

**PUBLIC HEALTH CODE (EXCERPT)**  
**Act 368 of 1978**

PART 217  
NURSING HOMES

**333.21701 Meanings of words and phrases; general definitions and principles of construction.**

Sec. 21701. (1) For purposes of this part, the words and phrases defined in sections 21702 to 21703 have the meanings ascribed to them in those sections.

(2) In addition, article 1 contains general definitions and principles of construction applicable to all articles in this code and part 201 contains definitions applicable to this part.

**History:** 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1978, Act 493, Eff. Mar. 30, 1979.

**Compiler's note:** For transfer of powers and duties of the division of health facility licensing and certification in the bureau of health systems, division of federal support services, and the division of emergency medical services, with the exception of the division of managed care and division of health facility development, from the department of public health to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.

For transfer of powers and duties of the bureau of health services from the department of consumer and industry services to the director of the department of community health by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

**Popular name:** Act 368

**333.21702 Definitions; D to P.**

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) "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.

(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.

(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, and administered by the department of social services under the social welfare act, Act No. 280 of the Public Acts of 1939, being sections 400.1 to 400.119b of the Michigan Compiled Laws.

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

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

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

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

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

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

(9) "Nonpayment" means:

(a) Failure to collect from the patient or any other source the full amount of the facility charges to a nonmedicaid patient based on a written contract signed on or after that patient's admission to the facility.

(b) Failure to collect a medicaid patient's stipulated contribution toward his or her care.

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

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979;—Am. 1994, Act 73, Imd. Eff. Apr. 11, 1994.

**Popular name:** Act 368

**333.21703 Definitions; P to W.**

Sec. 21703. (1) "Patient" means a person who receives care or services at a nursing home.

(2) "Patient's representative" means a person, other than the licensee or an employee or person having a direct or indirect ownership interest in the nursing home, designated in writing by a patient or a patient's guardian for a specific, limited purpose or for general purposes, or, if a written designation of a representative

is not made, the guardian of the patient.

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

(4) "Transfer" means the movement of a patient from 1 nursing home to another nursing home or from 1 certified distinct part of a nursing home to another certified distinct part of the same nursing home.

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

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **333.21707 Prescribing course of medical treatment; limitations on authority.**

Sec. 21707. (1) The course of medical treatment provided to a patient in a nursing home shall be prescribed by the patient's physician.

(2) This part does not:

(a) Authorize the supervision, regulation, or control of the practice of any method of healing.

(b) Authorize the medical supervision, regulation, or control of the remedial care or nonmedical nursing care of patients in a nursing home operated for the adherents of a bona fide church or religious denomination who rely upon treatment by prayer or spiritual means only in accordance with the creed or tenets of that church or denomination. The residents, patients, personnel, or employees, other than food handlers, of the home are not required to submit to a medical or physical examination. However, the nursing home shall be inspected and licensed under laws pertaining to fire, safety, sanitation, and building construction.

**History:** 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **333.21711 License required; prohibited terms or abbreviations; license for formal or informal nursing care services; exception.**

Sec. 21711. (1) A nursing home shall be licensed under this article.

(2) "Nursing home", "nursing center", "convalescent center", "extended care facility", or a similar term or abbreviation shall not be used to describe or refer to a health facility or agency unless the health facility or agency is licensed as a nursing home by the department under this article.

(3) A person shall not purport to provide formal or informal nursing care services of the kind normally provided in a nursing home without obtaining a license as provided in this article. This subsection does not apply to a hospital or a facility created by Act No. 152 of the Public Acts of 1885, as amended, being sections 36.1 to 36.12 of the Michigan Compiled Laws.

**History:** 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **333.21712 Name of nursing home; change in name; prohibited terms; rehabilitation services.**

Sec. 21712. (1) A nursing home shall use the name that appears on the license for its premises. A nursing home shall not change its name without the approval of the department.

(2) A nursing home shall not use the terms "hospital" or "sanitarium" or a term conveying a meaning that is substantially similar to those terms in the name of the nursing home. However, a nursing home may use the term "health center" or "health care center" or "rehabilitation center" or a term conveying a meaning substantially similar to those terms as long as those terms do not conflict with the terms prohibited by this subsection.

(3) If a nursing home uses the term "rehabilitation center" in its name as allowed under subsection (2), the nursing home shall have the capacity to provide rehabilitation services that include, at a minimum, all of the following:

(a) Physical therapy services.

(b) Occupational therapy services.

(c) Speech therapy services.

(4) A nursing home shall not include in its name the name of a religious, fraternal, or charitable corporation, organization, or association unless the corporation, organization, or association is an owner of the nursing home.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979;—Am. 2001, Act 273, Imd. Eff. Jan. 11, 2002.

**Popular name:** Act 368

### **333.21713 Owner, operator, and governing body of nursing home; responsibilities and duties generally.**

Sec. 21713. The owner, operator, and governing body of a nursing home licensed under this article:

(a) Are responsible for all phases of the operation of the nursing home and quality of care rendered in the home.

(b) Shall cooperate with the department in the enforcement of this article and require that the physicians and other personnel working in the nursing home and for whom a license or registration is required be currently licensed or registered.

**History:** 1978, Act 368, Eff. Sept. 30, 1978.

**Popular name:** Act 368

### **333.21715 Programs of planned and continuing nursing and medical care required; nurses and physicians in charge; expiration of subsection (1)(a); nature and scope of services.**

Sec. 21715. (1) A nursing home shall provide:

(a) A program of planned and continuing nursing care under the charge of a registered nurse in a skilled facility and a licensed practical nurse with a registered nurse consultant in an intermediate care facility. This subdivision shall expire December 31, 1979.

(b) A program of planned and continuing medical care under the charge of physicians.

(2) Nursing care and medical care shall consist of services given to individuals who are subject to prolonged suffering from illness or injury or who are recovering from illness or injury. The services shall be within the ability of the home to provide and shall include the functions of medical care such as diagnosis and treatment of an illness; nursing care via assessment, planning, and implementation; evaluation of a patient's health care needs; and the carrying out of required treatment prescribed by a physician.

**History:** 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **333.21716 Nursing home; influenza vaccination.**

Sec. 21716. A nursing home shall offer each resident, or shall provide each resident with information and assistance in obtaining, an annual vaccination against influenza in accordance with the most recent recommendations of the advisory committee on immunization practices of the federal centers for disease control and prevention, as approved by the department of community health.

