

SUBSTITUTE FOR
HOUSE BILL NO. 4441

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 22208 and 22210 (MCL 333.22208 and 333.22210),
section 22208 as amended by 1993 PA 88 and section 22210 as amended
by 2006 PA 195.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 22208. ~~(1) "Short term nursing care" means nursing care~~
2 ~~provided in a hospital to a patient who has been discharged or is~~
3 ~~ready for transfer from a licensed hospital bed other than a~~
4 ~~hospital long term care unit bed and cannot be placed in a nursing~~
5 ~~home bed, county medical care facility bed, or hospital long term~~
6 ~~care unit bed located within a 50 mile radius of the patient's~~
7 ~~residence.~~

8 (1) ~~(2)~~ "Title XVIII" means title XVIII of the social security
9 act, ~~chapter 531, 49 Stat. 620, 42 U.S.C. 1395 to 1395b, 1395b-2,~~

1 ~~1395e to 1395i, 1395 2 to 1395i 4, 1395j to 1395t, 1395u to 1395w~~
 2 ~~2, 1395w 4 to 1395zz, and 1395bbb to 1395ccc~~ **42 USC 1395 TO**
 3 **1395KKK-1.**

4 (2) ~~(3)~~ "Title XIX" means title XIX of the social security
 5 act, chapter 531, 49 Stat. 620, ~~42 U.S.C. 1396 to 1396g and 1396i~~
 6 ~~to 1396u~~ **42 USC 1396 TO 1396W-5.**

7 Sec. 22210. (1) ~~A~~ **SUBJECT TO THIS SECTION, A** hospital that
 8 applies to the department for a certificate of need and meets all
 9 of the following criteria shall be granted a certificate of need
 10 for a ~~short term nursing~~ **AN EXTENDED care SERVICES** program with up
 11 to 10 licensed hospital beds:

12 (a) Is eligible to apply for certification as a provider of
 13 ~~swing bed~~ **EXTENDED CARE services THROUGH THE USE OF SWING BEDS**
 14 under section 1883 of title XVIII, 42 USC 1395tt.

15 (b) Subject to subsection (2), has fewer than 100 licensed
 16 beds not counting beds excluded under section 1883 of title XVIII,
 17 42 USC 1395tt.

18 (c) Does not have uncorrected licensing, certification, or
 19 safety deficiencies for which the department or the bureau of fire
 20 services created in section 1b of the fire prevention code, 1941 PA
 21 207, MCL 29.1b, or both, has not accepted a plan of correction.

22 (d) Provides evidence satisfactory to the department that the
 23 hospital has had difficulty in placing patients in skilled nursing
 24 home beds during the 12 months immediately preceding the date of
 25 the application.

26 (2) After October 1, 1990, the criteria set forth in
 27 subsection (1)(b) may be modified by the commission, using the

1 procedure set forth in section 22215(3). The department shall not
2 charge a fee for processing a certificate of need application to
3 initiate a ~~short-term nursing~~ **AN EXTENDED** care **SERVICES** program.

4 (3) A hospital that is granted a certificate of need for a
5 ~~short-term nursing~~ **AN EXTENDED** care **SERVICES** program under
6 subsection (1) shall comply with all of the following:

7 (a) Not charge for or otherwise attempt to recover the cost of
8 a length of stay for a patient in the ~~short-term nursing~~ **EXTENDED**
9 care **SERVICES** program that exceeds the length of time allowed for
10 post-hospital extended care under title XVIII.

11 (b) Admit patients to the ~~short-term nursing~~ **EXTENDED** care
12 **SERVICES** program only pursuant to an admissions contract approved
13 by the department.

14 (c) ~~Not~~ **SUBJECT TO SUBDIVISION (F), NOT** discharge or transfer
15 a patient from a licensed hospital bed other than a hospital long-
16 term care unit bed and admit that patient to the ~~short-term nursing~~
17 **EXTENDED** care **SERVICES** program unless the discharge or transfer and
18 admission is determined medically appropriate by the attending
19 physician.

