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Act No. 231

Public Acts of 2020

Approved by the Governor

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STATE OF MICHIGAN

100TH LEGISLATURE

REGULAR SESSION OF 2020

Introduced by Senator Lucido

ENROLLED SENATE BILL NO. 1094

AN ACT to amend 1978 PA 368, entitled “An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates,” by amending section 21717 (MCL 333.21717), as amended by 2014 PA 66, and by adding section 5145.

The People of the State of Michigan enact:

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

(a) By November 15, 2020, develop and submit a report to the house and senate standing committees on health policy that is based on relevant guidance issued by the federal Centers for Disease Control and Prevention and incorporates recommendations from the Michigan nursing homes COVID-19 preparedness task force. The report must include, but is not limited to, a description of any updates to the final recommendations of the Michigan nursing homes COVID-19 preparedness task force in its report dated August 30, 2020, the status on implementing the recommendations, and a description of any barriers to implementing the recommendations. The department may use health care systems and hospital capacity data when preparing the report. The report must also address each of the following quality-of-life recommendations from the task force report described in this subdivision:

(*i*) Outdoor visits.

(*ii*) Small-group noncontact activities.

(*iii*) Communal dining for residents.

(*iv*) Indoor visitation participation opt-in.

(*v*) Resident small-group “pod” opt-in.

(vi) Increased virtual visitation opportunities.

(*vii*) Staff access to creative engagement ideas.

(*viii*) Support for meaningful engagement activities.

(*ix*) Ancillary service providers.

(*x*) Visitation volunteers.

(*xi*) Off-campus health and wellness visits.

(*xii*) Window visits.

(b) By November 15, 2020, implement a statewide policy for nursing homes on providing in-person indoor and outdoor visitations to all nursing home residents. The department shall post a copy of the policy on the department’s publicly available website and post any updates to the policy within 48 hours after making the updates. The department shall also provide a copy of the policy to the house and senate standing committees on health policy. The policy may limit in-person indoor and outdoor visitations for a nursing home resident who tests positive for coronavirus, if a nursing home is experiencing an outbreak of coronavirus, or if a community is experiencing an outbreak of coronavirus.

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

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

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

(A) That the nursing home has at least a 3-star rating based on the Five-Star Quality Rating System established by the federal Centers for Medicare and Medicaid Services.

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

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

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

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

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

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

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

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

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

(e) By November 15, 2020, implement a process for the approval of designated areas within nursing homes for individuals who test positive for coronavirus. The department shall require a nursing home seeking to establish a designated area within its facility to apply to the department on a form provided by the department and meet all of the following requirements:

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

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

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

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

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

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

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

Sec. 21717. (1) An individual shall not be admitted or retained for care in a nursing home if any of the following apply:

(a) The individual requires special medical or surgical treatment, or treatment for acute mental illness, developmental disability, communicable tuberculosis, or a communicable disease, unless the home is able to provide an area and a program for the care. The department shall approve both the area and the program.

(b) The individual has tested positive for coronavirus, is currently receiving treatment at a hospital, and has less than 72 hours remaining in the individual's overall isolation period as described in guidelines established by the federal Centers for Disease Control and Prevention. However, if the hospital determines that it has reached surge capacity, this subdivision does not apply.

(c) Except as otherwise provided in subsection (2), beginning November 15, 2020, the individual has tested positive for coronavirus unless any of the following apply:

(*i*) The individual has since recovered from coronavirus.

(*ii*) The nursing home is a care and recovery center.

(*iii*) The nursing home demonstrates to the department of health and human services that it meets the requirements described in section 5145(1)(e) to accept an individual who has tested positive for coronavirus within the approved designated area of the nursing home.

(2) If, by November 15, 2020, the department of health and human services has not implemented the process for the creation of care and recovery centers within nursing homes as described in section 5145(1)(d), a nursing home may admit or retain for care an individual who has tested positive for coronavirus until the date that the process is implemented by the department of health and human services and for up to 30 days thereafter.

(3) As used in this section:

(a) "Care and recovery center" means a care and recovery center described in section 5145.

(b) "Coronavirus" means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

This act is ordered to take immediate effect.

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