



# SENATE BILL No. 733

October 25, 1995, Introduced by Senator SHUGARS and referred to the Committee on Health Policy and Senior Citizens.

A bill to amend sections 16221, 16226, 20201, and 22210 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," sections 16221 and 16226 as amended by Act No. 133 of the Public Acts of 1993, section 20201 as amended by Act No. 354 of the Public Acts of 1982, and section 22210 as amended by Act No. 88 of the Public Acts of 1993, being sections 333.16221, 333.16226, 333.20201, and 333.22210 of the Michigan Compiled Laws; and to add sections 16275 and 20195.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. Sections 16221, 16226, 20201, and 22210 of Act  
2 No. 368 of the Public Acts of 1978, sections 16221 and 16226 as  
3 amended by Act No. 133 of the Public Acts of 1993, section 20201  
4 as amended by Act No. 354 of the Public Acts of 1982, and  
5 section 22210 as amended by Act No. 88 of the Public Acts of

1 1993, being sections 333.16221, 333.16226, 333.20201, and  
2 333.22210 of the Michigan Compiled Laws, are amended and sections  
3 16275 and 20195 are added to read as follows:

4       Sec. 16221. The department may investigate activities  
5 related to the practice of a health profession by a licensee, a  
6 registrant, or an applicant for licensure or registration. The  
7 department may hold hearings, administer oaths, and order rele-  
8 vant testimony to be taken and shall report its findings to the  
9 appropriate disciplinary subcommittee. The disciplinary subcom-  
10 mittee shall proceed under section 16226 if it finds that ~~any~~ 1  
11 OR MORE of the following grounds exist:

12       (a) A violation of general duty, consisting of negligence or  
13 failure to exercise due care, including negligent delegation to  
14 or supervision of employees or other individuals, whether or not  
15 injury results, or any conduct, practice, or condition which  
16 impairs, or may impair, the ability to safely and skillfully  
17 practice the health profession.

18       (b) Personal disqualifications, consisting of ~~any~~ 1 OR  
19 MORE of the following:

20       (i) Incompetence.

21       (ii) Subject to sections 16165 to 16170a, substance abuse as  
22 defined in section 6107.

23       (iii) Mental or physical inability reasonably related to and  
24 adversely affecting the licensee's ability to practice in a safe  
25 and competent manner.

26       (iv) Declaration of mental incompetence by a court of  
27 competent jurisdiction.

1 (v) Conviction of a misdemeanor punishable by imprisonment  
2 for a maximum term of 2 years, a misdemeanor involving the ille-  
3 gal delivery, possession, or use of alcohol or a controlled sub-  
4 stance, or a felony. A certified copy of the court record is  
5 conclusive evidence of the conviction.

6 (vi) Lack of good moral character.

7 (vii) Conviction of a criminal offense under sections 520a  
8 to 520l of the Michigan penal code, Act No. 328 of the Public  
9 Acts of 1931, being sections 750.520a to 750.520l of the Michigan  
10 Compiled Laws. A certified copy of the court record is conclu-  
11 sive evidence of the conviction.

12 (viii) Conviction of a violation of section 492a of the  
13 Michigan penal code, Act No. 328 of the Public Acts of 1931,  
14 being section 750.492a of the Michigan Compiled Laws. A certi-  
15 fied copy of the court record is conclusive evidence of the  
16 conviction.

17 (ix) Conviction of a misdemeanor or felony involving fraud  
18 in obtaining or attempting to obtain fees related to the practice  
19 of a health profession. A certified copy of the court record is  
20 conclusive evidence of the conviction.

21 (x) Final adverse administrative action by a licensure, reg-  
22 istration, disciplinary, or certification board involving the  
23 holder of, or an applicant for, a license or registration regu-  
24 lated by another state or a territory of the United States. A  
25 certified copy of the record of the board is conclusive evidence  
26 of the final action.

1           (xi) Conviction of a misdemeanor that is reasonably related  
2 to or that adversely affects the licensee's ability to practice  
3 in a safe and competent manner. A certified copy of the court  
4 record is conclusive evidence of the conviction.

5           (c) Prohibited acts, consisting of ~~any~~ 1 OR MORE of the  
6 following:

7           (i) Fraud or deceit in obtaining or renewing a license or  
8 registration.

9           (ii) Permitting the license or registration to be used by an  
10 unauthorized person.

11           (iii) Practice outside the scope of a license.

12           (iv) Obtaining, possessing, or attempting to obtain or pos-  
13 sess a controlled substance as defined in section 7104 or a drug  
14 as defined in section 7105 without lawful authority; or selling,  
15 prescribing, giving away, or administering drugs for other than  
16 lawful diagnostic or therapeutic purposes.

17           (d) Unethical business practices, consisting of ~~any~~ 1 OR  
18 MORE of the following:

19           (i) False or misleading advertising.

20           (ii) Dividing fees for referral of patients or accepting  
21 kickbacks on medical or surgical services, appliances, or medica-  
22 tions purchased by or in behalf of patients.

23           (iii) Fraud or deceit in obtaining or attempting to obtain  
24 third party reimbursement.

