

HOUSE BILL No. 5919

March 29, 2006, Introduced by Reps. Stahl, Shaffer, Green, Ward, Wojno, Sheltroun, Vander Veen, Zelenko, Vagnozzi, Polidori, Clack, Gonzales, Condino, Cushingberry, Gaffney, Pearce and Van Regenmorter and referred to the Committee on Senior Health, Security, and Retirement.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 12615, 17307, 20106, 20109, 20127, 20142, 20155, 20156, 20162, 20168, 20176, 20194, 20198, 20201, 22205, 22210, and 22239 (MCL 333.12615, 333.17307, 333.20106, 333.20109, 333.20127, 333.20142, 333.20155, 333.20156, 333.20162, 333.20168, 333.20176, 333.20194, 333.20198, 333.20201, 333.22205, 333.22210, and 333.22239), section 12615 as amended by 1988 PA 315, section 17307 as added by 2001 PA 139, section 20106 as amended by 2000 PA 253, section 20109 as amended by 1996 PA 224, section 20155 as amended by 2001 PA 218, section 20156 as amended by 1990 PA 179, section 20162 as amended by 2004 PA 284, section 20176 as amended by 1994 PA 52, section 20194 as amended by 2003 PA 3, section 20198 as added by 1998 PA 270, section 20201 as amended by 2006 PA 38,

sections 22205 and 22239 as amended by 2002 PA 619, and section 22210 as amended by 1993 PA 88; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 12615. This part is in addition to, and does not
2 supersede the requirements for a policy regulating the smoking of
3 tobacco on the premises of a nursing home set forth in section
4 ~~21733~~ **3233 OF THE LONG-TERM CARE CONTINUUM ACT**, or the
5 requirements for a food service establishment set forth in section
6 12905.

7 Sec. 17307. (1) In addition to the requirements of section
8 ~~21720~~ **3220 OF THE LONG-TERM CARE CONTINUUM ACT**, a nursing home
9 shall not operate except under the direction of a nursing home
10 administrator.

11 (2) A person shall not engage in the practice of nursing home
12 administration unless the person is the holder of a valid nursing
13 home administrator's license issued under this part.

14 Sec. 20106. (1) "Health facility or agency", except as
15 provided in section 20115, means:

16 (a) An ambulance operation, aircraft transport operation,
17 nontransport prehospital life support operation, or medical first
18 response service.

19 (b) A clinical laboratory.

20 (c) A county medical care facility.

21 (d) A freestanding surgical outpatient facility.

22 (e) A health maintenance organization.

23 (f) A home for the aged.

1 (g) A hospital.

2 (h) A nursing home.

3 (i) A hospice.

4 (j) A hospice residence.

5 (k) A facility or agency listed in subdivisions (a) to (h)
6 located in a university, college, or other educational institution.

7 (2) "Health maintenance organization" means that term as
8 defined in section 3501 of the insurance code of 1956, 1956 PA 218,
9 MCL 500.3501.

10 (3) "Home for the aged" means ~~a supervised personal care~~
11 ~~facility, other than a hotel, adult foster care facility, hospital,~~
12 ~~nursing home, or county medical care facility that provides room,~~
13 ~~board, and supervised personal care to 21 or more unrelated,~~
14 ~~nontransient, individuals 60 years of age or older. Home for the~~
15 ~~aged includes a supervised personal care facility for 20 or fewer~~
16 ~~individuals 60 years of age or older if the facility is operated in~~
17 ~~conjunction with and as a distinct part of a licensed nursing home~~
18 **THAT TERM AS DEFINED IN SECTION 4301 OF THE LONG-TERM CARE**
19 **CONTINUUM ACT.**

20 (4) "Hospice" means ~~a health care program that provides a~~
21 ~~coordinated set of services rendered at home or in outpatient or~~
22 ~~institutional settings for individuals suffering from a disease or~~
23 ~~condition with a terminal prognosis~~ **THAT TERM AS DEFINED IN**
24 **SECTION 3101 OF THE LONG-TERM CARE CONTINUUM ACT.**

25 (5) "Hospital" means a facility offering inpatient, overnight
26 care, and services for observation, diagnosis, and active treatment
27 of an individual with a medical, surgical, obstetric, chronic, or

1 rehabilitative condition requiring the daily direction or
 2 supervision of a physician. Hospital does not include a mental
 3 health hospital licensed or operated by the department of community
 4 health or a hospital operated by the department of corrections.

5 (6) "Hospital long-term care unit" means a nursing care
 6 facility, owned and operated by and as part of a hospital,
 7 providing organized nursing care and medical treatment to 7 or more
 8 unrelated individuals suffering or recovering from illness, injury,
 9 or infirmity.

10 Sec. 20109. (1) "Nursing home" means **THAT TERM AS DEFINED IN**
 11 **SECTION 3101 OF THE LONG-TERM CARE CONTINUUM ACT.** ~~a nursing care~~
 12 ~~facility, including a county medical care facility, that provides~~
 13 ~~organized nursing care and medical treatment to 7 or more unrelated~~
 14 ~~individuals suffering or recovering from illness, injury, or~~
 15 ~~infirmity. Nursing home does not include a unit in a state~~
 16 ~~correctional facility. Nursing home does not include 1 or more of~~
 17 ~~the following:~~

18 ~~—— (a) A hospital.~~

19 ~~—— (b) A veterans facility created under Act No. 152 of the~~
 20 ~~Public Acts of 1885, being sections 36.1 to 36.12 of the Michigan~~
 21 ~~Compiled Laws.~~

22 ~~—— (c) A hospice residence that is licensed under this article.~~

23 ~~—— (d) A hospice that is certified under 42 C.F.R. 418.100.~~

24 (2) "Person" means a person as defined in section 1106 or a
 25 governmental entity.

