

HOUSE BILL No. 6075

December 4, 2012, Introduced by Reps. Slavens, Switalski and Brunner and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 20142, 20199, and 21755 (MCL 333.20142, 333.20199, and 333.21755).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20142. (1) A health facility or agency shall apply for
2 ~~licensure~~**AN INITIAL LICENSE, FOR A NEW LICENSE DUE TO A CHANGE OF**
3 **OWNERSHIP, FOR A LICENSE RENEWAL, or FOR TITLE XVIII OR FOR TITLE**
4 **XIX** certification on a form authorized and provided by the
5 department. The application shall include attachments, additional
6 data, and information required by **THIS SECTION AND BY** the
7 department.

8 (2) An applicant shall certify the accuracy of information
9 supplied in the application and supplemental statements.

10 (3) An applicant **FOR AN INITIAL LICENSE, FOR A NEW LICENSE DUE**

1 TO A CHANGE OF OWNERSHIP, or FOR a licensee ~~LICENSE RENEWAL~~ under
2 part 213 or 217 shall disclose the names, addresses, ~~principal~~
3 ~~occupations,~~ and official positions of all ~~persons~~ **INDIVIDUALS** who
4 have an ownership interest in the ~~health facility or agency~~ **HOME**
5 **FOR THE AGED OR NURSING HOME. IF THE APPLICANT FOR AN INITIAL**
6 **LICENSE, FOR A NEW LICENSE DUE TO A CHANGE OF OWNERSHIP, OR FOR A**
7 **LICENSE RENEWAL UNDER PART 213 OR 217 IS NOT AN INDIVIDUAL, THE**
8 **APPLICANT SHALL DISCLOSE THE NAME OF THE ENTITY AND THE NAMES,**
9 **ADDRESSES, AND OFFICIAL POSITIONS OF ALL OFFICERS AND DIRECTORS OF**
10 **ANY ENTITY THAT HAS AN OWNERSHIP INTEREST IN THE HOME FOR THE AGED**
11 **OR NURSING HOME AND A DESCRIPTION OF THE RELATIONSHIP, IF ANY,**
12 **BETWEEN INDIVIDUALS WITH AN OWNERSHIP INTEREST IN THE HOME FOR THE**
13 **AGED OR NURSING HOME. If the health facility or agency** **HOME FOR THE**
14 **AGED OR NURSING HOME** is located on or in leased real estate, the
15 applicant or licensee shall disclose the name of the lessor and any
16 direct or indirect interest the applicant or licensee has in the
17 lease other than as lessee. A change in ownership shall be reported
18 **IN WRITING** to the director not less than ~~15~~ **60** days before the
19 change occurs. ~~, except that a person purchasing stock of a company~~
20 ~~registered pursuant to the securities exchange act of 1934, 15~~
21 ~~U.S.C. 78a to 78kk, is exempt from disclosing ownership in the~~
22 ~~facility.~~ A person required to file a beneficial ownership report
23 ~~pursuant~~ **ACCORDING** to section 16(a) of the securities exchange act
24 of 1934, 15 U.S.C. ~~USC~~ 78p shall file with the department
25 information relating to securities ownership required by the
26 department rule or order. ~~An applicant or licensee proposing a sale~~
27 ~~of a nursing home to another person shall provide the department~~

1 ~~with written, advance notice of the proposed sale.~~ **A LICENSE ISSUED**
2 **UNDER PART 213 OR 217 IS NOT TRANSFERABLE TO ANY OTHER PERSON WHO**
3 **SEEKS TO OBTAIN OR PURCHASE AN OWNERSHIP INTEREST IN THE FACILITY**
4 **AND IS SUBJECT TO REVOCATION UPON VERIFICATION OF THE TRANSFER OF**
5 **ANY OWNERSHIP INTEREST TO ANY OTHER PERSON. THE PERSONS PROPOSING**
6 **TO OBTAIN OR PURCHASE AN OWNERSHIP INTEREST IN A HOME FOR THE AGED**
7 **OR A NURSING HOME SHALL APPLY FOR LICENSURE ON A FORM AND IN THE**
8 **MANNER PRESCRIBED BY THE DEPARTMENT.** The applicant or licensee and
9 the other parties to the ~~sale~~ **CHANGE OF OWNERSHIP** shall arrange to
10 meet with specified department representatives ~~and shall~~ **TO** obtain
11 ~~before the sale~~ a determination of the items of noncompliance with
12 ~~applicable law and rules which shall~~ **AND CONDITIONS OF**
13 **PARTICIPATION THAT ARE TO** be corrected **BEFORE THE CHANGE OF**
14 **OWNERSHIP OCCURS.** The department shall notify the respective
15 parties of the items of noncompliance ~~prior to~~ **WITH APPLICABLE**
16 **LICENSING LAWS AND RULES AND ANY MEDICARE OR MEDICAID CONDITIONS OF**
17 **PARTICIPATION BEFORE** the change of ownership and shall ~~indicate~~
18 ~~that the items of noncompliance must be corrected as a condition of~~
19 ~~issuance of~~ **NOT ISSUE** a license to the new owner **UNTIL ALL OF THE**
20 **ITEMS OF NONCOMPLIANCE OR CONDITIONS OF PARTICIPATION HAVE BEEN**
21 **CORRECTED OR, AT THE OPTION OF THE DEPARTMENT, THE NEW OWNER HAS AN**
22 **APPROVED PLAN OF CORRECTION.** The department may accept reports
23 filed with the securities and exchange commission relating to the
24 filings. A person who violates this subsection is guilty of a
25 misdemeanor, punishable by a fine of not more than ~~\$1,000.00~~
26 **\$10,000.00** for each violation.

