

HOUSE BILL No. 4756

May 27, 2003, Introduced by Reps. Lipsey, Vagnozzi, Bieda, Kolb, Zelenko, Dennis, Jamnick, Sak, Tobocman, Gleason, Rivet, Anderson and Plakas 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 21766 (MCL 333.21766), as amended by 2001 PA 243, and by adding section 21766a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 21766. (1) A nursing home shall execute a written
2 contract solely with an applicant or patient or that applicant's
3 or patient's guardian or legal representative authorized by law
4 to have access to those portions of the patient's or applicant's
5 income or assets available to pay for nursing home care, at each
6 of the following times:
7 (a) At the time an individual is admitted to a nursing home.
8 (b) At the expiration of the term of a previous contract.
9 (c) At the time the source of payment for the patient's care
10 changes.

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

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

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

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

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

27 (7) The nursing home shall ensure that the contract is

1 written in clear and unambiguous language and is printed in not
2 less than 12-point type. The form of the contract shall be
3 prescribed by the department.

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

5 (a) The term of the contract.

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

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

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

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

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

19 (g) The right of a patient or the patient's legal guardian or
20 legal representative to deposit amounts due under the contract in
21 an escrow account pursuant to section 21766a if the nursing home
22 is in violation of a local ordinance or of this article or a rule
23 promulgated under this article.

24 (h) The right of the patient or the patient's legal guardian
25 or other legal representative to seek appropriate relief from a
26 court of competent jurisdiction for a violation of the contract.

27 (9) The nursing home may require a patient's or applicant's

1 guardian or legal representative who is authorized by law to have
2 access to those portions of the patient's or applicant's income
3 or assets available to pay for nursing home care to sign a
4 contract without incurring personal financial liability other
5 than for funds received in his or her legal capacity on behalf of
6 the patient.

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

11 **Sec. 21766a. (1) If a patient residing in a nursing home or**
12 **the patient's legal guardian or other legal representative**
13 **described in section 21766(1) has executed a contract under**
14 **section 21766, and if the patient or the patient's legal guardian**
15 **or other legal representative has reasonable cause to believe**
16 **that a nursing home is in violation of a local ordinance or of**
17 **this article or a rule promulgated under this article, the**
18 **patient or the patient's legal guardian or other legal**
19 **representative may suspend payment due the nursing home under the**
20 **contract, pursuant to this section.**

21 (2) A nursing home patient or the patient's legal guardian or
22 other legal representative who suspends payment due under a
23 nursing home contract pursuant to subsection (1) shall deposit
24 the amount due in an escrow account with a financial institution
25 located in this state. The financial institution with which the
26 escrow account is established shall pay the funds in the escrow
27 account to the nursing home to which the funds are owed or shall

1 pay restitution to the patient when the financial institution
2 receives written notice from the department of 1 of the
3 following:

4 (a) That the nursing home is not or is no longer in violation
5 of a local ordinance or of this article or a rule promulgated
6 under this article.

7 (b) That a settlement between the nursing home and the
8 patient, legal guardian, or other legal representative has been
9 reached.

10 (c) That the patient, legal guardian, or other legal
11 representative has voluntarily resumed payment.

12 (d) That the department has found a violation of a local
13 ordinance or of this article or the rules promulgated under this
14 article and has ordered the nursing home to pay restitution to
15 the patient.

16 (3) A nursing home patient or the patient's legal guardian or
17 other legal representative who elects to suspend payment under
18 subsection (1) shall notify the nursing home and the department
19 in writing of the suspension of payment and of the provisions of
20 the local ordinance or of this article or a rule promulgated
21 under this article that the resident, legal guardian, or other
22 legal representative believes are being violated. The notice
23 shall also contain the name and address of the financial
24 institution in which the escrow account is established under
25 subsection (2).

26 (4) A nursing home shall not evict a resident solely because
27 the resident has suspended payment pursuant to this section.

1 (5) Upon receipt of the notice described in subsection (3),
2 the department shall conduct the investigation required under
3 section 20176 in an expeditious manner. If the department
4 determines that the nursing home is in violation of a local
5 ordinance or of this article or a rule promulgated under this
6 article, the department may order the nursing home to pay
7 restitution to the patient. The department may order restitution
8 in the form of an abatement of payments due under the contract or
9 a rebate of payments made under the contract, or both. If the
10 department orders a nursing home to pay restitution under this
11 subsection, the department shall notify the financial institution
12 with which the amount due under the contract has been deposited
13 pursuant to subsection (2) to pay the restitution out of the
14 escrow account.

15 (6) If the department does not order restitution under
16 subsection (5), or if a nursing home patient, legal guardian, or
17 other legal representative does not use the procedure described
18 in this section or has reasonable cause to believe that the
19 nursing home is in violation of the nursing home contract, he or
20 she may bring an action in a court of competent jurisdiction.
21 The patient, legal guardian, or legal representative may seek
22 appropriate relief from the court, including, but not limited to,
23 an abatement of payments due under the contract or a rebate of
24 payments made under the contract, or both.