R 325.20112 POLICY ON PATIENT RIGHTS AND RESPONSIBILITIES.

Rule 112.

(1) A nursing home shall develop, adopt, post in a public place, distribute, and implement a policy on the rights and responsibilities of patients in accordance with the requirements of sections 20201, 20202, and 20203 of the code.

(2) For purposes of section 20201(2)(a) of the code, denial of care on the basis of source of payment shall include, when a nursing home or nursing care facility is certified for medicare or medicaid, discrimination in favor of or against a beneficiary of 1 of those programs by giving unequal or priority preference to patients with other payment sources.

R 325.20116 INVOLUNTARY TRANSFERS.

Rule 116.

(1) A patient shall not be involuntarily transferred or discharged, except as provided by section 21773 of the code and these rules.

(2) For purposes of section 21773 of the code, all of the following provisions apply:

(a) "Welfare of nursing home employees" means the physical safety of nursing home employees.

(b) The 21-day notice period shall begin on the day the patient or patient’s guardian actually receives the written notice.

(c) The home shall maintain a record of efforts to collect payment where nonpayment is the basis for involuntary transfer or discharge and shall be capable of documenting the nonpayment and efforts to collect payment upon request by the department.

(d) The written summary of the discussion required by section 21773(8) of the code shall be available to each person participating in the discussion at the time it is made part of the patient’s clinical record.

(e) The home and the department shall assure that the counseling mandated in section 21773(9) of the code is provided.
(f) The department shall monitor counseling of patients who are involuntarily transferred or discharged utilizing appropriate members of the department staff. These same members of the department staff, as part of the monitoring activity, shall be responsible for approving a facility plan to effectuate the orderly and safe transfer or discharge of a patient.

(g) It shall be the objective of a transfer or discharge plan to assure all of the following:

(i) That the proposed new placement is appropriate for the patient’s needs and considers the recommendations of the attending physician.

(ii) That the optimum placement is made, insofar as possible, the first time to avoid the necessity for additional transfers at a later date.

(iii) That the patient or the next of kin, guardian, designated representative, agency, or organization responsible for placing and maintaining the patient in a facility is involved in the choice of facility to which the patient is to be transferred.

(iv) That at least 1 counseling session shall be provided for each involuntarily transferred or discharged patient.

(v) That the patient shall have the opportunity to visit the proposed new placement at least once. The visit to the new site may only be waived if the attending physician documents in the patient’s clinical record that such a visit is medically contraindicated or if the patient, guardian, or patient representative determines, in writing, that it is not in the patient’s best interest. In such instances, the patient shall receive appropriate information, such as floor plans, brochures, pictures, and other documents, to familiarize the patient with the new facility.

(vi) That the department assures that a family member or other appropriate person is available to accompany the patient on the involuntary transfer or discharge from the home to a new placement, unless the patient requests otherwise.

(h) That the department assures that counseling in the new placement is provided following transfer or discharge and that counseling occurs within 72 hours following the transfer or discharge.

(3) For purposes of section 21774 of the code, both of the following provisions apply:

(a) Submission of a hearing request form shall be prerequisite to a patient’s appeal of an involuntary transfer or discharge, and any written communication from the patient or the patient’s representative to the department shall be accepted as a request for a hearing on the matter if the department has reason to believe the communication is intended to dispute the proposed transfer or discharge.

(b) Hearings shall be conducted informally by a representative of the department at the facility in which the patient is located. The patient and home, or their representative, may state their position and present documents and other proofs at the hearing. Following the
hearing, the department shall issue its decision and reasons therefor in writing, which decision shall be final and not subject to further administrative appeal.

(4) This rule shall not apply when a facility discontinues, or is required to discontinue, operations.

R 325.20401 ADMINISTRATIVE POLICY MANUAL.
Rule 401.

(1) The home shall make immediately available for on-site inspection by the department an administrative policy manual which shall include, at a minimum, all of the following:

(a) Admission policies, including a copy of the contract form used by the home when admitting patients...

R 325.20403 ADMISSION POLICIES.
Rule 403.