20 (d) Permit access to a representative of an organization
21 approved under section 21764 to patients admitted to the ~~short-term~~
22 ~~nursing~~ **EXTENDED** care **SERVICES** program, for all of the purposes
23 described in section 21763.

24 (e) ~~Subject to subsection (8), not~~ **NOT** allow the number of
25 patient days for the ~~short-term nursing~~ **EXTENDED** care **SERVICES**
26 program to exceed the equivalent of 1,825 patient days for a single
27 state fiscal year.

1 (f) ~~Transfer a patient in the short term nursing care program~~
2 ~~to an appropriately certified nursing home bed, county medical care~~
3 ~~facility bed, or hospital long term care unit bed located within a~~
4 ~~50 mile radius of the patient's residence within 5 business days~~
5 ~~after the hospital has been notified, either orally or in writing,~~
6 ~~that a bed has become available.~~ **NOT PROVIDE EXTENDED CARE SERVICES**
7 **IN A SWING BED IF THE HOSPITAL OWNS OR OPERATES A HOSPITAL LONG-**
8 **TERM CARE UNIT THAT HAS BEDS AVAILABLE.**

9 (g) Not charge or collect from a patient admitted to the
10 ~~short term nursing~~ **EXTENDED** care **SERVICES** program, for services
11 rendered as part of the ~~short term nursing~~ **EXTENDED** care **SERVICES**
12 program, an amount in excess of the reasonable charge for the
13 services as determined by the ~~United States~~ secretary of **THE UNITED**
14 **STATES DEPARTMENT OF** health and human services under title XVIII.

15 (h) Assist a patient who has been denied coverage for services
16 received in a ~~short term nursing~~ **AN EXTENDED** care **SERVICES** program
17 under title XVIII to file an appeal with the medicare recovery
18 project operated by the office of services to the aging.

19 (i) Operate the ~~short term nursing~~ **EXTENDED** care **SERVICES**
20 program ~~in accordance with~~ **PURSUANT TO** this section and the
21 ~~requirements of the swing bed~~ provisions of section 1883 of title
22 XVIII, 42 USC 1395tt, **THAT ARE APPLICABLE TO THE EXTENDED CARE**
23 **SERVICES PROGRAM.**

24 (j) Provide data to the department considered necessary by the
25 department to evaluate the ~~short term nursing~~ **EXTENDED** care
26 **SERVICES** program. The data shall include, but ~~is~~ **ARE** not limited
27 to, all of the following:

1 (i) The total number of patients admitted to the hospital's
2 ~~short term nursing~~ **EXTENDED** care **SERVICES** program during the period
3 specified by the department.

4 (ii) The total number of ~~short term nursing~~ **EXTENDED** care
5 **SERVICES** patient days for the period specified by the department.

6 (iii) Information identifying the type of care to which patients
7 in the ~~short term~~ **EXTENDED** care ~~nursing~~ **SERVICES** program are
8 released.

9 (k) As part of the hospital's policy describing the rights and
10 responsibilities of patients admitted to the hospital, as required
11 under section 20201, incorporate all of the following additional
12 rights and responsibilities for patients in the ~~short term nursing~~
13 **EXTENDED** care **SERVICES** program:

14 (i) A copy of the hospital's policy shall be provided to each
15 ~~short term nursing~~ **EXTENDED** care **SERVICES** patient upon admission,
16 and the staff of the hospital shall be trained and involved in the
17 implementation of the policy.

