

**SUBSTITUTE FOR
HOUSE BILL NO. 5794**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 20155 (MCL 333.20155), as amended by 2001 PA
218, and by adding section 21753.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20155. (1) Except as otherwise provided in this
2 section, the department ~~of consumer and industry services~~ shall
3 make annual and other visits to each health facility or agency
4 licensed under this article for the purposes of survey,
5 evaluation, and consultation. A visit made pursuant to a
6 complaint shall be unannounced. Except for a county medical care
7 facility, a home for the aged, a nursing home, or a hospice
8 residence, the department shall determine whether the visits that
9 are not made pursuant to a complaint are announced or
10 unannounced. Beginning June 20, 2001, the department shall

1 assure that each newly hired nursing home surveyor, as part of
2 his or her basic training, is assigned full-time to a licensed
3 nursing home for at least 10 days within a 14-day period to
4 observe actual operations outside of the survey process before
5 the trainee begins oversight responsibilities. A member of a
6 survey team shall not be employed by a licensed nursing home or a
7 nursing home management company doing business in this state at
8 the time of conducting a survey under this section. The
9 department shall not assign an individual to be a member of a
10 survey team for purposes of a survey, evaluation, or consultation
11 visit at a nursing home in which he or she was an employee within
12 the preceding 5 years.

13 (2) The department ~~of consumer and industry services~~ shall
14 make at least a biennial visit to each licensed clinical
15 laboratory, each nursing home, and each hospice residence for the
16 purposes of survey, evaluation, and consultation. The department
17 ~~of consumer and industry services~~ shall semiannually provide
18 for joint training with nursing home surveyors and providers on
19 at least 1 of the 10 most frequently issued federal citations in
20 this state during the past calendar year. The department ~~of~~
21 ~~consumer and industry services~~ shall develop a protocol for the
22 review of citation patterns compared to regional outcomes and
23 standards and complaints regarding the nursing home survey
24 process. The review will result in a report provided to the
25 legislature. Except as otherwise provided in this subsection,
26 beginning with his or her first full relicensure period after
27 June 20, 2000, each member of a department ~~of consumer and~~

1 ~~industry services~~ nursing home survey team who is a health
 2 professional licensee under article 15 shall earn not less than
 3 50% of his or her required continuing education credits, if any,
 4 in geriatric care. If a member of a nursing home survey team is
 5 a pharmacist licensed under article 15, he or she shall earn not
 6 less than 30% of his or her required continuing education credits
 7 in geriatric care.

8 (3) The department ~~of consumer and industry services~~ shall
 9 make a biennial visit to each hospital for survey and evaluation
 10 for the purpose of licensure. Subject to subsection (6), the
 11 department may waive the biennial visit required by this
 12 subsection if a hospital, as part of a timely application for
 13 license renewal, requests a waiver and submits both of the
 14 following and if all of the requirements of subsection (5) are
 15 met:

16 (a) Evidence that it is currently fully accredited by a body
 17 with expertise in hospital accreditation whose hospital
 18 accreditations are accepted by the United States department of
 19 health and human services for purposes of section 1865 of part C
 20 of title XVIII of the social security act, 42 ~~U.S.C.~~ **USC**
 21 1395bb.

22 (b) A copy of the most recent accreditation report for the
 23 hospital issued by a body described in subdivision (a) ~~—~~ and
 24 the hospital's responses to the accreditation report.

25 (4) Except as provided in subsection (8), accreditation
 26 information provided to the department ~~of consumer and industry~~
 27 ~~services~~ under subsection (3) is confidential, is not a public

1 record, and is not subject to court subpoena. The department
2 shall use the accreditation information only as provided in this
3 section and shall return the accreditation information to the
4 hospital within a reasonable time after a decision on the waiver
5 request is made.