25           (e) Unprofessional conduct, consisting of ~~any~~ 1 OR MORE of  
26 the following:

1 (i) Misrepresentation to a consumer or patient or in  
2 obtaining or attempting to obtain third party reimbursement in  
3 the course of professional practice.

4 (ii) Betrayal of a professional confidence.

5 (iii) Promotion for personal gain of an unnecessary drug,  
6 device, treatment, procedure, or service.

7 (iv) Directing or requiring an individual to purchase or  
8 secure a drug, device, treatment, procedure, or service from  
9 another person, place, facility, or business in which the  
10 licensee has a financial interest.

11 (f) Failure to report a change of name or mailing address  
12 within 30 days after the change occurs.

13 (g) A violation, or aiding or abetting in a violation, of  
14 this article or of rules promulgated under this article.

15 (h) Failure to comply with a subpoena issued pursuant to  
16 this part, failure to respond to a complaint issued under this  
17 article or article 7, failure to appear at a compliance confer-  
18 ence or an administrative hearing, or failure to report under  
19 section 16222 or 16223.

20 (i) Failure to pay an installment of an assessment levied  
21 pursuant to section 2504 of the insurance code of 1956, Act  
22 No. 218 of the Public Acts of 1956, as amended, being section  
23 500.2504 of the Michigan Compiled Laws, within 60 days after  
24 notice by the appropriate board.

25 (j) A violation of section 17013 or 17513.

26 (k) Failure to meet 1 or more of the requirements for  
27 licensure or registration under section 16174.

1 (L) A violation of section 17015 or 17515.

2 (M) A VIOLATION OF SECTION 16275.

3 Sec. 16226. (1) After finding the existence of 1 or more of  
4 the grounds for disciplinary subcommittee action listed in sec-  
5 tion 16221, a disciplinary subcommittee shall impose 1 or more of  
6 the following sanctions for each violation:

7 Violations of Section 16221

Sanctions

8 Subdivision (a), (b)(ii),	Probation, limitation, denial,
9 (b)(iv), (b)(vi), or	suspension, revocation,
10 (b)(vii)	restitution, community service,
11	or fine.
12 Subdivision (b)(viii)	Revocation or denial.
13 Subdivision (b)(i),	Limitation, suspension,
14 (b)(iii), (b)(v),	revocation, denial,
15 (b)(ix),	probation, restitution,
16 (b)(x), or (b)(xi)	community service, or fine.
17 Subdivision (c)(i)	Denial, revocation, suspension,
18	probation, limitation, commu-
19	nity service, or fine.
20 Subdivision (c)(ii)	Denial, suspension, revocation,
21	restitution, community service,
22	or fine.
23 Subdivision (c)(iii)	Probation, denial, suspension,
24	revocation, restitution, commu-
25	nity service, or fine.

1 Subdivision (c)(iv)  
2 or (d)(iii)  
3  
4  
5 Subdivision (d)(i)  
6 or (d)(ii)  
7  
8 Subdivision (e)(i)  
9  
10  
11  
12 Subdivision (e)(ii)  
13 or (h)  
14  
15 Subdivision (e)(iii)  
16 or (e)(iv)  
17  
18  
19 Subdivision (f)  
20 Subdivision (g)  
21  
22  
23  
24 Subdivision (i)  
25 Subdivision (j)  
26 Subdivision (k)  
27

Fine, probation, denial,  
suspension, revocation,  
community service,  
or restitution.  
Reprimand, fine, probation,  
community service, denial,  
or restitution.  
Reprimand, fine, probation,  
limitation, suspension, commu-  
nity service, denial, or  
restitution.  
Reprimand, probation,  
suspension, restitution, commu-  
nity service, denial, or fine.  
Reprimand, fine, probation,  
suspension, revocation, limita-  
tion, community service,  
denial, or restitution.  
Reprimand or fine.  
Reprimand, probation, denial,  
suspension, revocation, limita-  
tion, restitution, community  
service, or fine.  
Suspension or fine.  
Reprimand or fine.  
Reprimand, denial, or  
limitation.

1 Subdivision (L) Denial, revocation, restitution,  
2 probation, suspension, limita-  
3 tion, reprimand, or fine.

4 SUBDIVISION (M) REPRIMAND OR FINE.

5 (2) Determination of sanctions for violations under this  
6 section shall be made by a disciplinary subcommittee. If, during  
7 judicial review, the court of appeals determines that a final  
8 decision or order of a disciplinary subcommittee prejudices sub-  
9 stantial rights of the petitioner for any of the grounds listed  
10 in section 106 of the administrative procedures act of 1969, Act  
11 No. 306 of the Public Acts of 1969, being section 24.306 of  
12 Michigan Compiled Laws, and holds that the final decision or  
13 order is unlawful and is to be set aside, the court shall state  
14 on the record the reasons for the holding and may remand the case  
15 to the disciplinary subcommittee for further consideration.

16 (3) A disciplinary subcommittee may impose a fine of ~~up to,~~  
17 ~~but not exceeding,~~ NOT MORE THAN \$250,000.00 for a violation of  
18 section 16221(a) or (b).

