



HOUSE BILL No. 4012

January 11, 1995, Introduced by Rep. Clack and referred to the Committee on Health Policy.

A bill to amend sections 20201, 20203, 21771, and 21799c of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," section 20201 as amended by Act No. 354 of the Public Acts of 1982 and section 21799c as amended by Act No. 73 of the Public Acts of 1994, being sections 333.20201, 333.20203, 333.21771, and 333.21799c of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 20201, 20203, 21771, and 21799c of Act
2 No. 368 of the Public Acts of 1978, section 20201 as amended by
3 Act No. 354 of the Public Acts of 1982 and section 21799c as
4 amended by Act No. 73 of the Public Acts of 1994, being
5 sections 333.20201, 333.20203, 333.21771, and 333.21799c of the
6 Michigan Compiled Laws, are amended to read as follows:

1 Sec. 20201. (1) ~~A~~ SUBJECT TO SECTION 20203, A health
2 facility or agency ~~which~~ THAT provides services directly to
3 patients or residents and ~~which~~ is licensed under this article
4 shall adopt a policy describing the rights and responsibilities
5 of patients or residents admitted to the health facility or
6 agency. Except for a licensed health maintenance organization,
7 which shall comply with section 21086, ~~the policy shall be~~
8 ~~posted~~ A HEALTH FACILITY OR AGENCY SHALL POST THE POLICY at a
9 public place in the HEALTH facility OR AGENCY and shall ~~be~~
10 ~~provided~~ PROVIDE A COPY OF THE POLICY to each member of ~~the~~
11 ~~facility~~ ITS staff. ~~Patients~~ A HEALTH FACILITY OR AGENCY
12 SHALL TREAT PATIENTS or residents ~~shall be treated~~ in accord-
13 ance with the policy.

14 (2) The policy describing the rights and responsibilities of
15 patients or residents shall include, ~~as~~ AT a minimum, ALL OF
16 THE FOLLOWING:

17 (a) A patient or resident will not be denied appropriate
18 care on the basis of race, religion, color, national origin, sex,
19 age, handicap, marital status, sexual preference, or source of
20 payment.

21 (b) An individual who is or has been a patient or resident
22 is entitled to inspect, or receive for a reasonable fee, a copy
23 of his or her medical record upon request. A third party shall
24 not be given a copy of the patient's or resident's medical record
25 without prior authorization of the patient.

26 (c) A patient or resident is entitled to confidential
27 treatment of personal and medical records, and may refuse their

1 release to a person outside the facility except as required
2 because of a transfer to another health care facility or as
3 required by law or third party payment contract.

4 (d) A patient or resident is entitled to privacy, to the
5 extent feasible, in treatment and in caring for personal needs
6 with consideration, respect, and full recognition of his or her
7 dignity and individuality.

8 (e) A patient or resident is entitled to receive adequate
9 and appropriate care, and to receive, from the appropriate indi-
10 vidual within the HEALTH facility OR AGENCY, information about
11 his or her medical condition, proposed course of treatment, and
12 prospects for recovery, in terms that the patient or resident can
13 understand, unless medically contraindicated as documented by the
14 attending physician in the PATIENT'S OR RESIDENT'S medical
15 record.

16 (f) A patient or resident is entitled to refuse treatment to
17 the extent provided by law and to be informed of the consequences
18 of that refusal. When a refusal of treatment prevents a health
19 facility OR AGENCY or its staff from providing appropriate care
20 according to ethical and professional standards, the relationship
21 with the patient or resident may be terminated upon reasonable
22 notice.

23 (g) A patient or resident is entitled to exercise his or her
24 rights as a patient or resident and as a citizen, and to this end
25 may present grievances or recommend changes in policies and serv-
26 ices on behalf of himself or herself or others to the HEALTH
27 facility OR AGENCY staff, to governmental officials, or to

1 another person of his or her choice within or outside the HEALTH
2 facility OR AGENCY, free from restraint, interference, coercion,
3 discrimination, or reprisal. A patient or resident is entitled
4 to information about the HEALTH facility's OR AGENCY'S policies
5 and procedures for initiation, review, and resolution of patient
6 or resident complaints.

7 (h) A patient or resident is entitled to information con-
8 cerning an experimental procedure proposed as a part of his or
9 her care and ~~shall have~~ HAS the right to refuse to participate
10 in the experiment without jeopardizing his or her continuing
11 care.

