

SENATE BILL NO. 33

January 26, 2021, Introduced by Senators RUNESTAD, BARRETT, MACDONALD, DALEY, VICTORY, BUMSTEAD, JOHNSON, OUTMAN, MCBROOM and VANDERWALL and referred to the Committee on Health Policy and Human Services.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 20199, 21702, and 21703 (MCL 333.20199, 333.21702, and 333.21703), section 21702 as amended by 1994 PA 73 and section 21703 as amended by 2015 PA 155, and by adding sections 21788, 21788a, 21788b, 21788c, 21788d, 21788e, 21788f, 21788g, and 21788h.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20199. (1) Except as **otherwise** provided in ~~subsection (2)~~

1 ~~or section 20142, this article~~, a person who violates this article
2 or a rule promulgated or an order issued under this article is
3 guilty of a misdemeanor, punishable by fine of not more than
4 \$1,000.00 for each day the violation continues or, ~~in case of~~ **for** a
5 violation of sections 20551 to 20554, a fine of not more than
6 \$1,000.00 for each occurrence.

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

10 Sec. 21702. (1) "Discharge" means the voluntary or involuntary
11 movement of a patient out of a nursing home regardless of the
12 individual's destination or reason for the movement.

13 (2) **"Electronic monitoring" means the placement and use of an**
14 **electronic monitoring device in a resident's room pursuant to this**
15 **part.**

16 (3) **"Electronic monitoring device" means a camera or other**
17 **device that captures, records, or broadcasts audio or video, or**
18 **both, or logs events or occurrences in accordance with the health**
19 **insurance portability and accountability act of 1996, Public Law**
20 **104-191, and is installed in a resident's room to monitor**
21 **activities occurring in the room. Electronic monitoring device**
22 **includes, but is not limited to, a monitoring system, video**
23 **surveillance camera, web-based camera, or video phone that is**
24 **installed in the room of a resident. An electronic monitoring**
25 **device may be an interactive or recording device.**

26 (4) ~~(2)~~ "Full-time" means being usually present in the nursing
27 home or conducting or participating in activities directly related
28 to the nursing home during the normal 40-hour business week.

29 (5) ~~(3)~~ "Involuntary transfer" means a transfer not agreed to

1 in writing by the patient or, in the case of a plenary
2 guardianship, by the patient's legal guardian.

3 (6) ~~(4)~~—"Medicaid" means the program for medical assistance
4 established under title XIX of the social security act, ~~chapter~~
5 ~~531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, and 1396i to 1396u, 42~~
6 **USC 1396 to 1396w-5**, and administered by the department of ~~social~~
7 **health and human** services under the social welfare act, ~~Act No. 280~~
8 ~~of the Public Acts of 1939, being sections 400.1 to 400.119b of the~~
9 ~~Michigan Compiled Laws.1939 PA 280, MCL 400.1 to 400.119b.~~

10 (7) ~~(5)~~—"Medical reasons" means a medical justification for
11 either of the following:

12 (a) The transfer or discharge of a patient in accord with the
13 written orders of the attending physician that is written into the
14 patient's clinical record by the physician in the progress notes.

15 (b) The transfer or discharge of a patient who is a ~~medicaid~~
16 **Medicaid** recipient due to a change in level of care required by the
17 patient and the fact that the nursing home or nursing care facility
18 is not certified to provide the needed level of care.

19 (8) ~~(6)~~—"Medicare" means that term as defined in section 2701.

20 (9) ~~(7)~~—"Modification of a license" means an action by the
21 department to alter the number of beds, the levels of care, the
22 portions of the physical plant that may be operated or maintained
23 by a licensee in a particular nursing home, or to restrict the
24 nursing home from engaging in activity that violates this article
25 or a rule promulgated under this article.

26 (10) ~~(8)~~—"Negative case action" means an action taken by the
27 department of ~~social services~~ **health and human services** to deny an
28 application for medical assistance, cancel medical assistance, or
29 reduce medical assistance coverage.

1 (11) ~~(9)~~ "Nonpayment" means:

2 (a) Failure to collect from the patient or any other source
3 the full amount of the facility charges to a ~~nonmedicaid-non-~~
4 **Medicaid** patient based on a written contract signed on or after
5 that patient's admission to the facility.

