

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 77

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 20199, 21702, and 21703 (MCL 333.20199,
333.21702, and 333.21703), section 21702 as amended by 1994 PA 73
and section 21703 as amended by 2015 PA 155, and by adding sections
21788, 21788a, 21788b, 21788c, 21788d, 21788e, 21788f, 21788g, and
21788i.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20199. (1) Except as **otherwise** provided in ~~subsection (2)~~
2 ~~or section 20142,~~ **this article**, a person who violates this article
3 or a rule promulgated or an order issued under this article is
4 guilty of a misdemeanor, punishable by fine of not more than
5 \$1,000.00 for each day the violation continues or, ~~in case of~~ **for** a

1 violation of sections 20551 to 20554, a fine of not more than
2 \$1,000.00 for each occurrence.

3 (2) A person who violates sections 20181 to 20184 is guilty of
4 a misdemeanor ~~—~~punishable by imprisonment for not more than 6
5 months ~~—~~or a fine of not more than \$2,000.00, or both.

6 Sec. 21702. (1) "Discharge" means the voluntary or involuntary
7 movement of a patient out of a nursing home regardless of the
8 individual's destination or reason for the movement.

9 (2) **"Electronic monitoring" means the placement and use of an**
10 **electronic monitoring device in a resident's room pursuant to this**
11 **part.**

12 (3) **"Electronic monitoring device" means a camera or other**
13 **device that captures, records, or broadcasts audio or video, or**
14 **both, or logs events or occurrences in accordance with the health**
15 **insurance portability and accountability act of 1996, Public Law**
16 **104-191, and is installed in a resident's room to monitor**
17 **activities occurring in the room. Electronic monitoring device**
18 **includes, but is not limited to, a monitoring system, video**
19 **surveillance camera, web-based camera, or video phone that is**
20 **installed in the room of a resident. An electronic monitoring**
21 **device may be an interactive or recording device.**

22 (4) ~~(2)~~—"Full-time" means being usually present in the nursing
23 home or conducting or participating in activities directly related
24 to the nursing home during the normal 40-hour business week.

25 (5) ~~(3)~~—"Involuntary transfer" means a transfer not agreed to
26 in writing by the patient or, in the case of a plenary
27 guardianship, by the patient's legal guardian.

28 (6) ~~(4)~~—"Medicaid" means the program for medical assistance
29 established under title XIX of the social security act, ~~chapter~~

~~531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, and 1396i to 1396u, 42 USC 1396 to 1396w-5, and administered by the department of social health and human services under the social welfare act, Act No. 280 of the Public Acts of 1939, being sections 400.1 to 400.119b of the Michigan Compiled Laws. 1939 PA 280, MCL 400.1 to 400.119b.~~

(7) ~~(5)~~ "Medical reasons" means a medical justification for either of the following:

(a) The transfer or discharge of a patient in accord with the written orders of the attending physician that is written into the patient's clinical record by the physician in the progress notes.

(b) The transfer or discharge of a patient who is a ~~medicaid~~ **Medicaid** recipient due to a change in level of care required by the patient and the fact that the nursing home or nursing care facility is not certified to provide the needed level of care.

(8) ~~(6)~~ "Medicare" means that term as defined in section 2701.

(9) ~~(7)~~ "Modification of a license" means an action by the department to alter the number of beds, the levels of care, the portions of the physical plant that may be operated or maintained by a licensee in a particular nursing home, or to restrict the nursing home from engaging in activity that violates this article or a rule promulgated under this article.

(10) ~~(8)~~ "Negative case action" means an action taken by the department of social services to deny an application for medical assistance, cancel medical assistance, or reduce medical assistance coverage.

(11) ~~(9)~~ "Nonpayment" means:

(a) Failure to collect from the patient or any other source the full amount of the facility charges to a ~~nonmedicaid-non-~~ **Medicaid** patient based on a written contract signed on or after

1 that patient's admission to the facility.

2 (b) Failure to collect a ~~medicaid~~ **Medicaid** patient's
3 stipulated contribution toward his or her care.