12 (i) A patient or resident is entitled to receive and examine
13 an explanation of his or her bill regardless of the source of
14 payment and to receive, upon request, information relating to
15 financial assistance available through the HEALTH facility OR
16 AGENCY.

17 (j) A patient or resident is entitled to know who is respon-
18 sible for and who is providing his or her direct care, is enti-
19 tled to receive information concerning his or her continuing
20 health needs and alternatives for meeting those needs, and to be
21 involved in his or her discharge planning, if appropriate.

22 (k) A patient or resident is entitled to associate and have
23 private communications and consultations with his or her physi-
24 cian, attorney, or any other person of his or her choice and to
25 send and receive personal mail unopened on the same day it is
26 received at the health facility or agency, unless medically
27 contraindicated as documented by the attending physician in the

1 PATIENT'S OR RESIDENT'S medical record. A patient's or
2 resident's civil and religious liberties, including the right to
3 independent personal decisions and the right to knowledge of
4 available choices, shall not be infringed and the HEALTH facility
5 OR AGENCY shall encourage and assist in the fullest possible
6 exercise of these rights. A patient or resident may meet with,
7 and participate in, the activities of social, religious, and com-
8 munity groups at his or her discretion, unless medically contra-
9 indicated as documented by the attending physician in the
10 PATIENT'S OR RESIDENT'S medical record.

11 (4) A patient or resident is entitled to be free from mental
12 and physical abuse, SEXUAL CONTACT WITHOUT THE PATIENT'S OR
13 RESIDENT'S CONSENT, and from physical and chemical restraints,
14 except those restraints authorized in writing by the attending
15 physician for a specified and limited time or as are necessitated
16 by an emergency to protect the patient or resident from injury to
17 self or others, in which case the restraint may only be applied
18 by a qualified professional who shall set forth in writing the
19 circumstances requiring the use of restraints and who shall
20 promptly report the action to the attending physician. In case
21 of a chemical restraint a physician shall be consulted within 24
22 hours after the commencement of the restraint. AS USED IN THIS
23 SUBDIVISION, "SEXUAL CONTACT" MEANS THAT TERM AS DEFINED IN
24 SECTION 520A OF THE MICHIGAN PENAL CODE, ACT NO. 328 OF THE
25 PUBLIC ACTS OF 1931, BEING SECTION 750.520A OF THE MICHIGAN
26 COMPILED LAWS, AND INCLUDES "SEXUAL PENETRATION" AS THAT TERM IS

1 DEFINED IN SECTION 520A OF ACT NO. 328 OF THE PUBLIC ACTS OF
2 1931.

3 (m) A patient or resident is entitled to be free from per-
4 forming services for the HEALTH facility OR AGENCY that are not
5 included for therapeutic purposes in the plan of care.

6 (n) A patient or resident is entitled to information about
7 the health facility OR AGENCY rules and regulations affecting
8 patient or resident care and conduct.

9 (3) The following additional requirements for the policy
10 described in subsection (2) ~~shall~~ apply to licensees under
11 parts 213 and 217:

12 (a) The policy shall be provided to each nursing home
13 patient or home for the aged resident upon admission, and the
14 staff of the ~~facility~~ NURSING HOME OR HOME FOR THE AGED shall
15 be trained and involved in the implementation of the policy.

16 (b) Each nursing home patient may associate and communicate
17 privately with persons of his or her choice. Reasonable, regular
18 visiting hours, which shall be not less than 8 hours per day, and
19 which shall take into consideration the special circumstances of
20 each visitor, shall be established for patients to receive
21 visitors. A NURSING HOME patient may be visited by the patient's
22 attorney or by representatives of the departments named in sec-
23 tion 20156, during other than established visiting hours.
24 Reasonable privacy shall be afforded for visitation of a NURSING
25 HOME patient who shares a room with another NURSING HOME
26 patient. Each NURSING HOME patient shall have reasonable access
27 to a telephone. A married nursing home patient or home for the

1 aged resident is entitled to meet privately with his or her
2 spouse in a room which assures privacy. If both spouses are
3 PATIENTS OR residents in the same ~~facility~~ NURSING HOME OR HOME
4 FOR THE AGED, they are entitled to share a room unless medically
5 contraindicated and documented by the attending physician in the
6 PATIENT'S OR RESIDENT'S medical record.

