

14 (A) MAKE THE MEDICAL RECORD AVAILABLE FOR EXAMINATION DURING
15 REGULAR BUSINESS HOURS AND PROVIDE A COPY, IF REQUESTED, TO THE
16 PATIENT, THE PATIENT'S AGENT, OR OTHER LEGALLY AUTHORIZED INDI-
17 VIDUAL OF ALL OR PART OF THE MEDICAL RECORD, AS DETERMINED BY THE
18 PATIENT, THE PATIENT'S AGENT, OR OTHER LEGALLY AUTHORIZED
19 INDIVIDUAL.

20 (B) IF THE MEDICAL RECORD DOES NOT EXIST OR CANNOT BE FOUND,
21 SO INFORM THE PATIENT, THE PATIENT'S AGENT, OR OTHER LEGALLY
22 AUTHORIZED INDIVIDUAL.

23 (C) IF THE HEALTH FACILITY OR AGENCY TO WHOM THE REQUEST IS
24 DIRECTED DOES NOT MAINTAIN THE MEDICAL RECORD, SO INFORM THE
25 PATIENT, THE PATIENT'S AGENT, OR OTHER LEGALLY AUTHORIZED INDI-
26 VIDUAL AND PROVIDE THE NAME AND ADDRESS, IF KNOWN, OF THE HEALTH

1 PROFESSIONAL, HEALTH FACILITY OR AGENCY, OR OTHER ENTITY THAT
2 MAINTAINS THE MEDICAL RECORD.

3 (2) IF A PATIENT, THE PATIENT'S AGENT, OR OTHER LEGALLY
4 AUTHORIZED INDIVIDUAL REQUESTS TO EXAMINE OR COPY, OR BOTH, THE
5 PATIENT'S MEDICAL RECORD, THE HEALTH FACILITY OR AGENCY OR A
6 PERSON AUTHORIZED BY THE HEALTH FACILITY OR AGENCY TO RETRIEVE OR
7 COPY, OR BOTH, MEDICAL RECORDS MAY CHARGE THE PATIENT, THE
8 PATIENT'S AGENT, OR OTHER LEGALLY AUTHORIZED INDIVIDUAL 1 OR MORE
9 OF THE FOLLOWING:

10 (A) A RETRIEVAL FEE NOT TO EXCEED \$15.00 PER REQUEST.

11 (B) SUBJECT TO SUBSECTION (4), IF THE HEALTH FACILITY OR
12 AGENCY OR A PERSON AUTHORIZED BY THE HEALTH FACILITY OR AGENCY TO
13 RETRIEVE OR COPY, OR BOTH, MEDICAL RECORDS COPIES THE MEDICAL
14 RECORD FOR THE PATIENT, THE PATIENT'S AGENT, OR OTHER LEGALLY
15 AUTHORIZED INDIVIDUAL AND IF THE NUMBER OF PAGES TO BE COPIED
16 DOES NOT EXCEED 20, A COPYING FEE OF NOT MORE THAN \$1.00 PER
17 PAGE.

18 (C) SUBJECT TO SUBSECTION (4), IF THE HEALTH FACILITY OR
19 AGENCY OR A PERSON AUTHORIZED BY THE HEALTH FACILITY OR AGENCY TO
20 RETRIEVE OR COPY, OR BOTH, MEDICAL RECORDS COPIES THE MEDICAL
21 RECORD FOR THE PATIENT, THE PATIENT'S AGENT, OR OTHER LEGALLY
22 AUTHORIZED INDIVIDUAL AND IF THE NUMBER OF PAGES IS MORE THAN 20,
23 BUT FEWER THAN 60, A COPYING FEE OF NOT MORE THAN 75 CENTS PER
24 PAGE.

25 (D) SUBJECT TO SUBSECTION (4), IF THE HEALTH FACILITY OR
26 AGENCY OR A PERSON AUTHORIZED BY THE HEALTH FACILITY OR AGENCY TO
27 RETRIEVE OR COPY, OR BOTH, MEDICAL RECORDS COPIES THE MEDICAL

1 RECORDS FOR THE PATIENT, THE PATIENT'S AGENT, OR OTHER LEGALLY
2 AUTHORIZED INDIVIDUAL AND IF THE NUMBER OF PAGES IS MORE THAN 60,
3 A COPYING FEE OF NOT MORE THAN 25 CENTS PER PAGE.