6 (b) Failure to collect a ~~medicaid-Medicaid~~ patient's
7 stipulated contribution toward his or her care.

8 (12) **"Notification and consent form" means the form required**
9 **to be prescribed by the department under section 21788b.**

10 (13) ~~(10)~~ "Private pay rate" means the amount charged by a
11 nursing home for the care of a patient who is not entitled to state
12 or federal benefits for that patient's nursing home care.

13 Sec. 21703. (1) "Patient" means a resident.

14 (2) "Patient's representative", ~~or~~ "resident's
15 representative", **or "roommate's representative"** means a person,
16 other than the licensee or an employee or person having a direct or
17 indirect ownership interest in the nursing home, designated in
18 writing by a resident or a resident's guardian for a specific,
19 limited purpose or for general purposes, or, if a written
20 designation of a representative is not made, the guardian of the
21 resident.

22 (3) "Relocation" means the movement of a resident from 1 bed
23 to another or from 1 room to another within the same nursing home
24 or within a certified distinct part of a nursing home.

25 (4) "Resident" means an individual who receives care or
26 services at a nursing home.

27 (5) "Transfer" means the movement of a resident from 1 nursing
28 home to another nursing home or from 1 certified distinct part of a
29 nursing home to another certified distinct part of the same nursing

1 home.

2 (6) "Welfare" means, with reference to a resident, the
3 physical, emotional, or social well-being of a resident in a
4 nursing home, including a resident awaiting transfer or discharge,
5 as documented in the resident's clinical record by a licensed or
6 certified health care professional.

7 **Sec. 21788. (1) Subject to the requirements of this part, a**
8 **nursing home that receives from a resident or resident's**
9 **representative a written request for electronic monitoring on a**
10 **notification and consent form shall permit the resident or the**
11 **resident's representative to monitor the resident in the resident's**
12 **room through the use of an electronic monitoring device.**

13 (2) This part does not allow the use of an electronic
14 monitoring device to take still photographs or for the
15 nonconsensual interception of private communications.

16 (3) This part does not alter, abrogate, or limit a resident's
17 right to otherwise use a device to record audio or video, or both,
18 in the resident's room pursuant to the law.

19 **Sec. 21788a. (1) Except as otherwise provided in this section,**
20 **a resident must consent to electronic monitoring in the resident's**
21 **room in writing on a notification and consent form.**

22 (2) The resident's representative may consent to electronic
23 monitoring on behalf of the resident if all of the following
24 requirements are met:

25 (a) An individual licensed or otherwise authorized to engage
26 in a health profession under part 170 or 175 determines that the
27 resident currently lacks the ability to understand and appreciate
28 the nature and consequences of electronic monitoring.

29 (b) The resident's representative explains all of the

1 following to the resident:

2 (i) The type of electronic monitoring to be used.

3 (ii) The standard conditions or restrictions that may be placed
4 on the use of the electronic monitoring device.

5 (iii) The persons with whom the recording may be shared.

6 (iv) The resident's ability to decline all recording.

7 (c) After explaining the items required in subdivision (b),
8 the resident's representative asks the resident if the resident
9 wants electronic monitoring to be conducted. The resident's
10 response must be documented on the notification and consent form.

11 (d) The resident does not affirmatively object to electronic
12 monitoring when asked under subdivision (c). For purposes of this
13 subdivision, a resident affirmatively objects if the resident
14 orally, visually, or through the use of auxiliary aids or services
15 declines electronic monitoring.

16 (3) If a resident shares a room with another resident, before
17 conducting electronic monitoring, the consent of the resident's
18 roommate or, subject to subsection (2), the roommate's
19 representative must be obtained in writing on the notification and
20 consent form.

