

SENATE BILL No. 140

February 4, 2003, Introduced by Senators LELAND, BRATER, GOSCHKA, CHERRY, JACOBS, SCHAUER, OLSHOVE, BASHAM and BERNERO and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
 "Public health code,"
 by amending section 21720a (MCL 333.21720a).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

SENATE BILL No. 140

1 Sec. 21720a. (1) ~~A~~ **The department shall not license a**
 2 nursing home ~~shall not be licensed~~ under this part unless
 3 ~~that~~ **the** nursing home has on its staff at least 1 registered
 4 **professional nurse licensed under article 15** with specialized
 5 training or relevant experience in the area of gerontology, who
 6 ~~shall serve~~ **serves** as the director of nursing. ~~and who shall~~
 7 ~~be~~ **The director is** responsible for planning and directing
 8 nursing care. The nursing home shall have at least 1 ~~licensed~~
 9 ~~nurse~~ **registered professional nurse or licensed practical nurse**
 10 **licensed under article 15** on duty at all times and shall employ
 11 additional registered **professional nurses** and licensed practical

1 nurses ~~in accordance~~ **as necessary to comply** with subsection
2 (2). ~~This subsection shall not take effect until January 1,~~
3 ~~1980.~~

4 (2) A nursing home shall employ ~~nursing personnel~~ **direct**
5 **patient care providers** sufficient to provide continuous 24-hour
6 nursing care and services sufficient to meet the needs of each
7 patient in the nursing home. ~~Nursing personnel~~ **Direct patient**
8 **care providers** employed in the nursing home shall be under the
9 supervision of the director of nursing. ~~A licensee shall~~
10 ~~maintain a nursing home staff sufficient to provide not less than~~
11 ~~2.25 hours of nursing care by employed nursing care personnel per~~
12 ~~patient per day. The ratio of patients to nursing care personnel~~
13 ~~during a morning shift shall not exceed 8 patients to 1 nursing~~
14 ~~care personnel; the ratio of patients to nursing care personnel~~
15 ~~during an afternoon shift shall not exceed 12 patients to 1~~
16 ~~nursing care personnel; and the ratio of patients to nursing care~~
17 ~~personnel during a nighttime shift shall not exceed 15 patients~~
18 ~~to 1 nursing care personnel and there shall be sufficient nursing~~
19 ~~care personnel available on duty to assure coverage for patients~~
20 ~~at all times during the shift. An employee designated as a~~
21 ~~member of the nursing staff shall not be engaged in providing~~
22 ~~basic services such as food preparation, housekeeping, laundry,~~
23 ~~or maintenance services, except in an instance of natural~~
24 ~~disaster or other emergency reported to and concurred in by the~~
25 ~~department. In a nursing home having 30 or more beds, the~~
26 ~~director of nursing shall not be included in counting the minimum~~
27 ~~ratios of nursing personnel required by this subsection.~~ **Subject**

1 to subsection (4) and except as otherwise provided in subsection
2 (8), a licensee shall maintain a nursing home staff-to-patient
3 ratio sufficient to provide not less than 3.0 hours of direct
4 patient care by a direct patient care provider per patient per
5 day. The staff-to-patient ratio required under this subsection
6 shall be computed on a 24-hour basis so that at no time during
7 the 24-hour period does the staff-to-patient ratio fall below 1
8 direct patient care provider to 15 nursing home patients.

9 ~~(3) In administering this section, the department shall take~~
10 ~~into consideration a natural disaster or other emergency.~~

11 (3) Except as otherwise provided in this subsection and
12 subsection (4), a nursing home shall not include an individual
13 who is not a direct patient care provider in computing the
14 staff-to-patient ratio and hours-per-patient-per-day requirement
15 under subsection (2). However, the nursing home may include such
16 an individual to provide some types of direct patient care, if
17 the nursing home provides the individual with the training
18 required under section 21795 for each type or element of direct
19 patient care provided. A nursing home may, for purposes of
20 computing the staff-to-patient ratio and
21 hours-per-patient-per-day requirement under subsection (2),
22 include an individual who has completed the applicable training
23 required under title XVIII or title XIX, but has not yet been
24 tested as required under title XVIII and title XIX, as long as
25 not more than 120 days have elapsed since the individual
26 completed the training.

