

SENATE BILL NO. 400

June 22, 2023, Introduced by Senators JOHNSON, LAUWERS, RUNESTAD, THEIS and BELLINO and referred to the Committee on Oversight.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 2253 and 5145 (MCL 333.2253 and 333.5145), section 2253 as amended by 2022 PA 274 and section 5145 as amended by 2020 PA 311.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2253. (1) Subject to ~~subsections~~ **subsection** (4), and ~~(5)~~,
2 if the director determines that control of an epidemic is necessary
3 to protect the public health, the director by emergency order may

1 make a declaration of that determination and may within that
 2 emergency order prohibit the gathering of people for any purpose
 3 and establish procedures to be followed during the epidemic to
 4 ensure continuation of essential public health services and
 5 enforcement of health laws. Emergency procedures are not limited to
 6 this code.

7 (2) If an epidemic described in subsection (1) involves avian
 8 influenza or another virus or disease that is or may be spread by
 9 contact with animals, the department of agriculture and rural
 10 development shall cooperate with and assist the director in the
 11 director's response to the epidemic.

12 (3) On request from the director, the department of
 13 agriculture and rural development shall assist the department in
 14 any review or update of the department's pandemic influenza plan
 15 under section 5112.

16 ~~(4) Beginning June 1, 2023, an emergency order issued under~~
 17 ~~subsection (1) may prohibit or otherwise limit any visitation of a~~
 18 ~~patient or resident in a qualified health care facility for a~~
 19 ~~period not to exceed 30 days after the date the director first~~
 20 ~~declares that control of the epidemic is necessary to protect the~~
 21 ~~public health.~~

22 (4) ~~(5) Beginning June 1, 2023, because LINDA, after 30 days~~
 23 ~~after~~ ~~if~~ the director first declares that control of an epidemic is
 24 necessary to protect the public health in an emergency order issued
 25 under subsection (1), all of the following apply:

26 (a) Subject to subdivision (b), the emergency order must not
 27 prohibit ~~or otherwise limit~~ a patient representative from visiting
 28 a patient or resident ~~with a cognitive impairment~~ in a qualified
 29 health care facility.

1 (b) The emergency order may ~~de~~**limit visitation of a patient**
 2 **or resident in a qualified health facility by** any of the following:

3 (i) ~~Implement~~**Implementing** reasonable safety measures before or
 4 during a patient representative's visit to a patient or resident
 5 ~~with a cognitive impairment~~ in the qualified health care facility,
 6 including, but not limited to, prescreening or testing a patient
 7 representative, imposing a visit duration on a patient
 8 representative, restricting the number of patient representatives
 9 who may visit at 1 time, and requiring a patient representative to
 10 preschedule a visit.

11 (ii) ~~Establish~~**Establishing** procedures for the visitation of a
 12 patient or resident ~~with a cognitive impairment~~ in a qualified
 13 health care facility, if the director determines that establishing
 14 the procedures is vital to maintaining a safe health care
 15 infrastructure in this state. The director shall consult with
 16 qualified health care facilities before establishing procedures
 17 under this subparagraph.

18 (5) ~~(6)~~As used in this section:

19 (a) "Assisted living facility" means an unlicensed entity that
 20 offers community-based residential care for at least 3 unrelated
 21 adults who are 65 years of age or older or who need assistance with
 22 activities of daily living that are available 24 hours a day,
 23 including, but not limited to, personal, supportive, or
 24 intermittent health-related services.

25 ~~(b) "Cognitive impairment" means a deficiency in the patient's~~
 26 ~~or resident's mental capability or loss of intellectual ability,~~
 27 ~~either of which affects the patient's or resident's comprehension,~~
 28 ~~decision-making, reasoning, adaptive functioning, judgment,~~
 29 ~~learning, or memory and that materially affects the patient's or~~

1 ~~resident's ability to function. A cognitive impairment may be a~~
 2 ~~temporary short-term change in cognition, a medically induced~~
 3 ~~change in cognition, or a long-term ongoing change in cognition.~~

4 **(b)** ~~(e)~~—"Family member" means an individual related to a
 5 patient or resident by blood, marriage, or adoption who is within
 6 the fifth degree of kinship to the patient or resident.

7 ~~(d) "LINDA" means loved individuals need dedicated attention.~~

8 **(c)** ~~(e)~~—"Patient representative" means any of the following:

9 (i) A family member.

10 (ii) A patient advocate as that term is defined in section 1106
 11 of the estates and protected individuals code, 1998 PA 386, MCL
 12 700.1106.

13 (iii) An individual who is named as the attorney-in-fact under a
 14 durable or nondurable power of attorney for the patient or
 15 resident.

16 **(d)** ~~(f)~~—"Qualified health care facility" means any of the
 17 following:

18 (i) A health facility or agency as that term is defined in
 19 section 20106.

20 (ii) An assisted living facility.

21 (iii) A physician's private practice office.

