

SENATE BILL No. 854

September 22, 2009, Introduced by Senator SWITALSKI and referred to the Committee on Appropriations.

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by amending the title and by adding
section 16302.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

2 An act to protect and promote the public health; to codify,
3 revise, consolidate, classify, and add to the laws relating to
4 public health; to provide for the prevention and control of
5 diseases and disabilities; to provide for the classification,
6 administration, regulation, financing, and maintenance of personal,
7 environmental, and other health services and activities; to create
8 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 provide for the levy of taxes against certain **HEALTH PROFESSIONALS AND** health facilities or agencies; 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 provide for an appropriation and supplements; 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.

SEC. 16302. (1) THE DEPARTMENT SHALL ASSESS AND COLLECT A QUALITY ASSURANCE ASSESSMENT ON PHYSICIANS AS PROVIDED IN THIS SECTION. THE QUALITY ASSURANCE ASSESSMENT ON PHYSICIANS IS A TAX IMPOSED ON EACH PHYSICIAN AND ENTITY RELATED TO A PHYSICIAN THAT ENGAGES IN THE PRACTICE OF MEDICINE OR OSTEOPATHIC MEDICINE AND SURGERY IN THIS STATE. THE QUALITY ASSURANCE ASSESSMENT IS IMPOSED

1 AT A RATE OF 4% OF THE GROSS REVENUE OF THE PHYSICIAN OR ENTITY
2 RELATED TO A PHYSICIAN. THE DEPARTMENT SHALL ADMINISTER THIS
3 SECTION IN A MANNER THAT COMPLIES WITH FEDERAL REQUIREMENTS
4 NECESSARY TO ASSURE THAT THE QUALITY ASSURANCE ASSESSMENT QUALIFIES
5 FOR FEDERAL MATCHING FUNDS. THE DEPARTMENT SHALL CEASE THE
6 ASSESSMENT AND COLLECTION OF THE QUALITY ASSURANCE ASSESSMENT IF IT
7 IS NO LONGER ELIGIBLE FOR FEDERAL MATCHING FUNDS.

8 (2) THE QUALITY ASSURANCE ASSESSMENT COLLECTED UNDER THIS
9 SECTION AND ALL FEDERAL MATCHING FUNDS ATTRIBUTED TO THAT
10 ASSESSMENT SHALL BE USED ONLY FOR THE PURPOSES DESCRIBED IN THIS
11 SECTION AND ONLY AS PRESCRIBED IN THIS SECTION. THE QUALITY
12 ASSURANCE ASSESSMENT COLLECTED UNDER THIS SECTION AND ALL FEDERAL
13 MATCHING FUNDS ATTRIBUTED TO THAT ASSESSMENT SHALL BE USED TO
14 INCREASE MEDICAID PHYSICIAN SERVICES REIMBURSEMENT PAYMENTS AND TO
15 IMPLEMENT, ADMINISTER, AND ENFORCE THIS SECTION. ONLY PHYSICIANS
16 AND ENTITIES RELATED TO PHYSICIANS THAT ARE ASSESSED THE QUALITY
17 ASSURANCE ASSESSMENT UNDER THIS SECTION AND THAT PARTICIPATE IN THE
18 MEDICAID PROGRAM ARE ELIGIBLE FOR INCREASED MEDICAID PHYSICIAN
19 SERVICES REIMBURSEMENT RATES UNDER THIS SECTION.

20 (3) THE DEPARTMENT SHALL PRESCRIBE THE FORMS AND FORMAT FOR
21 USE BY A PHYSICIAN OR ENTITY RELATED TO A PHYSICIAN SUBJECT TO THE
22 QUALITY ASSURANCE ASSESSMENT UNDER THIS SECTION, WHICH FORMS AND
23 FORMAT ARE NECESSARY TO ADMINISTER THIS SECTION, INCLUDING THE
24 REPORTING OF GROSS REVENUE AND THE CALCULATION AND COLLECTION OF
25 THE ASSESSMENT. A PHYSICIAN OR ENTITY RELATED TO A PHYSICIAN
26 SUBJECT TO THE QUALITY ASSURANCE ASSESSMENT UNDER THIS SECTION
27 SHALL FILE AN ANNUAL STATEMENT WITH THE DEPARTMENT ON OR BEFORE THE

