

HOUSE BILL No. 4971

July 12, 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 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, 21762, 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,
4 21762, and 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 THAT IS CERTIFIED AS A MEDICAID SKILLED CARE BED, EXCEPT
6 THAT THIS REQUIREMENT DOES NOT APPLY TO A NURSING HOME, OR A DIS-
7 TINCT PART OF A NURSING HOME, THAT IS CERTIFIED BY THE DIRECTOR
8 AS A SPECIAL MENTAL RETARDATION OR SPECIAL MENTAL ILLNESS NURSING
9 HOME. THE DEPARTMENT OF SOCIAL SERVICES MAY MAKE AN EXCEPTION TO
10 THIS REQUIREMENT FOR A NURSING HOME THAT IS DETERMINED BY THE
11 SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN
12 SERVICES TO BE INELIGIBLE FOR MEDICARE CERTIFICATION.

13 (2) A NURSING HOME SHALL NOT BE LICENSED UNDER THIS PART
14 UNLESS EACH BED IN THE NURSING HOME THAT IS CERTIFIED AS A MEDI-
15 CARE BED IS ALSO CERTIFIED AS A MEDICAID SKILLED CARE BED.

16 SEC. 21762. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS
17 (2), (3), AND (4), A NURSING HOME THAT PARTICIPATES IN MEDICAID
18 SHALL MAINTAIN A SINGLE WAITING LIST FOR ALL APPLICANTS FOR
19 ADMISSION TO THE NURSING HOME, AND SHALL ADMIT ALL APPLICANTS IN
20 THE ORDER IN WHICH THEY APPLY FOR ADMISSION. UPON RECEIPT OF AN
21 APPLICATION FOR ADMISSION, THE NURSING HOME SHALL PROVIDE TO THE
22 APPLICANT A RECEIPT STATING THE TIME AND DATE OF APPLICATION.

23 (2) A PATIENT TEMPORARILY ABSENT FROM THE NURSING HOME UNDER
24 SECTION 21777 SHALL HAVE PRIORITY OVER APPLICANTS ON THE WAITING
25 LIST REQUIRED UNDER SUBSECTION (1).

26 (3) A NURSING HOME OPERATED, SUPERVISED, OR CONTROLLED BY A
27 RELIGIOUS OR FRATERNAL INSTITUTION OR ORGANIZATION MAY MAINTAIN A

1 SEPARATE WAITING LIST FOR APPLICANTS WHO ARE MEMBERS OF THAT
 2 RELIGIOUS OR FRATERNAL INSTITUTION OR ORGANIZATION, AND MAY GIVE
 3 THOSE APPLICANTS PRIORITY IN ADMISSIONS OVER OTHER APPLICANTS.
 4 IF A NURSING HOME MAINTAINS A SEPARATE WAITING LIST UNDER THIS
 5 SUBSECTION, THE NURSING HOME SHALL ADMIT THE APPLICANTS ON THAT
 6 SEPARATE WAITING LIST IN THE ORDER IN WHICH THEY APPLY FOR
 7 ADMISSION.

8 (4) IF A NURSING HOME IS PART OF A FACILITY THAT HAS
 9 LONG-TERM LEASES OR LIFE INTERESTS UNDER THE LIVING CARE DISCLO-
 10 SURE ACT, ACT NO. 440 OF THE PUBLIC ACTS OF 1976, BEING SECTIONS
 11 554.801 TO 554.844 OF THE MICHIGAN COMPILED LAWS, THE NURSING
 12 HOME MAY MAINTAIN A SEPARATE WAITING LIST FOR APPLICANTS WHO ARE
 13 PURCHASERS OF, NOMINEES OF, OR SUBSCRIBERS TO A LONG-TERM LEASE
 14 OR LIFE INTEREST UNDER THAT ACT AND WHO HAVE BEEN RESIDENTS AT
 15 THE FACILITY FOR AT LEAST 30 DAYS BEFORE APPLYING FOR ADMISSION
 16 TO THE NURSING HOME. THE NURSING HOME MAY GIVE THOSE APPLICANTS
 17 PRIORITY IN ADMISSIONS OVER OTHER APPLICANTS. IF A NURSING HOME
 18 MAINTAINS A SEPARATE WAITING LIST UNDER THIS SUBSECTION, THE
 19 NURSING HOME SHALL ADMIT THE APPLICANTS ON THAT SEPARATE WAITING
 20 LIST IN THE ORDER IN WHICH THEY APPLY FOR ADMISSION TO THE NURS-
 21 ING HOME.

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

25 (A) FOR medical reasons. ~~—for~~

26 (B) FOR the patient's welfare or that of other patients or
 27 facility employees. ~~—or for~~

1 (C) FOR nonpayment for the patient's stay, except as
2 prohibited by MEDICAID. ~~title 19 of the social security act, 42~~
3 ~~U.S.C. 1396 to 1396k.~~

4 (2) A NURSING HOME THAT PARTICIPATES IN MEDICAID SHALL NOT
5 INVOLUNTARILY TRANSFER OR DISCHARGE A PATIENT OR RELOCATE A
6 PATIENT WITHIN THE NURSING HOME SOLELY BECAUSE A PATIENT BECOMES
7 ELIGIBLE FOR, APPLIES FOR, OR RECEIVES MEDICAID.