22 Sec. 5145. (1) The department, in consultation with the
 23 department of licensing and regulatory affairs, shall do all of the
 24 following:

25 (a) By November 15, 2020, develop and submit a report to the
 26 house and senate standing committees on health policy that is based
 27 on relevant guidance issued by the ~~federal~~ Centers for Disease
 28 Control and Prevention and incorporates recommendations from the
 29 Michigan nursing homes COVID-19 preparedness task force. The report

1 must include, but is not limited to, a description of any updates
 2 to the final recommendations of the Michigan nursing homes COVID-19
 3 preparedness task force in its report dated August 30, 2020, the
 4 status on implementing the recommendations, and a description of
 5 any barriers to implementing the recommendations. The department
 6 may use health care systems and hospital capacity data when
 7 preparing the report. The report must also address each of the
 8 following quality-of-life recommendations from the task force
 9 report described in this subdivision:

- 10 (i) Outdoor visits.
- 11 (ii) Small-group noncontact activities.
- 12 (iii) Communal dining for residents.
- 13 (iv) Indoor visitation participation opt-in.
- 14 (v) Resident small-group "pod" opt-in.
- 15 (vi) Increased virtual visitation opportunities.
- 16 (vii) Staff access to creative engagement ideas.
- 17 (viii) Support for meaningful engagement activities.
- 18 (ix) Ancillary service providers.
- 19 (x) Visitation volunteers.
- 20 (xi) Off-campus health and wellness visits.
- 21 (xii) Window visits.

22 (b) By November 15, 2020, implement a statewide policy for
 23 nursing homes on providing in-person indoor and outdoor visitations
 24 to all nursing home residents. The department shall post a copy of
 25 the policy on the department's publicly available website and post
 26 any updates to the policy within 48 hours after making the updates.
 27 The department shall also provide a copy of the policy to the house
 28 and senate standing committees on health policy. ~~The policy may~~

1 ~~limit in-person indoor and outdoor visitations for a nursing home~~
 2 ~~resident who tests positive for coronavirus, if a nursing home is~~
 3 ~~experiencing an outbreak of coronavirus, or if a community is~~
 4 ~~experiencing an outbreak of coronavirus.~~

5 (c) By November 15, 2020, develop and submit a report to the
 6 house and senate standing committees on health policy on the
 7 department's plans to identify laboratories that will process and
 8 prioritize coronavirus diagnostic tests from nursing homes. The
 9 report must include the department's plans for issuing requests for
 10 proposals that include a provision requiring a successful bidder to
 11 be able to process a high volume of tests, including, but not
 12 limited to, rapid testing for coronavirus and provide expedited
 13 results.

14 (d) By November 15, 2020, implement a process for the creation
 15 of care and recovery centers within nursing homes for the purpose
 16 of providing care to individuals who have tested positive for
 17 coronavirus who have not met the criteria for the discontinuation
 18 of transmission-based precautions from the ~~federal~~ Centers for
 19 Disease Control and Prevention. The department shall require a
 20 nursing home seeking to operate a care and recovery center to apply
 21 to the department on a form provided by the department and meet all
 22 of the following requirements:

23 (i) Demonstrate each of the following to the department:

24 (A) That the nursing home has at least an overall rating of 3
 25 stars or a 3-star rating in the staffing category, based on the
 26 Five-Star Quality Rating System established by the ~~federal~~ Centers
 27 for Medicare and Medicaid Services.

28 (B) That the nursing home is not operating under a denial of
 29 payment for new admissions under 42 CFR 488.417.

1 (C) That the nursing home is not designated on the Nursing
2 Home Compare website of the ~~federal~~ Centers for Medicare and
3 Medicaid Services as a "red hand facility", indicating a citation
4 for abuse.

5 (D) That the nursing home meets physical plant capacity to
6 designate a distinct area within the nursing home for individuals
7 who have tested positive for coronavirus.

8 (E) That the nursing home has dedicated staff for the sole
9 purpose of treating individuals in the care and recovery center.

10 (ii) Agrees to comply with any facility requirements that the
11 department considers appropriate to prevent the spread of
12 coronavirus in nursing homes, including, but not limited to,
13 infection control safeguards, personal protective equipment,
14 testing for coronavirus, and operational capacity.

15 (iii) Agrees to comply with all of the following if an
16 individual tests positive for coronavirus and needs to be
17 transferred to a care and recovery center or other location
18 described in this section:

19 (A) Provide a notice to the individual; if applicable, the
20 individual's legal representative; and, if the individual consents,
21 the individual's emergency contact.

22 (B) That a physician, a nurse practitioner, or a physician's
23 assistant shall provide, in writing and in a time frame and manner
24 determined by the department, that the individual is medically
25 stable for the transfer.

26 (iv) Any other requirement established by the department in
27 consultation with the department of licensing and regulatory
28 affairs.

29 (e) By November 15, 2020, implement a process for the approval

1 of designated areas within nursing homes for individuals who test
2 positive for coronavirus. The department shall require a nursing
3 home seeking to establish a designated area within its facility to
4 apply to the department on a form provided by the department and
5 meet all of the following requirements:

6 (i) Demonstrate each of the following to the department:

7 (A) That the nursing home has a program for retaining and
8 providing the appropriate level of care necessary for individuals
9 who test positive for coronavirus and that the program has an
10 adequate supply of personal protective equipment and adequate
11 testing capabilities, dedicated staffing, and operational capacity
12 at the time of an individual's diagnosis.

13 (B) That the nursing home's designated area meets proper
14 infection control safeguards.

15 (C) That there is no longer capacity at a care and recovery
16 center and additional facilities are needed for individuals who
17 test positive for coronavirus, unless the department determines
18 that there are rare and unique circumstances that must be taken to
19 protect the health and safety of an individual.

20 (ii) Agrees to continually evaluate and ensure its ability to
21 meet each requirement for the approval of a designated area under
22 this subdivision.

23 (iii) Any other requirement established by the department in
24 consultation with the department of licensing and regulatory
25 affairs.

26 (2) As used in this section, "coronavirus" means severe acute
27 respiratory syndrome coronavirus 2 (SARS-CoV-2).