**History:** Add. 2000, Act 437, Imd. Eff. Jan. 9, 2001.

**Popular name:** Act 368

### **333.21717 Individuals excluded from nursing home; exception; approval of area and program.**

Sec. 21717. An individual shall not be admitted or retained for care in a nursing home who requires special medical or surgical treatment, or treatment for acute mental illness, mental retardation, communicable tuberculosis, or a communicable disease, unless the home is able to provide an area and a program for the care. The department shall approve both the area and the program, except for the programs providing treatment for mental illness and mental retardation which shall be approved by the department of mental health.

**History:** 1978, Act 368, Eff. Sept. 30, 1978.

**Popular name:** Act 368

### **333.21718 Conditions of skilled nursing facility certification and participation in title 19 program; exception; exemption.**

Sec. 21718. (1) Except as provided in subsections (3) and (4), as a condition of skilled nursing facility certification and participation in the title 19 program of the social security act, 42 U.S.C. 1396 to 1396k, a nursing home shall be concurrently certified for and give evidence of active participation in the title 18 program of the social security act, 42 U.S.C. 1395 to 1395qq. A nursing facility that is not concurrently certified for the title 18 program on the effective date of this section shall make application for concurrent certification not later than its next application for licensure and certification. A failure to make application shall result in the skilled nursing facility being decertified or refused certification as a provider in the title 19 program. Nursing home or nursing care facility participation in the title 18 program under the requirements for concurrent certification shall be effective not later than the beginning of the first accounting year following the home's or facility's title 18 certification.

(2) As a condition of skilled nursing facility certification, a nursing home shall obtain concurrent certification under title 19 of the social security act, 42 U.S.C. 1396 to 1396k, for each bed which is certified to provide skilled care under title 18 of the social security act, 42 U.S.C. 1395 to 1395qq. Skilled care certification shall not be renewed unless the requirements of this subsection are met.

(3) An exception may be made from the requirements of subsection (1) for a nursing facility that is currently certified as a skilled nursing facility by the director for title 19 participation but has been determined, after making application, to be ineligible for title 18 certification by the secretary of the United States department of health, education, and welfare.

(4) A home or facility, or a distinct part of a home or facility, certified by the director as a special mental retardation or special mental illness nursing home or nursing care facility shall be exempt from the requirements of subsection (1).

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **333.21719 Immediate access to acute care facilities.**

Sec. 21719. A nursing home shall not be licensed under this part unless the nursing home has formulated, and is prepared to implement, insofar as possible, a plan to provide immediate access to acute care facilities for the emergency care of patients.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **333.21720 Nursing home administrator required.**

Sec. 21720. (1) The department shall not license a nursing home under this part unless that nursing home is under the direction of a nursing home administrator licensed under article 15.

(2) Each nursing home having 50 beds or more shall have a full-time licensed nursing home administrator. If a nursing home changes nursing home administrators, the nursing home immediately shall notify the department of the change.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979;—Am. 2001, Act 139, Imd. Eff. Oct. 26, 2001.

**Popular name:** Act 368

### **333.21720a Director of nursing; nursing personnel; effective date of subsection (1); natural disaster or other emergency.**

Sec. 21720a. (1) A nursing home shall not be licensed under this part unless that nursing home has on its staff at least 1 registered nurse with specialized training or relevant experience in the area of gerontology, who shall serve as the director of nursing and who shall be responsible for planning and directing nursing care. The nursing home shall have at least 1 licensed nurse on duty at all times and shall employ additional registered and licensed practical nurses in accordance with subsection (2). This subsection shall not take effect until January 1, 1980.

(2) A nursing home shall employ nursing personnel sufficient to provide continuous 24-hour nursing care and services sufficient to meet the needs of each patient in the nursing home. Nursing personnel employed in the nursing home shall be under the supervision of the director of nursing. A licensee shall maintain a nursing home staff sufficient to provide not less than 2.25 hours of nursing care by employed nursing care personnel per patient per day. The ratio of patients to nursing care personnel during a morning shift shall not exceed 8 patients to 1 nursing care personnel; the ratio of patients to nursing care personnel during an afternoon shift shall not exceed 12 patients to 1 nursing care personnel; and the ratio of patients to nursing care personnel during a nighttime shift shall not exceed 15 patients to 1 nursing care personnel and there shall be sufficient nursing care personnel available on duty to assure coverage for patients at all times during the shift. An employee designated as a member of the nursing staff shall not be engaged in providing basic services such as food preparation, housekeeping, laundry, or maintenance services, except in an instance of natural disaster or other emergency reported to and concurred in by the department. In a nursing home having 30 or more beds, the director of nursing shall not be included in counting the minimum ratios of nursing personnel required by this subsection.

(3) In administering this section, the department shall take into consideration a natural disaster or other emergency.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **333.21720b Agreement with county community mental health program.**

Sec. 21720b. A nursing home shall not be licensed under this part unless that nursing home has entered into an agreement with the county community mental health program, if available, that will service the mental health needs of the patients of the nursing home.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **333.21721 Bond required.**

Sec. 21721. (1) Before issuance or renewal of a nursing home license under this article, the owner, operator, or governing body of the nursing home shall give a bond and provide evidence of a patient trust fund in an amount consistent with subsection (2) and with the surety the department approves. The bond shall be conditioned that the applicant shall hold separately in the trust fund all patients' funds deposited with the applicant, shall administer the funds on behalf of the patient in the manner directed by the depositor, shall render a true and complete account to the patient not less than once each 3 months, to the depositor when requested, and to the department of public health and the department of social services, when requested. Upon termination of the deposit, the applicant shall account for all funds received, expended, and held on hand. The bond shall insure the department of public health, for the benefit of the patients.

(2) The bond shall be in an amount equal to not less than 1-1/4 times the average balance of patient funds held during the previous year. The department may require an additional bond, or permit the filing of a bond in a lower amount, if the department determines a change in the average balance has occurred or may occur. An applicant for a new license shall file a bond in an amount which the department estimates as 1-1/4 times the average amount of patient funds which the applicant, upon the issuance of the license, is likely to hold during the first year of operation.