19 (4) A DISCIPLINARY SUBCOMMITTEE MAY IMPOSE A FINE OF NOT  
20 MORE THAN \$1,000.00 FOR EACH VIOLATION OF SECTION 16221(M).

21 ~~(4)~~ A disciplinary subcommittee may require a licensee  
22 or registrant or an applicant for licensure or registration who  
23 has violated this article or article 7 or a rule promulgated  
24 under this article or article 7 to satisfactorily complete an  
25 educational program, a training program, or a treatment program,  
26 a mental, physical, or professional competence examination, or a  
27 combination of those programs and examinations.



1        SEC. 16275. (1) UPON RECEIPT OF A WRITTEN REQUEST FOR A  
2 COPY OF A MEDICAL RECORD ACCOMPANIED BY A VALID AUTHORIZATION AND  
3 PAYMENT OF THE FEES PROVIDED IN SUBSECTION (2), A LICENSEE OR  
4 REGISTRANT OR HIS OR HER AGENT SHALL PROVIDE THE REQUESTING  
5 PERSON WITH A COPY OF EACH MEDICAL RECORD SPECIFIED IN THE  
6 REQUEST WITHIN A REASONABLE PERIOD OF TIME, NOT TO EXCEED 30  
7 DAYS.

8        (2) A LICENSEE OR REGISTRANT OR HIS OR HER AGENT MAY CHARGE  
9 A FEE NOT TO EXCEED \$15.00 FOR SEARCH AND RETRIEVAL, \$1.00 PER  
10 PAGE FOR MAKING AND PROVIDING COPIES FROM PAPER, \$2.00 PER PAGE  
11 FOR COPIES MADE FROM MICROFILM, PLUS ACTUAL POSTAGE AND SHIPPING  
12 FEES AND SALES TAX, IF APPLICABLE. THE FEE LIMITATION OF THIS  
13 SUBSECTION DOES NOT APPLY TO X-RAYS OR OTHER IMAGING RECORDS.

14        (3) THE DIRECTOR OF PUBLIC HEALTH MAY ANNUALLY ADJUST THE  
15 FEES DESCRIBED IN SUBSECTION (2) BY AN AMOUNT DETERMINED BY THE  
16 STATE TREASURER TO REFLECT THE ANNUAL PERCENTAGE CHANGE IN THE  
17 DETROIT CONSUMER PRICE INDEX.

18        (4) AS USED IN THIS SECTION:

19        (A) "AGENT" MEANS A CONTRACTOR, SUBCONTRACTOR, AFFILIATE, OR  
20 SUBSIDIARY OF A PERSON WHO IS A LICENSEE OR REGISTRANT AND WHO,  
21 PURSUANT TO AN AGREEMENT OR OTHER RELATIONSHIP WITH THE LICENSEE  
22 OR REGISTRANT, RECEIVES, MAINTAINS, USES, COPIES, OR TRANSMITS  
23 MEDICAL RECORDS IN ORDER TO CONDUCT A LEGITIMATE BUSINESS ACTIV-  
24 ITY OF THE HEALTH CARE PROVIDER.

25        (B) "DETROIT CONSUMER PRICE INDEX" MEANS THE MOST COMPREHEN-  
26 SIVE INDEX OF CONSUMER PRICES AVAILABLE FOR THE DETROIT AREA FROM

1 THE BUREAU OF LABOR STATISTICS OF THE UNITED STATES DEPARTMENT OF  
2 LABOR.

3 (C) "PATIENT" MEANS AN INDIVIDUAL WHO HAS RECEIVED HEALTH  
4 CARE FROM A LICENSEE OR REGISTRANT FOR TREATMENT OF A MEDICAL  
5 CONDITION.

6 (D) "PERSONAL REPRESENTATIVE" MEANS AN INDIVIDUAL APPOINTED  
7 TO ACT IN THAT CAPACITY FOR THE ESTATE OF A DECEASED INDIVIDUAL  
8 UNDER THE REVISED PROBATE CODE, ACT NO. 642 OF THE PUBLIC ACTS OF  
9 1978, BEING SECTIONS 700.1 TO 700.993 OF THE MICHIGAN COMPILED  
10 LAWS.

11 (E) "REQUESTING PERSON" MEANS 1 OF THE FOLLOWING WHO MAKES A  
12 REQUEST UNDER THIS SECTION:

13 (i) THE ADULT PATIENT TO WHOM A MEDICAL RECORD PERTAINS.

14 (ii) THE LEGAL REPRESENTATIVE OF A PATIENT, INCLUDING THE  
15 PATIENT'S ATTORNEY, OTHER THAN AN INDIVIDUAL DESCRIBED IN SUB-  
16 PARAGRAPHS (iii) TO (v).

17 (iii) THE GUARDIAN OF AN ADULT PATIENT DESCRIBED IN SUBPARA-  
18 GRAPH (i) OR THE CONSERVATOR OF THE ADULT PATIENT'S ESTATE.

19 (iv) THE PARENT OR GUARDIAN OF A MINOR PATIENT TO WHOM A  
20 MEDICAL RECORD PERTAINS OR THE CONSERVATOR OF THE MINOR PATIENT'S  
21 ESTATE.

