

# HOUSE BILL No. 4159

February 3, 1999, Introduced by Reps. LaForge, Cherry, Schauer, Bogardus and DeHart 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 21766 (MCL 333.21766), as amended by 1994  
PA 73, and by adding section 21766a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 21766. (1) A nursing home shall execute a written con-  
2 tract solely with an applicant or patient or that applicant's or  
3 patient's LEGAL guardian or OTHER legal representative authorized  
4 by law to have access to those portions of the patient's or  
5 applicant's income or assets available to pay for nursing home  
6 care, at each of the following times:

7       (a) At the time an individual is admitted to a nursing  
8 home.

9       (b) At the expiration of the term of a previous contract.

1 (c) At the time the source of payment for the patient's care  
2 changes.

3 (2) A nursing home shall not discharge or transfer a patient  
4 at the expiration of the term of a contract, except as provided  
5 in section 21773.

6 (3) A nursing home shall provide a copy of the contract  
7 EXECUTED UNDER SUBSECTION (1) to the patient ~~, the patient's~~  
8 ~~representative,~~ or TO the patient's LEGAL GUARDIAN OR OTHER  
9 legal representative ~~or legal guardian~~ at the time the contract  
10 is executed.

11 (4) For a patient supported by funds other than the  
12 patient's own funds, a nursing home shall make a copy of the con-  
13 tract EXECUTED UNDER SUBSECTION (1) available to the person pro-  
14 viding the funds for the patient's support.

15 (5) For a patient whose care is reimbursed with public funds  
16 administered by the department of ~~social services~~ COMMUNITY  
17 HEALTH UNDER THE SOCIAL WELFARE ACT, 1939 PA 280, MCL 400.1 TO  
18 400.119B, a nursing home shall maintain a copy of the contract  
19 EXECUTED UNDER SUBSECTION (1) in the patient's file at the nurs-  
20 ing home and upon request shall make a copy of the contract  
21 available to the department of ~~social services~~ COMMUNITY  
22 HEALTH.

23 (6) ~~The~~ A nursing home shall ensure that ~~the~~ A contract  
24 EXECUTED UNDER SUBSECTION (1) is written in clear and unambiguous  
25 language and is printed in not less than 12-point type. The form  
26 of the contract shall be prescribed by the department OF CONSUMER  
27 AND INDUSTRY SERVICES.

1       (7) ~~The~~ A contract EXECUTED UNDER SUBSECTION (1) shall  
2 specify AT LEAST all of the following:

3       (a) The term of the contract.

4       (b) The services to be provided under the contract and the  
5 charges for the services.

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

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

9       (e) The amount of deposit paid and the general and foresee-  
10 able terms upon which the deposit will be held and refunded.

11       (f) The rights, duties, and obligations of the patient,  
12 except that the specification of a patient's rights may be fur-  
13 nished on a separate document that complies with the requirements  
14 of section 20201.

15       (G) THE RIGHT OF A PATIENT OR THE PATIENT'S LEGAL GUARDIAN  
16 OR LEGAL REPRESENTATIVE TO DEPOSIT AMOUNTS DUE UNDER THE CONTRACT  
17 IN AN ESCROW ACCOUNT PURSUANT TO SECTION 21766A IF THE NURSING  
18 HOME IS IN VIOLATION OF A LOCAL ORDINANCE OR OF THIS ARTICLE OR A  
19 RULE PROMULGATED UNDER THIS ARTICLE.

20       (H) THE RIGHT OF THE PATIENT OR THE PATIENT'S LEGAL GUARDIAN  
21 OR OTHER LEGAL REPRESENTATIVE TO SEEK APPROPRIATE RELIEF FROM A  
22 COURT OF COMPETENT JURISDICTION FOR A VIOLATION OF THE CONTRACT.

23       (8) ~~The~~ A nursing home may require a patient's or  
24 applicant's LEGAL guardian or OTHER legal representative who is  
25 authorized by law to have access to those portions of the  
26 patient's or applicant's income or assets available to pay for  
27 nursing home care to sign a contract UNDER SUBSECTION (1) without

1 incurring personal financial liability other than for funds  
2 received in his or her legal capacity on behalf of the patient.

3 (9) A nursing home employee may request the appointment of a  
4 LEGAL guardian for an individual applicant or patient only if the  
5 nursing home employee reasonably believes that the individual  
6 meets the legal requirements for the appointment of a LEGAL  
7 guardian.

8 SEC. 21766A. (1) IF A PATIENT RESIDING IN A NURSING HOME OR  
9 THE PATIENT'S LEGAL GUARDIAN OR OTHER LEGAL REPRESENTATIVE  
10 DESCRIBED IN SECTION 21766(1) HAS EXECUTED A CONTRACT UNDER SEC-  
11 TION 21766, AND IF THE PATIENT OR THE PATIENT'S LEGAL GUARDIAN OR  
12 OTHER LEGAL REPRESENTATIVE HAS REASONABLE CAUSE TO BELIEVE THAT A  
13 NURSING HOME IS IN VIOLATION OF A LOCAL ORDINANCE OR OF THIS  
14 ARTICLE OR A RULE PROMULGATED UNDER THIS ARTICLE, THE PATIENT OR  
15 THE PATIENT'S LEGAL GUARDIAN OR OTHER LEGAL REPRESENTATIVE MAY  
16 SUSPEND PAYMENT DUE THE NURSING HOME UNDER THE CONTRACT, PURSUANT  
17 TO THIS SECTION.

