

HOUSE BILL No. 5762

February 28, 2006, Introduced by Reps. Vander Veen, Shaffer, Garfield, Taub, Brandenburg, Zelenko, Clack, Amos, Kooiman and Marleau and referred to the Committee on Senior Health, Security, and Retirement.

A bill to protect and promote long-term health care; to codify, revise, consolidate, classify, and add to the laws relating to long-term health care; to provide for the classification, administration, regulation, financing, and maintenance of personal and other long-term health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting long-term health care and adult foster care; to provide for the

imposition of a regulatory fee; to promote the efficient and economical delivery of long-term health care and adult foster care services; to provide for the appropriate utilization of long-term health care facilities and services and adult foster care facilities and services; to provide for the collection and use of data and information; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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ARTICLE I

GENERAL PROVISIONS

PART 1

SHORT TITLE, GENERAL DEFINITIONS, AND ADMINISTRATION

Sec. 101. This act shall be known and may be cited as the "long-term health care continuum act".

Sec. 103. (1) As used in this act:

(a) "Act" means the long-term health care continuum act.

(b) "Administrative procedures act of 1969" means 1969 PA 306, MCL 24.201 to 24.328.

(c) "Commission" means the long-term care commission created under part 4.

(d) "Consumer" means an individual seeking or receiving public assistance for long-term care.

(e) "Department" means the department of community health unless otherwise provided under this act.

(f) "Director" means the director of the department.

1 (g) "Long-term care" means those services and supports
2 provided to an individual in a setting of his or her choice that
3 are evaluative, preventative, rehabilitative, or health related
4 in nature.

5 (h) "Medicaid" or "title XIX" means the program for medical
6 assistance established under title XIX of the social security
7 act, 42 USC 1396 to 1396u, and administered by the department of
8 human services under the social welfare act, 1939 PA 280, MCL
9 400.1 to 400.119b.

10 (i) "Medicare" or "title XVIII" means benefits under the
11 federal medicare program established under title XVIII of the
12 social security act, 42 USC 1395 to 1395hhh.

13 (j) "Person" means an individual, partnership, cooperative,
14 association, private corporation, personal representative,
15 receiver, trustee, assignee, or other legal entity.

16 (k) "Public health code" means 1978 PA 368, MCL 333.1101 to
17 333.25211.

18 (l) "Primary consumer" means the actual user of long-term
19 care services.

20 (m) "Rule" means a rule promulgated pursuant to the
21 administrative procedures act of 1969.

22 (n) "Secondary consumer" means a family member or unpaid
23 caregiver of consumers.

24 (2) Unless otherwise provided in this act, the words defined
25 in subsection (1) apply to use of the defined term throughout
26 this act. Other definitions applicable to specific articles,
27 parts, or sections of this act are found in those articles,

1 consumers and of those primary consumers 50% shall be users of
2 medicaid services. The remainder of the 14 consumers shall be
3 secondary consumers and representatives of consumer
4 organizations.

5 (ii) Seven providers of long-term health care or
6 representatives of provider organizations.

7 (iii) Three direct care workers.

8 (iv) One individual from a state university who has expertise
9 in long-term care research.

10 (b) Five nonvoting ex officio members as follows:

11 (i) State long-term care ombudsman.

12 (ii) Director of the department or his or her designated
13 representative.

14 (iii) Director of the department of human services or his or
15 her designated representative.

16 (iv) Director of the department of labor and economic growth
17 or his or her designated representative.

18 (v) A representative of the designated protection and
19 advocacy system.

20 (2) Voting members of the commission shall serve for terms
21 of 3 years or until a successor is appointed, whichever is later,
22 except that of the members first appointed 9 shall serve for 1
23 year, 8 shall serve for 2 years, and 8 shall serve for 3 years.

24 If a vacancy occurs on the commission, the governor shall make an
25 appointment for the unexpired term in the same manner as the
26 original appointment.

27 (3) The commission shall meet at least 6 times per year. A

1 majority of the voting members serving constitute a quorum for
2 the transaction of business as long as at least 8 of those voting
3 members are consumer members. Members of the commission are
4 entitled to receive per diem compensation and reimbursement of
5 actual and necessary expenses while acting as an official
6 representative of the commission as defined by commission
7 policies and rules. The per diem compensation of the commission
8 and the schedule for reimbursement of expenses shall be as
9 established and appropriated annually by the legislature.

10 (4) The governor shall designate 1 person from among the
11 consumer membership to serve as chairperson of the commission.
12 The chairperson shall serve in that position at the pleasure of
13 the governor.

14 Sec. 303. (1) The commission shall do all of the following:

15 (a) Serve as an effective and visible advocate for all
16 consumers of long-term care supports and services.

17 (b) Participate in the preparation and review, prior to the
18 submission to the governor, of an ongoing, comprehensive
19 statewide plan and budget for long-term care services and
20 supports design, allocations, and strategies to address and meet
21 identified consumer preferences and needs.

22 (c) Ensure the broadest possible ongoing public
23 participation in statewide planning as part of subdivision (b).

24 (d) Ensure broad, culturally competent, and effective public
25 education initiatives are ongoing on long-term care issues,
26 choices, and opportunities for direct involvement by the public.

27 (e) Advise the governor and legislature regarding changes in

1 federal and state programs, statutes, and policies.

2 (f) Establish additional advisory committees, councils, or
3 workgroups as deemed helpful or necessary in pursuit of the
4 commission's mission.

5 (2) The commission may consult with staff from the medical
6 services administration and the office of services to the aging
7 as necessary.

8 Sec. 313. (1) The commission may appoint task forces and
9 advisory committees composed of individuals in a number the
10 commission determines is appropriate when the commission
11 determines that either of the following exists:

12 (a) A task force or advisory committee is appropriate to
13 provide professional or technical expertise related to a
14 department or commission function under this act.

15 (b) A task force or advisory committee is appropriate to
16 provide additional public participation in a department or
17 commission function under this act.

18 (2) The department may request that the commission establish
19 a task force or advisory committee when the department determines
20 that the task force or advisory committee is appropriate to the
21 functions vested in the department by this act.

22 Sec. 315. (1) An advisory committee to the department
23 created in this act or task force created under section 313 shall
24 terminate 2 years after the date of its creation or renewal
25 unless the commission not later than 90 days before an advisory
26 committee or task force is to terminate reviews the need for the
27 continued existence of the advisory committee or task force and

1 thereafter recommends its continuance.

2 (2) Upon the recommendation of the commission, the director
3 may reappoint or request reappointment of an advisory committee
4 or task force which would have been otherwise terminated pursuant
5 to subsection (1). Subsection (1) does not apply to advisory
6 councils, commissions, boards, task forces, or other advisory
7 bodies that are not specifically designated as advisory
8 committees.

9 (3) Not later than 2 years after the effective date of this
10 act, and biennially thereafter, the commission shall review and
11 advise the director on the need for, and alternatives to, each
12 advisory council, commission, board, task force, or body
13 established in the department.

14 ARTICLE III

15 LONG-TERM CARE FACILITIES

16 PART 31

17 GENERAL PROVISIONS

18 Sec. 3101. (1) As used in this article:

19 (a) "Adult foster care facility" means a governmental or
20 nongovernmental establishment that provides foster care to
21 adults. Subject to section 3526a(1), adult foster care facility
22 includes facilities and foster care family homes for adults who
23 are aged, mentally ill, developmentally disabled, or physically
24 disabled who require supervision on an ongoing basis but who do
25 not require continuous nursing care. Adult foster care facility
26 does not include any of the following:

27 (i) A nursing home.

1 (ii) A home for the aged.

2 (iii) A hospital licensed under article 17 of the public
3 health code.

4 (iv) A hospital for the mentally ill or a facility for the
5 developmentally disabled operated by the department of community
6 health under the mental health code, 1974 PA 258, MCL 330.1001 to
7 330.2106.

8 (v) A county infirmary operated by a county department of
9 human services under section 55 of the social welfare act, 1939
10 PA 280, MCL 400.55.

11 (vi) A child caring institution, children's camp, foster
12 family home, or foster family group home licensed or approved
13 under 1973 PA 116, MCL 722.111 to 722.128, if the number of
14 residents who become 18 years of age while residing in the
15 institution, camp, or home does not exceed the following:

16 (A) Two, if the total number of residents is 10 or fewer.

17 (B) Three, if the total number of residents is not less than
18 11 and not more than 14.

19 (C) Four, if the total number of residents is not less than
20 15 and not more than 20.

21 (D) Five, if the total number of residents is 21 or more.

22 (vii) A foster family home licensed or approved under 1973 PA
23 116, MCL 722.111 to 722.128, that has a person who is 18 years of
24 age or older placed in the foster family home under section 5(7)
25 of 1973 PA 116, MCL 722.115.

26 (viii) An establishment commonly described as an alcohol or a
27 substance abuse rehabilitation center, a residential facility for

1 persons released from or assigned to adult correctional
2 institutions, a maternity home, or a hotel or rooming house that
3 does not provide or offer to provide foster care.

4 (ix) A facility created by 1885 PA 152, MCL 36.1 to 36.12.

5 (b) "County medical care facility" means a nursing care
6 facility, other than a hospital long-term care unit, which
7 provides organized nursing care and medical treatment to 7 or
8 more unrelated individuals who are suffering or recovering from
9 illness, injury, or infirmity and which is owned by a county or
10 counties.

11 (c) "Home for the aged" means a supervised personal care
12 facility, other than a hotel, adult foster care facility,
13 hospital, nursing home, or county medical care facility that
14 provides room, board, and supervised personal care to 21 or more
15 unrelated, nontransient individuals 60 years of age or older.
16 Home for the aged includes a supervised personal care facility
17 for 20 or fewer individuals 60 years of age or older if the
18 facility is operated in conjunction with and as a distinct part
19 of a licensed nursing home.

20 (d) "Hospice" means a health care program that provides a
21 coordinated set of services rendered at home or in an outpatient
22 or institutional setting for individuals suffering from a disease
23 or condition with a terminal prognosis.

24 (e) "License" means an authorization, annual or as otherwise
25 specified, granted by the appropriate department and evidenced by
26 a certificate of licensure granting permission to a person to
27 establish or maintain and operate, or both, a long-term care

1 facility.

2 (f) "Licensee" means the holder of a license to establish or
3 maintain and operate, or both, a long-term care facility.

4 (g) "Long-term care facility" means a county medical care
5 facility, home for the aged, hospice, and nursing home.

6 (h) "Nursing home" means a nursing care facility, including
7 a county medical care facility, that provides organized nursing
8 care and medical treatment to 7 or more unrelated individuals
9 suffering or recovering from illness, injury, or infirmity.
10 Nursing home does not include a unit in a state correctional
11 facility. Nursing home does not include 1 or more of the
12 following:

13 (i) A hospital licensed under article 17 of the public health
14 code.

15 (ii) A veterans facility created under 1885 PA 152, MCL 36.1
16 to 36.12.

17 (iii) A hospice residence that is licensed under this article.

18 (iv) A hospice that is certified under 42 CFR 418.100.

19 (2) In addition, article I contains general definitions
20 applicable to all articles in this act.

21 Sec. 3103. (1) Except as otherwise provided in this article,
22 the department shall utilize the comprehensive system of
23 licensure established pursuant to part 201 of the public health
24 code for the licensure of long-term care facilities under this
25 act.

26 (2) A person shall not establish or maintain and operate a
27 long-term care facility without holding a license from the

1 appropriate department as required by this act. A long-term care
2 facility license issued under former part 213, 214, or 217 of the
3 public health code is a license issued under this article on the
4 effective date of this act until that license expires and then
5 the long-term care facility may renew the license pursuant to
6 this article.

7 (3) Unless otherwise provided by law, the licensing and
8 certification records required by this article are public
9 records.

10 Sec. 3105. (1) A long-term care facility shall apply for
11 licensure or certification on a form authorized and provided by
12 the department. The application shall include attachments,
13 additional data, and information required by the department.

14 (2) An applicant shall certify the accuracy of information
15 supplied in the application and supplemental statements.

16 (3) An applicant or a licensee under part 32 or 33 shall
17 disclose the names, addresses, principal occupations, and
18 official positions of all persons who have an ownership interest
19 in that long-term care facility. If that long-term care facility
20 is located on or in leased real estate, the applicant or licensee
21 shall disclose the name of the lessor and any direct or indirect
22 interest the applicant or licensee has in the lease other than as
23 lessee. A change in ownership shall be reported to the director
24 not less than 15 days before the change occurs, except that a
25 person purchasing stock of a company registered pursuant to the
26 securities exchange act of 1934, 15 USC 78a to 78kk, is exempt
27 from disclosing ownership in the facility. A person required to

1 file a beneficial ownership report pursuant to section 16(a) of
2 the securities exchange act of 1934, 15 USC 78p, shall file with
3 the department information relating to securities ownership
4 required by department rule or order. An applicant or licensee
5 proposing a sale of a nursing home to another person shall
6 provide the department with written, advance notice of the
7 proposed sale. The applicant or licensee and the other parties to
8 the sale shall arrange to meet with specified department
9 representatives and shall obtain before the sale a determination
10 of the items of noncompliance with applicable law and rules which
11 shall be corrected. The department shall notify the respective
12 parties of the items of noncompliance prior to the change of
13 ownership and shall indicate that the items of noncompliance must
14 be corrected as a condition of issuance of a license to the new
15 owner. The department may accept reports filed with the
16 securities and exchange commission relating to the filings. A
17 person who violates this subsection is guilty of a misdemeanor
18 punishable by a fine of not more than \$1,000.00 for each
19 violation.

20 (4) An applicant or licensee under part 32 shall disclose
21 the names and business addresses of suppliers who furnish goods
22 or services to an individual nursing home or a group of nursing
23 homes under common ownership, the aggregate charges for which
24 exceed \$5,000.00 in a 12-month period which includes a month in a
25 nursing home's current fiscal year. An applicant or licensee
26 shall disclose the names, addresses, principal occupations, and
27 official positions of all persons who have an ownership interest

1 in a business which furnishes goods or services to an individual
2 nursing home or to a group of nursing homes under common
3 ownership, if both of the following apply:

4 (a) The person, or the person's spouse, parent, sibling, or
5 child, has an ownership interest in the nursing home purchasing
6 the goods or services.

7 (b) The aggregate charges for the goods or services
8 purchased exceed \$5,000.00 in a 12-month period which includes a
9 month in the nursing home's current fiscal year.

10 (5) An applicant or licensee who makes a false statement in
11 an application or statement required by the department pursuant
12 to this article is guilty of a felony punishable by imprisonment
13 for not more than 4 years or a fine of not more than \$30,000.00,
14 or both.

15 Sec. 3106. (1) A licensee shall certify to the department,
16 as part of its application for licensing and certification, that
17 all phases of its operation, including its training programs,
18 comply with state and federal laws prohibiting discrimination.
19 The applicant shall direct the administrator of the long-term
20 care facility to take the necessary action to assure that the
21 facility is, in fact, so operated.

22 (2) This section does not prohibit a long-term care facility
23 from developing facilities and programs of care that are for
24 specific ages or sexes or rating individuals for purposes of
25 determining appropriate reimbursement for care and services.

26 Sec. 3107. (1) Except as otherwise provided in this section,
27 the department shall make annual and other visits to each long-

1 term care facility licensed under this article for the purposes
2 of survey, evaluation, and consultation. A visit made pursuant to
3 a complaint shall be unannounced. The department shall assure
4 that each newly hired nursing home surveyor, as part of his or
5 her basic training, is assigned full-time to a licensed nursing
6 home for at least 10 days within a 14-day period to observe
7 actual operations outside of the survey process before the
8 trainee begins oversight responsibilities. A member of a survey
9 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 shall make at least a biennial visit to
17 each long-term care facility for the purposes of survey,
18 evaluation, and consultation. The department shall semiannually
19 provide for joint training with nursing home surveyors and
20 providers on at least 1 of the 10 most frequently issued federal
21 citations in this state during the past calendar year. The
22 department shall adopt the protocols for the review of citation
23 patterns compared to regional outcomes and standards and
24 complaints regarding the nursing home survey process as developed
25 under the public health code. The review will result in a report
26 provided to the legislature. Each member of a department nursing
27 home survey team who is a health professional licensee under the

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

7 (3) This section does not prohibit the department from
8 citing a violation of this part during a survey, conducting
9 investigations or inspections pursuant to section 3109, or
10 conducting surveys of long-term care facilities for the purpose
11 of complaint investigations or federal certification. This
12 section does not prohibit the state fire marshal from conducting
13 annual surveys of long-term care facilities.

14 (4) The department or a local health department shall
15 conduct investigations or inspections, other than inspections of
16 financial records, of long-term care facilities without prior
17 notice to the long-term care facility. An employee of a state
18 agency charged with investigating or inspecting the long-term
19 care facility or an employee of a local health department who
20 directly or indirectly gives prior notice regarding an
21 investigation or an inspection, other than an inspection of the
22 financial records, to the long-term care facility or to an
23 employee of the long-term care facility is guilty of a
24 misdemeanor. Consultation visits that are not for the purpose of
25 annual or follow-up inspection or survey may be announced.

26 (5) The department shall maintain a record indicating
27 whether a visit and inspection are announced or unannounced.

1 Information gathered at each visit and inspection, whether
2 announced or unannounced, shall be taken into account in
3 licensure decisions.

4 (6) The department shall require periodic reports, and a
5 long-term care facility shall give the department access to
6 books, records, and other documents maintained by a long-term
7 care facility to the extent necessary to carry out the purpose of
8 this article and the rules promulgated under this article. The
9 department shall respect the confidentiality of a patient's
10 clinical record and shall not divulge or disclose the contents of
11 the records in a manner that identifies an individual except
12 under court order. The department may copy long-term care
13 facility records as required to document findings.

14 (7) The department may delegate survey, evaluation, or
15 consultation functions to another state agency or to a local
16 health department qualified to perform those functions. However,
17 the department shall not delegate survey, evaluation, or
18 consultation functions to a local health department that owns or
19 operates a hospice or hospice residence licensed under this
20 article. The delegation shall be by cost reimbursement contract
21 between the department and the state agency or local health
22 department. Survey, evaluation, or consultation functions shall
23 not be delegated to nongovernmental agencies, except as provided
24 in this section.

25 (8) If, upon investigation, the department or a state agency
26 determines that an individual licensed to practice a profession
27 in this state has violated the applicable licensure statute or

1 the rules promulgated under that statute, the department, state
2 agency, or local health department shall forward the evidence it
3 has to the appropriate licensing agency.

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

11 (a) The number of surveys conducted.

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

13 (c) The number referred to the Michigan public health
14 institute for remediation.

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

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

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

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

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

22 (i) The number and percentage of citations overturned or
23 modified, or both.

24 (10) The department shall report annually to the standing
25 committees on appropriations and the standing committees having
26 jurisdiction over issues involving senior citizens in the senate
27 and the house of representatives on the percentage of nursing

1 home citations that are appealed and the percentage of nursing
2 home citations that are appealed and amended through the informal
3 deficiency dispute resolution process.

4 (11) The department shall adopt the terms, the
5 clarifications of those terms, and the clinical process
6 guidelines and compliance protocols with outcome measures in
7 applying those terms as developed and provided by the
8 clarification workgroup established under section 20155 of the
9 public health code.

10 (12) A long-term care facility shall post the facility's
11 survey report in a conspicuous place within the facility for
12 public review.

13 Sec. 3109. (1) A representative of the department or the
14 state fire marshal division of the department of labor and
15 economic growth, upon presentation of proper identification, may
16 enter the premises of an applicant or licensee at any reasonable
17 time to determine whether the applicant or licensee meets the
18 requirements of this article and the rules promulgated under this
19 article. The director, the director of human services, the state
20 fire marshal, the director of the office of services to the
21 aging, or the director of a local health department, or an
22 authorized representative of the director, the director of human
23 services, the state fire marshal, the director of the office of
24 services to the aging, or the director of a local health
25 department, may enter on the premises of an applicant or licensee
26 under this article at any time in the course of carrying out
27 program responsibilities.

1 (2) The state fire marshal division of the department of
2 labor and economic growth shall enforce rules promulgated by the
3 state fire safety board for long-term care facilities to assure
4 that physical facilities owned, maintained, or operated by a
5 long-term care facility are planned, constructed, and maintained
6 in a manner to protect the health, safety, and welfare of
7 patients.

8 (3) The department shall not issue a license or certificate
9 to a long-term care facility until it receives an appropriate
10 certificate of approval from the state fire marshal division of
11 the department of labor and economic growth. For purposes of this
12 section, a decision of the state fire marshal division of the
13 department of labor and economic growth to issue a certificate
14 controls over that of a local fire department.

15 Sec. 3111. (1) Upon a determination that a long-term care
16 facility is in compliance with this article and the rules
17 promulgated under this article, the department shall issue an
18 initial license within 6 months after the applicant files a
19 completed application. Receipt of the application is considered
20 the date the application is received by any agency or department
21 of this state. If the application is considered incomplete by the
22 department, the department shall notify the applicant in writing
23 or make the notice electronically available within 30 days after
24 receipt of the incomplete application, describing the deficiency
25 and requesting additional information. If the department
26 identifies a deficiency or requires the fulfillment of a
27 corrective action plan, the 6-month period is tolled until either

1 of the following occurs:

2 (a) Upon notification by the department of a deficiency,
3 until the date the requested information is received by the
4 department.

5 (b) Upon notification by the department that a corrective
6 action plan is required, until the date the department determines
7 the requirements of the corrective action plan have been met.

8 (2) The determination of the completeness of an application
9 does not operate as an approval of the application for the
10 license and does not confer eligibility of an applicant
11 determined otherwise ineligible for issuance of a license.

12 (3) Except as otherwise provided in this subsection, if the
13 department fails to issue or deny a license within the time
14 period required by this section, the department shall return the
15 license fee and shall reduce the license fee for the applicant's
16 next licensure application, if any, by 15%. Failure to issue or
17 deny a license within the time period required under this section
18 does not allow the department to otherwise delay processing an
19 application. The completed application shall be placed in
20 sequence with other completed applications received at that same
21 time. The department shall not discriminate against an applicant
22 in the processing of the application based upon the fact that the
23 application fee was refunded or discounted under this subsection.
24 The department may issue a nonrenewable temporary permit for not
25 more than 6 months if additional time is needed to make a proper
26 investigation or to permit the applicant to undertake remedial
27 action related to operational or procedural deficiencies or items

1 of noncompliance. A temporary permit shall not be issued to cover
2 deficiencies in physical plant requirements.

3 (4) Except as provided in part 32, the department may issue
4 a provisional license for not more than 3 consecutive years to an
5 applicant who temporarily is unable to comply with the rules as
6 to the physical plant owned, maintained, or operated by a long-
7 term care facility except as otherwise provided in this article.
8 A provisional license shall not be issued to a new long-term care
9 facility or a long-term care facility whose ownership is
10 transferred after the effective date of this act, unless the
11 long-term care facility was licensed and operating under this
12 article or a prior law for not less than 5 years. Provisional
13 licensure under acts repealed by this act shall be counted
14 against the 3-year maximum for licensure.

15 (5) The department, in order to protect the people of this
16 state, shall provide a procedure for the orderly closing of a
17 long-term care facility if it is unable to maintain its license
18 under this section.

19 (6) Except as provided in part 32, the department, upon
20 finding that a long-term care facility is not operating in accord
21 with the requirements of its license, may do the following:

22 (a) Issue an order directing the licensee to:

23 (i) Discontinue admissions.

24 (ii) Transfer selected patients out of the facility.

25 (iii) Reduce its licensed capacity.

26 (iv) Comply with specific requirements for licensure or
27 certification as appropriate.

1 (b) Through the office of the attorney general, initiate
2 misdemeanor proceedings against the licensee as provided in
3 section 3143.

4 (7) An order issued under subsection (6) shall be governed
5 by the notice and hearing requirements of section 3119(1) and the
6 status requirements of section 3119(2).

7 (8) As used in this section, "completed application" means
8 an application complete on its face and submitted with any
9 applicable licensing fees as well as any other information,
10 records, approval, security, or similar item required by law or
11 rule from a local unit of government, a federal agency, or a
12 private entity but not from another department or agency of this
13 state.

14 Sec. 3113. (1) A license, certification, provisional
15 license, or limited license is valid for not more than 1 year
16 after the date of issuance. A license or certification is not
17 transferable and shall state the persons, buildings, and
18 properties to which it applies.

19 (2) If ownership is not voluntarily transferred, the
20 department shall be notified immediately and the new owner shall
21 apply for a license and certification not later than 30 days
22 after the transfer.

23 Sec. 3115. (1) Except as otherwise provided in this section,
24 after notice of intent to an applicant or licensee to deny,
25 limit, suspend, or revoke the applicant's or licensee's license
26 or certification and an opportunity for a hearing, the department
27 may deny, limit, suspend, or revoke the license or certification

1 or impose an administrative fine on a licensee if 1 or more of
2 the following exist:

3 (a) Fraud or deceit in obtaining or attempting to obtain a
4 license or certification or in the operation of the licensed
5 long-term care facility.

6 (b) A violation of this article or a rule promulgated under
7 this article.

8 (c) False or misleading advertising.

9 (d) Negligence or failure to exercise due care, including
10 negligent supervision of employees and subordinates.

11 (e) Permitting a license or certificate to be used by an
12 unauthorized long-term care facility.

13 (f) Evidence of abuse regarding a patient's health, welfare,
14 or safety or the denial of a patient's rights.

15 (2) The department may deny an application for a license or
16 certification based on a finding of a condition or practice that
17 would constitute a violation of this article if the applicant
18 were a licensee.

19 Sec. 3117. (1) Notice of intent to deny, limit, suspend, or
20 revoke a license or certification shall be given by certified
21 mail or personal service, shall set forth the particular reasons
22 for the proposed action, and shall fix a date, not less than 30
23 days after the date of service, on which the applicant or
24 licensee shall be given the opportunity for a hearing before the
25 director or the director's authorized representative. The hearing
26 shall be conducted in accordance with the administrative
27 procedures act of 1969 and rules promulgated by the department. A

1 full and complete record shall be kept of the proceeding and
2 shall be transcribed when requested by an interested party, who
3 shall pay the cost of preparing the transcript.

4 (2) On the basis of a hearing or on the default of the
5 applicant or licensee, the department may issue, deny, limit,
6 suspend, or revoke a license or certification. A copy of the
7 determination shall be sent by certified mail or served
8 personally upon the applicant or licensee. The determination
9 becomes final 30 days after it is mailed or served, unless the
10 applicant or licensee within the 30 days appeals the decision to
11 the circuit court in the county of jurisdiction or to the Ingham
12 county circuit court.

13 (3) The department may establish procedures, hold hearings,
14 administer oaths, issue subpoenas, or order testimony to be taken
15 at a hearing or by deposition in a proceeding pending at any
16 stage of the proceeding. A person may be compelled to appear and
17 testify and to produce books, papers, or documents in a
18 proceeding.

19 (4) In case of disobedience of a subpoena, a party to a
20 hearing may invoke the aid of the circuit court of the
21 jurisdiction in which the hearing is held to require the
22 attendance and testimony of witnesses. The circuit court may
23 issue an order requiring an individual to appear and give
24 testimony. Failure to obey the order of the circuit court may be
25 punished by the court as a contempt.

26 (5) The department shall not deny, limit, suspend, or revoke
27 a license on the basis of an applicant's or licensee's failure to

1 show a need for a long-term care facility.

2 Sec. 3119. (1) Upon a finding that a deficiency or violation
3 of this article or the rules promulgated under this article
4 seriously affect the health, safety, and welfare of individuals
5 receiving care or services in or from a licensed long-term care
6 facility, the department may issue an emergency order limiting,
7 suspending, or revoking the license of the long-term care
8 facility. If the department issues an emergency order affecting
9 the license of a nursing home, the department may request the
10 department of human services to limit reimbursements or payments
11 authorized under section 3218. The department shall provide an
12 opportunity for a hearing within 5 working days after issuance of
13 the order.

14 (2) An order shall incorporate the department's findings.
15 The conduct of a hearing under this section shall not suspend the
16 department's order.

17 Sec. 3121. If the department is directed to promulgate rules
18 by this act and rules exist pursuant to former part 213, 214, or
19 217 of the public health code or to the former adult foster care
20 facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, on
21 the date the requirement to promulgate takes effect, then those
22 rules continue in effect and shall apply to the long-term care
23 facilities licensed under this act to the extent that they do not
24 conflict with this act and shall continue to be enforced. The
25 rules may be amended or rescinded by the director.

26 Sec. 3123. If a board, committee, council, task force, or
27 other agency created by or pursuant to this act was preceded by

1 an agency with the same or similar name and functions under the
2 public health code, former parts of the public health code, or
3 the former adult foster care facility licensing act, 1979 PA 218,
4 MCL 400.701 to 400.737, members of the predecessor agency shall
5 continue in office for the duration of the terms of office for
6 which they were appointed and with the new members appointed
7 shall constitute the new agency. Members shall be appointed under
8 this act only as terms of the former members expire or vacancies
9 occur. Members of the predecessor agency may be appointed to the
10 new agency to succeed themselves subject to the limits for the
11 total period of service set forth in this act.

12 Sec. 3125. (1) Except as otherwise provided in subsection
13 (2), a long-term care facility shall not employ, independently
14 contract with, or grant clinical privileges to an individual who
15 regularly has direct access to or provides direct services to
16 patients or residents in the health facility or agency after the
17 effective date of this act if the individual satisfies 1 or more
18 of the following:

19 (a) Has been convicted of a relevant crime described under
20 42 USC 1320a-7.

21 (b) Has been convicted of any of the following felonies, an
22 attempt or conspiracy to commit any of those felonies, or any
23 other state or federal crime that is similar to the felonies
24 described in this subdivision, other than a felony for a relevant
25 crime described under 42 USC 1320a-7, unless 15 years have lapsed
26 since the individual completed all of the terms and conditions of
27 his or her sentencing, parole, and probation for that conviction

1 prior to the date of application for employment or clinical
2 privileges or the date of the execution of the independent
3 contract:

4 (i) A felony that involves the intent to cause death or
5 serious impairment of a body function, that results in death or
6 serious impairment of a body function, that involves the use of
7 force or violence, or that involves the threat of the use of
8 force or violence.

9 (ii) A felony involving cruelty or torture.

10 (iii) A felony under chapter XXA of the Michigan penal code,
11 1931 PA 328, MCL 750.145m to 750.145r.

12 (iv) A felony involving criminal sexual conduct.

13 (v) A felony involving abuse or neglect.

14 (vi) A felony involving the use of a firearm or dangerous
15 weapon.

16 (vii) A felony involving the diversion or adulteration of a
17 prescription drug or other medications.

18 (c) Has been convicted of a felony or an attempt or
19 conspiracy to commit a felony, other than a felony for a relevant
20 crime described under 42 USC 1320a-7 or a felony described under
21 subdivision (b), unless 10 years have lapsed since the individual
22 completed all of the terms and conditions of his or her
23 sentencing, parole, and probation for that conviction prior to
24 the date of application for employment or clinical privileges or
25 the date of the execution of the independent contract.

26 (d) Has been convicted of any of the following misdemeanors,
27 other than a misdemeanor for a relevant crime described under 42

1 USC 1320a-7, or a state or federal crime that is substantially
2 similar to the misdemeanors described in this subdivision, within
3 the 10 years immediately preceding the date of application for
4 employment or clinical privileges or the date of the execution of
5 the independent contract:

6 (i) A misdemeanor involving the use of a firearm or dangerous
7 weapon with the intent to injure, the use of a firearm or
8 dangerous weapon that results in a personal injury, or a
9 misdemeanor involving the use of force or violence or the threat
10 of the use of force or violence.

11 (ii) A misdemeanor under chapter XXA of the Michigan penal
12 code, 1931 PA 328, MCL 750.145m to 750.145r.

13 (iii) A misdemeanor involving criminal sexual conduct.

14 (iv) A misdemeanor involving cruelty or torture unless
15 otherwise provided under subdivision (e).

16 (v) A misdemeanor involving abuse or neglect.

17 (e) Has been convicted of any of the following misdemeanors,
18 other than a misdemeanor for a relevant crime described under 42
19 USC 1320a-7, or a state or federal crime that is substantially
20 similar to the misdemeanors described in this subdivision, within
21 the 5 years immediately preceding the date of application for
22 employment or clinical privileges or the date of the execution of
23 the independent contract:

24 (i) A misdemeanor involving cruelty if committed by an
25 individual who is less than 16 years of age.

26 (ii) A misdemeanor involving home invasion.

27 (iii) A misdemeanor involving embezzlement.

1 (iv) A misdemeanor involving negligent homicide.

2 (v) A misdemeanor involving larceny unless otherwise
3 provided under subdivision (g).

4 (vi) A misdemeanor of retail fraud in the second degree
5 unless otherwise provided under subdivision (g).

6 (vii) Any other misdemeanor involving assault, fraud, theft,
7 or the possession or delivery of a controlled substance unless
8 otherwise provided under subdivision (d), (f), or (g).

9 (f) Has been convicted of any of the following misdemeanors,
10 other than a misdemeanor for a relevant crime described under 42
11 USC 1320a-7, or a state or federal crime that is substantially
12 similar to the misdemeanors described in this subdivision, within
13 the 3 years immediately preceding the date of application for
14 employment or clinical privileges or the date of the execution of
15 the independent contract:

16 (i) A misdemeanor for assault if there was no use of a
17 firearm or dangerous weapon and no intent to commit murder or
18 inflict great bodily injury.

19 (ii) A misdemeanor of retail fraud in the third degree unless
20 otherwise provided under subdivision (g).

21 (iii) A misdemeanor under part 74 unless otherwise provided
22 under subdivision (g).

23 (g) Has been convicted of any of the following misdemeanors,
24 other than a misdemeanor for a relevant crime described under 42
25 USC 1320a-7, or a state or federal crime that is substantially
26 similar to the misdemeanors described in this subdivision, within
27 the year immediately preceding the date of application for

1 employment or clinical privileges or the date of the execution of
2 the independent contract:

3 (i) A misdemeanor under part 74 if the individual, at the
4 time of conviction, is under the age of 18.

5 (ii) A misdemeanor for larceny or retail fraud in the second
6 or third degree if the individual, at the time of conviction, is
7 under the age of 16.

8 (h) Is the subject of an order or disposition under section
9 16b of chapter IX of the code of criminal procedure, 1927 PA 175,
10 MCL 769.16b.

11 (i) Has been the subject of a substantiated finding of
12 neglect, abuse, or misappropriation of property by a state or
13 federal agency pursuant to an investigation conducted in
14 accordance with 42 USC 1395i-3 or 1396r.

15 (2) Except as otherwise provided in subsection (5), a long-
16 term care facility shall not employ, independently contract with,
17 or grant privileges to an individual who regularly has direct
18 access to or provides direct services to patients or residents in
19 the long-term care facility after the effective date of this act
20 until the long-term care facility conducts a criminal history
21 check in compliance with subsection (4). This subsection and
22 subsection (1) do not apply to any of the following:

23 (a) An individual who is employed by, under independent
24 contract to, or granted clinical privileges in a long-term care
25 facility before the effective date of this act. Within 24 months
26 after the effective date of this act, an individual who is exempt
27 under this subdivision shall provide the department of state

1 police with a set of fingerprints and the department of state
2 police shall input those fingerprints into the automated
3 fingerprint identification system database established under
4 subsection (12). An individual who is exempt under this
5 subdivision is not limited to working within the long-term care
6 facility with which he or she is employed by, under independent
7 contract to, or granted clinical privileges on the effective date
8 of this act. That individual may transfer to another long-term
9 care facility that is under the same ownership with which he or
10 she was employed, under contract, or granted privileges. If that
11 individual wishes to transfer to another long-term care facility
12 that is not under the same ownership, he or she may do so
13 provided that a criminal history check is conducted by the new
14 long-term care facility in accordance with subsection (4). If an
15 individual who is exempt under this subdivision is subsequently
16 convicted of a crime described under subsection (1)(a) through
17 (g) or found to be the subject of a substantiated finding
18 described under subsection (1)(i) or an order or disposition
19 described under subsection (1)(h), or is found to have been
20 convicted of a relevant crime described under subsection (1)(a),
21 then he or she is no longer exempt and shall be terminated from
22 employment or denied employment.

23 (b) An individual who is an independent contractor with a
24 long-term care facility if the services for which he or she is
25 contracted is not directly related to the provision of services
26 to a patient or resident or if the services for which he or she
27 is contracted allows for direct access to the patients or

1 residents but is not performed on an ongoing basis. This
2 exception includes, but is not limited to, an individual who
3 independently contracts with the health facility or agency to
4 provide utility, maintenance, construction, or communications
5 services.

6 (3) An individual who applies for employment either as an
7 employee or as an independent contractor or for clinical
8 privileges with a long-term care facility and has received a good
9 faith offer of employment, an independent contract, or clinical
10 privileges from the health facility or agency shall give written
11 consent at the time of application for the department of state
12 police to conduct an initial criminal history check under this
13 section, along with identification acceptable to the department
14 of state police.

