

**SUBSTITUTE FOR
HOUSE BILL NO. 5386**

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:

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TITLE

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

1 agencies; to prescribe the powers and duties of governmental
2 entities and officials; to regulate occupations, facilities, and
3 agencies affecting the public health; to regulate health
4 maintenance organizations and certain third party administrators
5 and insurers; to provide for the imposition of a regulatory fee; to
6 provide for the levy of taxes against certain **HEALTH PROFESSIONALS**
7 **AND** health facilities or agencies; to promote the efficient and
8 economical delivery of health care services, to provide for the
9 appropriate utilization of health care facilities and services, and
10 to provide for the closure of hospitals or consolidation of
11 hospitals or services; to provide for the collection and use of
12 data and information; to provide for the transfer of property; to
13 provide certain immunity from liability; to regulate and prohibit
14 the sale and offering for sale of drug paraphernalia under certain
15 circumstances; to provide for the implementation of federal law; to
16 provide for penalties and remedies; to provide for sanctions for
17 violations of this act and local ordinances; to provide for an
18 appropriation and supplements; to repeal certain acts and parts of
19 acts; to repeal certain parts of this act; and to repeal certain
20 parts of this act on specific dates.

21 **SEC. 16302. (1) THIS SECTION SHALL BE KNOWN AND MAY BE CITED**
22 **AS THE "MICHIGAN HEALTH CARE REBATE LAW".**

23 **(2) THE DEPARTMENT SHALL ASSESS AND COLLECT A QUALITY**
24 **ASSURANCE ASSESSMENT ON PHYSICIANS AS PROVIDED IN THIS SECTION. THE**
25 **QUALITY ASSURANCE ASSESSMENT IS IMPOSED AT A RATE OF 3% OF THE**
26 **GROSS REVENUE OF THE PHYSICIAN OR ENTITY RELATED TO A PHYSICIAN.**
27 **THE DEPARTMENT SHALL ADMINISTER THIS SECTION IN A MANNER THAT**

1 COMPLIES WITH FEDERAL REQUIREMENTS NECESSARY TO ASSURE THAT THE
2 QUALITY ASSURANCE ASSESSMENT QUALIFIES FOR FEDERAL MATCHING FUNDS.
3 THE DEPARTMENT SHALL CEASE THE ASSESSMENT AND COLLECTION OF THE
4 QUALITY ASSURANCE ASSESSMENT IF IT IS NO LONGER ELIGIBLE FOR
5 FEDERAL MATCHING FUNDS.

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

18 (4) THE DEPARTMENT SHALL PRESCRIBE THE FORMS AND FORMAT FOR
19 USE BY A PHYSICIAN OR ENTITY RELATED TO A PHYSICIAN SUBJECT TO THE
20 QUALITY ASSURANCE ASSESSMENT UNDER THIS SECTION, WHICH FORMS AND
21 FORMAT ARE NECESSARY TO ADMINISTER THIS SECTION, INCLUDING THE
22 REPORTING OF GROSS REVENUE AND THE CALCULATION AND COLLECTION OF
23 THE ASSESSMENT. A PHYSICIAN OR ENTITY RELATED TO A PHYSICIAN
24 SUBJECT TO THE QUALITY ASSURANCE ASSESSMENT UNDER THIS SECTION
25 SHALL FILE AN ANNUAL STATEMENT WITH THE DEPARTMENT ON OR BEFORE THE
26 LAST DAY OF THE SIXTH MONTH AFTER THE END OF THE PHYSICIAN'S OR
27 ENTITY'S TAX YEAR. THE ANNUAL STATEMENT SHALL IDENTIFY EACH

1 PHYSICIAN WHO PROVIDED PHYSICIAN SERVICES AND GENERATED REVENUE FOR
2 THOSE SERVICES, ALONG WITH THE PHYSICIAN'S PERCENTAGE OF OWNERSHIP
3 IN THE ENTITY RELATED TO A PHYSICIAN, IF APPLICABLE. THE PHYSICIAN
4 OR ENTITY SHALL INCLUDE WITH THE ANNUAL STATEMENT THE PAYMENT OF
5 ANY QUALITY ASSURANCE ASSESSMENT DUE UNDER THIS SECTION.

