

HOUSE BILL No. 6280

September 17, 2002, Introduced by Reps. Cassis, Newell, Vander Veen, Richardville, Caul, Shulman, Vear, Pappageorge, Voorhees, Middaugh and Richner and referred to the Committee on Senior Health, Security and Retirement.

A bill to amend 1978 PA 368, entitled "Public health code," by amending section 21734 (MCL 333.21734), as added by 2000 PA 437, and by adding section 21735.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 21734. (1) Notwithstanding section 20201(2)(l), a
2 nursing home shall give each ~~resident~~ PATIENT who uses a
3 hospital-type bed or the ~~resident's~~ PATIENT'S legal guardian,
4 patient advocate, or other legal representative the option of
5 having bed rails. A nursing home shall offer the option to new
6 ~~residents~~ PATIENTS upon admission and to other ~~residents~~
7 PATIENTS upon request. Upon receipt of a request for bed rails,
8 the nursing home shall inform the ~~resident~~ PATIENT or the
9 ~~resident's~~ PATIENT'S legal guardian, patient advocate, or other
10 legal representative of alternatives to and the risks involved in

1 using bed rails. A ~~resident~~ PATIENT or the ~~resident's~~
2 PATIENT'S legal guardian, patient advocate, or other legal repre-
3 sentative has the right to request and consent to bed rails for
4 the ~~resident~~ PATIENT. A nursing home shall provide bed rails
5 to a ~~resident~~ PATIENT only upon receipt of a signed consent
6 form authorizing bed rail use and a written order from the
7 ~~resident's~~ PATIENT'S attending physician that contains state-
8 ments and determinations regarding medical symptoms and that
9 specifies the circumstances under which bed rails are to be
10 used. For purposes of this subsection, "medical symptoms"
11 includes the following:

12 (a) A concern for the physical safety of the ~~resident~~
13 PATIENT.

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

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

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

21 (b) Monitor the ~~resident's~~ PATIENT'S use of the bed
22 rails.

23 (c) In consultation with the ~~resident~~ PATIENT,
24 ~~resident's~~ PATIENT'S family, ~~resident's~~ PATIENT'S attending
25 physician, and individual who consented to the bed rails, period-
26 ically reevaluate the ~~resident's~~ PATIENT'S need for the bed
27 rails.

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

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

9 (b) Proper maintenance of bed rails.

10 (c) Properly fitted mattresses.

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

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

1 reflect the recommendations of the hospital bed safety work group
2 established by the United States food and drug administration.

3 (5) A nursing home that complies with subsections (1) and
4 (2) and the guidelines developed under this section in providing
5 bed rails to a ~~resident~~ PATIENT is not subject to administra-
6 tive penalties imposed by the department based solely on provid-
7 ing the bed rails. Nothing in this subsection precludes the
8 department from citing specific state or federal deficiencies for
9 improperly maintained bed rails, improperly fitted mattresses, or
10 other hazards created by improperly positioned bed rails, mat-
11 tresses, or beds.

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

17 SEC. 21735. (1) NOTWITHSTANDING SECTION 20201(2)(l), A
18 NURSING HOME SHALL GIVE EACH PATIENT WHO USES A WHEELCHAIR OR THE
19 PATIENT'S LEGAL GUARDIAN, PATIENT ADVOCATE, OR OTHER LEGAL REPRE-
20 SENTATIVE THE OPTION OF USING 1 OR MORE WHEELCHAIR ASSISTIVE
21 DEVICES. A NURSING HOME SHALL OFFER THE OPTION TO NEW PATIENTS
22 UPON ADMISSION AND TO OTHER PATIENTS UPON REQUEST. UPON RECEIPT
23 OF A REQUEST FOR A WHEELCHAIR ASSISTIVE DEVICE, THE NURSING HOME
24 SHALL INFORM THE PATIENT OR THE PATIENT'S LEGAL GUARDIAN, PATIENT
25 ADVOCATE, OR OTHER LEGAL REPRESENTATIVE OF ALTERNATIVES TO AND
26 THE RISKS INVOLVED IN USING THE WHEELCHAIR ASSISTIVE DEVICE. A
27 PATIENT OR THE PATIENT'S LEGAL GUARDIAN, PATIENT ADVOCATE, OR

1 OTHER LEGAL REPRESENTATIVE HAS THE RIGHT TO REQUEST AND CONSENT
2 TO A WHEELCHAIR ASSISTIVE DEVICE FOR THE PATIENT. A NURSING HOME
3 SHALL PROVIDE A WHEELCHAIR ASSISTIVE DEVICE TO A PATIENT ONLY
4 UPON RECEIPT OF A SIGNED CONSENT FORM AUTHORIZING USE OF THE
5 WHEELCHAIR ASSISTIVE DEVICE AND A WRITTEN ORDER FROM THE
6 PATIENT'S ATTENDING PHYSICIAN THAT CONTAINS STATEMENTS AND DETER-
7 MINATIONS REGARDING MEDICAL SYMPTOMS AND THAT SPECIFIES THE CIR-
8 CUMSTANCES UNDER WHICH THE WHEELCHAIR ASSISTIVE DEVICE IS TO BE
9 USED.