6 (5) The department ~~of consumer and industry services~~ shall
7 grant a waiver under subsection (3) if the accreditation report
8 submitted under subsection (3)(b) is less than 2 years old and
9 there is no indication of substantial noncompliance with
10 licensure standards or of deficiencies that represent a threat to
11 public safety or patient care in the report, in complaints
12 involving the hospital, or in any other information available to
13 the department. If the accreditation report is 2 or more years
14 old, the department may do 1 of the following:

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

18 (b) Grant a waiver under subsection (3) based on the
19 accreditation report that is 2 or more years old, on condition
20 that the hospital promptly submit the next accreditation report
21 to the department.

22 (c) Deny the waiver request and conduct the visits required
23 under subsection (3).

24 (6) This section does not prohibit the department from citing
25 a violation of this part during a survey, conducting
26 investigations or inspections pursuant to section 20156, or
27 conducting surveys of health facilities or agencies for the

1 purpose of complaint investigations or federal certification.
2 This section does not prohibit the state fire marshal from
3 conducting annual surveys of hospitals, nursing homes, and county
4 medical care facilities.

5 (7) At the request of a health facility or agency, the
6 department ~~of consumer and industry services~~ may conduct a
7 consultation engineering survey of a health facility and provide
8 professional advice and consultation regarding health facility
9 construction and design. A health facility or agency may request
10 a voluntary consultation survey under this subsection at any time
11 between licensure surveys. The fees for a consultation
12 engineering survey are the same as the fees established for
13 waivers under section 20161(10).

14 (8) If the department ~~of consumer and industry services~~
15 determines that substantial noncompliance with licensure
16 standards exists or that deficiencies that represent a threat to
17 public safety or patient care exist based on a review of an
18 accreditation report submitted pursuant to subsection (3)(b), the
19 department shall prepare a written summary of the substantial
20 noncompliance or deficiencies and the hospital's response to the
21 department's determination. The department's written summary and
22 the hospital's response are public documents.

23 (9) The department ~~of consumer and industry services~~ or a
24 local health department shall conduct investigations or
25 inspections, other than inspections of financial records, of a
26 county medical care facility, home for the aged, nursing home, or
27 hospice residence without prior notice to the health facility or

1 agency. An employee of a state agency charged with investigating
2 or inspecting the health facility or agency or an employee of a
3 local health department who directly or indirectly gives prior
4 notice regarding an investigation or an inspection, other than an
5 inspection of the financial records, to the health facility or
6 agency or to an employee of the health facility or agency, is
7 guilty of a misdemeanor. Consultation visits that are not for
8 the purpose of annual or follow-up inspection or survey may be
9 announced.

10 (10) The department ~~of consumer and industry services~~ shall
11 maintain a record indicating whether a visit and inspection is
12 announced or unannounced. Information gathered at each visit and
13 inspection, whether announced or unannounced, shall be taken into
14 account in licensure decisions.

15 (11) The department ~~of consumer and industry services~~ shall
16 require periodic reports and a health facility or agency shall
17 give the department access to books, records, and other documents
18 maintained by a health facility or agency to the extent necessary
19 to carry out the purpose of this article and the rules
20 promulgated under this article. The department shall respect the
21 confidentiality of a patient's clinical record and shall not
22 divulge or disclose the contents of the records in a manner that
23 identifies an individual except under court order. The
24 department may copy health facility or agency records as required
25 to document findings.

26 (12) The department ~~of consumer and industry services~~ may
27 delegate survey, evaluation, or consultation functions to another

1 state agency or to a local health department qualified to perform
2 those functions. However, the department shall not delegate
3 survey, evaluation, or consultation functions to a local health
4 department that owns or operates a hospice or hospice residence
5 licensed under this article. The delegation shall be by cost
6 reimbursement contract between the department and the state
7 agency or local health department. Survey, evaluation, or
8 consultation functions shall not be delegated to nongovernmental
9 agencies, except as provided in this section. The department may
10 accept voluntary inspections performed by an accrediting body
11 with expertise in clinical laboratory accreditation under part
12 205 if the accrediting body utilizes forms acceptable to the
13 department, applies the same licensing standards as applied to
14 other clinical laboratories and provides the same information and
15 data usually filed by the department's own employees when engaged
16 in similar inspections or surveys. The voluntary inspection
17 described in this subsection shall be agreed upon by both the
18 licensee and the department.

