



HOUSE BILL No. 5432

March 23 1994 Introduced by Reps Clack Bennane and Pitoniak and referred to the Committee on Public Health

A bill to amend sections 20201, 20203, 21771, and 21799c of Act No 368 of the Public Acts of 1978, entitled as amended 'Public health code,' section 20201 as amended by Act No 354 of the Public Acts of 1982, being sections 333 20201, 333 20203, 333 21771, and 333 21799c of the Michigan Compiled Laws

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 20201, 20203, 21771, and 21799c of Act
2 No 368 of the Public Acts of 1978, section 20201 as amended by
3 Act No 354 of the Public Acts of 1982, being sections 333 20201,
4 333 20203, 333 21771, and 333 21799c of the Michigan Compiled
5 Laws, are amended to read as follows

6 Sec 20201 (1) ~~A~~ SUBJECT TO SECTION 20203, A health
7 facility or agency ~~which~~ THAT provides services directly to
8 patients or residents and ~~which~~ is licensed under this article

1 shall adopt a policy describing the rights and responsibilities
2 of patients or residents admitted to the health facility or
3 agency Except for a licensed health maintenance organization,
4 which shall comply with section 21086, ~~the policy shall be~~
5 ~~posted~~ A HEALTH FACILITY OR AGENCY SHALL POST THE POLICY at a
6 public place in the HEALTH facility OR AGENCY and shall ~~be~~
7 ~~provided~~ PROVIDE A COPY OF THE POLICY to each member of ~~the~~
8 ~~facility~~ ITS staff ~~Patients~~ A HEALTH FACILITY OR AGENCY
9 SHALL TREAT PATIENTS or residents ~~shall be treated~~ in accord-
10 ance with the policy

11 (2) The policy describing the rights and responsibilities of
12 patients or residents shall include, ~~as~~ AT a minimum, ALL OF
13 THE FOLLOWING

14 (a) A patient or resident will not be denied appropriate
15 care on the basis of race, religion, color, national origin sex,
16 age, handicap, marital status, sexual preference, or source of
17 payment

18 (b) An individual who is or has been a patient or resident
19 is entitled to inspect or receive for a reasonable fee, a copy
20 of his or her medical record upon request A third party shall
21 not be given a copy of the patient's or resident's medical record
22 without prior authorization of the patient

23 (c) A patient or resident is entitled to confidential treat-
24 ment of personal and medical records, and may refuse their
25 release to a person outside the facility except as required
26 because of a transfer to another health care facility or as
27 required by law or third party payment contract

1 (d) A patient or resident is entitled to privacy, to the
2 extent feasible in treatment and in caring for personal needs
3 with consideration respect, and full recognition of his or her
4 dignity and individuality

5 (e) A patient or resident is entitled to receive adequate
6 and appropriate care, and to receive, from the appropriate indi-
7 vidual within the HEALTH facility OR AGENCY, information about
8 his or her medical condition proposed course of treatment, and
9 prospects for recovery, in terms that the patient or resident can
10 understand, unless medically contraindicated as documented by the
11 attending physician in the PATIENT'S OR RESIDENT'S medical
12 record

13 (f) A patient or resident is entitled to refuse treatment to
14 the extent provided by law and to be informed of the consequences
15 of that refusal When a refusal of treatment prevents a health
16 facility OR AGENCY or its staff from providing appropriate care
17 according to ethical and professional standards the relationship
18 with the patient or resident may be terminated upon reasonable
19 notice

20 (g) A patient or resident is entitled to exercise his or her
21 rights as a patient or resident and as a citizen, and to this end
22 may present grievances or recommend changes in policies and serv-
23 ices on behalf of himself or herself or others to the HEALTH
24 facility OR AGENCY staff, to governmental officials, or to
25 another person of his or her choice within or outside the HEALTH
26 facility OR AGENCY, free from restraint, interference, coercion,
27 discrimination, or reprisal A patient or resident is entitled

1 to information about the HEALTH facility s OR AGENCY S policies
2 and procedures for initiation review and resolution of patient
3 or resident complaints

4 (h) A patient or resident is entitled to information con-
5 cerning an experimental procedure proposed as a part of his or
6 her care and ~~shall have~~ HAS the right to refuse to participate
7 in the experiment without jeopardizing his or her continuing
8 care

