

SUBSTITUTE FOR
HOUSE BILL NO. 4789

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding section 21794.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 21794. (1) EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTION
2 (7), WITH THE CONSENT OF THE RESIDENT OR THE RESIDENT'S DESIGNATED
3 REPRESENTATIVE A NURSING HOME MAY USE A DINING ASSISTANT TO FEED
4 RESIDENTS WHO, BASED ON THE CHARGE NURSE'S ASSESSMENT OF THE
5 RESIDENT AND THE RESIDENT'S MOST RECENT PLAN OF CARE, NEED
6 ASSISTANCE OR ENCOURAGEMENT WITH EATING AND DRINKING, BUT DO NOT
7 HAVE COMPLICATED FEEDING PROBLEMS, INCLUDING, BUT NOT LIMITED TO,
8 DIFFICULTY SWALLOWING, RECURRENT LUNG ASPIRATIONS, TUBE OR
9 PARENTERAL FEEDINGS, OR BEHAVIORAL ISSUES THAT MAY COMPROMISE

1 NUTRITIONAL INTAKE. THE CHARGE NURSE'S ASSESSMENT AND PLAN OF CARE
2 SHALL BE DOCUMENTED IN THE RESIDENT'S MEDICAL RECORD. FOR THOSE
3 RESIDENTS WHO ARE ASSIGNED A DINING ASSISTANT AND ARE NOT ON A
4 QUARTERLY RESIDENT PLAN OF CARE, THE CHARGE NURSE SHALL PERFORM A
5 SPECIAL QUARTERLY ASSESSMENT TO MONITOR THE APPROPRIATENESS OF
6 UTILIZING THE DINING ASSISTANT.

7 (2) A NURSING HOME THAT CHOOSES TO UTILIZE DINING ASSISTANTS
8 SHALL PROVIDE DINING ASSISTANTS WITH TRAINING THROUGH THEIR OWN
9 DINING ASSISTANT TRAINING PROGRAM THAT HAS BEEN APPROVED BY THE
10 DEPARTMENT OR BY ARRANGING FOR ANOTHER APPROVED DINING ASSISTANT
11 TRAINING PROGRAM TO PROVIDE THE TRAINING. IN ORDER TO BE APPROVED
12 BY THE DEPARTMENT, THE DINING ASSISTANT TRAINING PROGRAM SHALL
13 INCLUDE, AT A MINIMUM, A 1-HOUR PRACTICUM OF DIRECT RESIDENT
14 CONTACT, A WRITTEN EXAMINATION, AND COURSES ON EACH OF THE
15 FOLLOWING TOTALING NOT LESS THAN 15.5 HOURS:

- 16 (A) DINING ASSISTANTS PROGRAM OVERVIEW.
17 (B) RESIDENT RIGHTS.
18 (C) COMMUNICATION AND INTERPERSONAL SKILLS.
19 (D) APPROPRIATE RESPONSES TO RESIDENT BEHAVIOR.
20 (E) RECOGNIZING CHANGES IN RESIDENTS.
21 (F) INFECTION CONTROL.
22 (G) ASSISTANCE WITH FEEDING AND HYDRATION.
23 (H) FEEDING TECHNIQUES.
24 (I) SAFETY AND EMERGENCY PROCEDURES.
25 (J) END OF LIFE.

26 (3) AN INDIVIDUAL SHALL NOT BE PAID BY THE NURSING HOME AS A
27 DINING ASSISTANT UNLESS THAT INDIVIDUAL HAS SUCCESSFULLY COMPLETED

1 A DINING ASSISTANT TRAINING PROGRAM DESCRIBED UNDER SUBSECTION (2).
2 A NURSING HOME SHALL NOT EMPLOY OR ALLOW AN INDIVIDUAL WHO IS LESS
3 THAN 17 YEARS OF AGE TO WORK AS A DINING ASSISTANT.