7 (c) A nursing home patient or home for the aged resident is
8 entitled to retain and use personal clothing and possessions as
9 space permits, unless to do so would infringe upon the rights of
10 other NURSING HOME patients or HOME FOR THE AGED residents, or
11 unless medically contraindicated as documented by the attending
12 physician in the PATIENT'S OR RESIDENT'S medical record. Each
13 nursing home patient or home for the aged resident shall be pro-
14 vided with reasonable space. At the request of a NURSING HOME
15 patient, a nursing home shall provide for the safekeeping of per-
16 sonal effects, funds, and other property of a patient in accord-
17 ance with section 21767, except that a nursing home ~~shall not~~
18 ~~be~~ IS NOT required to provide for the safekeeping of a property
19 which would impose an unreasonable burden on the nursing home.

20 (d) A nursing home patient or home for the aged resident is
21 entitled to the opportunity to participate in the planning of his
22 or her medical treatment. A nursing home patient shall be fully
23 informed by the attending physician of the patient's medical con-
24 dition unless medically contraindicated as documented by a physi-
25 cian in the PATIENT'S medical record. Each nursing home patient
26 shall be afforded the opportunity to discharge himself or herself
27 from the nursing home.

1 (e) A home for the aged resident may be transferred or
2 discharged only for medical reasons, for his or her welfare or
3 that of other residents, or for nonpayment of his or her stay,
4 except as provided by ~~title 18 or 19 of the social security act,~~
5 ~~42 U.S.C. 1395 to 1396k~~ TITLE XVIII OR TITLE XIX. A nursing
6 home patient may be transferred or discharged only as provided in
7 sections 21773 to 21777. A nursing home patient or home for the
8 aged resident is entitled to be given reasonable advance notice
9 to ensure orderly transfer or discharge. ~~Those actions~~ STEPS
10 TAKEN TO ENSURE REASONABLE ADVANCE NOTICE shall be documented in
11 the PATIENT'S OR RESIDENT'S medical record. AS USED IN THIS SUB-
12 DIVISION AND SUBDIVISION (F):

13 (i) "TITLE XVIII" MEANS TITLE XVIII OF THE SOCIAL SECURITY
14 ACT, CHAPTER 531, 49 STAT. 620, 42 U.S.C. 1395 TO 1395b, 1395b-2,
15 1395c TO 1395i, 1395i-2 TO 1395i-4, 1395j TO 1395t, 1395u TO
16 1395w-2, AND 1395w-4 TO 1395ccc.

17 (ii) "TITLE XIX" MEANS TITLE XIX OF THE SOCIAL SECURITY ACT,
18 CHAPTER 531, 49 STAT. 620, 42 U.S.C. 1396 TO 1396g AND 1396i TO
19 1396v.

20 (f) A nursing home patient or home for the aged resident is
21 entitled to be fully informed before or at the time of admission
22 and during stay of services available in the ~~facility~~ NURSING
23 HOME OR HOME FOR THE AGED, and of the related charges including
24 any charges for services not covered under ~~title 18 or 19 of the~~
25 ~~social security act, 42 U.S.C. 1395 to 1396k~~ TITLE XVIII OR
26 TITLE XIX, or not covered by the ~~facility's~~ NURSING HOME'S OR
27 HOME FOR THE AGED'S basic per diem rate. The statement of

1 services provided by the ~~facility~~ NURSING HOME OR HOME FOR THE
2 AGED shall be in writing and shall include those required to be
3 offered on an as-needed basis.

4 (g) A nursing home patient or home for the aged resident is
5 entitled to manage his or her own financial affairs, or to have
6 at least a quarterly accounting of personal financial transac-
7 tions undertaken in his or her behalf by the ~~facility~~ NURSING
8 HOME OR HOME FOR THE AGED during a period of time the patient or
9 resident has delegated those responsibilities to the ~~facility~~
10 NURSING HOME OR HOME FOR THE AGED. In addition, a NURSING HOME
11 patient or HOME FOR THE AGED resident is entitled to receive each
12 month from the ~~facility~~ NURSING HOME OR HOME FOR THE AGED an
13 itemized statement setting forth the services paid for by or on
14 behalf of the patient and the services rendered by the ~~facility~~
15 NURSING HOME OR HOME FOR THE AGED. The admission of a patient to
16 a nursing home does not confer on the nursing home or its owner,
17 administrator, employees, or representatives the authority to
18 manage, use, or dispose of ~~a~~ THE patient's property.

