

**STATE OF MICHIGAN  
96TH LEGISLATURE  
REGULAR SESSION OF 2012**

Introduced by Reps. Poleski, Agema, Pscholka, Bumstead and Shirkey

# **ENROLLED HOUSE BILL No. 4863**

AN ACT to amend 1978 PA 368, entitled “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 agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates,” by amending sections 6233, 6235, 6236, 6237, 6238, 6241, 6243, 6251, 7408a, 16106a, and 16221 (MCL 333.6233, 333.6235, 333.6236, 333.6237, 333.6238, 333.6241, 333.6243, 333.6251, 333.7408a, 333.16106a, and 333.16221), section 7408a as amended by 1999 PA 144, section 16106a as added by 1993 PA 80, and section 16221 as amended by 2011 PA 222, and by adding sections 6230, 6234, and 6249.

*The People of the State of Michigan enact:*

Sec. 6230. As used in this part:

- (a) “Department” means the department of licensing and regulatory affairs.
- (b) “Director” means the director of the department or his or her designee.

(c) "Substance use disorder services" means substance use disorder prevention services or substance use disorder treatment and rehabilitation services, or both, as those terms are defined in section 100d of the mental health code, 1974 PA 258, MCL 330.1100d.

Sec. 6233. (1) A person not otherwise licensed to provide psychological, medical, or social services shall not establish, conduct, or maintain a substance use disorder services program unless it is licensed under this part.

(2) The department shall establish a licensing unit to administer the licensing functions of this part.

(3) This section does not apply to a private, nonprofit organization exempt under section 501(c)(3) of the internal revenue code, 26 USC 501, that has been in existence since before September 30, 1965 and whose major purpose is to provide residential services for the redirection and improvement of drug abusers and other character disordered individuals.

Sec. 6234. The department may promulgate rules under the administrative procedures act of 1969 for the administration of this part and the licensing of substance use disorder services programs under this part. Rules promulgated under former section 6231 relating to the licensing of substance use disorder services programs remain effective and applicable on and after the effective date of this section until rules are promulgated by the department under this section.

Sec. 6235. (1) An application for a license shall be in a form prescribed by the department and shall authorize the director to obtain from any source information as to the ability of the applicant to comply with this part and rules promulgated under this part.

(2) An applicant for an initial license shall include evidence of notice to churches, schools, and incorporated nonprofit civic organizations in the applicant's service delivery area of its intent to provide substance use disorder services.

Sec. 6236. The department shall provide an opportunity for individuals in the applicant's service delivery area to comment before the issuance of a license to the applicant. The department shall make the decision to issue or deny a license based on the applicant's ability to comply with the requirements of this part and rules promulgated under this part. If the administrative decision is the denial of a license, the department shall describe the reasons for the denial in writing to the applicant at the time the decision is rendered.

Sec. 6237. The department shall issue a license upon determining that the applicant has complied with this part and rules promulgated under this part. A licensee shall prominently display the license while it is in effect.

Sec. 6238. A standard license issued under this part is effective for 1 year after the date of issuance. The department may issue a provisional license to an applicant temporarily unable to comply with this part or the rules promulgated under this part. The department may renew or extend a provisional license issued under this section for not more than 1 year. The department may issue a temporary, nonrenewable permit for not more than 90 days if additional time is needed for the department to properly investigate or for the applicant to undertake remedial action.

Sec. 6241. The director or the personnel of another department or agency acting at the request of the director may enter the premises of an applicant for a license or a licensee at any reasonable time to make an inspection to determine whether the applicant or licensee is complying with this part and rules promulgated under this part. A local health department may visit a facility at the request of the director to advise as to matters affecting health and the sanitation of the buildings used or other matters designated by the director. The inspections shall be conducted in accordance with standards established in rules.

