

**SUBSTITUTE FOR
HOUSE BILL NO. 4792**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 20155 and 21799a (MCL 333.20155 and
333.21799a), section 20155 as amended by 2001 PA 218 and section
21799a as amended by 2004 PA 189, and by adding section 21753.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20155. (1) Except as otherwise provided in this section,
2 the department ~~of consumer and industry services~~ shall make
3 annual and other visits to each health facility or agency licensed
4 under this article for the purposes of survey, evaluation, and
5 consultation. A visit made pursuant to a complaint shall be
6 unannounced. Except for a county medical care facility, a home for
7 the aged, a nursing home, or a hospice residence, the department

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

15 (2) The department ~~of consumer and industry services~~ shall
16 make at least a biennial visit to each licensed clinical
17 laboratory, each nursing home, and each hospice residence for the
18 purposes of survey, evaluation, and consultation. **THE NURSING HOME**
19 **SURVEYOR SHALL POST IN A CONSPICUOUS PLACE WITHIN THE NURSING HOME**
20 **A NOTICE THAT A SURVEY IS CURRENTLY BEING CONDUCTED.** The department
21 ~~of consumer and industry services~~ shall semiannually provide for
22 joint training with nursing home surveyors and providers on at
23 least 1 of the 10 most frequently issued federal citations in this
24 state during the past calendar year. The department ~~of consumer~~
25 ~~and industry services~~ shall develop a protocol for the review of
26 citation patterns compared to regional outcomes and standards and
27 complaints regarding the nursing home survey process. The review

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

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

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

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

26 (4) Except as provided in subsection (8), accreditation
27 information provided to the department ~~of consumer and industry~~

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

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

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

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

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

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

1 health facilities or agencies for the purpose of complaint
2 investigations or federal certification. This section does not
3 prohibit the state fire marshal from conducting annual surveys of
4 hospitals, nursing homes, and county 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 a
10 voluntary consultation survey under this subsection at any time
11 between licensure surveys. The fees for a consultation engineering
12 survey are the same as the fees established for waivers under
13 section 20161(10).

14 (8) If the department ~~of consumer and industry services~~
15 determines that substantial noncompliance with licensure standards
16 exists or that deficiencies that represent a threat to public
17 safety or patient care exist based on a review of an accreditation
18 report submitted pursuant to subsection (3)(b), the department
19 shall prepare a written summary of the substantial noncompliance or
20 deficiencies and the hospital's response to the department's
21 determination. The department's written summary and the hospital's
22 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 or
2 inspecting the health facility or agency or an employee of a local
3 health department who directly or indirectly gives prior notice
4 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 the
8 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 give
17 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 promulgated
20 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 department
24 may copy health facility or agency records as required to document
25 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 survey,
3 evaluation, or consultation functions to a local health department
4 that owns or operates a hospice or hospice residence licensed under
5 this article. The delegation shall be by cost reimbursement
6 contract between the department and the state agency or local
7 health department. Survey, evaluation, or consultation functions
8 shall not be delegated to nongovernmental agencies, except as
9 provided in this section. The department may accept voluntary
10 inspections performed by an accrediting body with expertise in
11 clinical laboratory accreditation under part 205 if the accrediting
12 body utilizes forms acceptable to the department, applies the same
13 licensing standards as applied to other clinical laboratories and
14 provides the same information and data usually filed by the
15 department's own employees when engaged in similar inspections or
16 surveys. The voluntary inspection described in this subsection
17 shall be agreed upon by both the licensee and the department.

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

25 (14) The department ~~of consumer and industry services~~ shall
26 report to the appropriations subcommittees, the senate and house of
27 representatives standing committees having jurisdiction over issues

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

5 (a) The number of surveys conducted.

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

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

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

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

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

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

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

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

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

25 (16) Subject to subsection (17), a clarification work group
26 comprised of the department ~~of consumer and industry services~~ in
27 consultation with a nursing home resident or a member of a nursing

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

8 (a) Immediate jeopardy.

9 (b) Harm.

10 (c) Potential harm.

11 (d) Avoidable.

12 (e) Unavoidable.

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

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

21 (b) The likelihood of immediate jeopardy is reasonably higher
22 if there is evidence of a flagrant failure by the nursing home to
23 comply with a clinical process guideline adopted under subsection
24 (18) than if the nursing home has substantially and continuously
25 complied with those guidelines. If federal regulations and
26 guidelines are not clear ~~u~~ and if the clinical process guidelines
27 have been recognized, a process failure giving rise to an immediate

1 jeopardy may involve an egregious widespread or repeated process
2 failure and the absence of reasonable efforts to detect and prevent
3 the process failure.