(1) A home shall have a written admission policy that is available upon request, before and following the patient's admission, to all of the following:

(a) The patient.

(b) Attending physician.

(c) Next of kin or member of the family.

(d) Guardian.

(e) Designated representative.

(f) Person or agency responsible for placing and maintaining the patient in the home.

(g) Employees of the facility.

(h) The public.

R 325.20406 PATIENT BILL OF RIGHTS PROVISIONS.
Rule 406. To protect the rights of patients under section 20201 of the code and other relevant provisions of the code, the following requirements shall be complied with:

...(b) When a patient refuses treatment, a determination shall be made by the attending physician as to whether or not the patient's refusal of treatment prevents the facility from
providing appropriate care according to ethical and professional standards. The physician’s determination in this matter shall be in writing and shall be made a part of the patient’s clinical record. When a relationship between a nursing home and patient is terminated in conjunction with the physician’s determination and the action results in an involuntary transfer or discharge, such transfer or discharge shall be handled in accordance with the provisions of sections 21773 and 21774 of the code.

**R 325.20407 ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF SOURCE OF PAYMENT FOR CARE.**

Rule 407.

(1) When a nursing home is enrolled as a provider in the medicare and medicaid programs and holds a valid provider agreement with the designated federal or state agency, discrimination with respect to source of payment for purposes of sections 21799c(3) and 20201(2)(a) of the code includes action to require a cash payment before admission from any person determined to be eligible to receive medicare or medicaid, to require cash payment instead of medicare or medicaid payment authorized by the designated federal or state agency for any period of time, or to require any unauthorized supplemental cash payment in addition to medicare or medicaid payment for care.

(2) A home which violates a patient’s rights with respect to the matters described in subrule (1) of this rule shall, in addition to any civil penalties assessed under the code, repay any and all cash payments improperly required of the patient, the patient’s family, or designated representative, with interest, at the prime interest rate on the day the violation is identified, to be added and compounded for the period the cash payment has been inappropriately in the home’s possession.

**R 325.20502 POLICIES AND PROCEDURES FOR CARE.**

Rule 502.

(1) The home shall have a written policy governing the nursing care and other services provided to a patient, which shall be implemented through written procedures which are maintained and available to personnel at all times. All personnel shall be oriented to the facility and their responsibilities.

...(5) The policy shall govern, at a minimum, all of the following:

(a) Admission, discharge, and transfer of patients...
Sec. 20178. (1) Beginning not more than 90 days after the effective date of the amendatory act that added this section, a health facility or agency that is a nursing home, home for the aged, or county medical care facility that represents to the public that it provides inpatient care or services or residential care or services, or both, to persons with Alzheimer’s disease or a related condition shall provide to each prospective patient, resident, or surrogate decision maker a written description of the services provided by the health facility or agency to patients or residents with Alzheimer’s disease or a related condition. A written description shall include, but not be limited to, all of the following:

...(b) The process and criteria for placement in or transfer or discharge from a program for patients or residents with Alzheimer’s disease or a related condition...

Sec. 20192. A health facility or agency shall not require the execution of a do-not-resuscitate order under the Michigan do-not-resuscitate procedure act as a condition for admission or receipt of services.

...(2) The policy describing the rights and responsibilities of patients or residents required under subsection(1) shall include, as a minimum, all of the following:

(a) A patient or resident shall not be denied appropriate care on the basis of race, religion, color, national origin, sex, age, disability, marital status, sexual preference, or source of payment...

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

(a) The policy shall be provided to each nursing home patient or home for the aged resident upon admission, and the staff of the facility shall be trained and involved in the implementation of the policy.
(d) A nursing home patient or home for the aged resident is entitled to the opportunity to participate in the planning of his or her medical treatment. A nursing home patient shall be fully informed by the attending physician of the patient’s medical condition unless medically contraindicated as documented by a physician in the medical record. Each nursing home patient shall be afforded the opportunity to discharge himself or herself from the nursing home.