Sec. 6243. The department may deny, suspend, revoke, or refuse to renew a license of an applicant or licensee who is in violation of this part or rules promulgated under this part after opportunity for a hearing. A hearing and an appeal in a contested case shall be conducted by the director pursuant to the administrative procedures act of 1969.

Sec. 6249. (1) An individual or an agent, representative, or officer of a person subject to this part, which individual, agent, representative, or officer violates this part, is guilty of a misdemeanor.

(2) A conviction for a violation of this part is a sufficient ground for revocation of the license of the person subject to this part.

Sec. 6251. Notwithstanding the existence of any other remedy, the department may maintain an action in the name of this state for an injunction or other process against a person to restrain or prevent the establishment, conduct, management, or operation of a substance use disorder services program without a license or where operation of the licensee's program is likely to result in serious harm to recipients of the substance use disorder services.

Sec. 7408a. (1) As part of the sentence or juvenile disposition for an attempt to violate, a conspiracy to violate, or a violation of this part or of a local ordinance that prohibits conduct prohibited under this part, the court shall consider all prior convictions currently entered upon the criminal history record and Michigan driving record of the person, except those convictions which, upon motion of the defendant, are determined by the court to be constitutionally invalid, and, subject to subsection (11), shall impose the following licensing sanctions in addition to any other penalty or sanction imposed for the violation:

(a) If the court finds that the person does not have a prior conviction within 7 years of the violation, the court shall order the secretary of state to suspend the operator's or chauffeur's license of the person for 6 months. If the court finds compelling circumstances under subsection (8) sufficient to warrant the issuance of a restricted license, the court may order the secretary of state to issue to the person a restricted license during all or a specified portion of the period of suspension, except that a restricted license shall not be issued during the first 30 days of the period of suspension.

(b) If the court finds that the person has 1 or more prior convictions within 7 years of the violation, the court shall order the secretary of state to suspend the operator's or chauffeur's license of the person for 1 year. If the court finds compelling circumstances under subsection (8) sufficient to warrant the issuance of a restricted license, the court may order the secretary of state to issue to the person a restricted license during all or any portion of the period of suspension, except that a restricted license shall not be issued during the first 60 days of the period of suspension.

(2) The person whose operator's or chauffeur's license is ordered suspended under this section shall immediately surrender his or her operator's or chauffeur's license to the court. The court shall immediately destroy the license and forward an abstract of conviction with court-ordered license sanctions to the secretary of state. Upon receipt of, and pursuant to, the abstract of conviction with court-ordered license sanctions, the secretary of state shall suspend the person's license and, if ordered by the court and if the person is otherwise eligible for a license, issue to the person a restricted license stating the limited driving privileges indicated on the abstract. If the judgment is appealed to circuit court, the court may, ex parte, order the secretary of state to stay the suspension or license restriction issued under this section pending the outcome of the appeal.

(3) Except as otherwise provided in subsection (5), before imposing sentence or entering a juvenile disposition, other than court-ordered license sanctions under this section, for an attempt to violate, a conspiracy to violate, or a violation of this part or of a local ordinance that prohibits conduct prohibited under this part, the court may order the person to undergo screening and assessment by a person or agency as designated by a department-designated community mental health entity or a community mental health services program under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. The person shall pay for the costs of the screening and assessment services.

(4) Except as otherwise provided in subsection (5), as part of the sentence or juvenile disposition for an attempt to violate, a conspiracy to violate, or a violation of this part or of a local ordinance that prohibits conduct prohibited under this part, the court may order the person to do 1 or both of the following:

(a) Perform service to the community for not more than 90 days. A person ordered to perform service to the community under this subdivision shall not receive compensation, and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

(b) Participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the rehabilitative services.

(5) Subsections (3) and (4) do not apply to a person who is not eligible for probation under chapter XI of the code of criminal procedure, 1927 PA 175, MCL 777.1 to 777.14a.

(6) A restricted license issued in compliance with an order under this section shall permit the person to whom it is issued to drive under the following circumstances:

(a) In the course of the person's employment or occupation.

