HOUSE BILL No. 5386

September 17, 2009, Introduced by Rep. Cushingberry and referred to the Committee on Tax Policy.

A bill to amend 1978 PA 368, entitled

"Public health code,"

(MCL 333.1101 to 333.25211) by amending the title and by adding section 16302.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments,

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boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain **HEALTH PROFESSIONALS AND** health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates.

SEC. 16302. (1) THE DEPARTMENT SHALL ASSESS AND COLLECT A QUALITY ASSURANCE ASSESSMENT ON PHYSICIANS AS PROVIDED IN THIS SECTION. THE QUALITY ASSURANCE ASSESSMENT ON PHYSICIANS IS A TAX IMPOSED ON EACH PHYSICIAN AND ENTITY RELATED TO A PHYSICIAN THAT ENGAGES IN THE PRACTICE OF MEDICINE OR OSTEOPATHIC MEDICINE AND SURGERY IN THIS STATE. THE QUALITY ASSURANCE ASSESSMENT IS IMPOSED

AT A RATE OF 4% OF THE GROSS REVENUE OF THE PHYSICIAN OR ENTITY RELATED TO A PHYSICIAN. THE DEPARTMENT SHALL ADMINISTER THIS SECTION IN A MANNER THAT COMPLIES WITH FEDERAL REQUIREMENTS NECESSARY TO ASSURE THAT THE QUALITY ASSURANCE ASSESSMENT QUALIFIES FOR FEDERAL MATCHING FUNDS. THE DEPARTMENT SHALL CEASE THE ASSESSMENT AND COLLECTION OF THE QUALITY ASSURANCE ASSESSMENT IF IT IS NO LONGER ELIGIBLE FOR FEDERAL MATCHING FUNDS.

(2) THE QUALITY ASSURANCE ASSESSMENT COLLECTED UNDER THIS SECTION AND ALL FEDERAL MATCHING FUNDS ATTRIBUTED TO THAT ASSESSMENT SHALL BE USED ONLY FOR THE PURPOSES DESCRIBED IN THIS SECTION AND ONLY AS PRESCRIBED IN THIS SECTION. THE QUALITY ASSURANCE ASSESSMENT COLLECTED UNDER THIS SECTION AND ALL FEDERAL MATCHING FUNDS ATTRIBUTED TO THAT ASSESSMENT SHALL BE USED TO INCREASE MEDICAID PHYSICIAN SERVICES REIMBURSEMENT PAYMENTS AND TO IMPLEMENT, ADMINISTER, AND ENFORCE THIS SECTION. ONLY PHYSICIANS AND ENTITIES RELATED TO PHYSICIANS THAT ARE ASSESSED THE QUALITY ASSURANCE ASSESSMENT UNDER THIS SECTION AND THAT PARTICIPATE IN THE MEDICAID PROGRAM ARE ELIGIBLE FOR INCREASED MEDICAID PHYSICIAN SERVICES REIMBURSEMENT RATES UNDER THIS SECTION.

(3) THE DEPARTMENT SHALL PRESCRIBE THE FORMS AND FORMAT FOR USE BY A PHYSICIAN OR ENTITY RELATED TO A PHYSICIAN SUBJECT TO THE QUALITY ASSURANCE ASSESSMENT UNDER THIS SECTION, WHICH FORMS AND FORMAT ARE NECESSARY TO ADMINISTER THIS SECTION, INCLUDING THE REPORTING OF GROSS REVENUE AND THE CALCULATION AND COLLECTION OF THE ASSESSMENT. A PHYSICIAN OR ENTITY RELATED TO A PHYSICIAN SUBJECT TO THE QUALITY ASSURANCE ASSESSMENT UNDER THIS SECTION SHALL FILE AN ANNUAL STATEMENT WITH THE DEPARTMENT ON OR BEFORE THE

LAST DAY OF THE SIXTH MONTH AFTER THE END OF THE PHYSICIAN'S OR ENTITY'S TAX YEAR. THE ANNUAL STATEMENT SHALL IDENTIFY EACH PHYSICIAN WHO PROVIDED PHYSICIAN SERVICES AND GENERATED REVENUE FOR THOSE SERVICES, ALONG WITH THE PHYSICIAN'S PERCENTAGE OF OWNERSHIP IN THE ENTITY RELATED TO A PHYSICIAN, IF APPLICABLE. THE PHYSICIAN OR ENTITY SHALL INCLUDE WITH THE ANNUAL STATEMENT THE PAYMENT OF ANY QUALITY ASSURANCE ASSESSMENT DUE UNDER THIS SECTION.