22 (v) THE PERSONAL REPRESENTATIVE OF A DECEASED PATIENT TO  
23 WHOM A MEDICAL RECORD PERTAINS.

24 (vi) AN INDIVIDUAL WHO PRESENTS A COURT ORDER FOR A MEDICAL  
25 RECORD.

26 SEC. 20195. (1) UPON RECEIPT OF A WRITTEN REQUEST FOR A  
27 COPY OF A MEDICAL RECORD ACCOMPANIED BY A VALID AUTHORIZATION AND

1 PAYMENT OF THE FEES PROVIDED IN SUBSECTION (2), A HEALTH FACILITY  
2 OR AGENCY OR ITS AGENT SHALL PROVIDE THE REQUESTING PERSON WITH A  
3 COPY OF EACH MEDICAL RECORD SPECIFIED IN THE REQUEST WITHIN A  
4 REASONABLE PERIOD OF TIME, NOT TO EXCEED 30 DAYS.

5 (2) A HEALTH FACILITY OR AGENCY OR ITS AGENT MAY CHARGE A  
6 FEE NOT TO EXCEED \$15.00 FOR SEARCH AND RETRIEVAL, \$1.00 PER PAGE  
7 FOR MAKING AND PROVIDING COPIES FROM PAPER, \$2.00 PER PAGE FOR  
8 COPIES MADE FROM MICROFILM, PLUS ACTUAL POSTAGE AND SHIPPING FEES  
9 AND SALES TAX, IF APPLICABLE. THE FEE LIMITATION OF THIS SUBSEC-  
10 TION DOES NOT APPLY TO X-RAYS OR OTHER IMAGING RECORDS.

11 (3) THE DIRECTOR OF PUBLIC HEALTH MAY ANNUALLY ADJUST THE  
12 FEES DESCRIBED IN SUBSECTION (2) BY AN AMOUNT DETERMINED BY THE  
13 STATE TREASURER TO REFLECT THE ANNUAL PERCENTAGE CHANGE IN THE  
14 DETROIT CONSUMER PRICE INDEX.

15 (4) AS USED IN THIS SECTION:

16 (A) "AGENT" MEANS A CONTRACTOR, SUBCONTRACTOR, AFFILIATE, OR  
17 SUBSIDIARY OF A HEALTH FACILITY OR AGENCY AND WHO, PURSUANT TO AN  
18 AGREEMENT OR OTHER RELATIONSHIP WITH A HEALTH FACILITY OR AGENCY,  
19 RECEIVES, MAINTAINS, USES, COPIES, OR TRANSMITS MEDICAL RECORDS  
20 IN ORDER TO CONDUCT A LEGITIMATE BUSINESS ACTIVITY OF THE HEALTH  
21 FACILITY OR AGENCY.

22 (B) "DETROIT CONSUMER PRICE INDEX" MEANS THE MOST COMPREHEN-  
23 SIVE INDEX OF CONSUMER PRICES AVAILABLE FOR THE DETROIT AREA FROM  
24 THE BUREAU OF LABOR STATISTICS OF THE UNITED STATES DEPARTMENT OF  
25 LABOR.

26 (C) "PATIENT" MEANS AN INDIVIDUAL WHO HAS RECEIVED HEALTH  
27 CARE IN A HEALTH FACILITY OR AGENCY.

1 (D) "PERSONAL REPRESENTATIVE" MEANS AN INDIVIDUAL APPOINTED  
2 TO ACT IN THAT CAPACITY FOR THE ESTATE OF A DECEASED INDIVIDUAL  
3 UNDER THE REVISED PROBATE CODE, ACT NO. 642 OF THE PUBLIC ACTS OF  
4 1978, BEING SECTIONS 700.1 TO 700.993 OF THE MICHIGAN COMPILED  
5 LAWS.

6 (E) "REQUESTING PERSON" MEANS 1 OF THE FOLLOWING WHO MAKES A  
7 REQUEST UNDER THIS SECTION:

8 (i) THE ADULT PATIENT TO WHOM A MEDICAL RECORD PERTAINS.

9 (ii) THE LEGAL REPRESENTATIVE OF A PATIENT, INCLUDING THE  
10 PATIENT'S ATTORNEY, OTHER THAN AN INDIVIDUAL DESCRIBED IN SUB-  
11 PARAGRAPHS (iii) TO (v).

12 (iii) THE GUARDIAN OF AN ADULT PATIENT DESCRIBED IN SUBPARA-  
13 GRAPH (i) OR THE CONSERVATOR OF THE ADULT PATIENT'S ESTATE.

14 (iv) THE PARENT OR GUARDIAN OF A MINOR PATIENT TO WHOM A  
15 MEDICAL RECORD PERTAINS OR THE CONSERVATOR OF THE MINOR PATIENT'S  
16 ESTATE.

17 (v) THE PERSONAL REPRESENTATIVE OF A DECEASED PATIENT TO  
18 WHOM A MEDICAL RECORD PERTAINS.

19 (vi) AN INDIVIDUAL WHO PRESENTS A COURT ORDER FOR A MEDICAL  
20 RECORD.