19 (13) If, upon investigation, the department ~~of consumer and~~
20 ~~industry services~~ or a state agency determines that an
21 individual licensed to practice a profession in this state has
22 violated the applicable licensure statute or the rules
23 promulgated under that statute, the department, state agency, or
24 local health department shall forward the evidence it has to the
25 appropriate licensing agency.

26 (14) The department ~~of consumer and industry services~~ shall
27 report to the appropriations subcommittees, the senate and house

1 of representatives standing committees having jurisdiction over
2 issues involving senior citizens, and the fiscal agencies on
3 March 1 of each year on the initial and follow-up surveys
4 conducted on all nursing homes in this state. The report shall
5 include all of the following information:

6 (a) The number of surveys conducted.

7 (b) The number requiring follow-up surveys.

8 (c) The number referred to the Michigan public health
9 institute for remediation.

10 (d) The number of citations per nursing home.

11 (e) The number of night and weekend complaints filed.

12 (f) The number of night and weekend responses to complaints
13 conducted by the department.

14 (g) The average length of time for the department to respond
15 to a complaint filed against a nursing home.

16 (h) The number and percentage of citations appealed.

17 (i) The number and percentage of citations overturned or
18 modified, or both.

19 (15) The department ~~of consumer and industry services~~ shall
20 report annually to the standing committees on appropriations and
21 the standing committees having jurisdiction over issues involving
22 senior citizens in the senate and the house of representatives on
23 the percentage of nursing home citations that are appealed and
24 the percentage of nursing home citations that are appealed and
25 amended through the informal deficiency dispute resolution
26 process.

27 (16) Subject to subsection (17), a clarification work group

1 comprised of the department ~~of consumer and industry services~~
2 in consultation with a nursing home resident or a member of a
3 nursing home resident's family, nursing home provider groups, the
4 American medical directors association, the department of
5 community health, the state long-term care ombudsman, and the
6 federal centers for medicare and medicaid services shall clarify
7 the following terms as those terms are used in title XVIII and
8 title XIX and applied by the department to provide more
9 consistent regulation of nursing homes in Michigan:

10 (a) Immediate jeopardy.

11 (b) Harm.

12 (c) Potential harm.

13 (d) Avoidable.

14 (e) Unavoidable.

15 (17) All of the following clarifications developed under
16 subsection (16) apply for purposes of subsection (16):

17 (a) Specifically, the term "immediate jeopardy" means "a
18 situation in which immediate corrective action is necessary
19 because the nursing home's noncompliance with 1 or more
20 requirements of participation has caused or is likely to cause
21 serious injury, harm, impairment, or death to a resident
22 receiving care in a nursing home".

23 (b) The likelihood of immediate jeopardy is reasonably higher
24 if there is evidence of a flagrant failure by the nursing home to
25 comply with a clinical process guideline adopted under subsection
26 (18) than if the nursing home has substantially and continuously
27 complied with those guidelines. If federal regulations and

1 guidelines are not clear — and if the clinical process
2 guidelines have been recognized, a process failure giving rise to
3 an immediate jeopardy may involve an egregious widespread or
4 repeated process failure and the absence of reasonable efforts to
5 detect and prevent the process failure.

6 (c) In determining whether or not there is immediate
7 jeopardy, the survey agency should consider at least all of the
8 following:

9 (i) Whether the nursing home could reasonably have been
10 expected to know about the deficient practice and to stop it, but
11 did not stop the deficient practice.

12 (ii) Whether the nursing home could reasonably have been
13 expected to identify the deficient practice and to correct it,
14 but did not correct the deficient practice.

15 (iii) Whether the nursing home could reasonably have been
16 expected to anticipate that serious injury, serious harm,
17 impairment, or death might result from continuing the deficient
18 practice, but did not so anticipate.

19 (iv) Whether the nursing home could reasonably have been
20 expected to know that a widely accepted high-risk practice is or
21 could be problematic, but did not know.

