

# HOUSE BILL NO. 4318

February 23, 2021, Introduced by Rep. Kahle and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending section 5145 (MCL 333.5145), as added by 2020 PA 231,  
and by adding section 5145b.

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1       Sec. 5145. (1) The department, in consultation with the
- 2       department of licensing and regulatory affairs, shall do all of the
- 3       following:
- 4       (a) By November 15, 2020, develop and submit a report to the

house **of representatives** and senate standing committees on health policy that is based on relevant guidance issued by the federal Centers for Disease Control and Prevention and incorporates recommendations from the Michigan nursing homes COVID-19 preparedness task force. The report must include, but is not limited to, a description of any updates to the final recommendations of the Michigan nursing homes COVID-19 preparedness task force in its report dated August 30, 2020, the status on implementing the recommendations, and a description of any barriers to implementing the recommendations. The department may use health care systems and hospital capacity data when preparing the report. The report must also address each of the following quality-of-life recommendations from the task force report described in this subdivision:

- (i) Outdoor visits.
- (ii) Small-group noncontact activities.
- (iii) Communal dining for residents.
- (iv) Indoor visitation participation opt-in.
- (v) Resident small-group "pod" opt-in.
- (vi) Increased virtual visitation opportunities.
- (vii) Staff access to creative engagement ideas.
- (viii) Support for meaningful engagement activities.
- (ix) Ancillary service providers.
- (x) Visitation volunteers.
- (xi) Off-campus health and wellness visits.
- (xii) Window visits.

(b) By November 15, 2020, implement a statewide policy for nursing homes on providing in-person indoor and outdoor visitations

1 to all nursing home residents. The department shall post a copy of  
2 the policy on the department's publicly available website and post  
3 any updates to the policy within 48 hours after making the updates.  
4 The department shall also provide a copy of the policy to the house  
5 **of representatives** and senate standing committees on health policy.  
6 The policy may limit in-person indoor and outdoor visitations for a  
7 nursing home resident who tests positive for coronavirus, if a  
8 nursing home is experiencing an outbreak of coronavirus, or if a  
9 community is experiencing an outbreak of coronavirus. **If the**  
10 **department makes any updates to the policy based on risk levels**  
11 **within counties and regions in this state, the department shall**  
12 **only use the risk levels described in section 5145b when making the**  
13 **updates.**

14 (c) By November 15, 2020, develop and submit a report to the  
15 house **of representatives** and senate standing committees on health  
16 policy on the department's plans to identify laboratories that will  
17 process and prioritize coronavirus diagnostic tests from nursing  
18 homes. The report must include the department's plans for issuing  
19 requests for proposals that include a provision requiring a  
20 successful bidder to be able to process a high volume of tests,  
21 including, but not limited to, rapid testing for coronavirus and  
22 provide expedited results.

23 (d) By November 15, 2020, implement a process for the creation  
24 of care and recovery centers within nursing homes for the purpose  
25 of providing care to individuals who have tested positive for  
26 coronavirus who have not met the criteria for the discontinuation  
27 of transmission-based precautions from the federal Centers for  
28 Disease Control and Prevention. The department shall require a  
29 nursing home seeking to operate a care and recovery center to apply

1 to the department on a form provided by the department and meet all  
2 of the following requirements:

3 (i) Demonstrate each of the following to the department:

4 (A) That the nursing home has at least a 3-star rating based  
5 on the Five-Star Quality Rating System established by the federal  
6 Centers for Medicare and Medicaid Services.

7 (B) That the nursing home is not operating under a denial of  
8 payment for new admissions under 42 CFR 488.417.

9 (C) That the nursing home is not designated on the Nursing  
10 Home Compare website of the federal Centers for Medicare and  
11 Medicaid Services as a "red hand facility", indicating a citation  
12 for abuse.

13 (D) That the nursing home meets physical plant capacity to  
14 designate a distinct area within the nursing home for individuals  
15 who have tested positive for coronavirus.

16 (E) That the nursing home has dedicated staff for the sole  
17 purpose of treating individuals in the care and recovery center.

