

REPRINT

SUBSTITUTE FOR

HOUSE BILL NO. 4079

(As Passed the House, March 13, 2003)

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 20194 and 21799a (MCL 333.20194 and
333.21799a), section 20194 as added by 1993 PA 79.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20194. (1) ~~Subject to subsections (2), (3), and~~
2 **(4), a** health facility or agency, except a health facility or
3 agency licensed under part 209, and including a health facility
4 that is not licensed under this article but holds itself out as
5 providing medical services, shall conspicuously display in the
6 patient waiting areas or other common areas of the health
7 facility or agency copies of a pamphlet ~~provided~~ **developed** by
8 the department of ~~public health~~ **consumer and industry services**
9 outlining the procedure for filing a complaint against a health
10 facility or agency with the department ~~of public health~~ and the

1 procedure for filing a complaint ~~with the department of~~
2 ~~commerce~~ against ~~a person~~ **an individual** who is licensed or
3 registered under article 15 **and** employed by, under contract to,
4 or granted privileges by the health facility or agency. The
5 pamphlet shall be ~~prepared~~ **developed and distributed** by the
6 department of ~~public health in consultation with in consultation~~
7 ~~with the department of commerce and~~ **consumer and industry**
8 **services after consultation with** appropriate professional
9 associations.

10 (2) The department of ~~public health~~ **consumer and industry**
11 **services** shall ~~print~~ **develop** the pamphlets **required under**
12 **subsection (1)** in languages that are appropriate to the ethnic
13 composition of the patient population where the pamphlet will be
14 displayed. **The department shall use large, easily readable type**
15 **and nontechnical, easily understood language in the pamphlet.**
16 **The department shall periodically distribute copies of the**
17 **pamphlet to each health facility or agency and to each unlicensed**
18 **health facility described in subsection (1).**

19 (3) The department of consumer and industry services shall
20 include a model standardized complaint form in the pamphlet
21 described in subsection (1). The department may develop a
22 separate model standardized complaint form that is specific to a
23 particular health facility or agency or category of health
24 facilities and agencies. The department shall develop a model
25 standardized complaint form that is specific to nursing homes.
26 The department shall include on the model standardized complaint
27 form, at a minimum, simple instructions on how to file a

1 complaint, including with the nursing home as required under
2 section 21723, the department, the state long-term care
3 ombudsman, the Michigan protection and advocacy service, inc., and the
4 health care fraud unit of the department of attorney general.
5 The department shall distribute copies of the model standardized
6 complaint form simultaneously with copies of the pamphlet as
7 required under subsection (2). The nursing home shall
8 conspicuously display and make available multiple copies of the
9 pamphlet and model standardized complaint form with the complaint
10 information required to be posted under section 21723 in the
11 patient waiting areas or other common areas of the nursing home
12 that are easily accessible to nursing home patients and their
13 visitors, as described in subsection (1), and shall provide a copy of the
14 pamphlet and complaint form to each nursing home resident or the
15 resident's surrogate decision maker upon admission to the nursing home.
16 The department shall
17 include on the model standardized complaint form a telephone
18 number for the receipt of oral complaints.

16 (4) The department may continue to distribute the complaint
17 pamphlets within its possession on the effective date of the
18 amendatory act that added this subsection until the department's
19 stock is exhausted or until October 1, 2003, whichever is
20 sooner. Beginning October 1, 2003, the department shall only
21 distribute the complaint pamphlets and model standardized
22 complaint forms that are in compliance with subsections (2) and
23 (3).

24 (5) The department shall make the complaint pamphlet and the
25 model standardized complaint form available to the public on the
26 department's internet website. The department shall take
27 affirmative action toward the development and implementation of

1 **an electronic filing system that would allow an individual to**
2 **file a complaint through the website.**

3 Sec. 21799a. (1) A person who believes that this part, a
4 rule promulgated under this part, or a federal certification
5 regulation applying to a nursing home may have been violated may
6 request an investigation of a nursing home. **The person shall**
7 **submit the request** ~~shall be submitted~~ **for investigation** to the
8 department **of consumer and industry services** as a written
9 complaint, or the department shall assist the person in reducing
10 an oral request to a written complaint within 7 days after the
11 oral request is made. **A person filing a complaint under this**
12 **subsection may file the complaint on a model standardized**
13 **complaint form developed and distributed by the department under**
14 **section 20194(3) or file the complaint as provided by the**
15 **department on the internet.**

16 (2) The substance of ~~the~~ **a complaint filed under subsection**
17 **(1)** shall be provided to the licensee no earlier than at the
18 commencement of the on-site inspection of the nursing home
19 ~~which~~ **that** takes place pursuant to the complaint.