1 LAST DAY OF THE SIXTH MONTH AFTER THE END OF THE PHYSICIAN'S OR
2 ENTITY'S TAX YEAR. THE ANNUAL STATEMENT SHALL IDENTIFY EACH
3 PHYSICIAN WHO PROVIDED PHYSICIAN SERVICES AND GENERATED REVENUE FOR
4 THOSE SERVICES, ALONG WITH THE PHYSICIAN'S PERCENTAGE OF OWNERSHIP
5 IN THE ENTITY RELATED TO A PHYSICIAN, IF APPLICABLE. THE PHYSICIAN
6 OR ENTITY SHALL INCLUDE WITH THE ANNUAL STATEMENT THE PAYMENT OF
7 ANY QUALITY ASSURANCE ASSESSMENT DUE UNDER THIS SECTION.

8 (4) A PHYSICIAN OR ENTITY RELATED TO A PHYSICIAN THAT
9 REASONABLY EXPECTS ASSESSMENT LIABILITY UNDER THIS SECTION FOR THE
10 TAX YEAR TO BE \$2,000.00 OR MORE SHALL FILE AN ESTIMATED STATEMENT
11 AND PAY AN ESTIMATED QUALITY ASSURANCE ASSESSMENT FOR THAT QUARTER.
12 FOR A PHYSICIAN OR ENTITY ON A CALENDAR YEAR BASIS, THE ESTIMATED
13 QUARTERLY STATEMENT AND PAYMENT SHALL BE MADE ON OR BEFORE APRIL
14 30, JULY 31, OCTOBER 31, AND JANUARY 31. FOR A PHYSICIAN OR ENTITY
15 NOT ON A CALENDAR YEAR BASIS, THE ESTIMATED STATEMENT AND PAYMENT
16 SHALL BE MADE ON A QUARTERLY BASIS IN THAT PHYSICIAN'S OR ENTITY'S
17 FISCAL YEAR. THE ESTIMATED PAYMENT MADE WITH EACH QUARTERLY
18 STATEMENT SHALL BE FOR THE ESTIMATED GROSS REVENUE FOR THE QUARTER
19 OR 25% OF THE ESTIMATED ANNUAL ASSESSMENT. THE SECOND, THIRD, AND
20 FOURTH ESTIMATED PAYMENTS IN THE CALENDAR OR FISCAL YEAR SHALL
21 INCLUDE ADJUSTMENTS, IF NECESSARY, TO CORRECT UNDERPAYMENTS OR
22 OVERPAYMENTS FROM PREVIOUS QUARTERLY PAYMENTS IN THE CALENDAR OR
23 FISCAL YEAR TO A REVISED ESTIMATE OF THE ANNUAL ASSESSMENT.

24 (5) IF THE QUALITY ASSURANCE ASSESSMENT IS IMPOSED UPON GROSS
25 REVENUE REPORTED BY A PHYSICIAN, THEN THAT GROSS REVENUE SHALL NOT
26 OTHERWISE BE SUBJECT TO ASSESSMENT UNDER THIS SECTION. IF THE
27 QUALITY ASSURANCE ASSESSMENT IS IMPOSED UPON GROSS REVENUE REPORTED

1 BY AN ENTITY RELATED TO A PHYSICIAN, THEN THAT GROSS REVENUE SHALL
2 NOT OTHERWISE BE SUBJECT TO ASSESSMENT UNDER THIS SECTION.