**History:** 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **333.21723 Individual responsible for receiving complaints and conducting investigations; posting information in nursing home; communication procedure; information posted on internet website; nursing home receiving medicaid reimbursement.**

Sec. 21723. (1) A nursing home shall post in an area accessible to residents, employees, and visitors the name, title, location, and telephone number of the individual in the nursing home who is responsible for receiving complaints and conducting complaint investigations and a procedure for communicating with that individual.

(2) An individual responsible for receiving complaints and conducting complaint investigations in a nursing home shall be on duty and on site not less than 24 hours per day, 7 days a week.

(3) The individual described in subsection (2) who receives a complaint, inquiry, or request from a nursing home resident or the resident's surrogate decision maker shall respond using the nursing home's established procedures pursuant to R 325.20113 of the Michigan administrative code.

(4) To assist the individual described in subsection (2) in performing his or her duties, the department of consumer and industry services shall post on its internet website all of the following information:

(a) Links to federal and state regulations and rules governing the nursing home industry.

(b) The scheduling of any training or joint training sessions concerning nursing home or elderly care issues being put on by the department of consumer and industry services.

(c) A list of long-term care contact phone numbers including, but not limited to, the consumer and industry services complaint hotline, the consumer and industry services nursing home licensing division, any commonly known nursing home provider groups, the state long-term care ombudsman, and any commonly known nursing home patient care advocacy groups.

(d) When it becomes available, information on the availability of electronic mail access to file a complaint concerning nursing home violations directly with the department of consumer and industry services.

(e) Any other information that the department of consumer and industry services believes is helpful in responding to complaints, requests, and inquiries of a nursing home resident or his or her surrogate decision maker.

(5) A nursing home receiving reimbursement pursuant to the medicaid program shall designate 1 or more current employees to fulfill the duties and responsibilities outlined in this section. This section does not constitute a basis for increasing nursing home staffing levels. As used in this subsection, "medicaid" means the program for medical assistance created under title XIX of the social security act, chapter 53, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1 to 1396r-6, and 1396r-8 to 1396v.

**History:** Add. 2002, Act 11, Imd. Eff. Feb. 19, 2002.

**Popular name:** Act 368

**333.21731 Licensee considered consumer of tangible personal property.**

Sec. 21731. A licensee of a nursing home operated for profit is considered to be the consumer, and not the retailer, of the tangible personal property purchased and used or consumed in the operation of the home.

**History:** 1978, Act 368, Eff. Sept. 30, 1978.

**Popular name:** Act 368

**333.21733 Repealed. 2009, Act 188, Eff. May 1, 2010.**

**Compiler's note:** The repealed section pertained to smoking policies in nursing homes.

**333.21734 Nursing home; bed rails; provisions; guidelines; liability.**

Sec. 21734. (1) Notwithstanding section 20201(2)(l), a nursing home shall give each resident who uses a hospital-type bed or the resident's legal guardian, patient advocate, or other legal representative the option of having bed rails. A nursing home shall offer the option to new residents upon admission and to other residents upon request. Upon receipt of a request for bed rails, the nursing home shall inform the resident or the resident's legal guardian, patient advocate, or other legal representative of alternatives to and the risks involved in using bed rails. A resident or the resident's legal guardian, patient advocate, or other legal representative has the right to request and consent to bed rails for the resident. A nursing home shall provide bed rails to a resident only upon receipt of a signed consent form authorizing bed rail use and a written order from the resident's attending physician that contains statements and determinations regarding medical symptoms and that specifies the circumstances under which bed rails are to be used. For purposes of this subsection, "medical symptoms" includes the following:

(a) A concern for the physical safety of the resident.

(b) Physical or psychological need expressed by a resident. A resident's fear of falling may be the basis of a medical symptom.

(2) A nursing home that provides bed rails under subsection (1) shall do all of the following:

(a) Document that the requirements of subsection (1) have been met.

(b) Monitor the resident's use of the bed rails.

(c) In consultation with the resident, resident's family, resident's attending physician, and individual who consented to the bed rails, periodically reevaluate the resident's need for the bed rails.

(3) The department of consumer and industry services shall develop clear and uniform guidelines to be used in determining what constitutes each of the following:

(a) Acceptable bed rails for use in a nursing home in this state. The department shall consider the recommendations of the hospital bed safety work group established by the United States food and drug administration, if those are available, in determining what constitutes an acceptable bed rail.

(b) Proper maintenance of bed rails.

(c) Properly fitted mattresses.

(d) Other hazards created by improperly positioned bed rails, mattresses, or beds.

(4) The department of consumer and industry services shall develop the guidelines under subsection (3) in consultation with the long-term care work group. An individual representing manufacturers of bed rails, 2 residents or family members, and an individual with expertise in bed rail installation and use shall be added to the long-term care work group for purposes of this subsection. The department shall consider as part of its report to the legislature the recommendations of the hospital bed safety work group established by the United States food and drug administration, if those recommendations are available at the time of the submission of the report. Not later than 6 months after the effective date of the amendatory act that added this section, the department of consumer and industry services shall submit its report to the legislature. The department may delay submission of its report by up to 3 months so that its report may reflect the recommendations of the hospital bed safety work group established by the United States food and drug administration.

(5) A nursing home that complies with subsections (1) and (2) and the guidelines developed under this section in providing bed rails to a resident is not subject to administrative penalties imposed by the department based solely on providing the bed rails. Nothing in this subsection precludes the department from citing specific state or federal deficiencies for improperly maintained bed rails, improperly fitted mattresses, or other hazards created by improperly positioned bed rails, mattresses, or beds.

(6) The department of consumer and industry services shall consult with representatives of the nursing home industry to expeditiously develop interim guidelines on bed rail usage that are to be used until the department develops the guidelines required under subsection (4).

**History:** Add. 2000, Act 437, Imd. Eff. Jan. 9, 2001.

**Popular name:** Act 368

### **333.21735 Requirement of emergency generator system in nursing home.**

Sec. 21735. (1) A nursing home licensed under this article shall have, at a minimum, an emergency generator system that complies with existing state and federal law, including state and federal rules and regulations.

(2) A nursing home that fails to comply with this section is subject to a civil penalty as provided under existing state and federal law, including state and federal rules and regulations.