10 (2) A NURSING HOME THAT PROVIDES A WHEELCHAIR ASSISTIVE
11 DEVICE UNDER SUBSECTION (1) SHALL DO ALL OF THE FOLLOWING:

12 (A) DOCUMENT THAT THE REQUIREMENTS OF SUBSECTION (1) HAVE
13 BEEN MET.

14 (B) MONITOR THE PATIENT'S USE OF THE WHEELCHAIR ASSISTIVE
15 DEVICE.

16 (C) IN CONSULTATION WITH THE PATIENT, PATIENT'S FAMILY,
17 PATIENT'S ATTENDING PHYSICIAN, AND INDIVIDUAL WHO CONSENTED TO
18 USE OF THE WHEELCHAIR ASSISTIVE DEVICE, PERIODICALLY REEVALUATE
19 THE PATIENT'S NEED FOR THE WHEELCHAIR ASSISTIVE DEVICE.

20 (3) THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES SHALL
21 DEVELOP CLEAR AND UNIFORM GUIDELINES TO BE USED IN DETERMINING
22 WHAT CONSTITUTES EACH OF THE FOLLOWING:

23 (A) ACCEPTABLE WHEELCHAIR ASSISTIVE DEVICES FOR USE IN A
24 NURSING HOME IN THIS STATE.

25 (B) PROPER MAINTENANCE OF WHEELCHAIRS AND WHEELCHAIR ASSIS-
26 TIVE DEVICES.

1 (C) HAZARDS CREATED BY IMPROPER USE OF WHEELCHAIR ASSISTIVE
2 DEVICES.

3 (4) THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES SHALL
4 DEVELOP THE GUIDELINES UNDER SUBSECTION (3) IN CONSULTATION WITH
5 THE LONG-TERM CARE WORK GROUP. AN INDIVIDUAL REPRESENTING MANU-
6 FACTURERS OF WHEELCHAIR ASSISTIVE DEVICES, 2 PATIENTS OR FAMILY
7 MEMBERS, AND AN INDIVIDUAL WITH EXPERTISE IN WHEELCHAIR ASSISTIVE
8 DEVICE INSTALLATION AND USE SHALL BE ADDED TO THE LONG-TERM CARE
9 WORK GROUP FOR PURPOSES OF THIS SUBSECTION. NOT LATER THAN 6
10 MONTHS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
11 THIS SECTION, THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
12 SHALL SUBMIT ITS REPORT TO THE LEGISLATURE.

13 (5) A NURSING HOME THAT COMPLIES WITH SUBSECTIONS (1) AND
14 (2) AND THE GUIDELINES DEVELOPED UNDER THIS SECTION IN PROVIDING
15 A WHEELCHAIR ASSISTIVE DEVICE TO A PATIENT IS NOT SUBJECT TO
16 ADMINISTRATIVE PENALTIES IMPOSED BY THE DEPARTMENT BASED SOLELY
17 ON PROVIDING WHEELCHAIR ASSISTIVE DEVICES. NOTHING IN THIS SUB-
18 SECTION PRECLUDES THE DEPARTMENT FROM CITING SPECIFIC STATE OR
19 FEDERAL DEFICIENCIES FOR AN IMPROPERLY USED OR MAINTAINED WHEEL-
20 CHAIR ASSISTIVE DEVICE OR OTHER HAZARDS CREATED BY AN IMPROPERLY
21 USED OR MAINTAINED WHEELCHAIR ASSISTIVE DEVICE.

22 (6) THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES SHALL
23 CONSULT WITH REPRESENTATIVES OF THE NURSING HOME INDUSTRY TO
24 EXPEDITIOUSLY DEVELOP INTERIM GUIDELINES ON WHEELCHAIR ASSISTIVE
25 DEVICE USAGE THAT ARE TO BE FOLLOWED UNTIL THE DEPARTMENT DEVEL-
26 OPS THE GUIDELINES REQUIRED UNDER SUBSECTION (4).

1 (7) AS USED IN THIS SECTION:

2 (A) "MEDICAL SYMPTOMS" INCLUDES THE FOLLOWING:

3 (i) A CONCERN FOR THE PHYSICAL SAFETY OF THE PATIENT.

4 (ii) PHYSICAL OR PSYCHOLOGICAL NEED EXPRESSED BY A PATIENT.

5 A PATIENT'S FEAR OF FALLING MAY BE THE BASIS OF A MEDICAL

6 SYMPTOM.

7 (B) "WHEELCHAIR ASSISTIVE DEVICE" MEANS A PHYSICAL RESTRAINT

8 OR OTHER PHYSICAL AID INTENDED TO INCREASE A PATIENT'S SAFETY OR

9 CONVENIENCE IN CONJUNCTION WITH THE PATIENT'S USE OF A

10 WHEELCHAIR.