21 (4) Consent under this section may include any conditions of
22 the individual's choosing, including, but not limited to, the list
23 of standard conditions or restrictions described in section 21788b.
24 Regardless of whether consent is subject to any conditions, the
25 electronic monitoring device may be turned off, the audio recording
26 may be turned off, the visual recording component of the electronic
27 device may be blocked, or a curtain may be used to screen an
28 individual from the visual recording component of the electronic
29 monitoring device during care according to a plan of care or at any

1 time at the request of the resident or roommate, or the resident's
2 or roommate's representative if subsection (2) applies. The nursing
3 home shall comply with a plan of care or a request described in
4 this subsection. The nursing home shall ensure that its staff are
5 familiar with the requirements of this subsection and follow a plan
6 of care or request described in this subsection, including by
7 assisting a resident or resident's roommate, as necessary, in
8 accordance with the plan of care or request.

9 (5) The resident or roommate, or the resident's or roommate's
10 representative if subsection (2) applies, may withdraw his or her
11 consent at any time by giving written notice to the nursing home
12 and any other resident who resides in the room. If consent is
13 withdrawn under this subsection or if a new roommate moves into the
14 shared room and consent cannot be obtained from the new roommate or
15 the roommate's representative, 1 of the following must occur:

16 (a) Unless subdivision (b) applies, the resident or the
17 resident's representative shall turn off the electronic monitoring
18 device within 24 hours and remove the electronic monitoring device
19 from the room within 7 days. If the resident or the resident's
20 representative does not turn off or remove the electronic
21 monitoring device within the timeframe required under this
22 subdivision, the nursing home may turn off or remove the electronic
23 monitoring device.

24 (b) If the nursing home provides electronic monitoring
25 services to the resident under section 21788c(4), the nursing home
26 shall turn off the electronic monitoring device within 24 hours and
27 remove the electronic monitoring device from the room within 7
28 days.

29 (6) A nursing home shall make a reasonable effort to allow a

1 resident to change rooms if consent cannot be obtained from or is
2 withdrawn by a roommate or the roommate's representative. If a
3 resident chooses to reside in a private room in order to
4 accommodate the use of an electronic monitoring device, the
5 resident must pay the private room rate. If a nursing home is
6 unable to accommodate a resident's request to change rooms, the
7 nursing home shall reevaluate the request every 2 weeks until the
8 request is fulfilled.

9 Sec. 21788b. (1) A resident or resident's representative who
10 wishes to install an electronic monitoring device shall make the
11 request to the nursing home in writing on a notification and
12 consent form prescribed by the department.

13 (2) The notification and consent form must include, at a
14 minimum, all of the following information:

15 (a) The resident's signed consent to electronic monitoring or,
16 if section 21788a(2) applies, the signed consent of the resident's
17 representative.

18 (b) If the resident shares a room with another resident, the
19 roommate's signed consent to electronic monitoring or, if section
20 21788a(2) applies, the signed consent of the roommate's
21 representative.

22 (c) The type of electronic monitoring device to be used or, if
23 the resident or resident's representative plans to use electronic
24 monitoring services provided by the nursing home under section
25 21788c(4), a statement to that effect.

26 (d) The proposed date of installation for scheduling purposes.

27 (e) A copy of any contract for maintenance of the electronic
28 monitoring device by another person.

29 (f) A list of standard conditions or restrictions that the

1 resident or a roommate may elect to place on the use of the
2 electronic monitoring device, including, but not limited to, all of
3 the following:

4 (i) Prohibiting audio recording.

5 (ii) Prohibiting broadcasting of audio or video.

6 (iii) Turning off the electronic monitoring device or blocking
7 the visual recording component of the electronic monitoring device
8 for the duration of an exam or procedure by a health care
9 professional.

10 (iv) Turning off the electronic monitoring device or blocking
11 the visual recording component of the electronic monitoring device
12 while dressing or bathing is performed.

13 (v) Turning off the electronic monitoring device for the
14 duration of a visit with a spiritual advisor, ombudsman, attorney,
15 financial planner, intimate partner, or other visitor.

16 (g) Any other condition or restriction elected by the resident
17 or roommate on the use of the electronic monitoring device.

18 (h) An explanation of the right to report suspected abuse or
19 neglect based on a video or audio recording created by an
20 electronic monitoring device to the nursing home, the long-term
21 care ombudsman program, or the department. The explanation under
22 this subdivision must include telephone numbers for the long-term
23 care ombudsman program and the department. As used in this
24 subdivision, "long-term care ombudsman program" means the long-term
25 care ombudsman program established pursuant to section 6(aa) of the
26 older Michigianians act, 1981 PA 180, MCL 400.586.