9 (i) A patient or resident is entitled to receive and examine
10 an explanation of his or her bill regardless of the source of
11 payment and to receive, upon request, information relating to
12 financial assistance available through the HEALTH facility OR
13 AGENCY

14 (j) A patient or resident is entitled to know who is respon-
15 sible for and who is providing his or her direct care, is enti-
16 tled to receive information concerning his or her continuing
17 health needs and alternatives for meeting those needs, and to be
18 involved in his or her discharge planning, if appropriate

19 (k) A patient or resident is entitled to associate and have
20 private communications and consultations with his or her phys1-
21 cian, attorney, or any other person of his or her choice and to
22 send and receive personal mail unopened on the same day it is
23 received at the health facility or agency unless medically con-
24 traindicated as documented by the attending physician in the
25 PATIENT S OR RESIDENT S medical record A patient s or
26 resident s civil and religious liberties, including the right to
27 independent personal decisions and the right to knowledge of

1 available choices shall not be infringed and the HEALTH facility
2 OR AGENCY shall encourage and assist in the fullest possible
3 exercise of these rights A patient or resident may meet with,
4 and participate in, the activities of social, religious, and com-
5 munity groups at his or her discretion, unless medically contra-
6 indicated as documented by the attending physician in the
7 PATIENT S OR RESIDENT S medical record

8 (4) A patient or resident is entitled to be free from mental
9 and physical abuse, SEXUAL CONTACT WITHOUT THE PATIENT S OR
10 RESIDENT'S CONSENT, and from physical and chemical restraints,
11 except those restraints authorized in writing by the attending
12 physician for a specified and limited time or as are necessitated
13 by an emergency to protect the patient or resident from injury to
14 self or others, in which case the restraint may only be applied
15 by a qualified professional who shall set forth in writing the
16 circumstances requiring the use of restraints and who shall
17 promptly report the action to the attending physician In case
18 of a chemical restraint a physician shall be consulted within 24
19 hours after the commencement of the restraint AS USED IN THIS
20 SUBDIVISION, SEXUAL CONTACT MEANS THAT TERM AS DEFINED IN
21 SECTION 520A OF THE MICHIGAN PENAL CODE ACT NO 328 OF THE
22 PUBLIC ACTS OF 1931, BEING SECTION 750 520A OF THE MICHIGAN
23 COMPILED LAWS, AND INCLUDES SEXUAL PENETRATION AS THAT TERM IS
24 DEFINED IN SECTION 520A OF ACT NO 328 OF THE PUBLIC ACTS OF
25 1931

1 (m) A patient or resident is entitled to be free from
2 performing services for the HEALTH facility OR AGENCY that are
3 not included for therapeutic purposes in the plan of care

4 (n) A patient or resident is entitled to information about
5 the health facility OR AGENCY rules and regulations affecting
6 patient or resident care and conduct

7 (3) The following additional requirements for the policy
8 described in subsection (2) ~~shall~~ apply to licensees under
9 parts 213 and 217

10 (a) The policy shall be provided to each nursing home
11 patient or home for the aged resident upon admission, and the
12 staff of the ~~facility~~ NURSING HOME OR HOME FOR THE AGED shall
13 be trained and involved in the implementation of the policy

14 (b) Each nursing home patient may associate and communicate
15 privately with persons of his or her choice Reasonable, regular
16 visiting hours, which shall be not less than 8 hours per day, and
17 which shall take into consideration the special circumstances of
18 each visitor, shall be established for patients to receive
19 visitors A NURSING HOME patient may be visited by the patient's
20 attorney or by representatives of the departments named in sec-
21 tion 20156, during other than established visiting hours

22 Reasonable privacy shall be afforded for visitation of a NURSING
23 HOME patient who shares a room with another NURSING HOME

24 patient Each NURSING HOME patient shall have reasonable access
25 to a telephone A married nursing home patient or home for the
26 aged resident is entitled to meet privately with his or her
27 spouse in a room which assures privacy If both spouses are

1 PATIENTS OR residents in the same ~~facility~~ NURSING HOME OR HOME
2 FOR THE AGED, they are entitled to share a room unless medically
3 contraindicated and documented by the attending physician in the
4 PATIENT'S OR RESIDENT'S medical record