(b) To and from any combination of the following:

(i) The person's residence.

(ii) The person's work location.

(iii) An alcohol or drug education or treatment program as ordered by the court.

(iv) The court probation department.

(v) A court-ordered community service program.

(vi) An educational institution at which the person is enrolled as a student.

(vii) A place of regularly occurring medical treatment for a serious condition for the person or a member of the person's household or immediate family.

(7) The court shall not order the secretary of state under this section to issue a restricted license that would permit a person to operate a commercial motor vehicle that hauls hazardous material.

(8) The court shall not order the secretary of state under this section to issue a restricted license unless the person states under oath, and the court finds by testimony taken in open court or by statements contained in a sworn affidavit on a form prescribed by the state court administrator, that both of the following apply:

(a) The person needs vehicular transportation to and from his or her work location, place of alcohol or drug education treatment, court probation department, court-ordered community service program, or educational institution, or in the course of the person's employment or occupation.

(b) The person is unable to take public transportation and does not have any family members or other individual able to provide transportation to a destination or for a purpose described in subdivision (a).

(9) Regardless of a court order issued under this section, the secretary of state shall not issue a restricted license to a person whose license is suspended under this section unless a restricted license is authorized under this section and the person is otherwise eligible for a license.

(10) While driving, the person shall carry proof of his or her destination and the hours of any employment, class, or other reason for traveling and shall display that proof upon a peace officer's request.

(11) A court shall not order the suspension of a person's license if the person is sentenced to life imprisonment or to a minimum term of imprisonment that exceeds 1 year for an attempt to violate, a conspiracy to violate, or a violation of this part.

(12) The court shall do both of the following:

(a) Transmit a record of each order issued under this section to the secretary of state.

(b) Forward to the department of state police, on a form or forms prescribed by the state court administrator, a record that specifies the penalties imposed by the court for an offense described in subsection (1), including a licensing sanction ordered under this section and a term of imprisonment imposed for the offense.

(13) Except as otherwise provided by law, a record described in subsection (12) is a public record, and the department of state police shall retain the information contained in that record for not less than 7 years.

(14) As used in this section:

(a) "Commercial motor vehicle" means that term as defined in section 7a of the Michigan vehicle code, 1949 PA 300, MCL 257.7a.

(b) "Conviction" means a final conviction, a plea of guilty or nolo contendere if accepted by the court, a finding of guilt, a probate court disposition, or a juvenile adjudication, for a criminal law violation, regardless of whether the penalty is rebated or suspended.

(c) "Hazardous material" means that term as defined in section 19b of the Michigan vehicle code, 1949 PA 300, MCL 257.19b.

(d) "Juvenile disposition" means either of the following:

(i) A finding of juvenile delinquency under 18 USC 5031 to 5042.

(ii) The entry of a judgment or order of disposition by a court of another state that states or is based upon a finding that a juvenile violated a law of another state that would have been a criminal offense if committed by an adult in that state.

(e) "Law of another state" means a law or ordinance enacted by another state or by a local unit of government in another state.

(f) "Prior conviction" means either of the following:

(i) A conviction for an attempt to violate, a conspiracy to violate, or a violation of this part or former section 17766a, a local ordinance that prohibits conduct prohibited under this part or former section 17766a, or a law of another state that prohibits conduct prohibited under this part or former section 17766a.

(ii) A conviction for an attempt to violate, a conspiracy to violate, or a violation of the controlled substances act, 21 USC 801 to 971.

(g) "Probate court disposition" means the entry of a probate court order of disposition for a child found to be within the provisions of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32.

(h) "Work location" means, as applicable, either the specific place or places of employment, or the territory or territories regularly visited by the person in pursuance of the person's occupation, or both.

