

HOUSE BILL No. 4792

May 17, 2005, Introduced by Reps. Zelenko, Green and Vander Veen 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, 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
8 shall determine whether the visits that are not made pursuant to a

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

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

1 department ~~of consumer and industry services~~ nursing home survey
2 team who is a health professional licensee under article 15 shall
3 earn not less than 50% of his or her required continuing education
4 credits, if any, in geriatric care. If a member of a nursing home
5 survey team is a pharmacist licensed under article 15, he or she
6 shall earn not less than 30% of his or her required continuing
7 education credits 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 subsection
12 if a hospital, as part of a timely application for license renewal,
13 requests a waiver and submits both of the following and if all of
14 the requirements of subsection (5) are met:

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

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

23 (4) Except as provided in subsection (8), accreditation
24 information provided to the department ~~of consumer and industry~~
25 ~~services~~ under subsection (3) is confidential, is not a public
26 record, and is not subject to court subpoena. The department shall
27 use the accreditation information only as provided in this section

1 and shall return the accreditation information to the hospital
2 within a reasonable time after a decision on the waiver request is
3 made.

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

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

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

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

22 (6) This section does not prohibit the department from citing
23 a violation of this part during a survey, conducting investigations
24 or inspections pursuant to section 20156, or conducting surveys of
25 health facilities or agencies for the purpose of complaint
26 investigations or federal certification. This section does not
27 prohibit the state fire marshal from conducting annual surveys of

1 hospitals, nursing homes, and county medical care facilities.

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

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

20 (9) The department ~~of consumer and industry services~~ or a
21 local health department shall conduct investigations or
22 inspections, other than inspections of financial records, of a
23 county medical care facility, home for the aged, nursing home, or
24 hospice residence without prior notice to the health facility or
25 agency. An employee of a state agency charged with investigating or
26 inspecting the health facility or agency or an employee of a local
27 health department who directly or indirectly gives prior notice

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

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

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

23 (12) The department ~~of consumer and industry services~~ may
24 delegate survey, evaluation, or consultation functions to another
25 state agency or to a local health department qualified to perform
26 those functions. However, the department shall not delegate survey,
27 evaluation, or consultation functions to a local health department

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

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

22 (14) The department ~~of consumer and industry services~~ shall
23 report to the appropriations subcommittees, the senate and house of
24 representatives standing committees having jurisdiction over issues
25 involving senior citizens, and the fiscal agencies on March 1 of
26 each year on the initial and follow-up surveys conducted on all
27 nursing homes in this state. The report shall include all of the

1 following information:

2 (a) The number of surveys conducted.

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

4 (c) The number referred to the Michigan public health
5 institute for remediation.

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

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

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

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

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

13 (i) The number and percentage of citations overturned or
14 modified, or both.

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

22 (16) Subject to subsection (17), a clarification work group
23 comprised of the department ~~of consumer and industry services~~ in
24 consultation with a nursing home resident or a member of a nursing
25 home resident's family, nursing home provider groups, the American
26 medical directors association, the department of community health,
27 the state long-term care ombudsman, and the federal centers for

1 medicare and medicaid services shall clarify the following terms as
2 those terms are used in title XVIII and title XIX and applied by
3 the department to provide more consistent regulation of nursing
4 homes in Michigan:

5 (a) Immediate jeopardy.

6 (b) Harm.

7 (c) Potential harm.

8 (d) Avoidable.

9 (e) Unavoidable.

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

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

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

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

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

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

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

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

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

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

27 (e) Specifically, "actual harm" means ≠ a negative outcome to

1 a resident that has compromised the resident's ability to maintain
2 or reach, or both, his or her highest practicable physical, mental,
3 and psychosocial well-being as defined by an accurate and
4 comprehensive resident assessment, plan of care, and provision of
5 services. ~~—~~ Harm does not include a deficient practice that only
6 may cause or has caused limited consequences to the resident.