3 (6) IF A PHYSICIAN OR ENTITY RELATED TO A PHYSICIAN RENDERS
4 PHYSICIAN SERVICES IN THIS STATE AND IN ANOTHER STATE, ONLY THE
5 GROSS REVENUE RECEIVED FOR PHYSICIAN SERVICES PROVIDED IN THIS
6 STATE SHALL BE APPORTIONED TO THIS STATE AND ASSESSED AS PROVIDED
7 UNDER THIS SECTION. IF THE APPORTIONMENT BETWEEN THOSE GROSS
8 REVENUES RECEIVED FOR PHYSICIAN SERVICES PROVIDED IN THIS STATE AND
9 THOSE RECEIVED IN ANOTHER STATE CANNOT BE DETERMINED BY SEPARATE
10 ACCOUNTING METHODS, THE DEPARTMENT SHALL DETERMINE THE AMOUNT OF
11 GROSS REVENUE THAT IS SUBJECT TO ASSESSMENT UNDER THIS SECTION BY
12 MULTIPLYING THE PHYSICIAN'S OR ENTITY'S TOTAL GROSS REVENUE BY A
13 FRACTION, THE NUMERATOR OF WHICH IS THE TOTAL GROSS REVENUE OF THE
14 PHYSICIAN OR ENTITY FOR PROVIDING PHYSICIAN SERVICES IN THIS STATE
15 AND THE DENOMINATOR OF WHICH IS THE TOTAL GROSS REVENUE OF THE
16 PHYSICIAN OR ENTITY FOR PROVIDING PHYSICIAN SERVICES IN THIS STATE
17 AND IN ANY OTHER STATE.

18 (7) IN COMPUTING THE AMOUNT OF THE QUALITY ASSURANCE
19 ASSESSMENT UNDER THIS SECTION, A PHYSICIAN OR ENTITY RELATED TO A
20 PHYSICIAN MAY DEDUCT THE AMOUNT OF BAD DEBTS FOR PHYSICIAN SERVICES
21 IN THIS STATE FROM HIS OR HER GROSS REVENUE USED FOR THE
22 COMPUTATION OF THE ASSESSMENT IF THE AMOUNT OF THE ASSESSMENT
23 ATTRIBUTABLE TO THE BAD DEBT HAD ALREADY BEEN COLLECTED AND THE BAD
24 DEBT AMOUNT IS ELIGIBLE TO BE CLAIMED OR COULD BE ELIGIBLE TO BE
25 CLAIMED AS A DEDUCTION PURSUANT TO 26 USC 166.

26 (8) BEGINNING IN FISCAL YEAR 2009-2010, THE DEPARTMENT SHALL
27 INCREASE THE MEDICAID PHYSICIAN SERVICES REIMBURSEMENT RATES FOR

1 THAT FISCAL YEAR. FOR EACH SUBSEQUENT FISCAL YEAR IN WHICH THE
2 QUALITY ASSURANCE ASSESSMENT FOR PHYSICIANS IS IMPOSED AND
3 COLLECTED, THE DEPARTMENT SHALL MAINTAIN THE INCREASED MEDICAID
4 PHYSICIAN SERVICES REIMBURSEMENT RATES THAT ARE FINANCED BY THE
5 ASSESSMENT. BEGINNING IN FISCAL YEAR 2009-2010, THE DEPARTMENT
6 SHALL DETERMINE HOW MUCH OF THE MONEY REMAINING IN THE PHYSICIAN
7 SERVICES QUALITY ASSURANCE ASSESSMENT FUND MAY BE UTILIZED TO
8 OFFSET ANY DECLINE IN REVENUE IN THE MEDICAID PROGRAM AND TO
9 IMPLEMENT, ADMINISTER, AND ENFORCE THIS SECTION.

10 (9) THE PHYSICIAN SERVICES QUALITY ASSURANCE ASSESSMENT FUND
11 IS CREATED IN THE STATE TREASURY. THE STATE TREASURER MAY RECEIVE
12 MONEY OR OTHER ASSETS FROM ANY SOURCE FOR DEPOSIT INTO THE FUND.
13 THE STATE TREASURER SHALL DIRECT THE INVESTMENT OF THE FUND. THE
14 STATE TREASURER SHALL CREDIT TO THE FUND INTEREST AND EARNINGS FROM
15 FUND INVESTMENTS. MONEY IN THE FUND AT THE CLOSE OF THE FISCAL YEAR
16 SHALL REMAIN IN THE FUND AND SHALL NOT LAPSE TO THE GENERAL FUND.
17 THE DEPARTMENT SHALL TRANSMIT ALL MONEY COLLECTED UNDER THIS
18 SECTION AND ALL FEDERAL MATCHING FUNDS ATTRIBUTED TO THAT
19 ASSESSMENT TO THE STATE TREASURY FOR DEPOSIT INTO THE PHYSICIAN
20 SERVICES QUALITY ASSURANCE ASSESSMENT FUND. THE DEPARTMENT IS THE
21 ADMINISTRATOR OF THE PHYSICIAN SERVICES QUALITY ASSURANCE
22 ASSESSMENT FUND FOR AUDITING PURPOSES. THE DEPARTMENT SHALL
23 ADMINISTER THE FUND IN A MANNER THAT COMPLIES WITH FEDERAL
24 REQUIREMENTS NECESSARY TO ASSURE THAT THE QUALITY ASSURANCE
25 ASSESSMENT QUALIFIES FOR FEDERAL MATCHING FUNDS.