4 **(12) "Notification and consent form" means the form required**
5 **to be prescribed by the department under section 21788b.**

6 **(13) ~~(10)~~** "Private pay rate" means the amount charged by a
7 nursing home for the care of a patient who is not entitled to state
8 or federal benefits for that patient's nursing home care.

9 Sec. 21703. (1) "Patient" means a resident.

10 (2) "Patient's representative", ~~or~~ "resident's
11 representative", **or "roommate's representative"** means a person,
12 other than the licensee or an employee or person having a direct or
13 indirect ownership interest in the nursing home, designated in
14 writing by a resident or a resident's guardian for a specific,
15 limited purpose or for general purposes, or, if a written
16 designation of a representative is not made, the guardian of the
17 resident.

18 (3) "Relocation" means the movement of a resident from 1 bed
19 to another or from 1 room to another within the same nursing home
20 or within a certified distinct part of a nursing home.

21 (4) "Resident" means an individual who receives care or
22 services at a nursing home.

23 (5) "Transfer" means the movement of a resident from 1 nursing
24 home to another nursing home or from 1 certified distinct part of a
25 nursing home to another certified distinct part of the same nursing
26 home.

27 (6) "Welfare" means, with reference to a resident, the
28 physical, emotional, or social well-being of a resident in a
29 nursing home, including a resident awaiting transfer or discharge,

1 as documented in the resident's clinical record by a licensed or
2 certified health care professional.

3 Sec. 21788. (1) Subject to the requirements of this part, a
4 nursing home that receives from a resident or resident's
5 representative a written request for electronic monitoring on a
6 notification and consent form shall permit the resident or the
7 resident's representative to monitor the resident in the resident's
8 room through the use of an electronic monitoring device.

9 (2) This part does not allow the use of an electronic
10 monitoring device to capture, record, or broadcast audio, to take
11 still photographs, or for the nonconsensual interception of private
12 communications.

13 (3) This part does not alter, abrogate, or limit a resident's
14 right to otherwise use a device to record audio or video, or both,
15 in the resident's room pursuant to the law.

16 Sec. 21788a. (1) Except as otherwise provided in this section,
17 a resident must consent to electronic monitoring in the resident's
18 room in writing on a notification and consent form.

19 (2) The resident's representative may consent to electronic
20 monitoring on behalf of the resident if all of the following
21 requirements are met:

22 (a) An individual licensed or otherwise authorized to engage
23 in a health profession under part 170 or 175 determines that the
24 resident currently lacks the ability to understand and appreciate
25 the nature and consequences of electronic monitoring.

26 (b) The resident's representative explains all of the
27 following to the resident:

28 (i) The type of electronic monitoring to be used.

29 (ii) The standard conditions or restrictions that may be placed

1 on the use of the electronic monitoring device.

2 (iii) The persons with whom the recording may be shared.

3 (iv) The resident's ability to decline all recording.

4 (c) After explaining the items required in subdivision (b),
5 the resident's representative asks the resident if the resident
6 wants electronic monitoring to be conducted. The resident's
7 response must be documented on the notification and consent form.

8 (d) The resident does not affirmatively object to electronic
9 monitoring when asked under subdivision (c). For purposes of this
10 subdivision, a resident affirmatively objects if the resident
11 orally, visually, or through the use of auxiliary aids or services
12 declines electronic monitoring.

13 (3) If a resident shares a room with another resident, before
14 conducting electronic monitoring, the consent of the resident's
15 roommate or, subject to subsection (2), the roommate's
16 representative must be obtained in writing on the notification and
17 consent form.

18 (4) Consent under this section may include any conditions of
19 the individual's choosing, including, but not limited to, the list
20 of standard conditions or restrictions described in section 21788b.
21 Regardless of whether consent is subject to any conditions, the
22 electronic monitoring device may be turned off, the visual
23 recording component of the electronic device may be blocked, or a
24 curtain may be used to screen an individual from the visual
25 recording component of the electronic monitoring device during care
26 according to a plan of care or at any time at the request of the
27 resident or roommate, or the resident's or roommate's
28 representative if subsection (2) applies. The nursing home shall
29 comply with a plan of care or a request described in this

1 subsection. The nursing home shall ensure that its staff are
2 familiar with the requirements of this subsection and follow a plan
3 of care or request described in this subsection, including by
4 assisting a resident or resident's roommate, as necessary, in
5 accordance with the plan of care or request.