5 (c) A nursing home patient or home for the aged resident is
6 entitled to retain and use personal clothing and possessions as
7 space permits, unless to do so would infringe upon the rights of
8 other NURSING HOME patients or HOME FOR THE AGED residents, or
9 unless medically contraindicated as documented by the attending
10 physician in the PATIENT S OR RESIDENT S medical record Each
11 nursing home patient or home for the aged resident shall be pro-
12 vided with reasonable space At the request of a NURSING HOME
13 patient, a nursing home shall provide for the safekeeping of per-
14 sonal effects, funds, and other property of a patient in accord-
15 ance with section 21767, except that a nursing home ~~shall not~~
16 ~~be~~ IS NOT required to provide for the safekeeping of a property
17 which would impose an unreasonable burden on the nursing home

18 (d) A nursing home patient or home for the aged resident is
19 entitled to the opportunity to participate in the planning of his
20 or her medical treatment A nursing home patient shall be fully
21 informed by the attending physician of the patient s medical con-
22 dition unless medically contraindicated as documented by a phys-
23 cian in the PATIENT'S medical record Each nursing home patient
24 shall be afforded the opportunity to discharge himself or herself
25 from the nursing home

26 (e) A home for the aged resident may be transferred or
27 discharged only for medical reasons, for his or her welfare or

1 that of other residents, or for nonpayment of his or her stay
 2 except as provided by ~~title 18 or 19 of the social security act,~~
 3 ~~42 U S C 1395 to 1396k~~ TITLE XVIII OR TITLE XIX A nursing
 4 home patient may be transferred or discharged only as provided in
 5 sections 21773 to 21777 A nursing home patient or home for the
 6 aged resident is entitled to be given reasonable advance notice
 7 to ensure orderly transfer or discharge ~~Those actions~~ STEPS
 8 TAKEN TO ENSURE REASONABLE ADVANCE NOTICE shall be documented in
 9 the PATIENT S OR RESIDENT S medical record AS USED IN THIS SUB-
 10 DIVISION AND SUBDIVISION (F)

11 (1) "TITLE XVIII" MEANS TITLE XVIII OF THE SOCIAL SECURITY
 12 ACT, CHAPTER 531, 49 STAT 620, 42 U S C 1395 TO 1395b, 1395b-2,
 13 1395c TO 1395i, 1395i-2 TO 1395i-4, 1395j TO 1395t, 1395u TO
 14 1395w-2, AND 1395w-4 TO 1395ccc

15 (2) "TITLE XIX" MEANS TITLE XIX OF THE SOCIAL SECURITY ACT,
 16 CHAPTER 531 49 STAT 620, 42 U S C 1396 TO 1396g AND 1396i TO
 17 1396v

18 (f) A nursing home patient or home for the aged resident is
 19 entitled to be fully informed before or at the time of admission
 20 and during stay of services available in the ~~facility~~ NURSING
 21 HOME OR HOME FOR THE AGED, and of the related charges including
 22 any charges for services not covered under ~~title 18 or 19 of the~~
 23 ~~social security act, 42 U S C 1395 to 1396k~~ TITLE XVIII OR
 24 TITLE XIX, or not covered by the ~~facility's~~ NURSING HOME S OR
 25 HOME FOR THE AGED S basic per diem rate The statement of serv-
 26 ices provided by the ~~facility~~ NURSING HOME OR HOME FOR THE AGED

1 shall be in writing and shall include those required to be
2 offered on an as-needed basis

3 (g) A nursing home patient or home for the aged resident is
4 entitled to manage his or her own financial affairs, or to have
5 at least a quarterly accounting of personal financial transac-
6 tions undertaken in his or her behalf by the ~~facility~~ NURSING
7 HOME OR HOME FOR THE AGED during a period of time the patient or
8 resident has delegated those responsibilities to the ~~facility~~
9 NURSING HOME OR HOME FOR THE AGED In addition, a NURSING HOME
10 patient or HOME FOR THE AGED resident is entitled to receive each
11 month from the ~~facility~~ NURSING HOME OR HOME FOR THE AGED an
12 itemized statement setting forth the services paid for by or on
13 behalf of the patient and the services rendered by the ~~facility~~
14 NURSING HOME OR HOME FOR THE AGED The admission of a patient to
15 a nursing home does not confer on the nursing home or its owner,
16 administrator, employees or representatives the authority to
17 manage, use, or dispose of ~~a~~ THE patient's property

