

Act No. 137
Public Acts of 2001
Approved by the Governor
October 26, 2001
Filed with the Secretary of State
October 26, 2001
EFFECTIVE DATE: October 26, 2001

**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2001**

Introduced by Reps. Faunce, Vander Veen, Woronchak, Van Woerkom, Gilbert, Bisbee, Tabor, Allen and Birkholz

ENROLLED HOUSE BILL No. 4345

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 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 section 21773 (MCL 333.21773).

The People of the State of Michigan enact:

Sec. 21773. (1) A nursing home shall not involuntarily transfer or discharge a patient except for 1 or more of the following purposes:

- (a) Medical reasons.
- (b) The patient's welfare.
- (c) The welfare of other patients or nursing home employees.

(d) Nonpayment for the patient's stay, except as prohibited by title XIX of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396r-6 and 1396r-8 to 1396v.

(2) A licensed nursing home shall provide written notice at least 30 days before a patient is involuntarily transferred or discharged. The 30-day requirement of this subsection does not apply in any of the following instances:

(a) If an emergency transfer or discharge is mandated by the patient's health care needs and is in accord with the written orders and medical justification of the attending physician.

(b) If the transfer or discharge is mandated by the physical safety of other patients and nursing home employees as documented in the clinical record.

(c) If the transfer or discharge is subsequently agreed to by the patient or the patient's legal guardian, and notification is given to the next of kin and the person or agency responsible for the patient's placement, maintenance, and care in the nursing home.

(3) The notice required by subsection (2) shall be on a form prescribed by the department of consumer and industry services and shall contain all of the following:

(a) The stated reason for the proposed transfer.

(b) The effective date of the proposed transfer.

(c) A statement in not less than 12-point type that reads: "You have a right to appeal the nursing home's decision to transfer you. If you think you should not have to leave this facility, you may file a request for a hearing with the department of consumer and industry services within 10 days after receiving this notice. If you request a hearing, it will be held at least 7 days after your request, and you will not be transferred during that time. If you lose the hearing, you will not be transferred until at least 30 days after you received the original notice of the discharge or transfer. A form to appeal the nursing home's decision and to request a hearing is attached. If you have any questions, call the department of consumer and industry services at the number listed below."

(d) A hearing request form, together with a postage paid, preaddressed envelope to the department of consumer and industry services.

(e) The name, address, and telephone number of the responsible official in the department of consumer and industry services.

(4) A request for a hearing made under subsection (3) shall stay a transfer pending a hearing or appeal decision.

(5) A copy of the notice required by subsection (3) shall be placed in the patient's clinical record and a copy shall be transmitted to the department of consumer and industry services, the patient, the patient's next of kin, patient's representative, or legal guardian, and the person or agency responsible for the patient's placement, maintenance, and care in the nursing home.

(6) If the basis for an involuntary transfer or discharge is the result of a negative action by the department of community health with respect to a medicaid client and a hearing request is filed with that department, the 21-day written notice period of subsection (2) does not begin until a final decision in the matter is rendered by the department of community health or a court of competent jurisdiction and notice of that final decision is received by the patient and the nursing home.

(7) If nonpayment is the basis for involuntary transfer or discharge, the patient may redeem up to the date that the discharge or transfer is to be made and then may remain in the nursing home.

(8) The nursing home administrator or other appropriate nursing home employee designated by the nursing home administrator shall discuss an involuntary transfer or discharge with the patient, the patient's next of kin or legal guardian, and person or agency responsible for the patient's placement, maintenance, and care in the nursing home. The discussion shall include an explanation of the reason for the involuntary transfer or discharge. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and made a part of the patient's clinical record.

(9) The nursing home shall provide the patient with counseling services before the involuntary transfer or discharge and the department shall assure that counseling services are available after the involuntary transfer or discharge to minimize the possible adverse effect of the involuntary transfer or discharge.

(10) If a nursing home voluntarily withdraws from participation in the state plan for medicaid funding, but continues to provide services, the nursing home shall not, except as provided in subsection (1), involuntarily transfer or discharge a patient, whether or not the patient is eligible for medicaid benefits, who resided in the nursing home on the day before the effective date of the nursing home's withdrawal from participation. The prohibition against transfer or discharge imposed by this subsection continues unless the patient falls within 1 or more of the exceptions described in subsection (1).

(11) If an individual becomes a patient of a nursing home after the date the nursing home withdraws from participation in the state plan for medicaid funding, the nursing home, on or before the date the individual signs a contract with the nursing home, shall provide to the patient oral and written notice of both of the following:

(a) That the nursing home is not participating in the state plan for medicaid funding.

(b) That the facility may involuntarily transfer or discharge the patient for nonpayment under subsection (1)(d) even if the patient is eligible for medicaid benefits.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved -----

Governor.