20 (3) ~~The~~ **A complaint filed under subsection (1)**, a copy of
21 the complaint, or a record published, released, or otherwise
22 disclosed to the nursing home shall not disclose the name of the
23 complainant or a patient named in the complaint unless the
24 complainant or patient consents in writing to the disclosure or
25 the investigation results in an administrative hearing or a
26 judicial proceeding, or unless disclosure is considered essential
27 to the investigation by the department **of consumer and industry**

1 **services.** If **the department considers** disclosure ~~is considered~~
2 essential to the investigation, the **department shall give the**
3 complainant ~~shall be given~~ the opportunity to withdraw the
4 complaint before disclosure.

5 (4) Upon receipt of a complaint **under subsection (1)**, the
6 department **of consumer and industry services** shall determine,
7 based on the allegations presented, whether this part, a rule
8 promulgated under this part, or a federal certification
9 regulation for nursing homes has been, is, or is in danger of
10 being violated. The department shall investigate the complaint
11 according to the urgency determined by the department. The
12 initiation of a complaint investigation shall commence within 15
13 days after receipt of the written complaint by the department.

14 (5) If, at any time, the department **of consumer and industry**
15 **services** determines that this part, a rule promulgated under this
16 part, or a federal certification regulation for nursing homes has
17 been violated, the department shall list the violation and the
18 provisions violated on the state and federal licensure and
19 certification forms for nursing homes. The **department shall**
20 **consider the** violations, ~~shall be considered,~~ as evidenced by a
21 written explanation, ~~by the department~~ when it makes a
22 licensure and certification decision or recommendation.

23 (6) In all cases, the department **of consumer and industry**
24 **services** shall inform the complainant of its findings unless
25 otherwise indicated by the complainant. Within 30 days after
26 ~~the~~ receipt of **the** complaint, the department shall provide the
27 complainant a copy, if any, of the written determination, the

1 correction notice, the warning notice, and the state licensure or
2 federal certification form, or both, on which the violation is
3 listed, or a status report indicating when these documents may be
4 expected. The **department shall include in the** final report
5 ~~shall include~~ a copy of the original complaint. The
6 complainant may request additional copies of the documents
7 ~~listed~~ **described** in this subsection and **upon receipt** shall
8 reimburse the department for the copies in ~~accord~~ **accordance**
9 with established policies and procedures.

10 (7) ~~A~~ **The department of consumer and industry services**
11 **shall make a** written determination, correction notice, or warning
12 notice concerning a complaint ~~shall be~~ available for public
13 inspection, but the **department shall not disclose the** name of the
14 complainant or patient ~~shall not be disclosed~~ without the
15 complainant's or patient's consent.

16 (8) ~~A~~ **The department of consumer and industry services**
17 **shall report a** violation discovered as a result of the complaint
18 investigation procedure ~~shall be reported~~ to persons
19 administering sections 21799c to 21799e. The **department shall**
20 **assess a penalty for a** violation, ~~shall be assessed a penalty~~
21 as ~~described in~~ **prescribed by** this ~~act~~ **article**.

22 (9) A complainant who is dissatisfied with the determination
23 or investigation by the department **of consumer and industry**
24 **services** may request a hearing. A **complainant shall submit a**
25 request for a hearing ~~shall be submitted~~ in writing to the
26 director within 30 days after the mailing of the department's
27 findings as described in subsection (6). ~~Notice~~ **The department**

1 **shall send notice** of the time and place of the hearing ~~shall be~~
2 ~~sent~~ to the complainant and the nursing home.