

HOUSE BILL No. 5825

May 23, 2000, Introduced by Reps. Faunce, Richardville, Law, Voorhees, Tabor, Julian, Rocca, Van Woerkom, Bradstreet, Kowall, Shackleton, LaSata, Kukuk, Cameron Brown and Cassis and referred to the Committee on Senior Health, Security and Retirement.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 21773 (MCL 333.21773).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 21773. (1) A nursing home shall not involuntarily
2 transfer or discharge a patient except FOR 1 OR MORE OF THE FOL-
3 LOWING PURPOSES: ~~for medical~~
4 (A) MEDICAL reasons. ~~for the~~
5 (B) THE patient's welfare. ~~or that~~
6 (C) THE WELFARE of other patients or ~~facility~~ NURSING HOME
7 employees. ~~or for nonpayment~~
8 (D) NONPAYMENT for the patient's stay, except as prohibited
9 by title ~~19~~ XIX of the social security act, 42 U.S.C. 1396 to
10 ~~1396k~~ 1396f, 1396g-1 TO 1396r-6, AND 1396r-8 TO 1396v.

1 (2) ~~Involuntary transfer or discharge of a patient from a~~
2 A licensed nursing home shall ~~be preceded by a minimum~~ PROVIDE
3 written notice ~~of~~ AT LEAST 21 days BEFORE A PATIENT IS INVOLUN-
4 TARILY TRANSFERRED OR DISCHARGED. The 21-day requirement ~~shall~~
5 OF THIS SUBSECTION DOES not apply in any of the following
6 instances:

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

10 (b) If the transfer or discharge is mandated by the physical
11 safety of other patients and ~~facility~~ NURSING HOME employees as
12 documented in the clinical record.

13 (c) If the transfer or discharge is subsequently agreed to
14 by the patient or the patient's legal guardian, and notification
15 is given to the next of kin and the person or agency responsible
16 for the patient's placement, maintenance, and care in the
17 ~~facility~~ NURSING HOME.

18 (3) The notice required by subsection (2) shall be on a form
19 prescribed by the department and shall contain all of the
20 following:

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

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

23 (c) A statement in not less than 12-point type ~~, which~~
24 THAT reads: "You have a right to appeal the nursing home's deci-
25 sion to transfer you. If you think you should not have to leave
26 this facility, you may file a request for a hearing with the
27 department of ~~public health~~ CONSUMER AND INDUSTRY SERVICES

1 within 10 days after receiving this notice. If you request a
2 hearing, it will be held ~~not sooner than~~ AT LEAST 7 days after
3 your request, and you will not be transferred during that time.
4 If you lose the hearing, you will not be transferred ~~before the~~
5 ~~expiration of~~ UNTIL AT LEAST 30 days ~~following receipt of~~
6 AFTER YOU RECEIVED the original notice of the discharge or
7 transfer. A form to appeal the nursing home's decision and to
8 request a hearing is attached. If you have any questions, call
9 the department of ~~public health~~ CONSUMER AND INDUSTRY SERVICES
10 at the number listed below."

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

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

15 (4) A request for a hearing made under subsection (3) shall
16 stay a transfer pending a hearing or appeal decision.

17 (5) A copy of the notice required by subsection (3) shall be
18 placed in the patient's clinical record and a copy shall be
19 transmitted to the department OF CONSUMER AND INDUSTRY SERVICES,
20 the patient, the patient's next of kin, patient's representative,
21 or legal guardian, and the person or agency responsible for the
22 patient's placement, maintenance, and care in the ~~facility~~
23 NURSING HOME.

24 (6) If the basis for an involuntary transfer or discharge is
25 the result of a negative action by the department of ~~social~~
26 CONSUMER AND INDUSTRY services with respect to a medicaid client
27 and a hearing request is filed with ~~that~~ THE department, the

1 21-day written notice period ~~shall~~ OF SUBSECTION (2) DOES not
2 begin until a final decision in the matter is rendered by the
3 department of ~~social~~ CONSUMER AND INDUSTRY services or a court
4 of competent jurisdiction and notice of that final decision is
5 received by the patient and the ~~facility~~ NURSING HOME.