19 (h) A nursing home patient or a person authorized by ~~a~~ THE
20 patient in writing may inspect and copy the patient's personal
21 and medical records. The PERSONAL AND MEDICAL records shall be
22 made available for inspection and copying by the nursing home
23 within a reasonable time, not exceeding 1 week, after the receipt
24 of a written request UNDER THIS SUBDIVISION.

25 (i) If a nursing home patient desires treatment by a
26 licensed member of the healing arts, the treatment shall be made
27 available unless it is medically contraindicated, and the medical

1 contraindication is justified in the patient's medical record by
2 the attending physician.

3 (j) A nursing home patient has the right to have his or her
4 parents, if a minor, or his or her spouse, next of kin, or
5 patient's representative, if an adult, stay at the facility 24
6 hours a day if the patient is considered terminally ill by the
7 physician responsible for the patient's care.

8 (k) Each nursing home patient shall be provided with meals
9 which meet the recommended dietary allowances for that patient's
10 age and sex and which may be modified according to special
11 dietary needs or ability to chew.

12 (l) Each nursing home patient has the right to receive rep-
13 resentatives of approved organizations as provided in section
14 21763.

15 (4) A nursing home, its owner, administrator, employee, or
16 representative shall not discharge, harass, or retaliate or dis-
17 criminate against a patient because the patient has exercised a
18 right protected under this section.

19 (5) In the case of a nursing home patient, the rights enu-
20 merated in subsection (2)(c), (g), and (k) and subsection (3)(d),
21 (g), and (h) may be exercised by the patient's representative as
22 defined in section 21703.

23 (6) A nursing home patient or home for the aged resident is
24 entitled to be fully informed, as evidenced by the patient's or
25 resident's written acknowledgment, before or at the time of
26 admission and during stay, of the policy required by this
27 section. The policy shall provide that if a NURSING HOME patient

1 or HOME FOR THE AGED resident is adjudicated incompetent and not
2 restored to legal capacity, the rights and responsibilities set
3 forth in this section shall be exercised by a person designated
4 by the NURSING HOME patient or HOME FOR THE AGED resident. The
5 ~~facility or agency~~ NURSING HOME OR HOME FOR THE AGED shall pro-
6 vide proper forms for the NURSING HOME patient or HOME FOR THE
7 AGED resident to provide for the designation of this person at
8 the time of admission.

9 (7) This section ~~shall not be construed to~~ DOES NOT pro-
10 hibit a health facility or agency from establishing and recogniz-
11 ing additional patients' OR RESIDENTS' rights.

12 Sec. 20203. (1) The rights and responsibilities prescribed
13 in sections 20201 and 20202 are guidelines for health facilities
14 ~~, facility~~ AND AGENCIES AND THEIR staff, ~~facility~~ employees,
15 patients, and residents. An individual ~~shall~~ IS not ~~be~~ civ-
16 ily or criminally liable for failure to comply with ~~those~~ sec-
17 tions 20201 AND 20202. A NURSING HOME IS ADMINISTRATIVELY LIABLE
18 FOR A FAILURE TO COMPLY WITH SECTION 20201, AS PROVIDED IN
19 SECTION 21799C(3).

20 (2) Sections 20201 and 20202 ~~shall~~ DO not ~~be construed~~
21 ~~to~~ expand or diminish other remedies at law available to a
22 patient or resident under this code or UNDER the statutory,
23 ADMINISTRATIVE, and common law of this state.

24 (3) The department shall develop guidelines to assist health
25 facilities and agencies in the implementation of sections 20201
26 and 20202.

1 Sec. 21771. (1) A licensee, nursing home administrator, or
2 employee of a nursing home shall not physically, mentally, or
3 emotionally abuse, mistreat, or harmfully neglect a patient OR
4 ENGAGE IN SEXUAL CONTACT WITH A PATIENT.