27 (4) In computing the staff-to-patient ratio and the

1 hours-per-patient-per-day requirement under subsection (2) during
2 an emergency, a nursing home may include a nursing home staff
3 member who is a registered professional nurse or a licensed
4 practical nurse licensed under article 15 and is not normally
5 used in computing the ratio and requirement because the staff
6 member performs primarily administrative functions, if the staff
7 member provides direct patient care during the emergency, but
8 only for as long as the emergency exists.

9 (5) For purposes of subsection (2), from October 1, 2003 to
10 April 1, 2004, a licensee shall assure that the number of hours
11 of direct patient care by a direct patient care provider per
12 patient per day in the nursing home is not less than 2.75. From
13 April 2, 2004 to October 1, 2004, a licensee shall assure that
14 the number of hours of direct patient care by a direct patient
15 care provider per patient per day in the nursing home is not less
16 than 2.85. After October 1, 2004, a licensee shall assure that
17 the number of hours of direct patient care by a direct patient
18 care provider per patient per day in the nursing home is not less
19 than 3.0.

20 (6) If a direct patient care provider performs duties other
21 than direct patient care during his or her shift, the nursing
22 home may count the number of direct patient care hours provided
23 by the direct patient care provider during the shift in computing
24 compliance with subsection (2) or subsection (5), or both. A
25 nursing home may use the time a direct patient care provider
26 spends in documenting the direct patient care that he or she
27 provided in computing compliance with subsection (2) or

1 subsection (5), or both.

2 (7) A direct patient care provider shall not provide services
3 other than direct patient care to patients in a nursing home,
4 including, but not limited to, food preparation, housekeeping,
5 laundry, and maintenance services, except in time of natural
6 disaster or other emergency circumstances that are reported to
7 and concurred in by the department. A nursing home may direct a
8 nursing home employee who is not qualified as a direct patient
9 care provider to provide direct patient care in time of natural
10 disaster or other emergency circumstances that are reported to
11 and concurred in by the department. A nursing home may count the
12 hours of direct patient care provided under this subsection in
13 computing compliance with subsection (2) or subsection (5), or
14 both.

15 (8) Subject to subsection (9), if a nursing home's costs of
16 operation are increased as a result of its compliance with the
17 amendatory act that added this subsection, the nursing home may
18 advise the department in writing of the increased operational
19 costs. The nursing home may include in the written advisory a
20 request for reimbursement from the department for the increased
21 costs. Upon receipt of a written advisory from a nursing home
22 under this subsection that includes a request for reimbursement,
23 the department shall immediately adjust the nursing home's per
24 diem reimbursement under title XVIII in an amount sufficient to
25 reimburse the nursing home for the increased costs. The
26 department shall increase the nursing home's per diem
27 reimbursement rate under this subsection regardless of previously

1 applied cost limits. If the department fails to adjust a nursing
2 home's per diem reimbursement rate under this subsection within
3 30 days after receiving a written advisory that includes a
4 request for reimbursement under this subsection, then all of the
5 following shall occur:

6 (a) The nursing home is exempt from the staff-to-patient
7 ratios and the hours-per-patient-per-day requirements of this
8 section until the department adjusts the nursing home's per diem
9 reimbursement rate under this subsection.

10 (b) The nursing home shall provide each patient with not less
11 than 2.25 hours of direct patient care by a direct patient care
12 provider and shall maintain the staff-to-patient ratio required
13 under this section before it was amended by the amendatory act
14 that added this subsection.

15 (c) Within 30 days after being notified by the department
16 that the nursing home's status has changed and that the nursing
17 home will be reimbursed at the appropriate level, the nursing
18 home shall return to the staff-to-patient ratio and the
19 hours-per-patient-per-day requirement required by the amendatory
20 act that added this subsection.