**History:** Add. 2004, Act 397, Eff. Apr. 15, 2005.

**Popular name:** Act 368

### **333.21741 Rules.**

Sec. 21741. (1) The department of public health, after seeking advice and consultation from the department of social services, appropriate consumer and professional organizations, and concerned agencies, shall promulgate rules to implement and administer this part.

(2) Initial rules proposed under this part shall be submitted to a public hearing not later than 6 months after this section is enacted into law.

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

- (a) Complaint procedures.
- (b) Discharges and transfers.
- (c) Emergency procedures.
- (d) Medical audit procedures.
- (e) Patients' rights.
- (f) Standards of patient care to be provided in nursing homes.
- (g) Training, educational, and competency requirements of nursing home personnel other than licensed personnel.
- (h) Utilization and quality control review procedures.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **333.21743 Disclosures; public inspection.**

Sec. 21743. (1) In addition to public records subject to disclosure under section 20175, the following information is subject to disclosure from the department of public health or the department of social services:

(a) Ownership of nursing homes, ownership of buildings occupied by nursing homes, and the names and addresses of suppliers and the ownership of suppliers of goods and services to nursing homes required to be reported under section 20142.

(b) Records of license and certification inspections, surveys, and evaluations of nursing homes, other reports of inspections, surveys, and evaluations of patient care, and reports concerning a nursing home prepared pursuant to titles 18 and 19 of the social security act, 42 U.S.C. 1395 to 1396k.

(c) Cost and reimbursement reports submitted by a nursing home, reports of audits of nursing homes, and other public records concerning costs incurred by, revenues received by, and reimbursement of nursing homes.

(d) Complaints filed against a nursing home and complaint investigation reports. A complaint or complaint investigation report shall not be disclosed to a person other than the complainant or complainant's representative before it is disclosed to a nursing home under section 21799a and a complainant's or patient's name shall not be disclosed except as provided in section 21799a.

(2) The department of public health, the department of social services and the nursing home shall respect the confidentiality of a patient's clinical record as provided in section 20175 and shall not divulge or disclose the contents of a record in a manner which identifies a patient, except upon a patient's death to a relative or guardian, or under judicial proceedings. This subsection shall not be construed to limit the right of a patient or a patient's representative to inspect or copy the patient's clinical record.

(3) Confidential medical, social, personal, or financial information identifying a patient shall not be available for public inspection in a manner which identifies a patient.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **333.21744 Professional advice and consultation.**

Sec. 21744. The department shall provide to the applicant or licensee professional advice and consultation related to the quality of institutional or agency aspects of health care and services provided by the applicant or licensee.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

**333.21751 Emergency petition to place nursing home under control of receiver; appointment of receiver; use of income and assets; major structural alteration; consultation; termination of receivership; accounting; disposition of surplus funds.**

Sec. 21751. (1) When the department has concluded a proceeding under sections 71 to 106 of the administrative procedures act of 1969, as amended, being sections 24.271 to 24.306 of the Michigan Compiled Laws, or when the department has suspended or revoked the license of a nursing home, the department, a patient in the facility, or a patient's representative may file an emergency petition with the circuit court to place the nursing home under the control of a receiver if necessary to protect the health or safety of patients in the nursing home. The court may grant the petition upon a finding that the health or safety of the patients in the nursing home would be seriously threatened if a condition existing at the time the petition was filed is permitted to continue.

(2) The court shall appoint as receiver the director of the department of social services, the director of the department of public health, or another state agency or person designated by the director of public health. The receiver appointed by the court shall use the income and assets of the nursing home to maintain and operate the home and to attempt to correct the conditions which constitute a threat to the patients. A major structural alteration shall not be made to the nursing home, unless the alteration is necessary to bring the nursing home into compliance with licensing requirements.

(3) To assist in the implementation of the mandate of the court, the receiver may request and receive reasonable consultation from the available personnel of the department.

(4) The receivership shall be terminated when the receiver and the court certify that the conditions which prompted the appointment have been corrected, when the license is restored, when a new license is issued, or, in the case of a discontinuance of operation, when the patients are safely placed in other facilities, whichever occurs first.

(5) Upon the termination of the receivership, the receiver shall render a complete accounting to the court and shall dispose of surplus funds as the court directs.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

**333.21755 Grounds for refusal to issue license.**

Sec. 21755. The department may refuse to issue a license to establish or maintain and operate, or both, a nursing home to an applicant:

(a) Whose occupational, professional, or health agency license has been revoked during the 5 years preceding the date of application.

(b) Whom the department finds is not suitable to operate a nursing home because of financial incapacity or a lack of good moral character or appropriate business or professional experience. As used in this subdivision, "good moral character" means that term as defined in Act No. 381 of the Public Acts of 1974, as amended, being sections 338.41 to 338.47 of the Michigan Compiled Laws.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

**333.21757 Provisional license.**

Sec. 21757. (1) The department may issue a 1-year provisional license, renewable for not more than 1 additional year, to an applicant whose services are needed in the community but who is temporarily unable to comply with the rules related to the physical plant of the facilities, excluding maintenance problems. At the time a provisional license is granted, specific deadlines for the correction of each physical plant violation shall be established.

(2) A provisional license shall not be issued for a nursing home constructed, established, or changing corporate ownership or management after the effective date of this section unless it is shown that unusual hardship would result to the public or to the applicant for the provisional license and the nursing home was licensed and operating under a prior licensing act for not less than 5 years.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

**333.21761 Certification of nondiscrimination; violation of rights; giving preference to members of religious or fraternal institution or organization.**

Sec. 21761. (1) In addition to the requirements of section 20152, a licensee shall certify annually to the department, as part of its application for licensure and certification, that all phases of its operation, including its training program, are without discrimination against persons or groups of persons on the basis of race, religion, color, national origin, sex, age, disability, marital status, sexual preference, or the exercise of rights guaranteed by law, including freedom of speech and association. If the department finds a violation of rights enumerated in this section, the department shall direct the administrator of the nursing home to take the necessary action to assure that the nursing home is, in fact, operated in accordance with the rights listed in this section.

(2) This section shall not be construed to prevent a nursing home operated, supervised, or controlled by a religious or fraternal institution or organization from giving preference to applicants who are members of that religious or fraternal institution or organization.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979;—Am. 1998, Act 88, Imd. Eff. May 13, 1998.

