

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5460

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 20151 and 20155 (MCL 333.20151 and
333.20155), section 20155 as amended by 1996 PA 267.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20151. A licensee or certificate holder shall cooper-
2 ate with the department in carrying out its responsibility under
3 this article. The department ~~may~~ SHALL, TO THE EXTENT ALLOWED
4 BY LAW, provide professional advice and consultation as to the
5 quality of facility or agency aspects of health care and services
6 provided by the applicant or licensee.

7 Sec. 20155. (1) Except as OTHERWISE provided in this sec-
8 tion, the department OF CONSUMER AND INDUSTRY SERVICES shall make
9 annual and other visits to each health facility or agency
10 licensed under this article for the purposes of survey,

HB 5460, As Passed Senate, May 31, 2000

House Bill No. 5460

2

1 evaluation, and consultation. A VISIT MADE PURSUANT TO A
2 COMPLAINT SHALL BE UNANNOUNCED. Except for a ~~health facility or~~
3 ~~agency described in section 20106(1)(c), (f), (h), or (j)~~ COUNTY
4 MEDICAL CARE FACILITY, A HOME FOR THE AGED, A NURSING HOME, OR A
5 HOSPICE RESIDENCE, the department shall determine whether the
6 visits ~~shall be~~ THAT ARE NOT MADE PURSUANT TO A COMPLAINT ARE
7 announced or unannounced. ~~, except that a complaint investiga-~~
8 ~~tion shall not be announced and there shall be at least 1 unan-~~
9 ~~nounced visit other than a complaint investigation annually to a~~
10 ~~health facility or agency described in section 20106(1)(c), (h),~~
11 ~~or (j).~~ BEGINNING UPON THE EXPIRATION OF 12 MONTHS AFTER THE
12 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SENTENCE,
13 THE DEPARTMENT SHALL ASSURE THAT EACH NEWLY HIRED NURSING HOME
14 SURVEYOR, AS PART OF HIS OR HER BASIC TRAINING, IS ASSIGNED
15 FULL-TIME TO A LICENSED NURSING HOME FOR AT LEAST 10 DAYS WITHIN
16 A 14-DAY PERIOD TO OBSERVE ACTUAL OPERATIONS OUTSIDE OF THE
17 SURVEY PROCESS BEFORE THE TRAINEE BEGINS OVERSIGHT
18 RESPONSIBILITIES. A MEMBER OF A SURVEY TEAM SHALL NOT BE
19 EMPLOYED BY A LICENSED NURSING HOME OR A NURSING HOME MANAGEMENT
20 COMPANY DOING BUSINESS IN THIS STATE AT THE TIME OF CONDUCTING A
21 SURVEY UNDER THIS SECTION. THE DEPARTMENT SHALL NOT ASSIGN AN
22 INDIVIDUAL TO BE A MEMBER OF A SURVEY TEAM FOR PURPOSES OF A
23 SURVEY, EVALUATION, OR CONSULTATION VISIT AT A NURSING HOME IN
24 WHICH HE OR SHE WAS AN EMPLOYEE WITHIN THE PRECEDING 5 YEARS.

25 (2) The department OF CONSUMER AND INDUSTRY SERVICES shall
26 make at least a biennial visit to each licensed clinical
27 laboratory, each nursing home, and each hospice residence for the

HB 5460, As Passed Senate, May 31, 2000

House Bill No. 5460

3

1 purposes of survey, evaluation, and consultation. ~~If a nursing~~
2 ~~home is only partially certified under title XVIII or title XIX,~~
3 ~~the department shall include all licensed parts of the nursing~~
4 ~~home in a certification survey conducted by the department.~~ THE
5 DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES SHALL SEMIANNUALLY
6 PROVIDE FOR JOINT TRAINING WITH NURSING HOME SURVEYORS AND PRO-
7 VIDERS ON AT LEAST 1 OF THE 10 MOST FREQUENTLY ISSUED FEDERAL
8 CITATIONS IN THIS STATE DURING THE PAST CALENDAR YEAR. THE
9 DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES SHALL DEVELOP A PRO-
10 TOCOL FOR THE REVIEW OF CITATION PATTERNS COMPARED TO REGIONAL
11 OUTCOMES AND STANDARDS AND COMPLAINTS REGARDING THE NURSING HOME
12 SURVEY PROCESS. THE REVIEW WILL RESULT IN A REPORT PROVIDED TO
13 THE LEGISLATURE. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSEC-
14 TION, BEGINNING WITH HIS OR HER FIRST FULL RELICENSURE PERIOD
15 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
16 SENTENCE, EACH MEMBER OF A DEPARTMENT OF CONSUMER AND INDUSTRY
17 SERVICES NURSING HOME SURVEY TEAM WHO IS A HEALTH PROFESSIONAL
18 LICENSEE UNDER ARTICLE 15 SHALL EARN NOT LESS THAN 50% OF HIS OR
19 HER REQUIRED CONTINUING EDUCATION CREDITS, IF ANY, IN GERIATRIC
20 CARE. IF A MEMBER OF A NURSING HOME SURVEY TEAM IS A PHARMACIST
21 LICENSED UNDER ARTICLE 15, HE OR SHE SHALL EARN NOT LESS THAN 30%
22 OF HIS OR HER REQUIRED CONTINUING EDUCATION CREDITS IN GERIATRIC
23 CARE.