6 (7) If nonpayment is the basis for involuntary transfer or
7 discharge, the patient ~~shall have the right to~~ MAY redeem up to
8 the date that the discharge or transfer is to be made and then
9 ~~shall have the right to~~ MAY remain in the ~~facility~~ NURSING
10 HOME.

11 (8) The NURSING HOME ADMINISTRATOR OR OTHER APPROPRIATE
12 NURSING HOME EMPLOYEE DESIGNATED BY THE NURSING HOME ADMINISTRA-
13 TOR SHALL DISCUSS AN involuntary transfer or discharge ~~shall be~~
14 ~~discussed~~ with the patient, the patient's next of kin or legal
15 guardian, and person or agency responsible for the patient's
16 placement, maintenance, and care in the ~~facility~~ NURSING HOME.
17 ~~The explanation and discussion of the reasons for involuntary~~
18 ~~transfer or discharge shall include the nursing home administra=~~
19 ~~tor or other appropriate nursing home representative as the~~
20 ~~administrator's designee.~~ THE DISCUSSION SHALL INCLUDE AN EXPLA-
21 NATION OF THE REASONS FOR THE INVOLUNTARY TRANSFER OR DISCHARGE.
22 The content of the discussion and explanation shall be summarized
23 in writing and shall include the names of the individuals
24 involved in the discussions and made a part of the patient's
25 clinical record.

26 (9) The NURSING HOME SHALL PROVIDE THE patient ~~shall~~
27 ~~receive~~ WITH counseling services before and after the

1 INVOLUNTARY transfer OR DISCHARGE to minimize the possible
2 adverse effect of the INVOLUNTARY transfer OR DISCHARGE.

3 (10) IF A NURSING HOME VOLUNTARILY WITHDRAWS FROM PARTICIPA-
4 TION IN THE STATE PLAN FOR MEDICAID FUNDING, BUT CONTINUES TO
5 PROVIDE SERVICES, THE NURSING HOME SHALL NOT, EXCEPT AS PROVIDED
6 IN SUBSECTION (1), INVOLUNTARILY TRANSFER OR DISCHARGE A PATIENT,
7 WHETHER OR NOT THE PATIENT IS ELIGIBLE FOR MEDICAID BENEFITS, WHO
8 RESIDED IN THE NURSING HOME ON THE DAY BEFORE THE EFFECTIVE DATE
9 OF THE NURSING HOME'S WITHDRAWAL FROM PARTICIPATION. THE PROHI-
10 BITION AGAINST TRANSFER OR DISCHARGE IMPOSED BY THIS SUBSECTION
11 CONTINUES UNLESS THE PATIENT FALLS WITHIN 1 OR MORE OF THE EXCEP-
12 TIONS DESCRIBED IN SUBSECTION (1).

13 (11) IF AN INDIVIDUAL BECOMES A PATIENT OF A NURSING HOME
14 AFTER THE DATE THE NURSING HOME WITHDRAWS FROM PARTICIPATION IN
15 THE STATE PLAN FOR MEDICAID FUNDING, THE NURSING HOME, ON OR
16 BEFORE THE DATE THE INDIVIDUAL SIGNS A CONTRACT WITH THE NURSING
17 HOME, SHALL PROVIDE TO THE PATIENT ORAL AND WRITTEN NOTICE OF
18 BOTH OF THE FOLLOWING:

19 (A) THAT THE NURSING HOME IS NOT PARTICIPATING IN THE STATE
20 PLAN FOR MEDICAID FUNDING.

21 (B) THAT THE FACILITY MAY INVOLUNTARILY TRANSFER OR DIS-
22 CHARGE THE PATIENT FOR NONPAYMENT UNDER SUBSECTION (1)(D) EVEN IF
23 THE PATIENT IS ELIGIBLE FOR MEDICAID BENEFITS.