26 (3) "Public member" means a member of the general public who
 27 is not a provider; who does not have an ownership interest in or

1 contractual relationship with a nursing home other than a patient
 2 contract; who does not have a contractual relationship with a
 3 person who does substantial business with a nursing home; and who
 4 is not the spouse, parent, sibling, or child of an individual who
 5 has an ownership interest in or contractual relationship with a
 6 nursing home, other than a patient contract.

7 (4) "Skilled nursing facility" means a hospital long-term care
 8 unit, nursing home, county medical care facility, or other nursing
 9 care facility, or a distinct part thereof, certified by the
 10 department to provide skilled nursing care.

11 Sec. 20127. (1) Task force 4 shall be composed of 15 state
 12 residents to review the operation of part ~~217~~ **32 OF THE LONG-TERM**
 13 **CARE CONTINUUM ACT** and rules promulgated under part ~~217~~ **32 OF THE**
 14 **LONG-TERM CARE CONTINUUM ACT**, to hear and evaluate complaints in
 15 implementation of part ~~217~~ **32 OF THE LONG-TERM CARE CONTINUUM**
 16 **ACT**, and to recommend to the legislature and the department changes
 17 in part ~~217~~ **32 OF THE LONG-TERM CARE CONTINUUM ACT** and the rules.

18 (2) The director shall appoint the task force members, 1 of
 19 whom shall be a nurse having a background in gerontology, 1 a
 20 social worker having a background in gerontology, 5 representatives
 21 of nursing homes, 3 representatives of public interest health
 22 consumer groups, and 5 public members, 3 of whom have or have had
 23 relatives in a nursing home. In addition, there shall be 2 ex
 24 officio members without vote, 1 representing the department, ~~of~~
 25 ~~public health,~~ and 1 representing the department of ~~social~~ **HUMAN**
 26 services.

27 (3) A majority of the voting members of the task force shall

1 be consumers.

2 (4) The task force annually shall elect a chairperson and a
3 vice-chairperson.

4 (5) The task force shall determine what constitutes a quorum
5 and may establish procedures for the conduct of its business.

6 (6) The task force shall be charged with the following tasks:

7 (a) Meeting at least 6 times a year, at the call of the
8 chairperson, the director, or any 3 members of the committee.

9 (b) Receiving and commenting on drafts of proposed rules.

10 (c) Receiving and making recommendations regarding complaint
11 investigation reports, decisions, and procedures.

12 (d) Making reports and recommendations on needed changes in
13 statutes and rules.

14 (e) Reviewing decisions as provided in section ~~21764~~ **3264 OF**
15 **THE LONG-TERM CARE CONTINUUM ACT.**

16 (f) Reviewing complaints received under section ~~21763~~ **3263**
17 **OF THE LONG-TERM CARE CONTINUUM ACT.**

18 Sec. 20142. (1) A health facility or agency shall apply for
19 licensure or certification on a form authorized and provided by the
20 department. The application shall include attachments, additional
21 data, and information required by the department.

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

24 ~~(3) An applicant or a licensee under part 213 or 217 shall~~
25 ~~disclose the names, addresses, principal occupations, and official~~
26 ~~positions of all persons who have an ownership interest in the~~
27 ~~health facility or agency. If the health facility or agency is~~

~~1 located on or in leased real estate, the applicant or licensee
2 shall disclose the name of the lessor and any direct or indirect
3 interest the applicant or licensee has in the lease other than as
4 lessee. A change in ownership shall be reported to the director not
5 less than 15 days before the change occurs, except that a person
6 purchasing stock of a company registered pursuant to the securities
7 exchange act of 1934, 15 U.S.C. 78a to 78kk, is exempt from
8 disclosing ownership in the facility. A person required to file a
9 beneficial ownership report pursuant to section 16(a) of the
10 securities exchange act of 1934, 15 U.S.C. 78p shall file with the
11 department information relating to securities ownership required by
12 the department rule or order. An applicant or licensee proposing a
13 sale of a nursing home to another person shall provide the
14 department with written, advance notice of the proposed sale. The
15 applicant or licensee and the other parties to the sale shall
16 arrange to meet with specified department representatives and shall
17 obtain before the sale a determination of the items of
18 noncompliance with applicable law and rules which shall be
19 corrected. The department shall notify the respective parties of
20 the items of noncompliance prior to the change of ownership and
21 shall indicate that the items of noncompliance must be corrected as
22 a condition of issuance of a license to the new owner. The
23 department may accept reports filed with the securities and
24 exchange commission relating to the filings. A person who violates
25 this subsection is guilty of a misdemeanor, punishable by a fine of
26 not more than \$1,000.00 for each violation.~~

~~27 (4) An applicant or licensee under part 217 shall disclose the~~

1 ~~names and business addresses of suppliers who furnish goods or~~
2 ~~services to an individual nursing home or a group of nursing homes~~
3 ~~under common ownership, the aggregate charges for which exceed~~
4 ~~\$5,000.00 in a 12-month period which includes a month in a nursing~~
5 ~~home's current fiscal year. An applicant or licensee shall disclose~~
6 ~~the names, addresses, principal occupations, and official positions~~
7 ~~of all persons who have an ownership interest in a business which~~
8 ~~furnishes goods or services to an individual nursing home or to a~~
9 ~~group of nursing homes under common ownership, if both of the~~
10 ~~following apply:~~

11 ~~—— (a) The person, or the person's spouse, parent, sibling, or~~
12 ~~child has an ownership interest in the nursing home purchasing the~~
13 ~~goods or services.~~

14 ~~—— (b) The aggregate charges for the goods or services purchased~~
15 ~~exceeds \$5,000.00 in a 12-month period which includes a month in~~
16 ~~the nursing home's current fiscal year.~~

17 (3) ~~(5)~~ An applicant or licensee who makes a false statement
18 in an application or statement required by the department pursuant
19 to this article is guilty of a felony, punishable by imprisonment
20 for not more than 4 years, or a fine of not more than \$30,000.00,
21 or both.