Sec. 16106a. "Impaired" or "impairment" means the inability or immediately impending inability of a health professional to practice his or her health profession in a manner that conforms to the minimum standards of acceptable and prevailing practice for that health profession due to the health professional's substance abuse, chemical dependency,

or mental illness or the health professional's use of drugs or alcohol that does not constitute substance abuse or chemical dependency. As used in this section:

(a) "Chemical dependency" means a group of cognitive, behavioral, and physiological symptoms that indicate that an individual has a substantial lack of or no control over the individual's use of 1 or more psychoactive substances.

(b) "Mental illness" means that term as defined in section 400 of the mental health code, 1974 PA 258, MCL 330.1400.

(c) "Substance abuse" means substance use disorder as defined in section 100d of the mental health code, 1974 PA 258, MCL 330.1100d.

Sec. 16221. The department may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The department may hold hearings, administer oaths, and order the taking of relevant testimony and shall report its findings to the appropriate disciplinary subcommittee. The disciplinary subcommittee shall proceed under section 16226 if it finds that 1 or more of the following grounds exist:

(a) A violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, or any conduct, practice, or condition that impairs, or may impair, the ability to safely and skillfully practice the health profession.

(b) Personal disqualifications, consisting of 1 or more of the following:

(i) Incompetence.

(ii) Subject to sections 16165 to 16170a, substance use disorder as defined in section 100d of the mental health code, 1974 PA 258, MCL 330.1100d.

(iii) Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

(iv) Declaration of mental incompetence by a court of competent jurisdiction.

(v) Conviction of a misdemeanor punishable by imprisonment for a maximum term of 2 years; a misdemeanor involving the illegal delivery, possession, or use of a controlled substance; or a felony. A certified copy of the court record is conclusive evidence of the conviction.

(vi) Lack of good moral character.

(vii) Conviction of a criminal offense under section 520e or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and 750.520g. A certified copy of the court record is conclusive evidence of the conviction.

(viii) Conviction of a violation of section 492a of the Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy of the court record is conclusive evidence of the conviction.

(ix) Conviction of a misdemeanor or felony involving fraud in obtaining or attempting to obtain fees related to the practice of a health profession. A certified copy of the court record is conclusive evidence of the conviction.

(x) Final adverse administrative action by a licensure, registration, disciplinary, or certification board involving the holder of, or an applicant for, a license or registration regulated by another state or a territory of the United States, by the United States military, by the federal government, or by another country. A certified copy of the record of the board is conclusive evidence of the final action.

(xi) Conviction of a misdemeanor that is reasonably related to or that adversely affects the licensee's ability to practice in a safe and competent manner. A certified copy of the court record is conclusive evidence of the conviction.

(xii) Conviction of a violation of section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430. A certified copy of the court record is conclusive evidence of the conviction.

(xiii) Conviction of a criminal offense under section 520b, 520c, 520d, or 520f of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, and 750.520f. A certified copy of the court record is conclusive evidence of the conviction.

(c) Prohibited acts, consisting of 1 or more of the following:

(i) Fraud or deceit in obtaining or renewing a license or registration.

(ii) Permitting a license or registration to be used by an unauthorized person.

(iii) Practice outside the scope of a license.

(iv) Obtaining, possessing, or attempting to obtain or possess a controlled substance as defined in section 7104 or a drug as defined in section 7105 without lawful authority; or selling, prescribing, giving away, or administering drugs for other than lawful diagnostic or therapeutic purposes.

(d) Unethical business practices, consisting of 1 or more of the following:

(i) False or misleading advertising.

(ii) Dividing fees for referral of patients or accepting kickbacks on medical or surgical services, appliances, or medications purchased by or in behalf of patients.

(iii) Fraud or deceit in obtaining or attempting to obtain third party reimbursement.



(e) Unprofessional conduct, consisting of 1 or more of the following:

(i) Misrepresentation to a consumer or patient or in obtaining or attempting to obtain third party reimbursement in the course of professional practice.

(ii) Betrayal of a professional confidence.