21 (9) Subsection (8) is not intended as a remedy that allows
22 the department to reimburse a nursing home at a rate that allows
23 the nursing home to maintain a nursing home staff-to-patient
24 ratio that is not sufficient to provide at least 3.0 hours of
25 direct patient care by a direct patient care provider per patient
26 per day as required under subsection (2). It is the intent of
27 the legislature that the department reimburse nursing homes under

1 title XVIII in an amount sufficient to maintain the
2 staff-to-patient ratio and the number of direct patient care
3 hours per patient per day required under subsection (2). If the
4 department fails to adjust a nursing home's reimbursement rate
5 under subsection (8) within the 30-day time period required under
6 subsection (8), the department immediately shall file a written
7 report with the standing appropriations committees of the senate
8 and the house of representatives and with the appropriate
9 subcommittees. The department shall include in the report its
10 reasons for failing to adjust the nursing home's reimbursement
11 rate in compliance with this section.

12 (10) The department shall determine whether a nursing home's
13 operational costs were actually increased as described in
14 subsection (8) during the department's audit of the nursing
15 home's annual cost report. If the department determines as a
16 result of the audit that the nursing home's costs were not in
17 fact increased, the department may retroactively disallow the
18 increased costs claimed by the nursing home in an amount equal to
19 the amount of costs determined by the department not to have been
20 incurred by the nursing home. A retroactive disallowance by the
21 department under this subsection is an "adverse action" as that
22 term is defined in R 400.3401 of the Michigan administrative code
23 and is subject to appeal under R 400.3401 to R 400.3425 of the
24 Michigan administrative code.

25 (11) A nursing home may file with the department a petition
26 for temporary, emergency rate relief from the staff-to-patient
27 ratio and the direct patient care hours-per-patient-per-day

1 requirement of subsection (2) or the minimum hours of direct
2 patient care required under subsection (5), or both. The
3 department may grant the nursing home's petition for temporary,
4 emergency rate relief if the nursing home demonstrates to the
5 satisfaction of the department that the staff-to-patient ratio
6 and the direct patient care hours-per-patient-per-day requirement
7 of subsection (2) or the minimum number of hours of direct
8 patient care required under subsection (5), or both, has a
9 substantial effect on the nursing home's operating costs. The
10 department shall issue a decision on a petition filed under this
11 subsection within 90 days after receipt of the petition. If the
12 department denies the petition, the department shall provide the
13 nursing home, in writing, with the reasons for the denial. If
14 the department fails to issue a decision on a petition within the
15 90-day time limit, the petition is granted.

16 (12) A nursing home may appeal a denial of a petition for
17 temporary, emergency rate relief under subsection (11). The
18 department shall hold a hearing on the appeal. The department or
19 the department's designee shall conduct the hearing in a less
20 formal manner than it would conduct a contested case hearing
21 under the administrative procedures act of 1969. The department
22 shall allow a representative of the nursing home to present
23 information, data, and other evidence in support of granting the
24 petition under subsection (11). The department or the
25 department's designee shall present the department's reasons for
26 denying the petition. The department shall issue a written
27 decision on the appeal within 30 days after the hearing held

1 under this subsection. The department shall include in the
2 written decision the reasons for denying the appeal. A denial of
3 an appeal by the department under this subsection has the effect
4 of creating an emergency under section VII, entitled "exception
5 procedure", of the policy and methods for establishing payment
6 rates in the state plan required under title XIX, which document
7 is incorporated by reference for purposes of this subsection.

8 (13) A nursing home may appeal an adverse decision under
9 subsection (12) to the circuit court for the county in which the
10 nursing home is located or the circuit court for Ingham county.
11 If the nursing home prevails on the appeal, the court may award
12 compensatory damages to the nursing home for the cost of
13 providing care to its residents during the period from the filing
14 of a petition with the department under subsection (11) to the
15 decision on the appeal under this subsection. The court may also
16 award costs to the nursing home if it prevails on the appeal.

17 (14) A nursing home shall post the name of the direct patient
18 care provider who is assigned to a particular patient either in a
19 conspicuous place near the nurses' station or outside the
20 patient's door near the patient's name.

