

HOUSE BILL No. 4636

May 4, 1999, Introduced by Reps. Green, Law, Spade, DeHart, Schermesser, Ehardt, Richner, Caul, DeVuyst, Bovin, Pappageorge, Voorhees and Scranton 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 20155 (MCL 333.20155), as amended by 1996 PA
267.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20155. (1) Except as OTHERWISE provided in this sec-
2 tion, the department OF CONSUMER AND INDUSTRY SERVICES shall make
3 annual and other visits to each health facility or agency
4 licensed under this article for the purposes of survey, evalu-
5 ation, and consultation. Except for a health facility or agency
6 described in section 20106(1)(c), (f), (h), or (j), the depart-
7 ment shall determine whether the visits shall be announced or
8 unannounced, except that a complaint investigation shall not be
9 announced and there shall be at least 1 unannounced visit other

1 than a complaint investigation annually to a health facility or
2 agency described in section 20106(1)(c), (h), or (j). BEGINNING
3 UPON THE EXPIRATION OF 1 YEAR AFTER THE EFFECTIVE DATE OF THE
4 AMENDATORY ACT THAT ADDED THIS SENTENCE, FOR PURPOSES OF A
5 SURVEY, EVALUATION, AND CONSULTATION VISIT, THE DEPARTMENT SHALL
6 ENSURE THAT EACH STANDARD OR ANNUAL SURVEY AND REVISIT SURVEY OF
7 A LICENSED NURSING HOME IS CONDUCTED BY A SURVEY, EVALUATION, AND
8 CONSULTATION TEAM THAT INCLUDES AT LEAST 1 SURVEYOR WHO IS A
9 LICENSED REGISTERED PROFESSIONAL NURSE AND WHO HAS AT LEAST 3
10 YEARS' EXPERIENCE AS A HEALTH PROFESSIONAL EMPLOYEE OF A LICENSED
11 NURSING HOME. THE LICENSED REGISTERED PROFESSIONAL NURSE SUR-
12 VEYOR SHALL BE EMPLOYED BY OR UNDER CONTRACT TO THE DEPARTMENT.
13 A MEMBER OF A SURVEY TEAM SHALL NOT BE EMPLOYED BY A LICENSED
14 NURSING HOME OR A NURSING HOME MANAGEMENT COMPANY DOING BUSINESS
15 IN THIS STATE AT THE TIME OF CONDUCTING A SURVEY UNDER THIS
16 SECTION. THE DEPARTMENT SHALL NOT ALLOW A LICENSED REGISTERED
17 PROFESSIONAL NURSE TO BE A MEMBER OF A SURVEY TEAM FOR PURPOSES
18 OF THIS SUBSECTION IF HE OR SHE HAS BEEN INVOLUNTARILY DISCHARGED
19 FROM EMPLOYMENT WITH A NURSING HOME OR OTHER LONG-TERM CARE
20 FACILITY WITHIN THE 5 YEARS IMMEDIATELY PRECEDING THE DATE THE
21 SURVEY IS TO BE CONDUCTED.

22 (2) The department OF CONSUMER AND INDUSTRY SERVICES shall
23 make at least a biennial visit to each licensed clinical labora-
24 tory, each nursing home, and each hospice residence for the pur-
25 poses of survey, evaluation, and consultation. If a nursing home
26 is only partially certified under title XVIII or title XIX, the

1 department shall include all licensed parts of the nursing home
2 in a certification survey conducted by the department.

3 (3) The department OF CONSUMER AND INDUSTRY SERVICES shall
4 make a biennial visit to each hospital for survey and evaluation
5 for the purpose of licensure. Subject to subsection (6), the
6 department may waive the biennial visit required by this subsec-
7 tion if a hospital, as part of a timely application for license
8 renewal, requests a waiver and submits both of the following and
9 if all of the requirements of subsection (5) are met:

10 (a) Evidence that it is currently fully accredited by a body
11 with expertise in hospital accreditation whose hospital accredit-
12 ations are accepted by the United States department of health and
13 human services for purposes of section 1865 of PART C OF title
14 XVIII of the social security act, ~~chapter 531, 49 Stat. 620,~~
15 42 U.S.C. 1395bb.