27 (4) ~~An~~ **UPON REQUEST, AN** applicant or licensee under part 217

1 shall disclose **TO THE DEPARTMENT** the names and business addresses
2 of suppliers who furnish goods or services to an individual nursing
3 home or a group of nursing homes under common ownership, the
4 aggregate charges for which exceed \$5,000.00 in a 12-month period
5 which includes a month in a nursing home's current fiscal year. ~~An~~
6 **UPON REQUEST, AN** applicant or licensee shall disclose **TO THE**
7 **DEPARTMENT** the names, addresses, principal occupations, and
8 official positions of all persons who have an ownership interest in
9 a business ~~which~~**THAT** furnishes goods or services to an individual
10 nursing home or to a group of nursing homes under common ownership,
11 if both of the following apply:

12 (a) The person, or the person's spouse, parent, sibling, or
13 child has an ownership interest in the nursing home purchasing the
14 goods or services.

15 (b) The aggregate charges for the goods or services purchased
16 exceeds \$5,000.00 in a 12-month period ~~which~~**THAT** includes a month
17 in the nursing home's current fiscal year.

18 (5) An applicant or licensee who makes a false statement in an
19 application or statement required by the department pursuant to
20 this article is guilty of a felony, punishable by imprisonment for
21 not more than 4 years, or a fine of not more than \$30,000.00, or
22 both.

23 (6) **UPON REQUEST, AN APPLICANT OR LICENSEE UNDER PART 217**
24 **SHALL DISCLOSE TO THE DEPARTMENT ANY INFORMATION THE DEPARTMENT**
25 **CONSIDERS RELEVANT TO ITS DUTIES UNDER SECTION 21755.**

26 (7) **FOR THE PURPOSES OF THIS SECTION:**

27 (A) **"CHANGE OF OWNERSHIP" MEANS ANY OF THE FOLLOWING:**

1 (i) A SALE OF THE ENTITY TO ANY OTHER PERSON.

2 (ii) A CHANGE IN A SOLE PROPRIETORSHIP.

3 (iii) A TRANSFER OF THE TITLE AND PROPERTY TO ANOTHER PERSON IN
4 AN UNINCORPORATED SOLE PROPRIETORSHIP.

5 (iv) A REMOVAL, ADDITION, OR SUBSTITUTION OF A PARTNER IN A
6 PARTNERSHIP.

7 (v) A MERGER OF A CORPORATION INTO ANOTHER CORPORATION.

8 (vi) THE CONSOLIDATION OF 2 OR MORE CORPORATIONS RESULTING IN A
9 NEW CORPORATION.

10 (vii) A CHANGE IN THE MEMBERSHIP OF A LIMITED LIABILITY
11 COMPANY.

12 (viii) A TRANSFER OF AN ENTITY TO A TRUST OR A CHANGE IN A
13 TRUST.

14 (ix) A CHANGE OF OWNERSHIP OF 30% OR MORE OF THE STOCK OF A
15 CORPORATION.

16 (x) A TRANSACTION THAT RESULTS IN THE CHANGE OF THE PERSON WHO
17 IS THE LEGAL HOLDER OF A CERTIFICATE OF NEED FOR THE HEALTH
18 FACILITY OR AGENCY.

19 (B) A PERSON IS CONSIDERED TO HAVE AN OWNERSHIP INTEREST IF
20 THEY ARE ANY OF THE FOLLOWING:

21 (i) AN OFFICER OF A CORPORATION.

22 (ii) A MEMBER OF THE BOARD OF DIRECTORS OF A CORPORATION.