6 (5) The resident or roommate, or the resident's or roommate's
7 representative if subsection (2) applies, may withdraw his or her
8 consent at any time by giving written notice to the nursing home
9 and any other resident who resides in the room. If consent is
10 withdrawn under this subsection or if a new roommate moves into the
11 shared room and consent cannot be obtained from the new roommate or
12 the roommate's representative, 1 of the following must occur:

13 (a) Unless subdivision (b) applies, the resident or the
14 resident's representative shall turn off the electronic monitoring
15 device within 24 hours and remove the electronic monitoring device
16 from the room within 7 days. If the resident or the resident's
17 representative does not turn off or remove the electronic
18 monitoring device within the timeframe required under this
19 subdivision, the nursing home may turn off or remove the electronic
20 monitoring device.

21 (b) If the nursing home provides electronic monitoring
22 services to the resident under section 21788c(4), the nursing home
23 shall turn off the electronic monitoring device within 24 hours and
24 remove the electronic monitoring device from the room within 7
25 days.

26 (6) A nursing home shall make a reasonable effort to allow a
27 resident to change rooms if consent cannot be obtained from or is
28 withdrawn by a roommate or the roommate's representative. If a
29 resident chooses to reside in a private room in order to

1 accommodate the use of an electronic monitoring device, the
2 resident must pay the private room rate. If a nursing home is
3 unable to accommodate a resident's request to change rooms, the
4 nursing home shall reevaluate the request every 2 weeks until the
5 request is fulfilled.

6 Sec. 21788b. (1) A resident or resident's representative who
7 wishes to install an electronic monitoring device shall make the
8 request to the nursing home in writing on a notification and
9 consent form prescribed by the department.

10 (2) The notification and consent form must include, at a
11 minimum, all of the following information:

12 (a) The resident's signed consent to electronic monitoring or,
13 if section 21788a(2) applies, the signed consent of the resident's
14 representative.

15 (b) If the resident shares a room with another resident, the
16 roommate's signed consent to electronic monitoring or, if section
17 21788a(2) applies, the signed consent of the roommate's
18 representative.

19 (c) The type of electronic monitoring device to be used or, if
20 the resident or resident's representative plans to use electronic
21 monitoring services provided by the nursing home under section
22 21788c(4), a statement to that effect.

23 (d) The proposed date of installation for scheduling purposes.

24 (e) A copy of any contract for maintenance of the electronic
25 monitoring device by another person.

26 (f) A list of standard conditions or restrictions that the
27 resident or a roommate may elect to place on the use of the
28 electronic monitoring device, including, but not limited to, all of
29 the following:

1 (i) Prohibiting broadcasting of video.

2 (ii) Turning off the electronic monitoring device or blocking
3 the visual recording component of the electronic monitoring device
4 for the duration of an exam or procedure by a health care
5 professional.

6 (iii) Turning off the electronic monitoring device or blocking
7 the visual recording component of the electronic monitoring device
8 while dressing or bathing is performed.

9 (iv) Turning off the electronic monitoring device for the
10 duration of a visit with a spiritual advisor, ombudsman, attorney,
11 financial planner, intimate partner, or other visitor.

12 (g) Any other condition or restriction elected by the resident
13 or roommate on the use of the electronic monitoring device.

14 (h) An explanation of the right to report suspected abuse or
15 neglect based on a video recording created by an electronic
16 monitoring device to the nursing home, the long-term care ombudsman
17 program, or the department. The explanation under this subdivision
18 must include telephone numbers for the long-term care ombudsman
19 program and the department. As used in this subdivision, "long-term
20 care ombudsman program" means the long-term care ombudsman program
21 established pursuant to section 6(aa) of the older Michiganians
22 act, 1981 PA 180, MCL 400.586.