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

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

1 (5) The department OF CONSUMER AND INDUSTRY SERVICES shall
2 grant a waiver under subsection (3) if the accreditation report
3 submitted under subsection (3)(b) is less than 2 years old and
4 there is no indication of substantial noncompliance with licen-
5 sure standards or of deficiencies that represent a threat to
6 public safety or patient care in the report, in complaints
7 involving the hospital, or in any other information available to
8 the department. If the accreditation report is 2 or more years
9 old, the department may do 1 of the following:

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

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

17 (c) Deny the waiver request and conduct the visits required
18 under subsection (3).

19 (6) The department OF CONSUMER AND INDUSTRY SERVICES shall
20 not grant more than 2 consecutive waivers under subsection (3).
21 This section does not prohibit the department from citing a vio-
22 lation of this part during a survey, conducting investigations or
23 inspections pursuant to section 20156, or conducting surveys of
24 health facilities or agencies for the purpose of complaint inves-
25 tigation or federal certification. This section does not pro-
26 hibit the state fire marshal from conducting annual surveys of
27 hospitals, nursing homes, and county medical care facilities.

1 (7) At the request of a health facility or agency, the
2 department OF CONSUMER AND INDUSTRY SERVICES may conduct a con-
3 sultation engineering survey of a health facility and provide
4 professional advice and consultation regarding health facility
5 construction and design. A health facility or agency may request
6 a voluntary consultation survey under this subsection at any time
7 between licensure surveys. The fees for a consultation engineer-
8 ing survey are the same as the fees established for waivers under
9 section 20161(10).

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

19 (9) ~~Investigations~~ THE DEPARTMENT AND A LOCAL HEALTH
20 DEPARTMENT SHALL CONDUCT INVESTIGATIONS or inspections, other
21 than inspections of financial records, of a health facility or
22 agency described in section 20106(1)(c), (f), (h), or (j) ~~shall~~
23 ~~be conducted~~ without prior notice to the health facility or
24 agency. An employee of a state agency charged with inspecting
25 the health facility or agency or an employee of a local health
26 department who directly or indirectly gives prior notice
27 regarding an inspection, other than an inspection of the

1 financial records, to the health facility or agency or to an
2 employee of the health facility or agency, is guilty of a
3 misdemeanor. Consultation visits that are not for the purpose of
4 annual or follow-up inspection or survey may be announced.

5 (10) The department OF CONSUMER AND INDUSTRY SERVICES shall
6 maintain a record indicating whether visits are announced or
7 unannounced. Information gathered at all visits, announced or
8 unannounced, shall be taken into account in licensure decisions.

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

20 (12) The department OF CONSUMER AND INDUSTRY SERVICES may
21 delegate survey, evaluation, or consultation functions to another
22 state agency or to a local health department qualified to perform
23 those functions. However, the department shall not delegate
24 survey, evaluation, or consultation functions to a local health
25 department that owns or operates a hospice or hospice residence
26 licensed under this article. The delegation shall be by cost
27 reimbursement contract between the department and the state

1 agency or local health department. Survey, evaluation, or
2 consultation functions shall not be delegated to nongovernmental
3 agencies, except as provided in this section. The department may
4 accept voluntary inspections performed by an accrediting body
5 with expertise in clinical laboratory accreditation under part
6 205 if the accrediting body utilizes forms acceptable to the
7 department, applies the same licensing standards as applied to
8 other clinical laboratories and provides the same information and
9 data usually filed by the department's own employees when engaged
10 in similar inspections or surveys. The voluntary inspection
11 described in this subsection shall be agreed upon by both the
12 licensee and the department.

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

20 (14) As used in this section:

21 (a) "Title XVIII" means title XVIII of the social security
22 act, chapter 531, 49 Stat. 620, 42 U.S.C. 1395 to 1395b, 1395b-2,
23 1395b-6 TO 1395b-7, 1395c to 1395i, 1395i-2 to ~~1395i-4~~ 1395i-5,
24 1395j to 1395t, 1395u to ~~1395w-2~~ 1395w, 1395w-2 TO 1395w-4, ~~to~~
25 ~~1395yy, and 1395bbb to 1395ccc~~ 1395w-21 TO 1395w-28, 1395x TO
26 1395yy, AND 1395bbb TO 1395ggg.

1 (b) "Title XIX" means title XIX of the social security act,
2 chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1 TO
3 1396r-6, AND 1396r-8 TO 1396v.