(iii) Promotion for personal gain of an unnecessary drug, device, treatment, procedure, or service.

(iv) Either of the following:

(A) A requirement by a licensee other than a physician that an individual purchase or secure a drug, device, treatment, procedure, or service from another person, place, facility, or business in which the licensee has a financial interest.

(B) A referral by a physician for a designated health service that violates 42 USC 1395nn or a regulation promulgated under that section. For purposes of this subdivision, 42 USC 1395nn and the regulations promulgated under that section as they exist on June 3, 2002 are incorporated by reference. A disciplinary subcommittee shall apply 42 USC 1395nn and the regulations promulgated under that section regardless of the source of payment for the designated health service referred and rendered. If 42 USC 1395nn or a regulation promulgated under that section is revised after June 3, 2002, the department shall officially take notice of the revision. Within 30 days after taking notice of the revision, the department shall decide whether or not the revision pertains to referral by physicians for designated health services and continues to protect the public from inappropriate referrals by physicians. If the department decides that the revision does both of those things, the department may promulgate rules to incorporate the revision by reference. If the department does promulgate rules to incorporate the revision by reference, the department shall not make any changes to the revision. As used in this sub-subparagraph, "designated health service" means that term as defined in 42 USC 1395nn and the regulations promulgated under that section and "physician" means that term as defined in sections 17001 and 17501.

(v) For a physician who makes referrals pursuant to 42 USC 1395nn or a regulation promulgated under that section, refusing to accept a reasonable proportion of patients eligible for Medicaid and refusing to accept payment from Medicaid or Medicare as payment in full for a treatment, procedure, or service for which the physician refers the individual and in which the physician has a financial interest. A physician who owns all or part of a facility in which he or she provides surgical services is not subject to this subparagraph if a referred surgical procedure he or she performs in the facility is not reimbursed at a minimum of the appropriate Medicaid or Medicare outpatient fee schedule, including the combined technical and professional components.

(f) Beginning June 3, 2003, the department of consumer and industry services shall prepare the first of 3 annual reports on the effect of 2002 PA 402 on access to care for the uninsured and Medicaid patients. The department shall report on the number of referrals by licensees of uninsured and Medicaid patients to purchase or secure a drug, device, treatment, procedure, or service from another person, place, facility, or business in which the licensee has a financial interest.

(g) Failure to report a change of name or mailing address within 30 days after the change occurs.

(h) A violation, or aiding or abetting in a violation, of this article or of a rule promulgated under this article.

(i) Failure to comply with a subpoena issued pursuant to this part, failure to respond to a complaint issued under this article or article 7, failure to appear at a compliance conference or an administrative hearing, or failure to report under section 16222 or 16223.

(j) Failure to pay an installment of an assessment levied under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, within 60 days after notice by the appropriate board.

(k) A violation of section 17013 or 17513.

(l) Failure to meet 1 or more of the requirements for licensure or registration under section 16174.

(m) A violation of section 17015, 17015a, 17017, 17515, or 17517.

(n) A violation of section 17016 or 17516.

(o) Failure to comply with section 9206(3).

(p) A violation of section 5654 or 5655.

(q) A violation of section 16274.

(r) A violation of section 17020 or 17520.

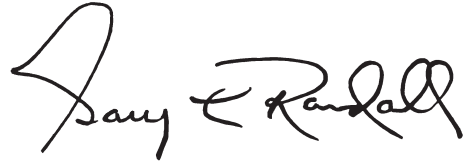
(s) A violation of the medical records access act, 2004 PA 47, MCL 333.26261 to 333.26271.

(t) A violation of section 17764(2).

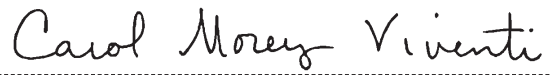
Enacting section 1. This amendatory act takes effect January 1, 2013.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 4862 of the 96th Legislature is enacted into law.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

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Governor