26 (10) IF A PHYSICIAN OR ENTITY RELATED TO A PHYSICIAN FAILS OR
27 REFUSES TO FILE A QUARTERLY OR ANNUAL STATEMENT OR PAY THE

1 ASSESSMENT IMPOSED UNDER THIS SECTION, THE DEPARTMENT MAY ASSESS
2 THE PHYSICIAN OR ENTITY A PENALTY OF 1% OF THE ASSESSMENT FOR EACH
3 MONTH THAT THE ASSESSMENT AND PENALTY ARE NOT PAID UP TO A MAXIMUM
4 OF 15% OF THE ASSESSMENT. THE DEPARTMENT MAY ALSO REFER FOR
5 COLLECTION TO THE DEPARTMENT OF TREASURY PAST DUE AMOUNTS
6 CONSISTENT WITH SECTION 13 OF 1941 PA 122, MCL 205.13. EACH
7 PHYSICIAN WHO HAS AN OWNERSHIP INTEREST IN AN ENTITY RELATED TO A
8 PHYSICIAN IS JOINTLY AND SEVERALLY LIABLE FOR FILING THE ANNUAL
9 STATEMENTS, ESTIMATED QUARTERLY STATEMENTS, AND ALL OTHER FORMS AND
10 STATEMENTS REQUIRED UNDER THIS SECTION; FOR PAYING THE ASSESSMENT
11 FOR THE ENTITY; AND FOR ANY OTHER REQUIREMENT UNDER THIS SECTION.

12 (11) THIS SECTION APPLIES TO PHYSICIAN SERVICES PROVIDED BY AN
13 ENTITY RELATED TO A PHYSICIAN THAT IS OWNED IN WHOLE OR IN PART BY
14 A HOSPITAL, A HEALTH MAINTENANCE ORGANIZATION, A NONPROFIT HEALTH
15 CARE CORPORATION, OR ANY OTHER PUBLIC OR PRIVATE ENTITY.

16 (12) AS USED IN THIS SECTION:

17 (A) "ENTITY RELATED TO A PHYSICIAN" MEANS AN ORGANIZATION,
18 ASSOCIATION, CORPORATION, PARTNERSHIP, OR OTHER LEGAL ENTITY FORMED
19 BY OR ON BEHALF OF A PHYSICIAN OR PHYSICIANS TO ENGAGE IN THE
20 PRACTICE OF MEDICINE OR OSTEOPATHIC MEDICINE AND SURGERY.

21 (B) "GROSS REVENUE" MEANS THE AMOUNT RECEIVED OR RECEIVABLE,
22 WHETHER IN CASH OR IN KIND, WITHOUT DEDUCTION, FROM PATIENTS,
23 THIRD-PARTY PAYERS, OR ANY OTHER PERSON FOR PHYSICIAN SERVICES.

24 (C) "MEDICAID" MEANS THAT TERM AS DEFINED IN SECTION 22207.

25 (D) "PHYSICIAN" MEANS AN INDIVIDUAL LICENSED UNDER THIS
26 ARTICLE TO ENGAGE IN THE PRACTICE OF MEDICINE OR OSTEOPATHIC
27 MEDICINE AND SURGERY.

1 (E) "PHYSICIAN SERVICES" MEANS HEALTH CARE SERVICES PROVIDED
2 BY A PHYSICIAN OR BY A PHYSICIAN'S ASSISTANT OR NURSE UNDER THE
3 DIRECTION, SUPERVISION, CONTROL, OR DELEGATORY AUTHORITY OF A
4 PHYSICIAN.