(4) A PHYSICIAN OR ENTITY RELATED TO A PHYSICIAN THAT REASONABLY EXPECTS ASSESSMENT LIABILITY UNDER THIS SECTION FOR THE TAX YEAR TO BE $2,000.00 OR MORE SHALL FILE AN ESTIMATED STATEMENT AND PAY AN ESTIMATED QUALITY ASSURANCE ASSESSMENT FOR THAT QUARTER. FOR A PHYSICIAN OR ENTITY ON A CALENDAR YEAR BASIS, THE ESTIMATED QUARTERLY STATEMENT AND PAYMENT SHALL BE MADE ON OR BEFORE APRIL 30, JULY 31, OCTOBER 31, AND JANUARY 31. FOR A PHYSICIAN OR ENTITY NOT ON A CALENDAR YEAR BASIS, THE ESTIMATED STATEMENT AND PAYMENT SHALL BE MADE ON A QUARTERLY BASIS IN THAT PHYSICIAN'S OR ENTITY'S FISCAL YEAR. THE ESTIMATED PAYMENT MADE WITH EACH QUARTERLY STATEMENT SHALL BE FOR THE ESTIMATED GROSS REVENUE FOR THE QUARTER OR 25% OF THE ESTIMATED ANNUAL ASSESSMENT. THE SECOND, THIRD, AND FOURTH ESTIMATED PAYMENTS IN THE CALENDAR OR FISCAL YEAR SHALL INCLUDE ADJUSTMENTS, IF NECESSARY, TO CORRECT UNDERPAYMENTS OR OVERPAYMENTS FROM PREVIOUS QUARTERLY PAYMENTS IN THE CALENDAR OR FISCAL YEAR TO A REVISED ESTIMATE OF THE ANNUAL ASSESSMENT.

(5) IF THE QUALITY ASSURANCE ASSESSMENT IS IMPOSED UPON GROSS REVENUE REPORTED BY A PHYSICIAN, THEN THAT GROSS REVENUE SHALL NOT OTHERWISE BE SUBJECT TO ASSESSMENT UNDER THIS SECTION. IF THE QUALITY ASSURANCE ASSESSMENT IS IMPOSED UPON GROSS REVENUE REPORTED

BY AN ENTITY RELATED TO A PHYSICIAN, THEN THAT GROSS REVENUE SHALL NOT OTHERWISE BE SUBJECT TO ASSESSMENT UNDER THIS SECTION.

(6) IF A PHYSICIAN OR ENTITY RELATED TO A PHYSICIAN RENDERS PHYSICIAN SERVICES IN THIS STATE AND IN ANOTHER STATE, ONLY THE GROSS REVENUE RECEIVED FOR PHYSICIAN SERVICES PROVIDED IN THIS STATE SHALL BE APPORTIONED TO THIS STATE AND ASSESSED AS PROVIDED UNDER THIS SECTION. IF THE APPORTIONMENT BETWEEN THOSE GROSS REVENUES RECEIVED FOR PHYSICIAN SERVICES PROVIDED IN THIS STATE AND THOSE RECEIVED IN ANOTHER STATE CANNOT BE DETERMINED BY SEPARATE ACCOUNTING METHODS, THE DEPARTMENT SHALL DETERMINE THE AMOUNT OF GROSS REVENUE THAT IS SUBJECT TO ASSESSMENT UNDER THIS SECTION BY MULTIPLYING THE PHYSICIAN'S OR ENTITY'S TOTAL GROSS REVENUE BY A FRACTION, THE NUMERATOR OF WHICH IS THE TOTAL GROSS REVENUE OF THE PHYSICIAN OR ENTITY FOR PROVIDING PHYSICIAN SERVICES IN THIS STATE AND THE DENOMINATOR OF WHICH IS THE TOTAL GROSS REVENUE OF THE PHYSICIAN OR ENTITY FOR PROVIDING PHYSICIAN SERVICES IN THIS STATE AND IN ANY OTHER STATE.

(7) IN COMPUTING THE AMOUNT OF THE QUALITY ASSURANCE ASSESSMENT UNDER THIS SECTION, A PHYSICIAN OR ENTITY RELATED TO A PHYSICIAN MAY DEDUCT THE AMOUNT OF BAD DEBTS FOR PHYSICIAN SERVICES IN THIS STATE FROM HIS OR HER GROSS REVENUE USED FOR THE COMPUTATION OF THE ASSESSMENT IF THE AMOUNT OF THE ASSESSMENT ATTRIBUTABLE TO THE BAD DEBT HAD ALREADY BEEN COLLECTED AND THE BAD DEBT AMOUNT IS ELIGIBLE TO BE CLAIMED OR COULD BE ELIGIBLE TO BE CLAIMED AS A DEDUCTION PURSUANT TO 26 USC 166.

(8) BEGINNING IN FISCAL YEAR 2009-2010, THE DEPARTMENT SHALL INCREASE THE MEDICAID PHYSICIAN SERVICES REIMBURSEMENT RATES FOR

THAT FISCAL YEAR. FOR EACH SUBSEQUENT FISCAL YEAR IN WHICH THE QUALITY ASSURANCE ASSESSMENT FOR PHYSICIANS IS IMPOSED AND COLLECTED, THE DEPARTMENT SHALL MAINTAIN THE INCREASED MEDICAID PHYSICIAN SERVICES REIMBURSEMENT RATES THAT ARE FINANCED BY THE ASSESSMENT. BEGINNING IN FISCAL YEAR 2009-2010, THE DEPARTMENT SHALL DETERMINE HOW MUCH OF THE MONEY REMAINING IN THE PHYSICIAN SERVICES QUALITY ASSURANCE ASSESSMENT FUND MAY BE UTILIZED TO OFFSET ANY DECLINE IN REVENUE IN THE MEDICAID PROGRAM AND TO IMPLEMENT, ADMINISTER, AND ENFORCE THIS SECTION.