4 (4) A DINING ASSISTANT SHALL WORK UNDER THE SUPERVISION OF A
5 REGISTERED PROFESSIONAL NURSE OR A LICENSED PRACTICAL NURSE. A
6 DINING ASSISTANT'S SOLE PURPOSE IS TO PROVIDE FEEDING ASSISTANCE TO
7 RESIDENTS, AND HE OR SHE SHALL NOT PERFORM ANY OTHER NURSING OR
8 NURSING-RELATED TASKS, SUCH AS TOILETING OR TRANSPORTING RESIDENTS.
9 EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTION (5), A DINING
10 ASSISTANT SHALL ONLY PROVIDE FEEDING ASSISTANCE UNDER THE DIRECTION
11 OF A REGISTERED PROFESSIONAL NURSE, LICENSED PRACTICAL NURSE, OR
12 CERTIFIED NURSE AID. A DINING ASSISTANT IS NOT NURSING PERSONNEL
13 AND SHALL NOT BE INCLUDED IN COMPUTING THE RATIO OF PATIENTS TO
14 NURSING CARE PERSONNEL OR USED TO SUPPLEMENT OR REPLACE NURSING
15 PERSONNEL. EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTION (5),
16 DINING ASSISTANTS SHALL ONLY PROVIDE FEEDING ASSISTANCE IN
17 DESIGNATED DINING AREAS AND SHALL NOT FEED RESIDENTS IN THEIR
18 ROOMS. A DINING ASSISTANT SHALL NOT BE ASSIGNED MORE THAN 3
19 RESIDENTS AT 1 TIME. BECAUSE PROVIDING FEEDING ASSISTANCE TO
20 RESIDENTS IS PROVIDING DIRECT SERVICES TO RESIDENTS, DINING
21 ASSISTANTS ARE SUBJECT TO THE CRIMINAL BACKGROUND CHECKS UNDER
22 SECTION 20173.

23 (5) IF APPROVED BY THE CHARGE NURSE AND SUBJECT TO SUBSECTION
24 (1), A DINING ASSISTANT MAY FEED A RESIDENT WHO IS UNABLE TO MAKE
25 IT INTO A DESIGNATED DINING AREA IN HIS OR HER ROOM. A REGISTERED
26 PROFESSIONAL NURSE OR A LICENSED PRACTICAL NURSE IS NOT REQUIRED TO
27 BE PHYSICALLY PRESENT WITHIN THE RESIDENT'S ROOM DURING THE

1 FEEDING, BUT A REGISTERED PROFESSIONAL NURSE OR LICENSED PRACTICAL
2 NURSE SHALL BE IMMEDIATELY AVAILABLE TO PROVIDE HELP IF NEEDED. A
3 DINING ASSISTANT WHO IS FEEDING A RESIDENT IN HIS OR HER ROOM AS
4 PROVIDED UNDER THIS SUBSECTION SHALL NOT BE ASSIGNED TO ASSIST
5 ANOTHER RESIDENT AT THE SAME TIME.

6 (6) A NURSING HOME THAT UTILIZES DINING ASSISTANTS SHALL
7 MAINTAIN A WRITTEN RECORD OF EACH INDIVIDUAL USED AS A DINING
8 ASSISTANT. THE WRITTEN RECORD SHALL INCLUDE, AT A MINIMUM, THE
9 COMPLETE NAME AND ADDRESS OF THE INDIVIDUAL AND THE DATE THE
10 INDIVIDUAL SUCCESSFULLY COMPLETED THE DINING ASSISTANT TRAINING
11 PROGRAM ALONG WITH A COPY OF THE WRITTEN RECORD OF THE SATISFACTORY
12 COMPLETION OF THE TRAINING PROGRAM.

13 (7) A NURSING HOME THAT MEETS ANY OF THE FOLLOWING SHALL NOT
14 UTILIZE DINING ASSISTANTS WITHOUT OBTAINING WRITTEN APPROVAL FROM
15 THE DEPARTMENT THAT INCLUDES A MONITORING PLAN TO ENSURE THE
16 HEALTH, SAFETY, AND WELFARE OF THE RESIDENTS WITHIN THAT FACILITY:

17 (A) HAS RECEIVED AN ACTUAL HARM DIETARY RELATED CITATION
18 WITHIN THE IMMEDIATELY PRECEDING YEAR.

19 (B) HAS RECEIVED A STAFFING LEVEL CITATION WITHIN THE
20 IMMEDIATELY PRECEDING 2 YEARS.

21 (C) HAS HAD A BAN ON ADMISSIONS IMPOSED WITHIN THE IMMEDIATELY
22 PRECEDING 2 YEARS.

23 (D) HAS RECEIVED AN IMMEDIATE JEOPARDY CITATION FOR NURSING
24 RELATED ISSUES WITHIN THE IMMEDIATELY PRECEDING 2 YEARS.

25 (E) HAS RECEIVED MORE THAN 2 TIMES THE STATEWIDE AVERAGE
26 NUMBER OF CITATIONS ON THE 2 MOST RECENT SURVEYS.