18 (ii) Each ~~short term nursing~~ **EXTENDED** care **SERVICES** patient may
19 associate and communicate privately with persons of his or her
20 choice. Reasonable, regular visiting hours, which shall take into
21 consideration the special circumstances of each visitor, shall be
22 established for ~~short term nursing~~ **EXTENDED** care **SERVICES** patients
23 to receive visitors. ~~A short term nursing~~ **AN EXTENDED** care **SERVICES**
24 patient may be visited by the patient's attorney or by
25 representatives of the departments named in section 20156 during
26 other than established visiting hours. Reasonable privacy shall be
27 afforded for visitation of a ~~short term nursing~~ **AN EXTENDED** care

1 **SERVICES** patient who shares a room with another ~~short term nursing~~
2 **EXTENDED** care **SERVICES** patient. Each ~~short term nursing~~ **EXTENDED**
3 care **SERVICES** patient shall have reasonable access to a telephone.

4 (iii) A ~~short term nursing~~ **AN EXTENDED** care **SERVICES** patient is
5 entitled to retain and use personal clothing and possessions as
6 space permits, unless medically contraindicated, as documented by
7 the attending physician in the medical record.

8 (iv) A ~~short term nursing~~ **AN EXTENDED** care **SERVICES** patient is
9 entitled to the opportunity to participate in the planning of his
10 or her medical treatment, **INCLUDING THE DEVELOPMENT OF THE**
11 **DISCHARGE PLAN UNDER SUBDIVISION (M)**. A ~~short term nursing~~ **AN**
12 **EXTENDED** care **SERVICES** patient shall be fully informed by the
13 attending physician of the ~~short term nursing~~ **EXTENDED** care
14 **SERVICES** patient's medical condition, unless medically
15 contraindicated, as documented by a physician in the medical
16 record. Each ~~short term nursing~~ **EXTENDED** care **SERVICES** patient
17 shall be afforded the opportunity to discharge himself or herself
18 from the ~~short term nursing~~ **EXTENDED** care **SERVICES** program.

19 (v) A ~~short term nursing~~ **AN EXTENDED** care **SERVICES** patient is
20 entitled to be fully informed either before or at the time of
21 admission, and during his or her stay, of services available in the
22 hospital and of the related charges for those services. The
23 statement of services provided by the hospital shall be in writing
24 and shall include those services required to be offered on an as
25 needed basis.

26 (vi) A patient in a ~~short term nursing~~ **AN EXTENDED** care
27 **SERVICES** program or a person authorized in writing by the patient

1 may, upon submission to the hospital of a written request, inspect
2 and copy the patient's personal or medical records. The hospital
3 shall make the records available for inspection and copying within
4 a reasonable time, not exceeding 7 days, after the receipt of the
5 written request.

6 (vii) ~~A short-term nursing~~ **AN EXTENDED** care **SERVICES** patient
7 has the right to have his or her parents, if the ~~short-term nursing~~
8 **EXTENDED** care **SERVICES** patient is a minor, or his or her spouse,
9 next of kin, or patient's representative, if the ~~short-term nursing~~
10 **EXTENDED** care **SERVICES** patient is an adult, stay at the ~~facility~~
11 **HOSPITAL** 24 hours a day if the ~~short-term nursing~~ **EXTENDED** care
12 **SERVICES** patient is considered terminally ill by the physician
13 responsible for the ~~short-term nursing~~ **EXTENDED** care **SERVICES**
14 patient's care.

15 (viii) Each ~~short-term nursing~~ **EXTENDED** care **SERVICES** patient
16 shall be provided with meals that meet the recommended dietary
17 allowances for that patient's age and sex and that may be modified
18 according to special dietary needs or ability to chew.

19 (ix) Each ~~short-term nursing~~ **EXTENDED** care **SERVICES** patient has
20 the right to receive a representative of an organization approved
21 under section 21764, for all of the purposes described in section
22 21763.

23 (l) Achieve and maintain medicare certification under title
24 XVIII.

