

# HOUSE BILL No. 4241

February 18, 2003, Introduced by Reps. Hunter, McConico, Hopgood, Lipsey, Cheeks, Vagnozzi, Smith, Clack, Murphy, Minore, Gleason, Stallworth, Dennis and Phillips 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 2001  
PA 218.

**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. **In addition to visits made pursuant to a complaint**

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1 **investigation, the department shall annually make at least 2**  
2 **unannounced visits to each county medical care facility and**  
3 **hospice residence.** Beginning June 20, 2001, the department shall  
4 assure that each newly hired nursing home surveyor, as part of  
5 his or her basic training, is assigned full-time to a licensed  
6 nursing home for at least 10 days within a 14-day period to  
7 observe actual operations outside of the survey process before  
8 the trainee begins oversight responsibilities. A member of a  
9 survey team shall not be employed by a licensed nursing home or a  
10 nursing home management company doing business in this state at  
11 the time of conducting a survey under this section. The  
12 department shall not assign an individual to be a member of a  
13 survey team for purposes of a survey, evaluation, or consultation  
14 visit at a nursing home in which he or she was an employee within  
15 the preceding 5 years.

16 (2) The department of consumer and industry services shall  
17 make at least a biennial visit to each licensed clinical  
18 laboratory ~~—, each nursing home,~~ and each hospice residence for  
19 the purposes of survey, evaluation, and consultation. **In**  
20 **addition to visits made pursuant to complaint investigations, the**  
21 **department shall annually make at least 2 unannounced visits and**  
22 **inspect each nursing home licensed under this article, regardless**  
23 **of whether the nursing home is certified under title XVIII or**  
24 **title XIX.** The department of consumer and industry services shall  
25 semiannually provide for joint training with nursing home  
26 surveyors and providers on at least 1 of the 10 most frequently  
27 issued federal citations in this state during the past calendar

1 year. The department of consumer and industry services shall  
2 develop a protocol for the review of citation patterns compared  
3 to regional outcomes and standards and complaints regarding the  
4 nursing home survey process. The review will result in a report  
5 provided to the legislature. Except as otherwise provided in  
6 this subsection, beginning with his or her first full relicensure  
7 period after June 20, ~~2000~~ 2001, each member of a department of  
8 consumer and industry services nursing home survey team who is a  
9 health professional licensee under article 15 shall earn not less  
10 than 50% of his or her required continuing education credits, if  
11 any, in geriatric care. If a member of a nursing home survey  
12 team is a pharmacist licensed under article 15, he or she shall  
13 earn not less than 30% of his or her required continuing  
14 education credits in geriatric care.

15 (3) The department of consumer and industry services shall  
16 make a biennial visit to each hospital for survey and evaluation  
17 for the purpose of licensure. Subject to subsection (6), the  
18 department may waive the biennial visit required by this  
19 subsection if a hospital, as part of a timely application for  
20 license renewal, requests a waiver and submits both of the  
21 following and if all of the requirements of subsection (5) are  
22 met:

23 (a) Evidence that it is currently fully accredited by a body  
24 with expertise in hospital accreditation whose hospital  
25 accreditations are accepted by the United States department of  
26 health and human services for purposes of section 1865 of part  
27 ~~C~~ D of title XVIII of the social security act,

1 42 U.S.C. 1395bb.

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

5 (4) Except as provided in subsection (8), accreditation  
6 information provided to the department of consumer and industry  
7 services under subsection (3) is confidential, is not a public  
8 record, and is not subject to court subpoena. The department  
9 shall use the accreditation information only as provided in this  
10 section and shall return the accreditation information to the  
11 hospital within a reasonable time after a decision on the waiver  
12 request is made.

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

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

25 (b) Grant a waiver under subsection (3) based on the  
26 accreditation report that is 2 or more years old, on condition  
27 that the hospital promptly submit the next accreditation report

1 to the department.

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

4 (6) This section does not prohibit the department from citing  
5 a violation of this part during a survey, conducting  
6 investigations or inspections pursuant to section 20156, or  
7 conducting surveys of health facilities or agencies for the  
8 purpose of complaint investigations or federal certification.  
9 This section does not prohibit the state fire marshal from  
10 conducting annual surveys of hospitals, nursing homes, and county  
11 medical care facilities.

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

21 (8) If the department of consumer and industry services  
22 determines that substantial noncompliance with licensure  
23 standards exists or that deficiencies that represent a threat to  
24 public safety or patient care exist based on a review of an  
25 accreditation report submitted pursuant to subsection (3)(b), the  
26 department shall prepare a written summary of the substantial  
27 noncompliance or deficiencies and the hospital's response to the

1 department's determination. The department's written summary and  
2 the hospital's response are public documents.