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

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

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

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

24 (9) BEGINNING IN FISCAL YEAR 2009-2010, THE DEPARTMENT SHALL
25 INCREASE THE MEDICAID PHYSICIAN SERVICES REIMBURSEMENT RATES FOR
26 THAT FISCAL YEAR. FOR EACH SUBSEQUENT FISCAL YEAR IN WHICH THE
27 QUALITY ASSURANCE ASSESSMENT FOR PHYSICIANS IS IMPOSED AND

1 COLLECTED, THE DEPARTMENT SHALL MAINTAIN THE INCREASED MEDICAID
2 PHYSICIAN SERVICES REIMBURSEMENT RATES THAT ARE FINANCED BY THE
3 ASSESSMENT. BEGINNING IN FISCAL YEAR 2009-2010, A STATE RETENTION
4 AMOUNT EQUAL TO 13.2% OF THE FEDERAL FUNDS GENERATED BY THE QUALITY
5 ASSURANCE ASSESSMENT UNDER THIS SECTION, INCLUDING THE STATE
6 RETENTION AMOUNT, SHALL BE APPROPRIATED FROM THE PHYSICIAN SERVICES
7 QUALITY ASSURANCE ASSESSMENT FUND TO THE DEPARTMENT OF COMMUNITY
8 HEALTH TO SUPPORT MEDICAID EXPENDITURES FOR PHYSICIAN SERVICES. AN
9 AMOUNT EQUAL TO THE STATE RETENTION AMOUNT UNDER THIS SUBSECTION
10 THAT WAS ORIGINALLY APPROPRIATED FOR THAT PURPOSE SHALL BE CREDITED
11 TO THE MICHIGAN HEALTH CARE REBATE FUND THAT IS HEREBY CREATED IN
12 THE STATE TREASURY. THE STATE TREASURER MAY RECEIVE MONEY OR OTHER
13 ASSETS FROM ANY SOURCE FOR DEPOSIT INTO THE MICHIGAN HEALTH CARE
14 REBATE FUND. THE STATE TREASURER SHALL DIRECT THE INVESTMENT OF THE
15 MICHIGAN HEALTH CARE REBATE FUND. THE STATE TREASURER SHALL CREDIT
16 TO THE MICHIGAN HEALTH CARE REBATE FUND INTEREST AND EARNINGS FROM
17 FUND INVESTMENTS. MONEY IN THE MICHIGAN HEALTH CARE REBATE FUND AT
18 THE CLOSE OF THE FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT
19 LAPSE TO THE GENERAL FUND. THE DEPARTMENT SHALL BE THE
20 ADMINISTRATOR OF THE MICHIGAN HEALTH CARE REBATE FUND FOR AUDITING
21 PURPOSES. FOR THE 2009-2010 FISCAL YEAR, THE DEPARTMENT SHALL
22 EXPEND MONEY FROM THE MICHIGAN HEALTH CARE REBATE FUND, UPON
23 APPROPRIATION, ONLY FOR THE PURPOSE OF MEDICAID PROVIDER RATES,
24 NONMEDICAID COMMUNITY MENTAL HEALTH PROGRAMS, OR HEALTHY MICHIGAN
25 FUND'S PODIATRIC AND DENTAL SERVICES PROGRAMS, OR ANY COMBINATION
26 OF THESE PURPOSES. BEGINNING IN THE 2010-2011 FISCAL YEAR, THE
27 DEPARTMENT SHALL EXPEND MONEY FROM THE MICHIGAN HEALTH CARE REBATE