22 Sec. 20155. (1) Except as otherwise provided in this section,
23 the department ~~of consumer and industry services~~ shall make
24 annual and other visits to each health facility or agency licensed
25 under this article for the purposes of survey, evaluation, and
26 consultation. A visit made pursuant to a complaint shall be
27 unannounced. Except for a county medical care facility, ~~a home for~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 state agency or to a local health department qualified to perform
2 those functions. However, the department shall not delegate survey,
3 evaluation, or consultation functions to a local health department
4 that owns or operates a hospice or hospice residence licensed under
5 ~~this article~~ **PART 34 OF THE LONG-TERM CARE CONTINUUM ACT**. The
6 delegation shall be by cost reimbursement contract between the
7 department and the state agency or local health department. Survey,
8 evaluation, or consultation functions shall not be delegated to
9 nongovernmental agencies, except as provided in this section. The
10 department may accept voluntary inspections performed by an
11 accrediting body with expertise in clinical laboratory
12 accreditation under part 205 if the accrediting body utilizes forms
13 acceptable to the department, applies the same licensing standards
14 as applied to other clinical laboratories and provides the same
15 information and data usually filed by the department's own
16 employees when engaged in similar inspections or surveys. The
17 voluntary inspection described in this subsection shall be agreed
18 upon by both the licensee and the department.

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

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

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

6 ~~—— (a) The number of surveys conducted.~~

7 ~~—— (b) The number requiring follow up surveys.~~

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

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

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

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

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

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

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

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

26 ~~(14) —(16)— Subject to subsection —(17)— (15), a clarification~~
 27 ~~work group comprised of the department —of consumer and industry~~

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

9 (a) Immediate jeopardy.

10 (b) Harm.

11 (c) Potential harm.

12 (d) Avoidable.

13 (e) Unavoidable.

14 **(15)** ~~-(17)-~~ All of the following clarifications developed
 15 under subsection ~~-(16)-~~ **(14)** apply for purposes of subsection ~~-(16)-~~
 16 **(14)**:

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

23 (b) The likelihood of immediate jeopardy is reasonably higher
 24 if there is evidence of a flagrant failure by the nursing home to
 25 comply with a clinical process guideline adopted under subsection
 26 ~~-(18)-~~ **(16)** than if the nursing home has substantially and
 27 continuously complied with those guidelines. If federal regulations

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

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

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

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

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

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

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

24 (d) The existence of 1 or more of the factors described in
25 subdivision (c), and especially the existence of 3 or more of those
26 factors simultaneously, may lead to a conclusion that the situation
27 is one in which the nursing home's practice makes adverse events

1 likely to occur if immediate intervention is not undertaken, and
2 therefore constitutes immediate jeopardy. If none of the factors
3 described in subdivision (c) is present, the situation may involve
4 harm or potential harm that is not immediate jeopardy.

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

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

24 (g) For purposes of subdivision (e), if the publications
25 described in subdivision (f) do not provide specific guidance, the
26 department may consider the degree of a nursing home's adherence to
27 a clinical process guideline adopted pursuant to subsection ~~(18)~~

1 (16) in considering whether the degree of compromise and future
2 risk to the resident constitutes actual harm. The risk of
3 significant compromise to the resident may be considered greater in
4 the context of substantial deviation from the guidelines than in
5 the case of overall adherence.

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

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

- 1 (a) Bed rails.
- 2 (b) Adverse drug effects.
- 3 (c) Falls.
- 4 (d) Pressure sores.
- 5 (e) Nutrition and hydration including, but not limited to,
- 6 heat-related stress.
- 7 (f) Pain management.
- 8 (g) Depression and depression pharmacotherapy.
- 9 (h) Heart failure.
- 10 (i) Urinary incontinence.
- 11 (j) Dementia.
- 12 (k) Osteoporosis.
- 13 (l) Altered mental states.
- 14 (m) Physical and chemical restraints.

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

27 **(18)** ~~—(20)—~~ The department shall create a process by which the

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

12 **(19)** ~~(21)~~ The department may give grants, awards, or other
13 recognition to nursing homes to encourage the rapid implementation
14 of the clinical process guidelines adopted under subsection ~~(18)~~
15 **(16)**.

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

24 **(21)** ~~(23)~~ The department ~~of consumer and industry services~~
25 shall instruct and train the surveyors in the use of the
26 clarifications described in subsection ~~(17)~~ **(15)** and the clinical
27 process guidelines adopted under subsection ~~(18)~~ **(16)** in citing

1 deficiencies.

2 ~~—— (24) A nursing home shall post the nursing home's survey~~
 3 ~~report in a conspicuous place within the nursing home for public~~
 4 ~~review.~~

5 (22) ~~—(25)—~~ Nothing in this amendatory act shall be construed
 6 to limit the requirements of related state and federal law.