15 (4) Upon receipt of the written consent and identification
16 required under subsection (3), a long-term care facility that has
17 made a good faith offer of employment or an independent contract
18 or clinical privileges to the applicant shall make a request to
19 the department of state police to conduct a criminal history
20 check on the applicant, to input the applicant's fingerprints
21 into the automated fingerprint identification system database,
22 and to forward the applicant's fingerprints to the federal bureau
23 of investigation. The department of state police shall request
24 the federal bureau of investigation to make a determination of
25 the existence of any national criminal history pertaining to the
26 applicant. The applicant shall provide the department of state
27 police with a set of fingerprints. The request shall be made in a

1 manner prescribed by the department of state police. The long-
2 term care facility shall make the written consent and
3 identification available to the department of state police. The
4 long-term care facility shall make a request to the relevant
5 licensing or regulatory department to conduct a check of all
6 relevant registries established pursuant to federal and state law
7 and regulations for any substantiated findings of abuse, neglect,
8 or misappropriation of property. If the department of state
9 police or the federal bureau of investigation charges a fee for
10 conducting the initial criminal history check, the charge shall
11 be paid by or reimbursed by the department with federal funds as
12 provided to implement a pilot program for national and state
13 background checks on direct patient access employees of long-term
14 care facilities or providers in accordance with section 307 of
15 the medicare prescription drug, improvement, and modernization
16 act of 2003, Public Law 108-173. The long-term care facility
17 shall not seek reimbursement for a charge imposed by the
18 department of state police or the federal bureau of investigation
19 from the individual who is the subject of the initial criminal
20 history check. A long-term care facility, a prospective employee,
21 or a prospective independent contractor covered under this
22 section may not be charged for the cost of an initial criminal
23 history check required under this section. The department of
24 state police shall conduct a criminal history check on the
25 applicant named in the request. The department of state police
26 shall provide the department with a written report of the
27 criminal history check conducted under this subsection if the

1 criminal history check contains any criminal history record
2 information. The report shall contain any criminal history record
3 information on the applicant maintained by the department of
4 state police. The department of state police shall provide the
5 results of the federal bureau of investigation determination to
6 the department within 30 days after the request is made. If the
7 requesting long-term care facility is not a state department or
8 agency and if a criminal conviction is disclosed on the written
9 report of the criminal history check or the federal bureau of
10 investigation determination, the department shall notify the
11 long-term care facility and the applicant in writing of the type
12 of crime disclosed on the written report of the criminal history
13 check or the federal bureau of investigation determination
14 without disclosing the details of the crime. Any charges imposed
15 by the department of state police or the federal bureau of
16 investigation for conducting an initial criminal history check or
17 making a determination under this subsection shall be paid in the
18 manner required under this subsection. The notice shall include a
19 statement that the applicant has a right to appeal a decision
20 made by the long-term care facility regarding his or her
21 employment eligibility based on the criminal background check.
22 The notice shall also include information regarding where to file
23 and describing the appellate procedures established under section
24 20173b.

25 (5) If a long-term care facility determines it necessary to
26 employ or grant clinical privileges to an applicant before
27 receiving the results of the applicant's criminal history check

1 under this section, the health facility or agency may
2 conditionally employ or grant conditional clinical privileges to
3 the individual if all of the following apply:

4 (a) The long-term care facility requests the criminal
5 history check under this section upon conditionally employing or
6 conditionally granting clinical privileges to the individual.

7 (b) The individual signs a statement in writing that
8 indicates all of the following:

9 (i) That he or she has not been convicted of 1 or more of the
10 crimes that are described in subsection (1)(a) through (g) within
11 the applicable time period prescribed by each subdivision
12 respectively.

13 (ii) That he or she is not the subject of an order or
14 disposition described in subsection (1)(h).

15 (iii) That he or she has not been the subject of a
16 substantiated finding as described in subsection (1)(i).

17 (iv) The individual agrees that, if the information in the
18 criminal history check conducted under this section does not
19 confirm the individual's statements under subparagraphs (i)
20 through (iii), his or her employment or clinical privileges will be
21 terminated by the long-term care facility as required under
22 subsection (1) unless and until the individual appeals and can
23 prove that the information is incorrect.

24 (v) That he or she understands the conditions described in
25 subparagraphs (i) through (iv) that result in the termination of
26 his or her employment or clinical privileges and that those
27 conditions are good cause for termination.

1 (6) The department shall develop and distribute a model form
2 for the statement required under subsection (5)(b). The
3 department shall make the model form available to long-term care
4 facilities subject to this section upon request at no charge.

5 (7) If an individual is employed as a conditional employee
6 or is granted conditional clinical privileges under subsection
7 (5), and the report described in subsection (4) does not confirm
8 the individual's statement under subsection (5)(b)(i) through
9 (iii), the long-term care facility shall terminate the individual's
10 employment or clinical privileges as required by subsection (1).

11 (8) An individual who knowingly provides false information
12 regarding his or her identity, criminal convictions, or
13 substantiated findings on a statement described in subsection
14 (5)(b)(i) through (iii) is guilty of a misdemeanor punishable by
15 imprisonment for not more than 93 days or a fine of not more than
16 \$500.00, or both.

17 (9) A long-term care facility shall use criminal history
18 record information obtained under subsection (4) only for the
19 purpose of evaluating an applicant's qualifications for
20 employment, an independent contract, or clinical privileges in
21 the position for which he or she has applied and for the purposes
22 of subsections (5) and (7). A long-term care facility or an
23 employee of the long-term care facility shall not disclose
24 criminal history record information obtained under subsection (4)
25 to a person who is not directly involved in evaluating the
26 applicant's qualifications for employment, an independent
27 contract, or clinical privileges. An individual who knowingly

1 uses or disseminates the criminal history record information
2 obtained under subsection (4) in violation of this subsection is
3 guilty of a misdemeanor punishable by imprisonment for not more
4 than 93 days or a fine of not more than \$1,000.00, or both. Upon
5 written request from another long-term care facility, health
6 facility or agency, psychiatric facility or intermediate care
7 facility for people with mental retardation, or adult foster care
8 facility that is considering employing, independently contracting
9 with, or granting clinical privileges to an individual, a long-
10 term care facility that has obtained criminal history record
11 information under this section on that individual shall, with the
12 consent of the applicant, share the information with the
13 requesting long-term care facility, health facility or agency,
14 psychiatric facility or intermediate care facility for people
15 with mental retardation, or adult foster care facility. Except
16 for a knowing or intentional release of false information, a
17 health facility or agency has no liability in connection with a
18 criminal background check conducted under this section or the
19 release of criminal history record information under this
20 subsection.

21 (10) As a condition of continued employment, each employee,
22 independent contractor, or individual granted clinical privileges
23 shall do each of the following:

24 (a) Agree in writing to report to the long-term care
25 facility immediately upon being arraigned for 1 or more of the
26 criminal offenses listed in subsection (1)(a) through (g), upon
27 being convicted of 1 or more of the criminal offenses listed in

1 subsection (1)(a) through (g), upon becoming the subject of an
2 order or disposition described under subsection (1)(h), and upon
3 being the subject of a substantiated finding of neglect, abuse,
4 or misappropriation of property as described in subsection
5 (1)(i). Reporting of an arraignment under this subdivision is not
6 cause for termination or denial of employment.

7 (b) If a set of fingerprints is not already on file with the
8 department of state police, provide the department of state
9 police with a set of fingerprints.

10 (11) In addition to sanctions set forth in section 20165, a
11 licensee, owner, administrator, or operator of a long-term care
12 facility who knowingly and willfully fails to conduct the
13 criminal history checks as required under this section is guilty
14 of a misdemeanor punishable by imprisonment for not more than 1
15 year or a fine of not more than \$5,000.00, or both.

16 (12) In collaboration with the department of state police,
17 the department of information technology shall establish an
18 automated fingerprint identification system database that would
19 allow the department of state police to store and maintain all
20 fingerprints submitted under this section and would provide for
21 an automatic notification if and when a subsequent criminal
22 arrest fingerprint card submitted into the system matches a set
23 of fingerprints previously submitted in accordance with this
24 section. Upon such notification, the department of state police
25 shall immediately notify the department and the department shall
26 immediately contact the respective health facility or agency with
27 which that individual is associated. Information in the database

1 established under this subsection is confidential, is not subject
2 to disclosure under the freedom of information act, 1976 PA 442,
3 MCL 15.231 to 15.246, and shall not be disclosed to any person
4 except for purposes of this act or for law enforcement purposes.

5 (13) By March 1, 2007, the department and the department of
6 state police shall develop and implement an electronic web-based
7 system to assist those long-term care facilities required to
8 check relevant registries and conduct criminal history checks of
9 its employees and independent contractors and to provide for an
10 automated notice to those long-term care facilities for those
11 individuals inputted in the system who, since the initial check,
12 have been convicted of a disqualifying offense or have been the
13 subject of a substantiated finding of abuse, neglect, or
14 misappropriation of property.

15 (14) As used in this section:

16 (a) "Adult foster care facility" means an adult foster care
17 facility licensed under the adult foster care facility licensing
18 act, 1979 PA 218, MCL 400.701 to 400.737.

19 (b) "Direct access" means access to a patient or resident or
20 to a patient's or resident's property, financial information,
21 medical records, treatment information, or any other identifying
22 information.

23 (c) "Independent contract" means a contract entered into by
24 a health facility or agency with an individual who provides the
25 contracted services independently or a contract entered into by a
26 health facility or agency with an organization or agency that
27 employs or contracts with an individual after complying with the

1 requirements of this section to provide the contracted services
2 to the health facility or agency on behalf of the organization or
3 agency.

4 (d) "Medicare" means benefits under the federal medicare
5 program established under title XVIII of the social security act,
6 42 USC 1395 to 1395ggg.

7 Sec. 3125a. (1) An individual who has been disqualified from
8 or denied employment by a long-term care facility based on a
9 criminal history check conducted pursuant to section 3125 may
10 appeal to the department if he or she believes that the criminal
11 history report is inaccurate, and the appeal shall be conducted
12 as a contested case hearing pursuant to the administrative
13 procedures act of 1969. The individual shall file the appeal with
14 the director of the department within 15 business days after
15 receiving the written report of the criminal history check unless
16 the conviction contained in the criminal history report is one
17 that may be expunged or set aside. If an individual has been
18 disqualified or denied employment based on a conviction that may
19 be expunged or set aside, then he or she shall file the appeal on
20 a form provided by the department within 15 business days after a
21 court order granting or denying his or her application to expunge
22 or set aside that conviction is granted. If the order is granted
23 and the conviction is expunged or set aside, then the individual
24 shall not be disqualified or denied employment based solely on
25 that conviction. The director shall review the appeal and issue a
26 written decision within 30 business days after receiving the
27 appeal. The decision of the director is final.

1 (2) As used in this section, "business day" means a day
2 other than a Saturday, Sunday, or any legal holiday.

3 Sec. 3127. (1) A long-term care facility shall keep and
4 maintain a record for each patient including a full and complete
5 record of observations made and treatments provided. Departmental
6 officers and employees shall respect the confidentiality of
7 patient clinical records and shall not divulge or disclose the
8 contents of records in a manner that identifies an individual
9 except pursuant to court order.

10 (2) A long-term care facility that employs, contracts with,
11 or grants privileges to a health professional licensed or
12 registered under article 15 of the public health code shall
13 report the following to the department not more than 30 days
14 after it occurs:

15 (a) Disciplinary action taken by the long-term care facility
16 against a health professional licensed or registered under
17 article 15 of the public health code based on the licensee's or
18 registrant's professional competence, disciplinary action that
19 results in a change of employment status, or disciplinary action
20 based on conduct that adversely affects the licensee's or
21 registrant's clinical privileges for a period of more than 15
22 days. As used in this subdivision, "adversely affects" means the
23 reduction, restriction, suspension, revocation, denial, or
24 failure to renew the clinical privileges of a licensee or
25 registrant by a long-term care facility.

26 (b) Restriction or acceptance of the surrender of the
27 clinical privileges of a health professional licensed or

1 registered under article 15 of the public health code under
2 either of the following circumstances:

3 (i) The licensee or registrant is under investigation by the
4 long-term care facility.

5 (ii) There is an agreement in which the long-term care
6 facility agrees not to conduct an investigation into the
7 licensee's or registrant's alleged professional incompetence or
8 improper professional conduct.

9 (c) A case in which a health professional resigns or
10 terminates a contract or whose contract is not renewed instead of
11 the long-term care facility taking disciplinary action against
12 the health professional.

13 (3) Upon request by another long-term care facility seeking
14 a reference for purposes of changing or granting staff
15 privileges, credentials, or employment, a long-term care facility
16 that employs, contracts with, or grants privileges to health
17 professionals licensed or registered under article 15 of the
18 public health code shall notify the requesting long-term care
19 facility of any disciplinary or other action reportable under
20 subsection (2) that it has taken against a health professional
21 licensed or registered under article 15 of the public health code
22 and employed by, under contract to, or granted privileges by the
23 long-term care facility.

24 (4) For the purpose of reporting disciplinary actions under
25 this section, a long-term care facility shall include only the
26 following in the information provided:

27 (a) The name of the health professional licensed or

1 registered under article 15 of the public health code against
2 whom disciplinary action has been taken.

3 (b) A description of the disciplinary action taken.

4 (c) The specific grounds for the disciplinary action taken.

5 (d) The date of the incident that is the basis for the
6 disciplinary action.

7 Sec. 3129. (1) A person may notify the department of a
8 violation of this article or of a rule promulgated under this
9 article that the person believes exists. The department shall
10 investigate each written complaint received and shall notify the
11 complainant in writing of the results of a review or
12 investigation of the complaint and any action proposed to be
13 taken. Except as otherwise provided in sections 3135, 3243(1)(d),
14 and 3299a, the name of the complainant and the charges contained
15 in the complaint are a matter of public record.

16 (2) Except as otherwise provided in section 3299a, a
17 complainant who is aggrieved by the decision of the department
18 under this section may appeal to the director. After review of an
19 appeal under this subsection, the director may order the
20 department to reinvestigate the complaint.

21 Sec. 3129a. (1) A long-term care facility shall not
22 discharge or discipline, threaten to discharge or discipline, or
23 otherwise discriminate against an employee regarding the
24 employee's compensation, terms, conditions, location, or
25 privileges of employment because the employee or an individual
26 acting on behalf of the employee does either or both of the
27 following:

1 (a) In good faith reports or intends to report, verbally or
2 in writing, the malpractice of a health professional or a
3 violation of this article, article 7, or article 15 of the public
4 health code or a rule promulgated under this act or the public
5 health code.

6 (b) Acts as an expert witness in a civil action involving
7 medical malpractice or in an administrative action.

8 (2) In addition to the sanctions set forth in section 3115,
9 a long-term care facility that violates subsection (1) is subject
10 to an administrative fine of not more than \$10,000.00 for each
11 violation.

12 Sec. 3131. Notwithstanding the existence and pursuit of any
13 other remedy, the director, without posting a bond, may request
14 the prosecuting attorney or attorney general to bring an action
15 in the name of the people of this state to restrain, enjoin, or
16 prevent the establishment, maintenance, or operation of a long-
17 term care facility in violation of this article or rules
18 promulgated under this article.

19 Sec. 3133. (1) A long-term care facility that is not a
20 hospice that represents to the public that it provides inpatient
21 care or services or residential care or services, or both, to
22 persons with Alzheimer's disease or a related condition shall
23 provide to each prospective patient, resident, or surrogate
24 decision maker a written description of the services provided by
25 the long-term care facility to patients or residents with
26 Alzheimer's disease or a related condition. A written description
27 shall include, but not be limited to, all of the following:

1 (a) The overall philosophy and mission reflecting the needs
2 of patients or residents with Alzheimer's disease or a related
3 condition.

4 (b) The process and criteria for placement in or transfer or
5 discharge from a program for patients or residents with
6 Alzheimer's disease or a related condition.

7 (c) The process used for assessment and establishment of a
8 plan of care and its implementation.

9 (d) Staff training and continuing education practices.

10 (e) The physical environment and design features appropriate
11 to support the function of patients or residents with Alzheimer's
12 disease or a related condition.

13 (f) The frequency and types of activities for patients or
14 residents with Alzheimer's disease or a related condition.

15 (g) Identification of supplemental fees for services
16 provided to patients or residents with Alzheimer's disease or a
17 related condition.

18 (2) As used in this section, "represents to the public"
19 means advertises or markets the facility as providing specialized
20 Alzheimer's or dementia care services.

21 Sec. 3135. (1) A person employed by or under contract to a
22 long-term care facility or any other person acting in good faith
23 who makes a report or complaint including, but not limited to, a
24 report or complaint of a violation of this article or a rule
25 promulgated under this article; who assists in originating,
26 investigating, or preparing a report or complaint; or who assists
27 the department in carrying out its duties under this article is

1 immune from civil or criminal liability that might otherwise be
2 incurred and is protected under the whistleblowers' protection
3 act, 1980 PA 469, MCL 15.361 to 15.369. A person described in
4 this subsection who makes or assists in making a report or
5 complaint, or who assists the department as described in this
6 subsection, is presumed to have acted in good faith. The immunity
7 from civil or criminal liability granted under this subsection
8 extends only to acts done pursuant to this article.

9 (2) Unless a person described in subsection (1) otherwise
10 agrees in writing, the department shall keep the person's
11 identity confidential until disciplinary proceedings under this
12 article are initiated against the subject of the report or
13 complaint and the person making or assisting in originating,
14 investigating, or preparing the report or complaint is required
15 to testify in the disciplinary proceedings. If disclosure of the
16 person's identity is considered by the department to be essential
17 to the disciplinary proceedings and if the person is the
18 complainant, the department shall give the person an opportunity
19 to withdraw the complaint before disclosure.

20 Sec. 3137. A long-term care facility shall not require the
21 execution of a do-not-resuscitate order under the Michigan do-
22 not-resuscitate procedure act as a condition for admission or
23 receipt of services.

24 Sec. 3139. (1) Subject to subsections (2), (3), and (4), a
25 long-term care facility shall conspicuously display in the
26 patient waiting areas or other common areas of the long-term care
27 facility copies of a pamphlet developed by the department

1 outlining the procedure for filing a complaint against a long-
2 term care facility with the department and the procedure for
3 filing a complaint against an individual who is licensed or
4 registered under article 15 of the public health code and
5 employed by, under contract to, or granted privileges by the
6 long-term care facility. The pamphlet shall be developed and
7 distributed by the department after consultation with appropriate
8 professional associations.

9 (2) The department shall develop the pamphlets required
10 under subsection (1) in languages that are appropriate to the
11 ethnic composition of the patient population where the pamphlet
12 will be displayed. The department shall use large, easily
13 readable type and nontechnical, easily understood language in the
14 pamphlet. The department shall periodically distribute copies of
15 the pamphlet to each long-term care facility.

16 (3) The department shall include a model standardized
17 complaint form in the pamphlet described in subsection (1). The
18 department may develop a separate model standardized complaint
19 form that is specific to a particular long-term care facility or
20 category of long-term care facilities. The department shall
21 develop a model standardized complaint form that is specific to
22 nursing homes. The department shall include on the model
23 standardized complaint form, at a minimum, simple instructions on
24 how to file a complaint, including with the nursing home as
25 required under section 3223, the department, the state long-term
26 care ombudsman, the Michigan protection and advocacy service,
27 inc., and the health care fraud unit of the department of

1 attorney general. The department shall distribute copies of the
2 model standardized complaint form simultaneously with copies of
3 the pamphlet as required under subsection (2). The nursing home
4 shall conspicuously display and make available multiple copies of
5 the pamphlet and model standardized complaint form with the
6 complaint information required to be posted under section 3223 in
7 the patient waiting areas or other common areas of the nursing
8 home that are easily accessible to nursing home patients and
9 their visitors, as described in subsection (1), and shall provide
10 a copy of the pamphlet and complaint form to each nursing home
11 resident or the resident's surrogate decision maker upon
12 admission to the nursing home. The department shall include on
13 the model standardized complaint form a telephone number for the
14 receipt of oral complaints.

15 (4) The department may continue to distribute the complaint
16 pamphlets within its possession on the effective date of this act
17 until the department's stock is exhausted or until 6 months after
18 the effective date of this act, whichever is sooner. Beginning 6
19 months after the effective date of this act, the department shall
20 only distribute the complaint pamphlets and model standardized
21 complaint forms that are in compliance with subsections (2) and
22 (3).

23 (5) The department shall make the complaint pamphlet and the
24 model standardized complaint form available to the public on the
25 department's internet website. The department shall take
26 affirmative action toward the development and implementation of
27 an electronic filing system that would allow an individual to

1 file a complaint through the website.

2 Sec. 3141. (1) Subject to subsection (3), an individual
3 shall not enter upon the premises of a long-term care facility
4 that is a residential facility for the purpose of engaging in an
5 activity that would cause a reasonable person to feel terrorized,
6 frightened, intimidated, threatened, harassed, or molested and
7 that actually causes a long-term care facility employee, patient,
8 resident, or visitor to feel terrorized, frightened, intimidated,
9 threatened, harassed, or molested. This subsection does not
10 prohibit constitutionally protected activity or conduct that
11 serves a legitimate purpose.

12 (2) An individual who violates subsection (1) is guilty of a
13 misdemeanor punishable by imprisonment for not more than 1 year
14 or a fine of not less than \$1,000.00 or more than \$10,000.00, or
15 both.

16 (3) Subsections (1) and (2) do not apply to a nursing home
17 covered under sections 3263(5) and 3299c(1)(c).

18 Sec. 3143. Except as otherwise provided in section 3105, a
19 person who violates this article or a rule promulgated or an
20 order issued under this article is guilty of a misdemeanor
21 punishable by fine of not more than \$1,000.00 for each day the
22 violation continues.

23 Sec. 3145. (1) A long-term care facility that provides
24 services directly to patients or residents and is licensed under
25 this article shall adopt a policy describing the rights and
26 responsibilities of patients or residents admitted to the long-
27 term care facility. The policy shall be posted at a public place

1 in the long-term care facility and shall be provided to each
2 member of the long-term care facility staff. Patients or
3 residents shall be treated in accordance with the policy.

4 (2) The policy describing the rights and responsibilities of
5 patients or residents required under subsection (1) shall
6 include, as a minimum, all of the following:

7 (a) A patient or resident shall not be denied appropriate
8 care on the basis of race, religion, color, national origin, sex,
9 age, disability, marital status, sexual preference, or source of
10 payment.

11 (b) An individual who is or has been a patient or resident
12 is entitled to inspect, or receive for a reasonable fee, a copy
13 of his or her medical record upon request. A third party shall
14 not be given a copy of the patient's or resident's medical record
15 without prior authorization of the patient or resident.

16 (c) A patient or resident is entitled to confidential
17 treatment of personal and medical records and may refuse their
18 release to a person outside the long-term care facility except as
19 required because of a transfer to another long-term care facility
20 or as required by law or third party payment contract.

21 (d) A patient or resident is entitled to privacy, to the
22 extent feasible, in treatment and in caring for personal needs
23 with consideration, respect, and full recognition of his or her
24 dignity and individuality.

25 (e) A patient or resident is entitled to receive adequate
26 and appropriate care, and to receive, from the appropriate
27 individual within the long-term care facility, information about

1 his or her medical condition, proposed course of treatment, and
2 prospects for recovery, in terms that the patient or resident can
3 understand, unless medically contraindicated as documented by the
4 attending physician in the medical record.

5 (f) A patient or resident is entitled to refuse treatment to
6 the extent provided by law and to be informed of the consequences
7 of that refusal. If a refusal of treatment prevents a long-term
8 care facility or its staff from providing appropriate care
9 according to ethical and professional standards, the relationship
10 with the patient or resident may be terminated upon reasonable
11 notice.

12 (g) A patient or resident is entitled to exercise his or her
13 rights as a patient or resident and as a citizen, and to this end
14 may present grievances or recommend changes in policies and
15 services on behalf of himself or herself or others to the long-
16 term care facility staff, to governmental officials, or to
17 another person of his or her choice within or outside the long-
18 term care facility, free from restraint, interference, coercion,
19 discrimination, or reprisal. A patient or resident is entitled to
20 information about the long-term care facility's policies and
21 procedures for initiation, review, and resolution of patient or
22 resident complaints.

23 (h) A patient or resident is entitled to information
24 concerning an experimental procedure proposed as a part of his or
25 her care and has the right to refuse to participate in the
26 experimental procedure without jeopardizing his or her continuing
27 care.

1 (i) A patient or resident is entitled to receive and examine
2 an explanation of his or her bill regardless of the source of
3 payment and to receive, upon request, information relating to
4 financial assistance available through the long-term care
5 facility.

6 (j) A patient or resident is entitled to know who is
7 responsible for and who is providing his or her direct care, is
8 entitled to receive information concerning his or her continuing
9 health needs and alternatives for meeting those needs, and is
10 entitled to be involved in his or her discharge planning, if
11 appropriate.

12 (k) A patient or resident is entitled to associate and have
13 private communications and consultations with his or her
14 physician, attorney, or any other person of his or her choice and
15 to send and receive personal mail unopened on the same day it is
16 received at the long-term care facility, unless medically
17 contraindicated as documented by the attending physician in the
18 medical record. A patient's or resident's civil and religious
19 liberties, including the right to independent personal decisions
20 and the right to knowledge of available choices, shall not be
21 infringed and the long-term care facility shall encourage and
22 assist in the fullest possible exercise of these rights. A
23 patient or resident may meet with, and participate in, the
24 activities of social, religious, and community groups at his or
25 her discretion, unless medically contraindicated as documented by
26 the attending physician in the medical record.

27 (l) A patient or resident is entitled to be free from mental

1 and physical abuse and from physical and chemical restraints,
2 except those restraints authorized in writing by the attending
3 physician for a specified and limited time or as are necessitated
4 by an emergency to protect the patient or resident from injury to
5 self or others, in which case the restraint may only be applied
6 by a qualified professional who shall set forth in writing the
7 circumstances requiring the use of restraints and who shall
8 promptly report the action to the attending physician. In case of
9 a chemical restraint, a physician shall be consulted within 24
10 hours after the commencement of the chemical restraint.

11 (m) A patient or resident is entitled to be free from
12 performing services for the long-term care facility that are not
13 included for therapeutic purposes in the plan of care.

14 (n) A patient or resident is entitled to information about
15 the long-term care facility rules and regulations affecting
16 patient or resident care and conduct.

17 (o) A patient or resident is entitled to adequate and
18 appropriate pain and symptom management as a basic and essential
19 element of his or her medical treatment.

20 (3) The following additional requirements for the policy
21 described in subsection (2) apply to licensees under parts 32 and
22 33:

23 (a) The policy shall be provided to each nursing home
24 patient or home for the aged resident upon admission, and the
25 staff of the facility shall be trained and involved in the
26 implementation of the policy.

27 (b) Each nursing home patient may associate and communicate

1 privately with persons of his or her choice. Reasonable, regular
2 visiting hours, which shall be not less than 8 hours per day, and
3 which shall take into consideration the special circumstances of
4 each visitor, shall be established for patients to receive
5 visitors. A patient may be visited by the patient's attorney or
6 by representatives of the departments named in section 3109,
7 during other than established visiting hours. Reasonable privacy
8 shall be afforded for visitation of a patient who shares a room
9 with another patient. Each patient shall have reasonable access
10 to a telephone. A married nursing home patient or home for the
11 aged resident is entitled to meet privately with his or her
12 spouse in a room that assures privacy. If both spouses are
13 residents in the same facility, they are entitled to share a room
14 unless medically contraindicated and documented by the attending
15 physician in the medical record.

16 (c) A nursing home patient or home for the aged resident is
17 entitled to retain and use personal clothing and possessions as
18 space permits, unless to do so would infringe upon the rights of
19 other patients or residents, or unless medically contraindicated
20 as documented by the attending physician in the medical record.
21 Each nursing home patient or home for the aged resident shall be
22 provided with reasonable space. At the request of a patient, a
23 nursing home shall provide for the safekeeping of personal
24 effects, funds, and other property of a patient in accordance
25 with section 3267, except that a nursing home is not required to
26 provide for the safekeeping of a property that would impose an
27 unreasonable burden on the nursing home.

1 (d) A nursing home patient or home for the aged resident is
2 entitled to the opportunity to participate in the planning of his
3 or her medical treatment. A nursing home patient shall be fully
4 informed by the attending physician of the patient's medical
5 condition unless medically contraindicated as documented by a
6 physician in the medical record. Each nursing home patient shall
7 be afforded the opportunity to discharge himself or herself from
8 the nursing home.

9 (e) A home for the aged resident may be transferred or
10 discharged only for medical reasons, for his or her welfare or
11 that of other residents, or for nonpayment of his or her stay,
12 except as provided by title XVIII or title XIX. A nursing home
13 patient may be transferred or discharged only as provided in
14 sections 3273 to 3277. A nursing home patient or home for the
15 aged resident is entitled to be given reasonable advance notice
16 to ensure orderly transfer or discharge. Those actions shall be
17 documented in the medical record.

18 (f) A nursing home patient or home for the aged resident is
19 entitled to be fully informed before or at the time of admission
20 and during stay of services available in the facility, and of the
21 related charges including any charges for services not covered
22 under title XVIII, or not covered by the facility's basic per
23 diem rate. The statement of services provided by the facility
24 shall be in writing and shall include those required to be
25 offered on an as-needed basis.

26 (g) A nursing home patient or home for the aged resident is
27 entitled to manage his or her own financial affairs, or to have

1 at least a quarterly accounting of personal financial
2 transactions undertaken in his or her behalf by the facility
3 during a period of time the patient or resident has delegated
4 those responsibilities to the facility. In addition, a patient or
5 resident is entitled to receive each month from the facility an
6 itemized statement setting forth the services paid for by or on
7 behalf of the patient and the services rendered by the facility.
8 The admission of a patient to a nursing home does not confer on
9 the nursing home or its owner, administrator, employees, or
10 representatives the authority to manage, use, or dispose of a
11 patient's property.

12 (h) A nursing home patient or a person authorized by the
13 patient in writing may inspect and copy the patient's personal
14 and medical records. The records shall be made available for
15 inspection and copying by the nursing home within a reasonable
16 time, not exceeding 1 week, after the receipt of a written
17 request.

18 (i) If a nursing home patient desires treatment by a
19 licensed member of the healing arts, the treatment shall be made
20 available unless it is medically contraindicated, and the medical
21 contraindication is justified in the patient's medical record by
22 the attending physician.

23 (j) A nursing home patient has the right to have his or her
24 parents, if a minor, or his or her spouse, next of kin, or
25 patient's representative, if an adult, stay at the facility 24
26 hours a day if the patient is considered terminally ill by the
27 physician responsible for the patient's care.

1 (k) Each nursing home patient shall be provided with meals
2 that meet the recommended dietary allowances for that patient's
3 age and sex and that may be modified according to special dietary
4 needs or ability to chew.

5 (l) Each nursing home patient has the right to receive
6 representatives of approved organizations as provided in section
7 21763.

8 (4) A nursing home, its owner, administrator, employee, or
9 representative shall not discharge, harass, or retaliate or
10 discriminate against a patient because the patient has exercised
11 a right protected under this section.

12 (5) In the case of a nursing home patient, the rights
13 enumerated in subsection (2)(c), (g), and (k) and subsection
14 (3)(d), (g), and (h) may be exercised by the patient's
15 representative.

16 (6) A nursing home patient or home for the aged resident is
17 entitled to be fully informed, as evidenced by the patient's or
18 resident's written acknowledgment, before or at the time of
19 admission and during stay, of the policy required by this
20 section. The policy shall provide that if a patient or resident
21 is adjudicated incompetent and not restored to legal capacity,
22 the rights and responsibilities set forth in this section shall
23 be exercised by a person designated by the patient or resident.
24 The long-term care facility shall provide proper forms for the
25 patient or resident to provide for the designation of this person
26 at the time of admission.

27 (7) This section does not prohibit a long-term care facility

1 from establishing and recognizing additional patients' rights.

2 (8) As used in this section, "patient's representative"
3 means that term as defined in section 3203.

4 Sec. 3147. (1) A patient or resident is responsible for
5 following the long-term care facility rules and regulations
6 affecting patient or resident care and conduct.

7 (2) A patient or resident is responsible for providing a
8 complete and accurate medical history.

9 (3) A patient or resident is responsible for making it known
10 whether he or she clearly comprehends a contemplated course of
11 action and the things he or she is expected to do.

12 (4) A patient or resident is responsible for following the
13 recommendations and advice prescribed in a course of treatment by
14 the physician.

15 (5) A patient or resident is responsible for providing
16 information about unexpected complications that arise in an
17 expected course of treatment.

18 (6) A patient or resident is responsible for being
19 considerate of the rights of other patients or residents and
20 long-term care facility personnel and property.

21 (7) A patient or resident is responsible for providing the
22 long-term care facility with accurate and timely information
23 concerning his or her sources of payment and ability to meet
24 financial obligations.

25 Sec. 3149. (1) The rights and responsibilities prescribed in
26 sections 3145 and 3147 are guidelines for long-term care
27 facilities, facility staff, facility employees, patients, and

1 residents. An individual shall not be civilly or criminally
2 liable for failure to comply with those sections.

3 (2) Sections 3145 and 3147 shall not be construed to expand
4 or diminish other remedies at law available to a patient or
5 resident under this act or the statutory and common law of this
6 state.

7 (3) The department shall develop guidelines to assist long-
8 term care facilities in the implementation of sections 3145 and
9 3147.

10 Sec. 3151. (1) Every 6 months, the department shall issue a
11 summary of its activities in relation to licensing and regulation
12 and shall cause the information to be made available to the news
13 media and all persons who make a written request to receive
14 copies of the information.

15 (2) The list and current inspection reports shall be
16 available for inspection and copying.

17 PART 32

18 NURSING HOMES

19 Sec. 3201. (1) For purposes of this part, the words and
20 phrases defined in sections 3202 to 3203 have the meanings
21 ascribed to them in those sections.

22 (2) In addition, article I contains general definitions and
23 principles of construction applicable to all articles in this act
24 and part 31 contains definitions applicable to this part.

25 Sec. 3202. (1) "Discharge" means the voluntary or
26 involuntary movement of a patient out of a nursing home
27 regardless of the individual's destination or reason for the

1 movement.

2 (2) "Full-time" means being usually present in the nursing
3 home or conducting or participating in activities directly
4 related to the nursing home during the normal 40-hour business
5 week.

6 (3) "Involuntary transfer" means a transfer not agreed to in
7 writing by the patient or, in the case of a plenary guardianship,
8 by the patient's legal guardian.

9 (4) "Medicaid" means that term as defined in section 103.

10 (5) "Medical reasons" means a medical justification for
11 either of the following:

12 (a) The transfer or discharge of a patient in accord with
13 the written orders of the attending physician that is written
14 into the patient's clinical record by the physician in the
15 progress notes.

16 (b) The transfer or discharge of a patient who is a medicaid
17 recipient due to a change in level of care required by the
18 patient and the fact that the nursing home or nursing care
19 facility is not certified to provide the needed level of care.

20 (6) "Medicare" means that term as defined in section 103.

21 (7) "Modification of a license" means an action by the
22 department to alter the number of beds, the levels of care, or
23 the portions of the physical plant that may be operated or
24 maintained by a licensee in a particular nursing home, or to
25 restrict the nursing home from engaging in activity that violates
26 this article or a rule promulgated under this article.

27 (8) "Negative case action" means an action taken by the

1 department of human services to deny an application for medical
2 assistance, cancel medical assistance, or reduce medical
3 assistance coverage.

4 (9) "Nonpayment" means:

5 (a) Failure to collect from the patient or any other source
6 the full amount of the facility charges to a nonmedicaid patient
7 based on a written contract signed on or after that patient's
8 admission to the facility.

9 (b) Failure to collect a medicaid patient's stipulated
10 contribution toward his or her care.

11 (10) "Private pay rate" means the amount charged by a
12 nursing home for the care of a patient who is not entitled to
13 state or federal benefits for that patient's nursing home care.

14 Sec. 3203. (1) "Patient" means a person who receives care or
15 services at a nursing home.

16 (2) "Patient's representative" means a person, other than
17 the licensee or an employee or person having a direct or indirect
18 ownership interest in the nursing home, designated in writing by
19 a patient or a patient's guardian for a specific, limited purpose
20 or for general purposes, or, if a written designation of a
21 representative is not made, the guardian of the patient.

22 (3) "Relocation" means the movement of a patient from 1 bed
23 to another or from 1 room to another within the same nursing home
24 or within a certified distinct part of a nursing home.

25 (4) "Transfer" means the movement of a patient from 1
26 nursing home to another nursing home or from 1 certified distinct
27 part of a nursing home to another certified distinct part of the

1 same nursing home.

2 (5) "Welfare" means, with reference to a patient, the
3 physical, emotional, or social well-being of a patient in a
4 nursing home, including a patient awaiting transfer or discharge,
5 as documented in the patient's clinical record by a licensed or
6 certified health care professional.

7 Sec. 3207. (1) The course of medical treatment provided to a
8 patient in a nursing home shall be prescribed by the patient's
9 physician.

10 (2) This part does not do the following:

11 (a) Authorize the supervision, regulation, or control of the
12 practice of any method of healing.

13 (b) Authorize the medical supervision, regulation, or
14 control of the remedial care or nonmedical nursing care of
15 patients in a nursing home operated for the adherents of a bona
16 fide church or religious denomination who rely upon treatment by
17 prayer or spiritual means only in accordance with the creed or
18 tenets of that church or denomination. The residents, patients,
19 personnel, or employees, other than food handlers, of the home
20 are not required to submit to a medical or physical examination.
21 However, the nursing home shall be inspected and licensed under
22 laws pertaining to fire, safety, sanitation, and building
23 construction.

24 Sec. 3211. (1) A nursing home shall be licensed under this
25 article.

26 (2) "Nursing home", "nursing center", "convalescent center",
27 "extended care facility", or a similar term or abbreviation shall

1 not be used to describe or refer to a long-term care facility
2 unless the long-term care facility is licensed as a nursing home
3 by the department under this article.

4 (3) A person shall not purport to provide formal or informal
5 nursing care services of the kind normally provided in a nursing
6 home without obtaining a license as provided in this article.

7 This subsection does not apply to a hospital or a facility
8 created by 1885 PA 152, MCL 36.1 to 36.12.

9 Sec. 3212. (1) A nursing home shall use the name that
10 appears on the license for its premises. A nursing home shall not
11 change its name without the approval of the department.

