

HOUSE BILL No. 5277

October 22, 1991, Introduced by Reps. Perry Bullard, Anthony, Hertel, Pitoniak, Dobronski, Wozniak, DeMars and Richard A. Young and referred to the Committee on Public Health.

A bill to amend sections 21773 and 21782 of Act No. 368 of the Public Acts of 1978, entitled as amended

"Public health code,"

being sections 333.21773 and 333.21782 of the Michigan Compiled Laws; to add sections 21718a and 21799f; and to repeal certain parts of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 21773 and 21782 of Act No. 368 of the
2 Public Acts of 1978, being sections 333.21773 and 333.21782 of
3 the Michigan Compiled Laws, are amended and sections 21718a and
4 21799f are added to read as follows:

5 SEC. 21718A. (1) AS A CONDITION OF PARTICIPATION IN MEDI-
6 CAID, A NURSING HOME SHALL DO ALL OF THE FOLLOWING:

1 (A) HAVE OR TAKE ALL NECESSARY ACTION TO OBTAIN MEDICAID
 2 INTERMEDIATE CARE CERTIFICATION FOR EACH BED IN THE NURSING
 3 HOME.

4 (B) OBTAIN MEDICARE CERTIFICATION FOR EACH BED IN THE NURS-
 5 ING HOME, EXCEPT THAT THIS REQUIREMENT DOES NOT APPLY TO A NURS-
 6 ING HOME, OR A DISTINCT PART OF A NURSING HOME, THAT IS CERTIFIED
 7 BY THE DIRECTOR AS A SPECIAL MENTAL RETARDATION OR SPECIAL MENTAL
 8 ILLNESS NURSING HOME. THE DEPARTMENT OF SOCIAL SERVICES MAY MAKE
 9 AN EXCEPTION TO THIS REQUIREMENT FOR A NURSING HOME THAT IS
 10 DETERMINED BY THE SECRETARY OF THE UNITED STATES DEPARTMENT OF
 11 HEALTH AND HUMAN SERVICES TO BE INELIGIBLE FOR MEDICARE
 12 CERTIFICATION.

13 (2) THE DEPARTMENT SHALL NOT LICENSE A NURSING HOME UNDER
 14 THIS PART UNLESS EACH BED IN THE NURSING HOME THAT IS CERTIFIED
 15 AS A MEDICARE BED IS ALSO CERTIFIED AS A MEDICAID BED.

16 Sec. 21773. (1) A nursing home shall not involuntarily
 17 transfer or discharge a patient except ~~for~~ UNDER 1 OR MORE
 18 OF THE FOLLOWING CIRCUMSTANCES:

19 (A) FOR medical reasons. ~~for~~

20 (B) FOR the patient's welfare or that of other patients or
 21 facility employees. ~~or for~~

22 (C) FOR nonpayment for the patient's stay, except as prohib-
 23 ited by MEDICAID. ~~title 19 of the social security act, 42~~
 24 ~~U.S.C. 1396 to 1396k.~~

25 (2) A NURSING HOME THAT PARTICIPATES IN MEDICAID SHALL NOT
 26 INVOLUNTARILY TRANSFER OR DISCHARGE A PATIENT OR RELOCATE A

1 PATIENT WITHIN THE NURSING HOME SOLELY BECAUSE A PATIENT BECOMES
2 ELIGIBLE FOR, APPLIES FOR, OR RECEIVES MEDICAID.

3 (3) ~~(2)~~ Involuntary transfer or discharge of a patient
4 from a licensed nursing home shall be preceded by a minimum writ-
5 ten notice of ~~2+~~ 30 days. The ~~2+~~ ~~day~~ 30-DAY requirement
6 ~~shall~~ DOES not apply in any of the following instances:

7 (a) If an emergency transfer or discharge is mandated by the
8 patient's health care needs and is in accord with the written
9 orders and medical justification of the attending physician.

10 (b) If the transfer or discharge is mandated by the physical
11 safety of other patients and facility employees as documented in
12 the clinical record.

13 (c) If the transfer or discharge is subsequently agreed to
14 by the patient or the patient's legal guardian, and notification
15 is given to the next of kin and the person or agency responsible
16 for the patient's placement, maintenance, and care in the
17 facility.

18 (4) ~~(3)~~ The notice required by subsection ~~(2)~~ (3) shall
19 be on a form prescribed by the department and shall contain all
20 of the following:

21 (a) The stated reason for the proposed transfer.

22 (b) The effective date of the proposed transfer.

23 (c) A statement in not less than 12-point type, ~~which~~

24 ~~reads~~ THAT PROVIDES: "You have a right to appeal the nursing

25 home's decision to transfer you. If you think you should not

26 have to leave this facility, you may file a request for a hearing

27 with the department of public health within 10 days after

1 receiving this notice. If you request a hearing, it will be held
2 not sooner than 7 days after your request, and you will not be
3 transferred during that time. If you lose the hearing, you will
4 not be transferred before the expiration of 30 days following
5 receipt of the original notice of the discharge or transfer. A
6 form to appeal the nursing home's decision and to request a hear-
7 ing is attached. If you have any questions, call the department
8 of public health at the number listed below."