24 (3) The department OF CONSUMER AND INDUSTRY SERVICES shall
25 make a biennial visit to each hospital for survey and evaluation
26 for the purpose of licensure. Subject to subsection (6), the
27 department may waive the biennial visit required by this

HB 5460, As Passed Senate, May 31, 2000

House Bill No. 5460

4

1 subsection if a hospital, as part of a timely application for
2 license renewal, requests a waiver and submits both of the fol-
3 lowing and if all of the requirements of subsection (5) are met:

4 (a) Evidence that it is currently fully accredited by a body
5 with expertise in hospital accreditation whose hospital accredit-
6 ations are accepted by the United States department of health and
7 human services for purposes of section 1865 of PART C OF title
8 XVIII of the social security act, ~~chapter 531, 49 Stat. 620,~~
9 42 U.S.C. 1395bb.

10 (b) A copy of the most recent accreditation report for the
11 hospital issued by a body described in subdivision (a), and the
12 hospital's responses to the accreditation report.

13 (4) Except as provided in subsection (8), accreditation
14 information provided to the department OF CONSUMER AND INDUSTRY
15 SERVICES under subsection (3) is confidential, is not a public
16 record, and is not subject to court subpoena. The department
17 shall use the accreditation information only as provided in this
18 section and shall return the accreditation information to the
19 hospital within a reasonable time after a decision on the waiver
20 request is made.

21 (5) The department OF CONSUMER AND INDUSTRY SERVICES shall
22 grant a waiver under subsection (3) if the accreditation report
23 submitted under subsection (3)(b) is less than 2 years old and
24 there is no indication of substantial noncompliance with licen-
25 sure standards or of deficiencies that represent a threat to
26 public safety or patient care in the report, in complaints
27 involving the hospital, or in any other information available to

HB 5460, As Passed Senate, May 31, 2000

House Bill No. 5460

5

1 the department. If the accreditation report is 2 or more years
2 old, the department may do 1 of the following:

3 (a) Grant an extension of the hospital's current license
4 until the next accreditation survey is completed by the body
5 described in subsection (3)(a).

6 (b) Grant a waiver under subsection (3) based on the accred-
7 itation report that is 2 or more years old, on condition that the
8 hospital promptly submit the next accreditation report to the
9 department.

10 (c) Deny the waiver request and conduct the visits required
11 under subsection (3).

12 (6) ~~The department shall not grant more than 2 consecutive~~
13 ~~waivers under subsection (3).~~ This section does not prohibit the
14 department from citing a violation of this part during a survey,
15 conducting investigations or inspections pursuant to
16 section 20156, or conducting surveys of health facilities or
17 agencies for the purpose of complaint investigations or federal
18 certification. This section does not prohibit the state fire
19 marshal from conducting annual surveys of hospitals, nursing
20 homes, and county medical care facilities.

21 (7) At the request of a health facility or agency, the
22 department OF CONSUMER AND INDUSTRY SERVICES may conduct a con-
23 sultation engineering survey of a health facility and provide
24 professional advice and consultation regarding health facility
25 construction and design. A health facility or agency may request
26 a voluntary consultation survey under this subsection at any time
27 between licensure surveys. The fees for a consultation

HB 5460, As Passed Senate, May 31, 2000

House Bill No. 5460

6

1 engineering survey are the same as the fees established for
2 waivers under section 20161(10).