(e) A home for the aged resident may be transferred or discharged only for medical reasons, for his or her welfare or that of other residents, or for nonpayment of his or her stay, except as provided by title XVIII or title XIX. A nursing home patient may be transferred or discharged only as provided in sections 21773 to 21777. A nursing home patient or home for the aged resident is entitled to be given reasonable advance notice to ensure orderly transfer or discharge. Those actions shall be documented in the medical record.

(f) A nursing home patient or home for the aged resident is entitled to be fully informed before or at the time of admission and during stay of services available in the facility, and of the related charges including any charges for services not covered under title XVIII, or not covered by the facility’s basic per diem rate. The statement of services provided by the facility shall be in writing and shall include those required to be offered on an as-needed basis.

...(6) A nursing home patient or home for the aged resident is entitled to be fully informed, as evidenced by the patient’s or resident’s written acknowledgment, before or at the time of admission and during stay, of the policy required by this section. The policy shall provide that if a patient or resident is adjudicated incompetent and not restored to legal capacity, the rights and responsibilities set forth in this section shall be exercised by a person designated by the patient or resident. The health facility or agency shall provide proper forms for the patient or resident to provide for the designation of this person at the time of admission.

**333.21741 RULES.**

..(3) In addition to the rules prescribed in section 20171, rules for nursing homes shall include the establishment of standards relating to:

...(b) Discharges and transfers.

**333.21765A CERTAIN ADMISSION CONDITIONS PROHIBITED; ENFORCEMENT OF CONTRACT PROVISIONS OR AGREEMENTS IN CONFLICT WITH SUBSECTIONS (1) AND (2).**

Sec. 21765a.
(1) A nursing home shall not require an applicant, as a condition of admission, to waive his or her right to benefits under medicare or medicaid, to give oral or written assurance that the applicant is not eligible for medicare or medicaid, or to give oral or written assurance that the applicant will not apply for benefits under medicare or medicaid.

(2) A nursing home shall not require any of the following as a condition of an applicant’s admission or a patient’s continued residency at that nursing home:

(a) That an applicant or patient remain a private pay patient for a specified period of time before applying for medicaid.

(b) That a person pay on behalf of an applicant or patient the private pay rate for a specified period of time before the applicant or patient applies for medicaid.

(c) That an applicant, patient, or other person make a gift or donation on behalf of that applicant or patient.

(3) As of the effective date of this section, a contract provision or agreement in conflict with subsection (1) or (2), whether made before, on, or after the effective date of this section, is unenforceable.

(4) Not later than 30 days after the effective date of this section, a nursing home that participates in medicaid shall provide written notice to each private pay patient subject to a contract provision or agreement in conflict with subsection (1) or (2) that the contract provision or agreement is no longer a bar to the patient applying for medicaid.

333.21766 WRITTEN CONTRACT.

Sec. 21766.

...(2) A nursing home shall not discharge or transfer a patient at the expiration of the term of a contract, except as provided in section 21773.

333.21773 Involuntary transfer or discharge of patient; notice; form; request for hearing; copy of notice; commencement of notice period; nonpayment; redemption; explanation and discussion; counseling services; prohibition; notice of nonparticipation in state plan for Medicaid funding.

Sec. 21773.

(1) A nursing home shall not involuntarily transfer or discharge a patient except for 1 or more of the following purposes:

(a) Medical reasons.
(b) The patient’s welfare.

(c) The welfare of other patients or nursing home employees.

(d) Nonpayment for the patient’s stay, except as prohibited by title XIX of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396r-6 and 1396r-8 to 1396v.

(2) A licensed nursing home shall provide written notice at least 30 days before a patient is involuntarily transferred or discharged. The 30-day requirement of this subsection does not apply in any of the following instances:

(a) If an emergency transfer or discharge is mandated by the patient’s health care needs and is in accord with the written orders and medical justification of the attending physician.

(b) If the transfer or discharge is mandated by the physical safety of other patients and nursing home employees as documented in the clinical record.

(c) If the transfer or discharge is subsequently agreed to by the patient or the patient’s legal guardian, and notification is given to the next of kin and the person or agency responsible for the patient’s placement, maintenance, and care in the nursing home.