4 (E) IF THE HEALTH FACILITY OR AGENCY OR A PERSON AUTHORIZED
5 BY THE HEALTH FACILITY OR AGENCY TO RETRIEVE OR COPY, OR BOTH,
6 MEDICAL RECORDS COPIES THE MEDICAL RECORD UPON THE REQUEST OF A
7 PROSECUTING ATTORNEY, THE HEALTH FACILITY OR AGENCY OR PERSON
8 AUTHORIZED BY THE HEALTH FACILITY OR AGENCY TO RETRIEVE OR COPY,
9 OR BOTH, MEDICAL RECORDS MAY CHARGE A RETRIEVAL FEE OF NOT MORE
10 THAN \$15.00 PLUS THE ACTUAL COST OF DELIVERY.

11 (F) IF THE HEALTH FACILITY OR AGENCY OR A PERSON AUTHORIZED
12 BY THE HEALTH FACILITY OR AGENCY TO RETRIEVE OR COPY, OR BOTH,
13 MEDICAL RECORDS COPIES THE MEDICAL RECORD UPON THE REQUEST OF A
14 STATE EXECUTIVE AGENCY, THE HEALTH FACILITY OR AGENCY OR PERSON
15 AUTHORIZED BY THE HEALTH FACILITY OR AGENCY TO RETRIEVE OR COPY,
16 OR BOTH, MEDICAL RECORDS MAY NOT CHARGE A RETRIEVAL FEE OR ANY
17 OTHER FEE, UNLESS SUCH A FEE IS PERMITTED UNDER STATE EXECUTIVE
18 AGENCY RULE OR GUIDELINES.

19 (G) IF THE HEALTH FACILITY OR AGENCY OR A PERSON AUTHORIZED
20 BY THE HEALTH FACILITY OR AGENCY TO RETRIEVE OR COPY, OR BOTH,
21 MEDICAL RECORDS COPIES THE MEDICAL RECORD FOR THE PURPOSE OF SUP-
22 PORTING A CLAIM FOR MEDICARE, MEDICAID, OR OTHER NEED-BASED PRO-
23 GRAMS, AND THE PURPOSE OF THE REQUEST IS CLEARLY SHOWN BY THE
24 PARTY MAKING THE REQUEST, THE HEALTH FACILITY OR AGENCY OR PERSON
25 AUTHORIZED BY THE HEALTH FACILITY OR AGENCY TO RETRIEVE OR COPY,
26 OR BOTH, MEDICAL RECORDS MAY CHARGE A RETRIEVAL FEE OF NOT MORE
27 THAN \$25.00 PLUS THE ACTUAL COST OF DELIVERY.

1 (3) A HEALTH FACILITY OR AGENCY OR A PERSON AUTHORIZED BY
2 THE HEALTH FACILITY OR AGENCY TO RETRIEVE OR COPY, OR BOTH, MEDI-
3 CAL RECORDS MAY CHARGE A FEE UNDER SUBSECTION (2) ONLY FOR THAT
4 PART OF THE MEDICAL RECORD ACTUALLY RETRIEVED OR COPIED, OR
5 BOTH. A HEALTH FACILITY OR AGENCY OR A PERSON AUTHORIZED BY THE
6 HEALTH FACILITY OR AGENCY TO RETRIEVE OR COPY, OR BOTH, MEDICAL
7 RECORDS MAY REFUSE TO RETRIEVE OR COPY A MEDICAL RECORD FOR A
8 PATIENT, PATIENT'S AGENT, OR OTHER LEGALLY AUTHORIZED INDIVIDUAL
9 UNTIL THE APPLICABLE FEE IS PAID.

10 (4) THE COPYING CHARGE LIMIT SET FORTH IN SUBSECTION (2)
11 DOES NOT APPLY TO COPIES OF MICROFILM, X-RAYS, ELECTROENCEPHALO-
12 GRAM TRACINGS, OR OTHER IMAGING OR PHOTOGRAPHIC RECORDS. A
13 HEALTH FACILITY OR AGENCY OR A PERSON AUTHORIZED BY THE HEALTH
14 FACILITY OR AGENCY TO RETRIEVE OR COPY, OR BOTH, MEDICAL RECORDS
15 MAY CHARGE THE ACTUAL COST OF COPYING A MEDICAL RECORD DESCRIBED
16 IN THIS SUBSECTION.