**Popular name:** Act 368

**333.21763 Access to nursing home patients; purposes; requirements; termination of visit; confidentiality; complaint; determination; prohibited entry.**

Sec. 21763. (1) A nursing home shall permit a representative of an approved organization, who is known by the nursing home administration to be authorized to represent the organization or who carries identification showing that the representative is authorized to represent the organization, a family member of a patient, or a legal representative of a patient, to have access to nursing home patients for 1 or more of the following purposes:

(a) Visit, talk with, and make personal, social, and legal services available to the patients.

(b) Inform patients of their rights and entitlements, and their corresponding obligations, under federal and state laws by means of the distribution of educational materials and discussion in groups and with individual patients.

(c) Assist patients in asserting their legal rights regarding claims for public assistance, medical assistance, and social services benefits, as well as in all matters in which patients are aggrieved. Assistance may be provided individually or on a group basis and may include organizational activity and counseling and litigation.

(d) Engage in other methods of assisting, advising, and representing patients so as to extend to them the full enjoyment of their rights.

(2) Access as prescribed in subsection (1) shall be permitted during regular visiting hours each day. A representative of an approved organization entering a nursing home under this section promptly shall advise the nursing home administrator or the acting administrator or other available agent of the nursing home of the representative's presence. A representative shall not enter the living area of a patient without identifying himself or herself to the patient and without receiving the patient's permission to enter. A representative shall use only patient areas of the home to carry out the activities described in subsection (1).

(3) A patient may terminate a visit by a representative permitted access under subsection (1). Communications between a patient and the representative are confidential, unless otherwise authorized by the patient.

(4) If a nursing home administrator or employee believes that an individual or organization permitted access under this section is acting or has acted in a manner detrimental to the health or safety of patients in the nursing home, the nursing home administrator or employee may file a complaint with the task force established under section 20127. Upon receipt of a complaint, department staff shall investigate the allegations made in the complaint. The task force shall make a determination regarding proper resolution of the complaint based on the results of the investigation. Written notification of the task force determination and of recommendations adopted by the task force shall be given to the complainant and the individual or organization against whom the complaint was made.

(5) An individual shall not enter upon the premises of a nursing home for the purpose of engaging in an activity that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes a nursing home employee, patient, or visitor to feel terrorized, frightened, intimidated, threatened, harassed, or molested. This subsection does not prohibit constitutionally protected activity or conduct that serves a legitimate purpose including, but not limited to, activities or conduct allowed under subsection (1).

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979;—Am. 1996, Act 546, Eff. Mar. 31, 1997.

Popular name: Act 368

**333.21764 Approval or disapproval of nonprofit corporation rendering assistance without charge; appeal; decision.**

Sec. 21764. (1) The director, with the advice of the nursing home task force, shall approve or disapprove a nonprofit corporation which has as 1 of its primary purposes the rendering of assistance, without charge to nursing home patients for the purpose of obtaining access to nursing homes and their patients under section 21763.

(2) Upon receipt of a written application for approval under subsection (1), the director shall notify all persons who have made a written request for notice of applications made under this section.

(3) The director shall approve the organization making the request if the organization is a bona fide community organization or legal aid program, is capable of providing 1 or more of the services listed in section 21763, and is likely to utilize the access provided under section 21763 to enhance the welfare of nursing home patients. The director shall approve or disapprove the organization within 30 days after receiving the application.

(4) A person aggrieved by the decision of the director may appeal the decision to the nursing home task force. A decision of the task force shall be binding on the director.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

**333.21765 Policies and procedures; copy of rights enumerated in MCL 333.20201; reading or explaining rights; staff observance of rights, policies, and procedures.**

Sec. 21765. (1) A nursing home shall establish written policies and procedures to implement the rights protected under section 20201. The policies shall include a procedure for the investigation and resolution of patient complaints. The policies and procedures shall be subject to approval by the department. The policies and procedures shall be clear and unambiguous, shall be printed in not less than 12-point type, shall be available for inspection by any person, shall be distributed to each patient and representative, and shall be available for public inspection.

(2) Each patient shall be given a copy of the rights enumerated in section 20201 at the time of admission to a nursing home. A patient of a nursing home at the time of the implementation of this section shall be given a copy of the rights enumerated in section 20201 as specified by rule.

(3) A copy shall be given to a person who executes a contract pursuant to section 21766 and to any other person who requests a copy.

(4) If a patient is unable to read the form, it shall be read to the patient in a language the patient understands. In the case of a mentally retarded individual, the rights shall be explained in a manner which that person is able to understand and the explanation witnessed by a third person. In the case of a minor or a person having a legal guardian, both the patient and the parent or legal guardian shall be fully informed of the policies and procedures.

(5) A nursing home shall ensure that its staff is familiar with and observes the rights enumerated in section 20201 and the policies and procedures established under this section.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

**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.

**History:** Add. 1994, Act 73, Imd. Eff. Apr. 11, 1994.

**Popular name:** Act 368

### **333.21766 Written contract.**

Sec. 21766. (1) A nursing home shall execute a written contract solely with an applicant or patient or that applicant's or patient's guardian or legal representative authorized by law to have access to those portions of the patient's or applicant's income or assets available to pay for nursing home care, at each of the following times:

- (a) At the time an individual is admitted to a nursing home.
- (b) At the expiration of the term of a previous contract.
- (c) At the time the source of payment for the patient's care changes.

(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.

(3) A nursing home shall specifically notify in writing an applicant or patient or that applicant's or patient's guardian or legal representative of the availability or lack of availability of hospice care in the nursing home. This written notice shall be by way of a specific paragraph located in the written contract described in subsection (1) and shall require the applicant or patient or that applicant's or patient's guardian or legal representative to sign or initial the paragraph before execution of the written contract. As used in this subsection, "hospice" means that term as defined in section 20106(4).

(4) A nursing home shall provide a copy of the contract to the patient, the patient's representative, or the patient's legal representative or legal guardian at the time the contract is executed.

(5) For a patient supported by funds other than the patient's own funds, a nursing home shall make a copy of the contract available to the person providing the funds for the patient's support.

(6) For a patient whose care is reimbursed with public funds administered by the department of community health, a nursing home shall maintain a copy of the contract in the patient's file at the nursing home and upon request shall make a copy of the contract available to the department of community health.