12 (2) A nursing home shall not use the terms "hospital" or
13 "sanitarium" or a term conveying a meaning that is substantially
14 similar to those terms in the name of the nursing home. However,
15 a nursing home may use the term "health center" or "health care
16 center" or "rehabilitation center" or a term conveying a meaning
17 substantially similar to those terms as long as those terms do
18 not conflict with the terms prohibited by this subsection.

19 (3) If a nursing home uses the term "rehabilitation center"
20 in its name as allowed under subsection (2), the nursing home
21 shall have the capacity to provide rehabilitation services that
22 include, at a minimum, all of the following:

23 (a) Physical therapy services.

24 (b) Occupational therapy services.

25 (c) Speech therapy services.

26 (4) A nursing home shall not include in its name the name of
27 a religious, fraternal, or charitable corporation, organization,

1 or association unless the corporation, organization, or
2 association is an owner of the nursing home.

3 Sec. 3213. The owner, operator, and governing body of a
4 nursing home licensed under this article:

5 (a) Are responsible for all phases of the operation of the
6 nursing home and quality of care rendered in the home.

7 (b) Shall cooperate with the department in the enforcement
8 of this article and require that the physicians and other
9 personnel working in the nursing home and for whom a license or
10 registration is required be currently licensed or registered.

11 Sec. 3215. (1) A nursing home shall provide a program of
12 planned and continuing medical care under the charge of
13 physicians.

14 (2) Nursing care and medical care shall consist of services
15 given to individuals who are subject to prolonged suffering from
16 illness or injury or who are recovering from illness or injury.
17 The services shall be within the ability of the home to provide
18 and shall include the functions of medical care such as diagnosis
19 and treatment of an illness; nursing care via assessment,
20 planning, and implementation; evaluation of a patient's health
21 care needs; and the carrying out of required treatment prescribed
22 by a physician.

23 Sec. 3216. A nursing home shall offer each resident, or
24 shall provide each resident with information and assistance in
25 obtaining, an annual vaccination against influenza in accordance
26 with the most recent recommendations of the advisory committee on
27 immunization practices of the federal centers for disease control

1 and prevention, as approved by the department of community
2 health.

3 Sec. 3217. An individual shall not be admitted or retained
4 for care in a nursing home who requires special medical or
5 surgical treatment, or treatment for acute mental illness, mental
6 retardation, communicable tuberculosis, or a communicable
7 disease, unless the home is able to provide an area and a program
8 for the care. The department shall approve both the area and the
9 program, including the programs providing treatment for mental
10 illness and mental retardation.

11 Sec. 3218. (1) Except as provided in subsections (3) and
12 (4), as a condition of skilled nursing facility certification and
13 participation in the title XIX program, a nursing home shall be
14 concurrently certified for and give evidence of active
15 participation in the title XVIII program. A nursing facility that
16 is not concurrently certified for the title XVIII program on
17 March 30, 1979 shall make application for concurrent
18 certification not later than its next application for licensure
19 and certification. A failure to make application shall result in
20 the skilled nursing facility being decertified or refused
21 certification as a provider in the title XIX program. Nursing
22 home or nursing care facility participation in the title XVIII
23 program under the requirements for concurrent certification shall
24 be effective not later than the beginning of the first accounting
25 year following the home's or facility's title XVIII
26 certification.

27 (2) As a condition of skilled nursing facility

1 certification, a nursing home shall obtain concurrent
2 certification under title XIX, for each bed which is certified to
3 provide skilled care under title XVIII. Skilled care
4 certification shall not be renewed unless the requirements of
5 this subsection are met.

6 (3) An exception may be made from the requirements of
7 subsection (1) for a nursing facility that is currently certified
8 as a skilled nursing facility by the director for title XIX
9 participation but has been determined, after making application,
10 to be ineligible for title XVIII certification by the secretary
11 of the United States department of health, education, and
12 welfare.

13 (4) A home or facility, or a distinct part of a home or
14 facility, certified by the director as a special mental
15 retardation or special mental illness nursing home or nursing
16 care facility shall be exempt from the requirements of subsection
17 (1).

18 Sec. 3219. A nursing home shall not be licensed under this
19 part unless the nursing home has formulated, and is prepared to
20 implement, insofar as possible, a plan to provide immediate
21 access to acute care facilities for the emergency care of
22 patients.

23 Sec. 3220. (1) The department shall not license a nursing
24 home under this part unless that nursing home is under the
25 direction of a nursing home administrator licensed under article
26 5.

27 (2) Each nursing home having 50 beds or more shall have a

1 full-time licensed nursing home administrator. If a nursing home
2 changes nursing home administrators, the nursing home immediately
3 shall notify the department of the change.

4 Sec. 3220a. (1) A nursing home shall not be licensed under
5 this part unless that nursing home has on its staff at least 1
6 registered nurse with specialized training or relevant experience
7 in the area of gerontology, who shall serve as the director of
8 nursing and who shall be responsible for planning and directing
9 nursing care. The nursing home shall have at least 1 licensed
10 nurse on duty at all times and shall employ additional registered
11 and licensed practical nurses in accordance with subsection (2).

12 (2) A nursing home shall employ nursing personnel sufficient
13 to provide continuous 24-hour nursing care and services
14 sufficient to meet the needs of each patient in the nursing home.
15 Nursing personnel employed in the nursing home shall be under the
16 supervision of the director of nursing. A licensee shall maintain
17 a nursing home staff sufficient to provide not less than 2.25
18 hours of nursing care by employed nursing care personnel per
19 patient per day. The ratio of patients to nursing care personnel
20 during a morning shift shall not exceed 8 patients to 1 nursing
21 care personnel; the ratio of patients to nursing care personnel
22 during an afternoon shift shall not exceed 12 patients to 1
23 nursing care personnel; and the ratio of patients to nursing care
24 personnel during a nighttime shift shall not exceed 15 patients
25 to 1 nursing care personnel and there shall be sufficient nursing
26 care personnel available on duty to assure coverage for patients
27 at all times during the shift. An employee designated as a member

1 of the nursing staff shall not be engaged in providing basic
2 services such as food preparation, housekeeping, laundry, or
3 maintenance services, except in an instance of natural disaster
4 or other emergency reported to and concurred in by the
5 department. In a nursing home having 30 or more beds, the
6 director of nursing shall not be included in counting the minimum
7 ratios of nursing personnel required by this subsection.

8 (3) In administering this section, the department shall take
9 into consideration a natural disaster or other emergency.

10 Sec. 3220b. A nursing home shall not be licensed under this
11 part unless that nursing home has entered into an agreement with
12 the county community mental health program, if available, that
13 will service the mental health needs of the patients of the
14 nursing home.

15 Sec. 3221. (1) Before issuance or renewal of a nursing home
16 license under this article, the owner, operator, or governing
17 body of the nursing home shall give a bond and provide evidence
18 of a patient trust fund in an amount consistent with subsection
19 (2) and with the surety the department approves. The bond shall
20 be conditioned that the applicant shall hold separately in the
21 trust fund all patients' funds deposited with the applicant,
22 shall administer the funds on behalf of the patient in the manner
23 directed by the depositor, and shall render a true and complete
24 account to the patient not less than once each 3 months, to the
25 depositor when requested, and to the department and the
26 department of human services, when requested. Upon termination of
27 the deposit, the applicant shall account for all funds received,

1 expended, and held on hand. The bond shall insure the department
2 for the benefit of the patients.

3 (2) The bond shall be in an amount equal to not less than 1-
4 1/4 times the average balance of patient funds held during the
5 previous year. The department may require an additional bond, or
6 permit the filing of a bond in a lower amount, if the department
7 determines a change in the average balance has occurred or may
8 occur. An applicant for a new license shall file a bond in an
9 amount which the department estimates as 1-1/4 times the average
10 amount of patient funds which the applicant, upon the issuance of
11 the license, is likely to hold during the first year of
12 operation.

13 Sec. 3223. (1) A nursing home shall post in an area
14 accessible to residents, employees, and visitors the name, title,
15 location, and telephone number of the individual in the nursing
16 home who is responsible for receiving complaints and conducting
17 complaint investigations and a procedure for communicating with
18 that individual.

19 (2) An individual responsible for receiving complaints and
20 conducting complaint investigations in a nursing home shall be on
21 duty and on site not less than 24 hours per day, 7 days a week.

22 (3) The individual described in subsection (2) who receives
23 a complaint, inquiry, or request from a nursing home resident or
24 the resident's surrogate decision maker shall respond using the
25 nursing home's established procedures pursuant to R 325.20113 of
26 the Michigan administrative code.

27 (4) To assist the individual described in subsection (2) in

1 performing his or her duties, the department shall post on its
2 internet website all of the following information:

3 (a) Links to federal and state regulations and rules
4 governing the nursing home industry.

5 (b) The scheduling of any training or joint training
6 sessions concerning nursing home or elderly care issues being put
7 on by the department.

8 (c) A list of long-term care contact telephone numbers
9 including, but not limited to, the department's complaint
10 hotline, the department's nursing home licensing division, any
11 commonly known nursing home provider groups, the state long-term
12 care ombudsman, and any commonly known nursing home patient care
13 advocacy groups.

14 (d) When it becomes available, information on the
15 availability of electronic mail access to file a complaint
16 concerning nursing home violations directly with the department.

17 (e) Any other information that the department believes is
18 helpful in responding to complaints, requests, and inquiries of a
19 nursing home resident or his or her surrogate decision maker.

20 (5) A nursing home receiving reimbursement pursuant to the
21 medicaid program shall designate 1 or more current employees to
22 fulfill the duties and responsibilities outlined in this section.
23 This section does not constitute a basis for increasing nursing
24 home staffing levels.

25 Sec. 3231. A licensee of a nursing home operated for profit
26 is considered to be the consumer, and not the retailer, of the
27 tangible personal property purchased and used or consumed in the

1 operation of the home.

2 Sec. 3233. (1) A nursing home licensed under this article
3 shall adopt a policy regulating the smoking of tobacco on the
4 nursing home premises.

5 (2) A nursing home policy regulating smoking at a minimum
6 shall provide that:

7 (a) Upon admission each patient or person responsible for
8 the patient's admission shall be asked if there is a preference
9 for placement with smokers or nonsmokers.

10 (b) Smoking by patients shall be restricted to private
11 rooms, rooms shared with other smokers only, or other designated
12 smoking areas.

13 (c) Visitors shall not be permitted to smoke in rooms or
14 wards occupied by patients who do not smoke.

15 (d) Visitors shall be permitted to smoke only in designated
16 areas.

17 (e) Staff shall be permitted to smoke in designated areas
18 only.

19 (f) Staff shall not be permitted to smoke in patients' rooms
20 or while performing their duties in the presence of patients.

21 (g) Eating areas shall have sections for smokers and
22 nonsmokers.

23 (h) Cigarettes, cigars, and pipe tobacco shall not be sold
24 or dispensed within the nursing home except as provided for by
25 the owner or governing board.

26 (i) A sign indicating that smoking is prohibited in the
27 nursing home except in designated areas shall be posted at each

1 entrance to the nursing home. Each designated smoking area shall
2 be posted as such by sign.

3 (3) A nursing home licensed under this article shall retain
4 a copy of the smoking policy which will be available to the
5 public upon request.

6 Sec. 3234. (1) Notwithstanding section 3145(2)(l), a nursing
7 home shall give each resident who uses a hospital-type bed or the
8 resident's legal guardian, patient advocate, or other legal
9 representative the option of having bed rails. A nursing home
10 shall offer the option to new residents upon admission and to
11 other residents upon request. Upon receipt of a request for bed
12 rails, the nursing home shall inform the resident or the
13 resident's legal guardian, patient advocate, or other legal
14 representative of alternatives to and the risks involved in using
15 bed rails. A resident or the resident's legal guardian, patient
16 advocate, or other legal representative has the right to request
17 and consent to bed rails for the resident. A nursing home shall
18 provide bed rails to a resident only upon receipt of a signed
19 consent form authorizing bed rail use and a written order from
20 the resident's attending physician that contains statements and
21 determinations regarding medical symptoms and that specifies the
22 circumstances under which bed rails are to be used. For purposes
23 of this subsection, "medical symptoms" includes the following:

- 24 (a) A concern for the physical safety of the resident.
25 (b) Physical or psychological need expressed by a resident.
26 A resident's fear of falling may be the basis of a medical
27 symptom.

1 (2) A nursing home that provides bed rails under subsection
2 (1) shall do all of the following:

3 (a) Document that the requirements of subsection (1) have
4 been met.

5 (b) Monitor the resident's use of the bed rails.

6 (c) In consultation with the resident, resident's family,
7 resident's attending physician, and individual who consented to
8 the bed rails, periodically reevaluate the resident's need for
9 the bed rails.

10 (3) The department shall develop clear and uniform
11 guidelines to be used in determining what constitutes each of the
12 following:

13 (a) Acceptable bed rails for use in a nursing home in this
14 state. The department shall consider the recommendations of the
15 hospital bed safety work group established by the United States
16 food and drug administration, if those are available, in
17 determining what constitutes an acceptable bed rail.

18 (b) Proper maintenance of bed rails.

19 (c) Properly fitted mattresses.

20 (d) Other hazards created by improperly positioned bed
21 rails, mattresses, or beds.

22 (4) A nursing home that complies with subsections (1) and
23 (2) and the guidelines developed under this section in providing
24 bed rails to a resident is not subject to administrative
25 penalties imposed by the department based solely on providing the
26 bed rails. Nothing in this subsection precludes the department
27 from citing specific state or federal deficiencies for improperly

1 maintained bed rails, improperly fitted mattresses, or other
2 hazards created by improperly positioned bed rails, mattresses,
3 or beds.

4 Sec. 3235. (1) A nursing home licensed under this article
5 shall have, at a minimum, an emergency generator system that
6 complies with existing state and federal law, including state and
7 federal rules and regulations.

8 (2) A nursing home that fails to comply with this section is
9 subject to a civil penalty as provided under existing state and
10 federal law, including state and federal rules and regulations.

11 Sec. 3241. (1) The department, after seeking advice and
12 consultation from the department of human services, appropriate
13 consumer and professional organizations, and concerned agencies,
14 shall promulgate rules to implement and administer this part.

15 (2) In addition to the rules prescribed under section 20171
16 of the public health code, rules for nursing homes shall include
17 the establishment of standards relating to:

18 (a) Complaint procedures.

19 (b) Discharges and transfers.

20 (c) Emergency procedures.

21 (d) Medical audit procedures.

22 (e) Patients' rights.

23 (f) Standards of patient care to be provided in nursing
24 homes.

25 (g) Training, educational, and competency requirements of
26 nursing home personnel other than licensed personnel.

27 (h) Utilization and quality control review procedures.

1 Sec. 3243. (1) In addition to public records subject to
2 disclosure under section 3127, the following information is
3 subject to disclosure from the department or the department of
4 human services:

5 (a) Ownership of nursing homes, ownership of buildings
6 occupied by nursing homes, and the names and addresses of
7 suppliers and the ownership of suppliers of goods and services to
8 nursing homes required to be reported under section 3105.

9 (b) Records of license and certification inspections,
10 surveys, and evaluations of nursing homes, other reports of
11 inspections, surveys, and evaluations of patient care, and
12 reports concerning a nursing home prepared pursuant to titles
13 XVIII and XIX.

14 (c) Cost and reimbursement reports submitted by a nursing
15 home, reports of audits of nursing homes, and other public
16 records concerning costs incurred by, revenues received by, and
17 reimbursement of nursing homes.

18 (d) Complaints filed against a nursing home and complaint
19 investigation reports. A complaint or complaint investigation
20 report shall not be disclosed to a person other than the
21 complainant or complainant's representative before it is
22 disclosed to a nursing home under section 5299a, and a
23 complainant's or patient's name shall not be disclosed except as
24 provided in section 5299a.

25 (2) The department, the department of human services, and
26 the nursing home shall respect the confidentiality of a patient's
27 clinical record as provided in section 3127 and shall not divulge

1 or disclose the contents of a record in a manner which identifies
2 a patient, except upon a patient's death to a relative or
3 guardian, or under judicial proceedings. This subsection shall
4 not be construed to limit the right of a patient or a patient's
5 representative to inspect or copy the patient's clinical record.

6 (3) Confidential medical, social, personal, or financial
7 information identifying a patient shall not be available for
8 public inspection in a manner which identifies a patient.

9 Sec. 3244. The department shall provide to the applicant or
10 licensee professional advice and consultation related to the
11 quality of institutional or agency aspects of health care and
12 services provided by the applicant or licensee.

13 Sec. 3251. (1) When the department has concluded a
14 proceeding under sections 71 to 106 of the administrative
15 procedures act of 1969, or when the department has suspended or
16 revoked the license of a nursing home, the department, a patient
17 in the facility, or a patient's representative may file an
18 emergency petition with the circuit court to place the nursing
19 home under the control of a receiver if necessary to protect the
20 health or safety of patients in the nursing home. The court may
21 grant the petition upon a finding that the health or safety of
22 the patients in the nursing home would be seriously threatened if
23 a condition existing at the time the petition was filed is
24 permitted to continue.

25 (2) The court shall appoint as receiver the director of the
26 department of human services, the director of the department, or
27 another state agency or person designated by the director of

1 community health. The receiver appointed by the court shall use
2 the income and assets of the nursing home to maintain and operate
3 the home and to attempt to correct the conditions which
4 constitute a threat to the patients. A major structural
5 alteration shall not be made to the nursing home, unless the
6 alteration is necessary to bring the nursing home into compliance
7 with licensing requirements.

8 (3) To assist in the implementation of the mandate of the
9 court, the receiver may request and receive reasonable
10 consultation from the available personnel of the department.

11 (4) The receivership shall be terminated when the receiver
12 and the court certify that the conditions which prompted the
13 appointment have been corrected, when the license is restored,
14 when a new license is issued, or, in the case of a discontinuance
15 of operation, when the patients are safely placed in other
16 facilities, whichever occurs first.

17 (5) Upon the termination of the receivership, the receiver
18 shall render a complete accounting to the court and shall dispose
19 of surplus funds as the court directs.

20 Sec. 3255. The department may refuse to issue a license to
21 establish or maintain and operate, or both, a nursing home to an
22 applicant:

23 (a) Whose occupational, professional, or health agency
24 license has been revoked during the 5 years preceding the date of
25 application.

26 (b) Whom the department finds is not suitable to operate a
27 nursing home because of financial incapacity or a lack of good

1 moral character or appropriate business or professional
2 experience. As used in this subdivision, "good moral character"
3 means that term as defined in 1974 PA 381, MCL 338.41 to 338.47.

4 Sec. 3257. (1) The department may issue a 1-year provisional
5 license, renewable for not more than 1 additional year, to an
6 applicant whose services are needed in the community but who is
7 temporarily unable to comply with the rules related to the
8 physical plant of the facilities, excluding maintenance problems.
9 At the time a provisional license is granted, specific deadlines
10 for the correction of each physical plant violation shall be
11 established.

12 (2) A provisional license shall not be issued for a nursing
13 home constructed, established, or changing corporate ownership or
14 management after March 30, 1979 unless it is shown that unusual
15 hardship would result to the public or to the applicant for the
16 provisional license and the nursing home was licensed and
17 operating under a prior licensing act for not less than 5 years.

18 Sec. 3261. (1) In addition to the requirements of section
19 3106, a licensee shall certify annually to the department, as
20 part of its application for licensure and certification, that all
21 phases of its operation, including its training program, are
22 without discrimination against persons or groups of persons on
23 the basis of race, religion, color, national origin, sex, age,
24 disability, marital status, sexual preference, or the exercise of
25 rights guaranteed by law, including freedom of speech and
26 association. If the department finds a violation of rights
27 enumerated in this section, the department shall direct the

1 administrator of the nursing home to take the necessary action to
2 assure that the nursing home is, in fact, operated in accordance
3 with the rights listed in this section.

4 (2) This section shall not be construed to prevent a nursing
5 home operated, supervised, or controlled by a religious or
6 fraternal institution or organization from giving preference to
7 applicants who are members of that religious or fraternal
8 institution or organization.

9 Sec. 3263. (1) A nursing home shall permit a representative
10 of an approved organization, who is known by the nursing home
11 administration to be authorized to represent the organization or
12 who carries identification showing that the representative is
13 authorized to represent the organization, a family member of a
14 patient, or a legal representative of a patient, to have access
15 to nursing home patients for 1 or more of the following purposes:

16 (a) Visit, talk with, and make personal, social, and legal
17 services available to the patients.

18 (b) Inform patients of their rights and entitlements, and
19 their corresponding obligations, under federal and state laws by
20 means of the distribution of educational materials and discussion
21 in groups and with individual patients.

22 (c) Assist patients in asserting their legal rights
23 regarding claims for public assistance, medical assistance, and
24 social services benefits, as well as in all matters in which
25 patients are aggrieved. Assistance may be provided individually
26 or on a group basis and may include organizational activity and
27 counseling and litigation.

1 (d) Engage in other methods of assisting, advising, and
2 representing patients so as to extend to them the full enjoyment
3 of their rights.

4 (2) Access as prescribed in subsection (1) shall be
5 permitted during regular visiting hours each day. A
6 representative of an approved organization entering a nursing
7 home under this section promptly shall advise the nursing home
8 administrator or the acting administrator or other available
9 agent of the nursing home of the representative's presence. A
10 representative shall not enter the living area of a patient
11 without identifying himself or herself to the patient and without
12 receiving the patient's permission to enter. A representative
13 shall use only patient areas of the home to carry out the
14 activities described in subsection (1).

15 (3) A patient may terminate a visit by a representative
16 permitted access under subsection (1). Communications between a
17 patient and the representative are confidential, unless otherwise
18 authorized by the patient.

19 (4) If a nursing home administrator or employee believes
20 that an individual or organization permitted access under this
21 section is acting or has acted in a manner detrimental to the
22 health or safety of patients in the nursing home, the nursing
23 home administrator or employee may file a complaint with the task
24 force established under section 20127 of the public health code.
25 Upon receipt of a complaint, department staff shall investigate
26 the allegations made in the complaint. The task force shall make
27 a determination regarding proper resolution of the complaint

1 based on the results of the investigation. Written notification
2 of the task force determination and of recommendations adopted by
3 the task force shall be given to the complainant and the
4 individual or organization against whom the complaint was made.

5 (5) An individual shall not enter upon the premises of a
6 nursing home for the purpose of engaging in an activity that
7 would cause a reasonable person to feel terrorized, frightened,
8 intimidated, threatened, harassed, or molested and that actually
9 causes a nursing home employee, patient, or visitor to feel
10 terrorized, frightened, intimidated, threatened, harassed, or
11 molested. This subsection does not prohibit constitutionally
12 protected activity or conduct that serves a legitimate purpose
13 including, but not limited to, activities or conduct allowed
14 under subsection (1).

15 Sec. 3264. (1) The director, with the advice of the nursing
16 home task force, shall approve or disapprove a nonprofit
17 corporation which has as 1 of its primary purposes the rendering
18 of assistance, without charge to nursing home patients for the
19 purpose of obtaining access to nursing homes and their patients
20 under section 5263.

21 (2) Upon receipt of a written application for approval under
22 subsection (1), the director shall notify all persons who have
23 made a written request for notice of applications made under this
24 section.

25 (3) The director shall approve the organization making the
26 request if the organization is a bona fide community organization
27 or legal aid program, is capable of providing 1 or more of the

1 services listed in section 5263, and is likely to utilize the
2 access provided under section 5263 to enhance the welfare of
3 nursing home patients. The director shall approve or disapprove
4 the organization within 30 days after receiving the application.

5 (4) A person aggrieved by the decision of the director may
6 appeal the decision to the nursing home task force. A decision of
7 the task force shall be binding on the director.

8 Sec. 3265. (1) A nursing home shall establish written
9 policies and procedures to implement the rights protected under
10 section 3145. The policies shall include a procedure for the
11 investigation and resolution of patient complaints. The policies
12 and procedures shall be subject to approval by the department.
13 The policies and procedures shall be clear and unambiguous, shall
14 be printed in not less than 12-point type, shall be available for
15 inspection by any person, shall be distributed to each patient
16 and representative, and shall be available for public inspection.

17 (2) Each patient shall be given a copy of the rights
18 enumerated in section 3145 at the time of admission to a nursing
19 home. A patient of a nursing home at the time of the
20 implementation of this section shall be given a copy of the
21 rights enumerated in section 3145 as specified by rule.

22 (3) A copy shall be given to a person who executes a
23 contract pursuant to section 3266 and to any other person who
24 requests a copy.

25 (4) If a patient is unable to read the form, it shall be
26 read to the patient in a language the patient understands. In the
27 case of a mentally retarded individual, the rights shall be

1 explained in a manner which that person is able to understand and
2 the explanation witnessed by a third person. In the case of a
3 minor or a person having a legal guardian, both the patient and
4 the parent or legal guardian shall be fully informed of the
5 policies and procedures.

6 (5) A nursing home shall ensure that its staff is familiar
7 with and observes the rights enumerated in section 3145 and the
8 policies and procedures established under this section.

9 Sec. 3265a. (1) A nursing home shall not require an
10 applicant, as a condition of admission, to waive his or her right
11 to benefits under medicare or medicaid, to give oral or written
12 assurance that the applicant is not eligible for medicare or
13 medicaid, or to give oral or written assurance that the applicant
14 will not apply for benefits under medicare or medicaid.

15 (2) A nursing home shall not require any of the following as
16 a condition of an applicant's admission or a patient's continued
17 residency at that nursing home:

18 (a) That an applicant or patient remain a private pay
19 patient for a specified period of time before applying for
20 medicaid.

21 (b) That a person pay on behalf of an applicant or patient
22 the private pay rate for a specified period of time before the
23 applicant or patient applies for medicaid.

24 (c) That an applicant, patient, or other person make a gift
25 or donation on behalf of that applicant or patient.

26 (3) As of April 11, 1994, a contract provision or agreement
27 in conflict with subsection (1) or (2), whether made before, on,

1 or after April 11, 1994, is unenforceable.

2 (4) Not later than 30 days after April 11, 1994, a nursing
3 home that participates in medicaid shall provide written notice
4 to each private pay patient subject to a contract provision or
5 agreement in conflict with subsection (1) or (2) that the
6 contract provision or agreement is no longer a bar to the patient
7 applying for medicaid.

8 Sec. 3266. (1) A nursing home shall execute a written
9 contract solely with an applicant or patient or that applicant's
10 or patient's guardian or legal representative authorized by law
11 to have access to those portions of the patient's or applicant's
12 income or assets available to pay for nursing home care, at each
13 of the following times:

14 (a) At the time an individual is admitted to a nursing home.

15 (b) At the expiration of the term of a previous contract.

16 (c) At the time the source of payment for the patient's care
17 changes.

18 (2) A nursing home shall not discharge or transfer a patient
19 at the expiration of the term of a contract, except as provided
20 in section 3273.

21 (3) A nursing home shall specifically notify in writing an
22 applicant or patient or that applicant's or patient's guardian or
23 legal representative of the availability or lack of availability
24 of hospice care in the nursing home. This written notice shall be
25 by way of a specific paragraph located in the written contract
26 described in subsection (1) and shall require the applicant or
27 patient or that applicant's or patient's guardian or legal

1 representative to sign or initial the paragraph before execution
2 of the written contract. As used in this subsection, "hospice"
3 means that term as defined in section 3101.

4 (4) A nursing home shall provide a copy of the contract to
5 the patient, the patient's representative, or the patient's legal
6 representative or legal guardian at the time the contract is
7 executed.

8 (5) For a patient supported by funds other than the
9 patient's own funds, a nursing home shall make a copy of the
10 contract available to the person providing the funds for the
11 patient's support.

12 (6) For a patient whose care is reimbursed with public funds
13 administered by the department, a nursing home shall maintain a
14 copy of the contract in the patient's file at the nursing home
15 and upon request shall make a copy of the contract available to
16 the department.

17 (7) The nursing home shall ensure that the contract is
18 written in clear and unambiguous language and is printed in not
19 less than 12-point type. The form of the contract shall be
20 prescribed by the department.

21 (8) The contract shall specify all of the following:

22 (a) The term of the contract.

23 (b) The services to be provided under the contract,
24 including the availability of hospice or other special care, and
25 the charges for the services.

26 (c) The services that may be provided to supplement the
27 contract and the charges for the services.

1 (d) The sources liable for payments due under the contract.

2 (e) The amount of deposit paid and the general and
3 foreseeable terms upon which the deposit will be held and
4 refunded.

5 (f) The rights, duties, and obligations of the patient,
6 except that the specification of a patient's rights may be
7 furnished on a separate document that complies with the
8 requirements of section 3145.

9 (9) The nursing home may require a patient's or applicant's
10 guardian or legal representative who is authorized by law to have
11 access to those portions of the patient's or applicant's income
12 or assets available to pay for nursing home care to sign a
13 contract without incurring personal financial liability other
14 than for funds received in his or her legal capacity on behalf of
15 the patient.

16 (10) A nursing home employee may request the appointment of
17 a guardian for an individual applicant or patient only if the
18 nursing home employee reasonably believes that the individual
19 meets the legal requirements for the appointment of a guardian.

20 Sec. 3267. (1) A nursing home, or an owner, administrator,
21 employee, or representative of a nursing home shall not act as
22 guardian, trustee, conservator, patient's representative, or
23 protective payee for a patient, except as provided in subsection
24 (2).

25 (2) Subject to the bonding requirements of section 3221,
26 money or other property belonging or due a patient which is
27 received by a nursing home shall be received as trust funds or

1 property, shall be kept separate from the funds and property of
2 the nursing home and other patients, and shall be disbursed only
3 as directed by the patient. A written receipt shall be given to a
4 patient whose money or other property is received by a nursing
5 home. Upon request, but not less than once every 3 months, the
6 nursing home shall furnish the patient a complete and verified
7 statement of the funds or other property received by the nursing
8 home. The statement shall contain the amounts and items received,
9 the sources, the disposition, and the date of each transaction.
10 The nursing home shall furnish a final statement not later than
11 10 days after the discharge of a patient.

12 Sec. 3271. (1) A licensee, nursing home administrator, or
13 employee of a nursing home shall not physically, mentally, or
14 emotionally abuse, mistreat, or harmfully neglect a patient.

15 (2) A nursing home employee who becomes aware of an act
16 prohibited by this section immediately shall report the matter to
17 the nursing home administrator or nursing director. A nursing
18 home administrator or nursing director who becomes aware of an
19 act prohibited by this section immediately shall report the
20 matter by telephone to the department of community health, which
21 in turn shall notify the department of human services.

22 (3) Any person may report a violation of this section to the
23 department.

24 (4) A physician or other licensed health care personnel of a
25 long-term care facility to which a patient is transferred who
26 becomes aware of an act prohibited by this section shall report
27 the act to the department.

1 (5) Upon receipt of a report made under this section, the
2 department shall make an investigation. The department may
3 require the person making the report to submit a written report
4 or to supply additional information, or both.

5 (6) A licensee or nursing home administrator shall not
6 evict, harass, dismiss, or retaliate against a patient, a
7 patient's representative, or an employee who makes a report under
8 this section.

9 Sec. 3272. The owner, administrator, employee, or
10 representative of a nursing home shall not interfere with the
11 right of a person to bring a civil or criminal action or to file
12 a complaint with the department or other governmental agency with
13 respect to the operation of the nursing home, nor discharge,
14 harass, or retaliate against a person who does so or on whose
15 behalf the action is taken.

16 Sec. 3273. (1) A nursing home shall not involuntarily
17 transfer or discharge a patient except for 1 or more of the
18 following purposes:

19 (a) Medical reasons.

20 (b) The patient's welfare.

21 (c) The welfare of other patients or nursing home employees.

22 (d) Nonpayment for the patient's stay except as prohibited
23 by title XIX.

24 (2) A licensed nursing home shall provide written notice at
25 least 30 days before a patient is involuntarily transferred or
26 discharged. The 30-day requirement of this subsection does not
27 apply in any of the following instances:

1 (a) If an emergency transfer or discharge is mandated by the
2 patient's health care needs and is in accord with the written
3 orders and medical justification of the attending physician.

4 (b) If the transfer or discharge is mandated by the physical
5 safety of other patients and nursing home employees as documented
6 in the clinical record.

7 (c) If the transfer or discharge is subsequently agreed to
8 by the patient or the patient's legal guardian, and notification
9 is given to the next of kin and the person or agency responsible
10 for the patient's placement, maintenance, and care in the nursing
11 home.

12 (3) The notice required by subsection (2) shall be on a form
13 prescribed by the department and shall contain all of the
14 following:

15 (a) The stated reason for the proposed transfer.

16 (b) The effective date of the proposed transfer.

17 (c) A statement in not less than 12-point type that reads:

18 "You have a right to appeal the nursing home's decision to
19 transfer you. If you think you should not have to leave this
20 facility, you may file a request for a hearing with the
21 department of community health within 10 days after receiving
22 this notice. If you request a hearing, it will be held at least 7
23 days after your request, and you will not be transferred during
24 that time. If you lose the hearing, you will not be transferred
25 until at least 30 days after you received the original notice of
26 the discharge or transfer. A form to appeal the nursing home's
27 decision and to request a hearing is attached. If you have any

1 questions, call the department of community health at the number
2 listed below.".

3 (d) A hearing request form, together with a postage paid,
4 preaddressed envelope to the department of community health.

5 (e) The name, address, and telephone number of the
6 responsible official in the department.

7 (4) A request for a hearing made under subsection (3) shall
8 stay a transfer pending a hearing or appeal decision.

9 (5) A copy of the notice required by subsection (3) shall be
10 placed in the patient's clinical record, and a copy shall be
11 transmitted to the department, the patient, the patient's next of
12 kin, patient's representative, or legal guardian, and the person
13 or agency responsible for the patient's placement, maintenance,
14 and care in the nursing home.

15 (6) If the basis for an involuntary transfer or discharge is
16 the result of a negative action by the department with respect to
17 a medicaid client and a hearing request is filed with the
18 department, the 21-day written notice period of subsection (2)
19 does not begin until a final decision in the matter is rendered
20 by the department or a court of competent jurisdiction and notice
21 of that final decision is received by the patient and the nursing
22 home.

23 (7) If nonpayment is the basis for involuntary transfer or
24 discharge, the patient may redeem up to the date that the
25 discharge or transfer is to be made and then may remain in the
26 nursing home.

27 (8) The nursing home administrator or other appropriate

1 nursing home employee designated by the nursing home
2 administrator shall discuss an involuntary transfer or discharge
3 with the patient, the patient's next of kin or legal guardian,
4 and person or agency responsible for the patient's placement,
5 maintenance, and care in the nursing home. The discussion shall
6 include an explanation of the reason for the involuntary transfer
7 or discharge. The content of the discussion and explanation shall
8 be summarized in writing and shall include the names of the
9 individuals involved in the discussions and made a part of the
10 patient's clinical record.

11 (9) The nursing home shall provide the patient with
12 counseling services before the involuntary transfer or discharge,
13 and the department shall assure that counseling services are
14 available after the involuntary transfer or discharge to minimize
15 the possible adverse effect of the involuntary transfer or
16 discharge.

17 (10) If a nursing home voluntarily withdraws from
18 participation in the state plan for medicaid funding, but
19 continues to provide services, the nursing home shall not, except
20 as provided in subsection (1), involuntarily transfer or
21 discharge a patient, whether or not the patient is eligible for
22 medicaid benefits, who resided in the nursing home on the day
23 before the effective date of the nursing home's withdrawal from
24 participation. The prohibition against transfer or discharge
25 imposed by this subsection continues unless the patient falls
26 within 1 or more of the exceptions described in subsection (1).

27 (11) If an individual becomes a patient of a nursing home

1 after the date the nursing home withdraws from participation in
2 the state plan for medicaid funding, the nursing home, on or
3 before the date the individual signs a contract with the nursing
4 home, shall provide to the patient oral and written notice of
5 both of the following:

6 (a) That the nursing home is not participating in the state
7 plan for medicaid funding.

8 (b) That the facility may involuntarily transfer or
9 discharge the patient for nonpayment under subsection (1)(d) even
10 if the patient is eligible for medicaid benefits.

11 Sec. 3274. (1) A patient subject to involuntary transfer or
12 discharge from a licensed nursing home shall have the opportunity
13 to file a request for a hearing with the department within 10
14 days following receipt of the written notice of the involuntary
15 transfer or discharge by the nursing home.

16 (2) The department, when the basis for involuntary transfer
17 or discharge is other than a negative action by the department of
18 human services with respect to a medicaid client, shall hold an
19 informal hearing in the matter at the patient's facility not
20 sooner than 7 days after a hearing request is filed and render a
21 decision in the matter within 14 days after the filing of the
22 hearing request.

23 (3) In a determination as to whether a transfer or discharge
24 is authorized, the burden of proof rests on the party requesting
25 the transfer or discharge. The hearing shall be in accordance
26 with fair hearing procedures prescribed by rule.

27 (4) If the department determines that a transfer or

1 discharge is authorized under section 3273, the patient shall not
2 be required to leave the facility before the thirty-fourth day
3 following receipt of the notice required under section 3273(2),
4 or the tenth day following receipt of the department's decision,
5 whichever is later.

6 Sec. 3275. The department of human services shall continue
7 medicaid funding during the appeal, transfer, or discharge period
8 as provided in section 3274 for those medicaid patients affected
9 by section 3273.

10 Sec. 3276. The licensee, with the approval of the
11 department, shall develop a plan to effectuate the orderly and
12 safe transfer or discharge of a patient. The patient and the
13 patient's family or representative shall be consulted in choosing
14 another facility. The patient shall receive counseling services
15 before the move to minimize the adverse effects of transfer
16 trauma. The department shall assure that counseling will be
17 available if the patient requires counseling after transfer or
18 discharge.

19 Sec. 3277. (1) If a patient is temporarily absent from a
20 nursing home for emergency medical treatment, the nursing home
21 shall hold the bed open for 10 days for that patient in the
22 patient's absence, if there is a reasonable expectation that the
23 patient will return within that period of time and the nursing
24 home receives payment for each day during the absent period.