17 (5) A HEALTH FACILITY OR AGENCY OR A PERSON AUTHORIZED BY
18 THE HEALTH FACILITY OR AGENCY TO RETRIEVE OR COPY, OR BOTH, MEDI-
19 CAL RECORDS MAY CHARGE THE ACTUAL COSTS OF SHIPPING AND DELIVERY
20 FOR MEDICAL RECORDS COPIED, SHIPPED, AND DELIVERED UNDER THIS
21 SECTION.

22 (6) THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND INDUSTRY
23 SERVICES MAY ANNUALLY ADJUST THE DOLLAR OR CENTS PER PAGE LIMIT
24 SET FORTH IN SUBSECTION (2) BY AN AMOUNT DETERMINED BY THE STATE
25 TREASURER TO REFLECT THE ANNUAL PERCENTAGE CHANGE IN THE DETROIT
26 CONSUMER PRICE INDEX.

1 (7) THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND INDUSTRY
2 SERVICES SHALL DEVELOP A MODEL REQUEST FORM FOR PURPOSES OF THIS
3 SECTION AND MAKE THE FORM AVAILABLE UPON REQUEST TO A HEALTH
4 FACILITY OR AGENCY OR A PERSON AUTHORIZED BY THE HEALTH FACILITY
5 OR AGENCY TO RETRIEVE OR COPY, OR BOTH, MEDICAL RECORDS OR TO AN
6 INDIVIDUAL.

7 (8) IN ADDITION TO THE SANCTIONS SET FORTH IN SECTION 20165,
8 A HEALTH FACILITY OR AGENCY THAT VIOLATES THIS SECTION IS SUBJECT
9 TO A REPRIMAND OR TO AN ADMINISTRATIVE FINE OF NOT MORE THAN
10 \$1,000.00 FOR EACH VIOLATION.

11 (9) AS USED IN THIS SECTION:

12 (A) "DETROIT CONSUMER PRICE INDEX" MEANS THE MOST COMPREHEN-
13 SIVE INDEX OF CONSUMER PRICES AVAILABLE FOR THE DETROIT AREA FROM
14 THE BUREAU OF LABOR STATISTICS OF THE UNITED STATES DEPARTMENT OF
15 LABOR.

16 (B) "MEDICAID" MEANS THE PROGRAM FOR MEDICAL ASSISTANCE CRE-
17 ATED UNDER TITLE XIX AND ADMINISTERED BY THE DEPARTMENT OF COMMU-
18 NITY HEALTH UNDER THE SOCIAL WELFARE ACT, 1939 PA 280, MCL 400.1
19 TO 400.119B. AS USED IN THIS SUBDIVISION, "TITLE XIX" MEANS THAT
20 TERM AS DEFINED IN SECTION 20201(3)(E).

21 (C) "MEDICAL RECORD" INCLUDES, BUT IS NOT LIMITED TO, MEDI-
22 CAL HISTORIES, RECORDS, REPORTS, SUMMARIES, DIAGNOSES AND PRO-
23 GNOSES, TREATMENT AND MEDICATION ORDERED AND GIVEN, NOTES,
24 ENTRIES, AND X-RAYS AND OTHER RADIOGRAPHIC OR PHOTOGRAPHIC
25 RECORDS. MEDICAL RECORD DOES NOT INCLUDE MENTAL HEALTH RECORDS.

26 (D) "MEDICARE" MEANS BENEFITS UNDER THE FEDERAL MEDICARE
27 PROGRAM ESTABLISHED UNDER TITLE XVIII. AS USED IN THIS

1 SUBDIVISION, "TITLE XVIII" MEANS THAT TERM AS DEFINED IN SECTION
2 20201(3)(E).

3 (E) "MENTAL HEALTH RECORD" MEANS INFORMATION THAT IS
4 DESCRIBED AND MADE CONFIDENTIAL UNDER SECTION 748 OF THE MENTAL
5 HEALTH CODE, 1974 PA 258, MCL 330.1748.

6 (F) "PATIENT'S AGENT" MEANS 1 OR MORE OF THE FOLLOWING:

7 (i) A LEGAL GUARDIAN OF THE PATIENT.

8 (ii) IF THE PATIENT IS A MINOR, A PARENT OR LEGAL GUARDIAN
9 OF THE MINOR.

10 (iii) A LEGAL REPRESENTATIVE OF THE PATIENT.