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

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

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

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

- 23 (a) Bed rails.
- 24 (b) Adverse drug effects.
- 25 (c) Falls.
- 26 (d) Pressure sores.
- 27 (e) Nutrition and hydration including, but not limited to,

1 heat-related stress.

2 (f) Pain management.

3 (g) Depression and depression pharmacotherapy.

4 (h) Heart failure.

5 (i) Urinary incontinence.

6 (j) Dementia.

7 (k) Osteoporosis.

8 (l) Altered mental states.

9 (m) Physical and chemical restraints.

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

22 (20) The department shall create a process by which the
23 director of the division of nursing home monitoring or his or her
24 designee or the director of the division of operations or his or
25 her designee reviews and authorizes the issuance of a citation for
26 immediate jeopardy or substandard quality of care before the
27 statement of deficiencies is made final. The review shall be to

1 assure that the applicable concepts, clinical process guidelines,
2 and other tools contained in subsections (17) to (19) are being
3 used consistently, accurately, and effectively. As used in this
4 subsection, "immediate jeopardy" and "substandard quality of care"
5 mean those terms as defined by the federal centers for medicare and
6 medicaid services.

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

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

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

22 (24) ~~A~~ **THE DEPARTMENT SHALL TRANSMIT A WRITTEN OR ELECTRONIC**
23 **COPY OF THE RESULTS OF EACH VISIT AND SURVEY CONDUCTED UNDER THIS**
24 **SECTION TO THE NURSING HOME VISITED WITHIN 15 DAYS AFTER THE VISIT**
25 **IS CONDUCTED. WITHIN 24 HOURS AFTER THE SURVEY REPORT IS RECEIVED,**
26 **A nursing home shall post the nursing home's survey report in a**
27 **conspicuous place within the nursing home for public review. WITHIN**

1 45 DAYS AFTER THE SURVEY REPORT IS RECEIVED, A NURSING HOME SHALL
 2 NOTIFY THE RESIDENTS OF THE HOME THAT THE SURVEY REPORT HAS BEEN
 3 RECEIVED AND IS POSTED WITHIN THE NURSING HOME AND IS AVAILABLE ON
 4 THE INTERNET THROUGH THE DEPARTMENT OF COMMUNITY HEALTH'S WEBSITE.
 5 A NURSING HOME MAY SATISFY THE NOTIFICATION REQUIREMENT OF THIS
 6 SUBSECTION BY INCLUDING A NOTIFICATION IN A MONTHLY NEWSLETTER, OR
 7 OTHER WRITTEN DOCUMENTATION, DISTRIBUTED TO THE RESIDENT, THE
 8 RESIDENT'S FAMILY, OR THE RESIDENT'S DESIGNATED REPRESENTATIVE OR
 9 BY POSTING A NOTICE AT THE ENTRANCE OF THE NURSING HOME. THE
 10 DEPARTMENT SHALL POST THE REPORT IN A SEARCHABLE FORMAT ON THE
 11 DEPARTMENT'S WEBSITE WITHIN 30 DAYS AFTER THE VISIT IS CONDUCTED.

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

14 (26) As used in this section:

15 (a) "Title XVIII" means title XVIII of the social security
 16 act, ~~chapter 531, 49 Stat. 620, 42 U.S.C. 1395 to 1395b, 1395b-2,~~
 17 ~~1395b-6 to 1395b-7, 1395c to 1395i, 1395i-2 to 1395i-5, 1395j to~~
 18 ~~1395t, 1395u to 1395w, 1395w-2 to 1395w-4, 1395w-21 to 1395w-28,~~
 19 ~~1395x to 1395yy, and 1395bbb to 1395ggg~~ 42 USC 1395 TO 1395HHH.

20 (b) "Title XIX" means title XIX of the social security act,
 21 ~~chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1 to~~
 22 ~~1396r-6, and 1396r-8 to 1396v~~ 42 USC 1396 TO 1396V.

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