27 (F) DID NOT COMPLETE, OR PROVIDED INACCURATE, EATING,

1 HYDRATION, AND WEIGHT STATUS INFORMATION IN RESIDENTS' CHARTS FOR
2 THE MOST RECENT SURVEY.

3 (8) NOTHING IN THIS SECTION PROHIBITS A FAMILY MEMBER OR
4 FRIEND FROM PROVIDING FEEDING ASSISTANCE TO A RESIDENT WITHIN THE
5 NURSING HOME OR REQUIRES A FRIEND OR FAMILY MEMBER TO COMPLETE THE
6 TRAINING PROGRAM PRESCRIBED UNDER SUBSECTION (2). HOWEVER, A
7 NURSING HOME MAY OFFER TO PROVIDE THE DINING ASSISTANT TRAINING
8 PROGRAM TO FAMILY MEMBERS AND FRIENDS.

9 (9) IF THE FINAL REPORT ON THE MERITS OF THE MICHIGAN DINING
10 ASSISTANT PILOT PROJECT CONDUCTED BY THE DEPARTMENT OF COMMUNITY
11 HEALTH AND MICHIGAN STATE UNIVERSITY IS NOT COMPLETED BY MAY 1,
12 2006, THE DEPARTMENT SHALL ISSUE AN INTERIM REPORT ON THE
13 UTILIZATION OF DINING ASSISTANTS WITHIN A NURSING HOME BY JUNE 1,
14 2006 AND BY JULY 1, 2006 PRESENT THAT INTERIM REPORT TO THE HOUSE
15 OF REPRESENTATIVES AND SENATE STANDING COMMITTEES THAT REPORTED
16 HOUSE BILL NO. 4789 OF THE 93RD LEGISLATURE.

17 (10) AS USED IN THIS SECTION:

18 (A) "CERTIFIED NURSE AID" MEANS A NURSE'S AID OR NURSE
19 ASSISTANT TRAINED AS REQUIRED UNDER 42 USC 1395I-3 AND 42 USC
20 1396R.

21 (B) "DINING ASSISTANT" MEANS AN INDIVIDUAL WHO MEETS THE
22 REQUIREMENTS OF THIS SECTION AND WHO IS ONLY PAID TO FEED NURSING
23 HOME RESIDENTS BY THE NURSING HOME OR WHO IS USED UNDER AN
24 ARRANGEMENT WITH ANOTHER AGENCY OR ORGANIZATION.

25 (C) "DIRECTION" MEANS BEING WITHIN THE FIELD OF VISION OF
26 WHERE THE FEEDING ASSISTANCE IS BEING PROVIDED AND IMMEDIATELY
27 AVAILABLE TO PROVIDE HELP IN THE EVENT OF AN EMERGENCY.

1 (D) "IMMEDIATELY AVAILABLE" MEANS BEING CAPABLE OF RESPONDING
2 TO PROVIDE HELP IF NEEDED TO A DINING ASSISTANT AT ANY TIME EITHER
3 IN PERSON OR BY VOICE OR CALL LIGHT SYSTEM, RADIO, TELEPHONE,
4 PAGER, OR OTHER METHOD OF COMMUNICATION DURING A FEEDING.

5 (E) "REGISTERED PROFESSIONAL NURSE" OR "LICENSED PRACTICAL
6 NURSE" MEANS AN INDIVIDUAL LICENSED UNDER ARTICLE 15 TO ENGAGE IN
7 THE PRACTICE OF NURSING.

8 (F) "SUPERVISION" MEANS A REGISTERED PROFESSIONAL NURSE OR
9 LICENSED PRACTICAL NURSE WHO OVERSEES THE WORK OF A DINING
10 ASSISTANT AND COMPLIES WITH EACH OF THE FOLLOWING:

11 (i) DESIGNATES A RESIDENT TO WHOM FEEDING ASSISTANCE IS TO BE
12 PROVIDED.

13 (ii) IS PHYSICALLY PRESENT IN THE NURSING HOME AND IMMEDIATELY
14 AVAILABLE TO PROVIDE HELP IN THE EVENT OF AN EMERGENCY.

15 Enacting section 1. It is the intent of this legislature that
16 this amendatory act take effect September 30, 2006 unless the
17 legislature concludes, after consulting with the department of
18 community health, reviewing the interim report or final report, if
19 completed, of the dining assistant pilot project conducted by the
20 department of community health and Michigan state university, and
21 holding at least 1 meeting open to the public for discussion of
22 that report, that the use of dining assistants within a nursing
23 home has a detrimental impact on patient care and well-being and
24 repeals section 21794 of the public health code, 1978 PA 368, MCL
25 333.21794.