7 (23) ~~—(26)—~~ As used in this section:

8 (a) "Title XVIII" means title XVIII of the social security
 9 act, ~~chapter 531, 49 Stat. 620, 42 U.S.C. 1395 to 1395b, 1395b-2,~~
 10 ~~1395b-6 to 1395b-7, 1395e to 1395i, 1395i-2 to 1395i-5, 1395j to~~
 11 ~~1395t, 1395u to 1395w, 1395w-2 to 1395w-4, 1395w-21 to 1395w-28,~~
 12 ~~1395x to 1395yy, and 1395bbb to 1395ggg~~ **42 USC 1395 TO 1395HHH.**

13 (b) "Title XIX" means title XIX of the social security act,
 14 ~~chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1 to~~
 15 ~~1396r-6, and 1396r-8 to 1396v~~ **42 USC 1396 TO 1396V.**

16 Sec. 20156. (1) A representative of the department ~~of public~~
 17 ~~health~~ or the ~~state fire marshal division of the department of~~
 18 ~~state police~~ **BUREAU OF FIRE SERVICES**, upon presentation of proper
 19 identification, may enter the premises of an applicant or licensee
 20 at any reasonable time to determine whether the applicant or
 21 licensee meets the requirements of this article and the rules
 22 promulgated under this article. ~~The director; the director of~~
 23 ~~social services; the state fire marshal; the director of the office~~
 24 ~~of services to the aging; or the director of a local health~~
 25 ~~department; or an authorized representative of the director, the~~
 26 ~~director of social services, the state fire marshal, the director~~
 27 ~~of the office of services to the aging, or the director of a local~~

1 ~~health department may enter on the premises of an applicant or~~
2 ~~licensee under part 217 at any time in the course of carrying out~~
3 ~~program responsibilities.~~

4 (2) The ~~state fire marshal division of the department of~~
5 ~~state police~~ **BUREAU OF FIRE SERVICES** shall enforce rules
6 promulgated by the state fire safety board for health facilities
7 and agencies to assure that physical facilities owned, maintained,
8 or operated by a health facility or agency are planned,
9 constructed, and maintained in a manner to protect the health,
10 safety, and welfare of patients.

11 (3) The department ~~of public health~~ shall not issue a
12 license or certificate to a health facility or agency until it
13 receives an appropriate certificate of approval from the ~~state~~
14 ~~fire marshal division of the department of state police~~ **BUREAU OF**
15 **FIRE SERVICES**. For purposes of this section, a decision of the
16 ~~state fire marshal division of the department of state police~~
17 **BUREAU OF FIRE SERVICES** to issue a certificate controls over that
18 of a local fire department.

19 (4) Subsections (2) and (3) do not apply to a health facility
20 or an agency licensed under part 205, 209, or 210.

21 Sec. 20162. (1) Beginning on ~~the effective date of the~~
22 ~~amendatory act that added section 20935~~ **JULY 23, 2004**, upon a
23 determination that a health facility or agency is in compliance
24 with this article and the rules promulgated under this article, the
25 department shall issue an initial license within 6 months after the
26 applicant files a completed application. Receipt of the application
27 is considered the date the application is received by any agency or

1 department of this state. If the application is considered
2 incomplete by the department, the department shall notify the
3 applicant in writing or make the notice electronically available
4 within 30 days after receipt of the incomplete application,
5 describing the deficiency and requesting additional information. If
6 the department identifies a deficiency or requires the fulfillment
7 of a corrective action plan, the 6-month period is tolled until
8 either of the following occurs:

9 (a) Upon notification by the department of a deficiency, until
10 the date the requested information is received by the department.

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

14 (2) The determination of the completeness of an application
15 does not operate as an approval of the application for the license
16 and does not confer eligibility of an applicant determined
17 otherwise ineligible for issuance of a license.

18 (3) Except as otherwise provided in this subsection, if the
19 department fails to issue or deny a license within the time period
20 required by this section, the department shall return the license
21 fee and shall reduce the license fee for the applicant's next
22 licensure application, if any, by 15%. Failure to issue or deny a
23 license within the time period required under this section does not
24 allow the department to otherwise delay processing an application.
25 The completed application shall be placed in sequence with other
26 completed applications received at that same time. The department
27 shall not discriminate against an applicant in the processing of

1 the application based upon the fact that the application fee was
2 refunded or discounted under this subsection. The department may
3 issue a nonrenewable temporary permit for not more than 6 months if
4 additional time is needed to make a proper investigation or to
5 permit the applicant to undertake remedial action related to
6 operational or procedural deficiencies or items of noncompliance. A
7 temporary permit shall not be issued to cover deficiencies in
8 physical plant requirements.

9 (4) ~~Except as provided in part 217, the~~ **THE** department may
10 issue a provisional license for not more than 3 consecutive years
11 to an applicant who temporarily is unable to comply with the rules
12 as to the physical plant owned, maintained, or operated by a health
13 facility or agency except as otherwise provided in this article. A
14 provisional license shall not be issued to a new health facility or
15 agency or a facility or agency whose ownership is transferred after
16 September 30, 1978, unless the facility or agency was licensed and
17 operating under this article or a prior law for not less than 5
18 years. Provisional licensure under acts repealed by this code shall
19 be counted against the 3-year maximum for licensure.

20 (5) The department, in order to protect the people of this
21 state, shall provide a procedure for the orderly closing of a
22 facility if it is unable to maintain its license under this
23 section.

24 (6) ~~Except as provided in part 217, the~~ **THE** department, upon
25 finding that a health facility or agency is not operating in accord
26 with the requirements of its license, may:

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

1 (i) Discontinue admissions.