8 (3) ~~(2)~~ Involuntary transfer or discharge of a patient
9 from a licensed nursing home shall be preceded by a minimum writ-
10 ten notice of 21 days. The 21-day requirement shall not apply in
11 any of the following instances:

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

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

18 (c) If the transfer or discharge is subsequently agreed to
19 by the patient or the patient's legal guardian, and notification
20 is given to the next of kin and the person or agency responsible
21 for the patient's placement, maintenance, and care in the
22 facility.

23 (4) ~~(3)~~ The notice required by subsection ~~(2)~~ (3) shall
24 be on a form prescribed by the department and shall contain all
25 of the following:

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

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

2 (c) A statement in not less than 12-point type, which
3 reads: "You have a right to appeal the nursing home's decision
4 to transfer you. If you think you should not have to leave this
5 facility, you may file a request for a hearing with the depart-
6 ment of public health within 10 days after receiving this
7 notice. If you request a hearing, it will be held not sooner
8 than 7 days after your request, and you will not be transferred
9 during that time. If you lose the hearing, you will not be
10 transferred before the expiration of 30 days following receipt of
11 the original notice of the discharge or transfer. A form to
12 appeal the nursing home's decision and to request a hearing is
13 attached. If you have any questions, call the department of
14 public health at the number listed below."

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

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

19 (5) ~~-(4)-~~ A request for a hearing made under subsection
20 ~~-(3)-~~ (4) shall stay a transfer pending a hearing or appeal
21 decision.

22 (6) ~~-(5)-A~~ THE NURSING HOME SHALL PLACE A copy of the
23 notice required by subsection (3) ~~shall be placed~~ in the
24 patient's clinical record and ~~a copy shall be transmitted~~
25 TRANSMIT A COPY to the department, the patient, the patient's
26 next of kin, patient's representative, or legal guardian, and the

1 person or agency responsible for the patient's placement,
2 maintenance, and care in the facility.

3 (7) ~~-(6)-~~ If the basis for an involuntary transfer or dis-
4 charge is the result of a negative action by the department of
5 social services with respect to a medicaid client and a hearing
6 request is filed with that department, the 21-day written notice
7 period shall not begin until a final decision in the matter is
8 rendered by the department of social services or a court of com-
9 petent jurisdiction and notice of that final decision is received
10 by the patient and the facility.

11 (8) ~~-(7)-~~ If nonpayment is the basis for involuntary trans-
12 fer or discharge, the patient ~~shall have the right to~~ MAY
13 redeem up to the date that the discharge or transfer is to be
14 made and then ~~shall have the right to~~ MAY remain in the
15 facility.

16 (9) ~~-(8)-~~ The NURSING HOME SHALL DISCUSS THE involuntary
17 transfer or discharge ~~shall be discussed~~ with the patient, the
18 patient's next of kin or legal guardian, and person or agency
19 responsible for the patient's placement, maintenance, and care in
20 the facility. The explanation and discussion of the reasons for
21 involuntary transfer or discharge shall include the nursing home
22 administrator or other appropriate nursing home representative as
23 the administrator's designee. The content of the discussion and
24 explanation shall be summarized in writing and shall include the
25 names of the individuals involved in the discussions, and SHALL
26 BE made a part of the patient's clinical record.

1 (10) ~~(9)~~ The ~~patient~~ NURSING HOME shall ~~receive~~
2 PROVIDE counseling services TO THE PATIENT before and after the
3 transfer to minimize the possible adverse effect of the
4 transfer.

5 Sec. 21782. A licensee shall retain for public inspection
6 ALL OF THE FOLLOWING:

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

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

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

20 (d) A list of the name, address, principal occupation, and
21 official position of each person who, as a stockholder or other-
22 wise, has a proprietary interest in the nursing home as required
23 by section 20142, of each officer and director of a nursing home
24 which is a corporation, and of each trustee or beneficiary of a
25 nursing home ~~which~~ THAT is a trust.

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

1 (f) A copy of the standard form contract utilized under
2 section 21766.

3 (G) A COPY OF THE WAITING LIST REQUIRED UNDER SECTION
4 21762(1), INCLUDING THE DATE AND TIME OF EACH APPLICATION FOR
5 ADMISSION.

6 (H) A COPY OF EACH SEPARATE WAITING LIST, IF ANY, MAINTAINED
7 UNDER SECTION 21762(3) OR (4), INCLUDING THE DATE AND TIME OF
8 EACH APPLICATION FOR ADMISSION TO THE NURSING HOME.

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

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

18 Section 2. Section 21718 of Act No. 368 of the Public Acts
19 of 1978, being section 333.21718 of the Michigan Compiled Laws,
20 is repealed.