

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,
21788h, 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

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

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

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

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

(3) "Electronic monitoring device" means a camera or other device that captures, records, or broadcasts audio or video, or both, and is installed in a resident's room to monitor activities occurring in the room. Electronic monitoring device includes, but is not limited to, a monitoring system, video surveillance camera, web-based camera, or video phone that is installed in the room of a resident. An electronic monitoring device may be an interactive or recording device.

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

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

(6) ~~+(4)~~—"Medicaid" means the program for medical assistance 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~~

1 **health and human** services under the social welfare act, ~~Act No. 280~~
 2 ~~of the Public Acts of 1939, being sections 1939 PA 280, MCL 400.1~~
 3 ~~to 400.119b. of the Michigan Compiled Laws.~~

4 (7) ~~(5)~~—"Medical reasons" means a medical justification for
 5 either of the following:

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

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

13 (8) ~~(6)~~—"Medicare" means that term as defined in section 2701.

14 (9) ~~(7)~~—"Modification of a license" means an action by the
 15 department to alter the number of beds, the levels of care, the
 16 portions of the physical plant that may be operated or maintained
 17 by a licensee in a particular nursing home, or to restrict the
 18 nursing home from engaging in activity that violates this article
 19 or a rule promulgated under this article.

20 (10) ~~(8)~~—"Negative case action" means an action taken by the
 21 department of social services to deny an application for medical
 22 assistance, cancel medical assistance, or reduce medical assistance
 23 coverage.

24 (11) ~~(9)~~—"Nonpayment" means:

25 (a) Failure to collect from the patient or any other source
 26 the full amount of the facility charges to a ~~nonmedicaid non-~~
 27 **Medicaid** patient based on a written contract signed on or after
 28 that patient's admission to the facility.

29 (b) Failure to collect a ~~medicaid~~ **Medicaid** patient's

1 stipulated contribution toward his or her care.

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

4 **(13) ~~(10)~~**—"Private pay rate" means the amount charged by a
 5 nursing home for the care of a patient who is not entitled to state
 6 or federal benefits for that patient's nursing home care.

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

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

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

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

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

25 (6) "Welfare" means, with reference to a resident, the
 26 physical, emotional, or social well-being of a resident in a
 27 nursing home, including a resident awaiting transfer or discharge,
 28 as documented in the resident's clinical record by a licensed or
 29 certified health care professional.

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

7 (2) This part does not allow the use of an electronic
8 monitoring device to take still photographs or for the
9 nonconsensual interception of private communications.

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

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

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

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

23 (b) The resident's representative explains all of the
24 following to the resident:

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

26 (ii) The standard conditions or restrictions that may be placed
27 on the use of the electronic monitoring device.

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

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

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

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

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

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

1 assisting a resident or resident's roommate, as necessary, in
2 accordance with the plan of care or request.

3 (5) The resident or roommate, or the resident's or roommate's
4 representative if subsection (2) applies, may withdraw his or her
5 consent at any time by giving written notice to the nursing home
6 and any other resident who resides in the room. If consent is
7 withdrawn under this subsection or if a new roommate moves into the
8 shared room and consent cannot be obtained from the new roommate or
9 the roommate's representative, the resident or the resident's
10 representative shall turn off the electronic monitoring device
11 within 24 hours and remove the electronic monitoring device from
12 the room within 7 days. If the resident or the resident's
13 representative does not turn off or remove the electronic
14 monitoring device within the timeframe required under this
15 subsection, the nursing home may turn off or remove the electronic
16 monitoring device.

17 (6) A nursing home shall make a reasonable effort to allow a
18 resident to change rooms if consent cannot be obtained from or is
19 withdrawn by a roommate or the roommate's representative. If a
20 resident chooses to reside in a private room in order to
21 accommodate the use of an electronic monitoring device, the
22 resident must pay the private room rate. If a nursing home is
23 unable to accommodate a resident's request to change rooms, the
24 nursing home shall reevaluate the request every 2 weeks until the
25 request is fulfilled.

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

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

3 (a) The resident's signed consent to electronic monitoring or,
4 if section 21788a(2) applies, the signed consent of the resident's
5 representative.

6 (b) If the resident shares a room with another resident, the
7 roommate's signed consent to electronic monitoring or, if section
8 21788a(2) applies, the signed consent of the roommate's
9 representative.

10 (c) The type of electronic monitoring device to be used.

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

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

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

18 (i) Prohibiting audio recording.

19 (ii) Prohibiting broadcasting of audio or video.

20 (iii) Turning off the electronic monitoring device or blocking
21 the visual recording component of the electronic monitoring device
22 for the duration of an exam or procedure by a health care
23 professional.

24 (iv) Turning off the electronic monitoring device or blocking
25 the visual recording component of the electronic monitoring device
26 while dressing or bathing is performed.

27 (v) Turning off the electronic monitoring device for the
28 duration of a visit with a spiritual advisor, ombudsman, attorney,
29 financial planner, intimate partner, or other visitor.

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

4 (h) An explanation of the right to report suspected abuse or
5 neglect based on a video or audio recording created by an
6 electronic monitoring device to the nursing home, the long-term
7 care ombudsman program, or the department and the right to
8 mediation through the long-term care ombudsman program under
9 section 21788h. The explanation under this subdivision must include
10 telephone numbers for the long-term care ombudsman program and the
11 department. As used in this subdivision, "long-term care ombudsman
12 program" means the long-term care ombudsman program established
13 pursuant to section 6(aa) of the older Michiganians act, 1981 PA
14 180, MCL 400.586.