(7) The nursing home shall ensure that the contract is written in clear and unambiguous language and is printed in not less than 12-point type. The form of the contract shall be prescribed by the department.

(8) The contract shall specify all of the following:

(a) The term of the contract.

(b) The services to be provided under the contract, including the availability of hospice or other special care, and the charges for the services.

(c) The services that may be provided to supplement the contract and the charges for the services.

(d) The sources liable for payments due under the contract.

(e) The amount of deposit paid and the general and foreseeable terms upon which the deposit will be held and refunded.

(f) The rights, duties, and obligations of the patient, except that the specification of a patient's rights may be furnished on a separate document that complies with the requirements of section 20201.

(9) The nursing home may require a patient's or applicant's guardian or legal representative who is authorized by law to have access to those portions of the patient's or applicant's income or assets available to pay for nursing home care to sign a contract without incurring personal financial liability other than for funds received in his or her legal capacity on behalf of the patient.

(10) A nursing home employee may request the appointment of a guardian for an individual applicant or patient only if the nursing home employee reasonably believes that the individual meets the legal requirements for the appointment of a guardian.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979;—Am. 1994, Act 73, Imd. Eff. Apr. 11, 1994;—Am. 2001, Act 243, Eff. July 1, 2002.

**Popular name:** Act 368

### **333.21767 Guardian, trustee, conservator, patient's representative, or protective payee for patient; receipt for money or property of patient; statement of funds.**

Sec. 21767. (1) A nursing home, or an owner, administrator, employee, or representative of a nursing home shall not act as guardian, trustee, conservator, patient's representative, or protective payee for a patient, except as provided in subsection (2).

(2) Subject to the bonding requirements of section 21721, money or other property belonging or due a patient which is received by a nursing home shall be received as trust funds or property, shall be kept separate from the funds and property of the nursing home and other patients, and shall be disbursed only as directed by the patient. A written receipt shall be given to a patient whose money or other property is received by a nursing home. Upon request, but not less than once every 3 months, the nursing home shall furnish the patient a complete and verified statement of the funds or other property received by the nursing home. The statement shall contain the amounts and items received, the sources, the disposition, and the date of each transaction. The nursing home shall furnish a final statement not later than 10 days after the discharge of a patient.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **333.21771 Abusing, mistreating, or neglecting patient; reports; investigation; retaliation prohibited.**

Sec. 21771. (1) A licensee, nursing home administrator, or employee of a nursing home shall not physically, mentally, or emotionally abuse, mistreat, or harmfully neglect a patient.

(2) A nursing home employee who becomes aware of an act prohibited by this section immediately shall report the matter to the nursing home administrator or nursing director. A nursing home administrator or nursing director who becomes aware of an act prohibited by this section immediately shall report the matter by telephone to the department of public health, which in turn shall notify the department of social services.

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

(4) A physician or other licensed health care personnel of a hospital or other health care facility to which a patient is transferred who becomes aware of an act prohibited by this section shall report the act to the department.

(5) Upon receipt of a report made under this section, the department shall make an investigation. The department may require the person making the report to submit a written report or to supply additional information, or both.

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

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **333.21772 Interference with right to bring action or file complaint prohibited; retaliation prohibited.**

Sec. 21772. The owner, administrator, employee, or representative of a nursing home shall not interfere with the right of a person to bring a civil or criminal action or to file a complaint with the department or other governmental agency with respect to the operation of the nursing home, nor discharge, harass, or retaliate against a person who does so or on whose behalf the action is taken.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **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.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979;—Am. 2001, Act 137, Imd. Eff. Oct. 26, 2001.

**Popular name:** Act 368

### **333.21774 Involuntary transfer or discharge; request for hearing; informal hearing; decision;**

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**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.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

**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.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979;—Am. 1994, Act 73, Imd. Eff. Apr. 11, 1994.

**Popular name:** Act 368

**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.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

**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).

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979;—Am. 2004, Act 372, Imd. Eff. Oct. 11, 2004.

**Popular name:** Act 368

**333.21781 Posting of license and other information.**

Sec. 21781. A licensee shall conspicuously post in an area of its offices accessible to patients, employees, and visitors:

(a) A current license.

(b) A complete copy of the most recent inspection report of the nursing home received from the department.

(c) A description, provided by the department, of complaint procedures established under this act and the name, address, and telephone number of a person authorized by the department to receive complaints.

(d) A copy of a notice of a pending hearing or order pertaining to the nursing home issued by the

department or a court under the authority of this article or rules promulgated under this article.

(e) A complete list of materials available for public inspection as required by section 21782.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **333.21782 Retention of documents for public inspection.**

Sec. 21782. A licensee shall retain for public inspection:

(a) A complete copy of each inspection report of the nursing home received from the department during the past 5 years.

(b) A copy of each notice of a hearing or order pertaining to the nursing home issued by the department or a court under the authority of this article or rules promulgated under this article after the effective date of this section. The copy of the notice or order shall be retained for not less than 3 years after its date of issuance or not less than 3 years after the date of the resolution of the subject matter of the notice or order, whichever is later.

(c) A description of the services provided by the nursing home and the rates charged for those services and items for which a patient may be separately charged.

(d) A list of the name, address, principal occupation, and official position of each person who, as a stockholder or otherwise, has a proprietary interest in the nursing home as required by section 20142, of each officer and director of a nursing home which is a corporation, and of each trustee or beneficiary of a nursing home which is a trust.

(e) A list of licensed personnel employed or retained by the nursing home.

(f) A copy of the standard form contract utilized under section 21766.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **333.21784 Threatening medical condition; notice; emergency treatment; comfort of patient.**

Sec. 21784. If a patient's life is threatened by his or her medical condition, the nursing home shall immediately notify the patient's next of kin, patient's representative, and physician. The nursing home shall secure emergency medical treatment for the patient when the patient's physician is not available. A nursing home shall take all reasonable measures to ensure the comfort of a patient in the terminal stages of an illness.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **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.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **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.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **333.21787 Michigan public health institute; consultation and contracts.**

Sec. 21787. The department may consult and work with the Michigan public health institute created under section 2611 in performing the department's regulatory and disciplinary duties under this article. The department may also contract with the Michigan public health institute for the performance of specific functions required or authorized by this article, if determined necessary by the director of the department.