23 (i) A statement that an individual is advised to report
24 suspected abuse or neglect after viewing the recording on which the
25 suspected abuse or neglect is based.

26 (j) An acknowledgement of the explanation of rights described
27 in subdivision (h) and the statement described in subdivision (i)
28 signed by the resident or, if section 21788a(2) applies, the
29 resident's representative.

1 (3) The nursing home shall place a copy of the completed
2 notification and consent form in the resident's and any roommate's
3 clinical record and provide a copy of the notification and consent
4 form to the resident and any roommate.

5 (4) The department shall prescribe the notification and
6 consent form not later than 60 days after the effective date of the
7 amendatory act that added this section.

8 (5) If an electronic monitoring device is installed or used
9 without a completed notification and consent form, a video or audio
10 recording created by the electronic monitoring device is
11 inadmissible as evidence in a civil action against the nursing
12 home.

13 Sec. 21788c. (1) Except as otherwise provided in subsection
14 (3)(b) or (4), if a resident or resident's representative chooses
15 to conduct electronic monitoring, the resident or resident's
16 representative shall pay for all costs of the electronic
17 monitoring, including, but not limited to, all of the following:

18 (a) The purchase cost of the electronic monitoring device.

19 (b) Installation costs.

20 (c) Maintenance costs.

21 (d) Activation costs.

22 (e) Removal costs, including, but not limited to, deactivation
23 costs and cancellation fees.

24 (2) If a resident or resident's representative chooses to
25 install an electronic monitoring device that uses internet
26 technology for visual monitoring, the resident or resident's
27 representative is responsible for contracting with an internet
28 service provider or paying any additional costs incurred by the
29 nursing home for use of the nursing home's internet provider to

1 conduct the electronic monitoring.

2 (3) A nursing home shall make reasonable accommodation for
3 electronic monitoring, including, but not limited to, by providing
4 both of the following:

5 (a) A reasonably secure place to locate the electronic
6 monitoring device. An electronic monitoring device must be placed
7 in a conspicuously visible location in the room.

8 (b) Access to a power source for the electronic monitoring
9 device. A nursing home shall not charge the resident a fee for the
10 cost of electricity used by an electronic monitoring device.

11 (4) Subject to the requirements of this part, a nursing home
12 may provide electronic monitoring services to a resident or
13 resident's representative, including, but not limited to, providing
14 electronic monitoring on a subscription basis. If a resident or
15 resident's representative chooses to receive electronic monitoring
16 services from a nursing home, the resident or resident's
17 representative shall pay the amount charged by the nursing home for
18 the services as reflected in a written agreement with the nursing
19 home. In providing electronic monitoring services under this
20 subsection, a nursing home may contract with a third-party video
21 monitoring company to provide video monitoring services if both of
22 the following requirements are met:

23 (a) The third-party video monitoring company provides video
24 monitoring through live-streaming, nonrecording video systems that
25 include video privacy features and event log capabilities.

26 (b) The live-stream video is monitored 24 hours a day, 7 days
27 a week for resident and staff safety by 1 or more trained staff
28 members.

29 (5) A nursing home that provides electronic monitoring

1 services under subsection (4) shall not require a resident or
2 resident's representative to use those services to receive
3 electronic monitoring.

4 (6) All electronic monitoring device installations and
5 supporting services must comply with the requirements of the
6 National Fire Protection Association (NFPA) 101 Life Safety Code
7 (2000 edition).

8 Sec. 21788d. (1) If a resident of a nursing home is
9 electronically monitored, a sign must be clearly and conspicuously
10 posted at all building entrances accessible to visitors. The sign
11 must be entitled "Electronic Monitoring" and must state, in large,
12 easy-to-read type, "The rooms of some residents may be monitored
13 electronically by or on behalf of the residents."