3 (9) The department of consumer and industry services or a  
4 local health department shall conduct investigations or  
5 inspections, other than ~~inspections~~ **an inspection** of financial  
6 records, of a county medical care facility, home for the aged,  
7 nursing home, or hospice residence without prior notice to the  
8 health facility or agency. An employee of a state agency charged  
9 with investigating or inspecting the health facility or agency or  
10 an employee of a local health department who directly or  
11 indirectly gives prior notice regarding an investigation or an  
12 inspection, other than an inspection of the financial records, to  
13 the health facility or agency or to an employee of the health  
14 facility or agency, is guilty of a misdemeanor. ~~Consultation~~  
15 ~~visits that are~~ **A consultation visit that is** not for the purpose  
16 of annual or follow-up inspection or survey may be announced.

17 (10) The department of consumer and industry services shall  
18 maintain a record indicating whether a visit and inspection is  
19 announced or unannounced. Information gathered at each visit and  
20 inspection, whether announced or unannounced, shall be taken into  
21 account in licensure decisions.

22 (11) The department of consumer and industry services shall  
23 require periodic reports and a health facility or agency shall  
24 give the department access to books, records, and other documents  
25 maintained by a health facility or agency to the extent necessary  
26 to carry out the purpose of this article and the rules  
27 promulgated under this article. The department shall respect the

1 confidentiality of a patient's clinical record and shall not  
2 divulge or disclose the contents of the records in a manner that  
3 identifies an individual except under court order. The  
4 department may copy health facility or agency records as required  
5 to document findings.

6 (12) The department of consumer and industry services may  
7 delegate survey, evaluation, or consultation functions to another  
8 state agency or to a local health department qualified to perform  
9 those functions. However, the department shall not delegate  
10 survey, evaluation, or consultation functions to a local health  
11 department that owns or operates a hospice or hospice residence  
12 licensed under this article. The delegation shall be by cost  
13 reimbursement contract between the department and the state  
14 agency or local health department. Survey, evaluation, or  
15 consultation functions shall not be delegated to nongovernmental  
16 agencies, except as provided in this section. The department may  
17 accept voluntary inspections performed by an accrediting body  
18 with expertise in clinical laboratory accreditation under part  
19 205 if the accrediting body utilizes forms acceptable to the  
20 department, applies the same licensing standards as applied to  
21 other clinical laboratories and provides the same information and  
22 data usually filed by the department's own employees when engaged  
23 in similar inspections or surveys. The voluntary inspection  
24 described in this subsection shall be agreed upon by both the  
25 licensee and the department.

26 (13) If, upon investigation, the department of consumer and  
27 industry services or a state agency determines that an individual

1 licensed to practice a profession in this state has violated the  
2 applicable licensure statute or the rules promulgated under that  
3 statute, the department, state agency, or local health department  
4 shall forward the evidence it has to the appropriate licensing  
5 agency.

6 (14) The department of consumer and industry services shall  
7 report to the appropriations subcommittees, the senate and house  
8 of representatives standing committees having jurisdiction over  
9 issues involving senior citizens, and the fiscal agencies on  
10 March 1 of each year on the initial and follow-up surveys  
11 conducted on all nursing homes in this state. The report shall  
12 include all of the following information:

13 (a) The number of surveys conducted.

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

15 (c) The number referred to the Michigan public health  
16 institute for remediation.

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

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

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

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

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

24 (i) The number and percentage of citations overturned or  
25 modified, or both.

26 (15) The department of consumer and industry services shall  
27 report annually to the standing committees on appropriations and

1 the standing committees having jurisdiction over issues involving  
2 senior citizens in the senate and the house of representatives on  
3 the percentage of nursing home citations that are appealed and  
4 the percentage of nursing home citations that are appealed and  
5 amended through the informal deficiency dispute resolution  
6 process.

7 (16) Subject to subsection (17), a clarification work group  
8 comprised of the department of consumer and industry services in  
9 consultation with a nursing home resident or a member of a  
10 nursing home resident's family, nursing home provider groups, the  
11 American medical directors association, the department of  
12 community health, the state long-term care ombudsman, and the  
13 federal centers for medicare and medicaid services shall clarify  
14 the following terms as those terms are used in title XVIII and  
15 title XIX and applied by the department to provide more  
16 consistent regulation of nursing homes in Michigan:

17 (a) Immediate jeopardy.

18 (b) Harm.

19 (c) Potential harm.

20 (d) Avoidable.

21 (e) Unavoidable.

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

24 (a) Specifically, the term "immediate jeopardy" means "a  
25 situation in which immediate corrective action is necessary  
26 because the nursing home's noncompliance with 1 or more  
27 requirements of participation has caused or is likely to cause

1 serious injury, harm, impairment, or death to a resident  
2 receiving care in a nursing home".