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

3 (iii) Reduce its licensed capacity.

4 (iv) Comply with specific requirements for licensure or
5 certification as appropriate.

6 (b) Through the office of the attorney general, initiate
7 misdemeanor proceedings against the licensee as provided in section
8 20199(1).

9 (7) An order issued under subsection (6) shall be governed by
10 the notice and hearing requirements of section 20168(1) and the
11 status requirements of section 20168(2).

12 (8) Beginning October 1, 2005, the director of the department
13 shall submit a report by December 1 of each year to the standing
14 committees and appropriations subcommittees of the senate and house
15 of representatives concerned with public health issues. The
16 director shall include all of the following information in the
17 report concerning the preceding fiscal year:

18 (a) The number of initial applications the department received
19 and completed within the 6-month time period required under
20 subsection (1).

21 (b) The number of applications requiring a request for
22 additional information.

23 (c) The number of applications denied.

24 (d) The average processing time for initial licenses granted
25 after the 6-month period.

26 (e) The number of temporary permits issued under subsection
27 (3).

1 (f) The number of initial license applications not issued
2 within the 6-month period and the amount of money returned to
3 applicants under subsection (3).

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

10 Sec. 20168. (1) Upon a finding that a deficiency or violation
11 of this article or the rules promulgated under this article
12 seriously affects the health, safety, and welfare of individuals
13 receiving care or services in or from a licensed health facility or
14 agency, the department may issue an emergency order limiting,
15 suspending, or revoking the license of the health facility or
16 agency. ~~If the department of public health issues an emergency
17 order affecting the license of a nursing home, the department of
18 public health may request the department of social services to
19 limit reimbursements or payments authorized under section 21718.~~
20 The department shall provide an opportunity for a hearing within 5
21 working days after issuance of the order.

22 (2) An order shall incorporate the department's findings. The
23 conduct of a hearing under this section shall not suspend the
24 department's order.

25 Sec. 20176. (1) A person may notify the department of a
26 violation of this article or of a rule promulgated under this
27 article that the person believes exists. The department shall

1 investigate each written complaint received and shall notify the
2 complainant in writing of the results of a review or investigation
3 of the complaint and any action proposed to be taken. Except as
4 otherwise provided in ~~sections~~ **SECTION** 20180, ~~21743(1)(d), and~~
5 ~~21799a,~~ the name of the complainant and the charges contained in
6 the complaint are a matter of public record.

7 (2) ~~Except as otherwise provided in section 21799a, a~~ **A**
8 complainant who is aggrieved by the decision of the department
9 under this section may appeal to the director. After review of an
10 appeal under this subsection, the director may order the department
11 to reinvestigate the complaint.

12 Sec. 20194. (1) Subject to subsections (2), (3), and (4), a
13 health facility or agency, except a health facility or agency
14 licensed under part 209, and including a health facility that is
15 not licensed under this article but holds itself out as providing
16 medical services, shall conspicuously display in the patient
17 waiting areas or other common areas of the health facility or
18 agency copies of a pamphlet developed by the department ~~of~~
19 ~~consumer and industry services~~ outlining the procedure for filing
20 a complaint against a health facility or agency with the department
21 and the procedure for filing a complaint against an individual who
22 is licensed or registered under article 15 and employed by, under
23 contract to, or granted privileges by the health facility or
24 agency. The pamphlet shall be developed and distributed by the
25 department ~~of consumer and industry services~~ after consultation
26 with appropriate professional associations.

27 (2) The department ~~of consumer and industry services~~ shall

1 develop the pamphlets required under subsection (1) in languages
2 that are appropriate to the ethnic composition of the patient
3 population where the pamphlet will be displayed. The department
4 shall use large, easily readable type and nontechnical, easily
5 understood language in the pamphlet. The department shall
6 periodically distribute copies of the pamphlet to each health
7 facility or agency and to each unlicensed health facility described
8 in subsection (1).

9 (3) The department ~~of consumer and industry services~~ shall
10 include a model standardized complaint form in the pamphlet
11 described in subsection (1). The department may develop a separate
12 model standardized complaint form that is specific to a particular
13 health facility or agency or category of health facilities and
14 agencies. The department shall develop a model standardized
15 complaint form that is specific to nursing homes. The department
16 shall include on the model standardized complaint form, at a
17 minimum, simple instructions on how to file a complaint, including
18 with the nursing home as required under section ~~21723~~ **3223 OF THE**
19 **LONG-TERM CARE CONTINUUM ACT**, the department, the state long-term
20 care ombudsman, the Michigan protection and advocacy service, inc.,
21 and the health care fraud unit of the department of attorney
22 general. The department shall distribute copies of the model
23 standardized complaint form simultaneously with copies of the
24 pamphlet as required under subsection (2). ~~The nursing home shall~~
25 ~~conspicuously display and make available multiple copies of the~~
26 ~~pamphlet and model standardized complaint form with the complaint~~
27 ~~information required to be posted under section 21723 in the~~

1 ~~patient waiting areas or other common areas of the nursing home~~
2 ~~that are easily accessible to nursing home patients and their~~
3 ~~visitors, as described in subsection (1), and shall provide a copy~~
4 ~~of the pamphlet and complaint form to each nursing home resident or~~
5 ~~the resident's surrogate decision maker upon admission to the~~
6 ~~nursing home.~~ The department shall include on the model
7 standardized complaint form a telephone number for the receipt of
8 oral complaints.