**History:** Add. 2000, Act 501, Imd. Eff. Jan. 11, 2001.

**Popular name:** Act 368

### **333.21791 Advertising; false or misleading information prohibited.**

Sec. 21791. A licensee shall not use false or misleading information in the advertising of a nursing home or its name.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **333.21792 Commission, bonus, fee, or gratuity; violation; penalty.**

Sec. 21792. (1) An owner, administrator, employee, or representative of a nursing home shall not pay, or offer to pay, a commission, bonus, fee, or gratuity to a physician, surgeon, organization, agency, or other person for the referral of a patient to a nursing home.

(2) A person shall not offer or give a commission, bonus, fee, or gratuity to an owner, administrator, employee, or representative of a nursing home in return for the purchase of a drug, biological, or any other ancillary services provided for a patient of a nursing home.

(3) An owner, administrator, employee, or representative of a nursing home shall not accept a commission, bonus, fee, or gratuity in return for the purchase of a drug, biological, or any other ancillary services provided for a patient of a nursing home.

(4) A person who violates this section is guilty of a felony, punishable by imprisonment for not more than 4 years, or a fine of not more than \$30,000.00, or both.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **333.21795 Education and training for unlicensed nursing personnel; criteria; competency examinations; rules.**

Sec. 21795. (1) The department, in consultation and with the advice of the Michigan board of nursing and appropriate consumer and professional organizations, shall develop by rule minimum criteria for the education and training for unlicensed nursing personnel in facilities designated in this part.

(2) This section shall not be construed to be a prerequisite for employment of unlicensed nursing personnel in a nursing home.

(3) During the annual licensing inspection the department shall, and during other inspections the department may, conduct random competency examinations to determine whether the requirements of this section are being met. The department shall promulgate rules to administer this subsection.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **333.21796 Insuring proper licensing of licensed personnel.**

Sec. 21796. The nursing home administrator and licensee shall be responsible for insuring that all licensed personnel employed by the nursing home are properly licensed.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **333.21799a Nursing home; violation; complaint; investigation; disclosure; determination; listing violation and provisions violated; copies of documents; public inspection; report of violation; penalty; request for hearing; notice of hearing; "priority complaint" defined.**

Sec. 21799a. (1) A person who believes that this part, a rule promulgated under this part, or a federal certification regulation applying to a nursing home may have been violated may request an investigation of a nursing home. The person may submit the request for investigation to the department as a written complaint, or the department shall assist a person in reducing an oral request made under subsection (2) to a written complaint as provided in subsection (2). A person filing a complaint under this subsection may file the complaint on a model standardized complaint form developed and distributed by the department under section 20194(3) or file the complaint as provided by the department on the internet.

(2) The department shall provide a toll-free telephone consumer complaint line. The complaint line shall be accessible 24 hours per day and monitored at a level to ensure that each priority complaint is identified and that a response is initiated to each priority complaint within 24 hours after its receipt. The department shall establish a system for the complaint line that includes at least all of the following:

(a) An intake form that serves as a written complaint for purposes of subsections (1) and (5).

(b) The forwarding of an intake form to an investigator not later than the next business day after the complaint is identified as a priority complaint.

(c) Except for an anonymous complaint, the forwarding of a copy of the completed intake form to the complainant not later than 5 business days after it is completed.

(3) The substance of a complaint filed under subsection (1) or (2) shall be provided to the licensee no earlier than at the commencement of the on-site inspection of the nursing home that takes place in response to the complaint.

(4) A complaint filed under subsection (1) or (2), a copy of the complaint, or a record published, released, or otherwise disclosed to the nursing home shall not disclose the name of the complainant or a patient named in the complaint unless the complainant or patient consents in writing to the disclosure or the investigation results in an administrative hearing or a judicial proceeding, or unless disclosure is considered essential to the investigation by the department. If the department considers disclosure essential to the investigation, the department shall give the complainant the opportunity to withdraw the complaint before disclosure.

(5) Upon receipt of a complaint under subsection (1) or (2), the department shall determine, based on the allegations presented, whether this part, a rule promulgated under this part, or a federal certification regulation for nursing homes has been, is, or is in danger of being violated. Subject to subsection (2), the department shall investigate the complaint according to the urgency determined by the department. The initiation of a complaint investigation shall commence within 15 days after receipt of the written complaint by the department.

(6) If, at any time, the department determines that this part, a rule promulgated under this part, or a federal certification regulation for nursing homes has been violated, the department shall list the violation and the provisions violated on the state and federal licensure and certification forms for nursing homes. The department shall consider the violations, as evidenced by a written explanation, when it makes a licensure and certification decision or recommendation.

(7) In all cases, the department shall inform the complainant of its findings unless otherwise indicated by the complainant. Subject to subsection (2), within 30 days after receipt of the complaint, the department shall provide the complainant a copy, if any, of the written determination, the correction notice, the warning notice, and the state licensure or federal certification form, or both, on which the violation is listed, or a status report indicating when these documents may be expected. The department shall include in the final report a copy of the original complaint. The complainant may request additional copies of the documents described in this subsection and upon receipt shall reimburse the department for the copies in accordance with established policies and procedures.

(8) The department shall make a written determination, correction notice, or warning notice concerning a complaint available for public inspection, but the department shall not disclose the name of the complainant or patient without the complainant's or patient's consent.

(9) The department shall report a violation discovered as a result of the complaint investigation procedure to persons administering sections 21799c to 21799e. The department shall assess a penalty for a violation, as prescribed by this article.

(10) A complainant who is dissatisfied with the determination or investigation by the department may request a hearing. A complainant shall submit a request for a hearing in writing to the director within 30 days after the mailing of the department's findings as described in subsection (7). The department shall send notice of the time and place of the hearing to the complainant and the nursing home.

(11) As used in this section, "priority complaint" means a complaint alleging an existing situation that involves physical, mental, or emotional abuse, mistreatment, or harmful neglect of a resident that requires immediate corrective action to prevent serious injury, serious harm, serious impairment, or death of a resident while receiving care in a facility.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979;—Am. 2003, Act 3, Imd. Eff. Apr. 22, 2003;—Am. 2004, Act 189, Imd. Eff. July 8, 2004.