25 (2) If a patient is temporarily absent from a nursing home
26 for therapeutic reasons as approved by a physician, the nursing
27 home shall hold the bed open for 18 days, if there is a

1 reasonable expectation that the patient will return within that
2 period of time and the nursing home receives payment for each day
3 during the absent period. Temporary absences for therapeutic
4 reasons are limited to 18 days per year.

5 (3) When a patient's absence is longer than specified under
6 subsection (1) or (2), or both, the patient has the option to
7 return to the nursing home for the next available bed.

8 (4) For title XIX patients, the department shall continue
9 funding for the temporary absence as provided under subsections
10 (1) and (2) if the nursing home is at 98% or more occupancy
11 except for any bed being held open under subsection (1) or (2).

12 Sec. 3281. A licensee shall conspicuously post in an area of
13 its offices accessible to patients, employees, and visitors:

14 (a) A current license.

15 (b) A complete copy of the most recent inspection report of
16 the nursing home received from the department.

17 (c) A description, provided by the department, of complaint
18 procedures established under this act and the name, address, and
19 telephone number of a person authorized by the department to
20 receive complaints.

21 (d) A copy of a notice of a pending hearing or order
22 pertaining to the nursing home issued by the department or a
23 court under the authority of this article or rules promulgated
24 under this article.

25 (e) A complete list of materials available for public
26 inspection as required by section 3282.

27 Sec. 3282. A licensee shall retain for public inspection:

1 (a) A complete copy of each inspection report of the nursing
2 home received from the department during the past 5 years.

3 (b) A copy of each notice of a hearing or order pertaining
4 to the nursing home issued by the department or a court under the
5 authority of this article or rules promulgated under this article
6 after March 30, 1979. The copy of the notice or order shall be
7 retained for not less than 3 years after its date of issuance or
8 not less than 3 years after the date of the resolution of the
9 subject matter of the notice or order, whichever is later.

10 (c) A description of the services provided by the nursing
11 home and the rates charged for those services and items for which
12 a patient may be separately charged.

13 (d) A list of the name, address, principal occupation, and
14 official position of each person who, as a stockholder or
15 otherwise, has a proprietary interest in the nursing home as
16 required by section 3105, of each officer and director of a
17 nursing home which is a corporation, and of each trustee or
18 beneficiary of a nursing home which is a trust.

19 (e) A list of licensed personnel employed or retained by the
20 nursing home.

21 (f) A copy of the standard form contract utilized under
22 section 3266.

23 Sec. 3284. If a patient's life is threatened by his or her
24 medical condition, the nursing home shall immediately notify the
25 patient's next of kin, patient's representative, and physician.
26 The nursing home shall secure emergency medical treatment for the
27 patient when the patient's physician is not available. A nursing

1 home shall take all reasonable measures to ensure the comfort of
2 a patient in the terminal stages of an illness.

3 Sec. 3285. (1) If a nursing home proposes to discontinue
4 operation, the licensee shall notify the department and the
5 department of human services of the impending discontinuance of
6 operation. The licensee shall notify the patient and the
7 patient's next of kin, patient's representative, and the party
8 executing the contract under section 3266 of the proposed date of
9 the discontinuance. The notice shall be sufficient to make
10 suitable arrangements for the transfer and care of the patient.

11 (2) The notices required by this section shall be given not
12 less than 30 days before the discontinuance.

13 (3) The licensee and the department of human services shall
14 be responsible for securing a suitable relocation of a patient
15 who does not have a relative or legal representative to assist in
16 his or her relocation before the discontinuance of operation. The
17 licensee and the department of human services shall keep the
18 department informed of their efforts and activities in carrying
19 out this responsibility. The department of human services shall
20 make available to the licensee and the department assistance
21 necessary to assure the effectiveness of efforts to secure a
22 suitable relocation.

23 Sec. 3286. In the case of an emergency closing of a nursing
24 home, or when it is determined by the department that a nursing
25 home is suddenly no longer able to provide adequate patient care,
26 the department shall do both of the following:

27 (a) Assure that the department of human services has been

1 notified to make arrangements for the orderly and safe discharge
2 and transfer of the patients to another facility.

3 (b) Place a representative of the department in a facility
4 on a daily basis to do each of the following:

5 (i) Monitor the discharge of patients to other facilities or
6 locations.

7 (ii) Ensure that the rights of patients are protected.

8 (iii) Discuss the discharge and relocation with each patient
9 and next of kin or legal guardian, person, or agency responsible
10 for the patient's placement, maintenance, and care in the
11 facility. The content of the explanation and discussion shall be
12 summarized in writing and shall be made a part of the patient's
13 clinical record.

14 Sec. 3287. The department may consult and work with the
15 Michigan public health institute created under section 2611 of
16 the public health code in performing the department's regulatory
17 and disciplinary duties under this article. The department may
18 also contract with the Michigan public health institute for the
19 performance of specific functions required or authorized by this
20 article, if determined necessary by the director of the
21 department.

22 Sec. 3291. A licensee shall not use false or misleading
23 information in the advertising of a nursing home or its name.

24 Sec. 3292. (1) An owner, administrator, employee, or
25 representative of a nursing home shall not pay, or offer to pay,
26 a commission, bonus, fee, or gratuity to a physician, surgeon,
27 organization, agency, or other person for the referral of a

1 patient to a nursing home.

2 (2) A person shall not offer or give a commission, bonus,
3 fee, or gratuity to an owner, administrator, employee, or
4 representative of a nursing home in return for the purchase of a
5 drug, biological, or any other ancillary services provided for a
6 patient of a nursing home.

7 (3) An owner, administrator, employee, or representative of
8 a nursing home shall not accept a commission, bonus, fee, or
9 gratuity in return for the purchase of a drug, biological, or any
10 other ancillary services provided for a patient of a nursing
11 home.

12 (4) A person who violates this section is guilty of a felony
13 punishable by imprisonment for not more than 4 years or a fine of
14 not more than \$30,000.00, or both.

15 Sec. 3295. (1) The department, in consultation and with the
16 advice of the Michigan board of nursing and appropriate consumer
17 and professional organizations, shall develop by rule minimum
18 criteria for the education and training for unlicensed nursing
19 personnel in long-term care facilities designated in this part.

20 (2) This section shall not be construed to be a prerequisite
21 for employment of unlicensed nursing personnel in a nursing home.

22 (3) During the annual licensing inspection, the department
23 shall, and during other inspections the department may, conduct
24 random competency examinations to determine whether the
25 requirements of this section are being met. The department shall
26 promulgate rules to administer this subsection.

27 Sec. 3296. The nursing home administrator and licensee shall

1 be responsible for insuring that all licensed personnel employed
2 by the nursing home are properly licensed.

3 Sec. 3299a. (1) A person who believes that this part, a rule
4 promulgated under this part, or a federal certification
5 regulation applying to a nursing home may have been violated may
6 request an investigation of a nursing home. The person may submit
7 the request for investigation to the department as a written
8 complaint, or the department shall assist a person in reducing an
9 oral request made under subsection (2) to a written complaint as
10 provided in subsection (2). A person filing a complaint under
11 this subsection may file the complaint on a model standardized
12 complaint form developed and distributed by the department under
13 section 3139(3) or file the complaint as provided by the
14 department on the internet.

15 (2) The department shall provide a toll-free telephone
16 consumer complaint line. The complaint line shall be accessible
17 24 hours per day and monitored at a level to ensure that each
18 priority complaint is identified and that a response is initiated
19 to each priority complaint within 24 hours after its receipt. The
20 department shall establish a system for the complaint line that
21 includes at least all of the following:

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

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

27 (c) Except for an anonymous complaint, the forwarding of a

1 copy of the completed intake form to the complainant not later
2 than 5 business days after it is completed.

3 (3) The substance of a complaint filed under subsection (1)
4 or (2) shall be provided to the licensee no earlier than at the
5 commencement of the on-site inspection of the nursing home that
6 takes place in response to the complaint.

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

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

27 (6) If, at any time, the department determines that this

1 part, a rule promulgated under this part, or a federal
2 certification regulation for nursing homes has been violated, the
3 department shall list the violation and the provisions violated
4 on the state and federal licensure and certification forms for
5 nursing homes. The department shall consider the violations, as
6 evidenced by a written explanation, when it makes a licensure and
7 certification decision or recommendation.

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

21 (8) The department shall make a written determination,
22 correction notice, or warning notice concerning a complaint
23 available for public inspection, but the department shall not
24 disclose the name of the complainant or patient without the
25 complainant's or patient's consent.

26 (9) The department shall report a violation discovered as a
27 result of the complaint investigation procedure to persons

1 administering sections 3299c to 3299e. The department shall
2 assess a penalty for a violation, as prescribed by this article.

3 (10) A complainant who is dissatisfied with the
4 determination or investigation by the department may request a
5 hearing. A complainant shall submit a request for a hearing in
6 writing to the director within 30 days after the mailing of the
7 department's findings as described in subsection (7). The
8 department shall send notice of the time and place of the hearing
9 to the complainant and the nursing home.

10 (11) As used in this section, "priority complaint" means a
11 complaint alleging an existing situation that involves physical,
12 mental, or emotional abuse, mistreatment, or harmful neglect of a
13 resident that requires immediate corrective action to prevent
14 serious injury, serious harm, serious impairment, or death of a
15 resident while receiving care in a facility.

16 Sec. 3299b. (1) If, upon investigation, the department finds
17 that a licensee is not in compliance with this part, a rule
18 promulgated under this part, or a federal law or regulation
19 governing nursing home certification under title XVIII or XIX,
20 which noncompliance impairs the ability of the licensee to
21 deliver an acceptable level of care and services, or in the case
22 of a nursing home closure, the department may issue 1 or more of
23 the following correction notices to the licensee:

24 (a) Suspend the admission or readmission of patients to the
25 nursing home.

26 (b) Reduce the licensed capacity of the nursing home.

27 (c) Selectively transfer patients whose care needs are not

1 being met by the licensee.

2 (d) Initiate action to place the home in receivership as
3 prescribed in section 3251.

4 (e) Require appointment at the nursing home's expense of a
5 department approved temporary administrative advisor or a
6 temporary clinical advisor, or both, with authority and duties
7 specified by the department to assist the nursing home management
8 and staff to achieve sustained compliance with required operating
9 standards.

10 (f) Require appointment at the nursing home's expense of a
11 department approved temporary manager with authority and duties
12 specified by the department to oversee the nursing home's
13 achievement of sustained compliance with required operating
14 standards or to oversee the orderly closure of the nursing home.

15 (g) Issue a correction notice to the licensee and the
16 department describing the violation and the statute or rule
17 violated and specifying the corrective action to be taken and the
18 period of time in which the corrective action is to be completed.
19 Upon issuance, the director shall cause to be published in a
20 daily newspaper of general circulation in an area in which the
21 nursing home is located notice of the action taken and the
22 listing of conditions upon which the director's action is
23 predicated.

24 (2) Within 72 hours after receipt of a notice issued under
25 subsection (1), the licensee shall be given an opportunity for a
26 hearing on the matter. The director's notice shall continue in
27 effect during the pendency of the hearing and any subsequent

1 court proceedings. The hearing shall be conducted in compliance
2 with the administrative procedures act of 1969.

3 (3) A licensee who believes that a correction notice has
4 been complied with may request a verification of compliance from
5 the department. Not later than 72 hours after the licensee makes
6 the request, the department shall investigate to determine
7 whether the licensee has taken the corrective action prescribed
8 in the notice under subsection (1)(g). If the department finds
9 that the licensee has taken the corrective action and that the
10 conditions giving rise to the notice have been alleviated, the
11 department may cease taking further action against the licensee
12 or may take other action that the director considers appropriate.

13 (4) The department shall report annually to the house and
14 senate standing committees on senior issues on the number of
15 times the department appointed a temporary administrative
16 advisor, temporary clinical advisor, and temporary manager as
17 described in subsection (1)(e) or (f). The report shall include
18 whether the nursing home closed or remained open. The department
19 may include this report with other reports made to fulfill
20 legislative reporting requirements.

21 (5) If the department determines that a nursing home's
22 patients can be safeguarded and provided with a safe environment,
23 the department shall make its decisions concerning the nursing
24 home's future operation based on a presumption in favor of
25 keeping the nursing home open.

26 Sec. 3299c. (1) A person who violates 1 of the following
27 sections is guilty of a misdemeanor punishable by imprisonment

1 for not more than 1 year or a fine of not less than \$1,000.00 or
2 more than \$10,000.00, or both:

3 (a) Section 3211.

4 (b) Section 3212.

5 (c) Section 3263(5).

6 (d) Section 3265a(1) or (2).

7 (e) Section 3271(1) or (6).

8 (f) Section 3291.

9 (2) A person who violates section 3265a(1) or (2) is liable
10 to an applicant or patient in a civil action for treble the
11 amount of actual damages or \$1,000.00, whichever is greater,
12 together with costs and reasonable attorney fees.

13 (3) For the purpose of computing administrative penalties
14 under this section, the number of patients per day is based on
15 the average number of patients in the nursing home during the 30
16 days immediately preceding the discovery of the violation.

17 (4) If the department finds a violation of section 3145 as
18 to a particular nursing home patient, the department shall issue
19 an order requiring the nursing home to pay to the patient \$100.00
20 or to reimburse the patient for costs incurred or injuries
21 sustained as a result of the violation, whichever is greater. The
22 department also shall assess the nursing home an administrative
23 penalty that is the lesser of the following:

24 (a) Not more than \$1,500.00.

25 (b) \$15.00 per patient bed.

26 (5) The department shall promulgate rules for a quality of
27 care allowance formula that is consistent with the

1 recommendations of the fiscal incentives subcommittee to the
2 committee on nursing home reimbursement established pursuant to
3 1975 PA 241, as described in the November 24, 1975 interim
4 report, in the December 3, 1975 final report, and in the November
5 24, 1976 report of the committee recommending appropriate changes
6 in the procedures utilized.

7 (6) The department shall not assess an administrative
8 penalty under subsection (4) for a violation of this part for
9 which a nursing home's reimbursement is withheld under subsection
10 (5).

11 Sec. 3299d. A civil penalty assessed under this part shall
12 be collected by the department. If the person or nursing home
13 against whom a civil penalty has been assessed does not comply
14 with a written demand for payment within 30 days, the department
15 shall issue an order to do 1 of the following:

16 (a) Direct the department of treasury to deduct the amount
17 of the civil penalty from amounts otherwise due from the state to
18 the nursing home and remit that amount to the department.

19 (b) Add the amount of the civil penalty to the nursing
20 home's licensing fee. If the licensee refuses to make the payment
21 at the time of application for renewal of its license, the
22 license shall not be renewed.

23 (c) Bring an action in circuit court to recover the amount
24 of the civil penalty.

25 Sec. 3299e. (1) The penalties prescribed by this part or a
26 rule promulgated under this part are cumulative and not
27 exclusive. Neither the department nor any other party is limited

1 to the remedies in this part.

2 (2) The remedies provided under section 3107 and sections
3 3299a to 3299d are independent and cumulative. Except as provided
4 in section 3299c(5), the use of 1 remedy by a person shall not be
5 considered a bar to the use of other remedies by that person or
6 to the use of any remedy by another person.

7 PART 33

8 HOMES FOR THE AGED

9 Sec. 3301. Article I contains general definitions and
10 principles of construction applicable to all articles in this
11 act, and part 31 contains definitions applicable to this part.

12 Sec. 3307. This part does not authorize the medical
13 supervision, regulation, or control of the remedial care or
14 treatment of residents in a home for the aged operated for the
15 adherents of a bona fide church or religious denomination who
16 rely on treatment by prayer or spiritual means only in accordance
17 with the creed or tenets of that church or denomination. The
18 residents, personnel, or employees, other than food handlers, of
19 the home are not required to submit to a medical or physical
20 examination.

21 Sec. 3311. (1) A home for the aged shall be licensed under
22 this article.

23 (2) "Home for the aged" or a similar term or abbreviation
24 shall not be used to describe or refer to a long-term care
25 facility unless the long-term care facility is licensed as a home
26 for the aged by the department under this article.

27 (3) Except as otherwise provided in this subsection, a home

1 for the aged shall not admit an individual under 60 years of age.
2 Upon the request of a home for the aged and subject to subsection
3 (4), the director shall waive the age limitation imposed by this
4 subsection if the individual, the individual's guardian or other
5 legal representative, if appointed, and the owner, operator, and
6 governing body of the home for the aged, upon consultation with
7 the individual's physician, agree on each of the following:

8 (a) The home for the aged is capable of meeting all of the
9 individual's medical, social, and other needs as determined in
10 the individual's plan of service.

11 (b) The individual will be compatible with the other
12 residents of that home for the aged.

13 (c) The placement in that home for the aged is in the best
14 interests of the individual.

15 (4) The owner, operator, and governing body of the home for
16 the aged shall submit, with its request for a waiver,
17 documentation to the director that supports each of the points of
18 agreement necessary under subsection (3). Within 5 days after
19 receipt of the information required under this subsection, the
20 director shall determine if that documentation collectively
21 substantiates each of the points of agreement necessary under
22 subsection (3) and approve or deny the waiver. If denied, the
23 director shall send a written notice of the denial and the
24 reasons for denial to the requesting party.

25 Sec. 3313. (1) The owner, operator, and governing body of a
26 home for the aged are responsible for all phases of the operation
27 of the home and shall assure that the home maintains an organized

1 program to provide room and board, protection, supervision,
2 assistance, and supervised personal care for its residents.

3 (2) The owner, operator, and governing body shall assure the
4 availability of emergency medical care required by a resident.

5 Sec. 3321. (1) Before issuance of a license under this
6 article, the owner, operator, or governing body of the applicant
7 shall give a bond with a surety approved by the department. The
8 bond shall insure the department for the benefit of the
9 residents. The bond shall be conditioned to require the applicant
10 to do all of the following:

11 (a) Hold separately and in trust all resident funds
12 deposited with the applicant.

13 (b) Administer the funds on behalf of a resident in the
14 manner directed by the depositor.

15 (c) Render a true and complete account to the resident, the
16 depositor, and the department when requested.

17 (d) Account, on termination of the deposit, for all funds
18 received, expended, and held on hand.

19 (2) The bond shall be in an amount equal to not less than 1-
20 1/4 times the average balance of resident funds held during the
21 prior year. The department may require an additional bond or
22 permit filing of a bond in a lower amount, if the department
23 determines that a change in the average balance has occurred or
24 may occur. An applicant for a new license shall file a bond in an
25 amount which the department estimates as 1-1/4 times the average
26 amount of funds which the applicant, upon issuance of the
27 license, is likely to hold during the first year of operation.

1 Sec. 3325. If a resident of a home for the aged is receiving
2 care in the facility in addition to the room, board, and
3 supervised personal care specified in section 3101(1)(c), as
4 determined by a physician, the department shall not order the
5 removal of the resident from the home for the aged if both of the
6 following conditions are met:

7 (a) The resident, the resident's family, the resident's
8 physician, and the owner, operator, and governing body of the
9 home for the aged consent to the resident's continued stay in the
10 home for the aged.

11 (b) The owner, operator, and governing body of the home for
12 the aged commit to assuring that the resident receives the
13 necessary additional services.

14 Sec. 3331. A licensee of a home for the aged operated for
15 profit is considered to be the consumer, and not the retailer, of
16 tangible personal property purchased and used or consumed in
17 operation of the home.

18 Sec. 3332. A home for the aged shall offer each resident, or
19 shall provide each resident with information and assistance in
20 obtaining, an annual vaccination against influenza in accordance
21 with the most recent recommendations of the advisory committee on
22 immunization practices of the federal centers for disease control
23 and prevention, as approved by the department.

24 Sec. 3333. (1) A home for the aged licensed under this
25 article shall adopt a policy regulating the smoking of tobacco on
26 the home for the aged premises.

27 (2) A home for the aged policy governing smoking shall at a

1 minimum provide that:

2 (a) Upon admission each resident or person responsible for
3 the resident's admission shall be asked if there is a preference
4 for placement with smokers or nonsmokers.

5 (b) Smoking by residents shall be restricted to private
6 rooms, rooms shared with other smokers only, or other designated
7 smoking areas.

8 (c) Visitors shall not be permitted to smoke in rooms or
9 wards occupied by residents who do not smoke.

10 (d) Visitors shall be permitted to smoke only in designated
11 areas.

12 (e) Staff shall be permitted to smoke in designated areas
13 only.

14 (f) Staff shall not be permitted to smoke in residents'
15 rooms or while performing their duties in the presence of
16 residents.

17 (g) Eating areas shall have sections for smokers and
18 nonsmokers.

19 (h) Cigarettes, cigars, and pipe tobacco shall not be sold
20 or dispensed within the licensed facility except as provided for
21 by the owner or governing board.

22 (i) A sign indicating that smoking is prohibited in the
23 facility except in designated areas shall be posted at each
24 entrance to the facility. Each designated smoking area shall be
25 posted as such by sign.

26 (3) A home for the aged licensed under this article shall
27 retain a copy of the smoking policy which will be available to

1 the public upon request.

2 PART 34

3 HOSPICES

4 Sec. 3401. (1) As used in this part:

5 (a) "Home care" means a level of care provided to a patient
6 that is consistent with the categories "routine home care" or
7 "continuous home care" described in 42 CFR 418.302(b)(1) and (2).

8 (b) "Hospice residence" means a facility that meets all of
9 the following:

10 (i) Provides 24-hour hospice care to 2 or more patients at a
11 single location.

12 (ii) Either provides inpatient care directly in compliance
13 with this article and with the standards set forth in 42 CFR
14 418.100 or provides home care as described in this article.

15 (iii) Is owned, operated, and governed by a hospice program
16 that is licensed under this article and provides aggregate days
17 of patient care on a biennial basis to not less than 51% of its
18 hospice patients in their own homes. As used in this
19 subparagraph, "home" does not include a residence established by
20 a patient in a long-term care facility licensed under this
21 article or a residence established by a patient in an adult
22 foster care facility licensed under this article.

23 (c) "Inpatient care" means a level of care provided to a
24 patient that is consistent with the categories "inpatient respite
25 care day" and "general inpatient care day" described in 42 CFR
26 418.302(b)(3) and (4).

27 (2) Article I contains general definitions and principles of

1 construction applicable to all articles in this act, and part 31
2 contains definitions applicable to this part.

3 Sec. 3411. (1) Except as provided in subsection (5), a
4 hospice or hospice residence shall be licensed as required under
5 this article.

6 (2) The term "hospice" shall not be used to describe or
7 refer to a long-term care facility unless that program or agency
8 is licensed as a hospice by the department as required under this
9 article or is exempted from licensure as provided in subsection
10 (5).

11 (3) A person shall not represent itself as a hospice
12 residence unless that person is licensed as a hospice residence
13 by the department as required under this article.

14 (4) A hospital, nursing home, home for the aged, county
15 medical care facility, or any other long-term care facility that
16 operates a hospice or hospice residence shall be licensed as a
17 hospice or hospice residence under this article.

18 (5) A hospice is exempt from licensure under this article if
19 the hospice meets all of the following requirements:

20 (a) Provides services to not more than 7 patients per month
21 on a yearly average.

22 (b) Does not charge or receive fees for goods or services
23 provided.

24 (c) Does not receive third party reimbursement for goods or
25 services provided.

26 (6) If a hospice provides inpatient services that meet the
27 definition of a hospital, nursing home, home for the aged, county

1 medical care facility, hospice residence, or other long-term care
2 facility or health facility or agency, the hospice or hospice
3 residence shall obtain a separate license as required under this
4 article for that hospital, nursing home, home for the aged,
5 county medical care facility, hospice residence, or other long-
6 term care facility or health facility or agency.

7 (7) This part does not restrict an activity of a long-term
8 care facility or health facility or agency if the activity is
9 permitted under the license held by that long-term care facility
10 or that health facility or agency.

11 (8) If separate licensure is required under this section,
12 the department may conduct inspections and issue the required
13 licenses concurrently.

14 (9) As used in this section:

15 (a) "Health facility or agency" means that term as defined
16 under section 20106 of the public health code.

17 (b) "Hospital" means that term as defined under section
18 20106 of the public health code and licensed under part 215 of
19 the public health code.

20 Sec. 3413. (1) The owner, operator, and governing body of a
21 hospice or hospice residence licensed under this article:

22 (a) Are responsible for all phases of the operation of the
23 hospice or hospice residence and for the quality of care and
24 services rendered by the hospice or hospice residence.

25 (b) Shall cooperate with the department in the enforcement
26 of this part, and require that the physicians and other personnel
27 working in the hospice or hospice residence and for whom a

1 license or registration is required be currently licensed or
2 registered.

3 (c) Shall not discriminate because of race, religion, color,
4 national origin, or sex, in the operation of the hospice or
5 hospice residence including employment, patient admission and
6 care, and room assignment.

7 (2) As a condition of licensure as a hospice residence, an
8 applicant shall have been licensed under this article as a
9 hospice and in compliance with the standards set forth in 42 CFR
10 part 418 for not less than the 2 years immediately preceding the
11 date of application for licensure. A hospice residence licensed
12 under this article may provide both home care and inpatient care
13 at the same location. A hospice residence providing inpatient
14 care shall comply with the standards in 42 CFR 418.100.

15 (3) In addition to the requirements of subsections (1) and
16 (2) and section 3415, the owner, operator, and governing body of
17 a hospice residence that is licensed under this article and that
18 provides care only at the home care level shall do all of the
19 following:

20 (a) Provide 24-hour nursing services for each patient in
21 accordance with the patient's hospice care plan as required under
22 42 CFR part 418.

23 (b) Have an approved plan for infection control that
24 includes making provisions for isolating each patient with an
25 infectious disease.

26 (c) Obtain fire safety approval pursuant to section 3109.

27 (d) Equip each patient room with a device approved by the

1 department for calling the staff member on duty.

2 (e) Design and equip areas within the hospice residence for
3 the comfort and privacy of each patient and his or her family
4 members.

5 (f) Permit patients to receive visitors at any hour,
6 including young children.

7 (g) Provide individualized meal service plans in accordance
8 with 42 CFR 418.100(j).

9 (h) Provide appropriate methods and procedures for the
10 storage, dispensing, and administering of drugs and biologicals
11 pursuant to 42 CFR 418.100(k).

12 Sec. 3415. (1) A hospice or a hospice residence shall
13 provide a program of planned and continuous hospice care, the
14 medical components of which shall be under the direction of a
15 physician.

16 (2) Hospice care shall consist of a coordinated set of
17 services rendered at home or in hospice residence or other
18 institutional settings on a continuous basis for individuals
19 suffering from a disease or condition with a terminal prognosis.
20 The coordination of services shall assure that the transfer of a
21 patient from 1 setting to another will be accomplished with a
22 minimum disruption and discontinuity of care. Hospice services
23 shall address the physical, psychological, social, and spiritual
24 needs of the individual and shall be designed to meet the related
25 needs of the individual's family through the periods of illness
26 and bereavement. These hospice services shall be provided through
27 a coordinated interdisciplinary team that may also include

1 services provided by trained volunteers.

2 Sec. 3417. An individual shall not be admitted to or
3 retained for care by a hospice or a hospice residence unless the
4 individual is suffering from a disease or condition with a
5 terminal prognosis. An individual shall be considered to have a
6 disease or condition with a terminal prognosis if, in the opinion
7 of a physician, the individual's death is anticipated within 6
8 months after the date of admission to the hospice or hospice
9 residence. If a person lives beyond a 6-month or less prognosis,
10 the person is not disqualified from receiving continued hospice
11 care.

12 Sec. 3419. (1) The department may submit for a public
13 hearing proposed rules necessary to implement and administer this
14 part.

15 (2) The rules promulgated pursuant to subsection (1) shall
16 not establish standards related to the credentials of an
17 individual providing care in a hospice program, whether as an
18 employee of a program or volunteer in a program, unless, with
19 respect to the type of care the individual would provide in the
20 hospice program, a license or other credential is required by law
21 for an individual providing that care.

22 Sec. 3420. Notwithstanding any other provision of this act,
23 all hospices shall be exempt from license fees and certificate of
24 need fees for 3 years after the first hospice is licensed under
25 this article.

26 PART 35

27 ADULT FOSTER CARE FACILITIES

1 Sec. 3501. (1) For the purposes of this part, the words and
2 phrases defined in sections 3503 to 3507 have the meanings
3 ascribed to them in those sections.

4 (2) In addition, article I contains general definitions and
5 principles of construction applicable to all articles in this
6 act.

7 Sec. 3503. (1) "Adult" means:

8 (a) A person 18 years of age or older.

9 (b) A person who is placed in an adult foster care family
10 home or an adult foster care small group home pursuant to section
11 5(6) or (8) of 1973 PA 116, MCL 722.115.

12 (2) "Adult foster care camp" or "adult camp" means an adult
13 foster care facility with the approved capacity to receive more
14 than 4 adults to be provided foster care. An adult foster care
15 camp is a facility located in a natural or rural environment.

16 (3) "Adult foster care congregate facility" means an adult
17 foster care facility with the approved capacity to receive more
18 than 20 adults to be provided with foster care.

19 (4) "Adult foster care facility" means a governmental or
20 nongovernmental establishment that provides foster care to
21 adults. Subject to section 3526a(1), adult foster care facility
22 includes facilities and foster care family homes for adults who
23 are aged, mentally ill, developmentally disabled, or physically
24 disabled who require supervision on an ongoing basis but who do
25 not require continuous nursing care. Adult foster care facility
26 does not include any of the following:

27 (a) A nursing home licensed under part 32 of this act.

1 (b) A home for the aged licensed under part 33 of this act.

2 (c) A hospital licensed under article 17 of the public
3 health code.

4 (d) A hospital for the mentally ill or a facility for the
5 developmentally disabled operated by the department of community
6 health under the mental health code, 1974 PA 258, MCL 330.1001 to
7 330.2106.

8 (e) A county infirmary operated by a county department of
9 social services or family independence agency under section 55 of
10 the social welfare act, 1939 PA 280, MCL 400.55.

11 (f) A child caring institution, children's camp, foster
12 family home, or foster family group home licensed or approved
13 under 1973 PA 116, MCL 722.111 to 722.128, if the number of
14 residents who become 18 years of age while residing in the
15 institution, camp, or home does not exceed the following:

16 (i) Two, if the total number of residents is 10 or fewer.

17 (ii) Three, if the total number of residents is not less than
18 11 and not more than 14.

19 (iii) Four, if the total number of residents is not less than
20 15 and not more than 20.

21 (iv) Five, if the total number of residents is 21 or more.

22 (g) A foster family home licensed or approved under 1973 PA
23 116, MCL 722.111 to 722.128, that has a person who is 18 years of
24 age or older placed in the foster family home under section 5(7)
25 of 1973 PA 116, MCL 722.115.

26 (h) An establishment commonly described as an alcohol or a
27 substance abuse rehabilitation center, a residential facility for

1 persons released from or assigned to adult correctional
2 institutions, a maternity home, or a hotel or rooming house that
3 does not provide or offer to provide foster care.

4 (i) A facility created by 1885 PA 152, MCL 36.1 to 36.12.

5 (5) "Adult foster care family home" means a private
6 residence with the approved capacity to receive 6 or fewer adults
7 to be provided with foster care for 5 or more days a week and for
8 2 or more consecutive weeks. The adult foster care family home
9 licensee shall be a member of the household and an occupant of
10 the residence.

11 (6) "Adult foster care large group home" means an adult
12 foster care facility with the approved capacity to receive at
13 least 13 but not more than 20 adults to be provided with foster
14 care.

15 (7) "Adult foster care small group home" means an adult
16 foster care facility with the approved capacity to receive 12 or
17 fewer adults to be provided with foster care.

18 (8) "Aged" means an adult whose chronological age is 60
19 years of age or older or whose biological age, as determined by a
20 physician, is 60 years of age or older.

21 (9) "Assessment plan" means a written statement prepared in
22 cooperation with a responsible agency or person that identifies
23 the specific care and maintenance, services, and resident
24 activities appropriate for each individual resident's physical
25 and behavioral needs and well-being and the methods of providing
26 the care and services taking into account the preferences and
27 competency of the individual.

1 Sec. 3504. (1) "Council" means the adult foster care
2 licensing advisory council created in section 3508.

3 (2) "Department" means the department of human services.

4 (3) "Developmental disability" means a disability as defined
5 in section 500(h) of 1974 PA 258, MCL 330.1500.

6 (4) "Director" means the director of the department.

7 (5) "Do-not-resuscitate order" means a document executed
8 pursuant to section 3 of the Michigan do-not-resuscitate
9 procedure act, 1996 PA 193, MCL 333.1051 to 333.1067, directing
10 that, in the event a resident suffers cessation of both
11 spontaneous respiration and circulation, no resuscitation will be
12 initiated.

13 (6) "Foster care" means the provision of supervision,
14 personal care, and protection in addition to room and board, for
15 24 hours a day, 5 or more days a week, and for 2 or more
16 consecutive weeks for compensation.

17 Sec. 3505. (1) "Good moral character" means good moral
18 character as defined in 1974 PA 381, MCL 338.41 to 338.47.

19 (2) "Licensed hospice program" means a health care program
20 that provides a coordinated set of services rendered at home or
21 in an outpatient or institutional setting for individuals
22 suffering from a disease or condition with a terminal prognosis
23 and that is licensed under part 34.

24 (3) "Licensee" means the agency, association, corporation,
25 organization, person, or department or agency of the state,
26 county, city, or other political subdivision, that has been
27 issued a license to operate an adult foster care facility.

1 (4) "Mental illness" means a substantial disorder of thought
2 or mood that significantly impairs judgment, behavior, capacity
3 to recognize reality, or ability to cope with the ordinary
4 demands of life.

5 (5) "New construction" means a newly constructed facility or
6 a facility that has been completely renovated for use as an adult
7 foster care facility.

8 Sec. 3506. (1) "Personal care" means personal assistance
9 provided by a licensee or an agent or employee of a licensee to a
10 resident who requires assistance with dressing, personal hygiene,
11 grooming, maintenance of a medication schedule as directed and
12 supervised by the resident's physician, or the development of
13 those personal and social skills required to live in the least
14 restrictive environment.

15 (2) "Physical disability" means a determinable physical
16 characteristic of an individual that may result from disease,
17 injury, congenital condition of birth, or functional disorder.

18 (3) "Physical plant" means the structure in which a facility
19 is located and all physical appurtenances to the facility.

20 (4) "Protection", subject to section 3526a(2), means the
21 continual responsibility of the licensee to take reasonable
22 action to insure the health, safety, and well-being of a
23 resident, including protection from physical harm, humiliation,
24 intimidation, and social, moral, financial, and personal
25 exploitation while on the premises, while under the supervision
26 of the licensee or an agent or employee of the licensee, or when
27 the resident's assessment plan states that the resident needs

1 continuous supervision.

2 (5) "Provisional license" means a license issued to a
3 facility that has previously been licensed under this act or an
4 act repealed by this act but is temporarily unable to conform to
5 the requirements of a regular license prescribed in this act or
6 rules promulgated under this act.

7 (6) "Quality of care" means the foster care of residents of
8 a facility and other similar items not related to the physical
9 plant that address themselves to the general physical and mental
10 health, welfare, and well-being of residents.

11 Sec. 3507. (1) "Regular license" means a license issued to
12 an adult foster care facility which is in compliance with this
13 act and the rules promulgated under this act.

14 (2) "Related" means any of the following relationships by
15 marriage, blood, or adoption: spouse, child, parent, brother,
16 sister, grandparent, aunt, uncle, stepparent, stepbrother,
17 stepsister, or cousin.

18 (3) "Short-term operation" means an adult foster care
19 facility which operates for a period of time less than 6 months
20 within a calendar year.

21 (4) "Special license" means a license issued for the
22 duration of the operation of an adult foster care facility if the
23 licensee is a short-term operation.

24 (5) "Specialized program" means a program of services or
25 treatment provided in an adult foster care facility licensed
26 under this act that is designed to meet the unique programmatic
27 needs of the residents of that home as set forth in the

1 assessment plan for each resident and for which the facility
2 receives special compensation.

3 (6) "Special compensation" means payment to an adult foster
4 care facility to ensure the provision of a specialized program in
5 addition to the basic payment for adult foster care. Special
6 compensation does not include payment received by the adult
7 foster care facility directly from the medicaid program for
8 personal care services for a resident or payment received under
9 the supplemental security income program under title XVI of the
10 social security act, 42 USC 1381 to 1383c.

11 (7) "Supervision" means guidance of a resident in the
12 activities of daily living, including all of the following:

13 (a) Reminding a resident to maintain his or her medication
14 schedule, as directed by the resident's physician.

15 (b) Reminding a resident of important activities to be
16 carried out.

17 (c) Assisting a resident in keeping appointments.

18 (d) Being aware of a resident's general whereabouts even
19 though the resident may travel independently about the community.

20 (8) "Temporary license" means a license issued to a facility
21 which has not previously been licensed pursuant to this act, to
22 the former adult care facility licensing act, or to former 1972
23 PA 287.

24 Sec. 3508. (1) The adult foster care licensing advisory
25 council is created within the department. The council shall
26 consist of 11 members, appointed by the director. The director
27 shall appoint at least 1 member of the council from appropriate

1 state and local agencies, private or public organizations, adult
2 foster care providers, and residents of adult foster care
3 facilities or their representatives. The members of the adult
4 foster care licensing advisory council created under section 8 of
5 the former adult foster care licensing act, MCL 400.708, shall
6 serve as the initial members of the council created in this
7 section until their successors are appointed or until the
8 expiration of their respective terms, whichever occurs first. A
9 vacancy shall be filled for the remainder of the unexpired term
10 in the same manner as original appointments are made.

11 (2) The per diem compensation of the council members and the
12 schedule for reimbursement of travel and other expenses shall be
13 pursuant to the compensation and schedules established by the
14 legislature. The council shall meet not more than once each
15 month. The council shall advise the department on the content of
16 rules and their enforcement.