5 (2) A nursing home employee who becomes aware of an act pro-
6 hibited by this section OR WHO BECOMES AWARE OF SEXUAL CONTACT
7 WITH A PATIENT IN THE NURSING HOME BY AN INDIVIDUAL OTHER THAN AN
8 INDIVIDUAL DESCRIBED IN SUBSECTION (1) WITHOUT THE PATIENT'S
9 CONSENT immediately shall report the matter to the nursing home
10 administrator or nursing director. A nursing home administrator
11 or nursing director who becomes aware of an act prohibited by
12 this section OR WHO BECOMES AWARE OF SEXUAL CONTACT WITH A
13 PATIENT IN THE NURSING HOME BY AN INDIVIDUAL OTHER THAN AN INDI-
14 VIDUAL DESCRIBED IN SUBSECTION (1) WITHOUT THE PATIENT'S CONSENT
15 immediately shall report the matter by telephone to the depart-
16 ment of public health, which in turn shall notify the department
17 of social services.

18 (3) Any person may report a violation of this section to the
19 department.

20 (4) A physician or other licensed OR REGISTERED health ~~care~~
21 ~~personnel of~~ PROFESSIONAL EMPLOYED BY OR UNDER CONTRACT TO a
22 hospital or other health ~~care~~ facility OR AGENCY to which a
23 NURSING HOME patient is transferred who becomes aware of an act
24 prohibited by this section OR WHO BECOMES AWARE OF SEXUAL CONTACT
25 WITH THE TRANSFERRED PATIENT IN THE HOSPITAL OR OTHER HEALTH
26 FACILITY OR AGENCY WITHOUT THE PATIENT'S CONSENT shall report the
27 act OR SEXUAL CONTACT to the department.

1 (5) Upon receipt of a report made under this section, the
2 department shall make an investigation. The department may
3 require the person making the report to submit a written report
4 or to supply additional information, or both.

5 (6) A licensee or nursing home administrator shall not
6 evict, harass, dismiss, or retaliate against a patient, a
7 patient's representative, or an employee who makes a report under
8 this section.

9 (7) AS USED IN THIS SECTION, "SEXUAL CONTACT" MEANS THAT
10 TERM AS DEFINED IN SECTION 520A OF THE MICHIGAN PENAL CODE, ACT
11 NO. 328 OF THE PUBLIC ACTS OF 1931, BEING SECTION 750.520A OF THE
12 MICHIGAN COMPILED LAWS, AND INCLUDES "SEXUAL PENETRATION" AS THAT
13 TERM IS DEFINED IN SECTION 520A OF ACT NO. 328 OF THE PUBLIC ACTS
14 OF 1931.

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

19 (a) Section 21711.

20 (b) Section 21712.

21 (c) Section 21765a(1) or (2).

22 (d) Section 21771(1), (2), (4), or (6).

23 (e) Section 21791.

24 (2) A person who violates section 21765a(1) or (2) is liable
25 to an applicant or patient in a civil action for treble the
26 amount of actual damages or \$1,000.00, whichever is greater,
27 together with costs and reasonable attorney fees.

1 (3) For the purpose of computing civil OR ADMINISTRATIVE
2 penalties under this section, the number of patients per day is
3 based on the average number of patients in the nursing home
4 during the 30 days IMMEDIATELY preceding the discovery of the
5 violation.

6 (4) If the department finds a violation of section 20201 as
7 to a particular nursing home patient, the department shall issue
8 an order requiring the nursing home to pay to the patient
9 \$100.00, or to reimburse the patient for costs incurred or inju-
10 ries sustained, whichever is greater, and the department shall
11 assess the nursing home ~~a civil~~ AN ADMINISTRATIVE penalty that
12 is the lesser of the following:

13 (a) Not more than \$1,500.00.

14 (b) \$15.00 per patient bed.

15 (5) The department of social services, with the advice of
16 the department of public health, shall promulgate rules for a
17 quality of care allowance formula that is consistent with the
18 recommendations of the fiscal incentives subcommittee to the com-
19 mittee on nursing home reimbursement established pursuant to Act
20 No. 241 of the Public Acts of 1975, as described in the November
21 24, 1975 interim report, in the December 3, 1975 final report,
22 and the November 24, 1976 report of the committee recommending
23 appropriate changes in the procedures utilized.

24 (6) The department shall not assess ~~a civil~~ AN
25 ADMINISTRATIVE penalty under subsection (4) for a violation of
26 this part for which a nursing home's reimbursement is withheld
27 under subsection (5).