3 (b) The likelihood of immediate jeopardy is reasonably higher  
4 if there is evidence of a flagrant failure by the nursing home to  
5 comply with a clinical process guideline adopted under subsection  
6 (18) than if the nursing home has substantially and continuously  
7 complied with those guidelines. If federal regulations and  
8 guidelines are not clear, and if the clinical process guidelines  
9 have been recognized, a process failure giving rise to an  
10 immediate jeopardy may involve an egregious widespread or  
11 repeated process failure and the absence of reasonable efforts to  
12 detect and prevent the process failure.

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

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

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

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

26 (iv) Whether the nursing home could reasonably have been  
27 expected to know that a widely accepted high-risk practice is or

1 could be problematic, but did not know.

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

5 (d) The existence of 1 or more of the factors described in  
6 subdivision (c), and especially the existence of 3 or more of  
7 those factors simultaneously, may lead to a conclusion that the  
8 situation is one in which the nursing home's practice makes  
9 adverse events likely to occur if immediate intervention is not  
10 undertaken, and therefore constitutes immediate jeopardy. If  
11 none of the factors described in subdivision (c) is present, the  
12 situation may involve harm or potential harm that is not  
13 immediate jeopardy.

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

22 (f) For purposes of subdivision (e), in determining whether a  
23 negative outcome is of limited consequence, if the "state  
24 operations manual" or "the guidance to surveyors" published by  
25 the federal centers for medicare and medicaid services does not  
26 provide specific guidance, the department may consider whether  
27 most people in similar circumstances would feel that the damage

1 was of such short duration or impact as to be inconsequential or  
2 trivial. In such a case, the consequence of a negative outcome  
3 may be considered more limited if it occurs in the context of  
4 overall procedural consistency with an accepted clinical process  
5 guideline adopted pursuant to subsection (18), as compared to a  
6 substantial inconsistency with or variance from the guideline.

7 (g) For purposes of subdivision (e), if the publications  
8 described in subdivision (f) do not provide specific guidance,  
9 the department may consider the degree of a nursing home's  
10 adherence to a clinical process guideline adopted pursuant to  
11 subsection (18) in considering whether the degree of compromise  
12 and future risk to the resident constitutes actual harm. The  
13 risk of significant compromise to the resident may be considered  
14 greater in the context of substantial deviation from the  
15 guidelines than in the case of overall adherence.

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

1 considered in the application of that term.

2 (18) Subject to subsection (19), the department, in  
3 consultation with the clarification work group appointed under  
4 subsection (16), shall develop and adopt clinical process  
5 guidelines that shall be used in applying the terms set forth in  
6 subsection (16). The department shall establish and adopt  
7 clinical process guidelines and compliance protocols with outcome  
8 measures for all of the following areas and for other topics  
9 where the department determines that clarification will benefit  
10 providers and consumers of long-term care:

11 (a) Bed rails.

12 (b) Adverse drug effects.

13 (c) Falls.

14 (d) Pressure sores.

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

17 (f) Pain management.

18 (g) Depression and depression pharmacotherapy.

19 (h) Heart failure.

20 (i) Urinary incontinence.

21 (j) Dementia.

22 (k) Osteoporosis.

23 (l) Altered mental states.

24 (m) Physical and chemical restraints.

25 (19) The department shall create a clinical advisory  
26 committee to review and make recommendations regarding the  
27 clinical process guidelines with outcome measures adopted under

1 subsection (18). The department shall appoint physicians,  
2 registered professional nurses, and licensed practical nurses to  
3 the clinical advisory committee, along with professionals who  
4 have expertise in long-term care services, some of whom may be  
5 employed by long-term care facilities. The clarification work  
6 group created under subsection (16) shall review the clinical  
7 process guidelines and outcome measures after the clinical  
8 advisory committee and shall make the final recommendations to  
9 the department before the clinical process guidelines are  
10 adopted.

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

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

27 (22) The department shall assess the effectiveness of the

1 amendatory act that added this subsection. The department shall  
2 file an annual report on the implementation of the clinical  
3 process guidelines and the impact of the guidelines on resident  
4 care with the standing committee in the legislature with  
5 jurisdiction over matters pertaining to nursing homes. The first  
6 report shall be filed on July 1, 2002. ~~of the year following the~~  
7 ~~year in which the amendatory act that added this subsection takes~~  
8 ~~effect.~~

9 (23) The department of consumer and industry services shall  
10 instruct and train the surveyors in the use of the clarifications  
11 described in subsection (17) and the clinical process guidelines  
12 adopted under subsection (18) in citing deficiencies.

13 (24) A nursing home shall post the nursing home's survey  
14 report in a conspicuous place within the nursing home for public  
15 review.

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

18 (26) As used in this section:

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

24 (b) "Title XIX" means title XIX of the social security act,  
25 chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to ~~1396f, 1396g-1 to~~  
26 1396r-6 ~~—~~ and 1396r-8 to 1396v.