3 (8) If the department OF CONSUMER AND INDUSTRY SERVICES
4 determines that substantial noncompliance with licensure stan-
5 dards exists or that deficiencies that represent a threat to
6 public safety or patient care exist based on a review of an
7 accreditation report submitted pursuant to subsection (3)(b), the
8 department shall prepare a written summary of the substantial
9 noncompliance or deficiencies and the hospital's response to the
10 department's determination. The department's written summary and
11 the hospital's response are public documents.

12 (9) ~~Investigations~~ THE DEPARTMENT OF CONSUMER AND INDUSTRY
13 SERVICES OR A LOCAL HEALTH DEPARTMENT SHALL CONDUCT
14 INVESTIGATIONS or inspections, other than inspections of finan-
15 cial records, of a ~~health facility or agency described in sec-~~
16 ~~tion 20106(1)(c), (f), (h), or (j) shall be conducted~~ COUNTY
17 MEDICAL CARE FACILITY, HOME FOR THE AGED, NURSING HOME, OR HOS-
18 PICE RESIDENCE without prior notice to the health facility or
19 agency. An employee of a state agency charged with INVESTIGATING
20 OR inspecting the health facility or agency or an employee of a
21 local health department who directly or indirectly gives prior
22 notice regarding an INVESTIGATION OR AN inspection, other than an
23 inspection of the financial records, to the health facility or
24 agency or to an employee of the health facility or agency, is
25 guilty of a misdemeanor. Consultation visits that are not for
26 the purpose of annual or follow-up inspection or survey may be
27 announced.

HB 5460, As Passed Senate, May 31, 2000

House Bill No. 5460

7

1 (10) The department OF CONSUMER AND INDUSTRY SERVICES shall
2 maintain a record indicating whether ~~visits are~~ A VISIT AND
3 INSPECTION IS announced or unannounced. Information gathered at
4 ~~all visits,~~ EACH VISIT AND INSPECTION, WHETHER announced or
5 unannounced, shall be taken into account in licensure decisions.

6 (11) The department OF CONSUMER AND INDUSTRY SERVICES shall
7 require periodic reports and a health facility or agency shall
8 give the department access to books, records, and other documents
9 maintained by a health facility or agency to the extent necessary
10 to carry out the purpose of this article and the rules promul-
11 gated under this article. The department shall respect the con-
12 fidentiality of a patient's clinical record and shall not divulge
13 or disclose the contents of the records in a manner that identi-
14 fies an individual except under court order. The department may
15 copy health facility or agency records as required to document
16 findings.

17 (12) The department OF CONSUMER AND INDUSTRY SERVICES may
18 delegate survey, evaluation, or consultation functions to another
19 state agency or to a local health department qualified to perform
20 those functions. However, the department shall not delegate
21 survey, evaluation, or consultation functions to a local health
22 department that owns or operates a hospice or hospice residence
23 licensed under this article. The delegation shall be by cost
24 reimbursement contract between the department and the state
25 agency or local health department. Survey, evaluation, or con-
26 sultation functions shall not be delegated to nongovernmental
27 agencies, except as provided in this section. The department may

HB 5460, As Passed Senate, May 31, 2000

House Bill No. 5460

8

1 accept voluntary inspections performed by an accrediting body
2 with expertise in clinical laboratory accreditation under part
3 205 if the accrediting body utilizes forms acceptable to the
4 department, applies the same licensing standards as applied to
5 other clinical laboratories and provides the same information and
6 data usually filed by the department's own employees when engaged
7 in similar inspections or surveys. The voluntary inspection
8 described in this subsection shall be agreed upon by both the
9 licensee and the department.

10 (13) If, upon investigation, the department OF CONSUMER AND
11 INDUSTRY SERVICES or a state agency determines that an individual
12 licensed to practice a profession in this state has violated the
13 applicable licensure statute or the rules promulgated under that
14 statute, the department, state agency, or local health department
15 shall forward the evidence it has to the appropriate licensing
16 agency.

17 (14) THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES SHALL
18 REPORT TO THE APPROPRIATIONS SUBCOMMITTEES, THE SENATE AND HOUSE
19 OF REPRESENTATIVES STANDING COMMITTEES HAVING JURISDICTION OVER
20 ISSUES INVOLVING SENIOR CITIZENS, AND THE FISCAL AGENCIES ON
21 MARCH 1 OF EACH YEAR ON THE INITIAL AND FOLLOW-UP SURVEYS CON-
22 DUCTED ON ALL NURSING HOMES IN THIS STATE. THE REPORT SHALL
23 INCLUDE ALL OF THE FOLLOWING INFORMATION:

24 (A) THE NUMBER OF SURVEYS CONDUCTED.