21 Sec. 20201. (1) ~~A~~ SUBJECT TO SECTION 20203, A health  
22 facility or agency ~~which~~ THAT provides services directly to  
23 patients or residents and ~~which~~ is licensed under this article  
24 shall adopt a policy describing the rights and responsibilities  
25 of patients or residents admitted to the health facility or  
26 agency. Except for a licensed health maintenance organization,  
27 which shall comply with section 21086, ~~the policy shall be~~

1 ~~posted~~ A HEALTH FACILITY OR AGENCY SHALL POST THE POLICY at a  
2 public place in the HEALTH facility OR AGENCY and shall ~~be~~  
3 ~~provided~~ PROVIDE A COPY OF THE POLICY to each member of ~~the~~  
4 ~~facility~~ ITS staff. ~~Patients~~ A HEALTH FACILITY OR AGENCY  
5 SHALL TREAT PATIENTS or residents ~~shall be treated~~ in accord-  
6 ance with the policy.

7 (2) The policy describing the rights and responsibilities of  
8 patients or residents shall include, ~~as~~ AT a minimum, ALL OF  
9 THE FOLLOWING:

10 (a) A patient or resident will not be denied appropriate  
11 care on the basis of race, religion, color, national origin, sex,  
12 age, handicap, marital status, sexual preference, or source of  
13 payment.

14 (b) An individual who is or has been a patient or resident  
15 is entitled to inspect ~~or~~ AND receive ~~for a reasonable fee,~~  
16 a copy of his or her medical record upon request, PURSUANT TO  
17 SECTIONS 16275 AND 20195. A third party shall not be given a  
18 copy of the patient's or resident's medical record without prior  
19 authorization of the patient.

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

25 (d) A patient or resident is entitled to privacy, to the  
26 extent feasible, in treatment and in caring for personal needs

1 with consideration, respect, and full recognition of his or her  
2 dignity and individuality.

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

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

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

1 and procedures for initiation, review, and resolution of patient  
2 or resident complaints.

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

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

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

18 (k) A patient or resident is entitled to associate and have  
19 private communications and consultations with his or her physi-  
20 cian, attorney, or any other person of his or her choice and to  
21 send and receive personal mail unopened on the same day it is  
22 received at the health facility or agency, unless medically con-  
23 traindicated as documented by the attending physician in the  
24 PATIENT'S OR RESIDENT'S medical record. A patient's or  
25 resident's civil and religious liberties, including the right to  
26 independent personal decisions and the right to knowledge of  
27 available choices, shall not be infringed and the HEALTH facility

1 OR AGENCY shall encourage and assist in the fullest possible  
2 exercise of these rights. A patient or resident may meet with,  
3 and participate in, the activities of social, religious, and com-  
4 munity groups at his or her discretion, unless medically contra-  
5 indicated as documented by the attending physician in the  
6 PATIENT'S OR RESIDENT'S medical record.

7 (l) A patient or resident is entitled to be free from mental  
8 and physical abuse and from physical and chemical restraints,  
9 except those restraints authorized in writing by the attending  
10 physician for a specified and limited time or as are necessitated  
11 by an emergency to protect the patient or resident from injury to  
12 self or others, in which case the restraint may only be applied  
13 by a qualified professional who shall set forth in writing the  
14 circumstances requiring the use of restraints and who shall  
15 promptly report the action to the attending physician. In case  
16 of a chemical restraint a physician shall be consulted within 24  
17 hours after the commencement of the restraint.

18 (m) A patient or resident is entitled to be free from per-  
19 forming services for the HEALTH facility OR AGENCY that are not  
20 included for therapeutic purposes in the plan of care.

21 (n) A patient or resident is entitled to information about  
22 the health facility OR AGENCY rules and regulations affecting  
23 patient or resident care and conduct.

24 (3) The following additional requirements for the policy  
25 described in subsection (2) ~~shall~~ apply to licensees under  
26 parts 213 and 217:



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

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

13 Reasonable privacy shall be afforded for visitation of a NURSING  
14 HOME patient who shares a room with another NURSING HOME  
15 patient. Each NURSING HOME patient shall have reasonable access  
16 to a telephone. A married nursing home patient or home for the  
17 aged resident is entitled to meet privately with his or her  
18 spouse in a room which assures privacy. If both spouses are  
19 PATIENTS OR residents in the same ~~facility~~ NURSING HOME OR HOME  
20 FOR THE AGED, they are entitled to share a room unless medically  
21 contraindicated and documented by the attending physician in the  
22 PATIENT'S OR RESIDENT'S medical record.

23 (c) A nursing home patient or home for the aged resident is  
24 entitled to retain and use personal clothing and possessions as  
25 space permits, unless to do so would infringe upon the rights of  
26 other NURSING HOME patients or HOME FOR THE AGED residents, or  
27 unless medically contraindicated as documented by the attending

1 physician in the PATIENT'S OR RESIDENT'S medical record. Each  
2 nursing home patient or home for the aged resident shall be pro-  
3 vided with reasonable space. At the request of a NURSING HOME  
4 patient, a nursing home shall provide for the safekeeping of per-  
5 sonal effects, funds, and other property of a patient in accord-  
6 ance with section 21767, except that a nursing home ~~shall not~~  
7 ~~be~~ IS NOT required to provide for the safekeeping of a property  
8 which would impose an unreasonable burden on the nursing home.