9 (d) A hearing request form, together with a postage paid,
10 preaddressed envelope to the department.

11 (e) The name, address, and telephone number of the responsi-
12 ble official in the department.

13 (5) ~~(4)~~ A request for a hearing made under subsection ~~(3)~~
14 ~~shall stay~~ (4) STAYS a transfer pending a hearing or appeal
15 decision.

16 (6) ~~(5) A~~ THE NURSING HOME SHALL PLACE A copy of the
17 notice required by subsection (3) ~~shall be placed~~ in the
18 patient's clinical record and ~~a copy shall be transmitted~~
19 TRANSMIT A COPY to the department, the patient, the patient's
20 next of kin, patient's representative, or legal guardian, and the
21 person or agency responsible for the patient's placement, mainte-
22 nance, and care in the facility.

23 (7) ~~(6)~~ If the basis for an involuntary transfer or dis-
24 charge is the result of a negative action by the department of
25 social services with respect to a medicaid client and a hearing
26 request is filed with that department, the ~~21 day~~ 30-DAY
27 written notice period ~~shall~~ DOES not begin until a final

1 decision in the matter is rendered by the department of social
2 services or a court of competent jurisdiction and notice of that
3 final decision is received by the patient and the facility.

4 (8) ~~-(7)-~~ If nonpayment is the basis for involuntary trans-
5 fer or discharge, the patient ~~shall have the right to~~ MAY
6 redeem up to the date that the discharge or transfer is to be
7 made and then ~~shall have the right to~~ MAY remain in the
8 facility.

9 (9) ~~-(8)-~~ The NURSING HOME SHALL PROVIDE AN EXPLANATION AND
10 DISCUSS THE involuntary transfer or discharge ~~shall be~~
11 ~~discussed~~ with the patient, the patient's next of kin or legal
12 guardian, and person or agency responsible for the patient's
13 placement, maintenance, and care in the facility. The
14 ~~explanation and~~ NURSING HOME ADMINISTRATOR OR OTHER NURSING
15 HOME REPRESENTATIVE DESIGNATED BY THE ADMINISTRATOR SHALL ATTEND
16 AND PARTICIPATE IN THE discussion of the reasons for involuntary
17 transfer or discharge. ~~shall include the nursing home adminis-~~
18 ~~trator or other appropriate nursing home representative as the~~
19 ~~administrator's designee.~~ The content of the discussion and
20 explanation shall be summarized in writing and shall include the
21 names of the individuals involved in the discussions, and SHALL
22 BE made a part of the patient's clinical record.

23 (10) ~~-(9)-~~ The ~~patient~~ NURSING HOME shall ~~receive~~
24 PROVIDE counseling services TO THE PATIENT before and after the
25 transfer to minimize the possible adverse effect of the
26 transfer.

1 Sec. 21782. A licensee shall retain for public inspection
2 ALL OF THE FOLLOWING:

3 (a) A complete copy of each inspection report of the nursing
4 home received from the department during the past 5 years.

5 (b) A copy of each notice of a hearing or order pertaining
6 to the nursing home issued by the department or a court under the
7 authority of this article or rules promulgated under this article
8 after ~~the effective date of this section~~ MARCH 30, 1979. The
9 copy of the notice or order shall be retained for not less than 3
10 years after its date of issuance or not less than 3 years after
11 the date of the resolution of the subject matter of the notice or
12 order, whichever is later.

13 (c) A description of the services provided by the nursing
14 home and the rates charged for those services and items for which
15 a patient may be separately charged.

16 (d) A list ~~of~~ THAT CONTAINS the name, address, principal
17 occupation, and official position of each person who, as a stock-
18 holder or otherwise, has a proprietary interest in the nursing
19 home as required by section 20142, ~~of~~ AND THAT IDENTIFIES each
20 officer and director of a nursing home ~~which~~ THAT is a corpora-
21 tion ~~—~~ and ~~of~~ each trustee or beneficiary of a nursing home
22 ~~which~~ THAT is a trust.

23 (e) A list of licensed personnel employed or retained by the
24 nursing home.

25 (f) A copy of the standard form contract utilized under sec-
26 tion 21766.

1 SEC. 21799F. (1) A PERSON WHO VIOLATES THIS PART IS LIABLE
2 TO A PATIENT IN A CIVIL ACTION FOR TREBLE THE AMOUNT OF ACTUAL
3 DAMAGES OR \$1,000.00, WHICHEVER IS GREATER, TOGETHER WITH COSTS
4 AND REASONABLE ATTORNEY FEES.

5 (2) IN ADDITION TO ANY OTHER ENFORCEMENT ACTION AUTHORIZED
6 BY LAW, A PERSON ALLEGING A VIOLATION OF THIS PART MAY BRING A
7 CIVIL ACTION FOR APPROPRIATE INJUNCTIVE RELIEF. IF INJUNCTIVE
8 RELIEF IS GRANTED, THE COURT SHALL AWARD TO THE PERSON BRINGING
9 THE ACTION COSTS AND REASONABLE ATTORNEY FEES.

10 Section 2. Section 21718 of Act No. 368 of the Public Acts
11 of 1978, being section 333.21718 of the Michigan Compiled Laws,
12 is repealed.