21 (15) As used in this section:

22 (a) "Competency-evaluated nurse assistant" means a nurse's
23 aide or nurse assistant trained as required under section
24 1819(b)(5) of title XVIII of the social security act, chapter
25 531, 49 Stat. 620, 42 U.S.C. 1395i-3, and under section
26 1919(b)(5) of title XIX of the social security act, chapter 531,
27 49 Stat. 620, 42 U.S.C. 1396r.

1 (b) "Direct patient care" means 1 or more of the following
2 activities or services provided by a direct patient care provider
3 to a patient in a nursing home as required by the patient's care
4 plan:

5 (i) Personal care, including, but not limited to, all of the
6 following: bathing a patient while encouraging the patient's
7 independence; supportive and preventative skin care; routine
8 morning and evening mouth care; hair and nail care; shaving;
9 dressing and undressing, with emphasis on encouraging and
10 maintaining the patient's independence; assisting in the use of
11 prosthetic devices; and other matters of personal hygiene.

12 (ii) Nutrition, including, but not limited to, all of the
13 following: making mealtime a pleasant experience; measuring and
14 recording the patient's food intake; assisting the patient in
15 increasing or reducing fluid intake; assisting the patient in
16 eating, with emphasis on encouraging the patient's independence
17 and dignity.

18 (iii) Elimination, including, but not limited to, all of the
19 following: encouraging and maintaining the patient's
20 independence in toilet, bedpan, and urinal use; catheter care;
21 preventing incontinence; the prevention of constipation; perineal
22 care; measuring and recording bladder output; urine testing; and
23 bowel and bladder training.

24 (iv) Restoration and rehabilitation, including, but not
25 limited to, all of the following: assistance and encouragement
26 with ambulation, walking, and transferring from location to
27 location or from position to position; turning a patient;

1 maintaining proper body alignment; range of motion exercises; the
2 use of ambulation aids, such as wheelchairs, walkers, canes, and
3 crutches; utilizing transfer techniques and the proper body
4 mechanics involved in lifting a patient or an object; using bed
5 boards, foot boards, foot stools, trochanter rolls, pillows for
6 positioning, and orthotic devices.

7 (v) Feeding and clothing patients and making and changing
8 beds.

9 (vi) Administration of medications and treatments.

10 (vii) Other activities or services, or both, performed with
11 or for the direct patient care provider's assigned patient that
12 enhances that patient's quality of life.

13 (c) "Direct patient care provider" means an individual who is
14 a registered professional nurse licensed under article 15 or a
15 licensed practical nurse licensed under article 15 and whose
16 primary function is as a nurse, or an individual who is
17 certified, at a minimum, as a competency-evaluated nurse
18 assistant, who is employed by or under contract to a nursing
19 home, and who provides direct patient care in the nursing home.

20 Direct patient care provider does not include the following:

21 (i) The director of nursing for a nursing home.

22 (ii) A quality assurance nurse for a nursing home.

23 (iii) A staff development nurse for a nursing home.

24 (iv) A physical therapist licensed under article 15.

25 (v) A certified speech and language therapist.

26 (vi) An occupational therapist registered under article 15.

27 (vii) An activities director or activities staff.

1 (viii) An individual who is hired and paid privately by a
2 patient or the patient's family and who works only with that
3 patient.

4 (d) "Title XVIII" means title XVIII of the social security
5 act, chapter 531, 49 Stat. 620, 42 U.S.C. 1395 to 1395b, 1395b-2,
6 1395b-6 to 1395b-7, 1395c to 1395i, 1395i-2 to 1395i-5, 1395j to
7 1395t, 1395u to 1395w, 1395w-2 to 1395w-4, 1395w-21 to 1395w-28,
8 1395x to 1395yy, and 1395bbb to 1395ggg.

9 (e) "Title XIX" means title XIX of the social security act,
10 chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396r-6 and 1396r-8
11 to 1396v.

12 (16) The amendatory act that added this subsection does not
13 limit, modify, or otherwise affect the practice of nursing as
14 that term is defined in section 17201.

15 Enacting section 1. This amendatory act takes effect July
16 1, 2003.