(3) The notice required by subsection (2) shall be on a form prescribed by the department of consumer and industry services and shall contain all of the following:

(a) The stated reason for the proposed transfer.

(b) The effective date of the proposed transfer.

(c) A statement in not less than 12-point type that reads: “You have a right to appeal the nursing home’s decision to transfer you. If you think you should not have to leave this facility, you may file a request for a hearing with the department of consumer and industry services within 10 days after receiving this notice. If you request a hearing, it will be held at least 7 days after your request, and you will not be transferred during that time. If you lose the hearing, you will not be transferred until at least 30 days after you received the original notice of the discharge or transfer. A form to appeal the nursing home’s decision and to request a hearing is attached. If you have any questions, call the department of consumer and industry services at the number listed below.”

(d) A hearing request form, together with a postage paid, preaddressed envelope to the department of consumer and industry services.

(e) The name, address, and telephone number of the responsible official in the department of consumer and industry services.

(4) A request for a hearing made under subsection (3) shall stay a transfer pending a hearing or appeal decision.
(5) A copy of the notice required by subsection (3) shall be placed in the patient’s clinical record and a copy shall be transmitted to the department of consumer and industry services, the patient, the patient’s next of kin, patient’s representative, or legal guardian, and the person or agency responsible for the patient’s placement, maintenance, and care in the nursing home.

(6) If the basis for an involuntary transfer or discharge is the result of a negative action by the department of community health with respect to a Medicaid client and a hearing request is filed with that department, the 21-day written notice period of subsection (2) does not begin until a final decision in the matter is rendered by the department of community health or a court of competent jurisdiction and notice of that final decision is received by the patient and the nursing home.

(7) If nonpayment is the basis for involuntary transfer or discharge, the patient may redeem up to the date that the discharge or transfer is to be made and then may remain in the nursing home.

(8) The nursing home administrator or other appropriate nursing home employee designated by the nursing home administrator shall discuss an involuntary transfer or discharge with the patient, the patient’s next of kin or legal guardian, and person or agency responsible for the patient’s placement, maintenance, and care in the nursing home. The discussion shall include an explanation of the reason for the involuntary transfer or discharge. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and made a part of the patient’s clinical record.

(9) The nursing home shall provide the patient with counseling services before the involuntary transfer or discharge and the department shall assure that counseling services are available after the involuntary transfer or discharge to minimize the possible adverse effect of the involuntary transfer or discharge.

(10) If a nursing home voluntarily withdraws from participation in the state plan for Medicaid funding, but continues to provide services, the nursing home shall not, except as provided in subsection (1), involuntarily transfer or discharge a patient, whether or not the patient is eligible for Medicaid benefits, who resided in the nursing home on the day before the effective date of the nursing home’s withdrawal from participation. The prohibition against transfer or discharge imposed by this subsection continues unless the patient falls within 1 or more of the exceptions described in subsection (1).

(11) If an individual becomes a patient of a nursing home after the date the nursing home withdraws from participation in the state plan for Medicaid funding, the nursing home, on or before the date the individual signs a contract with the nursing home, shall provide to the patient oral and written notice of both of the following:

(a) That the nursing home is not participating in the state plan for Medicaid funding.
(b) That the facility may involuntarily transfer or discharge the patient for nonpayment under subsection (1)(d) even if the patient is eligible for Medicaid benefits.

333.21774 INVOLUNTARY TRANSFER OR DISCHARGE; REQUEST FOR HEARING; INFORMAL HEARING; DECISION; BURDEN OF PROOF; PROCEDURES; TIME FOR LEAVING FACILITY.

Sec. 21774.

(1) A patient subject to involuntary transfer or discharge from a licensed nursing home shall have the opportunity to file a request for a hearing with the department within 10 days following receipt of the written notice of the involuntary transfer or discharge by the nursing home.

(2) The department of public health, when the basis for involuntary transfer or discharge is other than a negative action by the department of social services with respect to a Medicaid client, shall hold an informal hearing in the matter at the patient’s facility not sooner than 7 days after a hearing request is filed, and render a decision in the matter within 14 days after the filing of the hearing request.