17 (3) The business which the council may perform shall be
18 conducted at a public meeting of the council held in compliance
19 with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.
20 Public notice of the time, date, and place of the meeting shall
21 be given in the manner required by the open meetings act, 1976 PA
22 267, MCL 15.261 to 15.275.

23 (4) Except as provided in section 3512, a writing prepared,
24 owned, used, in the possession of, or retained by the council in
25 the performance of an official function shall be made available
26 to the public in compliance with the freedom of information act,
27 1976 PA 442, MCL 15.231 to 15.246.

1 Sec. 3509. (1) The department shall administer this part and
2 shall require reports, establish procedures, make inspections,
3 and conduct investigations pursuant to law to enforce the
4 requirements of this part and the rules promulgated under this
5 part.

6 (2) The department shall provide advice and technical
7 assistance to facilities covered by this part to assist
8 facilities in meeting the requirements of this part and the rules
9 promulgated under this part. The department shall offer
10 consultation, upon request, in developing methods for the
11 improvement of service. The department shall cooperate with other
12 state departments and agencies and local units of government in
13 administering this part.

14 (3) The department shall provide education to the public
15 regarding the requirements of this part through the ongoing use
16 of mass media and other methods.

17 Sec. 3510. (1) The department shall promulgate rules
18 pursuant to the administrative procedures act of 1969 in the
19 areas provided under subsection (4).

20 (2) The state fire safety board created under the fire
21 prevention code, 1941 PA 207, MCL 29.1 to 29.34, shall promulgate
22 rules providing for adequate fire prevention and safety in an
23 adult foster care facility licensed or proposed to be licensed
24 for more than 6 adults. The rules shall be promulgated in
25 cooperation with the department and shall provide for the
26 protection of the health, safety, and welfare of the adults
27 residing in a facility. The state fire safety board shall

1 promulgate rules pursuant to the administrative procedures act of
2 1969. A person may request a variance from the application of a
3 rule promulgated pursuant to this subsection by application to
4 the state fire marshal. The state fire marshal may make a
5 variance upon a finding that the variance does not result in a
6 hazard to life or property. The finding shall be transmitted to
7 the person requesting the variance and shall be entered into the
8 records of the department of labor and economic growth. If the
9 variance requested concerns a building, the finding shall also be
10 transmitted to the governing body of the city, village, or
11 township in which the building is located. The entire state fire
12 safety board shall act as a hearing body in accordance with the
13 administrative procedures act of 1969 to review and render
14 decisions on a rule promulgated pursuant to this subsection or a
15 ruling of the state fire marshal in the marshal's interpretation
16 or application of these rules. After a hearing, the state fire
17 safety board may vary the application of a rule or may modify the
18 ruling or interpretation of the state fire marshal if the
19 enforcement of the ruling or interpretation would do manifest
20 injustice and would be contrary to the spirit and purpose of the
21 rules or the public interest. A decision of the state fire safety
22 board to vary the application of a rule, or to modify or change a
23 ruling of the state fire marshal, shall specify in what manner
24 the variance, modification, or change is made, the conditions
25 upon which it is made, and the reasons for the variance,
26 modification, or change.

27 (3) The department of community health shall promulgate

1 rules for the certification of specialized programs offered in an
2 adult foster care facility to a mentally ill or developmentally
3 disabled resident. The rules shall include provision for an
4 appeal of a denial or limitation of the terms of certification to
5 the department pursuant to chapter 4 of the administrative
6 procedures act of 1969.

7 (4) The rules promulgated by the department under this part
8 shall be restricted to the following:

9 (a) The operation and conduct of adult foster care
10 facilities.

11 (b) The character, suitability, training, and qualifications
12 of applicants and other persons directly responsible for the care
13 and welfare of adults served.

14 (c) The general financial ability and competence of
15 applicants to provide necessary care for adults and to maintain
16 prescribed standards.

17 (d) The number of individuals or staff required to ensure
18 adequate supervision and care of the adults served.

19 (e) The appropriateness, safety, cleanliness, and general
20 adequacy of the premises, including maintenance of adequate
21 health standards to provide for the physical comfort, care,
22 protection, and well-being of the adults received and maintenance
23 of adequate fire protection for adult foster care facilities
24 licensed to receive 6 or fewer adults. Rules promulgated in the
25 areas provided by this subdivision shall be promulgated in
26 cooperation with the state fire safety board.

27 (f) Provisions for food, clothing, educational

1 opportunities, equipment, and individual supplies to assure the
2 healthy physical, emotional, and mental development of adults
3 served.

4 (g) The type of programs and services necessary to provide
5 appropriate care to each resident admitted.

6 (h) Provisions to safeguard the rights of adults served,
7 including cooperation with rights protection systems established
8 by law.

9 (i) Provisions to prescribe the rights of licensees.

10 (j) Maintenance of records pertaining to admission,
11 progress, health, and discharge of adults. The rules promulgated
12 under this subdivision shall include a method by which a licensee
13 promptly shall notify the appropriate placement agency or
14 responsible agent of any indication that a resident's assessment
15 plan is not appropriate for that resident.

16 (k) Filing of reports with the department.

17 (l) Transportation safety.

18 (5) The rules shall be reviewed by the council not less than
19 once every 5 years.

20 Sec. 3511. (1) The director, the director's agent, or
21 personnel of another department or agency, acting at the request
22 of the director, may enter upon the premises of an applicant or
23 licensee at a reasonable time to make inspections, as permitted
24 by applicable law, to determine whether the applicant or licensee
25 is complying with this part and the rules promulgated under this
26 part. On-site inspections may be conducted without prior notice
27 to the adult foster care facility. A health and sanitation

1 inspection of an adult foster care facility shall be conducted
2 upon the request of the department by 1 of the following:

3 (a) Department staff.

4 (b) The department of community health.

5 (c) A local health department.

6 (2) The department of community health, the fire marshal
7 division of the department of labor and economic growth, or local
8 authorities, in carrying out this act, may visit an adult foster
9 care facility more often than annually to advise in matters
10 affecting health or fire protection. Inspections shall be made as
11 permitted by law.

12 (3) An adult foster care facility shall be inspected for
13 fire safety by 1 of the following:

14 (a) Department staff, if the facility is licensed or
15 proposed to be licensed for 6 or fewer adults. The department may
16 request that a fire safety inspection be completed or caused to
17 be completed by the state fire marshal, for a facility licensed
18 or proposed to be licensed for 6 or fewer adults, when such an
19 inspection would result in the efficient administration of this
20 part.

21 (b) The state fire marshal or the designated representative
22 of the state fire marshal, if the facility is licensed or
23 proposed to be licensed for more than 6 adults. The state fire
24 marshal shall inspect or cause to be inspected for fire safety an
25 adult foster care facility licensed or proposed to be licensed
26 for 6 or fewer adults upon request by the department. The state
27 fire marshal may contract with the fire marshal of a city having

1 a population of not less than 1,000,000 to inspect adult foster
2 care facilities licensed or proposed to be licensed for more than
3 6 adults if the facility is located within that city. The fire
4 marshal of a city shall conduct an inspection in compliance with
5 procedures established and on forms provided by the state fire
6 marshal.

7 (4) Except as provided in subsection (3)(b) and section
8 3510(2), the inspector shall administer and enforce the rules
9 promulgated by the department.

10 (5) Upon receipt of a request from an adult foster care
11 facility for certification of a specialized program for
12 developmentally disabled or mentally ill adults, the department
13 of mental health shall inspect the facility to determine whether
14 the proposed specialized program conforms with the requirements
15 of applicable law and rules. The department of community health
16 shall provide the department with an inspection report and a
17 certification, denial of certification, or certification with
18 limited terms for the proposed specialized program. The
19 department of community health shall reinspect a certified
20 specialized program not less than once biennially and notify the
21 department in the same manner as for the initial certification.
22 In carrying out this subsection, the department of community
23 health may contract with a county community mental health board
24 or any other agency for services.

25 (6) Inspection reports required by this section shall be
26 furnished to the department and shall be used in the evaluation
27 for licensing of an adult foster care facility. The department

1 shall consider the reports carefully and may make special
2 consultations if necessary. The department shall be responsible
3 for the final determination of the issuance, denial, or
4 revocation and the temporary or provisional nature of a license
5 issued to an adult foster care facility. A report of the
6 department's findings shall be furnished to the licensee or
7 applicant.

8 (7) The inspection reports required by this section shall be
9 available for public inspection during reasonable business hours.

10 Sec. 3512. (1) The department may prescribe appropriate
11 records to be kept and maintained regarding each adult received
12 by a licensee and may require reports, upon forms furnished or
13 approved by the department, setting forth facts or circumstances
14 related to the care of adults received by the licensee.

15 (2) The department may examine the books, records, and
16 reports of a facility. Members of the department shall be
17 provided reasonable facilities for the thorough examination and
18 copying of the books, records, and reports of the facility.

19 (3) The records of the residents of a facility which are
20 required to be kept by the facility under this act or rules
21 promulgated under this act shall be confidential and properly
22 safeguarded. These materials shall be open only to the inspection
23 of the director, an agent of the director, another executive
24 department of the state pursuant to a contract between that
25 department and the facility, a party to a contested case
26 involving the facility, or on the order of a court or tribunal of
27 competent jurisdiction. The records of a resident of a facility

1 which are required to be kept by the facility under this act or
2 rules promulgated under this act shall be open to inspection by
3 the resident, unless medically contraindicated, or the guardian
4 of a resident.

5 Sec. 3513. (1) A person, partnership, corporation,
6 association, or a department or agency of the state, county,
7 city, or other political subdivision shall not establish or
8 maintain an adult foster care facility unless licensed by the
9 department.

10 (2) Application for a license shall be made on forms
11 provided and in the manner prescribed by the department. The
12 application shall be accompanied by the fee prescribed in section
13 3513a.

14 (3) Before issuing or renewing a license, the department
15 shall investigate the activities and standards of care of the
16 applicant and shall make an on-site evaluation of the facility.
17 On-site inspections conducted in response to the application may
18 be conducted without prior notice to the applicant. Subject to
19 subsections (9), (10), and (11), the department shall issue or
20 renew a license if satisfied as to all of the following:

21 (a) The financial stability of the facility.

22 (b) The applicant's compliance with this part and rules
23 promulgated under this part.

24 (c) The good moral character of the applicant, or owners,
25 partners, or directors of the facility, if other than an
26 individual. Each of these persons shall be not less than 18 years
27 of age.

1 (d) The physical and emotional ability of the applicant, and
2 the person responsible for the daily operation of the facility to
3 operate an adult foster care facility.

4 (e) The good moral character of the person responsible for
5 the daily operations of the facility and all employees of the
6 facility. The applicant shall be responsible for assessing the
7 good moral character of the employees of the facility. The person
8 responsible for the daily operation of the facility shall be not
9 less than 18 years of age.

10 (4) The department shall require an applicant or a licensee
11 to disclose the names, addresses, and official positions of all
12 persons who have an ownership interest in the adult foster care
13 facility. If the adult foster care facility is located on or in
14 real estate that is leased, the applicant or licensee shall
15 disclose the name of the lessor of the real estate and any direct
16 or indirect interest that the applicant or licensee has in the
17 lease other than as lessee.

18 (5) Each license shall state the maximum number of persons
19 to be received for foster care at 1 time.

20 (6) If applicable, a license shall state the type of
21 specialized program for which certification has been received
22 from the department.

23 (7) A license shall be issued to a specific person for a
24 facility at a specific location, is nontransferable, and remains
25 the property of the department. The prohibition against transfer
26 of a license to another location does not apply if a licensee's
27 adult foster care facility or home is closed as a result of

1 eminent domain proceedings, if the facility or home, as
2 relocated, otherwise meets the requirements of this act and the
3 rules promulgated under this act.

4 (8) An applicant or licensee proposing a sale of an adult
5 foster care facility or home to another owner shall provide the
6 department with advance notice of the proposed sale in writing.
7 The applicant or licensee and other parties to the sale shall
8 arrange to meet with specified department representatives and
9 shall obtain before the sale a determination of the items of
10 noncompliance with applicable law and rules that shall be
11 corrected. The department shall notify the respective parties of
12 the items of noncompliance before the change of ownership, shall
13 indicate that the items of noncompliance shall be corrected as a
14 condition of issuance of a license to the new owner, and shall
15 notify the prospective purchaser of all licensure requirements.

16 (9) The department shall not issue a license to or renew the
17 license of a person who has been convicted of a felony under this
18 part or under chapter XXA of the Michigan penal code, 1931 PA
19 328, MCL 750.145m to 750.145r. The department shall not issue a
20 license to or renew the license of a person who has been
21 convicted of a misdemeanor under this act or under chapter XXA of
22 the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r,
23 for a period of 10 years after the conviction.

24 (10) If the department has revoked, suspended, or refused to
25 renew a person's license for an adult foster care facility
26 according to section 3522, the department may refuse to issue a
27 license to or renew a license of that person for a period of 5

1 years after the suspension, revocation, or nonrenewal of the
2 license.

3 (11) The department may refuse to issue a license to or
4 renew the license of an applicant if the department determines
5 that the applicant has a relationship with a former licensee
6 whose license under this act has been suspended, revoked, or
7 nonrenewed under subsection (9) or section 3522 or a convicted
8 person to whom a license has been denied under subsection (9).
9 This subsection applies for 5 years after the suspension,
10 revocation, or nonrenewal of the former licensee's license or the
11 denial of the convicted person's license. For purposes of this
12 subsection, an applicant has a relationship with a former
13 licensee or convicted person if the former licensee or convicted
14 person is involved with the facility in 1 or more of the
15 following ways:

16 (a) Participates in the administration or operation of the
17 facility.

18 (b) Has a financial interest in the operation of the
19 facility.

20 (c) Provides care to residents of the facility.

21 (d) Has contact with residents or staff on the premises of
22 the facility.

23 (e) Is employed by the facility.

24 (f) Resides in the facility.

25 (12) If the department determines that an unlicensed
26 facility is an adult foster care facility, the department shall
27 notify the owner or operator of the facility that it is required

1 to be licensed under this part. A person receiving the
2 notification required under this section who does not apply for a
3 license within 30 days is subject to the penalties described in
4 subsection (13).

5 (13) Subject to subsection (12), a person who violates
6 subsection (1) is guilty of a misdemeanor punishable by
7 imprisonment for not more than 2 years or a fine of not more than
8 \$50,000.00, or both. A person who has been convicted of a
9 violation of subsection (1) who commits a second or subsequent
10 violation is guilty of a felony punishable by imprisonment for
11 not more than 5 years or a fine of not more than \$75,000.00, or
12 both.

13 (14) The department shall issue an initial or renewal
14 license not later than 6 months after the applicant files a
15 completed application. Receipt of the application is considered
16 the date the application is received by any agency or department
17 of this state. If the application is considered incomplete by the
18 department, the department shall notify the applicant in writing
19 or make notice electronically available within 30 days after
20 receipt of the incomplete application, describing the deficiency
21 and requesting additional information. If the department
22 identifies a deficiency or requires the fulfillment of a
23 corrective action plan, the 6-month period is tolled until either
24 of the following occurs:

25 (a) Upon notification by the department of a deficiency,
26 until the date the requested information is received by the
27 department.

1 (b) Upon notification by the department that a corrective
2 action plan is required, until the date the department determines
3 the requirements of the corrective action plan have been met.

4 (15) The determination of the completeness of an application
5 does not operate as an approval of the application for the
6 license and does not confer eligibility of an applicant
7 determined otherwise ineligible for issuance of a license.

8 (16) If the department fails to issue or deny a license
9 within the time required by this section, the department shall
10 return the license fee and shall reduce the license fee for the
11 applicant's next renewal application, if any, by 15%. Failure to
12 issue or deny a license within the time period required under
13 this section does not allow the department to otherwise delay
14 processing an application. The completed application shall be
15 placed in sequence with other completed applications received at
16 that same time. The department shall not discriminate against an
17 applicant in the processing of an application based on the fact
18 that the application fee was refunded or discounted under this
19 subsection.

20 (17) If, on a continual basis, inspections performed by a
21 local health department delay the department in issuing or
22 denying licenses under this act within the 6-month period, the
23 department may use department staff to complete the inspections
24 instead of the local health department causing the delays.

25 (18) The director of the department shall submit a report by
26 December 1 of each year to the standing committees and
27 appropriations subcommittees of the senate and house of

1 representatives concerned with human services issues. The
2 director shall include all of the following information in the
3 report concerning the preceding fiscal year:

4 (a) The number of initial and renewal applications the
5 department received and completed within the 6-month time period
6 described in subsection (14).

7 (b) The number of applications requiring a request for
8 additional information.

9 (c) The number of applications rejected.

10 (d) The number of licenses not issued within the 6-month
11 period.

12 (e) The average processing time for initial and renewal
13 licenses granted after the 6-month period.

14 (19) As used in this section, "completed application" means
15 an application complete on its face and submitted with any
16 applicable licensing fees as well as any other information,
17 records, approval, security, or similar item required by law or
18 rule from a local unit of government, a federal agency, or a
19 private entity but not from another department or agency of this
20 state. A completed application does not include a health
21 inspection performed by a local health department.

22 Sec. 3513a. (1) Application fees for an individual,
23 partnership, firm, corporation, association, governmental
24 organization, or nongovernmental organization licensed or seeking
25 licensure under this part are as follows:

26 (a) Application fee for a temporary license:

1	(i) Family home	\$ 65.00
2	(ii) Small group home (1-6)	105.00
3	(iii) Small group home (7-12)	135.00
4	(iv) Large group home	170.00
5	(v) Congregate facility	220.00
6	(vi) Camp	40.00

7 (b) Application fee for subsequent licenses:

8	(i) Family home	\$ 25.00
9	(ii) Small group home (1-6)	25.00
10	(iii) Small group home (7-12)	60.00
11	(iv) Large group home	100.00
12	(v) Congregate facility	150.00
13	(vi) Camp	25.00

14 (2) Fees collected under this part shall be credited to the
 15 general fund of the state to be appropriated by the legislature
 16 to the department for the enforcement of this part.

17 Sec. 3513b. An adult foster care facility license issued
 18 under the former adult foster care facility licensing act, 1979
 19 PA 218, MCL 400.701 to 400.737, is a license issued under this
 20 part on the effective date of this act until that license expires
 21 and then the adult foster care facility may renew the license
 22 pursuant to this part.

23 Sec. 3514. (1) A temporary license shall be issued to an
 24 adult foster care facility for the first 6 months of operation if
 25 the adult foster care facility has not previously been licensed
 26 as an adult foster care facility. At the end of the first 6

1 months of operation, the department shall issue a regular
2 license, issue a provisional license, or refuse to issue a
3 license in the manner provided for in section 3522. A temporary
4 license shall not be renewed.

5 (2) Before issuing a temporary license, the department may
6 require an adult foster care facility to submit to the department
7 an acceptable plan of correction for the adult foster care
8 facility. The adult foster care facility shall implement the plan
9 of correction within the time limitations of the temporary
10 license period.

11 Sec. 3515. The department shall not issue a temporary
12 license to an adult foster care congregate facility, except a
13 facility which is to replace an adult foster care congregate
14 facility licensed on March 27, 1984 and is a new construction;
15 satisfies all applicable state construction code requirements and
16 the fire safety requirements prescribed by section 3520; and the
17 bed capacity does not exceed that of the licensed facility which
18 it replaces.

19 Sec. 3516. (1) Unless the city, village, or township
20 approves a temporary license, a temporary license shall not be
21 granted under this part if the issuance of the license would
22 substantially contribute to an excessive concentration of
23 community residential facilities within a city, village, or
24 township of this state.

25 (2) A temporary license shall not be granted under this part
26 if the proposed adult foster care facility for more than 6 adults
27 has not obtained zoning approval or obtained a special or

1 conditional use permit if required by an ordinance of the city,
2 village, or township in which the proposed facility is located.

3 (3) The department shall not issue a temporary license to an
4 adult foster care facility which does not comply with section 16a
5 of 1943 PA 183, MCL 125.216a, section 16a of 1943 PA 184, MCL
6 125.286a, and section 3b of 1921 PA 207, MCL 125.583b.

7 (4) This section shall not apply to an applicant who has
8 purchased a facility and the facility, at the time of the
9 purchase, or for 1 year preceding the application, was licensed
10 under this part or an act repealed by this act.

11 Sec. 3517. (1) A provisional license may be issued to an
12 adult foster care facility that has previously held a temporary
13 or regular license under this part or an act repealed by this
14 act. A provisional license may be issued for 6 months if an adult
15 foster care facility is temporarily unable to conform to the
16 requirements of this part for a regular license and may be
17 renewed not more than 2 consecutive times as provided in
18 subsections (2) and (4). The issuance of a provisional license
19 shall be contingent upon the submission to the department of an
20 acceptable plan of correction for the adult foster care facility
21 within the time limitations of the provisional period.

22 (2) If the provisional license is issued for deficiencies in
23 the physical plant of the adult foster care facility, the
24 provisional license may be renewed for not more than 2
25 consecutive 6-month terms for the same physical plant
26 deficiencies.

27 (3) If the provisional license is issued for deficiencies in

1 the quality of care provided in the adult foster care facility,
2 the provisional license is not renewable. If the quality of care
3 deficiencies are corrected and intervening deficiencies of any
4 kind are not incurred, a regular license shall be issued.

5 (4) If a provisional license has been issued because of
6 deficiencies in both the quality of care and the physical plant
7 of the adult foster care facility, the provisional license may be
8 renewed under subsection (2) if the quality of care deficiencies
9 have been corrected.

10 (5) The department shall notify the applicant of the reasons
11 for issuing a provisional license and shall designate whether the
12 deficiencies are physical plant deficiencies or quality of care
13 deficiencies.

14 Sec. 3518. (1) A special license may be issued for the
15 duration of the operation of an adult foster care facility if the
16 applicant is a short-term operation.

17 (2) The department may promulgate rules regulating the
18 issuance and duration of special licenses.

19 Sec. 3519. (1) A regular license shall be issued to an adult
20 foster care facility which is in compliance with the requirements
21 of this part and rules promulgated under this part for issuance
22 of a regular license.

23 (2) A regular license for all adult foster care facilities
24 except adult foster care camps is valid for 2 years after the
25 date of issuance unless revoked as authorized by section 3522 or
26 modified to a provisional status based on evidence of
27 noncompliance with this part or the rules promulgated under this

1 part. The license shall be renewed biennially on application and
2 approval.

3 (3) A regular license for an adult foster care camp is
4 effective for the specific dates of operation not to exceed a 12-
5 month period unless revoked as authorized by section 3522 or
6 modified to a provisional status based on evidence of
7 noncompliance with this part or the rules promulgated under this
8 part. The license shall be renewed annually on application and
9 approval.

10 (4) Any increase beyond 6 in the number of persons to be
11 received for foster care at 1 time in a small group home requires
12 application for a temporary license pursuant to sections 3514 and
13 3516. This subsection applies to facilities that have been
14 previously licensed.

15 Sec. 3520. (1) The department shall not issue a temporary,
16 provisional, or regular license to an adult foster care facility
17 whose capacity is more than 6 adults until the facility receives
18 a certificate of approval from the state fire marshal division of
19 the department of state police after compliance with fire safety
20 standards prescribed in rules promulgated by the state fire
21 safety board pursuant to section 3510(2).

22 (2) The department shall not issue a license to an adult
23 foster care facility indicating approval to operate a specialized
24 program for developmentally disabled adults or mentally ill
25 adults until the facility receives a certificate of approval from
26 the state department of community health as required under
27 section 3511(5).

1 (3) A licensee or applicant who is denied a certificate of
2 approval by the state fire marshal division of the department of
3 state police or who is denied or certified with limitations for a
4 specialized program by the department of community health may
5 request a hearing. The hearing shall be conducted by the state
6 fire safety board or the department of community health, as
7 applicable, pursuant to chapter 4 of the administrative
8 procedures act of 1969.

9 Sec. 3521. (1) Except as provided in subsection (2), an
10 adult foster care facility licensed on March 27, 1980 shall be
11 considered to be in compliance with the fire safety standards
12 prescribed in rules promulgated under this part if the facility
13 meets the fire safety standards prescribed in rules promulgated
14 under the former adult care facility licensing act, 1979 PA 218,
15 MCL 400.701 to 400.737, or former 1972 PA 287, which were in
16 effect on March 27, 1980.

17 (2) This section does not apply to the installation of smoke
18 and heat detection equipment as required by rules promulgated
19 pursuant to this part.

20 Sec. 3522. (1) The department may deny, suspend, revoke, or
21 refuse to renew a license, or modify a regular license to a
22 provisional license, if the licensee falsifies information on the
23 application for license or willfully and substantially violates
24 this part, the rules promulgated under this part, or the terms of
25 the license.

26 (2) The department may suspend, revoke, or modify a license
27 of an applicant if the department determines that the applicant

1 has a relationship with a former licensee whose license under
2 this part has been suspended, revoked, or nonrenewed under this
3 section or section 3513(9) or a convicted person to whom a
4 license has been denied under section 3513(9). This subsection
5 applies for 10 years after the suspension, revocation, or
6 nonrenewal of the former licensee's license or the denial of the
7 convicted person's license. As used in this subsection, an
8 applicant has a relationship with a former licensee or convicted
9 person if the former licensee or convicted person is involved
10 with the facility in 1 or more of the following ways:

11 (a) Participates in the administration or operation of the
12 facility.

13 (b) Has a financial interest in the operation of the
14 facility.

15 (c) Provides care to residents of the facility.

16 (d) Has contact with residents or staff on the premises of
17 the facility.

18 (e) Is employed by the facility.

19 (f) Resides in the facility.

20 (3) A license shall not be denied, suspended, or revoked, a
21 renewal shall not be refused, and a regular license shall not be
22 modified to a provisional license unless the department gives the
23 licensee or applicant written notice of the grounds of the
24 proposed denial, revocation, refusal to renew, or modification.
25 If the licensee or applicant appeals the denial, revocation,
26 refusal to renew, or modification by filing a written appeal with
27 the director within 30 days after receipt of the written notice,

1 the director or the director's designated representative shall
2 conduct a hearing at which the licensee or applicant may present
3 testimony and confront witnesses. Notice of the hearing shall be
4 given to the licensee or applicant by personal service or
5 delivery to the proper address by registered mail not less than 2
6 weeks before the date of the hearing. The decision of the
7 director shall be made and forwarded to the protesting party by
8 registered mail not more than 30 days after the hearing. If the
9 proposed denial, revocation, refusal to renew, or modification is
10 not protested within 30 days, the license shall be denied,
11 revoked, refused, or modified.

12 (4) If the department has revoked, suspended, or refused to
13 renew a license, the former licensee shall not receive or
14 maintain in that facility an adult who requires foster care. A
15 person who violates this subsection is guilty of a felony
16 punishable by imprisonment for not more than 5 years or a fine of
17 not more than \$75,000.00, or both.

18 (5) If the department has revoked, suspended, or refused to
19 renew a license, relocation services shall be provided to adults
20 who were being served by the formerly licensed facility, upon the
21 department's determination that the adult or his or her
22 designated representative is unable to relocate the adult in
23 another facility without assistance. The relocation services
24 shall be provided by the responsible agency, as defined in
25 administrative rules, or, if the adult has no agency designated
26 as responsible, by the department.

27 (6) In the case of facilities that are operated under lease

1 with a state department or a community mental health services
2 board, the department may issue an emergency license for a 90-day
3 period to avoid relocation of residents following the revocation,
4 suspension, or nonrenewal of a license, if all of the following
5 requirements are met:

6 (a) The leased physical plant is in substantial compliance
7 with all licensing requirements.

8 (b) The applicant for the emergency license is a licensee
9 who is in compliance with all applicable regulations under this
10 part and under contract with a state department or a community
11 mental health services board to operate the leased physical plant
12 temporarily.

13 (c) The former licensee's access to the facility according
14 to a lease, sublease, or contract has been lawfully terminated by
15 the owner or lessee of the facility.

16 Sec. 3523. (1) The legislative body of a city, village, or
17 township in which an adult foster care facility is located may
18 file a complaint with the department to have the facility's
19 license denied or revoked pursuant to the procedures prescribed
20 in this part and the rules promulgated under this part. The
21 complaint shall specify those provisions of this part or the
22 rules promulgated under this part with which the facility is not
23 in compliance.

24 (2) The department shall resolve the issues of a complaint
25 filed pursuant to subsection (1) within 45 days after receipt of
26 the complaint. Notice of the resolution of the issues shall be
27 mailed by registered mail to the complainant and the licensee.

1 Failure of the department to resolve the issues of the complaint
2 within 45 days after receipt of the complaint shall serve as a
3 decision by the department to deny or revoke the facility's
4 license, and the licensee shall be notified pursuant to section
5 3522.

6 (3) If the decision to deny or revoke the license or the
7 resolution of the issues is protested by written objection of the
8 complainant or licensee to the department within 30 days after
9 the denial or revocation of the license or the receipt of the
10 notice pertaining to the denial or revocation, the director or
11 the director's designated representative shall conduct a hearing
12 pursuant to chapter 4 of the administrative procedures act of
13 1969. The decision of the director shall be mailed by registered
14 mail to the complainant and the licensee. If the resolution of
15 the issues by the director is not protested within 30 days after
16 receipt of the notice of the resolution, the resolution by the
17 director is final. The department may issue a license pending the
18 resolution of the matter.

19 Sec. 3524. (1) A person who believes that this part or a
20 rule promulgated under this part may have been violated may
21 request an investigation of an adult foster care facility. The
22 request shall be submitted to the department in writing, or the
23 department shall assist the person in reducing an oral complaint
24 to writing within 7 days after the oral request is made.

25 (2) The substance of the complaint shall be provided to the
26 licensee not earlier than at the commencement of the on-site
27 inspection of the adult foster care facility which takes place

1 pursuant to the complaint.

2 (3) The complaint, a copy of the complaint, or a record
3 published, released, or otherwise disclosed to the adult foster
4 care facility shall not disclose the name of the complainant or
5 an adult resident named in the complaint unless the complainant
6 or an adult resident consents in writing to the disclosure or the
7 investigation results in an administrative hearing or a judicial
8 proceeding, or unless disclosure is considered essential to the
9 investigation by the department. If disclosure is considered
10 essential to the investigation, the complainant shall be given
11 the opportunity to withdraw the complaint before disclosure.

12 (4) Upon receipt of a complaint, the department shall
13 determine, based on the allegations presented, whether this part
14 or a rule promulgated under this part has been, is, or is in
15 danger of being violated. The department shall investigate the
16 complaint according to the urgency determined by the department.
17 The initiation of a complaint investigation shall commence within
18 15 days after receipt of the written complaint by the department.

19 (5) The department shall inform the complainant of its
20 findings. Within 30 days after the receipt of complaint, the
21 department shall provide the complainant a copy, if any, of the
22 written determination or a status report indicating when these
23 documents may be expected. The final report shall include a copy
24 of the original complaint. The complainant may request additional
25 copies of the documents listed in this subsection and shall
26 reimburse the department for the copies pursuant to established
27 policies and procedures.

1 (6) The department shall inform the licensee of the
2 department's findings at the same time that the department
3 informs the complainant pursuant to subsection (5).

4 (7) A written determination concerning a complaint shall be
5 available for public inspection, but the name of the complainant
6 or adult resident shall not be disclosed without the
7 complainant's or adult resident's consent.

8 (8) A complainant who is dissatisfied with the determination
9 or investigation by the department may request a hearing. A
10 request for a hearing shall be submitted in writing to the
11 director within 30 days after the mailing of the department's
12 findings as described in subsection (5). Notice of the time and
13 place of the hearing shall be sent to the complainant and the
14 adult foster care facility. A complainant who is dissatisfied
15 with the decision of the director may appeal by filing with the
16 clerk of the court an affidavit setting forth the substance of
17 the proceedings before the department and the errors of law upon
18 which the person relies, and serving the director with a copy of
19 the affidavit. The circuit court of the county in which the
20 complainant resides shall have jurisdiction to hear and determine
21 the questions of fact or law involved in the appeal.

22 Sec. 3525. A person aggrieved by the decision of the
23 director following a hearing under section 3522 or 3523, within
24 10 days after receipt of decision, may appeal to the circuit
25 court for the county in which the person resides by filing with
26 the clerk of the court an affidavit setting forth the substance
27 of the proceedings before the department and the errors of law

1 upon which the person relies, and serving the director with a
2 copy of the affidavit. The circuit court shall have jurisdiction
3 to hear and determine the questions of fact or law involved in
4 the appeal. If the department prevails, the circuit court shall
5 affirm the decision of the department; if the licensee or
6 applicant prevails, the circuit court shall set aside the
7 revocation or order the issuance or renewal of the license.

8 Sec. 3526. (1) An adult foster care facility shall not
9 utilize a name or designation which implies, infers, or leads the
10 public to believe that the facility provides nursing care.

11 (2) An adult foster care facility shall not include in its
12 name the name of a religious, fraternal, or charitable
13 corporation, organization, or association unless the corporation,
14 organization, or association is an owner of the facility.

15 Sec. 3526a. (1) A resident of an adult foster care facility
16 who is enrolled in a licensed hospice program is not considered
17 to require continuous nursing care for purposes of section
18 3503(4).

19 (2) A licensee providing foster care to a resident who is
20 enrolled in a licensed hospice program and whose assessment plan
21 includes a do-not-resuscitate order is considered to be providing
22 protection to the resident for purposes of section 3506(4) and
23 the rules promulgated under this part if, in the event the
24 resident suffers cessation of both spontaneous respiration and
25 circulation, the licensee contacts the licensed hospice program.

26 Sec. 3526b. (1) An adult foster care large group home, an
27 adult foster care small group home, or an adult foster care

1 congregate facility that represents to the public that it
2 provides inpatient or residential care or services, or both, to
3 persons with Alzheimer's disease or related conditions shall
4 provide to each prospective patient, resident, or surrogate
5 decision maker a written description of the services provided by
6 the home or facility to patients or residents with Alzheimer's
7 disease or related conditions. A written description shall
8 include, but not be limited to, all of the following:

9 (a) The overall philosophy and mission reflecting the needs
10 of residents with Alzheimer's disease or related conditions.

11 (b) The process and criteria for placement in or transfer or
12 discharge from a program for residents with Alzheimer's disease
13 or related conditions.

14 (c) The process used for assessment and establishment of a
15 plan of care and its implementation.

16 (d) Staff training and continuing education practices.

17 (e) The physical environment and design features appropriate
18 to support the function of residents with Alzheimer's disease or
19 related conditions.

20 (f) The frequency and types of activities for residents with
21 Alzheimer's disease or related conditions.

22 (g) Identification of supplemental fees for services
23 provided to patients or residents with Alzheimer's disease or
24 related conditions.

25 (2) As used in this section, "represents to the public"
26 means advertises or markets the facility as providing specialized
27 Alzheimer's or dementia care services.

1 Sec. 3527. (1) A licensee operating an adult foster care
2 congregate facility shall conspicuously post all of the following
3 in an area of the facility accessible to residents, employees,
4 and visitors:

5 (a) A current license.

6 (b) A complete copy of the most recent inspection report of
7 the facility received from the department.

8 (c) A description, provided by the department, of complaint
9 procedures established under this part and the name, address, and
10 telephone number of a person authorized by the department to
11 receive complaints.

12 (d) A complete list of materials available for public
13 inspection which the facility is required to retain under
14 subsection (2).

15 (2) A licensee operating an adult foster care congregate
16 facility shall retain all of the following for public inspection:

17 (a) A complete copy of each inspection report of the
18 facility received from the department during the past 5 years.

19 (b) A description of the services provided by the facility
20 and the rates charged for those services and items for which a
21 resident may be separately charged.

22 (c) A list of the name, address, and official position of
23 each person having an ownership interest in the facility as
24 required by section 3513(4).

25 (d) A list of personnel employed or retained by the
26 facility.

27 Sec. 3529. This part shall not prohibit an adult foster care

1 facility from providing foster care to a person related to the
2 licensee or the licensee's spouse for compensation or otherwise.
3 The related person shall be considered in determining the number
4 of residents being cared for in the facility if the person is
5 provided adult foster care services for compensation.

6 Sec. 3530. The attorney general, on behalf of the
7 department, may seek an injunction against an adult foster care
8 facility in either of the following cases:

9 (a) The facility is being operated without a license in
10 violation of section 3513.

11 (b) A licensee violates this part or a rule promulgated
12 under this part and the violation may result in serious harm to
13 the residents under care.

14 Sec. 3531. (1) Except as otherwise provided in section 3513
15 or section 3522, a person, adult foster care facility, agency, or
16 representative or officer of a corporation, association, or
17 organization who violates this act is guilty of a misdemeanor
18 punishable by imprisonment for not more than 1 year or a fine of
19 not more than \$1,000.00, or both.

20 (2) A person convicted of a misdemeanor under this act or
21 under chapter XXA of the Michigan penal code, 1931 PA 328, MCL
22 750.145m to 750.145r, shall not be involved with an adult foster
23 care facility for a period of 5 years after the conviction in any
24 of the following ways:

25 (a) Participate in the administration or operation of the
26 facility.

27 (b) Have a financial interest in the operation of the

1 facility.

2 (c) Provide care to residents of the facility.

3 (d) Have contact with residents or staff on the premises of
4 the facility.

5 (e) Be employed by the facility.

6 (f) Reside in the facility.

7 (3) A person convicted of a felony under this part or under
8 chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m
9 to 750.145r, shall not be involved with an adult foster care
10 facility in any of the following ways:

11 (a) Participate in the administration or operation of the
12 facility.

13 (b) Have a financial interest in the operation of the
14 facility.

15 (c) Provide care to residents of the facility.

16 (d) Have contact with residents or staff on the premises of
17 the facility.

18 (e) Be employed by the facility.