9 (d) A nursing home patient or home for the aged resident is  
10 entitled to the opportunity to participate in the planning of his  
11 or her medical treatment. A nursing home patient shall be fully  
12 informed by the attending physician of the patient's medical con-  
13 dition unless medically contraindicated as documented by a physi-  
14 cian in the PATIENT'S medical record. Each nursing home patient  
15 shall be afforded the opportunity to discharge himself or herself  
16 from the nursing home.

17 (e) A home for the aged resident may be transferred or dis-  
18 charged only for medical reasons, for his or her welfare or that  
19 of other residents, or for nonpayment of his or her stay, except  
20 as provided by ~~title 18 or 19 of the social security act, 42~~  
21 ~~U.S.C. 1395 to 1396k~~ TITLE XVIII OR TITLE XIX. A nursing home  
22 patient may be transferred or discharged only as provided in sec-  
23 tions 21773 to 21777. A nursing home patient or home for the  
24 aged resident is entitled to be given reasonable advance notice  
25 to ensure orderly transfer or discharge. ~~Those actions~~ STEPS  
26 TAKEN TO ENSURE REASONABLE ADVANCE NOTICE shall be documented in

1 the PATIENT'S OR RESIDENT'S medical record. AS USED IN THIS  
2 SUBDIVISION AND SUBDIVISION (F):

3 (i) "TITLE XVIII" MEANS TITLE XVIII OF THE SOCIAL SECURITY  
4 ACT, CHAPTER 531, 49 STAT. 620, 42 U.S.C. 1395 TO 1395b, 1395b-2,  
5 1395c TO 1395i, 1395i-2 TO 1395i-4, 1395j TO 1395t, 1395u TO  
6 1395w-2, 1395w-4 TO 1395yy, AND 1395bbb TO 1395ccc.

7 (ii) "TITLE XIX" MEANS TITLE XIX OF THE SOCIAL SECURITY ACT,  
8 CHAPTER 531, 49 STAT. 620, 42 U.S.C. 1396 TO 1396g AND 1396i TO  
9 1396v.

10 (f) A nursing home patient or home for the aged resident is  
11 entitled to be fully informed before or at the time of admission  
12 and during stay of services available in the ~~facility~~ NURSING  
13 HOME OR HOME FOR THE AGED, and of the related charges including  
14 any charges for services not covered under ~~title 18 or 19 of the~~  
15 ~~social security act, 42 U.S.C. 1395 to 1396k~~ TITLE XVIII OR  
16 TITLE XIX, or not covered by the ~~facility's~~ NURSING HOME'S OR  
17 HOME FOR THE AGED'S basic per diem rate. The statement of serv-  
18 ices provided by the ~~facility~~ NURSING HOME OR HOME FOR THE AGED  
19 shall be in writing and shall include those required to be  
20 offered on an as-needed basis.

21 (g) A nursing home patient or home for the aged resident is  
22 entitled to manage his or her own financial affairs, or to have  
23 at least a quarterly accounting of personal financial transac-  
24 tions undertaken in his or her behalf by the ~~facility~~ NURSING  
25 HOME OR HOME FOR THE AGED during a period of time the patient or  
26 resident has delegated those responsibilities to the ~~facility~~  
27 NURSING HOME OR HOME FOR THE AGED. In addition, a NURSING HOME

1 patient or HOME FOR THE AGED resident is entitled to receive each  
2 month from the ~~facility~~ NURSING HOME OR HOME FOR THE AGED an  
3 itemized statement setting forth the services paid for by or on  
4 behalf of the patient and the services rendered by the ~~facility~~  
5 NURSING HOME OR HOME FOR THE AGED. The admission of a patient to  
6 a nursing home does not confer on the nursing home or its owner,  
7 administrator, employees, or representatives the authority to  
8 manage, use, or dispose of ~~a~~ THE patient's property.

9 (h) A nursing home patient or a person authorized by ~~a~~ THE  
10 patient in writing may inspect and copy the patient's personal  
11 RECORDS UNDER THIS SUBDIVISION and MAY INSPECT AND COPY THE  
12 PATIENT'S medical records PURSUANT TO SECTIONS 16275 AND 20195.  
13 The PERSONAL records shall be made available for inspection and  
14 copying by the nursing home within a reasonable time, not exceed-  
15 ing 1 week, after the receipt of a written request UNDER THIS  
16 SUBDIVISION.

17 (i) If a nursing home patient desires treatment by a  
18 licensed member of the healing arts, the treatment shall be made  
19 available unless it is medically contraindicated, and the medical  
20 contraindication is justified in the patient's medical record by  
21 the attending physician.

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

1 (k) Each nursing home patient shall be provided with meals  
2 which meet the recommended dietary allowances for that patient's  
3 age and sex and which may be modified according to special  
4 dietary needs or ability to chew.

5 (l) Each nursing home patient has the right to receive rep-  
6 resentatives of approved organizations as provided in section  
7 21763.