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

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

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

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

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

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

22 (d) The existence of 1 or more of the factors described in
23 subdivision (c), and especially the existence of 3 or more of those
24 factors simultaneously, may lead to a conclusion that the situation
25 is one in which the nursing home's practice makes adverse events
26 likely to occur if immediate intervention is not undertaken — and
27 therefore constitutes immediate jeopardy. If none of the factors

1 described in subdivision (c) is present, the situation may involve
2 harm or potential harm that is not immediate jeopardy.

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

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

22 (g) For purposes of subdivision (e), if the publications
23 described in subdivision (f) do not provide specific guidance, the
24 department may consider the degree of a nursing home's adherence to
25 a clinical process guideline adopted pursuant to subsection (18) in
26 considering whether the degree of compromise and future risk to the
27 resident constitutes actual harm. The risk of significant

1 compromise to the resident may be considered greater in the context
2 of substantial deviation from the guidelines than in the case of
3 overall adherence.

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

17 (18) Subject to subsection (19), the department, in
18 consultation with the clarification work group appointed under
19 subsection (16), shall develop and adopt clinical process
20 guidelines that shall be used in applying the terms set forth in
21 subsection (16). The department shall establish and adopt clinical
22 process guidelines and compliance protocols with outcome measures
23 for all of the following areas and for other topics where the
24 department determines that clarification will benefit providers and
25 consumers of long-term care:

26 (a) Bed rails.

27 (b) Adverse drug effects.

1 (c) Falls.

2 (d) Pressure sores.

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

5 (f) Pain management.

6 (g) Depression and depression pharmacotherapy.

7 (h) Heart failure.

8 (i) Urinary incontinence.

9 (j) Dementia.

10 (k) Osteoporosis.

11 (l) Altered mental states.

12 (m) Physical and chemical restraints.

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

25 (20) The department shall create a process by which the
26 director of the division of nursing home monitoring or his or her
27 designee or the director of the division of operations or his or

1 her designee reviews and authorizes the issuance of a citation for
2 immediate jeopardy or substandard quality of care before the
3 statement of deficiencies is made final. The review shall be to
4 assure that the applicable concepts, clinical process guidelines,
5 and other tools contained in subsections (17) to (19) are being
6 used consistently, accurately, and effectively. As used in this
7 subsection, "immediate jeopardy" and "substandard quality of care"
8 mean those terms as defined by the federal centers for medicare and
9 medicaid services.

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

13 (22) The department shall assess the effectiveness of the
14 amendatory act that added this subsection. The department shall
15 file an annual report on the implementation of the clinical process
16 guidelines and the impact of the guidelines on resident care with
17 the standing committee in the legislature with jurisdiction over
18 matters pertaining to nursing homes. The first report shall be
19 filed on July 1, ~~of the year following the year in which the~~
20 ~~amendatory act that added this subsection takes effect~~ 2002.

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

25 (24) ~~A~~ **THE DEPARTMENT SHALL TRANSMIT A WRITTEN OR ELECTRONIC**
26 **COPY OF THE RESULTS OF EACH VISIT AND SURVEY CONDUCTED UNDER THIS**
27 **SECTION TO THE NURSING HOME VISITED WITHIN 10 BUSINESS DAYS AFTER**

1 THE VISIT IS CONDUCTED. EXCEPT AS OTHERWISE PROVIDED UNDER
2 SUBSECTION (25), WITHIN 24 HOURS AFTER THE SURVEY REPORT IS
3 RECEIVED OR WITHIN 24 HOURS AFTER RECEIVING NOTICE THAT THE
4 DEPARTMENT HAS APPROVED THE NURSING HOME'S PLAN OF CORRECTION, A
5 nursing home shall post the nursing home's survey report OR
6 APPROVED PLAN OF CORRECTION in a conspicuous place within the
7 nursing home for public review. WITHIN 30 DAYS AFTER THE SURVEY
8 REPORT OR THE APPROVED PLAN OF CORRECTION IS POSTED, A NURSING HOME
9 SHALL NOTIFY THE RESIDENTS OF THE HOME THAT THE SURVEY REPORT OR
10 THE APPROVED PLAN OF CORRECTION IS POSTED WITHIN THE NURSING HOME
11 AND THAT A SUMMARY OF THE SURVEY REPORT IS AVAILABLE ON THE
12 INTERNET THROUGH THE DEPARTMENT OF COMMUNITY HEALTH'S WEBSITE. A
13 NURSING HOME MAY SATISFY THE NOTIFICATION REQUIREMENT OF THIS
14 SUBSECTION BY INCLUDING A NOTIFICATION IN A MONTHLY NEWSLETTER, OR
15 OTHER WRITTEN DOCUMENTATION, DISTRIBUTED TO THE RESIDENT, THE
16 RESIDENT'S FAMILY, OR THE RESIDENT'S DESIGNATED REPRESENTATIVE. IF
17 THE SURVEY REPORT OR THE PLAN OF CORRECTION INCLUDES AN IMMEDIATE
18 JEOPARDY CITATION, THE NURSING HOME SHALL INCLUDE IN THE REQUIRED
19 NOTIFICATION A DESCRIPTION OF THAT CITATION ALONG WITH A
20 DESCRIPTION OF HOW THE SITUATION WAS CORRECTED. THE DEPARTMENT
21 SHALL MAKE THE SUMMARY OF THE REPORT AVAILABLE IN A SEARCHABLE
22 FORMAT ON THE DEPARTMENT'S WEBSITE OR VIA A LINK ON ITS WEBSITE. AS
23 USED IN THIS SUBSECTION, "BUSINESS DAY" MEANS A DAY OF THE YEAR
24 EXCLUDING A SATURDAY, SUNDAY, OR LEGAL HOLIDAY.