19 (f) Reside in the facility.

20 Sec. 3531a. (1) In addition to or as an alternative to
21 imposing a term of imprisonment under this part, the court may
22 sentence the person to perform community service as follows:

23 (a) If the person is convicted of a felony, community
24 service for not more than 160 days.

25 (b) If the person is convicted of a misdemeanor, community
26 service for not more than 80 days.

27 (2) For purposes of this section, community service shall

1 not include activities involving interaction with or care of
2 vulnerable adults.

3 (3) A person sentenced to perform community service under
4 this section shall not receive compensation and shall reimburse
5 the state or appropriate local unit of government for the cost of
6 supervision incurred by the state or local unit of government as
7 a result of the person's activities in that service.

8 Sec. 3532. (1) The department shall notify the clerk of the
9 city, village, or township where a proposed adult foster care
10 facility is to be located at least 45 days before the issuance of
11 a license.

12 (2) The department shall notify the clerk of the city,
13 village, or township of all newly licensed adult foster care
14 facilities within 30 days after the issuance of a license.

15 (3) The department shall notify the clerk of the city,
16 village, or township of the location of all licensed adult foster
17 care facilities within the boundaries of that city, village, or
18 township within 30 days after receipt of the request.

19 Sec. 3533. This part supersedes all local regulations
20 applicable specifically to adult foster care facilities. Local
21 ordinances, regulations, or construction codes regulating
22 institutions shall not be applied to adult foster care large
23 group homes, adult foster care small group homes, or adult foster
24 care family homes. This section shall not be construed to exempt
25 adult foster care facilities from local construction codes which
26 are applicable to private residences.

27 Sec. 3534. (1) In addition to the restrictions prescribed in

1 sections 13, 22, and 31, and except as otherwise provided in
2 subsection (2), an adult foster care facility shall not employ or
3 independently contract with an individual who regularly has
4 direct access to or provides direct services to residents of the
5 adult foster care facility after the effective date of this act
6 if the individual satisfies 1 or more of the following:

7 (a) Has been convicted of a relevant crime described under
8 42 USC 1320a-7.

9 (b) Has been convicted of any of the following felonies, an
10 attempt or conspiracy to commit any of those felonies, or any
11 other state or federal crime that is similar to the felonies
12 described in this subdivision, other than a felony for a relevant
13 crime described under 42 USC 1320a-7, unless 15 years have lapsed
14 since the individual completed all of the terms and conditions of
15 his or her sentencing, parole, and probation for that conviction
16 prior to the date of application for employment or the date of
17 the execution of the independent contract:

18 (i) A felony that involves the intent to cause death or
19 serious impairment of a body function, that results in death or
20 serious impairment of a body function, that involves the use of
21 force or violence, or that involves the threat of the use of
22 force or violence.

23 (ii) A felony involving cruelty or torture.

24 (iii) A felony under chapter XXA of the Michigan penal code,
25 1931 PA 328, MCL 750.145m to 750.145r.

26 (iv) A felony involving criminal sexual conduct.

27 (v) A felony involving abuse or neglect.

1 (vi) A felony involving the use of a firearm or dangerous
2 weapon.

3 (vii) A felony involving the diversion or adulteration of a
4 prescription drug or other medications.

5 (c) Has been convicted of a felony or an attempt or
6 conspiracy to commit a felony, other than a felony for a relevant
7 crime described under 42 USC 1320a-7 or a felony described under
8 subdivision (b), unless 10 years have lapsed since the individual
9 completed all of the terms and conditions of his or her
10 sentencing, parole, and probation for that conviction prior to
11 the date of application for employment or the date of the
12 execution of the independent contract.

13 (d) Has been convicted of any of the following misdemeanors,
14 other than a misdemeanor for a relevant crime described under 42
15 USC 1320a-7, or a state or federal crime that is substantially
16 similar to the misdemeanors described in this subdivision, within
17 the 10 years immediately preceding the date of application for
18 employment or the date of the execution of the independent
19 contract:

20 (i) A misdemeanor involving the use of a firearm or dangerous
21 weapon with the intent to injure, the use of a firearm or
22 dangerous weapon that results in a personal injury, or a
23 misdemeanor involving the use of force or violence or the threat
24 of the use of force or violence.

25 (ii) A misdemeanor under chapter XXA of the Michigan penal
26 code, 1931 PA 328, MCL 750.145m to 750.145r.

27 (iii) A misdemeanor involving criminal sexual conduct.

1 (iv) A misdemeanor involving cruelty or torture unless
2 otherwise provided under subdivision (e).

3 (v) A misdemeanor involving abuse or neglect.

4 (e) Has been convicted of any of the following misdemeanors,
5 other than a misdemeanor for a relevant crime described under 42
6 USC 1320a-7, or a state or federal crime that is substantially
7 similar to the misdemeanors described in this subdivision, within
8 the 5 years immediately preceding the date of application for
9 employment or the date of the execution of the independent
10 contract:

11 (i) A misdemeanor involving cruelty if committed by an
12 individual who is less than 16 years of age.

13 (ii) A misdemeanor involving home invasion.

14 (iii) A misdemeanor involving embezzlement.

15 (iv) A misdemeanor involving negligent homicide.

16 (v) A misdemeanor involving larceny unless otherwise
17 provided under subdivision (g).

18 (vi) A misdemeanor of retail fraud in the second degree
19 unless otherwise provided under subdivision (g).

20 (vii) Any other misdemeanor involving assault, fraud, theft,
21 or the possession or delivery of a controlled substance unless
22 otherwise provided under subdivision (d), (f), or (g).

23 (f) Has been convicted of any of the following misdemeanors,
24 other than a misdemeanor for a relevant crime described under 42
25 USC 1320a-7, or a state or federal crime that is substantially
26 similar to the misdemeanors described in this subdivision, within
27 the 3 years immediately preceding the date of application for

1 employment or the date of the execution of the independent
2 contract:

3 (i) A misdemeanor for assault if there was no use of a
4 firearm or dangerous weapon and no intent to commit murder or
5 inflict great bodily injury.

6 (ii) A misdemeanor of retail fraud in the third degree unless
7 otherwise provided under subdivision (g).

8 (iii) A misdemeanor under part 74 of the public health code,
9 1978 PA 368, MCL 333.7401 to 333.7461, unless otherwise provided
10 under subdivision (g).

11 (g) Has been convicted of any of the following misdemeanors,
12 other than a misdemeanor for a relevant crime described under 42
13 USC 1320a-7, or a state or federal crime that is substantially
14 similar to the misdemeanors described in this subdivision, within
15 the year immediately preceding the date of application for
16 employment or the date of the execution of the independent
17 contract:

18 (i) A misdemeanor under part 74 of the public health code,
19 1978 PA 368, MCL 333.7401 to 333.7461, if the individual, at the
20 time of conviction, is under the age of 18.

21 (ii) A misdemeanor for larceny or retail fraud in the second
22 or third degree if the individual, at the time of conviction, is
23 under the age of 16.

24 (h) Is the subject of an order or disposition under section
25 16b of chapter IX of the code of criminal procedure, 1927 PA 175,
26 MCL 769.16b.

27 (i) Has been the subject of a substantiated finding of

1 neglect, abuse, or misappropriation of property by a state or
2 federal agency pursuant to an investigation conducted in
3 accordance with 42 USC 1395i-3 or 1396r.

4 (2) Except as otherwise provided in subsection (6), an adult
5 foster care facility shall not employ or independently contract
6 with an individual who has direct access to residents after the
7 effective date of this section until the adult foster care
8 facility conducts a criminal history check in compliance with
9 subsections (4) and (5). This subsection and subsection (1) do
10 not apply to an individual who is employed by or under contract
11 to an adult foster care facility before the effective date of
12 this act. Within 24 months after the effective date of this act,
13 an individual who is exempt under this subsection shall provide
14 the department of state police a set of fingerprints and the
15 department of state police shall input those fingerprints into
16 the automated fingerprint identification system database
17 established under subsection (12). An individual who is exempt
18 under this subsection is not limited to working within the adult
19 foster care facility with which he or she is employed by or under
20 independent contract with on the effective date of this act. That
21 individual may transfer to another adult foster care facility
22 that is under the same ownership with which he or she was
23 employed or under contract. If that individual wishes to transfer
24 to an adult foster care facility that is not under the same
25 ownership, he or she may do so provided that a criminal history
26 check is conducted by the new facility in accordance with
27 subsection (4). If an individual who is exempt under this

1 subsection is subsequently convicted of a crime or offense
2 described under subsection (1)(a) through (g) or found to be the
3 subject of a substantiated finding described under subsection
4 (1)(i) or an order or disposition described under subsection
5 (1)(h), or is found to have been convicted of a relevant crime
6 described under subsection (1)(a), he or she is no longer exempt
7 and shall be terminated from employment or denied employment.

8 (3) An individual who applies for employment either as an
9 employee or as an independent contractor with an adult foster
10 care facility and has received a good faith offer of employment
11 or independent contract from the adult foster care facility shall
12 give written consent at the time of application for the
13 department of state police to conduct an initial criminal history
14 check under this section. The individual, at the time of initial
15 application, shall provide identification acceptable to the
16 department of state police.

17 (4) Upon receipt of the written consent and identification
18 required under subsection (3), the adult foster care facility
19 that has made a good faith offer of employment or independent
20 contract shall make a request to the department of state police
21 to conduct a criminal history check on the individual and input
22 the individual's fingerprints into the automated fingerprint
23 identification system database, and shall make a request to the
24 relevant licensing or regulatory department to perform a check of
25 all relevant registries established pursuant to federal and state
26 law and regulations for any substantiated findings of abuse,
27 neglect, or misappropriation of property. The request shall be

1 made in a manner prescribed by the department of state police and
2 the relevant licensing or regulatory department or agency. The
3 adult foster care facility shall make the written consent and
4 identification available to the department of state police and
5 the relevant licensing or regulatory department or agency. If the
6 department of state police or the federal bureau of investigation
7 charges a fee for conducting the initial criminal history check,
8 the charge shall be paid by or reimbursed by the department with
9 federal funds as provided to implement a pilot program for
10 national and state background checks on direct patient access
11 employees of long-term care facilities or providers in accordance
12 with section 307 of the medicare prescription drug, improvement,
13 and modernization act of 2003, Public Law 108-173. The adult
14 foster care facility shall not seek reimbursement for a charge
15 imposed by the department of state police or the federal bureau
16 of investigation from the individual who is the subject of the
17 initial criminal history check. The department of state police
18 shall conduct an initial criminal history check on the individual
19 named in the request. The department of state police shall
20 provide the department with a written report of the criminal
21 history check conducted under this subsection that contains a
22 criminal record. The report shall contain any criminal history
23 record information on the individual maintained by the department
24 of state police.

25 (5) Upon receipt of the written consent and identification
26 required under subsection (3), if the individual has applied for
27 employment either as an employee or as an independent contractor

1 with an adult foster care facility, the adult foster care
2 facility that has made a good faith offer of employment or
3 independent contract shall comply with subsection (4) and shall
4 make a request to the department of state police to forward the
5 individual's fingerprints to the federal bureau of investigation.
6 The department of state police shall request the federal bureau
7 of investigation to make a determination of the existence of any
8 national criminal history pertaining to the individual. An
9 individual described in this subsection shall provide the
10 department of state police with a set of fingerprints. The
11 department of state police shall complete the criminal history
12 check under subsection (4) and, except as otherwise provided in
13 this subsection, provide the results of its determination under
14 subsection (4) and the results of the federal bureau of
15 investigation determination to the department within 30 days
16 after the request is made. If the requesting adult foster care
17 facility is not a state department or agency and if a criminal
18 conviction is disclosed on the written report of the criminal
19 history check obtained under subsection (4) or the federal bureau
20 of investigation determination, the department shall notify the
21 adult foster care facility and the individual in writing of the
22 type of crime disclosed on the written report of the criminal
23 history check obtained under subsection (4) or the federal bureau
24 of investigation determination without disclosing the details of
25 the crime. The notification shall inform the facility or agency
26 and the applicant regarding the appeal process in section 34c.
27 Any charges imposed by the department of state police or the

1 federal bureau of investigation for conducting an initial
2 criminal history check or making a determination under this
3 subsection shall be paid in the manner required under subsection
4 (4).

5 (6) If an adult foster care facility determines it necessary
6 to employ or independently contract with an individual before
7 receiving the results of the individual's criminal history check
8 required under this section, the adult foster care facility may
9 conditionally employ the individual if both of the following
10 apply:

11 (a) The adult foster care facility requests the criminal
12 history check required under this section, upon conditionally
13 employing the individual.

14 (b) The individual signs a written statement indicating all
15 of the following:

16 (i) That he or she has not been convicted of 1 or more of the
17 crimes that are described in subsection (1)(a) to (g) within the
18 applicable time period prescribed by subsection (1)(a) to (g).

19 (ii) That he or she is not the subject of an order or
20 disposition described in subsection (1)(h).

21 (iii) That he or she has not been the subject of a
22 substantiated finding as described in subsection (1)(i).

23 (iv) The individual agrees that, if the information in the
24 criminal history check conducted under this section does not
25 confirm the individual's statement under subparagraphs (i) to
26 (iii), his or her employment will be terminated by the adult foster
27 care facility as required under subsection (1) unless and until

1 the individual can prove that the information is incorrect.

2 (v) That he or she understands the conditions described in
3 subparagraphs (i) to (iv) that result in the termination of his or
4 her employment and that those conditions are good cause for
5 termination.

6 (7) The department shall develop and distribute the model
7 form for the statement required under subsection (6)(b). The
8 department shall make the model form available to adult foster
9 care facilities upon request at no charge.

10 (8) If an individual is conditionally employed under
11 subsection (6), and the report described in subsection (4) or
12 (5), if applicable, does not confirm the individual's statement
13 under subsection (6)(b)(i) to (iii), the adult foster care facility
14 shall terminate the individual's employment as required by
15 subsection (1).

16 (9) An individual who knowingly provides false information
17 regarding his or her identity, criminal convictions, or
18 substantiated findings on a statement described in subsection
19 (6)(b)(i) to (iii) is guilty of a misdemeanor punishable by
20 imprisonment for not more than 93 days or a fine of not more than
21 \$500.00, or both.

22 (10) An adult foster care facility shall use criminal
23 history record information obtained under subsection (4) or (5)
24 only for the purpose of evaluating an individual's qualifications
25 for employment in the position for which he or she has applied
26 and for the purposes of subsections (6) and (8). An adult foster
27 care facility or an employee of the adult foster care facility

1 shall not disclose criminal history record information obtained
2 under this section to a person who is not directly involved in
3 evaluating the individual's qualifications for employment or
4 independent contract. An individual who knowingly uses or
5 disseminates the criminal history record information obtained
6 under subsection (4) or (5) in violation of this subsection is
7 guilty of a misdemeanor punishable by imprisonment for not more
8 than 93 days or a fine of not more than \$1,000.00, or both. Upon
9 written request from another adult foster care facility,
10 psychiatric facility or intermediate care facility for people
11 with mental retardation, or health facility or agency that is
12 considering employing or independently contracting with an
13 individual, an adult foster care facility that has obtained
14 criminal history record information under this section on that
15 individual shall, with the consent of the applicant, share the
16 information with the requesting adult foster care facility,
17 psychiatric facility or intermediate care facility for people
18 with mental retardation, or health facility or agency. Except for
19 a knowing or intentional release of false information, an adult
20 foster care facility has no liability in connection with a
21 background check conducted under this section or the release of
22 criminal history record information under this subsection.

23 (11) As a condition of continued employment, each employee
24 or independent contractor shall do both of the following:

25 (a) Agree in writing to report to the adult foster care
26 facility immediately upon being arraigned on 1 or more of the
27 criminal offenses listed in subsection (1)(a) to (g), upon being

1 convicted of 1 or more of the criminal offenses listed in
2 subsection (1)(a) to (g), upon becoming the subject of an order
3 or disposition described under subsection (1)(h), and upon
4 becoming the subject of a substantiated finding described under
5 subsection (1)(i). Reporting of an arraignment under this
6 subdivision is not cause for termination or denial of employment.

7 (b) If a set of fingerprints is not already on file with the
8 department of state police, provide the department of state
9 police with a set of fingerprints.

10 (12) In addition to sanctions set forth in this act, a
11 licensee, owner, administrator, or operator of an adult foster
12 care facility who knowingly and willfully fails to conduct the
13 criminal history checks as required under this section is guilty
14 of a misdemeanor punishable by imprisonment for not more than 1
15 year or a fine of not more than \$5,000.00, or both.

16 (13) In collaboration with the department of state police,
17 the department of information technology shall establish an
18 automated fingerprint identification system database that would
19 allow the department of state police to store and maintain all
20 fingerprints submitted under this section and would provide for
21 an automatic notification at the time a subsequent criminal
22 arrest fingerprint card submitted into the system matches a set
23 of fingerprints previously submitted in accordance with this
24 section. Upon such notification, the department of state police
25 shall immediately notify the department and the department shall
26 immediately contact the respective adult foster care facility
27 with which that individual is associated. Information in the

1 database established under this subsection is confidential, is
2 not subject to disclosure under the freedom of information act,
3 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to
4 any person except for purposes of this act or for law enforcement
5 purposes.

6 (14) If an individual independently contracts with an adult
7 foster care facility, subsections (1) and (2) do not apply if the
8 contractual work performed by the individual is not directly
9 related to the clinical, health care, or personal services
10 delivered by the adult foster care facility or if the
11 individual's duties are not performed on an ongoing basis with
12 direct access to residents. This exception includes, but is not
13 limited to, an individual who independently contracts with the
14 adult foster care facility to provide utility, maintenance,
15 construction, or communication services.

16 (15) By March 1, 2007, the department and the department of
17 state police shall develop and implement an electronic web-based
18 system to assist the adult foster care facilities required to
19 check relevant registries and conduct criminal history checks of
20 its employees and independent contractors and to provide for an
21 automated notice to the adult foster care facilities for the
22 individuals entered in the system who, since the initial check,
23 have been convicted of a disqualifying offense or have been the
24 subject of a substantiated finding of abuse, neglect, or
25 misappropriation of property.

26 (16) An adult foster care facility or a prospective employee
27 covered under this section may not be charged for the cost of an

1 initial criminal history check required under this act.

2 (17) As used in this section:

3 (a) "Direct access" means access to a resident or resident's
4 property, financial information, medical records, treatment
5 information, or any other identifying information.

6 (b) "Health facility or agency" means a health facility or
7 agency as defined in section 20106 of the public health code,
8 1978 PA 368, MCL 333.20106.

9 (c) "Independent contract" means a contract entered into by
10 an adult foster care facility with an individual who provides the
11 contracted services independently or a contract entered into by
12 an adult foster care facility with an organization or agency that
13 employs or contracts with an individual after complying with the
14 requirements of this section to provide the contracted services
15 to the adult foster care facility on behalf of the organization
16 or agency.

17 (d) "Title XIX" means title XIX of the social security act,
18 42 USC 1396 to 1396r-6 and 1396r-8 to 1396v.

19 Sec. 3534a. (1) An individual who has been disqualified from
20 or denied employment by an adult foster care facility based on a
21 criminal history check conducted pursuant to section 3534 may
22 appeal to the department if he or she believes that the criminal
23 history report is inaccurate, and the appeal shall be conducted
24 as a contested case hearing conducted pursuant to the
25 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
26 24.328. The individual shall file the appeal with the director of
27 the department within 15 business days after receiving the

1 written report of the criminal history check unless the
2 conviction contained in the criminal history report is one that
3 may be expunged or set aside. If an individual has been
4 disqualified or denied employment based on a conviction that may
5 be expunged or set aside, then he or she shall file the appeal
6 within 15 business days after a court order granting or denying
7 his or her application to expunge or set aside that conviction is
8 granted. If the order is granted and the conviction is expunged
9 or set aside, then the individual shall not be disqualified or
10 denied employment based solely on that conviction. The director
11 shall review the appeal and issue a written decision within 30
12 business days after receiving the appeal. The decision of the
13 director is final.

14 (2) As used in this section, "business day" means a day
15 other than a Saturday, Sunday, or any legal holiday.

16 Sec. 3536. (1) An adult foster care family home may be
17 concurrently licensed as a foster family home or a foster family
18 group home. Except as provided in subsection (2), additional
19 minor children who are not related to a resident of the adult
20 foster care family home shall not be received in the adult foster
21 care family home after the filing of an application for a license
22 under this part.

23 (2) A licensee may receive a minor child placed in foster
24 care under the laws of this state after filing an application for
25 a license under this part. A placement under this subsection
26 shall be approved at the discretion of the director or his or her
27 designee and shall be based upon a recommendation by a licensed

1 child placing agency or an approved governmental unit and shall
2 be subject to appropriate terms and conditions determined by the
3 department.

4 (3) As used in this section:

5 (a) "Foster family home" means that term as defined in
6 section 1 of 1973 PA 116, MCL 722.111.

7 (b) "Foster family group home" means that term as defined in
8 section 1 of 1973 PA 116, MCL 722.111.

9 Sec. 3537. (1) An adult foster care small group home may be
10 concurrently licensed as a child caring institution. Additional
11 children under 18 years of age who are not related to a resident
12 of the adult foster care small group home shall not be received
13 in the adult foster care small group home after the filing of an
14 application for a license pursuant to this part. The combined
15 licensed capacity shall not exceed more than a combination of 6
16 children and adults.

17 (2) As used in this section, "child caring institution"
18 means that term as defined in section 1 of 1973 PA 116, MCL
19 722.111.

20 Sec. 3539. Rules promulgated by the department or the
21 director under the former adult foster care facility licensing
22 act and in effect on the effective date of this act continue in
23 effect to the extent that they do not conflict with this part and
24 shall continue to be enforced. The rules may be amended or
25 rescinded by the director.

26 ARTICLE V
27 OCCUPATIONS

PART 51

GENERAL PROVISIONS

1
2
3 Sec. 5101. (1) For purposes of this article, the words and
4 phrases defined in sections 5102 to 5109 have the meanings
5 ascribed to them in those sections.

6 (2) In addition, article I contains general definitions and
7 principles of construction applicable to all articles in this
8 act.

9 Sec. 5103. (1) "Board" as used in this part means each board
10 created in this article and as used in any other part covering a
11 specific health profession means the board created in that part.

12 (2) "Certificate of licensure" means a document issued as
13 evidence of authorization to practice and use a designated title.

14 (3) "Certificate of registration" means a document issued as
15 evidence of authorization to use a designated title.

16 (4) "Committee" means the health professional recovery
17 committee created in section 16165 of the public health code.

18 (5) "Controlled substance" means that term as defined in
19 section 7104 of the public health code.

20 (6) "Conviction" means a judgment entered by a court upon a
21 plea of guilty, guilty but mentally ill, or nolo contendere or
22 upon a jury verdict or court finding that a defendant is guilty
23 or guilty but mentally ill.

24 Sec. 5104. (1) "Delegation" means an authorization granted
25 by a licensee to a licensed or unlicensed individual to perform
26 selected acts, tasks, or functions that fall within the scope of
27 practice of the delegator and that are not within the scope of

1 practice of the delegatee and that, in the absence of the
2 authorization, would constitute illegal practice of a licensed
3 profession.

4 (2) "Department" means the department of community health.

5 (3) "Director" means the director of community health or the
6 director's designee.

7 (4) "Disciplinary subcommittee" means a disciplinary
8 subcommittee appointed under section 5216.

9 (5) "Good moral character" means good moral character as
10 defined and determined under 1974 PA 381, MCL 338.41 to 338.47.

11 Sec. 5105. (1) "Health occupation" means a health related
12 vocation, calling, occupation, or employment performed by an
13 individual whether or not the individual is licensed or
14 registered under this article.

15 (2) "Health profession" means a vocation, calling,
16 occupation, or employment performed by an individual acting
17 pursuant to a license or registration issued under this article.

18 (3) "Health professional recovery program" or "program"
19 means a nondisciplinary, treatment-oriented program for impaired
20 health professionals established under section 16167 of the
21 public health code.

22 Sec. 5106. (1) "Impaired" or "impairment" means the
23 inability or immediately impending inability of a health
24 professional to practice his or her health profession in a manner
25 that conforms to the minimum standards of acceptable and
26 prevailing practice for that health profession due to the health
27 professional's substance abuse, chemical dependency, or mental

1 illness or the health professional's use of drugs or alcohol that
2 does not constitute substance abuse or chemical dependency. As
3 used in this section:

4 (a) "Chemical dependency" means a group of cognitive,
5 behavioral, and physiological symptoms that indicate that an
6 individual has a substantial lack of or no control over the
7 individual's use of 1 or more psychoactive substances.

8 (b) "Mental illness" means that term as defined in section
9 400a of the mental health code, 1974 PA 258, MCL 330.1400a.

10 (c) "Substance abuse" means that term as defined in section
11 6107 of the public health code.

12 (2) "Incompetence" means a departure from, or failure to
13 conform to, minimal standards of acceptable and prevailing
14 practice for a health profession, whether or not actual injury to
15 an individual occurs.

16 (3) "License", except as otherwise provided in this
17 subsection, means an authorization issued under this article to
18 practice where practice would otherwise be unlawful. License
19 includes an authorization to use a designated title which use
20 would otherwise be prohibited under this article and may be used
21 to refer to a health profession subfield license, a limited
22 license, or a temporary license.

23 (4) "Licensee", as used in a part that regulates a specific
24 health profession, means an individual to whom a license is
25 issued under that part, and as used in this part means each
26 licensee regulated by this article.

27 (5) "Limitation" means an action by which a board imposes

1 restrictions or conditions, or both, on a license.

2 (6) "Limited license" means a license to which restrictions
3 or conditions, or both, as to scope of practice, place of
4 practice, supervision of practice, duration of licensed status,
5 or type or condition of patient or client served are imposed by a
6 board.

7 Sec. 5107. (1) "Probation" means a sanction which permits a
8 board to evaluate over a period of time a licensee's fitness to
9 continue to practice under a license.

10 (2) "Public member" means a member of the general public who
11 is not a licensee or registrant under this article, is a resident
12 of this state, is not less than 18 years of age, and does not
13 have a material financial interest in the provision of health
14 services and has not had such an interest within the 12 months
15 before appointment.

16 Sec. 5108. (1) "Reclassification" means an action by a
17 disciplinary subcommittee by which restrictions or conditions, or
18 both, applicable to a license are added or removed.

19 (2) "Registration" means an authorization only for the use
20 of a designated title which use would otherwise be prohibited
21 under this article.

22 (3) "Registrant" as used in a part that regulates the use of
23 a title means an individual to whom a registration or a specialty
24 certification is issued under that part, and as used in this part
25 means each registrant regulated by this article.

26 (4) "Reinstatement" means the granting of a license or
27 certificate of registration, with or without limitations or

1 conditions, to an individual whose license or certificate of
2 registration has been suspended or revoked.

3 (5) "Relicensure" means the granting of a license to an
4 individual whose license has lapsed for failure to renew the
5 license within 60 days after the expiration date.

6 (6) "Reregistration" means the granting of a certificate of
7 registration to an individual whose certificate of registration
8 has lapsed for failure to renew the certificate within 60 days
9 after the expiration date.

10 Sec. 5109. (1) "Supervision", except as otherwise provided
11 in this article, means the overseeing of or participation in the
12 work of another individual by a health professional licensed
13 under this article in circumstances where at least all of the
14 following conditions exist:

15 (a) The continuous availability of direct communication in
16 person or by radio, telephone, or telecommunication between the
17 supervised individual and a licensed health professional.

18 (b) The availability of a licensed health professional on a
19 regularly scheduled basis to review the practice of the
20 supervised individual, to provide consultation to the supervised
21 individual, to review records, and to further educate the
22 supervised individual in the performance of the individual's
23 functions.

24 (c) The provision by the licensed supervising health
25 professional of predetermined procedures and drug protocol.

26 (2) "Task force" means a task force created by this article.

27 (3) "Temporary license" means a license of limited duration

1 granted to an applicant who has completed all requirements for
2 licensure except an examination or other required evaluation
3 procedure.

4 (4) "Treatment" or "treatment plan" means a plan of care and
5 rehabilitation services provided to impaired licensees,
6 registrants, and applicants.

7 Sec. 5111. (1) A part in this article does not prohibit a
8 licensee under another part or other law of this state from
9 performing activities and using designated titles authorized by a
10 license issued to him or her under that other part or other law
11 of this state.

12 (2) A part in this article does not prohibit a registrant
13 under another part or other state law from using designated
14 titles authorized by a registration issued to him or her under
15 that other part or other state law.

16 (3) This article shall not prohibit a licensee from advising
17 a patient to seek professional services or advice from another
18 person.

19 Sec. 5115. A board or task force created by this article is
20 the successor to the board or task force with the same or similar
21 name created or continued by a statute repealed by this act.

22 Sec. 5121. (1) The governor shall appoint by and with the
23 advice and consent of the senate the members of the boards and
24 task forces except ex officio members.

25 (2) A vacancy on a board or task force shall be filled for
26 the balance of the unexpired term in the same manner as the
27 original appointment. An appointment for a vacancy shall be

1 submitted to the senate not later than 60 days after the vacancy
2 occurs.

3 (3) The governor shall seek nominations from a wide range of
4 sources including professional associations, educational
5 institutions, consumer organizations, labor unions, health
6 planning agencies, and other community health organizations when
7 making appointments under this article.

8 (4) The governor may remove or suspend a board or task force
9 member from office in accordance with section 10 of article V of
10 the state constitution of 1963.

11 Sec. 5125. A licensing board shall be composed of a majority
12 of members licensed in the health profession which that board
13 licenses. The board shall include at least 1 public member. The
14 director shall be an ex officio member without vote, but is not a
15 member for the purposes of section 5 of article V of the state
16 constitution of 1963 or for determining a quorum.

17 Sec. 5126. A registration board shall be composed of a
18 majority of members registered in the profession which that board
19 registers. The board shall include at least 1 public member. The
20 director shall be an ex officio member without vote, but is not a
21 member for the purposes of section 5 of article V of the state
22 constitution of 1963 or for determining a quorum.

23 Sec. 5135. (1) Except as otherwise provided in subsection
24 (2), a member of a board, the committee, or a task force created
25 by this article shall meet all of the following requirements:

26 (a) Be 18 or more years of age.

27 (b) Be of good moral character.

1 (c) Be a resident of this state for not less than the 6
2 months immediately preceding appointment and remain a resident of
3 this state throughout the term of the appointment.

4 (d) Be currently licensed or registered in this state where
5 licensure or registration in a health profession is a requirement
6 for membership. The member shall have actively practiced that
7 profession or taught in an approved educational institution that
8 prepares applicants for licensure or registration in that
9 profession, or a combination of both, in any state for not less
10 than the 2 years immediately preceding appointment.

11 (2) Subject to subsection (3), the governor may appoint as
12 the members of the board who are required to be licensed or
13 registered under subsection (1)(d) individuals who meet either or
14 both of the following requirements:

15 (a) Are certified or otherwise approved by a national
16 organization that certifies or otherwise approves individuals in
17 the profession to be licensed or registered by the board.

18 (b) Have actively practiced the profession licensed or
19 registered by the board or taught in an educational institution
20 that prepares applicants for licensure or registration in that
21 profession, or a combination of both, for not less than the 2
22 years immediately preceding their appointment.

23 (3) Each individual appointed under subsection (2) shall be
24 licensed or registered under this article in the profession
25 licensed or registered by that board within 3 years after the
26 effective date of the amendatory act that created the board.

27 Sec. 5138. (1) A board, the committee, or a task force shall

1 hold regular meetings at places and on separate dates fixed by
2 it. The committee shall meet not less than quarterly. Special
3 meetings may be called by the chairperson, by a majority of the
4 members of the committee, a board, or a task force, or by the
5 department. Except as otherwise provided in this article or in
6 the bylaws of the committee, a board, or a task force, a majority
7 of the members appointed and serving constitute a quorum. Final
8 action by the committee, a board, or a task force shall be taken
9 only by affirmative vote of a majority of the members present at
10 a meeting or for a hearing. A member shall not vote by proxy.

11 (2) The department shall make available the times and places
12 of meetings of the boards and the task forces and keep minutes of
13 their meetings and a record of their actions. Meetings of a board
14 or a task force shall be open to the public in accordance with
15 the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

16 Sec. 5139. A board or a task force shall elect annually a
17 chairperson and vice-chairperson at the first meeting held after
18 the date set forth in each respective part. The committee shall
19 elect annually a chairperson and vice-chairperson at the first
20 meeting of each calendar year. The officers shall be selected
21 from board, committee, or task force members and shall hold
22 office for 1 year or until their successors are elected and
23 qualified. The committee, a board, or a task force may fill a
24 vacancy in the office of chairperson or vice-chairperson for the
25 balance of the unexpired term. The chairperson shall preside at
26 meetings, and if absent or unable to preside, the vice-
27 chairperson shall preside.

1 Sec. 5141. (1) The department shall furnish office services
2 to the committee, the boards, and the task forces; have charge of
3 their offices, records, and money collected; and perform
4 managerial and administrative functions for them.

5 (2) The department shall appoint administrative and
6 secretarial staff, clerks, and employees necessary to allow the
7 proper exercise of the powers and duties of the committee, a
8 board, or a task force. Salaries and other expenses incurred by
9 the committee, a board, or a task force and staff and expenses
10 for studies and activities authorized under this article shall be
11 paid out of funds appropriated by the legislature for those
12 purposes.

13 (3) The department may promulgate rules to promote the
14 effective and consistent administration of this article. However,
15 the department shall not promulgate rules that constitute the
16 licensure, registration, or examination of health professionals.

17 Sec. 5143. (1) The committee, a board, or a task force may
18 adopt bylaws for the regulation of its internal affairs.

19 (2) The committee, a disciplinary subcommittee, a board, or
20 a task force shall report its activities annually to the
21 department. The report shall include statistical data on
22 applicants for examination, licensure, and registration;
23 allegations and disciplinary actions against licensees and
24 registrants; and other matters relating to the licensure,
25 registration, and regulatory activity of the boards or a task
26 force as prescribed by the department.

27 (3) The committee, a disciplinary subcommittee, a board, or

1 a task force may perform acts and make determinations necessary
2 and proper to carry out its functions, and the department may
3 contract with other state agencies, private agencies,
4 organizations, and consultants to assist the committee,
5 disciplinary subcommittee, board, or task force to perform the
6 acts or to aid in carrying out functions of the committee, board,
7 or task force.

8 Sec. 5145. (1) A board may adopt and have an official seal.

9 (2) A board or task force may promulgate rules necessary or
10 appropriate to fulfill its functions as prescribed in this
11 article.

12 (3) Only a board or task force shall promulgate rules to
13 specify requirements for licenses, registrations, renewals,
14 examinations, and required passing scores.

15 Sec. 5146. (1) A board shall grant a license or registration
16 to an applicant meeting the requirements for the license or
17 registration as prescribed in this article and the rules
18 promulgated under this article.

19 (2) A board which grants licenses may do the following:

20 (a) Reclassify licenses on the basis of a determination that
21 the addition or removal of conditions or restrictions is
22 appropriate.

23 (b) Upon good cause, request that a licensee or registrant
24 have a criminal history check conducted in accordance with
25 section 5174(3).

26 Sec. 5148. (1) Only a board may promulgate rules to
27 establish standards for the education and training of individuals

1 to be licensed or registered, or whose licenses or registrations
2 are to be renewed, for the purposes of determining whether
3 graduates of a training program have the knowledge and skills
4 requisite for practice of a health profession or use of a title.

5 (2) Only a board may accredit training programs in
6 hospitals, schools, colleges, universities, and institutions
7 offering training programs meeting educational standards and may
8 deny or withdraw accreditation of training programs for failure
9 to meet established standards. A hospital, school, college,
10 university, or institution that has its program accreditation
11 withdrawn shall have an opportunity for a hearing.

12 (3) A decision of a board on standards for the education and
13 training of individuals or the accreditation of a training
14 program under subsection (1) or (2) shall be concurred in by a
15 majority of the board members who are not health profession
16 subfield licensees if the decision relates solely to licenses
17 that are not health profession subfield licenses.

18 Sec. 5169. (1) If an individual employed by or under
19 contract to the department has reasonable cause to believe that a
20 health professional may be impaired, the individual shall
21 transmit the information to the committee either orally or in
22 writing. Upon receipt of the information, the committee shall
23 request the program consultant described in section 16168 of the
24 public health code to determine whether or not the health
25 professional may be impaired.

26 (2) If, based on the information received by the department
27 under section 16168(2) of the public health code, the department

1 determines that the health professional involved may be a threat
2 to the public health, safety, or welfare and has violated this
3 article or article 7 of the public health code or the rules
4 promulgated under this article or article 7 of the public health
5 code, the department may proceed under sections 5211 and 5231.

6 (3) The identity of an individual submitting information to
7 the committee or the department regarding the suspected
8 impairment of a health professional is confidential.

9 (4) If a health professional successfully participates in
10 and completes a treatment plan prescribed under the health
11 professional recovery program, as determined by the committee,
12 the department shall destroy all records pertaining to the
13 impairment of the health professional, including records
14 pertaining to the health professional's participation in the
15 treatment plan, upon the expiration of 5 years after the date of
16 the committee's determination. This subsection does not apply to
17 records pertaining to a violation of this article or article 7 of
18 the public health code or a rule promulgated under this article
19 or article 7 of the public health code.

20 Sec. 5171. Under the circumstances and subject to the
21 limitations stated in each case, the following individuals are
22 not required to have a license issued under this article for
23 practice of a health profession in this state:

24 (a) A student in a health profession training program, which
25 has been approved by the appropriate board, while performing the
26 duties assigned in the course of training.

27 (b) An individual practicing a health profession in the

1 discharge of official duties while in the military service of the
2 United States, the United States public health service, the
3 United States department of agriculture, or the United States
4 veterans administration. The institution in which the individual
5 practices shall report the name and address of the individual to
6 the appropriate board within 30 days after the date of
7 employment.