25 (B) THE NUMBER REQUIRING FOLLOW-UP SURVEYS.

26 (C) THE NUMBER REFERRED TO THE MICHIGAN PUBLIC HEALTH
27 INSTITUTE FOR REMEDIATION.

HB 5460, As Passed Senate, May 31, 2000

House Bill No. 5460 as amended May 31, 2000

9

1 (D) THE NUMBER OF CITATIONS PER NURSING HOME.

2 (E) THE NUMBER OF NIGHT AND WEEKEND COMPLAINTS FILED.

3 (F) THE NUMBER OF NIGHT AND WEEKEND RESPONSES TO COMPLAINTS
4 CONDUCTED BY THE DEPARTMENT.

5 (G) THE AVERAGE LENGTH OF TIME FOR THE DEPARTMENT TO RESPOND
6 TO A COMPLAINT FILED AGAINST A NURSING HOME.

7 (H) THE NUMBER AND PERCENTAGE OF CITATIONS APPEALED.

8 (I) THE NUMBER AND PERCENTAGE OF CITATIONS OVERTURNED OR
9 MODIFIED, OR BOTH.

10 (15) THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES SHALL
11 REPORT ANNUALLY TO THE STANDING COMMITTEES ON APPROPRIATIONS AND
12 THE STANDING COMMITTEES HAVING JURISDICTION OVER ISSUES INVOLVING
13 SENIOR CITIZENS IN THE SENATE AND THE HOUSE OF REPRESENTATIVES ON
14 THE PERCENTAGE OF NURSING HOME CITATIONS THAT ARE APPEALED AND
15 THE PERCENTAGE OF NURSING HOME CITATIONS THAT ARE APPEALED AND
16 AMENDED THROUGH THE INFORMAL DEFICIENCY DISPUTE RESOLUTION
17 PROCESS.

18 (16) THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES IN
19 CONSULTATION WITH NURSING HOME PROVIDER GROUPS, THE AMERICAN MEDICAL
20 DIRECTORS ASSOCIATION, THE DEPARTMENT OF
21 COMMUNITY HEALTH, THE STATE LONG-TERM CARE OMBUDSMAN, AND THE
22 FEDERAL HEALTH CARE FINANCE ADMINISTRATION SHALL CLARIFY THE FOL-
23 LOWING TERMS AS THOSE TERMS ARE USED IN TITLE XVIII AND TITLE XIX
24 AND APPLIED BY THE DEPARTMENT TO PROVIDE MORE CONSISTENT REGULA-
25 TION OF NURSING HOMES IN MICHIGAN:

25 (A) IMMEDIATE JEOPARDY.

26 (B) HARM.

HB 5460, As Passed Senate, May 31, 2000

House Bill No. 5460

10

1 (C) POTENTIAL HARM.

2 (D) AVOIDABLE.

3 (E) UNAVOIDABLE.

4 (17) THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES SHALL
5 INSTRUCT AND TRAIN THE SURVEYORS IN THE USE OF THE CLARIFICATIONS
6 DESCRIBED IN SUBSECTION (16) IN CITING DEFICIENCIES.

7 (18) A NURSING HOME SHALL POST THE NURSING HOME'S SURVEY
8 REPORT IN A CONSPICUOUS PLACE WITHIN THE NURSING HOME FOR PUBLIC
9 REVIEW.

10 (19) ~~(14)~~ As used in this section:

11 (a) "Title XVIII" means title XVIII of the social security
12 act, chapter 531, 49 Stat. 620, 42 U.S.C. 1395 to 1395b, 1395b-2,
13 1395b-6 TO 1395b-7, 1395c to 1395i, 1395i-2 to ~~1395i-4~~ 1395i-5,
14 1395j to 1395t, 1395u to ~~1395w-2~~ 1395w, 1395w-2 TO 1395w-4, ~~to~~
15 ~~1395yy, and 1395bbb to 1395ccc~~ 1395w-21 TO 1395w-28, 1395x TO
16 1395yy, AND 1395bbb TO 1395ggg.

17 (b) "Title XIX" means title XIX of the social security act,
18 chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1 TO
19 1396r-6, AND 1396r-8 TO 1396v.