11 Sec. 20201. (1) ~~A~~ SUBJECT TO SECTION 20203, A health
12 facility or agency ~~which~~ THAT provides services directly to
13 patients or residents and ~~which~~ is licensed under this article
14 shall adopt a policy describing the rights and responsibilities
15 of patients or residents admitted to the health facility or
16 agency. Except for a licensed health maintenance organization
17 ~~which shall~~ THAT IS REQUIRED TO comply with section 21086, ~~the~~
18 ~~policy shall be posted~~ A HEALTH FACILITY OR AGENCY SHALL POST
19 THE POLICY at a public place in the HEALTH facility OR AGENCY and
20 shall ~~be provided~~ PROVIDE A COPY OF THE POLICY to each member
21 of ~~the facility~~ ITS staff. ~~Patients~~ A HEALTH FACILITY OR
22 AGENCY SHALL TREAT PATIENTS or residents ~~shall be treated~~ in
23 accordance with the policy.

24 (2) The policy REQUIRED UNDER SUBSECTION (1) describing the
25 rights and responsibilities of patients or residents shall
26 include, ~~as~~ AT a minimum, ALL OF THE FOLLOWING:

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

5 (b) An individual who is or has been a patient or resident
6 is entitled to inspect ~~, or receive for a reasonable fee, a~~ AND
7 TO copy ~~of~~ his or her medical record upon request, PURSUANT TO
8 SECTION 20195. A third party shall not be given a copy of the
9 patient's or resident's medical record without prior authoriza-
10 tion of the patient.

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

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

20 (e) A patient or resident is entitled to receive adequate
21 and appropriate care, and to receive, from the appropriate indi-
22 vidual within the HEALTH facility OR AGENCY, information about
23 his or her medical condition, proposed course of treatment, and
24 prospects for recovery, in terms that the patient or resident can
25 understand, unless medically contraindicated as documented by the
26 attending physician in the PATIENT'S OR RESIDENT'S medical
27 record.

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

8 (g) A patient or resident is entitled to exercise his or her
9 rights as a patient or resident and as a citizen, and to this end
10 may present grievances or recommend changes in policies and serv-
11 ices on behalf of himself or herself or others to the HEALTH
12 facility OR AGENCY staff, to governmental officials, or to
13 another person of his or her choice within or outside the HEALTH
14 facility OR AGENCY, free from restraint, interference, coercion,
15 discrimination, or reprisal. A patient or resident is entitled
16 to information about the HEALTH facility's OR AGENCY'S policies
17 and procedures for initiation, review, and resolution of patient
18 or resident complaints.

19 (h) A patient or resident is entitled to information con-
20 cerning an experimental procedure proposed as a part of his or
21 her care and ~~shall have~~ HAS the right to refuse to participate
22 in the experiment without jeopardizing his or her continuing
23 care.

24 (i) A patient or resident is entitled to receive and examine
25 an explanation of his or her bill regardless of the source of
26 payment and to receive, upon request, information relating to

1 financial assistance available through the HEALTH facility OR
2 AGENCY.

3 (j) A patient or resident is entitled to know who is respon-
4 sible for and who is providing his or her direct care, is enti-
5 tled to receive information concerning his or her continuing
6 health needs and alternatives for meeting those needs, and to be
7 involved in his or her discharge planning, if appropriate.

8 (k) A patient or resident is entitled to associate and have
9 private communications and consultations with his or her physi-
10 cian, attorney, or any other person of his or her choice and to
11 send and receive personal mail unopened on the same day it is
12 received at the health facility or agency, unless medically con-
13 traindicated as documented by the attending physician in the
14 PATIENT'S OR RESIDENT'S medical record. A patient's or
15 resident's civil and religious liberties, including the right to
16 independent personal decisions and the right to knowledge of
17 available choices, shall not be infringed and the HEALTH facility
18 OR AGENCY shall encourage and assist in the fullest possible
19 exercise of these rights. A patient or resident may meet with,
20 and participate in, the activities of social, religious, and com-
21 munity groups at his or her discretion, unless medically contra-
22 indicated as documented by the attending physician in the
23 PATIENT'S OR RESIDENT'S medical record.

24 (l) A patient or resident is entitled to be free from mental
25 and physical abuse and from physical and chemical restraints,
26 except those restraints authorized in writing by the attending
27 physician for a specified and limited time or as are necessitated

1 by an emergency to protect the patient or resident from injury to
2 self or others, in which case the restraint may only be applied
3 by a qualified professional who shall set forth in writing the
4 circumstances requiring the use of restraints and who shall
5 promptly report the action to the attending physician. In case
6 of a chemical restraint a physician shall be consulted within 24
7 hours after the commencement of the restraint.