(3) In a determination as to whether a transfer or discharge is authorized, the burden of proof rests on the party requesting the transfer or discharge. The hearing shall be in accordance with fair hearing procedures prescribed by rule.

(4) If the department determines that a transfer or discharge is authorized under section 21773, the patient shall not be required to leave the facility before the thirty-fourth day following receipt of the notice required under section 21773(2), or the tenth day following receipt of the department’s decision, whichever is later.

333.21775 CONTINUATION OF MEDICAID FUNDING DURING APPEAL, TRANSFER, OR DISCHARGE PERIOD.

Sec. 21775. The department of social services shall continue Medicaid funding during the appeal, transfer, or discharge period as provided in section 21774 for those Medicaid patients affected by section 21773.

333.21776 TRANSFER OR DISCHARGE OF PATIENT; PLAN; COUNSELING SERVICES.

Sec. 21776. The licensee, with the approval of the department, shall develop a plan to effectuate the orderly and safe transfer or discharge of a patient. The patient and the patient's family or representative shall be consulted in choosing another facility. The patient shall receive counseling services before the move to minimize the adverse effects of transfer trauma. The department shall assure that counseling will be available if the patient requires counseling after transfer or discharge.
333.21777 HOLDING BED OPEN DURING TEMPORARY ABSENCE OF PATIENT; OPTION; TITLE 19 PATIENTS.

Sec. 21777.

(1) If a patient is temporarily absent from a nursing home for emergency medical treatment, the nursing home shall hold the bed open for 10 days for that patient in the patient’s absence, if there is a reasonable expectation that the patient will return within that period of time and the nursing home receives payment for each day during the absent period.

(2) If a patient is temporarily absent from a nursing home for therapeutic reasons as approved by a physician, the nursing home shall hold the bed open for 18 days, if there is a reasonable expectation that the patient will return within that period of time and the nursing home receives payment for each day during the absent period. Temporary absences for therapeutic reasons are limited to 18 days per year.

(3) When a patient’s absence is longer than specified under subsection (1) or (2), or both, the patient has the option to return to the nursing home for the next available bed.

(4) For title 19 patients, the department of community health shall continue funding for the temporary absence as provided under subsections (1) and (2) if the nursing home is at 98% or more occupancy except for any bed being held open under subsection (1) or (2).

333.21785 DISCONTINUANCE OF OPERATION; NOTICE; RELOCATION OF PATIENTS.

Sec. 21785.

(1) If a nursing home proposes to discontinue operation, the licensee shall notify the department of public health and the department of social services of the impending discontinuance of operation. The licensee shall notify the patient and the patient’s next of kin, patient’s representative, and the party executing the contract under section 21766 of the proposed date of the discontinuance. The notice shall be sufficient to make suitable arrangements for the transfer and care of the patient.

(2) The notices required by this section shall be given not less than 30 days before the discontinuance.

(3) The licensee and the department of social services shall be responsible for securing a suitable relocation of a patient who does not have a relative or legal representative to assist in his or her relocation before the discontinuance of operation. The licensee and the department of social services shall keep the department of public health informed of their efforts and activities in carrying out this responsibility. The department of social services shall make available to the licensee and the department of public health assistance necessary to assure the effectiveness of efforts to secure a suitable relocation.
333.21786 EMERGENCY CLOSING OF NURSING HOME.

Sec. 21786. In the case of an emergency closing of a nursing home, or when it is determined by the department that a nursing home is suddenly no longer able to provide adequate patient care, the department shall do both of the following:

(a) Assure that the department of social services has been notified to make arrangements for the orderly and safe discharge and transfer of the patients to another facility.

(b) Place a representative of the department in a facility on a daily basis to do each of the following:

(i) Monitor the discharge of patients to other facilities or locations.

(ii) Ensure that the rights of patients are protected.

(iii) Discuss the discharge and relocation with each patient and next of kin or legal guardian, person, or agency responsible for the patient’s placement, maintenance, and care in the facility. The content of the explanation and discussion shall be summarized in writing and shall be made a part of the patient’s clinical record.