9 (4) ~~The department may continue to distribute the complaint~~
10 ~~pamphlets within its possession on the effective date of the~~
11 ~~amendatory act that added this subsection until the department's~~
12 ~~stock is exhausted or until October 1, 2003, whichever is sooner.~~
13 ~~Beginning October 1, 2003, the~~ **THE** department shall only
14 distribute the complaint pamphlets and model standardized complaint
15 forms that are in compliance with subsections (2) and (3).

16 (5) The department shall make the complaint pamphlet and the
17 model standardized complaint form available to the public on the
18 department's internet website. The department shall take
19 affirmative action toward the development and implementation of an
20 electronic filing system that would allow an individual to file a
21 complaint through the website.

22 Sec. 20198. (1) Subject to subsection (3), an individual shall
23 not enter upon the premises of a health facility or agency that is
24 an inpatient facility, an outpatient facility, or a residential
25 facility for the purpose of engaging in an activity that would
26 cause a reasonable person to feel terrorized, frightened,
27 intimidated, threatened, harassed, or molested and that actually

1 causes a health facility or agency employee, patient, resident, or
 2 visitor to feel terrorized, frightened, intimidated, threatened,
 3 harassed, or molested. This subsection does not prohibit
 4 constitutionally protected activity or conduct that serves a
 5 legitimate purpose.

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

9 ~~(3) Subsections (1) and (2) do not apply to a nursing home~~
 10 ~~covered under sections 21763(5) and 21799c(1)(c).~~

11 Sec. 20201. (1) A health facility or agency that provides
 12 services directly to patients or residents and is licensed under
 13 this article shall adopt a policy describing the rights and
 14 responsibilities of patients or residents admitted to the health
 15 facility or agency. Except for a licensed health maintenance
 16 organization which shall comply with chapter 35 of the insurance
 17 code of 1956, 1956 PA 218, MCL 500.3501 to 500.3580, **OR A NURSING**
 18 **HOME, HOSPICE, OR HOME FOR THE AGED WHICH SHALL COMPLY WITH THE**
 19 **LONG-TERM CARE CONTINUUM ACT**, the policy shall be posted at a
 20 public place in the health facility or agency and shall be provided
 21 to each member of the health facility or agency staff. Patients or
 22 residents shall be treated in accordance with the policy.

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

26 (a) A patient or resident shall not be denied appropriate care
 27 on the basis of race, religion, color, national origin, sex, age,

1 disability, marital status, sexual preference, or source of
2 payment.

3 (b) An individual who is or has been a patient or resident is
4 entitled to inspect, or receive for a reasonable fee, a copy of his
5 or her medical record upon request in accordance with the medical
6 records access act, 2004 PA 47, MCL 333.26261 to 333.26271. Except
7 as otherwise permitted or required under the health insurance
8 portability and accountability act of 1996, Public Law 104-191, or
9 regulations promulgated under that act, 45 CFR parts 160 and 164, a
10 third party shall not be given a copy of the patient's or
11 resident's medical record without prior authorization of the
12 patient or resident.

13 (c) A patient or resident is entitled to confidential
14 treatment of personal and medical records, and may refuse their
15 release to a person outside the health facility or agency except as
16 required because of a transfer to another health care facility, as
17 required by law or third party payment contract, or as permitted or
18 required under the health insurance portability and accountability
19 act of 1996, Public Law 104-191, or regulations promulgated under
20 that act, 45 CFR parts 160 and 164.

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

25 (e) A patient or resident is entitled to receive adequate and
26 appropriate care, and to receive, from the appropriate individual
27 within the health facility or agency, information about his or her

1 medical condition, proposed course of treatment, and prospects for
2 recovery, in terms that the patient or resident can understand,
3 unless medically contraindicated as documented by the attending
4 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 health
8 facility or agency 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 health
16 facility or agency staff, to governmental officials, or to another
17 person of his or her choice within or outside the health facility
18 or agency, free from restraint, interference, coercion,
19 discrimination, or reprisal. A patient or resident is entitled to
20 information about the health facility's or agency'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 health facility or
5 agency.

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 to be
10 involved in his or her discharge planning, if appropriate.

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

26 (l) A patient or resident is entitled to be free from mental
27 and physical abuse and from physical and chemical restraints,

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

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

13 (n) A patient or resident is entitled to information about the
14 health facility or agency rules and regulations affecting patient
15 or resident care and conduct.

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

19 ~~—— (3) The following additional requirements for the policy~~
20 ~~described in subsection (2) apply to licensees under parts 213 and~~
21 ~~217:~~

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

26 ~~—— (b) Each nursing home patient may associate and communicate~~
27 ~~privately with persons of his or her choice. Reasonable, regular~~

1 ~~visiting hours, which shall be not less than 8 hours per day, and~~
2 ~~which shall take into consideration the special circumstances of~~
3 ~~each visitor, shall be established for patients to receive~~
4 ~~visitors. A patient may be visited by the patient's attorney or by~~
5 ~~representatives of the departments named in section 20156, during~~
6 ~~other than established visiting hours. Reasonable privacy shall be~~
7 ~~afforded for visitation of a patient who shares a room with another~~
8 ~~patient. Each patient shall have reasonable access to a telephone.~~
9 ~~A married nursing home patient or home for the aged resident is~~
10 ~~entitled to meet privately with his or her spouse in a room that~~
11 ~~assures privacy. If both spouses are residents in the same~~
12 ~~facility, they are entitled to share a room unless medically~~
13 ~~contraindicated and documented by the attending physician in the~~
14 ~~medical record.~~