27 (i) A statement that an individual is advised to report
28 suspected abuse or neglect after viewing the recording on which the
29 suspected abuse or neglect is based.

1 (j) An acknowledgement of the explanation of rights described
2 in subdivision (h) and the statement described in subdivision (i)
3 signed by the resident or, if section 21788a(2) applies, the
4 resident's representative.

5 (3) The nursing home shall place a copy of the completed
6 notification and consent form in the resident's and any roommate's
7 clinical record and provide a copy of the notification and consent
8 form to the resident and any roommate.

9 (4) The department shall prescribe the notification and
10 consent form not later than 60 days after the effective date of the
11 amendatory act that added this section.

12 (5) If an electronic monitoring device is installed or used
13 without a completed notification and consent form, a video or audio
14 recording created by the electronic monitoring device is
15 inadmissible as evidence in a civil action against the nursing
16 home.

17 Sec. 21788c. (1) Except as otherwise provided in subsection
18 (3)(b) or (4), if a resident or resident's representative chooses
19 to conduct electronic monitoring, the resident or resident's
20 representative shall pay for all costs of the electronic
21 monitoring, including, but not limited to, all of the following:

22 (a) The purchase cost of the electronic monitoring device.

23 (b) Installation costs.

24 (c) Maintenance costs.

25 (d) Activation costs.

26 (e) Removal costs, including, but not limited to, deactivation
27 costs and cancellation fees.

28 (2) If a resident or resident's representative chooses to
29 install an electronic monitoring device that uses internet

1 technology for visual or audio monitoring, the resident or
2 resident's representative is responsible for contracting with an
3 internet service provider or paying any additional costs incurred
4 by the nursing home for use of the nursing home's internet provider
5 to conduct the electronic monitoring.

6 (3) A nursing home shall make reasonable accommodation for
7 electronic monitoring, including, but not limited to, by providing
8 both of the following:

9 (a) A reasonably secure place to locate the electronic
10 monitoring device. An electronic monitoring device must be placed
11 in a conspicuously visible location in the room.

12 (b) Access to a power source for the electronic monitoring
13 device. A nursing home shall not charge the resident a fee for the
14 cost of electricity used by an electronic monitoring device.

15 (4) Subject to the requirements of this part, a nursing home
16 may provide electronic monitoring services to a resident or
17 resident's representative, including, but not limited to, providing
18 electronic monitoring on a subscription basis. If a resident or
19 resident's representative chooses to receive electronic monitoring
20 services from a nursing home, the resident or resident's
21 representative shall pay the amount charged by the nursing home for
22 the services as reflected in a written agreement with the nursing
23 home. In providing electronic monitoring services under this
24 subsection, a nursing home may contract with a third-party video
25 monitoring company to provide video monitoring services if both of
26 the following requirements are met:

27 (a) The third-party video monitoring company provides video
28 monitoring through live-streaming, nonrecording video systems that
29 include audio and video privacy features and event log

1 capabilities.

2 (b) The live-stream video is monitored 24 hours a day, 7 days
3 a week for resident and staff safety by 1 or more trained staff
4 members.

5 (5) A nursing home that provides electronic monitoring
6 services under subsection (4) shall not require a resident or
7 resident's representative to use those services to receive
8 electronic monitoring.

9 (6) All electronic monitoring device installations and
10 supporting services must comply with the requirements of the
11 National Fire Protection Association (NFPA) 101 Life Safety Code
12 (2000 edition).

13 Sec. 21788d. (1) If a resident of a nursing home is
14 electronically monitored, a sign must be clearly and conspicuously
15 posted at all building entrances accessible to visitors. The sign
16 must be entitled "Electronic Monitoring" and must state, in large,
17 easy-to-read type, "The rooms of some residents may be monitored
18 electronically by or on behalf of the residents."