8 (m) A patient or resident is entitled to be free from per-
9 forming services for the HEALTH facility OR AGENCY that are not
10 included for therapeutic purposes in the plan of care.

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

14 (3) The following additional requirements for the policy
15 ~~described in subsection (2) shall~~ REQUIRED UNDER SUBSECTION (1)
16 apply to licensees under parts 213 and 217:

17 (a) The policy shall be provided to each nursing home
18 patient or home for the aged resident upon admission, and the
19 staff of the ~~facility~~ NURSING HOME OR HOME FOR THE AGED shall
20 be trained and involved in the implementation of the policy.

21 (b) Each nursing home patient may associate and communicate
22 privately with persons of his or her choice. Reasonable, regular
23 visiting hours, which shall be not less than 8 hours per day, and
24 which shall take into consideration the special circumstances of
25 each visitor, shall be established for patients to receive
26 visitors. A NURSING HOME patient may be visited by the patient's
27 attorney or by representatives of the departments named in

1 section 20156, during other than established visiting hours.
2 Reasonable privacy shall be afforded for visitation of a NURSING
3 HOME patient who shares a room with another NURSING HOME
4 patient. Each NURSING HOME patient shall have reasonable access
5 to a telephone. A married nursing home patient or home for the
6 aged resident is entitled to meet privately with his or her
7 spouse in a room which assures privacy. If both spouses are
8 PATIENTS OR residents in the same ~~facility~~ NURSING HOME OR HOME
9 FOR THE AGED, they are entitled to share a room unless medically
10 contraindicated and documented by the attending physician in the
11 PATIENT'S OR RESIDENT'S medical record.

12 (c) A nursing home patient or home for the aged resident is
13 entitled to retain and use personal clothing and possessions as
14 space permits, unless to do so would infringe upon the rights of
15 other NURSING HOME patients or HOME FOR THE AGED residents, or
16 unless medically contraindicated as documented by the attending
17 physician in the PATIENT'S OR RESIDENT'S medical record. Each
18 nursing home patient or home for the aged resident shall be pro-
19 vided with reasonable space. At the request of a NURSING HOME
20 patient, a nursing home shall provide for the safekeeping of per-
21 sonal effects, funds, and other property of a patient in accord-
22 ance with section 21767, except that a nursing home ~~shall not~~
23 ~~be~~ IS NOT required to provide for the safekeeping of a property
24 which would impose an unreasonable burden on the nursing home.

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

1 informed by the attending physician of the patient's medical
 2 condition unless medically contraindicated as documented by a
 3 physician in the PATIENT'S medical record. Each nursing home
 4 patient shall be afforded the opportunity to discharge himself or
 5 herself from the nursing home.

6 (e) A home for the aged resident may be transferred or dis-
 7 charged only for medical reasons, for his or her welfare or that
 8 of other residents, or for nonpayment of his or her stay, except
 9 as provided by ~~title 18 or 19 of the social security act, 42~~
 10 ~~U.S.C. 1395 to 1396k~~ TITLE XVIII OR TITLE XIX. A nursing home
 11 patient may be transferred or discharged only as provided in sec-
 12 tions 21773 to 21777. A nursing home patient or home for the
 13 aged resident is entitled to be given reasonable advance notice
 14 to ensure orderly transfer or discharge. ~~Those actions~~ STEPS
 15 TAKEN TO ENSURE REASONABLE ADVANCE NOTICE shall be documented in
 16 the PATIENT'S OR RESIDENT'S medical record. AS USED IN THIS SUB-
 17 DIVISION AND SUBDIVISION (F):

18 (i) "TITLE XVIII" MEANS TITLE XVIII OF THE SOCIAL SECURITY
 19 ACT, CHAPTER 531, 49 STAT. 620, 42 U.S.C. 1395 TO 1395b, 1395b-2,
 20 1395b-6 TO 1395b-7, 1395c TO 1395i, 1395i-2 TO 1395i-5, 1395j TO
 21 1395t, 1395u TO 1395w, 1395w-2 TO 1395w-4, 1395w-21 TO 1395w-28,
 22 1395x TO 1395yy, AND 1395bbb TO 1395ggg.

23 (ii) "TITLE XIX" MEANS TITLE XIX OF THE SOCIAL SECURITY ACT,
 24 CHAPTER 531, 49 STAT. 620, 42 U.S.C. 1396 TO 1396f AND 1396g-1 TO
 25 1396r-6, AND 1396r-8 TO 1396v.

