

HOUSE BILL No. 4440

March 14, 1989, Introduced by Reps. Perry Bullard, Weeks, Webb, Ciaramitaro, Clack, Dutko, Wallace, Leland, Berman and DeMars and referred to the Committee on Public Health.

A bill to amend sections 21702, 21766, 21775, and 21799c of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," being sections 333.21702, 333.21766, 333.21775, and 333.21799c of the Michigan Compiled Laws; and to add section 21765a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 21702, 21766, 21775, and 21799c of Act
2 No. 368 of the Public Acts of 1978, being sections 333.21702,
3 333.21766, 333.21775, and 333.21799c of the Michigan Compiled
4 Laws, are amended and section 21765a is added to read as
5 follows:

6 Sec. 21702. (1) "Discharge" means the voluntary or invol-
7 untary movement of a patient out of a nursing home regardless of
8 the individual's destination or reason for the movement.

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

5 (3) "Involuntary transfer" means a transfer not agreed to in
6 writing by the patient or, in the case of a plenary guardianship,
7 by the patient's legal guardian.

8 (4) "MEDICAID" MEANS THE PROGRAM FOR MEDICAL ASSISTANCE
9 ESTABLISHED UNDER TITLE XIX OF THE SOCIAL SECURITY ACT, CHAPTER
10 531, 49 STAT. 620, 42 U.S.C. 1396 TO 1396d, 1396f TO 1396g, AND
11 1396i TO 1396s, AND ADMINISTERED BY THE DEPARTMENT OF SOCIAL
12 SERVICES UNDER THE SOCIAL WELFARE ACT, ACT NO. 280 OF THE PUBLIC
13 ACTS OF 1939, BEING SECTIONS 400.1 TO 400.121 OF THE MICHIGAN
14 COMPILED LAWS.

15 (5) ~~(4)~~ "Medical reasons" means a medical justification
16 for either of the following:

17 (a) The transfer or discharge of a patient in accord with
18 the written orders of the attending physician which is written
19 into the patient's clinical record by the physician in the
20 progress notes.

21 (b) The transfer or discharge of a patient who is a medicaid
22 recipient due to a change in level of care required by the
23 patient and the fact that the nursing home or nursing care facil-
24 ity is not certified to provide the needed level of care.

25 (6) ~~(5)~~ "Modification of a license" means an action by the
26 department to alter the number of beds, the levels of care, the
27 portions of the physical plant which may be operated or

1 maintained by a licensee in a particular nursing home, or to
2 restrict the nursing home from engaging in activity violative of
3 this act or a rule promulgated under this act.

4 (7) ~~-(6)-~~ "Negative case action" means an action taken by
5 the department of social services to deny an application for med-
6 ical assistance, cancel medical assistance, or reduce medical
7 assistance coverage.

8 (8) ~~-(7)-~~ "Nonpayment" means:

9 (a) With respect to a nonmedicaid patient, failure to col-
10 lect from the patient or any other source the full amount of the
11 facility charges to the patient agreed upon in writing at admis-
12 sion or subsequently.

13 (b) With respect to a medicaid patient, failure to collect
14 the patient's stipulated contribution toward his or her care.

15 SEC. 21765A. (1) A NURSING HOME THAT PARTICIPATES IN MEDI-
16 CAID SHALL NOT DO ANY OF THE FOLLOWING:

17 (A) REQUIRE AN APPLICANT, AS A CONDITION OF ADMISSION, TO
18 AGREE TO REMAIN A PRIVATE PAY PATIENT FOR A SPECIFIED PERIOD OF
19 TIME BEFORE APPLYING FOR MEDICAID.

20 (B) AS A CONDITION OF THE APPLICANT'S ADMISSION, REQUIRE A
21 PERSON TO AGREE TO PAY ON BEHALF OF AN APPLICANT THE PRIVATE PAY
22 RATE FOR A SPECIFIED PERIOD OF TIME BEFORE THE APPLICANT MAY
23 APPLY FOR MEDICAID.

24 (C) AS A CONDITION OF CONTINUED STAY IN THE NURSING HOME,
25 REQUIRE A PATIENT TO AGREE TO REMAIN A PRIVATE PAY PATIENT FOR A
26 SPECIFIED PERIOD OF TIME BEFORE APPLYING FOR MEDICAID.