18 (ii) Agrees to comply with any facility requirements that the  
19 department considers appropriate to prevent the spread of  
20 coronavirus in nursing homes, including, but not limited to,  
21 infection control safeguards, personal protective equipment,  
22 testing for coronavirus, and operational capacity.

23 (iii) Agrees to comply with all of the following if an  
24 individual tests positive for coronavirus and needs to be  
25 transferred to a care and recovery center or other location  
26 described in this section:

27 (A) Provide a notice to the individual; if applicable, the  
28 individual's legal representative; and, if the individual consents,  
29 the individual's emergency contact.

1 (B) That a physician, a nurse practitioner, or a physician's  
2 assistant shall provide, in writing and in a time frame and manner  
3 determined by the department, that the individual is medically  
4 stable for the transfer.

5 (iv) Any other requirement established by the department in  
6 consultation with the department of licensing and regulatory  
7 affairs.

8 (e) By November 15, 2020, implement a process for the approval  
9 of designated areas within nursing homes for individuals who test  
10 positive for coronavirus. The department shall require a nursing  
11 home seeking to establish a designated area within its facility to  
12 apply to the department on a form provided by the department and  
13 meet all of the following requirements:

14 (i) Demonstrate each of the following to the department:

15 (A) That the nursing home has a program for retaining and  
16 providing the appropriate level of care necessary for individuals  
17 who test positive for coronavirus and that the program has an  
18 adequate supply of personal protective equipment and adequate  
19 testing capabilities, dedicated staffing, and operational capacity  
20 at the time of an individual's diagnosis.

21 (B) That the nursing home's designated area meets proper  
22 infection control safeguards.

23 (C) That there is no longer capacity at a care and recovery  
24 center and additional facilities are needed for individuals who  
25 test positive for coronavirus, unless the department determines  
26 that there are rare and unique circumstances that must be taken to  
27 protect the health and safety of an individual.

28 (ii) Agrees to continually evaluate and ensure its ability to  
29 meet each requirement for the approval of a designated area under

1 this subdivision.

2 (iii) Any other requirement established by the department in  
3 consultation with the department of licensing and regulatory  
4 affairs.

5 (2) As used in this section, "coronavirus" means severe acute  
6 respiratory syndrome coronavirus 2 (SARS-CoV-2).

7 **Sec. 5145b. (1) The department shall establish, or work with a**  
8 **third party to implement, a website containing information on**  
9 **coronavirus in this state. The department shall ensure that the**  
10 **website assigns a risk level of low, A, B, C, D, or E, to each**  
11 **county and each region in this state, with the risk level of low**  
12 **indicating that an individual within the county or region is at the**  
13 **lowest risk of contracting coronavirus and the risk level of E**  
14 **indicating an individual within the county or region is at the**  
15 **highest risk of contracting coronavirus. Subject to subsection (2),**  
16 **the risk levels must be assigned as follows:**

17 (a) If the county or region has a test positivity rate of less  
18 than 3%, the risk level low.

19 (b) If the county or region has a test positivity rate of 3%  
20 to 7%, the risk level A.

21 (c) If the county or region has a test positivity rate of  
22 greater than 7% to 10%, the risk level B.

23 (d) If the county or region has a test positivity rate greater  
24 than 10% to 15%, the risk level C.

25 (e) If the county or region has a test positivity rate of  
26 greater than 15% to 20%, the risk level D.

27 (f) If the county or region has a test positivity rate of  
28 greater than 20%, the risk level E.

29 (2) The test positivity rate described in subsection (1) must

1 be calculated daily for each county and each region by dividing the  
2 number of positive test results for coronavirus in the county or  
3 region for 1 day by the total number of tests performed for  
4 coronavirus within the county or region on that day.

5 (3) As used in this section:

6 (a) "Coronavirus" means that term as defined in section 5145.

7 (b) "Region" means the Michigan economic recovery council  
8 reporting regions identified in the "MI Safe Start: A plan to Re-  
9 Engage Michigan's Economy", a publication dated May 7, 2020.