8 (c) An individual who by education, training, or experience
9 substantially meets the requirements of this article for
10 licensure while rendering medical care in a time of disaster or
11 to an ill or injured individual at the scene of an emergency.

12 (d) An individual who provides nonmedical nursing or similar
13 services in the care of the ill or suffering or an individual who
14 in good faith ministers to the ill or suffering by spiritual
15 means alone, through prayer, in the exercise of a religious
16 freedom, and who does not hold himself or herself out to be a
17 health professional.

18 (e) An individual residing in another state or country and
19 authorized to practice a health profession in that state or
20 country who, in an exceptional circumstance, is called in for
21 consultation or treatment by a health professional in this state.

22 (f) An individual residing in another state or country and
23 authorized to practice a health profession in that state or
24 country, when attending meetings or conducting lectures,
25 seminars, or demonstrations under the auspices of professional
26 associations or training institutions in this state, if the
27 individual does not maintain an office or designate a place to

1 meet patients or receive calls in this state.

2 (g) An individual authorized in another country to practice
3 a health profession and who is employed by the United States
4 public health service or the government of another country for
5 the exclusive use of members of its merchant marine and members
6 of its consular and diplomatic corps, while caring for those
7 members in the performance of his or her official duties.

8 (h) An individual residing adjacent to the land border
9 between this state and an adjoining state who is authorized under
10 the laws of that state to practice a health profession and whose
11 practice may extend into this state, but who does not maintain an
12 office or designate a place to meet patients or receive calls in
13 this state.

14 (i) An individual authorized to practice a health profession
15 in another state or territory of the United States who has been
16 appointed by the United States Olympic committee to provide
17 health services exclusively to team personnel and athletes
18 registered to train and compete at a training site in this state
19 approved by the United States Olympic committee or at an event
20 conducted under the sanction of the United States Olympic
21 committee. The exemption granted by this subdivision shall apply
22 to the individual while performing the duties assigned in the
23 course of the sanctioned training program or event and for the
24 time period specified by the United States Olympic committee.

25 Sec. 5174. (1) An individual who is licensed or registered
26 under this article shall meet all of the following requirements:

27 (a) Be 18 or more years of age.

1 (b) Be of good moral character.

2 (c) Have a specific education or experience in the health
3 profession or training equivalent, or both, as prescribed by this
4 article or rules of a board necessary to promote safe and
5 competent practice and informed consumer choice.

6 (d) Have a working knowledge of the English language as
7 determined in accordance with minimum standards established for
8 that purpose by the department.

9 (e) Pay the appropriate fees as prescribed in this article.

10 (2) In addition to the requirements of subsection (1), an
11 applicant for licensure, registration, or specialty certification
12 under this article shall meet all of the following requirements:

13 (a) Establish that disciplinary proceedings before a similar
14 licensure, registration, or specialty certification board of this
15 or any other state, of the United States military, of the federal
16 government, or of another country are not pending against the
17 applicant.

18 (b) Establish that if sanctions have been imposed against
19 the applicant by a similar licensure, registration, or specialty
20 certification board of this or any other state, of the United
21 States military, of the federal government, or of another country
22 based upon grounds that are substantially similar to those set
23 forth in this article or article 7 of the public health code or
24 the rules promulgated under this article or article 7 of the
25 public health code, as determined by the board or task force to
26 which the applicant applies, the sanctions are not in force at
27 the time of application.

1 (c) File with the board or task force a written, signed
2 consent to the release of information regarding a disciplinary
3 investigation involving the applicant conducted by a similar
4 licensure, registration, or specialty certification board of this
5 or any other state, of the United States military, of the federal
6 government, or of another country.

7 (3) Beginning May 1, 2006, an applicant for initial
8 licensure or registration shall submit his or her fingerprints to
9 the department of state police to have a criminal history check
10 conducted and request that the department of state police forward
11 his or her fingerprints to the federal bureau of investigation
12 for a national criminal history check. The department of state
13 police shall conduct a criminal history check and request the
14 federal bureau of investigation to make a determination of the
15 existence of any national criminal history pertaining to the
16 applicant. The department of state police shall provide the
17 department with a written report of the criminal history check if
18 the criminal history check contains any criminal history record
19 information. The department of state police shall forward the
20 results of the federal bureau of investigation determination to
21 the department within 30 days after the request is made. The
22 department shall notify the board and the applicant in writing of
23 the type of crime disclosed on the federal bureau of
24 investigation determination without disclosing the details of the
25 crime. The department of state police may charge a reasonable fee
26 to cover the cost of conducting the criminal history check. The
27 criminal history record information obtained under this

1 subsection shall be used only for the purpose of evaluating an
2 applicant's qualifications for licensure or registration for
3 which he or she has applied. A member of the board shall not
4 disclose the report or its contents to any person who is not
5 directly involved in evaluating the applicant's qualifications
6 for licensure or registration. Information obtained under this
7 subsection is confidential, is not subject to disclosure under
8 the freedom of information act, 1976 PA 442, MCL 15.231 to
9 15.246, and shall not be disclosed to any person except for
10 purposes of this section or for law enforcement purposes.

11 (4) Before granting a license, registration, or specialty
12 certification license to an applicant, the board or task force to
13 which the applicant applies may do 1 of the following:

14 (a) Make an independent inquiry into the applicant's
15 compliance with the requirements described in subsection (2). If
16 a licensure or registration board or task force determines under
17 subsection (2)(b) that sanctions have been imposed and are in
18 force at the time of application, the board or task force shall
19 not grant a license or registration or specialty certification to
20 the applicant.

21 (b) Require the applicant to secure from a national
22 association or federation of state professional licensing boards
23 certification of compliance with the requirements described in
24 subsection (2).

25 (5) If, after issuing a license, registration, specialty
26 certification, a board or task force or the department determines
27 that sanctions have been imposed against the licensee or

1 registrant by a similar licensure or registration or specialty
2 certification board as described in subsection (2)(b), the
3 disciplinary subcommittee may impose appropriate sanctions upon
4 the licensee or registrant. The licensee or registrant may
5 request a show cause hearing before a hearing examiner to
6 demonstrate why the sanctions should not be imposed.

7 (6) An applicant for licensure, registration, or specialty
8 certification who is or has been licensed, registered, or
9 certified in a health profession by another state or country
10 shall disclose that fact on the application form.

11 Sec. 5175. In developing minimum standards of educational
12 prerequisites for licensure or registration, a board and its task
13 forces shall consider equivalency and proficiency testing and
14 other mechanisms and, where appropriate, grant credit for past
15 training, education, or experience in health and related fields.
16 Standards may include those for formal education, practice
17 proficiency, and other training, education, or experience which
18 may provide equivalence to completion of formal educational
19 requirements.

20 Sec. 5177. (1) An individual applying for licensure or
21 registration under this article shall do so on a form provided by
22 the department. The department shall require each applicant to
23 include on the application form his or her social security
24 number. The department shall not display an applicant's social
25 security number on his or her license or registration. If the
26 facts set forth in the application meet the requirements of the
27 board or task force and this article for licensure or

1 registration, the board or task force shall grant a license or
2 registration to the applicant. A board or task force may require
3 the applicant to take an examination to determine if the
4 applicant meets the qualifications for licensure or registration.
5 The examination shall include subjects determined by the board or
6 task force to be essential to the safe and competent practice of
7 the health profession, the appropriate use of a title, or both.
8 Passing scores or the procedure used to determine passing scores
9 shall be established before an examination is administered.

10 (2) In addition to the information required under subsection
11 (1), an applicant for licensure or registration or a licensee or
12 registrant applying for renewal shall include on a form provided
13 by the department all of the following information, if
14 applicable:

15 (a) A felony conviction.

16 (b) A misdemeanor conviction punishable by imprisonment for
17 a maximum term of 2 years or a misdemeanor conviction involving
18 the illegal delivery, possession, or use of alcohol or a
19 controlled substance.

20 (c) Sanctions imposed against the applicant by a similar
21 licensure, registration, certification, or disciplinary board of
22 another state or country.

23 (3) A requirement under this section to include a social
24 security number on an application does not apply to an applicant
25 who demonstrates he or she is exempt under law from obtaining a
26 social security number or to an applicant who for religious
27 convictions is exempt under law from disclosure of his or her

1 social security number under these circumstances. The department
2 shall inform the applicant of this possible exemption.

3 Sec. 5178. (1) Unless otherwise necessary for a board to
4 fulfill national or regional testing requirements, the department
5 shall conduct examinations or other evaluations necessary to
6 determine qualifications of applicants for initial licensure or
7 registration at least annually and may conduct other
8 investigations or evaluations necessary to determine the
9 qualifications of applicants. A board may accept passing a
10 national or regional examination developed for use in the United
11 States for the purpose of meeting a state board examination or a
12 part thereof.

13 (2) An individual who fails to pass a required examination
14 may be reexamined to the extent and in a manner determined by the
15 board.

16 (3) The department shall give public notice of the time and
17 place of a required regular initial licensure or registration
18 examination or evaluation in a manner it considers best not less
19 than 90 days before the date of the examination or evaluation.

20 Sec. 5179. An individual shall not make a false
21 representation or impersonation or act as a proxy for another
22 individual or allow or aid an individual to impersonate him or
23 her in connection with an examination or application for
24 licensure or registration or a request to be examined, licensed,
25 or registered.

26 Sec. 5181. (1) Except as otherwise provided in subsection
27 (2), a board may grant a nonrenewable, temporary license to an

1 applicant who has completed all requirements for licensure except
2 for examination or other required evaluation procedure. A board
3 shall not grant a temporary license to an individual who has
4 previously failed the examination or other required evaluation
5 procedure or whose license has been suspended or revoked. A
6 temporary license issued pursuant to this section is valid for 18
7 months, but a board shall automatically void the temporary
8 license if the applicant fails the examination or other required
9 evaluation procedure.

10 (2) The holder of a temporary license issued under
11 subsection (1) shall practice only under the supervision of a
12 licensee who holds a license, other than a health profession
13 subfield license, in the same health profession. The holder of a
14 temporary license issued under subsection (1) shall not be
15 supervised by a licensee who holds a limited license or temporary
16 license.

17 (3) The department shall promptly issue a temporary license.

18 Sec. 5182. (1) A board may grant a limited license to an
19 individual if the board determines that the limitation is
20 consistent with the ability of the individual to practice the
21 health profession in a safe and competent manner, is necessary to
22 protect the health and safety of patients or clients, or is
23 appropriate to promote the efficient and effective delivery of
24 health care services.

25 (2) In addition to the licenses issued under subsection (1),
26 a board may grant the following types of limited licenses upon
27 application by an individual or upon its own determination:

1 (a) Educational, to an individual engaged in postgraduate
2 education.

3 (b) Nonclinical, to an individual who functions only in a
4 nonclinical academic, research, or administrative setting and who
5 does not hold himself or herself out to the public as being
6 actively engaged in the practice of the health profession, or
7 otherwise directly solicit patients or clients.

8 (c) Clinical academic, to an individual who practices the
9 health profession only as part of an academic institution and
10 only in connection with his or her employment or other
11 contractual relationship with that academic institution.

12 Sec. 5186. (1) An individual who is licensed to practice a
13 health profession in another state, who is registered in another
14 state, or who holds a health profession specialty certification
15 from another state and who applies for licensure, registration,
16 or specialty certification license in this state may be granted
17 an appropriate license or registration or specialty certification
18 upon satisfying the board or task force to which the applicant
19 applies as to all of the following:

20 (a) The applicant substantially meets the requirements of
21 this article and rules promulgated under this article for
22 licensure, registration, or specialty certification.

23 (b) The applicant is licensed, registered, or specialty
24 certified in another state that maintains standards substantially
25 equivalent to those of this state.

26 (2) Before granting a license, registration, or specialty
27 certification, the board or task force to which the applicant

1 applies may require the applicant to appear personally before it
2 for an interview to evaluate the applicant's relevant
3 qualifications.

4 Sec. 5191. (1) The department shall issue a certificate of
5 licensure or registration to an applicant who is granted a
6 license or registration by a board.

7 (2) A licensee or registrant shall display his or her
8 current certificate of licensure or registration prominently and
9 where visible to the public in the licensee's or registrant's
10 principal place of business, if any.

11 (3) A licensee or registrant shall have available for
12 inspection a card, which shall be issued by the department,
13 containing the essential information on the certificate.

14 (4) If a license is limited by a board, the licensee shall
15 display the statement of limitation prepared by the department in
16 the same manner as prescribed for display of the certificate and
17 shall attach the statement to the certificate or display the
18 statement in immediate proximity with the certificate.

19 Sec. 5192. (1) A licensee or registrant shall report to the
20 department a change in name or mailing address not later than 30
21 days after the change occurs.

22 (2) The department may serve a notice of hearing or a
23 complaint on an applicant, licensee, or registrant in an action
24 or proceeding for a violation of this article or article 7 of the
25 public health code or a rule promulgated under this article or
26 article 7 of the public health code by regular mail and by
27 certified mail, return receipt requested, to the applicant's,

1 licensee's, or registrant's last known address, by serving the
2 notice on the applicant, licensee, or registrant, or by making a
3 reasonable attempt to serve the notice on the applicant,
4 licensee, or registrant. For purposes of this subsection, if
5 service is by mail, service is effective 3 days after the date of
6 mailing, and nondelivery does not affect the validity of the
7 service if the nondelivery was caused by the refusal of the
8 applicant, licensee, or registrant to accept service.

9 (3) A license or registration is not transferable.

10 Sec. 5193. Acceptance of a license or registration under
11 this article constitutes implied consent to submit to a chemical
12 analysis under section 430 of the Michigan penal code, 1931 PA
13 328, MCL 750.430.

14 Sec. 5194. (1) Licenses and registrations for health
15 professions expire on dates prescribed by the department by rule,
16 unless sooner terminated by death of the individual licensed or
17 registered or otherwise terminated pursuant to this part.

18 (2) The department or the appropriate board has the
19 administrative authority to issue part-term licenses and
20 registrations due to changing the terms from annual to a longer
21 term in subsection (1) and to provide for initial issuances for
22 terms longer or shorter than a normal term.

23 Sec. 5196. The license or registration of an individual
24 practicing his or her profession while in active service in the
25 military service of the United States, an auxiliary thereof, or
26 the United States public health service, who was licensed or
27 registered at the time of induction or entering into service,

1 continues in effect without further action by the individual
2 until discharge or leaving the service. The individual shall
3 notify the board of the military service or federal employment
4 and the cessation thereof.

5 Sec. 5201. (1) A license or registration shall be renewed by
6 the licensee or registrant on or before the expiration date as
7 prescribed by rule. The department shall mail a notice to the
8 licensee or registrant at the last known address on file with a
9 board advising of the time, procedure, and fee for renewal.
10 Failure of the licensee or registrant to receive notice under
11 this subsection does not relieve the licensee or registrant of
12 the responsibility for renewing his or her license or
13 registration.

14 (2) A license or registration not renewed by the expiration
15 date may be renewed within 60 days of the expiration date upon
16 application, payment of renewal, and late renewal fees, and
17 fulfillment of any continued competency or continuing education
18 requirements set forth in this article or rules promulgated under
19 this article. The licensee or registrant may continue to practice
20 and use the title during the 60-day time period.

21 (3) If a license or registration is not renewed within 60
22 days of the expiration date pursuant to subsection (2), the
23 license or registration shall be considered null and void. The
24 licensee shall not practice or use the title, and a registrant
25 shall not use the title. Except as otherwise provided by rule, a
26 person may be relicensed or reregistered within 3 years of the
27 expiration date upon application, payment of the application

1 processing, renewal, and late renewal fees, and fulfillment of
2 any continued competency or continuing education requirements in
3 effect at the time of the expiration date, or which would have
4 been required had the individual renewed his or her license or
5 registration pursuant to subsection (1). A temporary license or
6 registration may be issued under section 5181 pending the results
7 of action taken under this subsection.

8 (4) Except as otherwise provided in this article or by rule,
9 a person may be relicensed or reregistered more than 3 years
10 after the expiration date upon application as a new applicant,
11 meeting all licensure or registration requirements in effect at
12 the time of application, taking or retaking and passing any
13 examinations required for initial licensure or registration, and
14 payment of fees required of new applicants.

15 (5) The expiration or surrender of a license or registration
16 does not terminate the board's authority to impose sanctions on
17 the licensee or registrant whose license or registration has
18 expired or been surrendered.

19 Sec. 5204. (1) If the completion of continuing education is
20 a condition for renewal, the appropriate board shall by rule
21 require an applicant for renewal to complete an appropriate
22 number of hours or courses in pain and symptom management. Rules
23 promulgated by a board under section 16205(2) of the public
24 health code for continuing education in pain and symptom
25 management shall cover both course length and content and shall
26 take into consideration the recommendation for that health care
27 profession by the interdisciplinary advisory committee created in

1 section 16204a of the public health code. A board shall submit
2 the notice of public hearing for the rules as required under
3 section 42 of the administrative procedures act of 1969, 1969 PA
4 306, MCL 24.242, not later than 90 days after the first
5 interdisciplinary advisory committee makes its initial
6 recommendations and shall promulgate the rules as expeditiously
7 as possible.

8 (2) If a board proposes rules under section 16205(2) of the
9 public health code to institute a requirement that continuing
10 education be a mandatory condition for the renewal of a license
11 or registration issued under this article, the rules shall
12 require, as part of the continuing education requirements,
13 completion of an appropriate number of hours or courses in pain
14 and symptom management, taking into consideration the
15 recommendation for that health care profession by the
16 interdisciplinary advisory committee created in section 16204a of
17 the public health code.

18 Sec. 5205. (1) A board which requires evidence of attendance
19 at educational programs as a condition to license renewal may
20 waive those requirements if, upon written application, the board
21 finds the failure of the licensee to attend was due to the
22 licensee's disability, military service, absence from the
23 continental United States, or a circumstance beyond the control
24 of the licensee which the board considers good and sufficient.

25 (2) A board may promulgate rules to establish a system of
26 assessing the continued competence of licensees as a condition of
27 periodic license renewal.

1 Sec. 5211. (1) The department shall create and maintain a
2 permanent historical record for each licensee and registrant with
3 respect to information and data transmitted pursuant to law.

4 (2) The individual historical record shall include a written
5 allegation against the licensee or registrant that is
6 substantiated after investigation.

7 (3) The individual historical record may include other items
8 concerning a licensee's or registrant's record of practice that
9 the appropriate board determines will facilitate proper and
10 periodic review, but only those items as designated by rule.

11 (4) The department shall promptly review the entire file of
12 a licensee or registrant, including all prior matters with
13 respect to which no action was taken at the time, with respect to
14 whom there is received 1 or more of the following:

15 (a) A notice of revocation, suspension, or limitation of
16 staff privileges or a change in employment status due to
17 disciplinary action by a licensed health facility.

18 (b) A written allegation of a violation of this article,
19 article 7 of the public health code, or a rule promulgated under
20 this article or article 7 of the public health code that is
21 substantiated after investigation.

22 (c) A notice of disciplinary action by a health professional
23 society.

24 (d) An adverse malpractice settlement, award, or judgment.

25 (e) Written notice of 1 or more of the following:

26 (i) A felony conviction.

27 (ii) A misdemeanor conviction punishable by imprisonment for

1 a maximum term of 2 years.

2 (iii) A misdemeanor conviction, if the misdemeanor involves
3 the illegal delivery, possession, or use of alcohol or a
4 controlled substance.

5 (f) Notice that a licensee or registrant is ineligible to
6 participate as a provider in a federally funded health insurance
7 or health benefits program based upon the licensee's or
8 registrant's failure to meet the program's standards of
9 professional practice. A certified copy of the action or final
10 order making the licensee or registrant ineligible is sufficient
11 notice for purposes of this subdivision.

12 (g) A report or notice under section 5222.

13 (h) Notice of a disciplinary action by a licensure,
14 registration, disciplinary, or specialty certification board in
15 another state.

16 (5) The department shall retain written allegations that are
17 unsubstantiated for 5 years, after which the department shall
18 remove the allegations from the file, if no further allegations
19 against the licensee or registrant have been received by the
20 department within the 5-year period.

21 (6) Except as provided in section 5231(6), a licensee,
22 registrant, or applicant may review his or her individual
23 historical record.

24 Sec. 5215. (1) Subject to subsections (2) to (6), a licensee
25 who holds a license may delegate to a licensed or unlicensed
26 individual who is otherwise qualified by education, training, or
27 experience the performance of selected acts, tasks, or functions

1 where the acts, tasks, or functions fall within the scope of
2 practice of the licensee's profession and will be performed under
3 the licensee's supervision. A licensee shall not delegate an act,
4 task, or function under this section if the act, task, or
5 function, under standards of acceptable and prevailing practice,
6 requires the level of education, skill, and judgment required of
7 the licensee under this article.

8 (2) A board may promulgate rules to further prohibit or
9 otherwise restrict delegation of specific acts, tasks, or
10 functions to a licensed or unlicensed individual if the board
11 determines that the delegation constitutes or may constitute a
12 danger to the health, safety, or welfare of the patient or
13 public.

14 (3) To promote safe and competent practice, a board may
15 promulgate rules to specify conditions under which, and
16 categories and types of licensed and unlicensed individuals for
17 whom, closer supervision may be required for acts, tasks, and
18 functions delegated under this section.

19 (4) An individual who performs acts, tasks, or functions
20 delegated pursuant to this section does not violate the part that
21 regulates the scope of practice of that health profession.

22 Sec. 5216. (1) The chair of each board or task force shall
23 appoint 1 or more disciplinary subcommittees for that board or
24 task force. A disciplinary subcommittee for a board or task force
25 shall consist of 2 public members and 3 professional members from
26 the board or task force. The chair of a board or task force shall
27 not serve as a member of a disciplinary subcommittee.

1 (2) A final decision of the disciplinary subcommittee
2 finding a violation of this article or article 7 of the public
3 health code shall be by a majority vote of the members appointed
4 and serving on the disciplinary subcommittee.

5 (3) A final decision of the disciplinary subcommittee
6 imposing a sanction under this article or article 7 of the public
7 health code or a final decision of the disciplinary subcommittee
8 other than a final decision described in subsection (2) requires
9 a majority vote of the members appointed and serving on the
10 disciplinary subcommittee with an affirmative vote by at least 1
11 public member.

12 (4) The chairperson of each disciplinary subcommittee shall
13 be a public member and shall be appointed by the chair of the
14 board or task force.

15 Sec. 5221. The department may investigate activities related
16 to the practice of a health profession by a licensee, a
17 registrant, or an applicant for licensure or registration. The
18 department may hold hearings, administer oaths, and order
19 relevant testimony to be taken and shall report its findings to
20 the appropriate disciplinary subcommittee. The disciplinary
21 subcommittee shall proceed under section 5226 if it finds that 1
22 or more of the following grounds exist:

23 (a) A violation of general duty, consisting of negligence or
24 failure to exercise due care, including negligent delegation to
25 or supervision of employees or other individuals, whether or not
26 injury results, or any conduct, practice, or condition that
27 impairs, or may impair, the ability to safely and skillfully

1 practice the health profession.

2 (b) Personal disqualifications, consisting of 1 or more of
3 the following:

4 (i) Incompetence.

5 (ii) Subject to sections 16165 to 16170a of the public health
6 code, substance abuse as defined in section 6107.

7 (iii) Mental or physical inability reasonably related to and
8 adversely affecting the licensee's ability to practice in a safe
9 and competent manner.

10 (iv) Declaration of mental incompetence by a court of
11 competent jurisdiction.

12 (v) Conviction of a misdemeanor punishable by imprisonment
13 for a maximum term of 2 years; a misdemeanor involving the
14 illegal delivery, possession, or use of a controlled substance;
15 or a felony. A certified copy of the court record is conclusive
16 evidence of the conviction.

17 (vi) Lack of good moral character.

18 (vii) Conviction of a criminal offense under sections 520b to
19 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to
20 750.520g. A certified copy of the court record is conclusive
21 evidence of the conviction.

22 (viii) Conviction of a violation of section 492a of the
23 Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy
24 of the court record is conclusive evidence of the conviction.

25 (ix) Conviction of a misdemeanor or felony involving fraud in
26 obtaining or attempting to obtain fees related to the practice of
27 a health profession. A certified copy of the court record is

1 conclusive evidence of the conviction.

2 (x) Final adverse administrative action by a licensure,
3 registration, disciplinary, or certification board involving the
4 holder of, or an applicant for, a license or registration
5 regulated by another state or a territory of the United States,
6 by the United States military, by the federal government, or by
7 another country. A certified copy of the record of the board is
8 conclusive evidence of the final action.

9 (xi) Conviction of a misdemeanor that is reasonably related
10 to or that adversely affects the licensee's ability to practice
11 in a safe and competent manner. A certified copy of the court
12 record is conclusive evidence of the conviction.

13 (xii) Conviction of a violation of section 430 of the
14 Michigan penal code, 1931 PA 328, MCL 750.430. A certified copy
15 of the court record is conclusive evidence of the conviction.

16 (c) Prohibited acts, consisting of 1 or more of the
17 following:

18 (i) Fraud or deceit in obtaining or renewing a license or
19 registration.

20 (ii) Permitting the license or registration to be used by an
21 unauthorized person.

22 (iii) Practice outside the scope of a license.

23 (iv) Obtaining, possessing, or attempting to obtain or
24 possess a controlled substance or a drug as defined in section
25 7105 of the public health code without lawful authority; or
26 selling, prescribing, giving away, or administering drugs for
27 other than lawful diagnostic or therapeutic purposes.

1 (d) Unethical business practices, consisting of 1 or more of
2 the following:

3 (i) False or misleading advertising.

4 (ii) Dividing fees for referral of patients or accepting
5 kickbacks on medical or surgical services, appliances, or
6 medications purchased by or in behalf of patients.

7 (iii) Fraud or deceit in obtaining or attempting to obtain
8 third party reimbursement.

9 (e) Unprofessional conduct, consisting of 1 or more of the
10 following:

11 (i) Misrepresentation to a consumer or patient or in
12 obtaining or attempting to obtain third party reimbursement in
13 the course of professional practice.

14 (ii) Betrayal of a professional confidence.

15 (iii) Promotion for personal gain of an unnecessary drug,
16 device, treatment, procedure, or service.

17 (iv) A requirement by a licensee that an individual purchase
18 or secure a drug, device, treatment, procedure, or service from
19 another person, place, facility, or business in which the
20 licensee has a financial interest.

21 (f) Failure to report a change of name or mailing address
22 within 30 days after the change occurs.

23 (g) A violation, or aiding or abetting in a violation, of
24 this article or of a rule promulgated under this article.

25 (h) Failure to comply with a subpoena issued pursuant to
26 this part, failure to respond to a complaint issued under this
27 article or article 7 of the public health code, failure to appear

1 at a compliance conference or an administrative hearing, or
2 failure to report under section 5222 or 5223.

3 (i) Failure to pay an installment of an assessment levied
4 pursuant to the insurance code of 1956, 1956 PA 218, MCL 500.100
5 to 500.8302, within 60 days after notice by the appropriate
6 board.

7 (j) Failure to meet 1 or more of the requirements for
8 licensure or registration under section 5174.

9 (k) A violation of the medical records access act.

10 Sec. 5222. (1) A licensee or registrant having knowledge
11 that another licensee or registrant has committed a violation
12 under section 5221 or article 7 of the public health code or a
13 rule promulgated under article 7 of the public health code shall
14 report the conduct and the name of the subject of the report to
15 the department. Information obtained by the department under this
16 subsection is confidential and is subject to sections 5238 and
17 5244. Failure of a licensee or registrant to make a report under
18 this subsection does not give rise to a civil cause of action for
19 damages against the licensee or registrant, but the licensee or
20 registrant is subject to administrative action under sections
21 5221 and 5226. This subsection does not apply to a licensee or
22 registrant who obtains the knowledge of a violation while
23 providing professional services to the licensee or registrant to
24 whom the knowledge applies, who is serving on a duly constituted
25 ethics or peer review committee of a professional association, or
26 who is serving on a committee assigned a professional review
27 function in a health facility or agency.

1 (2) Unless the licensee or registrant making the report
2 otherwise agrees in writing, the identity of the licensee or
3 registrant making the report shall remain confidential unless
4 disciplinary proceedings under this part are initiated against
5 the subject of the report and the licensee or registrant making
6 the report is required to testify in the proceedings.

7 (3) A licensee or registrant shall notify the department of
8 a criminal conviction or a disciplinary licensing or registration
9 action taken by another state against the licensee or registrant
10 within 30 days after the date of the conviction or action. This
11 subsection includes, but is not limited to, a disciplinary action
12 that is stayed pending appeal.

13 Sec. 5223. (1) Except as otherwise provided in this section,
14 a licensee or registrant who has reasonable cause to believe that
15 a licensee, registrant, or applicant is impaired shall report
16 that fact to the department. For purposes of this subsection, a
17 report filed with the committee or with the program consultants
18 described in section 16168 of the public health code is
19 considered to be filed with the department. A licensee or
20 registrant who fails to report under this subsection is not
21 liable in a civil action for damages resulting from the failure
22 to report, but the licensee or registrant is subject to
23 administrative action under sections 5221 and 5226.

24 (2) This section does not apply to a licensee or registrant
25 who is in a bona fide health professional-patient relationship
26 with a licensee, registrant, or applicant believed to be
27 impaired.

1 (3) A licensee or registrant who in good faith complies with
 2 this section is not liable for damages in a civil action or
 3 subject to prosecution in a criminal proceeding as a result of
 4 the compliance.

5 Sec. 5224. (1) Failure or refusal to submit to an
 6 examination that the department, a disciplinary subcommittee, or
 7 a board or task force is authorized to require under this part
 8 after reasonable notice and opportunity for a hearing constitutes
 9 a ground for denial or suspension of a license or registration
 10 until the examination is taken.

11 (2) Additional grounds for disciplinary action may be found
 12 in a part dealing with a specific health profession.

13 Sec. 5226. (1) After finding the existence of 1 or more of
 14 the grounds for disciplinary subcommittee action referred to in
 15 section 5221, a disciplinary subcommittee shall impose 1 or more
 16 of the following sanctions for each violation:

<u>Violations of Section 5221</u>	<u>Sanctions</u>
18 Subdivision (a), (b)(ii), 19 (b)(iv), (b)(vi), or 20 (b)(vii)	Probation, limitation, denial, suspension, revocation, restitution, community service, or fine.
22 Subdivision (b)(viii)	Revocation or denial.
23 Subdivision (b)(i), 24 (b)(iii), (b)(v), 25 (b)(ix), (b)(x), 26 (b)(xi), or (b)(xii)	Limitation, suspension, revocation, denial, probation, restitution, community service, or fine.
27 Subdivision (c)(i)	Denial, revocation, suspension, probation, limitation, community

1 service, or fine.
 2 Subdivision (c)(ii) Denial, suspension, revocation,
 3 restitution, community service,
 4 or fine.
 5 Subdivision (c)(iii) Probation, denial, suspension,
 6 revocation, restitution,
 7 community service, or fine.
 8 Subdivision (c)(iv) Fine, probation, denial,
 9 or (d)(iii) suspension, revocation, community
 10 service, or restitution.
 11 Subdivision (d)(i) Reprimand, fine, probation,
 12 or (d)(ii) community service, denial,
 13 or restitution.
 14 Subdivision (e)(i) Reprimand, fine, probation,
 15 limitation, suspension, community
 16 service, denial, or restitution.
 17 Subdivision (e)(ii) Reprimand, probation,
 18 or (h) suspension, restitution,
 19 community service, denial, or
 20 fine.
 21 Subdivision (e)(iii) Reprimand, fine, probation,
 22 or (e)(iv) suspension, revocation,
 23 limitation, community service,
 24 denial, or restitution.
 25 Subdivision (f) Reprimand or fine.
 26 Subdivision (g) or (k) Reprimand, probation, denial,
 27 suspension, revocation,
 28 limitation, restitution,
 29 community service, or fine.
 30 Subdivision (i) Suspension or fine.
 31 Subdivision (j) Reprimand, denial, or

1 limitation.

2 (2) Determination of sanctions for violations under this
3 section shall be made by a disciplinary subcommittee. If, during
4 judicial review, the court of appeals determines that a final
5 decision or order of a disciplinary subcommittee prejudices
6 substantial rights of the petitioner for 1 or more of the grounds
7 listed in section 106 of the administrative procedures act of
8 1969 and holds that the final decision or order is unlawful and
9 is to be set aside, the court shall state on the record the
10 reasons for the holding and may remand the case to the
11 disciplinary subcommittee for further consideration.

12 (3) A disciplinary subcommittee may impose a fine of up to,
13 but not exceeding, \$250,000.00 for a violation of section 5221(a)
14 or (b) of the public health code.

15 (4) A disciplinary subcommittee may require a licensee or
16 registrant or an applicant for licensure or registration who has
17 violated this article or article 7 of the public health code or a
18 rule promulgated under this article or article 7 of the public
19 health code to satisfactorily complete an educational program, a
20 training program, or a treatment program, a mental, physical, or
21 professional competence examination, or a combination of those
22 programs and examinations.

23 Sec. 5227. (1) For an offense committed within 2 years after
24 a previous offense of the same kind, a disciplinary subcommittee
25 may suspend or revoke the license or registration.

26 (2) Section 5226 and this section do not limit any other

1 sanction or additional action a disciplinary subcommittee is
2 authorized to impose or take.

3 Sec. 5231. (1) A person or governmental entity that believes
4 that a violation of this article or article 7 of the public
5 health code or a rule promulgated under this article or article 7
6 of the public health code exists may make an allegation of that
7 fact to the department in writing.

8 (2) If, upon reviewing an application or an allegation or a
9 licensee's file under section 5211(4), the department determines
10 there is a reasonable basis to believe the existence of a
11 violation of this article or article 7 or a rule promulgated
12 under this article or article 7, the department, with the
13 authorization of the chair of the applicant's, licensee's, or
14 registrant's board or task force or his or her designee, shall
15 investigate. If the chair or his or her designee fails to grant
16 or deny authorization within 7 days after receipt of a request
17 for authorization, the department shall investigate.

18 (3) Upon the receipt of information reported pursuant to
19 section 5243(2) that indicates 3 or more malpractice settlements,
20 awards, or judgments against a licensee in a period of 5
21 consecutive years or 1 or more malpractice settlements, awards,
22 or judgments against a licensee totaling more than \$200,000.00 in
23 a period of 5 consecutive years, whether or not a judgment or
24 award is stayed pending appeal, the department shall investigate.

25 (4) At any time during an investigation or following the
26 issuance of a complaint, the department may schedule a compliance
27 conference pursuant to section 92 of the administrative

1 procedures act of 1969. The conference may include the applicant,
2 licensee, or registrant, the applicant's, licensee's, or
3 registrant's attorney, 1 member of the department's staff, and
4 any other individuals approved by the department. One member of
5 the appropriate board or task force who is not a member of the
6 disciplinary subcommittee with jurisdiction over the matter may
7 attend the conference and provide such assistance as needed. At
8 the compliance conference, the department shall attempt to reach
9 agreement. If an agreement is reached, the department shall
10 submit a written statement outlining the terms of the agreement,
11 or a stipulation and final order, if applicable, or a request for
12 dismissal to the appropriate disciplinary subcommittee for
13 approval. If the agreement or stipulation and final order or
14 request for dismissal is rejected by the disciplinary
15 subcommittee, or if no agreement is reached, a hearing before a
16 hearings examiner shall be scheduled. A party shall not make a
17 transcript of the compliance conference. All records and
18 documents of a compliance conference held before a complaint is
19 issued are subject to section 5238.

20 (5) Within 90 days after an investigation is initiated under
21 subsection (2) or (3), the department shall do 1 or more of the
22 following:

- 23 (a) Issue a formal complaint.
- 24 (b) Conduct a compliance conference under subsection (4).
- 25 (c) Issue a summary suspension.
- 26 (d) Issue a cease and desist order.
- 27 (e) Dismiss the complaint.

1 (f) Place in the complaint file not more than 1 written
2 extension of not more than 30 days to take action under this
3 subsection.

4 (6) Unless the person submitting the allegation under
5 subsection (1) otherwise agrees in writing, the department shall
6 keep the identity of a person submitting the allegation
7 confidential until disciplinary proceedings under this part are
8 initiated against the subject of the allegation and the person
9 making the allegation is required to testify in the proceedings.

10 (7) The department shall serve a complaint pursuant to
11 section 5192. The department shall include in the complaint a
12 notice that the applicant, licensee, or registrant who is the
13 subject of the complaint has 30 days from the date of receipt to
14 respond in writing to the complaint.

15 (8) The department shall treat the failure of the applicant,
16 licensee, or registrant to respond to the complaint within the
17 30-day period set forth in subsection (7) as an admission of the
18 allegations contained in the complaint. The department shall
19 notify the appropriate disciplinary subcommittee of the
20 individual's failure to respond and shall forward a copy of the
21 complaint to that disciplinary subcommittee. The disciplinary
22 subcommittee may then impose an appropriate sanction under this
23 article or article 7 of the public health code.

24 Sec. 5231a. (1) If an agreement is not reached at a
25 compliance conference held under section 5231(4), or if an
26 agreement is reached but is rejected by a disciplinary
27 subcommittee and the parties do not reach a new agreement, the

1 department shall hold a hearing before a hearings examiner
2 employed by or under contract to the department. If an agreement
3 is reached but is rejected by the disciplinary subcommittee, the
4 department shall not hold another compliance conference, but may
5 continue to try and reach a new agreement. The hearings examiner
6 shall conduct the hearing within 60 days after the compliance
7 conference at which an agreement is not reached or after the
8 agreement is rejected by the disciplinary subcommittee, unless a
9 new agreement is reached and approved by the disciplinary
10 subcommittee. One member of the appropriate board or task force
11 who is not a member of the disciplinary subcommittee with
12 jurisdiction over the matter may attend the hearing and provide
13 such assistance as needed.