8 (4) A nursing home, its owner, administrator, employee, or  
9 representative shall not discharge, harass, or retaliate or dis-  
10 criminate against a patient because the patient has exercised a  
11 right protected under this section.

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

16 (6) A nursing home patient or home for the aged resident is  
17 entitled to be fully informed, as evidenced by the patient's or  
18 resident's written acknowledgment, before or at the time of  
19 admission and during stay, of the policy required by this  
20 section. The policy shall provide that if a NURSING HOME patient  
21 or HOME FOR THE AGED resident is adjudicated incompetent and not  
22 restored to legal capacity, the rights and responsibilities set  
23 forth in this section shall be exercised by a person designated  
24 by the NURSING HOME patient or HOME FOR THE AGED resident. The  
25 ~~facility or agency~~ NURSING HOME OR HOME FOR THE AGED shall pro-  
26 vide proper forms for the NURSING HOME patient or HOME FOR THE

1 AGED resident to provide for the designation of this person at  
2 the time of admission.

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

6 Sec. 22210. (1) A hospital that applies to the department  
7 for a certificate of need and meets all of the following criteria  
8 shall be granted a certificate of need for a short-term nursing  
9 care program with up to 10 licensed hospital beds:

10 (a) Is eligible to apply for certification as a provider of  
11 swing-bed services under section 1883 of title XVIII,  
12 42 U.S.C. 1395tt.

13 (b) Subject to subsection (2), has fewer than 100 licensed  
14 beds not counting beds excluded under section 1883 of title XVIII  
15 of the social security act.

16 (c) Does not have uncorrected licensing, certification, or  
17 safety deficiencies for which the department or the state fire  
18 marshal, or both, has not accepted a plan of correction.

19 (d) Provides evidence satisfactory to the department that  
20 the hospital has had difficulty in placing patients in skilled  
21 nursing home beds during the 12 months immediately preceding the  
22 date of the application.

23 (2) After October 1, 1990, the criteria set forth in  
24 subsection (1)(b) may be modified by the commission, using the  
25 procedure set forth in section 22215(3). The department shall  
26 not charge a fee for processing a certificate of need application  
27 to initiate a short-term nursing care program.

1 (3) A hospital that is granted a certificate of need for a  
2 short-term nursing care program under subsection (1) shall comply  
3 with all of the following:

4 (a) Not charge for or otherwise attempt to recover the cost  
5 of a length of stay for a patient in the short-term nursing care  
6 program that exceeds the length of time allowed for post-hospital  
7 extended care under title XVIII.

8 (b) Admit patients to the short-term nursing care program  
9 only pursuant to an admissions contract approved by the  
10 department.

11 (c) Not discharge or transfer a patient from a licensed hos-  
12 pital bed other than a hospital long-term care unit bed and admit  
13 that patient to the short-term nursing care program unless the  
14 discharge or transfer and admission is determined medically  
15 appropriate by the attending physician.

16 (d) Permit access to a representative of an organization  
17 approved under section 21764 to patients admitted to the  
18 short-term nursing care program, for all of the purposes  
19 described in section 21763.

20 (e) Subject to subsection (8), not allow the number of  
21 patient days for the short-term nursing care program to exceed  
22 the equivalent of 1,825 patient days for a single state fiscal  
23 year.

24 (f) Transfer a patient in the short-term nursing care pro-  
25 gram to an appropriately certified nursing home bed, county medi-  
26 cal care facility bed, or hospital long-term care unit bed  
27 located within a 50-mile radius of the patient's residence within

1 5 business days after the hospital has been notified, either  
2 orally or in writing, that a bed has become available.

3 (g) Not charge or collect from a patient admitted to the  
4 short-term nursing care program, for services rendered as part of  
5 the short-term nursing care program, an amount in excess of the  
6 reasonable charge for the services as determined by the United  
7 States secretary of health and human services under title XVIII.

8 (h) Assist a patient who has been denied coverage for serv-  
9 ices received in a short-term nursing care program under title  
10 XVIII to file an appeal with the medicare recovery project oper-  
11 ated by the office of services to the aging.

12 (i) Operate the short-term nursing care program in accord-  
13 ance with this section and the requirements of the swing bed pro-  
14 visions of section 1883 of title XVIII, 42 U.S.C. 1395tt.

15 (j) Provide data to the department considered necessary by  
16 the department to evaluate the short-term nursing care program.  
17 The data shall include, but is not limited to, all of the  
18 following:

19 (i) The total number of patients admitted to the hospital's  
20 short-term nursing care program during the period specified by  
21 the department.

22 (ii) The total number of short-term nursing care patient  
23 days for the period specified by the department.

24 (iii) Information identifying the type of care to which  
25 patients in the short-term care nursing program are released.

26 (k) As part of the hospital's policy describing the rights  
27 and responsibilities of patients admitted to the hospital, as



1 required under section 20201, incorporate all of the following  
2 additional rights and responsibilities for patients in the  
3 short-term nursing care program:

4       *(i)* A copy of the hospital's policy shall be provided to  
5 each short-term nursing care patient upon admission, and the  
6 staff of the hospital shall be trained and involved in the imple-  
7 mentation of the policy.