18 (h) A nursing home patient or a person authorized by ~~a~~ THE
19 patient in writing may inspect and copy the patient s personal
20 and medical records The PERSONAL AND MEDICAL records shall be
21 made available for inspection and copying by the nursing home
22 within a reasonable time not exceeding 1 week, after the receipt
23 of a written request UNDER THIS SUBDIVISION

24 (1) If a nursing home patient desires treatment by a
25 licensed member of the healing arts, the treatment shall be made
26 available unless it is medically contraindicated, and the medical

1 contraindication is justified in the patient's medical record by
2 the attending physician

3 (j) A nursing home patient has the right to have his or her
4 parents, if a minor, or his or her spouse, next of kin, or
5 patient's representative, if an adult, stay at the facility 24
6 hours a day if the patient is considered terminally ill by the
7 physician responsible for the patient's care

8 (k) Each nursing home patient shall be provided with meals
9 which meet the recommended dietary allowances for that patient's
10 age and sex and which may be modified according to special
11 dietary needs or ability to chew

12 (l) Each nursing home patient has the right to receive rep-
13 resentatives of approved organizations as provided in section
14 21763

15 (4) A nursing home, its owner, administrator, employee, or
16 representative shall not discharge, harass, or retaliate or dis-
17 criminate against a patient because the patient has exercised a
18 right protected under this section

19 (5) In the case of a nursing home patient, the rights enu-
20 merated in subsection (2)(c), (g), and (k) and subsection (3)(d),
21 (g), and (h) may be exercised by the patient's representative as
22 defined in section 21703

23 (6) A nursing home patient or home for the aged resident is
24 entitled to be fully informed, as evidenced by the patient's or
25 resident's written acknowledgment, before or at the time of
26 admission and during stay, of the policy required by this
27 section The policy shall provide that if a NURSING HOME patient

1 or HOME FOR THE AGED resident is adjudicated incompetent and not
 2 restored to legal capacity the rights and responsibilities set
 3 forth in this section shall be exercised by a person designated
 4 by the NURSING HOME patient or HOME FOR THE AGED resident The
 5 ~~facility or agency~~ NURSING HOME OR HOME FOR THE AGED shall pro-
 6 vide proper forms for the NURSING HOME patient or HOME FOR THE
 7 AGED resident to provide for the designation of this person at
 8 the time of admission

9 (7) This section ~~shall not be construed to~~ DOES NOT pro-
 10 hibit a health facility or agency from establishing and recogniz-
 11 ing additional patients' OR RESIDENTS' rights

12 Sec 20203 (1) The rights and responsibilities prescribed
 13 in sections 20201 and 20202 are guidelines for health facilities
 14 ~~facility~~ AND AGENCIES AND THEIR staff, ~~facility~~ employees,
 15 patients and residents ~~An~~ EXCEPT AS OTHERWISE PROVIDED IN
 16 SECTION 21799C(3), AN individual ~~shall~~ IS not ~~be~~
 17 ADMINISTRATIVELY, civilly, or criminally liable for failure to
 18 comply with ~~those~~ sections 20201 AND 20202

19 (2) Sections 20201 and 20202 ~~shall~~ DO not ~~be construed~~
 20 ~~to~~ expand or diminish other remedies at law available to a
 21 patient or resident under this code or UNDER the statutory,
 22 ADMINISTRATIVE, and common law of this state

23 (3) The department shall develop guidelines to assist health
 24 facilities and agencies in the implementation of sections 20201
 25 and 20202

26 Sec 21771 (1) A licensee, nursing home administrator, or
 27 employee of a nursing home shall not physically, mentally, or

1 emotionally abuse mistreat or harmfully neglect a patient OR
2 ENGAGE IN SEXUAL CONTACT WITH A PATIENT