18 (2) A NURSING HOME PATIENT OR THE PATIENT'S LEGAL GUARDIAN  
19 OR OTHER LEGAL REPRESENTATIVE WHO SUSPENDS PAYMENT DUE UNDER A  
20 NURSING HOME CONTRACT PURSUANT TO SUBSECTION (1) SHALL DEPOSIT  
21 THE AMOUNT DUE IN AN ESCROW ACCOUNT WITH A FINANCIAL INSTITUTION  
22 LOCATED IN THIS STATE. THE FINANCIAL INSTITUTION WITH WHICH THE  
23 ESCROW ACCOUNT IS ESTABLISHED SHALL PAY THE FUNDS IN THE ESCROW  
24 ACCOUNT TO THE NURSING HOME TO WHICH THE FUNDS ARE OWED OR SHALL  
25 PAY RESTITUTION TO THE PATIENT WHEN THE FINANCIAL INSTITUTION  
26 RECEIVES WRITTEN NOTICE FROM THE DEPARTMENT OF 1 OF THE  
27 FOLLOWING:

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1 (A) THAT THE NURSING HOME IS NOT OR IS NO LONGER IN  
2 VIOLATION OF A LOCAL ORDINANCE OR OF THIS ARTICLE OR A RULE  
3 PROMULGATED UNDER THIS ARTICLE.

4 (B) THAT A SETTLEMENT BETWEEN THE NURSING HOME AND THE  
5 PATIENT, LEGAL GUARDIAN, OR OTHER LEGAL REPRESENTATIVE HAS BEEN  
6 REACHED.

7 (C) THAT THE PATIENT, LEGAL GUARDIAN, OR OTHER LEGAL REPRE-  
8 SENTATIVE HAS VOLUNTARILY RESUMED PAYMENT.

9 (D) THAT THE DEPARTMENT HAS FOUND A VIOLATION OF A LOCAL  
10 ORDINANCE OR OF THIS ARTICLE OR THE RULES PROMULGATED UNDER THIS  
11 ARTICLE AND HAS ORDERED THE NURSING HOME TO PAY RESTITUTION TO  
12 THE PATIENT.

13 (3) A NURSING HOME PATIENT OR THE PATIENT'S LEGAL GUARDIAN  
14 OR OTHER LEGAL REPRESENTATIVE WHO ELECTS TO SUSPEND PAYMENT UNDER  
15 SUBSECTION (1) SHALL NOTIFY THE NURSING HOME AND THE DEPARTMENT  
16 IN WRITING OF THE SUSPENSION OF PAYMENT AND OF THE PROVISIONS OF  
17 THE LOCAL ORDINANCE OR OF THIS ARTICLE OR A RULE PROMULGATED  
18 UNDER THIS ARTICLE THAT THE RESIDENT, LEGAL GUARDIAN, OR OTHER  
19 LEGAL REPRESENTATIVE BELIEVES ARE BEING VIOLATED. THE NOTICE  
20 SHALL ALSO CONTAIN THE NAME AND ADDRESS OF THE FINANCIAL INSTITU-  
21 TION IN WHICH THE ESCROW ACCOUNT IS ESTABLISHED UNDER SUBSECTION  
22 (2).

23 (4) A NURSING HOME SHALL NOT EVICT A RESIDENT SOLELY BECAUSE  
24 THE RESIDENT HAS SUSPENDED PAYMENT PURSUANT TO THIS SECTION.

25 (5) UPON RECEIPT OF THE NOTICE DESCRIBED IN SUBSECTION (3),  
26 THE DEPARTMENT SHALL CONDUCT THE INVESTIGATION REQUIRED UNDER  
27 SECTION 20176 IN AN EXPEDITIOUS MANNER. IF THE DEPARTMENT

1 DETERMINES THAT THE NURSING HOME IS IN VIOLATION OF A LOCAL  
2 ORDINANCE OR OF THIS ARTICLE OR A RULE PROMULGATED UNDER THIS  
3 ARTICLE, THE DEPARTMENT MAY ORDER THE NURSING HOME TO PAY RESTI-  
4 TUTION TO THE PATIENT. THE DEPARTMENT MAY ORDER RESTITUTION IN  
5 THE FORM OF AN ABATEMENT OF PAYMENTS DUE UNDER THE CONTRACT OR A  
6 REBATE OF PAYMENTS MADE UNDER THE CONTRACT, OR BOTH. IF THE  
7 DEPARTMENT ORDERS A NURSING HOME TO PAY RESTITUTION UNDER THIS  
8 SUBSECTION, THE DEPARTMENT SHALL NOTIFY THE FINANCIAL INSTITUTION  
9 WITH WHICH THE AMOUNT DUE UNDER THE CONTRACT HAS BEEN DEPOSITED  
10 PURSUANT TO SUBSECTION (2) TO PAY THE RESTITUTION OUT OF THE  
11 ESCROW ACCOUNT.

12 (6) IF THE DEPARTMENT DOES NOT ORDER RESTITUTION UNDER SUB-  
13 SECTION (5), OR IF A NURSING HOME PATIENT, LEGAL GUARDIAN, OR  
14 OTHER LEGAL REPRESENTATIVE DOES NOT USE THE PROCEDURE DESCRIBED  
15 IN THIS SECTION OR HAS REASONABLE CAUSE TO BELIEVE THAT THE NURS-  
16 ING HOME IS IN VIOLATION OF THE NURSING HOME CONTRACT, HE OR SHE  
17 MAY BRING AN ACTION IN A COURT OF COMPETENT JURISDICTION. THE  
18 PATIENT, LEGAL GUARDIAN, OR LEGAL REPRESENTATIVE MAY SEEK APPRO-  
19 PRIATE RELIEF FROM THE COURT, INCLUDING, BUT NOT LIMITED TO, AN  
20 ABATEMENT OF PAYMENTS DUE UNDER THE CONTRACT OR A REBATE OF PAY-  
21 MENTS MADE UNDER THE CONTRACT, OR BOTH.