25 (25) IF THE DEPARTMENT ISSUES A NURSING HOME A NOTICE OF AN
26 IMMEDIATE JEOPARDY SITUATION, IMMEDIATELY FOLLOWING THE REMOVAL OF
27 THE IMMEDIATE JEOPARDY SITUATION THE NURSING HOME SHALL POST THAT

1 NOTICE, ALONG WITH THE NURSING HOME'S PLAN TO RECTIFY THE IMMEDIATE
 2 JEOPARDY SITUATION, IN A CONSPICUOUS PLACE WITHIN THE NURSING HOME
 3 FOR PUBLIC REVIEW FOR A PERIOD OF NOT LESS THAN 7 DAYS. IF THE
 4 IMMEDIATE JEOPARDY SITUATION RESULTS IN A SERIOUS INJURY OR A
 5 CHANGE IN THE HEALTH STATUS OF A RESIDENT OR RESIDENTS WITHIN THAT
 6 NURSING HOME, THE NURSING HOME SHALL IMMEDIATELY NOTIFY THAT
 7 RESIDENT'S OR THOSE RESIDENTS' FAMILY OR DESIGNATED REPRESENTATIVES
 8 OF THE IMMEDIATE JEOPARDY SITUATION.

9 (26) ~~-(25)-~~ Nothing in this amendatory act shall be construed
 10 to limit the requirements of related state and federal law.

11 (27) ~~-(26)-~~ As used in this section:

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

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~~ 42 USC 1396 TO 1396V.

20 SEC. 21753. BEFORE RENEWING A LICENSE, THE DEPARTMENT SHALL
 21 REVIEW THE MOST RECENT INSPECTION, SURVEY, AND EVALUATION OF THAT
 22 FACILITY AND ANY WRITTEN DETERMINATION MADE CONCERNING A
 23 SUBSTANTIATED COMPLAINT FILED UNDER SECTION 21799A WITHIN THE PAST
 24 2 YEARS.

25 Sec. 21799a. (1) A person who believes that this part, a rule
 26 promulgated under this part, or a federal certification regulation
 27 applying to a nursing home may have been violated may request an

1 investigation of a nursing home. The person may submit the request
2 for investigation to the department as a written complaint, or the
3 department shall assist a person in reducing an oral request made
4 under subsection (2) to a written complaint as provided in
5 subsection (2). A person filing a complaint under this subsection
6 may file the complaint on a model standardized complaint form
7 developed and distributed by the department under section 20194(3)
8 or file the complaint as provided by the department on the
9 internet.

10 (2) The department shall provide a toll-free telephone
11 consumer complaint line. The complaint line shall be accessible 24
12 hours per day and monitored at a level to ensure that each priority
13 complaint is identified and that a response is initiated to each
14 priority complaint within 24 hours after its receipt. The
15 department shall establish a system for the complaint line that
16 includes at least all of the following:

17 (a) An intake form that serves as a written complaint for
18 purposes of subsections (1) and (5).

19 (b) The forwarding of an intake form to an investigator not
20 later than the next business day after the complaint is identified
21 as a priority complaint.

22 (c) Except for an anonymous complaint, the forwarding of a
23 copy of the completed intake form to the complainant not later than
24 5 business days after it is completed.

25 (3) The substance of a complaint filed under subsection (1) or
26 (2) shall be provided to the licensee no earlier than at the
27 commencement of the on-site inspection of the nursing home that

1 takes place in response to the complaint. **THE NURSING HOME**
2 **INVESTIGATOR SHALL POST IN A CONSPICUOUS PLACE WITHIN THE NURSING**
3 **HOME A NOTICE THAT AN INSPECTION IS CURRENTLY BEING CONDUCTED.**

4 (4) A complaint filed under subsection (1) or (2), a copy of
5 the complaint, or a record published, released, or otherwise
6 disclosed to the nursing home shall not disclose the name of the
7 complainant or a patient named in the complaint unless the
8 complainant or patient consents in writing to the disclosure or the
9 investigation results in an administrative hearing or a judicial
10 proceeding, or unless disclosure is considered essential to the
11 investigation by the department. If the department considers
12 disclosure essential to the investigation, the department shall
13 give the complainant the opportunity to withdraw the complaint
14 before disclosure.