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

18 (j) An acknowledgement of the explanation of rights described
19 in subdivision (h) and the statement described in subdivision (i)
20 signed by the resident or, if section 21788a(2) applies, the
21 resident's representative.

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

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

29 (5) If an electronic monitoring device is installed or used

1 without a completed notification and consent form, a video or audio
2 recording created by the electronic monitoring device is
3 inadmissible as evidence in a civil action against the nursing
4 home.

5 Sec. 21788c. (1) Except as otherwise provided in subsection
6 (3) (b), if a resident or resident's representative chooses to
7 conduct electronic monitoring, the resident or resident's
8 representative shall pay for all costs of the electronic
9 monitoring, including, but not limited to, all of the following:

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

11 (b) Installation costs.

12 (c) Maintenance costs.

13 (d) Activation costs.

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

16 (2) If a resident or resident's representative chooses to
17 install an electronic monitoring device that uses internet
18 technology for visual or audio monitoring, the resident or
19 resident's representative is responsible for contracting with an
20 internet service provider or paying any additional costs incurred
21 by the nursing home for use of the nursing home's internet provider
22 to conduct the electronic monitoring.

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

26 (a) A reasonably secure place to locate the electronic
27 monitoring device. An electronic monitoring device must be placed
28 in a conspicuously visible location in the room.

29 (b) Access to a power source for the electronic monitoring

1 device. A nursing home shall not charge the resident a fee for the
2 cost of electricity used by an electronic monitoring device.

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

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

13 (2) A sign must be clearly and conspicuously posted at the
14 entrance to a resident's room where electronic monitoring is being
15 conducted. The sign must state, in large, easy-to-read type, "This
16 room is electronically monitored."

17 (3) The signage required under this section must include a
18 warning to visitors that they may be electronically monitored, that
19 recordings made by an electronic monitoring device may be
20 disclosed, and that they should not have an expectation of privacy.

21 (4) The nursing home is responsible for installing and
22 maintaining the signage required under this section.

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

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

29 (3) A nursing home shall not otherwise retaliate against a

1 resident because of a request to install an electronic monitoring
2 device.

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

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

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

14 Sec. 21788g. (1) A video or audio recording created by an
15 electronic monitoring device under this part belongs to the
16 resident.

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

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

27 (4) If suspected abuse or neglect of a resident based on a
28 video or audio recording created by an electronic monitoring device
29 is reported to the long-term care ombudsman program and the

1 resident or resident's representative chooses to enter into
2 mediation with the nursing home through the long-term care
3 ombudsman program under section 21788h, a copy of the recording
4 must be provided to both the nursing home and the long-term care
5 ombudsman program.

6 (5) As used in this section, "long-term care ombudsman
7 program" means the long-term care ombudsman program established
8 pursuant to section 6(aa) of the older Michiganians act, 1981 PA
9 180, MCL 400.586.

10 Sec. 21788h. (1) The long-term care ombudsman program may loan
11 an electronic monitoring device and related equipment to a resident
12 or the resident's representative for a period of 30 days if the
13 resident is eligible for Medicaid.

14 (2) The long-term care ombudsman program may extend a loan
15 under this section beyond the original 30-day period at the request
16 of the resident or the resident's representative.

17 (3) Electronic monitoring devices and related equipment loaned
18 under this section must be provided free of charge.

19 (4) A resident or the resident's representative must sign a
20 loan program contract to receive a loan under this section. The
21 department shall prescribe the loan program contract not later than
22 60 days after the effective date of the amendatory act that added
23 this section. The loan program contract prescribed under this
24 section must describe the rights and obligations of the parties to
25 the contract.

26 (5) The department shall promulgate rules to implement the
27 loan program under this section, including rules regarding all of
28 the following:

29 (a) The application process.

1 (b) The criteria for receipt of a loan, including execution of
2 a loan program contract.

3 (c) Training to be provided to a resident or resident's
4 representative on the use of the loaned equipment.

5 (d) Conditions on the use of the loaned equipment.

6 (e) The process and criteria for extending a loan beyond the
7 original 30-day period.

8 (f) Requirements regarding the return of the equipment to the
9 long-term care ombudsman program.

10 (g) Remedies of the long-term care ombudsman program if
11 equipment is not returned.

12 (6) The long-term care ombudsman program may act as a mediator
13 and provide mediation to resolve a dispute between a nursing home
14 and a resident or resident's representative. The department may
15 promulgate rules to implement the mediation program under this
16 subsection.

17 (7) As used in this section:

18 (a) "Long-term care ombudsman program" means the long-term
19 care ombudsman program established pursuant to section 6(aa) of the
20 older Michiganians act, 1981 PA 180, MCL 400.586.

21 (b) "Mediation" means a voluntary process in which a mediator
22 facilitates communications between parties, assists in identifying
23 issues, and helps explore solutions to promote mutually acceptable
24 settlement.

25 Sec. 21788i. (1) The department may promulgate rules to
26 establish all of the following:

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

1 monitoring.

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

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

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

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

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

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

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

29 (i) Requirements and procedures a nursing home must follow in

1 installing and maintaining the signage required under section
2 21788d.

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

5 (3) Notwithstanding any provision to the contrary in this act,
6 the department shall not promulgate rules regarding electronic
7 monitoring except as allowed under this section and section 21788h.

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