15 ~~—— (c) A nursing home patient or home for the aged resident is~~
16 ~~entitled to retain and use personal clothing and possessions as~~
17 ~~space permits, unless to do so would infringe upon the rights of~~
18 ~~other patients or residents, or unless medically contraindicated as~~
19 ~~documented by the attending physician in the medical record. Each~~
20 ~~nursing home patient or home for the aged resident shall be~~
21 ~~provided with reasonable space. At the request of a patient, a~~
22 ~~nursing home shall provide for the safekeeping of personal effects,~~
23 ~~funds, and other property of a patient in accordance with section~~
24 ~~21767, except that a nursing home is not required to provide for~~
25 ~~the safekeeping of a property that would impose an unreasonable~~
26 ~~burden on the nursing home.~~

27 ~~—— (d) A nursing home patient or home for the aged resident is~~

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

8 ~~—— (e) A home for the aged resident may be transferred or~~
9 ~~discharged only for medical reasons, for his or her welfare or that~~
10 ~~of other residents, or for nonpayment of his or her stay, except as~~
11 ~~provided by title XVIII or title XIX. A nursing home patient may be~~
12 ~~transferred or discharged only as provided in sections 21773 to~~
13 ~~21777. A nursing home patient or home for the aged resident is~~
14 ~~entitled to be given reasonable advance notice to ensure orderly~~
15 ~~transfer or discharge. Those actions shall be documented in the~~
16 ~~medical record.~~

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

25 ~~—— (g) A nursing home patient or home for the aged resident is~~
26 ~~entitled to manage his or her own financial affairs, or to have at~~
27 ~~least a quarterly accounting of personal financial transactions~~

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

~~10 ——— (h) A nursing home patient or a person authorized by the
11 patient in writing may inspect and copy the patient's personal and
12 medical records. The records shall be made available for inspection
13 and copying by the nursing home within a reasonable time, not
14 exceeding 1 week, after the receipt of a written request.~~

~~15 ——— (i) If a nursing home patient desires treatment by a licensed
16 member of the healing arts, the treatment shall be made available
17 unless it is medically contraindicated, and the medical
18 contraindication is justified in the patient's medical record by
19 the attending physician.~~

~~20 ——— (j) A nursing home patient has the right to have his or her
21 parents, if a minor, or his or her spouse, next of kin, or
22 patient's representative, if an adult, stay at the facility 24
23 hours a day if the patient is considered terminally ill by the
24 physician responsible for the patient's care.~~

~~25 ——— (k) Each nursing home patient shall be provided with meals
26 that meet the recommended dietary allowances for that patient's age
27 and sex and that may be modified according to special dietary needs~~

1 ~~or ability to chew.~~

2 ~~—— (1) Each nursing home patient has the right to receive~~
3 ~~representatives of approved organizations as provided in section~~
4 ~~21763.~~

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

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

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

24 (3) ~~—(7)—~~ This section does not prohibit a health facility or
25 agency from establishing and recognizing additional patients'
26 rights.

27 ~~—— (8) As used in this section:~~

1 ~~—— (a) "Patient's representative" means that term as defined in~~
 2 ~~section 21703.~~

3 ~~—— (b) "Title XVIII" means title XVIII of the social security~~
 4 ~~act, 42 USC 1395 to 1395hhh.~~

5 ~~—— (c) "Title XIX" means title XIX of the social security act, 42~~
 6 ~~USC 1396 to 1396v.~~

7 Sec. 22205. (1) "Health facility", except as otherwise
 8 provided in subsection (2), means:

9 (a) A hospital licensed under part 215.

10 (b) A psychiatric hospital or psychiatric unit licensed under
 11 the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

12 (c) A nursing home licensed under part ~~217~~ **32 OF THE LONG-**
 13 **TERM CARE CONTINUUM ACT** or a hospital long-term care unit as
 14 defined in section 20106(6).

15 (d) A freestanding surgical outpatient facility licensed under
 16 part 208.

17 (e) A health maintenance organization issued a license or
 18 certificate of authority in this state.

19 (2) "Health facility" does not include the following:

20 (a) An institution conducted by and for the adherents of a
 21 church or religious denomination for the purpose of providing
 22 facilities for the care and treatment of the sick who depend solely
 23 upon spiritual means through prayer for healing.

24 (b) A health facility or agency located in a correctional
 25 institution.

26 (c) A veterans facility operated by the state or federal
 27 government.

1 (d) A facility owned and operated by the department of
2 community health.

3 (3) "Initiate" means the offering of a covered clinical
4 service that has not been offered in compliance with this part or
5 former part 221 on a regular basis at that location within the 12-
6 month period immediately preceding the date the covered clinical
7 service will be offered.

8 (4) "Medical equipment" means a single equipment component or
9 a related system of components that is used for clinical purposes.

10 Sec. 22210. (1) A hospital that applies to the department for
11 a certificate of need and meets all of the following criteria shall
12 be granted a certificate of need for a short-term nursing care
13 program with up to 10 licensed hospital beds:

14 (a) Is eligible to apply for certification as a provider of
15 swing-bed services under section 1883 of title XVIII, 42 ~~U.S.C.~~
16 **USC** 1395tt.

17 (b) Subject to subsection (2), has fewer than 100 licensed
18 beds not counting beds excluded under section 1883 of title XVIII
19 of the social security act.

20 (c) Does not have uncorrected licensing, certification, or
21 safety deficiencies for which the department or the state fire
22 marshal, or both, has not accepted a plan of correction.