26 (f) A nursing home patient or home for the aged resident is
 27 entitled to be fully informed before or at the time of admission

1 and during stay of services available in the ~~facility~~ NURSING
2 HOME OR HOME FOR THE AGED, and of the related charges including
3 any charges for services not covered under ~~title 18 or 19 of the~~
4 ~~social security act, 42 U.S.C. 1395 to 1396k~~ TITLE XVIII OR
5 TITLE XIX, or not covered by the ~~facility's~~ NURSING HOME'S OR
6 HOME FOR THE AGED'S basic per diem rate. The statement of serv-
7 ices provided by the ~~facility~~ NURSING HOME OR HOME FOR THE AGED
8 shall be in writing and shall include those required to be
9 offered on an as-needed basis.

10 (g) A nursing home patient or home for the aged resident is
11 entitled to manage his or her own financial affairs, or to have
12 at least a quarterly accounting of personal financial transac-
13 tions undertaken in his or her behalf by the ~~facility~~ NURSING
14 HOME OR HOME FOR THE AGED during a period of time the patient or
15 resident has delegated those responsibilities to the ~~facility~~
16 NURSING HOME OR HOME FOR THE AGED. In addition, a NURSING HOME
17 patient or HOME FOR THE AGED resident is entitled to receive each
18 month from the ~~facility~~ NURSING HOME OR HOME FOR THE AGED an
19 itemized statement setting forth the services paid for by or on
20 behalf of the patient and the services rendered by the ~~facility~~
21 NURSING HOME OR HOME FOR THE AGED. The admission of a patient to
22 a nursing home does not confer on the nursing home or its owner,
23 administrator, employees, or representatives the authority to
24 manage, use, or dispose of ~~a~~ THE patient's property.

25 (h) A nursing home patient or a person authorized by ~~a~~ THE
26 patient in writing may inspect and copy the patient's personal
27 RECORDS UNDER THIS SUBDIVISION and MAY INSPECT AND COPY THE

1 PATIENT'S medical records PURSUANT TO SECTION 20195. The
2 PERSONAL records shall be made available for inspection and copy-
3 ing by the nursing home within a reasonable time, not exceeding 1
4 week, after the receipt of a written request UNDER THIS
5 SUBDIVISION.

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

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

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

20 (l) Each nursing home patient has the right to receive rep-
21 resentatives of approved organizations as provided in section
22 21763.

23 (4) A nursing home, its owner, administrator, employee, or
24 representative shall not discharge, harass, or retaliate or dis-
25 criminate against a patient because the patient has exercised a
26 right protected under this section.

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

5 (6) A nursing home patient or home for the aged resident is
6 entitled to be fully informed, as evidenced by the patient's or
7 resident's written acknowledgment, before or at the time of
8 admission and during stay, of the policy required by this
9 section. The policy shall provide that if a NURSING HOME patient
10 or HOME FOR THE AGED resident is adjudicated incompetent and not
11 restored to legal capacity, the rights and responsibilities set
12 forth in this section shall be exercised by a person designated
13 by the NURSING HOME patient or HOME FOR THE AGED resident. The
14 ~~facility or agency~~ NURSING HOME OR HOME FOR THE AGED shall pro-
15 vide proper forms for the NURSING HOME patient or HOME FOR THE
16 AGED resident to provide for the designation of this person at
17 the time of admission.

18 (7) This section ~~shall not be construed to~~ DOES NOT pro-
19 hibit a health facility or agency from establishing and recogniz-
20 ing additional patients' OR RESIDENTS' rights.

21 Sec. 21515. The records, data, and knowledge INCLUDING,
22 BUT NOT LIMITED TO, MEDICAL RECORDS AS DEFINED IN SECTION 20195
23 collected for or by individuals or committees assigned a review
24 function described in this article are confidential and shall be
25 used BY THOSE INDIVIDUALS OR COMMITTEES only for the purposes
26 provided in this article, ~~shall~~ ARE not ~~be~~ public records,

1 and ~~shall~~ ARE not ~~be available for~~ SUBJECT TO court
2 subpoena.

3 Sec. 22210. (1) A hospital that applies to the department
4 for a certificate of need and meets all of the following criteria
5 shall be granted a certificate of need for a short-term nursing
6 care program with up to 10 licensed hospital beds:

7 (a) Is eligible to apply for certification as a provider of
8 swing-bed services under section 1883 of title XVIII,
9 42 U.S.C. 1395tt.