14 (2) The hearings examiner shall determine if there are
15 grounds for disciplinary action under section 5221 or if the
16 applicant, licensee, or registrant has violated this article or
17 article 7 of the public health code or the rules promulgated
18 under this article or article 7 of the public health code. The
19 hearings examiner shall prepare recommended findings of fact and
20 conclusions of law for transmittal to the appropriate
21 disciplinary subcommittee. The hearings examiner shall not
22 recommend or impose penalties.

23 (3) The applicant, licensee, or registrant who is the
24 subject of the complaint or the department of attorney general
25 may request and be granted not more than 1 continuance by the
26 hearings examiner for good cause shown.

27 (4) The applicant, licensee, or registrant may be

1 represented at the hearing by legal counsel. The department shall
2 be represented at the hearing by an assistant attorney general
3 from the department of attorney general. The assistant attorney
4 general shall not be the same individual assigned by the
5 department of attorney general to provide legal counsel to the
6 board or the special assistant attorney general described in
7 section 5237.

8 (5) Unless a continuance has been granted under subsection
9 (3), failure of an applicant, licensee, or registrant to appear
10 or be represented at a scheduled hearing shall be treated by the
11 hearings examiner as a default and an admission of the
12 allegations contained in the complaint. The hearings examiner
13 shall notify the appropriate disciplinary subcommittee of the
14 individual's failure to appear and forward a copy of the
15 complaint and any other relevant records to the disciplinary
16 subcommittee. The disciplinary subcommittee may then impose an
17 appropriate sanction under this article or article 7 of the
18 public health code, or both.

19 Sec. 5232. (1) The department shall provide an opportunity
20 for a hearing in connection with the denial, reclassification,
21 limitation, reinstatement, suspension, or revocation of a license
22 or a proceeding to reprimand, fine, order community service or
23 restitution, or place a licensee on probation.

24 (2) The department shall provide an opportunity for a
25 hearing in connection with the denial, limitation, suspension,
26 revocation, or reinstatement of a registration or a proceeding to
27 reprimand, fine, order community service or restitution, or place

1 a registrant on probation.

2 (3) A disciplinary subcommittee shall meet within 60 days
3 after receipt of the recommended findings of fact and conclusions
4 of law from a hearings examiner to impose a penalty.

5 (4) Only the department shall promulgate rules governing
6 hearings under this article or article 7 of the public health
7 code and related preliminary proceedings.

8 Sec. 5233. (1) The department may conduct an investigation
9 necessary to administer and enforce this article. Investigations
10 may include written, oral, or practical tests of a licensee's or
11 registrant's competency. The department may establish a special
12 paralegal unit to assist the department.

13 (2) The department may order an individual to cease and
14 desist from a violation of this article or article 7 of the
15 public health code or a rule promulgated under this article or
16 article 7 of the public health code.

17 (3) An individual ordered to cease and desist under
18 subsection (2) is entitled to a hearing before a hearings
19 examiner if the individual files a written request for a hearing
20 within 30 days after the effective date of the cease and desist
21 order. The department shall subsequently present the notice, if
22 any, of the applicant's, licensee's, or registrant's failure to
23 respond to a complaint, or attend or be represented at a hearing
24 as described in section 5231 or 5231a, or the recommended
25 findings of fact and conclusions of law to the appropriate
26 disciplinary subcommittee to determine whether the order is to
27 remain in effect or be dissolved.

1 (4) Upon a violation of a cease and desist order issued
2 under subsection (2), the department of attorney general may
3 apply in the circuit court to restrain and enjoin, temporarily or
4 permanently, an individual from further violating the cease and
5 desist order.

6 (5) After consultation with the chair of the appropriate
7 board or task force or his or her designee, the department may
8 summarily suspend a license or registration if the public health,
9 safety, or welfare requires emergency action in accordance with
10 section 92 of the administrative procedures act of 1969. If a
11 licensee or registrant is convicted of a felony, a misdemeanor
12 punishable by imprisonment for a maximum term of 2 years, or a
13 misdemeanor involving the illegal delivery, possession, or use of
14 a controlled substance, the department shall find that the public
15 health, safety, or welfare requires emergency action and, in
16 accordance with section 92 of the administrative procedures act
17 of 1969, shall summarily suspend the licensee's license or the
18 registrant's registration. If a licensee or registrant is
19 convicted of a misdemeanor involving the illegal delivery,
20 possession, or use of alcohol that adversely affects the
21 licensee's ability to practice in a safe and competent manner,
22 the department may find that the public health, safety, or
23 welfare requires emergency action and, in accordance with section
24 92 of the administrative procedures act of 1969, may summarily
25 suspend the licensee's license or the registrant's registration.

26 Sec. 5234. The department may hold hearings and administer
27 oaths and order testimony to be taken at a hearing or by

1 deposition conducted pursuant to the administrative procedures
2 act of 1969.

3 Sec. 5235. (1) Upon application by the attorney general or a
4 party to a contested case, the circuit court may issue a subpoena
5 requiring a person to appear before a hearings examiner in a
6 contested case or before the department in an investigation and
7 be examined with reference to a matter within the scope of that
8 contested case or investigation and to produce books, papers, or
9 documents pertaining to that contested case or investigation. A
10 subpoena issued under this subsection may require a person to
11 produce all books, papers, and documents pertaining to all of a
12 licensee's or registrant's patients in a long-term care facility
13 or adult foster care facility on a particular day if the
14 allegation that gave rise to the disciplinary proceeding was made
15 by or pertains to 1 or more of those patients.

16 (2) A copy of a record of a board or a task force or a
17 disciplinary subcommittee or a hearings examiner certified by a
18 person designated by the director is prima facie evidence of the
19 matters recorded and is admissible as evidence in a proceeding in
20 this state with the same force and effect as if the original were
21 produced.

22 Sec. 5236. (1) In a hearing or an investigation where mental
23 or physical inability or substance abuse under section 5221 or
24 impairment is alleged, a disciplinary subcommittee or a hearings
25 examiner or the department with the approval of a disciplinary
26 subcommittee may require the applicant, licensee, or registrant
27 to submit to a mental or physical examination conducted by

1 physicians or other appropriate health professionals designated
2 by the disciplinary subcommittee or the department. An
3 examination conducted under this subsection shall be at the
4 expense of the department.

5 (2) For purposes of this section, an individual licensed or
6 registered under this part who accepts the privilege of
7 practicing in this state, by so practicing or by receiving a
8 license or renewal to practice or by receiving registration, and
9 an individual who applies for licensure or registration, consents
10 to submit to a mental or physical examination under subsection
11 (1) when directed to do so in writing by a disciplinary
12 subcommittee, a hearings examiner, or the department. The
13 individual waives all objections to the admissibility of the
14 testimony or examination reports of the examining health
15 professional on the ground that the testimony or reports
16 constitute privileged communications.

17 Sec. 5237. (1) In imposing a penalty under section 5232(3),
18 a disciplinary subcommittee shall review the recommended findings
19 of fact and conclusions of law of the hearings examiner.

20 (2) The department of attorney general may assign an
21 independent special assistant attorney general who is under
22 contract to the department of attorney general and is not a
23 member of the state classified civil service to advise the
24 disciplinary subcommittees on matters of law and provide other
25 legal assistance as necessary. A special assistant attorney
26 general assigned to the disciplinary subcommittees under this
27 subsection shall not be the same individual who represented the

1 department before a hearings examiner under section 5231a(4).

2 (3) In reviewing the recommended findings of fact and
3 conclusions of law of the hearings examiner and the record of the
4 hearing, a disciplinary subcommittee may request the hearings
5 examiner to take additional testimony or evidence on a specific
6 issue or may revise the recommended findings of fact and
7 conclusions of law as determined necessary by the disciplinary
8 subcommittee, or both. A disciplinary subcommittee shall not
9 conduct its own investigation or take its own additional
10 testimony or evidence under this subsection.

11 (4) If a disciplinary subcommittee finds that a
12 preponderance of the evidence supports the recommended findings
13 of fact and conclusions of law of the hearings examiner
14 indicating that grounds exist for disciplinary action, the
15 disciplinary subcommittee shall impose an appropriate sanction
16 under this article or article 7 of the public health code, or
17 both. If the disciplinary subcommittee finds that a preponderance
18 of the evidence does not support the findings of fact and
19 conclusions of law of the hearings examiner indicating that
20 grounds exist for disciplinary action, the disciplinary
21 subcommittee shall dismiss the complaint. A disciplinary
22 subcommittee shall report final action taken by it in writing to
23 the appropriate board or task force.

24 (5) The compliance conference, the hearing before the
25 hearings examiner, and final disciplinary subcommittee action
26 shall be completed within 1 year after the department initiates
27 an investigation under section 5231(2) or (3). The department

1 shall note in its annual report any exceptions to the 1-year
2 requirement.

3 (6) A final decision of a disciplinary subcommittee may be
4 appealed only to the court of appeals. An appeal filed under this
5 subsection is by right.

6 Sec. 5238. (1) Except as otherwise provided in section
7 13(1)(u)(i) and (ii) of the freedom of information act, 1976 PA
8 442, MCL 15.243, the information including, but not limited to,
9 patient names, obtained in an investigation or a compliance
10 conference before a complaint is issued, is confidential and
11 shall not be disclosed except to the extent necessary for the
12 proper functioning of a hearings examiner, a disciplinary
13 subcommittee, or the department.

14 (2) A compliance conference conducted under this part before
15 a complaint is issued shall be closed to the public.

16 Sec. 5239. Each licensee or registrant who is in private
17 practice shall make available upon request of a patient a
18 pamphlet provided by the department outlining the procedure for
19 filing an allegation with the department under section 5231. The
20 department shall prepare the pamphlet in consultation with
21 appropriate professional associations and the boards and task
22 forces. The department shall prepare and print the pamphlet in
23 languages that are appropriate to the ethnic composition of the
24 patient population where the pamphlet will be available.

25 Sec. 5241. (1) After administrative disciplinary action is
26 final, the department shall publish a list of the names and
27 addresses of disciplined individuals. The department shall

1 indicate on the list that a final administrative disciplinary
2 action is subject to judicial review. The department shall report
3 disciplinary action to the commissioner of insurance, the state
4 and federal agencies responsible for fiscal administration of
5 federal health care programs, and the appropriate professional
6 association.

7 (2) Once each calendar year, the department shall transmit
8 to the library of Michigan sufficient copies of a compilation of
9 the lists required under subsection (1) for the immediately
10 preceding 3 calendar years. The library of Michigan shall
11 distribute the compilation to each depository library in the
12 state. The department also shall transmit the compilation to each
13 county clerk in the state once each calendar year.

14 (3) The department shall report the disciplinary actions to
15 appropriate licensed long-term care facilities and adult foster
16 care facilities. The commissioner of insurance shall report the
17 disciplinary actions received from the department to insurance
18 carriers providing professional liability insurance.

19 (4) In case of a summary suspension of a license under
20 section 5233(5), the department shall report the name and address
21 of the individual whose license has been suspended to the
22 commissioner of insurance, the state and federal agencies
23 responsible for fiscal administration of federal health care
24 programs, and the appropriate professional association.

25 (5) A licensee or registrant whose license or registration
26 is revoked or suspended under this article shall give notice of
27 the revocation or suspension to each patient who contacts the

1 licensee or registrant for professional services during the term
2 of the revocation or suspension. The notice required under this
3 subsection may be given orally and shall be given at the time of
4 contact.

5 (6) A licensee or registrant whose license or registration
6 is revoked or is suspended for more than 60 days under this
7 article shall notify in writing each patient or client to whom
8 the licensee or registrant rendered professional services in the
9 licensee's or registrant's private practice during the 120 days
10 immediately preceding the date of the final order imposing the
11 revocation or suspension and to each individual who is already
12 scheduled for professional services during the first 120 days
13 after the date of the final order imposing the revocation or
14 suspension. The notice shall be on a form provided by the
15 licensee's or registrant's board or task force and shall state,
16 at a minimum, the name, address, and license or registration
17 number of the licensee or registrant, the fact that his or her
18 license or registration has been revoked or suspended, the
19 effective date of the revocation or suspension, and the term of
20 the revocation or suspension. Each board or task force shall
21 develop a notice form that meets at least the minimum
22 requirements of this subsection. The licensee or registrant shall
23 send the notice to each patient or client to whom the licensee or
24 registrant rendered professional services in the licensee's or
25 registrant's private practice during the 120 days immediately
26 preceding the date of the final order imposing the revocation or
27 suspension within 30 days after the date of the final order

1 imposing the revocation or suspension and shall simultaneously
2 transmit a copy of the notice to the department. The licensee or
3 registrant orally shall notify each individual who contacts the
4 licensee or registrant for professional services during the first
5 120 days after the date of the final order imposing the
6 revocation or suspension. The licensee or registrant shall also
7 provide a copy of the notice within 10 days after the date of the
8 final order imposing the revocation or suspension to his or her
9 employer, if any, and to each hospital, if any, in which the
10 licensee or registrant is admitted to practice.

11 (7) A licensee or registrant who is reprimanded, fined,
12 placed on probation, or ordered to pay restitution under this
13 article or an applicant whose application for licensure or
14 registration is denied under this article shall notify his or her
15 employer, if any, and each hospital, if any, in which he or she
16 is admitted to practice, in the same manner as provided for
17 notice of revocation or suspension to an employer or hospital
18 under subsection (6), within 10 days after the date of the final
19 order imposing the sanction.

20 (8) The department annually shall report to the legislature
21 and to each board and task force on disciplinary actions taken
22 under this article and article 7 of the public health code. The
23 report shall contain, at a minimum, all of the following
24 information:

25 (a) Investigations conducted, complaints issued, and
26 settlements reached by the department of commerce, separated out
27 by type of complaint and health profession.

1 (b) Investigations and complaints closed or dismissed.

2 (c) Actions taken by each disciplinary subcommittee,
3 separated out by type of complaint, health profession, and final
4 order issued.

5 (d) Recommendations by boards and task forces.

6 (e) The number of extensions and delays granted by the
7 department that were in excess of the time limits required under
8 this article for each phase of the disciplinary process, and the
9 types of cases for which the extensions and delays were granted.

10 Sec. 5243. (1) The department or a disciplinary subcommittee
11 appointed under section 5216 may request and shall receive the
12 following reports:

13 (a) Information from a licensed long-term care facility or
14 adult foster care facility as to disciplinary action taken by it
15 pursuant to section 3127.

16 (b) Information from an insurer providing professional
17 liability insurance as to claims or actions for damages against a
18 licensee; settlements in any amount; final disposition not
19 resulting in payment on behalf of the insured; and a personal
20 injury claimed to have been caused by an error, omission, or
21 negligence in the performance of the insured professional
22 services. An insurer that receives a request under this
23 subdivision shall submit the information requested directly to
24 the department.

25 (c) Information from a court in this state as to a felony or
26 misdemeanor conviction or a judgment against a licensee or
27 registrant finding the licensee or registrant negligent in an

1 action for malpractice, whether or not the judgment is appealed.

2 (d) A report by a licensee or registrant under section 5222.

3 (e) Information provided by the state insurance commissioner
4 under sections 2477, 2477b, and 2477c of the insurance code of
5 1956, 1956 PA 218, MCL 500.2477, 500.2477b, and 500.2477c,
6 information provided by the national practitioner data bank, and
7 reports from the Michigan health care arbitration program.

8 (f) Reports from any other appropriate source necessary for
9 determination of the competency and safety of the practice of a
10 licensee. Appropriate sources include, but are not limited to,
11 appointed public and private professional review entities and
12 public and private health insurance programs.

13 (2) Within 10 days after the entry of a judgment against a
14 licensee finding the licensee negligent in an action for
15 malpractice or the approval by a court of a settlement in an
16 action for malpractice, the clerk of the court in which the
17 judgment was entered or the settlement approved shall prepare and
18 immediately forward to the department on a form prescribed by the
19 department a report setting forth the name of the licensee and
20 the amount of damages awarded or the amount of the approved
21 settlement.

22 Sec. 5244. (1) A person, including a state or county health
23 professional organization, a committee of the organization, or an
24 employee or officer of the organization furnishing information
25 to, or on behalf of, the organization, acting in good faith who
26 makes a report; assists in originating, investigating, or
27 preparing a report; or assists a board or task force, a

1 disciplinary subcommittee, a hearings examiner, the committee, or
2 the department in carrying out its duties under this article is
3 immune from civil or criminal liability including, but not
4 limited to, liability in a civil action for damages that might
5 otherwise be incurred thereby and is protected under the
6 whistleblowers' protection act, 1980 PA 469, MCL 15.361 to
7 15.369. A person making or assisting in making a report, or
8 assisting a board or task force, a hearings examiner, the
9 committee, or the department, is presumed to have acted in good
10 faith. The immunity from civil or criminal liability granted
11 under this subsection extends only to acts done pursuant to this
12 article.

13 (2) The physician-patient privilege created in section 2157
14 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2157,
15 does not apply in an investigation or proceeding by a board or
16 task force, a disciplinary subcommittee, a hearings examiner, the
17 committee, or the department acting within the scope of its
18 authorization. Unless expressly waived by the individual to whom
19 the information pertains, the information obtained is
20 confidential and shall not be disclosed except to the extent
21 necessary for the proper functioning of a board or task force, a
22 disciplinary subcommittee, the committee, or the department.
23 Except as otherwise provided in this subsection, a person shall
24 not use or disseminate the information except pursuant to a valid
25 court order.

26 Sec. 5245. (1) An individual whose license is limited,
27 suspended, or revoked under this part may apply to his or her

1 board or task force for a reinstatement of a revoked or suspended
2 license or reclassification of a limited license pursuant to
3 section 5247 or 5249.

4 (2) An individual whose registration is suspended or revoked
5 under this part may apply to his or her board for a reinstatement
6 of a suspended or revoked registration pursuant to section 5248.

7 (3) A board or task force shall reinstate a license or
8 registration suspended for grounds stated in section 5221(i) upon
9 payment of the installment.

10 (4) Except as otherwise provided in this subsection, in case
11 of a revoked license or registration, an applicant shall not
12 apply for reinstatement before the expiration of 3 years after
13 the effective date of the revocation. In the case of a license or
14 registration that was revoked for a violation of section
15 5221(b)(vii), a violation of section 5221(c)(iv) consisting of a
16 felony conviction, or any other felony conviction involving a
17 controlled substance, an applicant shall not apply for
18 reinstatement before the expiration of 5 years after the
19 effective date of the revocation. The department shall return an
20 application for reinstatement received before the expiration of
21 the applicable time period under this subsection.

22 (5) The department shall provide an opportunity for a
23 hearing before final rejection of an application for
24 reinstatement.

25 (6) Based upon the recommendation of the disciplinary
26 subcommittee for each health profession, the department shall
27 adopt guidelines to establish specific criteria to be met by an

1 applicant for reinstatement under this article or article 7 of
2 the public health code. The criteria may include corrective
3 measures or remedial education as a condition of reinstatement.
4 If a board or task force, in reinstating a license or
5 registration, deviates from the guidelines adopted under this
6 subsection, the board or task force shall state the reason for
7 the deviation on the record.

8 (7) An individual who seeks reinstatement or
9 reclassification of a license or registration pursuant to this
10 section shall pay the application processing fee as a
11 reinstatement or reclassification fee. If approved for
12 reinstatement or reclassification, the individual shall pay the
13 per year license or registration fee for the applicable license
14 or registration period.

15 (8) An individual who seeks reinstatement of a revoked or
16 suspended license or reclassification of a limited license
17 pursuant to this section shall have a criminal history check
18 conducted in accordance with section 5174 and submit a copy of
19 the results of the background check to the board with his or her
20 application for reinstatement or reclassification.

21 Sec. 5247. (1) A board or task force may reinstate a license
22 or issue a limited license to an individual whose license has
23 been suspended or revoked under this part if after a hearing the
24 board or task force is satisfied by clear and convincing evidence
25 that the applicant is of good moral character, is able to
26 practice the profession with reasonable skill and safety to
27 patients, has met the criteria in the rules promulgated under

1 section 5245(6), and should be permitted in the public interest
2 to practice. Pursuant to the rules promulgated under section
3 5245(6), as a condition of reinstatement, a disciplinary
4 subcommittee, upon the recommendation of a board or task force,
5 may impose a disciplinary or corrective measure authorized under
6 this part and require that the licensee attend a school or
7 program selected by the board or task force to take designated
8 courses or training to become competent or proficient in those
9 areas of practice in which the board or task force finds the
10 licensee to be deficient. The board or task force may require a
11 statement on a form approved by it from the chief administrator
12 of the school or program attended or the person responsible for
13 the training certifying that the licensee has achieved the
14 required competency or proficiency.

15 (2) As a condition of reinstatement, a board or task force
16 shall place the licensee on probation for 1 year under conditions
17 set by the board or task force. If a licensee whose license has
18 been revoked cannot apply for reinstatement for 5 years after the
19 date of revocation, then, as a condition of reinstatement, the
20 board or task force shall require the licensee to take and pass
21 the current licensure examination.

22 (3) A board or task force shall not reinstate a license
23 suspended or revoked for grounds stated in section 5221(b)(i),
24 (iii), or (iv) until it finds that the licensee is mentally or
25 physically able to practice with reasonable skill and safety to
26 patients. The board or task force may require further examination
27 of the licensee, at the licensee's expense, necessary to verify

1 that the licensee is mentally or physically able. A licensee
2 affected by this section shall be afforded the opportunity at
3 reasonable intervals to demonstrate that he or she can resume
4 competent practice in accordance with standards of acceptable and
5 prevailing practice.

6 Sec. 5248. A registration board may reinstate a registration
7 revoked or suspended under this part if, after a hearing, the
8 board is satisfied by clear and convincing evidence that the
9 individual is of good moral character, has the education and
10 experience as required in this article, has met the criteria in
11 the rules promulgated under section 5245(6), and will use the
12 title lawfully and act in accordance with this article.

13 Sec. 5249. A disciplinary subcommittee may reclassify a
14 license limited under this part to alter or remove the
15 limitations if, after a hearing, it is satisfied that the
16 applicant will practice the profession safely and competently
17 within the area of practice and under conditions stipulated by
18 the disciplinary subcommittee, and should be permitted in the
19 public interest to so practice. The disciplinary subcommittee may
20 require the submission of information necessary to make the
21 determination required for reclassification. As a condition of
22 reclassification, the disciplinary subcommittee may require that
23 the licensee take an examination or attend a school or program
24 selected by the disciplinary subcommittee to take designated
25 courses or training to become competent in those areas of
26 practice the disciplinary subcommittee determines necessary for
27 reclassification. The disciplinary subcommittee may require a

1 statement on a form approved by it from the chief administrator
2 of the school or program attended or the person responsible for
3 the training certifying that the licensee has achieved the
4 required competency.

5 Sec. 5261. (1) An individual who is not licensed or
6 registered under this article shall not use an insignia, title,
7 or letter, or a word, letter, or phrase singly or in combination,
8 with or without qualifying words, letters, or phrases, under a
9 circumstance to induce the belief that the person is licensed or
10 registered in this state, is lawfully entitled in this state to
11 engage in the practice of a health profession regulated by this
12 article, or is otherwise in compliance with this article.

13 (2) An individual shall not announce or hold himself or
14 herself out to the public as limiting his or her practice to, as
15 being specially qualified in, or as giving particular attention
16 to a health profession specialty field for which a board issues a
17 specialty certification without first having obtained a specialty
18 certification.

19 Sec. 5277. (1) A licensee or registrant who provides to a
20 patient nonemergency health care that the licensee or registrant
21 is licensed or registered under this article to provide, and who
22 receives no compensation for providing the nonemergency health
23 care, is not liable in a civil action for damages for acts or
24 omissions in providing the nonemergency health care, unless the
25 acts or omissions were the result of gross negligence or willful
26 and wanton misconduct or were intended to injure the patient.

27 (2) The limitation on liability provided under subsection

1 (1) applies only if the nonemergency health care is provided
2 inside the premises of or as a result of a referral from either
3 of the following:

4 (a) A long-term care facility or adult foster care facility
5 for the sole purpose of delivering nonemergency health care
6 without receiving compensation.

7 (b) An entity that is not a long-term care facility or adult
8 foster care facility and that provides nonemergency health care
9 to uninsured or underinsured individuals through the voluntary
10 services of licensees or registrants who receive no compensation
11 for providing the nonemergency health care.

12 (3) In addition to the restrictions under subsection (1),
13 the limitation on liability provided in subsection (1) does not
14 apply in regard to the nonemergency health care of a patient
15 unless, before the licensee or registrant provides that health
16 care, both of the following occur:

17 (a) The licensee or registrant provides the patient with a
18 written disclosure describing the limitation on liability and
19 stating that the health care is free and compensation for the
20 health care will not be requested from any source.

21 (b) The patient signs an acknowledgment of receipt of the
22 written disclosure.

23 (4) A long-term care facility or adult foster care facility,
24 other than a facility described in subsection (2), that provides
25 financial, in-kind, or other support, not including health care
26 services, to a facility described in subsection (2) is not liable
27 in a civil action for damages based on nonemergency health care

1 provided by the facility described in subsection (2).

2 (5) This section does not affect the liability of a facility
3 described in subsection (2) as that liability existed before the
4 effective date of this section.

5 (6) This section does not apply to a civil action for
6 damages for acts or omissions if the nonemergency health care is
7 surgery that customarily requires more than a local anesthetic.

8 (7) As used in this section, "compensation" means receipt of
9 payment or expected receipt of payment from any source,
10 including, but not limited to, receipt of payment or expected
11 receipt of payment directly from a patient, from a patient's
12 parent, guardian, or spouse, or from a public or private health
13 care payment or benefits plan on behalf of the patient, or
14 indirectly in the form of wages, salary, or other valuable
15 consideration under an employment or service agreement.

16 Sec. 5291. (1) Upon a violation of this article or of a rule
17 or order of a board or task force, a disciplinary subcommittee,
18 or the department, the circuit court for the county in which the
19 violation occurs may restrain and enjoin a person from the
20 violation. A board or task force, a disciplinary subcommittee, or
21 the department shall seek injunctive relief through the attorney
22 general or the prosecuting attorney of the county in which the
23 violation occurs. This proceeding may be in addition to and is
24 not in lieu of a criminal prosecution or proceeding as to a
25 license or registration.

26 (2) The department, a board or task force, or a disciplinary
27 subcommittee may request the attorney general or prosecuting

1 attorney to prosecute a person violating this article. The
2 attorney general or the prosecuting attorney may prosecute a
3 violation of this article.

4 Sec. 5294. Except as provided in section 5215, an individual
5 who practices or holds himself or herself out as practicing a
6 health profession regulated by this article without a license or
7 registration or under a suspended, revoked, lapsed, void, or
8 fraudulently obtained license or registration, or outside the
9 provisions of a limited license or registration, or who uses as
10 his or her own the license or registration of another person, is
11 guilty of a felony.

12 Sec. 5296. A person who uses a title regulated by this
13 article without a registration or under a suspended, revoked, or
14 fraudulently obtained registration, or who uses as his or her own
15 the registration of another person, is guilty of a misdemeanor
16 punishable as follows:

17 (a) For the first offense, by imprisonment for not more than
18 90 days or a fine of \$100.00, or both.

19 (b) For the second or subsequent offense, by imprisonment
20 for not less than 60 days or more than 1 year or a fine of not
21 less than \$300.00 or more than \$1,000.00, or both.

22 Sec. 5299. A person who violates or aids or abets another in
23 a violation of this article, other than those matters described
24 in sections 5294 and 5296, is guilty of a misdemeanor punishable
25 as follows:

26 (a) For the first offense, by imprisonment for not more than
27 90 days or a fine of not more than \$100.00, or both.

1 (b) For the second or subsequent offense, by imprisonment
2 for not less than 90 days or more than 6 months or a fine of not
3 less than \$200.00 or more than \$500.00, or both.

4 Sec. 5301. (1) Fees for licenses and registrations issued
5 and other services performed by the department shall be as
6 prescribed in this article.

7 (2) This article does not prohibit a person who has a
8 contract with the department or any other person providing direct
9 services from collecting fees directly from an applicant,
10 registrant, or licensee.

11 (3) If the department terminates a contract with a person
12 who has been administering a licensing or registration
13 examination to applicants for licensure or registration in a
14 specific profession and the department itself begins to
15 administer the examination, the department shall not charge an
16 applicant a fee greater than the fee charged under the terminated
17 contract unless the examination fee for that profession is
18 increased under this article.

19 Sec. 5303. Each application for a license or registration
20 shall be accompanied by a nonrefundable application processing
21 fee. The department may also require that the application be
22 accompanied by a fee for a required examination or inspection or
23 the fee for the initial license or registration period.

24 Sec. 5305. (1) An individual who is required to take an
25 examination shall pay an examination fee.

26 (2) An individual who is scheduled for examination or
27 reexamination and who fails to appear at the examination shall

1 forfeit the examination fee.

2 (3) An individual who fails all or part of an examination
3 may be reexamined, if eligible, after paying for the complete
4 examination or such parts of the examination as must be repeated.

5 Sec. 5307. (1) A person who has completed the requirements
6 for a license or registration or who seeks to renew a license or
7 registration shall not be issued a license or registration until
8 the person has paid the license or registration fee.

9 (2) License and registration fees shall be prescribed on a
10 per-year basis. If licenses and registrations are established on
11 a biennial basis, the fee required shall be twice the per-year
12 amount prescribed. If licenses or registrations are established
13 on a triennial basis, the fee required shall be 3 times the per-
14 year amount prescribed.

15 (3) Except as otherwise provided in this act or rules
16 promulgated under this act, all requirements for licensure or
17 registration shall be completed within 2 years after receipt of
18 the application by the department. If the requirements are not
19 completed within the 2-year period, the fees paid shall be
20 forfeited to the department and the application shall be void. An
21 individual whose application has been determined void under this
22 subsection shall submit a new application and fees and shall meet
23 the standards in effect on the date of receipt of the new
24 application.

25 Sec. 5315. Except as otherwise provided in this section, the
26 state treasurer shall credit the fees collected under section
27 5328 to the health professions regulatory fund established under

1 section 16315 of the public health code. The money in the health
 2 professions regulatory fund shall be expended only as provided in
 3 section 16315 of the public health code.

4 Sec. 5317. (1) At the beginning of each state fiscal year,
 5 the department may increase the fees collected under section 5328
 6 by a percentage amount equal to not more than the average
 7 percentage wage and salary increase granted for that fiscal year
 8 to classified civil service employees employed by the department.

9 (2) If the department increases fees under subsection (1),
 10 the increase shall be effective for that fiscal year. The
 11 increased fees shall be used by the department as the basis for
 12 calculating fee increases in subsequent fiscal years.

13 (3) By August 1 of each year, the department shall provide
 14 to the director of the department of management and budget and
 15 the chairpersons of the appropriations committees of the senate
 16 and house of representatives a complete schedule of fees to be
 17 collected under section 5328 for the following fiscal year.

18 Sec. 5328. Fees for a person licensed or seeking licensure
 19 as a nursing home administrator under part 54 are as follows:

20	(a) Application processing fee	\$ 15.00
21	(b) Examination fees:	
22	(i) Complete examination	120.00
23	(ii) National examination	95.00
24	(iii) State supplemental examination	50.00
25	(c) Examination review	25.00
26	(d) License fee, per year	60.00
27	(e) Temporary license	25.00

1 Sec. 5351. (1) Members of a board, task force, or committee
2 created under former part 161 of the public health code shall
3 serve as the initial members of that board, task force, or
4 committee created in part 51 until their successors are appointed
5 under this article or until the expiration of their respective
6 terms, whichever occurs first.

7 (2) Rules promulgated by the department or the director
8 under former article 15 of the public health code and in effect
9 on the effective date of this act continue in effect to the
10 extent that they do not conflict with this article and shall
11 continue to be enforced. The rules may be amended or rescinded by
12 the director.

13 PART 54

14 NURSING HOME ADMINISTRATORS

15 Sec. 5401. (1) As used in this part:

16 (a) "Nursing home" means that term as defined in section
17 3101.

18 (b) "Nursing home administrator" means the individual
19 licensed under this article to engage in the practice of nursing
20 home administration.

21 (c) "Practice of nursing home administration" means
22 planning, organizing, directing, and controlling the total
23 operation of the nursing home on behalf of the governing board or
24 owner of a nursing home.

25 (2) In addition to the definitions of this part, article I
26 contains general definitions and principles of construction
27 applicable to all articles in this act and part 51 contains

1 definitions applicable to this part.

2 Sec. 5403. A person shall not represent that he or she is a
3 nursing home administrator or use a title including "nursing home
4 administrator" or an abbreviation of that term or similar words
5 that would indicate that he or she is licensed under this article
6 unless the person is licensed under this article as a nursing
7 home administrator.

8 Sec. 5405. (1) Subject to section 5419(2), the Michigan
9 board of nursing home administrators is created in the department
10 and consists of the following 9 voting members who meet the
11 requirements of part 51:

12 (a) Six nursing home administrators.

13 (b) Three public members.

14 (2) The terms of office of individual members of the board
15 created under subsection (1), except those appointed to fill
16 vacancies, expire 4 years after appointment on June 30 of the
17 year in which the term expires.

18 Sec. 5407. (1) In addition to the requirements of section
19 3220, a nursing home shall not operate except under the direction
20 of a nursing home administrator.

21 (2) A person shall not engage in the practice of nursing
22 home administration unless the person is the holder of a valid
23 nursing home administrator's license issued under this part.

24 Sec. 5409. (1) The department shall issue a license as a
25 nursing home administrator to a person who fulfills the
26 requirements of this section or section 5415.

27 (2) An applicant for licensure as a nursing home

1 administrator shall have satisfactorily completed a course of
2 instruction and training approved by the department, which course
3 shall be designed as to content and be administered as to present
4 sufficient knowledge of the following:

5 (a) The needs properly to be served by a nursing home.

6 (b) The laws governing the operation of a nursing home and
7 the protection of the interests of a patient in a nursing home.

8 (c) The elements of good nursing home administration.

9 (3) An applicant for licensure as a nursing home
10 administrator shall present evidence satisfactory to the
11 department of sufficient education and training in the fields of
12 study described in subsection (2) or shall have been employed as
13 a chief executive or administrative officer at a hospital
14 licensed under article 17 of the public health code for not less
15 than 5 of the 7 years immediately preceding the date of
16 application for a license under this part.

17 (4) Subject to section 5178, an applicant for licensure as a
18 nursing home administrator shall also present evidence acceptable
19 to the department of having passed an examination acceptable to
20 the board and the department. The examination shall be designed
21 to test for competence in the fields of study described in
22 subsection (2).

23 (5) An applicant for licensure as a nursing home
24 administrator shall be of good moral character and meet any
25 additional qualifications as may be required by rule of the
26 department and board.

27 Sec. 5411. (1) If the department and board find that there

1 are not a sufficient number of courses of instruction and
2 training sufficient to meet the requirements of this part
3 conducted within this state, the department may conduct 1 or more
4 of those courses or training sessions, or both. The department
5 shall ensure that a course or training session conducted under
6 this subsection is reasonably accessible to a resident of this
7 state.

8 (2) The department and board may approve a course of
9 instruction or a training session conducted within or without
10 this state if the department determines that it is sufficient to
11 meet the education and training requirements of this part.

12 Sec. 5413. (1) Subject to sections 5201 and 5204, the
13 department shall not issue a renewal license unless the licensee
14 presents satisfactory evidence to the department that the
15 licensee has participated in continuing education courses of not
16 less than 18 clock hours' duration approved by the board and
17 department, for each year subsequent to the expiration of the
18 individual's last license.

19 (2) The continuing education courses required under
20 subsection (1) shall contain subjects related to the practice of
21 nursing home administration acceptable to the board and the
22 department.

23 Sec. 5415. (1) Subject to section 5182, this part or a rule
24 promulgated under this part shall not require an applicant for a
25 limited license as a nursing home administrator of a Christian
26 Science nursing home to meet a medical educational qualification
27 or to pass an examination on medical subjects.

1 (2) A license issued under this section shall describe its
2 limitation.

3 Sec. 5417. Subject to section 5186, the department may issue
4 a nursing home administrator's license, without examination, to
5 an individual who holds a current license as a nursing home
6 administrator from another state if the applicant passes an
7 examination approved by the department and the board which tests
8 the individual's knowledge of law relating to practice in
9 Michigan.

10 Sec. 5419. (1) An individual who holds a license issued
11 under former part 173 of the public health code on the effective
12 date of this act is licensed under this part until that license
13 expires and may renew his or her license pursuant to this
14 article.

15 (2) The members of the nursing home administrators' board
16 created under former section 17305 of the public health code
17 shall serve as the initial members of the nursing home
18 administrators' board created in section 5405 until their
19 successors are appointed under this article or until the
20 expiration of their respective terms, whichever occurs first.
21 However, if the term of a member of the nursing home
22 administrators' board has not expired on the effective date of
23 this act, that term expires on June 30 of the year in which the
24 term will expire.

25 (3) Rules promulgated by the nursing home administrators'
26 board, the department, or the director under former part 173 of
27 the public health code and in effect on the effective date of

1 this act continue in effect to the extent that they do not
2 conflict with this article and shall continue to be enforced. The
3 rules may be amended or rescinded by the director.

4 Enacting section 1. The following acts and parts of acts are
5 repealed:

6 (a) Sections 20173 and 20178 and parts 173, 213, 214, and
7 217 of the public health code, 1978 PA 368, MCL 333.20173,
8 333.20178, 333.17301 to 333.17319, 333.21301 to 333.21333,
9 333.21401 to 333.21420, and 333.21701 to 333.21799e.

10 (b) The adult foster care facility licensing act, 1979 PA
11 218, MCL 400.701 to 400.737.