1 (D) AS A CONDITION OF THE PATIENT'S CONTINUED STAY IN THE
2 NURSING HOME, REQUIRE A PERSON TO AGREE TO PAY ON BEHALF OF A
3 PATIENT THE PRIVATE PAY RATE FOR A SPECIFIED TIME BEFORE THE
4 PATIENT MAY APPLY FOR MEDICAID.

5 (E) AS A CONDITION OF ADMISSION, REQUIRE AN APPLICANT TO
6 MAKE A GIFT OR DONATION.

7 (F) AS A CONDITION OF THE APPLICANT'S ADMISSION, REQUIRE A
8 PERSON TO MAKE A GIFT OR DONATION ON BEHALF OF AN APPLICANT.

9 (2) AS OF THE EFFECTIVE DATE OF THIS SECTION, A CONTRACT
10 PROVISION OR AGREEMENT IN CONFLICT WITH SUBSECTION (1), WHETHER
11 MADE BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS SECTION, IS
12 UNENFORCEABLE.

13 (3) NOT LATER THAN 30 DAYS AFTER THE EFFECTIVE DATE OF THIS
14 SECTION, A NURSING HOME THAT PARTICIPATES IN MEDICAID SHALL
15 NOTIFY IN WRITING EACH PRIVATE PAY PATIENT SUBJECT TO A CONTRACT
16 PROVISION OR AGREEMENT IN CONFLICT WITH SUBSECTION (1) THAT THE
17 CONTRACT PROVISION OR AGREEMENT IS NO LONGER A BAR TO THE PATIENT
18 APPLYING FOR MEDICAID.

19 Sec. 21766. (1) A written contract shall be executed
20 ~~before~~ IN ACCORDANCE WITH ALL OF THE FOLLOWING:

21 (A) BEFORE the time a person is admitted to a nursing home.
22 ~~, at~~

23 (B) AT the expiration of the term of a previous contract.
24 ~~, or at~~

25 (C) AT the time the source of payment for the patient's care
26 changes.

1 (2) A patient shall not be discharged or transferred at the
2 expiration of the term of a contract, except as provided in
3 section 21773.

4 (3) ~~-(2)-~~ The contract shall be executed ONLY between the
5 person seeking admission or the person's guardian and the nursing
6 home.

7 (4) ~~-(3)-~~ A copy of the contract shall be given to the
8 patient or to the patient's representative or legal guardian at
9 the time of the patient's admission to the nursing home.

10 (5) ~~-(4)-~~ A copy of the contract for a patient supported by
11 funds other than the patient's own funds shall be made available
12 to the person providing the funds for the patient's support.

13 (6) ~~-(5)-~~ A copy of the contract for a patient whose care is
14 reimbursed with public funds administered by the department of
15 social services shall be given to the department of social
16 services.

17 (7) ~~-(6)-~~ The contract shall be written in clear and unam-
18 biguous language and shall be printed in not less than 12-point
19 type. The form of the contract shall be prescribed by the
20 department.

21 (8) ~~-(7)-~~ The contract shall specify ALL OF THE FOLLOWING:

22 (a) The term of the contract.

23 (b) The services to be provided under the contract and the
24 charges for the services.

25 (c) The services that may be provided to supplement the con-
26 tract and the charges for the services.

1 (d) The sources liable for payments due under the contract.

2 (e) The amount of deposit paid.

3 (f) The rights, duties, and obligations of the patient,
4 except that the specification of a patient's rights may be fur-
5 nished on a separate document which complies with the require-
6 ments of section 20201.

7 (9) A CONTRACT ENTERED INTO UNDER SUBSECTION (1) SHALL NOT
8 CONTAIN A REQUIREMENT THAT A PERSON HAVE A LEGAL GUARDIAN OR CON-
9 SERVATOR OR HAVE EXECUTED A DURABLE POWER OF ATTORNEY AS A CONDI-
10 TION OF ADMISSION TO OR CONTINUED STAY IN A NURSING HOME.