25 **(M) ESTABLISH A DISCHARGE PLAN FOR EACH EXTENDED CARE SERVICES**
26 **PATIENT WHO IS ADMITTED TO THE EXTENDED CARE SERVICES PROGRAM. IN**
27 **THE DISCHARGE PLAN, THE HOSPITAL SHALL EMPHASIZE PATIENT CHOICE IN**

1 RECEIVING EXTENDED CARE SERVICES IN THE MOST APPROPRIATE AND LEAST
2 RESTRICTIVE SETTING. THE HOSPITAL SHALL PROVIDE TO THE PATIENT OR
3 HIS OR HER AUTHORIZED REPRESENTATIVE A COPY OF THE DISCHARGE PLAN
4 NOT LATER THAN 3 DAYS AFTER THE PATIENT IS ADMITTED TO THE EXTENDED
5 CARE SERVICES PROGRAM.

6 (4) A hospital or the owner, administrator, an employee, or a
7 representative of the hospital shall not discharge, harass, or
8 retaliate or discriminate against a ~~short-term nursing~~ **AN EXTENDED**
9 care **SERVICES** patient because the ~~short-term nursing~~ **EXTENDED** care
10 **SERVICES** patient has exercised a right described in subsection
11 (3) (k).

12 (5) In the case of a ~~short-term nursing~~ **AN EXTENDED** care
13 **SERVICES** patient, the rights described in subsection (3) (k) (iv) may
14 be exercised by the patient's representative, as defined in section
15 21703(2).

16 (6) A ~~short-term nursing~~ **AN EXTENDED** care **SERVICES** patient
17 shall be fully informed, as evidenced by the ~~short-term nursing~~
18 **EXTENDED** care **SERVICES** patient's written acknowledgment, before or
19 at the time of admission and during stay, of the rights described
20 in subsection (3) (k). The written acknowledgment shall provide that
21 if a ~~short-term nursing~~ **AN EXTENDED** care **SERVICES** patient is
22 adjudicated incompetent and not restored to legal capacity, the
23 rights and responsibilities set forth in subsection (3) (k) shall be
24 exercised by a person designated by the ~~short-term nursing~~ **EXTENDED**
25 care **SERVICES** patient. The hospital shall provide proper forms for
26 the ~~short-term nursing~~ **EXTENDED** care **SERVICES** patient to provide
27 for the designation of this person at the time of admission.

1 (7) Subsection (3)(k) does not prohibit a hospital from
2 establishing and recognizing additional rights for ~~short-term~~
3 nursing **EXTENDED** care **SERVICES** patients.

4 ~~(8) Upon application, the department may grant a variation~~
5 ~~from the maximum number of patient days established under~~
6 ~~subsection (3)(e), to an applicant hospital that demonstrates to~~
7 ~~the satisfaction of the department that there is an immediate need~~
8 ~~for skilled nursing beds within a 100-mile radius of the hospital.~~
9 ~~A variation granted under this subsection shall be valid for not~~
10 ~~more than 1 year after the date the variation is granted. The~~
11 ~~department shall promulgate rules to implement this subsection~~
12 ~~including, at a minimum, a definition of immediate need and the~~
13 ~~procedure for applying for a variation.~~

14 (8) ~~(9)~~ A hospital that violates subsection (3) is subject to
15 the penalty provisions of section 20165.

16 (9) ~~(10)~~ A person shall not initiate a ~~short-term nursing~~ **AN**
17 **EXTENDED** care **SERVICES** program without first obtaining a
18 certificate of need under this section.

19 (10) **AS USED IN THIS SECTION:**

20 (A) **"EXTENDED CARE SERVICES PROGRAM" MEANS A PROGRAM BY A**
21 **HOSPITAL TO PROVIDE EXTENDED CARE SERVICES TO A PATIENT THROUGH THE**
22 **USE OF SWING BEDS UNDER SECTION 1883 OF TITLE XVIII, 42 USC 1395TT.**

23 (B) **"HOSPITAL LONG-TERM CARE UNIT" MEANS THAT TERM AS DEFINED**
24 **IN SECTION 20106.**

25 Enacting section 1. This amendatory act takes effect 180 days
26 after the date it is enacted into law.