8       *(ii)* Each short-term nursing care patient may associate and  
9 communicate privately with persons of his or her choice.  
10 Reasonable, regular visiting hours, which shall take into consid-  
11 eration the special circumstances of each visitor, shall be  
12 established for short-term nursing care patients to receive  
13 visitors. A short-term nursing care patient may be visited by  
14 the patient's attorney or by representatives of the departments  
15 named in section 20156 during other than established visiting  
16 hours. Reasonable privacy shall be afforded for visitation of a  
17 short-term nursing care patient who shares a room with another  
18 short-term nursing care patient. Each short-term nursing care  
19 patient shall have reasonable access to a telephone.

20       *(iii)* A short-term nursing care patient is entitled to  
21 retain and use personal clothing and possessions as space per-  
22 mits, unless medically contraindicated, as documented by the  
23 attending physician in the medical record.

24       *(iv)* A short-term nursing care patient is entitled to the  
25 opportunity to participate in the planning of his or her medical  
26 treatment. A short-term nursing care patient shall be fully  
27 informed by the attending physician of the short-term nursing

1 care patient's medical condition, unless medically  
2 contraindicated, as documented by a physician in the medical  
3 record. Each short-term nursing care patient shall be afforded  
4 the opportunity to discharge himself or herself from the  
5 short-term nursing care program.

6 (v) A short-term nursing care patient is entitled to be  
7 fully informed either before or at the time of admission, and  
8 during his or her stay, of services available in the hospital and  
9 of the related charges for those services. The statement of  
10 services provided by the hospital shall be in writing and shall  
11 include those services required to be offered on an as needed  
12 basis.

13 (vi) A patient in a short-term nursing care program or a  
14 person authorized in writing by the patient may, upon submission  
15 to the hospital of a written request, inspect and copy the  
16 patient's personal ~~or~~ RECORDS. A PATIENT IN A SHORT-TERM NURS-  
17 ING CARE PROGRAM MAY UPON REQUEST INSPECT AND COPY THE PATIENT'S  
18 medical records PURSUANT TO SECTIONS 16275 AND 20195. ~~The hos-~~  
19 ~~pital shall make the records available for inspection and copying~~  
20 ~~within a reasonable time, not exceeding 7 days, after the receipt~~  
21 ~~of the written request.~~

22 (vii) A short-term nursing care patient has the right to  
23 have his or her parents, if the short-term nursing care patient  
24 is a minor, or his or her spouse, next of kin, or patient's rep-  
25 resentative, if the short-term nursing care patient is an adult,  
26 stay at the facility 24 hours a day if the short-term nursing

1 care patient is considered terminally ill by the physician  
2 responsible for the short-term nursing care patient's care.

3 (viii) Each short-term nursing care patient shall be pro-  
4 vided with meals that meet the recommended dietary allowances for  
5 that patient's age and sex and that may be modified according to  
6 special dietary needs or ability to chew.

7 (ix) Each short-term nursing care patient has the right to  
8 receive a representative of an organization approved under  
9 section 21764, for all of the purposes described in section  
10 21763.

11 (l) Achieve and maintain medicare certification under title  
12 XVIII.

13 (4) A hospital or the owner, administrator, an employee, or  
14 a representative of the hospital shall not discharge, harass, or  
15 retaliate or discriminate against a short-term nursing care  
16 patient because the short-term nursing care patient has exercised  
17 a right described in subsection (3)(k).

18 (5) In the case of a short-term nursing care patient, the  
19 rights described in subsection (3)(k)(iv) may be exercised by the  
20 patient's representative, as defined in section 21703(2).

21 (6) A short-term nursing care patient shall be fully  
22 informed, as evidenced by the short-term nursing care patient's  
23 written acknowledgment, before or at the time of admission and  
24 during stay, of the rights described in subsection (3)(k). The  
25 written acknowledgment shall provide that if a short-term nursing  
26 care patient is adjudicated incompetent and not restored to legal  
27 capacity, the rights and responsibilities set forth in subsection

1 (3)(k) shall be exercised by a person designated by the  
2 short-term nursing care patient. The hospital shall provide  
3 proper forms for the short-term nursing care patient to provide  
4 for the designation of this person at the time of admission.

5 (7) Subsection (3)(k) does not prohibit a hospital from  
6 establishing and recognizing additional rights for short-term  
7 nursing care patients.

8 (8) Upon application, the department may grant a variation  
9 from the maximum number of patient days established under subsec-  
10 tion (3)(e), to an applicant hospital that demonstrates to the  
11 satisfaction of the department that there is an immediate need  
12 for skilled nursing beds within a 100-mile radius of the  
13 hospital. A variation granted under this subsection shall be  
14 valid for not more than 1 year after the date the variation is  
15 granted. The department shall promulgate rules to implement this  
16 subsection including, at a minimum, a definition of immediate  
17 need and the procedure for applying for a variation.

18 (9) A hospital that violates subsection (3) is subject to  
19 the penalty provisions of section 20165.

20 (10) A person shall not initiate a short-term nursing care  
21 program without first obtaining a certificate of need under this  
22 section.