11 (10) A NURSING HOME ADMINISTRATOR MAY REQUEST THE APPOINT-
12 MENT OF A GUARDIAN OR CONSERVATOR FOR AN INDIVIDUAL APPLICANT OR
13 PATIENT IF THE NURSING HOME ADMINISTRATOR REASONABLY BELIEVES
14 THAT THE INDIVIDUAL MEETS THE LEGAL REQUIREMENTS FOR THE APPOINT-
15 MENT OF A GUARDIAN OR CONSERVATOR.

16 (11) IF A NURSING HOME PARTICIPATES IN MEDICAID, A CONTRACT
17 ENTERED INTO UNDER SUBSECTION (1) SHALL REQUIRE THAT IF A PATIENT
18 HAS MADE PAYMENTS TO THE NURSING HOME FROM PRIVATE FUNDS, AND IF
19 THE PATIENT BECOMES A NEWLY ENROLLED MEDICAID RECIPIENT, THE
20 NURSING HOME SHALL ACCEPT ANY RETROACTIVE PAYMENT FROM THE
21 DEPARTMENT OF SOCIAL SERVICES AND REFUND TO THE PATIENT THE PRI-
22 VATE FUNDS PAID TO THE NURSING HOME FOR CARE CURRENTLY COVERED BY
23 MEDICAID LESS AMOUNTS DETERMINED TO BE REQUIRED COPAYMENTS AND
24 PAYMENTS FOR SERVICES NOT COVERED BY MEDICAID. FOR 90 DAYS AFTER
25 RECEIPT OF A REFUND UNDER THIS SUBSECTION, THE REFUND SHALL NOT
26 BE CONSIDERED INCOME OR AN ASSET OF THE PATIENT FOR PURPOSES OF
27 DETERMINING MEDICAID ELIGIBILITY.

1 Sec. 21775.. The department of social services shall
 2 continue medicaid funding during the appeal, transfer, or dis-
 3 charge period as provided in section 21774 for those ~~title 19~~
 4 MEDICAID patients affected by section 21773.

5 Sec. 21799c. (1) A person who violates the following sec-
 6 tions is guilty of a misdemeanor, punishable by imprisonment for
 7 not more than 1 year or a fine of not less than \$1,000.00, nor
 8 more than \$10,000.00, or both:

9 (a) Section 21711.

10 (b) Section 21712..

11 (c) SECTION 21765A(1).

12 (D) ~~(c)~~ Section 21771(1) or (6).

13 (E) ~~(d)~~ Section 21791.

14 (2) A PERSON WHO VIOLATES SECTION 21765A(1) IS LIABLE TO AN
 15 APPLICANT OR PATIENT IN A CIVIL ACTION FOR TREBLE THE AMOUNT OF
 16 ACTUAL DAMAGES OR \$1,000.00, WHICHEVER IS GREATER, TOGETHER WITH
 17 COSTS AND REASONABLE ATTORNEY FEES.

18 (3) ~~(2)~~ For the purpose of computing civil penalties under
 19 this section, the number of patients per day shall be based on
 20 the average number of patients in the nursing home during the 30
 21 days preceding the discovery of the violation.

22 (4) ~~(3) When~~ IF the department finds a violation of sec-
 23 tion 20201 as to a particular nursing home patient, the depart-
 24 ment shall issue an order requiring the nursing home to pay to
 25 the patient \$100.00, or to reimburse the patient for costs
 26 incurred or injuries sustained, whichever is greater, and the

1 nursing home shall be assessed a civil penalty, not to exceed
2 \$1,500.00, or \$15.00 per patient bed, whichever is lesser.

3 (5) ~~-(4)-~~ The department of social services, with the advice
4 of the department of public health, shall promulgate rules for a
5 quality of care allowance formula which is consistent with the
6 recommendations of the fiscal incentives subcommittee to the com-
7 mittee on nursing home reimbursement established pursuant to Act
8 No. 241 of the Public Acts of 1975, as described in the November
9 24, 1975 interim report, in the December 3, 1975 final report,
10 and the November 24, 1976 report of the committee recommending
11 appropriate changes in the procedures utilized.

12 (6) ~~-(5)-~~ A civil penalty shall not be assessed under sub-
13 section ~~-(3)-~~ (4) for a violation of this part for which a nurs-
14 ing home's reimbursement is withheld under subsection ~~-(4)-~~ (5).