10 (b) Subject to subsection (2), has fewer than 100 licensed
11 beds not counting beds excluded under section 1883 of title XVIII
12 of the social security act.

13 (c) Does not have uncorrected licensing, certification, or
14 safety deficiencies for which the department or the state fire
15 marshal, or both, has not accepted a plan of correction.

16 (d) Provides evidence satisfactory to the department that
17 the hospital has had difficulty in placing patients in skilled
18 nursing home beds during the 12 months immediately preceding the
19 date of the application.

20 (2) After October 1, 1990, the criteria set forth in
21 subsection (1)(b) may be modified by the commission, using the
22 procedure set forth in section 22215(3). The department shall
23 not charge a fee for processing a certificate of need application
24 to initiate a short-term nursing care program.

25 (3) A hospital that is granted a certificate of need for a
26 short-term nursing care program under subsection (1) shall comply
27 with all of the following:

1 (a) Not charge for or otherwise attempt to recover the cost
2 of a length of stay for a patient in the short-term nursing care
3 program that exceeds the length of time allowed for post-hospital
4 extended care under title XVIII.

5 (b) Admit patients to the short-term nursing care program
6 only pursuant to an admissions contract approved by the
7 department.

8 (c) Not discharge or transfer a patient from a licensed hos-
9 pital bed other than a hospital long-term care unit bed and admit
10 that patient to the short-term nursing care program unless the
11 discharge or transfer and admission is determined medically
12 appropriate by the attending physician.

13 (d) Permit access to a representative of an organization
14 approved under section 21764 to patients admitted to the
15 short-term nursing care program, for all of the purposes
16 described in section 21763.

17 (e) Subject to subsection (8), not allow the number of
18 patient days for the short-term nursing care program to exceed
19 the equivalent of 1,825 patient days for a single state fiscal
20 year.

21 (f) Transfer a patient in the short-term nursing care pro-
22 gram to an appropriately certified nursing home bed, county medi-
23 cal care facility bed, or hospital long-term care unit bed
24 located within a 50-mile radius of the patient's residence within
25 5 business days after the hospital has been notified, either
26 orally or in writing, that a bed has become available.

1 (g) Not charge or collect from a patient admitted to the
2 short-term nursing care program, for services rendered as part of
3 the short-term nursing care program, an amount in excess of the
4 reasonable charge for the services as determined by the United
5 States secretary of health and human services under title XVIII.

6 (h) Assist a patient who has been denied coverage for serv-
7 ices received in a short-term nursing care program under title
8 XVIII to file an appeal with the medicare recovery project oper-
9 ated by the office of services to the aging.

10 (i) Operate the short-term nursing care program in accord-
11 ance with this section and the requirements of the swing bed pro-
12 visions of section 1883 of title XVIII, 42 U.S.C. 1395tt.

13 (j) Provide data to the department considered necessary by
14 the department to evaluate the short-term nursing care program.
15 The data shall include, but is not limited to, all of the
16 following:

17 (i) The total number of patients admitted to the hospital's
18 short-term nursing care program during the period specified by
19 the department.

20 (ii) The total number of short-term nursing care patient
21 days for the period specified by the department.

22 (iii) Information identifying the type of care to which
23 patients in the short-term care nursing program are released.

24 (k) As part of the hospital's policy describing the rights
25 and responsibilities of patients admitted to the hospital, as
26 required under section 20201, incorporate all of the following

1 additional rights and responsibilities for patients in the
2 short-term nursing care program:

3 (i) A copy of the hospital's policy shall be provided to
4 each short-term nursing care patient upon admission, and the
5 staff of the hospital shall be trained and involved in the imple-
6 mentation of the policy.

7 (ii) Each short-term nursing care patient may associate and
8 communicate privately with persons of his or her choice.
9 Reasonable, regular visiting hours, which shall take into consid-
10 eration the special circumstances of each visitor, shall be
11 established for short-term nursing care patients to receive
12 visitors. A short-term nursing care patient may be visited by
13 the patient's attorney or by representatives of the departments
14 named in section 20156 during other than established visiting
15 hours. Reasonable privacy shall be afforded for visitation of a
16 short-term nursing care patient who shares a room with another
17 short-term nursing care patient. Each short-term nursing care
18 patient shall have reasonable access to a telephone.