23 (iii) A PERSON THAT OWNS OR ACQUIRES 5% OR MORE OF THE STOCK OF
24 A CORPORATION.

25 (iv) A SOLE PROPRIETORSHIP.

26 (v) A PARTNER.

27 (vi) A MEMBER OF A LIMITED LIABILITY COMPANY.

1 (vii) A MANAGER OF A LIMITED LIABILITY COMPANY.

2 (viii) A TRUSTEE OF AN ENTITY ORGANIZED AS A TRUST.

3 (ix) AN INDIVIDUAL OR A CORPORATION, PARTNERSHIP, SOLE
4 PROPRIETORSHIP, LIMITED LIABILITY COMPANY, TRUST, OR ANY OTHER
5 ENTITY, WHICH INDIVIDUAL OR ENTITY OPERATES THE HEALTH FACILITY OR
6 AGENCY UNDER A MANAGEMENT AGREEMENT.

7 Sec. 20199. (1) Except as provided in subsection (2) or
8 section 20142, a person who violates this article or a rule
9 promulgated or an order issued under this article is guilty of a
10 misdemeanor ~~—~~ punishable by **A** fine of not more than \$1,000.00 for
11 each day the violation continues or, in case of a violation of
12 sections 20551 to 20554, a fine of not more than \$1,000.00 for each
13 occurrence.

14 (2) A person who violates sections 20181 to 20184 is guilty of
15 a misdemeanor ~~—~~ punishable by imprisonment for not more than 6
16 months ~~—~~ or a fine of not more than \$2,000.00, or both.

17 (3) IN ADDITION TO ANY OTHER PENALTY PRESCRIBED OR REMEDY
18 PROVIDED FOR IN THIS ACT, A PERSON WHO VIOLATES SECTION 20141 IS
19 SUBJECT TO AN ADMINISTRATIVE FINE OF \$1,000.00 PER DAY FOR EACH DAY
20 IN VIOLATION OF THAT SECTION. WHILE IN VIOLATION OF SECTION 20141,
21 A PERSON SHALL NOT CHARGE TO OR COLLECT FROM ANOTHER PERSON OR
22 OTHERWISE COLLECT FOR SERVICES PROVIDED WHILE IN VIOLATION OF
23 SECTION 20141. A PERSON WHO HAS COLLECTED FEES FOR SERVICES WHILE
24 IN VIOLATION OF SECTION 20141 SHALL REFUND, WITHOUT DEMAND, FEES
25 COLLECTED WHILE IN VIOLATION OF THAT SECTION TO THE PERSON CHARGED
26 FOR SERVICES OR, IF UNDELIVERABLE, SHALL PAY FEES COLLECTED WHILE
27 IN VIOLATION OF THAT SECTION TO THE STATE TREASURER FOR DEPOSIT

1 INTO THE GENERAL FUND.

2 Sec. 21755. The department may refuse to issue a license to
3 establish or maintain and operate, or both, a nursing home to an
4 applicant OR LICENSEE OR TO AN APPLICANT OR LICENSEE THAT DISCLOSES
5 A PERSON WITH AN OWNERSHIP INTEREST IN THE NURSING HOME UNDER
6 SECTION 20142, IF ANY OF THE FOLLOWING APPLY:

7 (a) ~~Whose~~THE occupational, professional, or health FACILITY
8 OR agency license OF THE APPLICANT, LICENSEE, OR PERSON WITH AN
9 OWNERSHIP INTEREST has been revoked during the 5 years preceding
10 the date of application.

11 (b) ~~Whom the~~THE department finds ~~is~~THE APPLICANT, LICENSEE,
12 OR PERSON WITH AN OWNERSHIP INTEREST not suitable to operate a
13 nursing home because of financial incapacity or a lack of good
14 moral character or appropriate business or professional experience.
15 As used in this subdivision, "good moral character" means that term
16 as defined in ~~Act No. 381 of the Public Acts of 1974, as amended,~~
17 ~~being sections 338.41 to 338.47 of the Michigan Compiled Laws~~
18 SECTION 1 OF 1974 PA 381, MCL 338.41.

19 (C) THE APPLICANT, LICENSEE, OR PERSON WITH AN OWNERSHIP
20 INTEREST HAS FILED BANKRUPTCY OR BEEN DETERMINED BANKRUPT DURING
21 THE 5 YEARS PRECEDING THE DATE OF APPLICATION.