14 (2) In addition to the language required under subsection (1),
15 the signage required under this section must include a warning to
16 visitors that they may be electronically monitored, that recordings
17 made by an electronic monitoring device may be disclosed, and that
18 they should not have an expectation of privacy.

19 (3) The nursing home is responsible for installing and
20 maintaining the signage required under this section.

21 Sec. 21788e. (1) A nursing home shall not refuse to admit an
22 individual as a resident of or remove a resident from the nursing
23 home because of a request to install an electronic monitoring
24 device.

25 (2) A nursing home shall not require an applicant to agree to
26 forego electronic monitoring as a condition of admission.

27 (3) A nursing home shall not otherwise retaliate against a
28 resident because of a request to install an electronic monitoring
29 device.

1 Sec. 21788f. (1) An electronic monitoring device must include
2 a time and date stamp on all video recorded.

3 (2) Subject to the Michigan rules of evidence and except as
4 otherwise provided in this part, a video recording created by an
5 electronic monitoring device under this part is admissible in a
6 civil, criminal, or administrative proceeding in this state.

7 (3) A video recording created by an electronic monitoring
8 device under this part must not be used as evidence in a civil,
9 criminal, or administrative proceeding in this state that is
10 initiated more than 8 years after the date of the video recording.

11 Sec. 21788g. (1) A video recording created by an electronic
12 monitoring device under this part belongs to the resident.

13 (2) A nursing home is not civilly or criminally liable for the
14 inadvertent or intentional disclosure of a recording by a resident
15 or a resident's representative for a purpose not authorized by law.

16 (3) If suspected abuse or neglect of a resident based on a
17 video or audio recording created by an electronic monitoring device
18 is reported to the nursing home and the nursing home requests a
19 copy of the relevant recording, the individual in possession of the
20 recording shall provide a copy to the nursing home. The nursing
21 home shall pay all reasonable costs incurred by the individual in
22 providing the copy.

23 Sec. 21788i. (1) The department may promulgate rules in
24 consultation with the long-term care ombudsman program to establish
25 all of the following:

26 (a) The procedure by which a resident or a resident's
27 representative must submit a notification and consent form to a
28 nursing home as required under section 21788b to begin electronic
29 monitoring.

1 (b) Requirements for obtaining and documenting a determination
2 by an individual licensed in a health profession under part 170 or
3 175 that a resident currently lacks the ability to understand and
4 appreciate the nature and consequences of electronic monitoring as
5 required for the application of section 21788a(2).

6 (c) The process a resident or resident's representative must
7 follow to obtain consent to electronic monitoring from the
8 resident's roommate or the roommate's representative as required
9 under section 21788a(3).

10 (d) Requirements for retention and distribution of the
11 completed notification and consent form under section 21788b(3).

12 (e) Standards for reasonable accommodation by the nursing home
13 to allow for the installation, maintenance, and use of an
14 electronic monitoring device as required under section 21788c(3).

15 (f) Requirements and procedures for turning off an electronic
16 monitoring device or audio recording, blocking the visual recording
17 component of an electronic monitoring device, or using a curtain to
18 screen an individual from the visual recording component of an
19 electronic monitoring device pursuant to a condition on consent,
20 request, or plan of care under section 21788a(4).

21 (g) The procedure a resident, resident's representative,
22 roommate, or roommate's representative must follow to withdraw his
23 or her consent to electronic monitoring under section 21788a(5).

24 (h) Requirements and procedures for turning off an electronic
25 monitoring device and removing an electronic monitoring device when
26 consent is withdrawn or cannot be obtained from a new roommate or
27 the roommate's representative under section 21788a(5).

28 (i) Requirements and procedures a nursing home must follow in
29 installing and maintaining the signage required under section

1 21788d.

2 (2) In promulgating rules under this section, the department
3 shall consider similar rules of other states.

4 (3) As used in this section, "long-term care ombudsman
5 program" means the long-term care ombudsman program established
6 pursuant to section 6(aa) of the older Michiganians act, 1981 PA
7 180, MCL 400.586.

8 Enacting section 1. This amendatory act takes effect June 1,
9 2021.