1 FUND, UPON APPROPRIATION, FOR ANY DEPARTMENT PROGRAM.

2 (10) THE PHYSICIAN SERVICES QUALITY ASSURANCE ASSESSMENT FUND
3 IS CREATED IN THE STATE TREASURY. THE STATE TREASURER MAY RECEIVE
4 MONEY OR OTHER ASSETS FROM ANY SOURCE FOR DEPOSIT INTO THE FUND.
5 THE STATE TREASURER SHALL DIRECT THE INVESTMENT OF THE FUND. THE
6 STATE TREASURER SHALL CREDIT TO THE FUND INTEREST AND EARNINGS FROM
7 FUND INVESTMENTS. MONEY IN THE FUND AT THE CLOSE OF THE FISCAL YEAR
8 SHALL REMAIN IN THE FUND AND SHALL NOT LAPSE TO THE GENERAL FUND.
9 ALL MONEY COLLECTED UNDER THIS SECTION SHALL BE DEPOSITED INTO THE
10 PHYSICIAN SERVICES QUALITY ASSURANCE ASSESSMENT FUND. THE
11 DEPARTMENT IS THE ADMINISTRATOR OF THE PHYSICIAN SERVICES QUALITY
12 ASSURANCE ASSESSMENT FUND FOR AUDITING PURPOSES.

13 (11) IF A PHYSICIAN OR ENTITY RELATED TO A PHYSICIAN FAILS OR
14 REFUSES TO FILE A QUARTERLY OR ANNUAL STATEMENT OR PAY THE
15 ASSESSMENT IMPOSED UNDER THIS SECTION, THE DEPARTMENT MAY ASSESS
16 THE PHYSICIAN OR ENTITY A PENALTY OF 5% OF THE ASSESSMENT FOR EACH
17 MONTH THAT THE ASSESSMENT AND PENALTY ARE NOT PAID UP TO A MAXIMUM
18 OF 50% OF THE ASSESSMENT. THE DEPARTMENT MAY ALSO REFER FOR
19 COLLECTION TO THE DEPARTMENT OF TREASURY PAST DUE AMOUNTS
20 CONSISTENT WITH SECTION 13 OF 1941 PA 122, MCL 205.13. EACH
21 PHYSICIAN WHO HAS AN OWNERSHIP INTEREST IN AN ENTITY RELATED TO A
22 PHYSICIAN IS JOINTLY AND SEVERALLY LIABLE FOR FILING THE ANNUAL
23 STATEMENTS, ESTIMATED QUARTERLY STATEMENTS, AND ALL OTHER FORMS AND
24 STATEMENTS REQUIRED UNDER THIS SECTION; FOR PAYING THE ASSESSMENT
25 FOR THE ENTITY; AND FOR ANY OTHER REQUIREMENT UNDER THIS SECTION.

26 (12) THIS SECTION ALSO APPLIES TO PHYSICIAN SERVICES PROVIDED
27 BY AN ENTITY RELATED TO A PHYSICIAN THAT IS OWNED IN WHOLE OR IN

1 PART BY A HOSPITAL, A HEALTH MAINTENANCE ORGANIZATION, A NONPROFIT
2 HEALTH CARE CORPORATION, OR ANY OTHER PUBLIC OR PRIVATE ENTITY. THE
3 QUALITY ASSURANCE ASSESSMENT ON PHYSICIANS IS A TAX IMPOSED ON EACH
4 PHYSICIAN AND ENTITY RELATED TO A PHYSICIAN THAT ENGAGES IN THE
5 PRACTICE OF MEDICINE OR OSTEOPATHIC MEDICINE AND SURGERY IN THIS
6 STATE.

7 (13) AS USED IN THIS SECTION:

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

12 (B) "GROSS REVENUE" MEANS THE AMOUNT RECEIVED OR RECEIVABLE,
13 WHETHER IN CASH OR IN KIND, WITHOUT DEDUCTION, FROM PATIENTS,
14 THIRD-PARTY PAYERS, GOVERNMENTAL ENTITIES, OR ANY OTHER PERSON FOR
15 PHYSICIAN SERVICES.

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

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

20 (E) "PHYSICIAN SERVICES" MEANS HEALTH CARE SERVICES PROVIDED
21 BY A PHYSICIAN OR BY A PHYSICIAN'S ASSISTANT OR NURSE UNDER THE
22 DIRECTION, SUPERVISION, CONTROL, OR DELEGATORY AUTHORITY OF A
23 PHYSICIAN.