**Popular name:** Act 368

**333.21799b Noncompliance; notice of finding; correction notices; hearing; verification of compliance; investigation; action; definitions; annual report; presumption.**

Sec. 21799b. (1) If, upon investigation, the department of consumer and industry services finds that a licensee is not in compliance with this part, a rule promulgated under this part, or a federal law or regulation governing nursing home certification under title XVIII or XIX, which noncompliance impairs the ability of the licensee to deliver an acceptable level of care and services, or in the case of a nursing home closure, the department of consumer and industry services shall notify the department of community health of the finding and may issue 1 or more of the following correction notices to the licensee:

- (a) Suspend the admission or readmission of patients to the nursing home.
- (b) Reduce the licensed capacity of the nursing home.
- (c) Selectively transfer patients whose care needs are not being met by the licensee.
- (d) Initiate action to place the home in receivership as prescribed in section 21751.

(e) Require appointment at the nursing home's expense of a department approved temporary administrative advisor or a temporary clinical advisor, or both, with authority and duties specified by the department to assist the nursing home management and staff to achieve sustained compliance with required operating standards.

(f) Require appointment at the nursing home's expense of a department approved temporary manager with authority and duties specified by the department to oversee the nursing home's achievement of sustained compliance with required operating standards or to oversee the orderly closure of the nursing home.

(g) Issue a correction notice to the licensee and the department of community health describing the violation and the statute or rule violated and specifying the corrective action to be taken and the period of time in which the corrective action is to be completed. Upon issuance, the director shall cause to be published in a daily newspaper of general circulation in an area in which the nursing home is located notice of the action taken and the listing of conditions upon which the director's action is predicated.

(2) Within 72 hours after receipt of a notice issued under subsection (1), the licensee shall be given an opportunity for a hearing on the matter. The director's notice shall continue in effect during the pendency of the hearing and any subsequent court proceedings. The hearing shall be conducted in compliance with the administrative procedures act of 1969.

(3) A licensee who believes that a correction notice has been complied with may request a verification of compliance from the department. Not later than 72 hours after the licensee makes the request, the department shall investigate to determine whether the licensee has taken the corrective action prescribed in the notice under subsection (1)(g). If the department finds that the licensee has taken the corrective action and that the conditions giving rise to the notice have been alleviated, the department may cease taking further action against the licensee, or may take other action that the director considers appropriate.

(4) As used in this part, "title XVIII" and "title XIX" mean those terms as defined in section 20155.

(5) The department shall report annually to the house and senate standing committees on senior issues on the number of times the department appointed a temporary administrative advisor, temporary clinical advisor, and temporary manager as described in subsection (1)(e) or (f). The report shall include whether the nursing home closed or remained open. The department may include this report with other reports made to fulfill legislative reporting requirements.

(6) If the department determines that a nursing home's patients can be safeguarded and provided with a safe environment, the department shall make its decisions concerning the nursing home's future operation based on a presumption in favor of keeping the nursing home open.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979;—Am. 2000, Act 437, Imd. Eff. Jan. 9, 2001.

**Popular name:** Act 368

**333.21799c Violations; penalties; computation of civil penalties; paying or reimbursing patient; rules for quality of care allowance formula.**

Sec. 21799c. (1) A person who violates 1 of the following sections is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not less than \$1,000.00, nor more than \$10,000.00, or both:

- (a) Section 21711.
- (b) Section 21712.
- (c) Section 21763(5).
- (d) Section 21765a(1) or (2).

(e) Section 21771(1) or (6).

(f) Section 21791.

(2) A person who violates section 21765a(1) or (2) is liable to an applicant or patient in a civil action for treble the amount of actual damages or \$1,000.00, whichever is greater, together with costs and reasonable attorney fees.

(3) For the purpose of computing administrative penalties under this section, the number of patients per day is based on the average number of patients in the nursing home during the 30 days immediately preceding the discovery of the violation.

(4) If the department finds a violation of section 20201 as to a particular nursing home patient, the department shall issue an order requiring the nursing home to pay to the patient \$100.00, or to reimburse the patient for costs incurred or injuries sustained as a result of the violation, whichever is greater. The department also shall assess the nursing home an administrative penalty that is the lesser of the following:

(a) Not more than \$1,500.00.

(b) \$15.00 per patient bed.

(5) The department of community health shall promulgate rules for a quality of care allowance formula that is consistent with the recommendations of the fiscal incentives subcommittee to the committee on nursing home reimbursement established pursuant to Act No. 241 of the Public Acts of 1975, as described in the November 24, 1975 interim report, in the December 3, 1975 final report, and the November 24, 1976 report of the committee recommending appropriate changes in the procedures utilized.

(6) The department shall not assess an administrative penalty under subsection (4) for a violation of this part for which a nursing home's reimbursement is withheld under subsection (5).

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979;—Am. 1994, Act 73, Imd. Eff. Apr. 11, 1994;—Am. 1996, Act 546, Eff. Mar. 31, 1997.

**Popular name:** Act 368

### **333.21799d Collection of civil penalty; noncompliance; order.**

Sec. 21799d. A civil penalty assessed under this part shall be collected by the department. If the person or nursing home against whom a civil penalty has been assessed does not comply with a written demand for payment within 30 days, the department shall issue an order to do 1 of the following:

(a) Direct the department of treasury to deduct the amount of the civil penalty from amounts otherwise due from the state to the nursing home and remit that amount to the department.

(b) Add the amount of the civil penalty to the nursing home's licensing fee. If the licensee refuses to make the payment at the time of application for renewal of its license, the license shall not be renewed.

(c) Bring an action in circuit court to recover the amount of the civil penalty.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368

### **333.21799e Penalties and remedies cumulative.**

Sec. 21799e. (1) The penalties prescribed by this part or a rule promulgated under this part are cumulative and not exclusive. Neither the department nor any other party is limited to the remedies in this part.

(2) The remedies provided under section 20155 and sections 21799a to 21799d are independent and cumulative. Except as provided in section 21799(c)(5), the use of 1 remedy by a person shall not be considered a bar to the use of other remedies by that person or to the use of any remedy by another person.

**History:** Add. 1978, Act 493, Eff. Mar. 30, 1979.

**Popular name:** Act 368