19 (2) In addition to the language required under subsection (1),
20 the signage required under this section must include a warning to
21 visitors that they may be electronically monitored, that recordings
22 made by an electronic monitoring device may be disclosed, and that
23 they should not have an expectation of privacy.

24 (3) The nursing home is responsible for installing and
25 maintaining the signage required under this section.

26 Sec. 21788e. (1) A nursing home shall not refuse to admit an
27 individual as a resident of or remove a resident from the nursing
28 home because of a request to install an electronic monitoring
29 device.

1 (2) A nursing home shall not require an applicant to agree to
2 forego electronic monitoring as a condition of admission.

3 (3) A nursing home shall not otherwise retaliate against a
4 resident because of a request to install an electronic monitoring
5 device.

6 Sec. 21788f. (1) An electronic monitoring device must include
7 a time and date stamp on all video and audio recorded.

8 (2) Subject to the Michigan rules of evidence and except as
9 otherwise provided in this part, a video or audio recording created
10 by an electronic monitoring device under this part is admissible in
11 a civil, criminal, or administrative proceeding in this state.

12 (3) A video or audio recording created by an electronic
13 monitoring device under this part must not be used as evidence in a
14 civil, criminal, or administrative proceeding in this state that is
15 initiated more than 8 years after the date of the video or audio
16 recording.

17 Sec. 21788g. (1) A video or audio recording created by an
18 electronic monitoring device under this part belongs to the
19 resident.

20 (2) A nursing home is not civilly or criminally liable for the
21 inadvertent or intentional disclosure of a recording by a resident
22 or a resident's representative for a purpose not authorized by law.

23 (3) If suspected abuse or neglect of a resident based on a
24 video or audio recording created by an electronic monitoring device
25 is reported to the nursing home and the nursing home requests a
26 copy of the relevant recording, the individual in possession of the
27 recording shall provide a copy to the nursing home. The nursing
28 home shall pay all reasonable costs incurred by the individual in
29 providing the copy.

1 Sec. 21788h. (1) The department may promulgate rules in
2 consultation with the long-term care ombudsman program to establish
3 all of the following:

4 (a) The procedure by which a resident or a resident's
5 representative must submit a notification and consent form to a
6 nursing home as required under section 21788b to begin electronic
7 monitoring.

8 (b) Requirements for obtaining and documenting a determination
9 by an individual licensed or otherwise authorized to engage in a
10 health profession under part 170 or 175 that a resident currently
11 lacks the ability to understand and appreciate the nature and
12 consequences of electronic monitoring as required for the
13 application of section 21788a(2).

14 (c) The process a resident or resident's representative must
15 follow to obtain consent to electronic monitoring from the
16 resident's roommate or the roommate's representative as required
17 under section 21788a(3).

18 (d) Requirements for retention and distribution of the
19 completed notification and consent form under section 21788b(3).

20 (e) Standards for reasonable accommodation by the nursing home
21 to allow for the installation, maintenance, and use of an
22 electronic monitoring device as required under section 21788c(3).

23 (f) Requirements and procedures for turning off an electronic
24 monitoring device or audio recording, blocking the visual recording
25 component of an electronic monitoring device, or using a curtain to
26 screen an individual from the visual recording component of an
27 electronic monitoring device pursuant to a condition on consent,
28 request, or plan of care under section 21788a(4).

29 (g) The procedure a resident, resident's representative,

1 roommate, or roommate's representative must follow to withdraw his
2 or her consent to electronic monitoring under section 21788a(5).

3 (h) Requirements and procedures for turning off an electronic
4 monitoring device and removing an electronic monitoring device when
5 consent is withdrawn or cannot be obtained from a new roommate or
6 the roommate's representative under section 21788a(5).

7 (i) Requirements and procedures a nursing home must follow in
8 installing and maintaining the signage required under section
9 21788d.

10 (2) In promulgating rules under this section, the department
11 shall consider similar rules of other states.

12 (3) As used in this section, "long-term care ombudsman
13 program" means the long-term care ombudsman program established
14 pursuant to section 6(aa) of the older Michiganians act, 1981 PA
15 180, MCL 400.586.

16 Enacting section 1. This amendatory act takes effect 90 days
17 after the date it is enacted into law.