22 (D) A HEALTH FACILITY OR AGENCY OR OTHER ENTITY ESTABLISHED,
23 MAINTAINED, OR OPERATED BY THE APPLICANT, LICENSEE, OR PERSON WITH
24 AN OWNERSHIP INTEREST WAS INVOLUNTARILY CLOSED OR WAS TERMINATED
25 FROM PARTICIPATION UNDER TITLE XVIII OR TITLE XIX.

26 (E) A HEALTH FACILITY OR AGENCY OR OTHER ENTITY ESTABLISHED,
27 MAINTAINED, OR OPERATED BY THE APPLICANT, LICENSEE, OR PERSON WITH

1 AN OWNERSHIP INTEREST IS EXCLUDED FROM PARTICIPATION AS A MEDICARE
2 OR MEDICAID PROVIDER.

3 (F) THE APPLICANT, LICENSEE, OR PERSON WITH AN OWNERSHIP
4 INTEREST IS DISQUALIFIED FROM BEING EMPLOYED BY, UNDER INDEPENDENT
5 CONTRACT WITH, OR GRANTED CLINICAL PRIVILEGES BY A HEALTH FACILITY
6 OR AGENCY UNDER SECTION 20173A.

7 (G) THE APPLICANT, LICENSEE, OR PERSON WITH AN OWNERSHIP
8 INTEREST IS A PRINCIPAL OF A NURSING HOME THAT HAS BEEN PLACED IN
9 RECEIVERSHIP DURING THE 5 YEARS PRECEDING THE DATE OF APPLICATION.

10 (H) THE APPLICANT, LICENSEE, OR PERSON WITH AN OWNERSHIP
11 INTEREST IS A PRINCIPAL OF A NURSING HOME THAT HAS HAD A LICENSE
12 DENIED, SUSPENDED, OR REVOKED DURING THE 5 YEARS PRECEDING THE DATE
13 OF APPLICATION.

14 (I) THE APPLICANT, LICENSEE, OR PERSON WITH AN OWNERSHIP
15 INTEREST HAS BEEN THE SUBJECT OF AN ORDER ENJOINING AN ACT OR
16 PRACTICE UNDER OR AN ORDER DIRECTING COMPLIANCE WITH ANY OF THE
17 FOLLOWING:

18 (i) FEDERAL CONDITIONS OF PARTICIPATION AS A MEDICARE OR
19 MEDICAID PROVIDER.

20 (ii) THIS ACT OR RULES PROMULGATED UNDER THIS ACT TO ESTABLISH,
21 MAINTAIN, OR OPERATE A NURSING HOME.

22 (J) THE APPLICANT, LICENSEE, OR PERSON WITH AN OWNERSHIP
23 INTEREST HAS BEEN ADJUDGED TO BE ADMINISTRATIVELY, CIVILLY, OR
24 CRIMINALLY LIABLE FOR PROFESSIONAL NEGLIGENCE, WRONGFUL DEATH, OR
25 FOR VIOLATING AN INDIVIDUAL'S CIVIL RIGHTS UNDER ANY STATE OR
26 FEDERAL LAW.

27 (K) THE APPLICANT, LICENSEE, OR PERSON WITH AN OWNERSHIP

1 INTEREST HAS AN UNPAID DEBT TO THIS STATE, EXCEPT ANY DEBT SUBJECT
2 TO A FORMAL ADJUDICATION PROCESS.

3 (I) THE APPLICANT, LICENSEE, OR PERSON WITH AN OWNERSHIP
4 INTEREST HAS AN UNPAID DEBT TO THE FEDERAL GOVERNMENT FOR A CIVIL
5 MONETARY PENALTY, EXCEPT ANY CIVIL MONETARY PENALTY SUBJECT TO A
6 FORMAL ADJUDICATION PROCESS.

7 (M) THE APPLICANT, LICENSEE, OR PERSON WITH AN OWNERSHIP
8 INTEREST HAS AN UNPAID DEBT OR ASSESSMENT LEVIED BY THE INTERNAL
9 REVENUE SERVICE DURING THE 5 YEARS PRECEDING THE DATE OF
10 APPLICATION.

11 (N) THE APPLICANT, LICENSEE, OR PERSON WITH AN OWNERSHIP
12 INTEREST HAS AN UNPAID DETERMINATION FOR THE PAYMENT OF WAGES AND
13 BENEFITS UNDER 1978 PA 390, MCL 408.471 TO 408.490, EXCEPT FOR A
14 DETERMINATION THAT IS UNDER REVIEW AS PRESCRIBED IN SECTION 11 OF
15 1978 PA 390, MCL 408.481.

16 Enacting section 1. This amendatory act does not take effect
17 unless Senate Bill No.____ or House Bill No. 6076(request no.
18 06484'12) of the 96th Legislature is enacted into law.