3 (2) A nursing home employee who becomes aware of an act pro-
4 hibited by this section OR WHO BECOMES AWARE OF SEXUAL CONTACT
5 WITH A PATIENT IN THE NURSING HOME BY AN INDIVIDUAL OTHER THAN AN
6 INDIVIDUAL DESCRIBED IN SUBSECTION (1) WITHOUT THE PATIENT'S
7 CONSENT immediately shall report the matter to the nursing home
8 administrator or nursing director A nursing home administrator
9 or nursing director who becomes aware of an act prohibited by
10 this section OR WHO BECOMES AWARE OF SEXUAL CONTACT WITH A
11 PATIENT IN THE NURSING HOME BY AN INDIVIDUAL OTHER THAN AN INDI-
12 VIDUAL DESCRIBED IN SUBSECTION (1) WITHOUT THE PATIENT S CONSENT
13 immediately shall report the matter by telephone to the depart-
14 ment of public health which in turn shall notify the department
15 of social services

16 (3) Any person may report a violation of this section to the
17 department

18 (4) A physician or other licensed OR REGISTERED health ~~care~~
19 ~~personnel of~~ PROFESSIONAL EMPLOYED BY OR UNDER CONTRACT TO a
20 hospital or other health ~~care~~ facility OR AGENCY to which a
21 NURSING HOME patient is transferred who becomes aware of an act
22 prohibited by this section OR WHO BECOMES AWARE OF SEXUAL CONTACT
23 WITH THE TRANSFERRED PATIENT IN THE HOSPITAL OR OTHER HEALTH
24 FACILITY OR AGENCY WITHOUT THE PATIENT'S CONSENT shall report the
25 act OR SEXUAL CONTACT to the department

26 (5) Upon receipt of a report made under this section the
27 department shall make an investigation The department may

1 require the person making the report to submit a written report
2 or to supply additional information or both

3 (6) A licensee or nursing home administrator shall not
4 evict, harass, dismiss, or retaliate against a patient, a
5 patient's representative, or an employee who makes a report under
6 this section

7 (7) AS USED IN THIS SECTION, SEXUAL CONTACT MEANS THAT
8 TERM AS DEFINED IN SECTION 520A OF THE MICHIGAN PENAL CODE, ACT
9 NO 328 OF THE PUBLIC ACTS OF 1931, BEING SECTION 750 520A OF THE
10 MICHIGAN COMPILED LAWS, AND INCLUDES "SEXUAL PENETRATION AS THAT
11 TERM IS DEFINED IN SECTION 520A OF ACT NO 328 OF THE PUBLIC ACTS
12 OF 1931

13 Sec 21799c (1) A person who violates the following sec-
14 tions is guilty of a misdemeanor, punishable by imprisonment for
15 not more than 1 year or a fine of not less than \$1,000 00, nor
16 more than \$10,000 00, or both

17 (a) Section 21711

18 (b) Section 21712

19 (c) Section 21771(1) (2), (4) or (6)

20 (d) Section 21791

21 (2) For the purpose of computing civil penalties under this
22 section, the number of patients per day shall be based on the
23 average number of patients in the nursing home during the 30 days
24 preceding the discovery of the violation

25 (3) When the department finds a violation of section 20201
26 as to a particular nursing home patient, the department shall
27 issue an order requiring the nursing home to pay to the patient

1 \$100 00 or to reimburse the patient for costs incurred or
2 injuries sustained whichever is greater, and the nursing home
3 shall be assessed ~~a civil~~ AN ADMINISTRATIVE penalty, not to
4 exceed \$1,500 00, or \$15 00 per patient bed, whichever is
5 lesser

6 (4) The department of social services with the advice of the
7 department of public health, shall promulgate rules for a quality
8 of care allowance formula ~~which~~ THAT is consistent with the
9 recommendations of the fiscal incentives subcommittee to the com-
10 mittee on nursing home reimbursement established pursuant to Act
11 No 241 of the Public Acts of 1975, as described in the November
12 24, 1975 interim report, in the December 3, 1975 final report,
13 and the November 24, 1976 report of the committee recommending
14 appropriate changes in the procedures utilized

15 (5) ~~A civil~~ AN ADMINISTRATIVE penalty shall not be
16 assessed under subsection (3) for a violation of this part for
17 which a nursing home s reimbursement is withheld under subsection
18 (4)