22 (v) Whether the nursing home could reasonably have been
23 expected to detect the process problem in a more timely fashion,
24 but did not so detect.

25 (d) The existence of 1 or more of the factors described in
26 subdivision (c), and especially the existence of 3 or more of
27 those factors simultaneously, may lead to a conclusion that the

1 situation is one in which the nursing home's practice makes
2 adverse events likely to occur if immediate intervention is not
3 undertaken — and therefore constitutes immediate jeopardy. If
4 none of the factors described in subdivision (c) is present, the
5 situation may involve harm or potential harm that is not
6 immediate jeopardy.

7 (e) Specifically, "actual harm" means "a negative outcome to
8 a resident that has compromised the resident's ability to
9 maintain or reach, or both, his or her highest practicable
10 physical, mental, and psychosocial well-being as defined by an
11 accurate and comprehensive resident assessment, plan of care, and
12 provision of services". Harm does not include a deficient
13 practice that only may cause or has caused limited consequences
14 to the resident.

15 (f) For purposes of subdivision (e), in determining whether a
16 negative outcome is of limited consequence, if the "state
17 operations manual" or "the guidance to surveyors" published by
18 the federal centers for medicare and medicaid services does not
19 provide specific guidance, the department may consider whether
20 most people in similar circumstances would feel that the damage
21 was of such short duration or impact as to be inconsequential or
22 trivial. In such a case, the consequence of a negative outcome
23 may be considered more limited if it occurs in the context of
24 overall procedural consistency with an accepted clinical process
25 guideline adopted pursuant to subsection (18), as compared to a
26 substantial inconsistency with or variance from the guideline.

27 (g) For purposes of subdivision (e), if the publications

1 described in subdivision (f) do not provide specific guidance,
2 the department may consider the degree of a nursing home's
3 adherence to a clinical process guideline adopted pursuant to
4 subsection (18) in considering whether the degree of compromise
5 and future risk to the resident constitutes actual harm. The
6 risk of significant compromise to the resident may be considered
7 greater in the context of substantial deviation from the
8 guidelines than in the case of overall adherence.

9 (h) To improve consistency and to avoid disputes over
10 "avoidable" and "unavoidable" negative outcomes, nursing homes
11 and survey agencies must have a common understanding of accepted
12 process guidelines and of the circumstances under which it can
13 reasonably be said that certain actions or inactions will lead to
14 avoidable negative outcomes. If the "state operations manual" or
15 "the guidance to surveyors" published by the federal centers for
16 medicare and medicaid services is not specific, a nursing home's
17 overall documentation of adherence to a clinical process
18 guideline with a process indicator adopted pursuant to
19 subsection (18) is relevant information in considering whether a
20 negative outcome was "avoidable" or "unavoidable" and may be
21 considered in the application of that term.

22 (18) Subject to subsection (19), the department, in
23 consultation with the clarification work group appointed under
24 subsection (16), shall develop and adopt clinical process
25 guidelines that shall be used in applying the terms set forth in
26 subsection (16). The department shall establish and adopt
27 clinical process guidelines and compliance protocols with outcome

1 measures for all of the following areas and for other topics
2 where the department determines that clarification will benefit
3 providers and consumers of long-term care:

4 (a) Bed rails.

5 (b) Adverse drug effects.

6 (c) Falls.

7 (d) Pressure sores.

8 (e) Nutrition and hydration including, but not limited to,
9 heat-related stress.

10 (f) Pain management.

11 (g) Depression and depression pharmacotherapy.

12 (h) Heart failure.

13 (i) Urinary incontinence.

14 (j) Dementia.

15 (k) Osteoporosis.

16 (l) Altered mental states.

17 (m) Physical and chemical restraints.

18 (19) The department shall create a clinical advisory
19 committee to review and make recommendations regarding the
20 clinical process guidelines with outcome measures adopted under
21 subsection (18). The department shall appoint physicians,
22 registered professional nurses, and licensed practical nurses to
23 the clinical advisory committee, along with professionals who
24 have expertise in long-term care services, some of whom may be
25 employed by long-term care facilities. The clarification work
26 group created under subsection (16) shall review the clinical
27 process guidelines and outcome measures after the clinical

1 advisory committee and shall make the final recommendations to
2 the department before the clinical process guidelines are
3 adopted.

