

HOUSE BILL No. 4615

April 18, 2001, Introduced by Reps. Kuipers and DeRossett and referred to the Committee on Senior Health, Security and Retirement.

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

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

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

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

22 (2) SUBSECTION (1) IS NOT INTENDED AS A REMEDY THAT ALLOWS
23 THE DEPARTMENT TO REIMBURSE A NURSING HOME AT A RATE THAT ALLOWS
24 THE NURSING HOME TO MAINTAIN A NURSING HOME STAFF-TO-PATIENT
25 RATIO THAT IS NOT SUFFICIENT TO PROVIDE AT LEAST 3.0 HOURS OF
26 DIRECT PATIENT CARE BY A DIRECT PATIENT CARE PROVIDER PER PATIENT
27 PER DAY AS REQUIRED UNDER SECTION 21720A. IT IS THE INTENT OF

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

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

26 (4) A NURSING HOME MAY FILE WITH THE DEPARTMENT A PETITION
27 FOR TEMPORARY, EMERGENCY RATE RELIEF FROM THE STAFF-TO-PATIENT

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

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

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

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

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

24 (8) THE DEPARTMENT OF COMMUNITY HEALTH SHALL INCLUDE WITHIN
25 ITS ANNUAL BUDGET REQUEST A RECOMMENDATION FOR FUNDS SUFFICIENT
26 TO COVER PREDICTED AND ACTUAL INCREASED COSTS NECESSARY TO ADJUST
27 NURSING HOME PER DIEM REIMBURSEMENTS AS REQUIRED BY THIS

1 AMENDATORY ACT. A COPY OF THE RECOMMENDATION SHALL BE PROVIDED
2 TO ALL MEMBERS OF THE HOUSE AND SENATE APPROPRIATIONS COMMITTEES
3 AND THE STANDING COMMITTEES THAT OVERSEE SENIOR CITIZEN ISSUES
4 AND TO THE HOUSE AND SENATE FISCAL AGENCIES.

5 Enacting section 1. This amendatory act takes effect
6 October 1, 2001.

7 Enacting section 2. This amendatory act does not take
8 effect unless Senate Bill No. _____ or House Bill No. _____
9 (request no. 02050'01) of the 91st Legislature is enacted into
10 law.