(9) THE PHYSICIAN SERVICES QUALITY ASSURANCE ASSESSMENT FUND IS CREATED IN THE STATE TREASURY. THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS FROM ANY SOURCE FOR DEPOSIT INTO THE FUND. THE STATE TREASURER SHALL DIRECT THE INVESTMENT OF THE FUND. THE STATE TREASURER SHALL CREDIT TO THE FUND INTEREST AND EARNINGS FROM FUND INVESTMENTS. MONEY IN THE FUND AT THE CLOSE OF THE FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT LAPSE TO THE GENERAL FUND. THE DEPARTMENT SHALL TRANSMIT ALL MONEY COLLECTED UNDER THIS SECTION AND ALL FEDERAL MATCHING FUNDS ATTRIBUTED TO THAT ASSESSMENT TO THE STATE TREASURY FOR DEPOSIT INTO THE PHYSICIAN SERVICES QUALITY ASSURANCE ASSESSMENT FUND. THE DEPARTMENT IS THE ADMINISTRATOR OF THE PHYSICIAN SERVICES QUALITY ASSURANCE ASSESSMENT FUND FOR AUDITING PURPOSES. THE DEPARTMENT SHALL ADMINISTER THE FUND IN A MANNER THAT COMPLIES WITH FEDERAL REQUIREMENTS NECESSARY TO ASSURE THAT THE QUALITY ASSURANCE ASSESSMENT QUALIFIES FOR FEDERAL MATCHING FUNDS.

(10) IF A PHYSICIAN OR ENTITY RELATED TO A PHYSICIAN FAILS OR REFUSES TO FILE A QUARTERLY OR ANNUAL STATEMENT OR PAY THE

ASSESSMENT IMPOSED UNDER THIS SECTION, THE DEPARTMENT MAY ASSESS THE PHYSICIAN OR ENTITY A PENALTY OF 1% OF THE ASSESSMENT FOR EACH MONTH THAT THE ASSESSMENT AND PENALTY ARE NOT PAID UP TO A MAXIMUM OF 15% OF THE ASSESSMENT. THE DEPARTMENT MAY ALSO REFER FOR COLLECTION TO THE DEPARTMENT OF TREASURY PAST DUE AMOUNTS CONSISTENT WITH SECTION 13 OF 1941 PA 122, MCL 205.13. EACH PHYSICIAN WHO HAS AN OWNERSHIP INTEREST IN AN ENTITY RELATED TO A PHYSICIAN IS JOINTLY AND SEVERALLY LIABLE FOR FILING THE ANNUAL STATEMENTS, ESTIMATED QUARTERLY STATEMENTS, AND ALL OTHER FORMS AND STATEMENTS REQUIRED UNDER THIS SECTION; FOR PAYING THE ASSESSMENT FOR THE ENTITY; AND FOR ANY OTHER REQUIREMENT UNDER THIS SECTION.

(11) THIS SECTION APPLIES TO PHYSICIAN SERVICES PROVIDED BY AN ENTITY RELATED TO A PHYSICIAN THAT IS OWNED IN WHOLE OR IN PART BY A HOSPITAL, A HEALTH MAINTENANCE ORGANIZATION, A NONPROFIT HEALTH CARE CORPORATION, OR ANY OTHER PUBLIC OR PRIVATE ENTITY.

(12) AS USED IN THIS SECTION:

(A) "ENTITY RELATED TO A PHYSICIAN" MEANS AN ORGANIZATION, ASSOCIATION, CORPORATION, PARTNERSHIP, OR OTHER LEGAL ENTITY FORMED BY OR ON BEHALF OF A PHYSICIAN OR PHYSICIANS TO ENGAGE IN THE PRACTICE OF MEDICINE OR OSTEOPATHIC MEDICINE AND SURGERY.

(B) "GROSS REVENUE" MEANS THE AMOUNT RECEIVED OR RECEIVABLE, WHETHER IN CASH OR IN KIND, WITHOUT DEDUCTION, FROM PATIENTS, THIRD-PARTY PAYERS, OR ANY OTHER PERSON FOR PHYSICIAN SERVICES.

(C) "MEDICAID" MEANS THAT TERM AS DEFINED IN SECTION 22207.

(D) "PHYSICIAN" MEANS AN INDIVIDUAL LICENSED UNDER THIS ARTICLE TO ENGAGE IN THE PRACTICE OF MEDICINE OR OSTEOPATHIC MEDICINE AND SURGERY.

(E) "PHYSICIAN SERVICES" MEANS HEALTH CARE SERVICES PROVIDED BY A PHYSICIAN OR BY A PHYSICIAN'S ASSISTANT OR NURSE UNDER THE DIRECTION, SUPERVISION, CONTROL, OR DELEGATORY AUTHORITY OF A PHYSICIAN.