15 (5) Upon receipt of a complaint under subsection (1) or (2),
16 the department shall determine, based on the allegations presented,
17 whether this part, a rule promulgated under this part, or a federal
18 certification regulation for nursing homes has been, is, or is in
19 danger of being violated. Subject to subsection (2), the department
20 shall investigate the complaint according to the urgency determined
21 by the department. The initiation of a complaint investigation
22 shall commence within 15 days after receipt of the written
23 complaint by the department.

24 (6) If, at any time, the department determines that this part,
25 a rule promulgated under this part, or a federal certification
26 regulation for nursing homes has been violated, the department
27 shall list the violation and the provisions violated on the state

1 and federal licensure and certification forms for nursing homes.
2 The department shall consider the violations, as evidenced by a
3 written explanation, when it makes a licensure and certification
4 decision or recommendation.

5 (7) In all cases, the department shall inform the complainant
6 of its findings unless otherwise indicated by the complainant.
7 Subject to subsection (2), within 30 days after receipt of the
8 complaint, the department shall provide the complainant a copy, if
9 any, of the written determination, the correction notice, the
10 warning notice, and the state licensure or federal certification
11 form, or both, on which the violation is listed, or a status report
12 indicating when these documents may be expected. The department
13 shall include in the final report a copy of the original complaint.
14 The complainant may request additional copies of the documents
15 described in this subsection and upon receipt shall reimburse the
16 department for the copies in accordance with established policies
17 and procedures.

18 (8) The department shall make a written determination,
19 correction notice, or warning notice concerning a complaint
20 available for public inspection, but the department shall not
21 disclose the name of the complainant or patient without the
22 complainant's or patient's consent. **IF THE DEPARTMENT DETERMINES**
23 **THAT A VIOLATION EXISTED AS A RESULT OF THE COMPLAINT**
24 **INVESTIGATION, WITHIN 30 DAYS AFTER THE NURSING HOME RECEIVES THE**
25 **WRITTEN DETERMINATION, CORRECTION NOTICE, OR WARNING NOTICE**
26 **CONCERNING THAT VIOLATION, THE NURSING HOME SHALL NOTIFY EACH**
27 **RESIDENT, THE RESIDENT'S FAMILY, OR THE RESIDENT'S DESIGNATED**

1 REPRESENTATIVE THAT A COMPLAINT HAD BEEN FILED, AN INVESTIGATION
2 WAS CONDUCTED, AND THE WRITTEN DETERMINATION, CORRECTION NOTICE, OR
3 WARNING NOTICE CONCERNING THE COMPLAINT IS POSTED WITHIN THE
4 NURSING HOME AND IS AVAILABLE UPON REQUEST FROM THE DEPARTMENT OR
5 THE NURSING HOME. A NURSING HOME MAY SATISFY THE NOTIFICATION
6 REQUIREMENT OF THIS SUBSECTION BY INCLUDING A NOTIFICATION IN A
7 MONTHLY NEWSLETTER, OR OTHER WRITTEN DOCUMENTATION, DISTRIBUTED TO
8 THE RESIDENT, THE RESIDENT'S FAMILY, OR THE RESIDENT'S DESIGNATED
9 REPRESENTATIVE. THE DEPARTMENT AND THE NURSING HOME SHALL MAKE
10 AVAILABLE UPON REQUEST A COPY OF THE WRITTEN DETERMINATION,
11 CORRECTION NOTICE, OR WARNING NOTICE. THE DEPARTMENT AND NURSING
12 HOME MAY CHARGE A REASONABLE, COST-BASED FEE FOR PROVIDING COPIES
13 UNDER THIS SUBSECTION.

14 (9) The department shall report a violation discovered as a
15 result of the complaint investigation procedure to persons
16 administering sections 21799c to 21799e. The department shall
17 assess a penalty for a violation, as prescribed by this article.

18 (10) A complainant who is dissatisfied with the determination
19 or investigation by the department may request a hearing. A
20 complainant shall submit a request for a hearing in writing to the
21 director within 30 days after the mailing of the department's
22 findings as described in subsection (7). The department shall send
23 notice of the time and place of the hearing to the complainant and
24 the nursing home.

25 (11) As used in this section, "priority complaint" means a
26 complaint alleging an existing situation that involves physical,
27 mental, or emotional abuse, mistreatment, or harmful neglect of a

1 resident that requires immediate corrective action to prevent
2 serious injury, serious harm, serious impairment, or death of a
3 resident while receiving care in a facility.