19 (iii) A short-term nursing care patient is entitled to
20 retain and use personal clothing and possessions as space per-
21 mits, unless medically contraindicated, as documented by the
22 attending physician in the medical record.

23 (iv) A short-term nursing care patient is entitled to the
24 opportunity to participate in the planning of his or her medical
25 treatment. A short-term nursing care patient shall be fully
26 informed by the attending physician of the short-term nursing
27 care patient's medical condition, unless medically

1 contraindicated, as documented by a physician in the medical
2 record. Each short-term nursing care patient shall be afforded
3 the opportunity to discharge himself or herself from the
4 short-term nursing care program.

5 (v) A short-term nursing care patient is entitled to be
6 fully informed either before or at the time of admission, and
7 during his or her stay, of services available in the hospital and
8 of the related charges for those services. The statement of
9 services provided by the hospital shall be in writing and shall
10 include those services required to be offered on an as needed
11 basis.

12 (vi) A patient in a short-term nursing care program or ~~a~~
13 ~~person authorized in writing by the patient~~ THE PATIENT'S AGENT
14 may, upon ~~submission to the hospital of a written~~ request,
15 inspect and copy the patient's personal RECORDS or INSPECT AND
16 COPY THE PERSON'S medical records, PURSUANT TO SECTION 20195.
17 ~~The hospital shall make the records available for inspection and~~
18 ~~copying within a reasonable time, not exceeding 7 days, after the~~
19 ~~receipt of the written request.~~ AS USED IN THIS SUBPARAGRAPH,
20 "PATIENT'S AGENT" MEANS THAT TERM AS DEFINED IN SECTION 20195.

21 (vii) A short-term nursing care patient has the right to
22 have his or her parents, if the short-term nursing care patient
23 is a minor, or his or her spouse, next of kin, or patient's rep-
24 resentative, if the short-term nursing care patient is an adult,
25 stay at the facility 24 hours a day if the short-term nursing
26 care patient is considered terminally ill by the physician
27 responsible for the short-term nursing care patient's care.

1 (viii) Each short-term nursing care patient shall be
2 provided with meals that meet the recommended dietary allowances
3 for that patient's age and sex and that may be modified according
4 to special dietary needs or ability to chew.

5 (ix) Each short-term nursing care patient has the right to
6 receive a representative of an organization approved under
7 section 21764, for all of the purposes described in section
8 21763.

9 (l) Achieve and maintain medicare certification under title
10 XVIII.

11 (4) A hospital or the owner, administrator, an employee, or
12 a representative of the hospital shall not discharge, harass, or
13 retaliate or discriminate against a short-term nursing care
14 patient because the short-term nursing care patient has exercised
15 a right described in subsection (3)(k).

16 (5) In the case of a short-term nursing care patient, the
17 rights described in subsection (3)(k)(iv) may be exercised by the
18 patient's representative, as defined in section 21703(2).

19 (6) A short-term nursing care patient shall be fully
20 informed, as evidenced by the short-term nursing care patient's
21 written acknowledgment, before or at the time of admission and
22 during stay, of the rights described in subsection (3)(k). The
23 written acknowledgment shall provide that if a short-term nursing
24 care patient is adjudicated incompetent and not restored to legal
25 capacity, the rights and responsibilities set forth in subsection
26 (3)(k) shall be exercised by a person designated by the
27 short-term nursing care patient. The hospital shall provide

1 proper forms for the short-term nursing care patient to provide
2 for the designation of this person at the time of admission.

3 (7) Subsection (3)(k) does not prohibit a hospital from
4 establishing and recognizing additional rights for short-term
5 nursing care patients.

6 (8) Upon application, the department may grant a variation
7 from the maximum number of patient days established under subsec-
8 tion (3)(e), to an applicant hospital that demonstrates to the
9 satisfaction of the department that there is an immediate need
10 for skilled nursing beds within a 100-mile radius of the
11 hospital. A variation granted under this subsection shall be
12 valid for not more than 1 year after the date the variation is
13 granted. The department shall promulgate rules to implement this
14 subsection including, at a minimum, a definition of immediate
15 need and the procedure for applying for a variation.

16 (9) A hospital that violates subsection (3) is subject to
17 the penalty provisions of section 20165.

18 (10) A person shall not initiate a short-term nursing care
19 program without first obtaining a certificate of need under this
20 section.

21 (11) AS USED IN THIS SECTION, "TITLE XVIII" MEANS THAT TERM
22 AS DEFINED IN SECTION 20201(3)(E).