4 (20) The department shall create a process by which the
5 director of the division of nursing home monitoring or his or her
6 designee or the director of the division of operations or his or
7 her designee reviews and authorizes the issuance of a citation
8 for immediate jeopardy or substandard quality of care before the
9 statement of deficiencies is made final. The review shall be to
10 assure that the applicable concepts, clinical process guidelines,
11 and other tools contained in subsections (17) to (19) are being
12 used consistently, accurately, and effectively. As used in this
13 subsection, "immediate jeopardy" and "substandard quality of
14 care" mean those terms as defined by the federal centers for
15 medicare and medicaid services.

16 (21) The department may give grants, awards, or other
17 recognition to nursing homes to encourage the rapid
18 implementation of the clinical process guidelines adopted under
19 subsection (18).

20 (22) The department shall assess the effectiveness of the
21 amendatory act that added this subsection. The department shall
22 file an annual report on the implementation of the clinical
23 process guidelines and the impact of the guidelines on resident
24 care with the standing committee in the legislature with
25 jurisdiction over matters pertaining to nursing homes. The first
26 report shall be filed on July 1, ~~of the year following the year~~
27 ~~in which the amendatory act that added this subsection takes~~

1 ~~effect— 2002.~~

2 (23) The department ~~of consumer and industry services~~ shall
3 instruct and train the surveyors in the use of the clarifications
4 described in subsection (17) and the clinical process guidelines
5 adopted under subsection (18) in citing deficiencies.

6 (24) **The department shall transmit a written or electronic**
7 **copy of the results of each visit and survey conducted under this**
8 **section to the nursing home visited within 10 working days after**
9 **the visit is conducted.** A nursing home shall post the nursing
10 home's survey report in a conspicuous place within the nursing
11 home for public review. **The department shall post the report in**
12 **a searchable format on the department's website. If a nursing**
13 **home's [final] survey report under this section indicates [a final**
determination by the department] that the
14 **nursing home is in a situation of immediate jeopardy, the nursing**
15 **home shall provide each resident, the resident's family, or the**
16 **resident's designated representative with a summary of that**
17 **nursing home's survey report within 15 days after it receives the**
18 **report from the department. The summary shall include the**
19 **definition of immediate jeopardy and the specific citation or**
20 **citations that have placed the nursing home in a situation of**
21 **immediate jeopardy. As used in this subsection, "immediate**
22 **jeopardy" means that term as defined under subsection (17).**

23 (25) Nothing in this amendatory act shall be construed to
24 limit the requirements of related state and federal law.

25 (26) As used in this section:

26 (a) "Title XVIII" means title XVIII of the social security
27 act, ~~chapter 531, 49 Stat. 620, 42 U.S.C. 1395 to 1395b,~~

1 ~~1395b-2, 1395b-6 to 1395b-7, 1395c to 1395i, 1395i-2 to 1395i-5,~~
2 ~~1395j to 1395t, 1395u to 1395w, 1395w-2 to 1395w-4, 1395w-21 to~~
3 ~~1395w-28, 1395x to 1395yy, and 1395bbb to 1395ggg~~ **42 USC 1395 to**
4 **1395hhh.**

5 (b) "Title XIX" means title XIX of the social security act,
6 ~~chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1 to~~
7 ~~1396r-6, and 1396r-8 to 1396v~~ **42 USC 1396 to 1396v.**

8 **Sec. 21753. Before issuing or renewing a license, the**
9 **department shall review the most recent inspection, survey, and**
10 **evaluation of that facility and any written determination made**
11 **concerning a complaint filed under section 21799a within the past**
12 **2 years.**

13 Enacting section 1. This amendatory act does not take
14 effect unless House Bill No. 5795 of the 92nd Legislature is
15 enacted into law.