23 (d) Provides evidence satisfactory to the department that the
24 hospital has had difficulty in placing patients in skilled nursing
25 home beds during the 12 months immediately preceding the date of
26 the application.

27 (2) After October 1, 1990, the criteria set forth in

1 subsection (1)(b) may be modified by the commission, using the
2 procedure set forth in section 22215(3). The department shall not
3 charge a fee for processing a certificate of need application to
4 initiate a short-term nursing care program.

5 (3) A hospital that is granted a certificate of need for a
6 short-term nursing care program under subsection (1) shall comply
7 with all of the following:

8 (a) Not charge for or otherwise attempt to recover the cost of
9 a length of stay for a patient in the short-term nursing care
10 program that exceeds the length of time allowed for post-hospital
11 extended care under title XVIII.

12 (b) Admit patients to the short-term nursing care program only
13 pursuant to an admissions contract approved by the department.

14 (c) Not discharge or transfer a patient from a licensed
15 hospital bed other than a hospital long-term care unit bed and
16 admit that patient to the short-term nursing care program unless
17 the discharge or transfer and admission is determined medically
18 appropriate by the attending physician.

19 (d) Permit access to a representative of an organization
20 approved under section ~~21764~~ **3264 OF THE LONG-TERM CARE CONTINUUM**
21 **ACT** to patients admitted to the short-term nursing care program,
22 for all of the purposes described in section ~~21763~~ **3263 OF THE**
23 **LONG-TERM CARE CONTINUUM ACT**.

24 (e) Subject to subsection (8), not allow the number of patient
25 days for the short-term nursing care program to exceed the
26 equivalent of 1,825 patient days for a single state fiscal year.

27 (f) Transfer a patient in the short-term nursing care program

1 to an appropriately certified nursing home bed, county medical care
2 facility bed, or hospital long-term care unit bed located within a
3 50-mile radius of the patient's residence within 5 business days
4 after the hospital has been notified, either orally or in writing,
5 that a bed has become available.

6 (g) Not charge or collect from a patient admitted to the
7 short-term nursing care program, for services rendered as part of
8 the short-term nursing care program, an amount in excess of the
9 reasonable charge for the services as determined by the United
10 States secretary of health and human services under title XVIII.

11 (h) Assist a patient who has been denied coverage for services
12 received in a short-term nursing care program under title XVIII to
13 file an appeal with the medicare recovery project operated by the
14 office of services to the aging.

15 (i) Operate the short-term nursing care program in accordance
16 with this section and the requirements of the swing bed provisions
17 of section 1883 of title XVIII, 42 ~~U.S.C.~~ **USC** 1395tt.

18 (j) Provide data to the department considered necessary by the
19 department to evaluate the short-term nursing care program. The
20 data shall include, but is not limited to, all of the following:

21 (i) The total number of patients admitted to the hospital's
22 short-term nursing care program during the period specified by the
23 department.

24 (ii) The total number of short-term nursing care patient days
25 for the period specified by the department.

26 (iii) Information identifying the type of care to which patients
27 in the short-term care nursing program are released.

1 (k) As part of the hospital's policy describing the rights and
2 responsibilities of patients admitted to the hospital, as required
3 under section 20201, incorporate all of the following additional
4 rights and responsibilities for patients in the short-term nursing
5 care program:

6 (i) A copy of the hospital's policy shall be provided to each
7 short-term nursing care patient upon admission, and the staff of
8 the hospital shall be trained and involved in the implementation of
9 the policy.

10 (ii) Each short-term nursing care patient may associate and
11 communicate privately with persons of his or her choice.
12 Reasonable, regular visiting hours, which shall take into
13 consideration the special circumstances of each visitor, shall be
14 established for short-term nursing care patients to receive
15 visitors. A short-term nursing care patient may be visited by the
16 patient's attorney or by representatives of the departments named
17 in section 20156 during other than established visiting hours.
18 Reasonable privacy shall be afforded for visitation of a short-term
19 nursing care patient who shares a room with another short-term
20 nursing care patient. Each short-term nursing care patient shall
21 have reasonable access to a telephone.

22 (iii) A short-term nursing care patient is entitled to retain
23 and use personal clothing and possessions as space permits, unless
24 medically contraindicated, as documented by the attending physician
25 in the medical record.

26 (iv) A short-term nursing care patient is entitled to the
27 opportunity to participate in the planning of his or her medical

1 treatment. A short-term nursing care patient shall be fully
2 informed by the attending physician of the short-term nursing care
3 patient's medical condition, unless medically contraindicated, as
4 documented by a physician in the medical record. Each short-term
5 nursing care patient shall be afforded the opportunity to discharge
6 himself or herself from the short-term nursing care program.

7 (v) A short-term nursing care patient is entitled to be fully
8 informed either before or at the time of admission, and during his
9 or her stay, of services available in the hospital and of the
10 related charges for those services. The statement of services
11 provided by the hospital shall be in writing and shall include
12 those services required to be offered on an as needed basis.

13 (vi) A patient in a short-term nursing care program or a person
14 authorized in writing by the patient may, upon submission to the
15 hospital of a written request, inspect and copy the patient's
16 personal or medical records. The hospital shall make the records
17 available for inspection and copying within a reasonable time, not
18 exceeding 7 days, after the receipt of the written request.

19 (vii) A short-term nursing care patient has the right to have
20 his or her parents, if the short-term nursing care patient is a
21 minor, or his or her spouse, next of kin, or patient's
22 representative, if the short-term nursing care patient is an adult,
23 stay at the facility 24 hours a day if the short-term nursing care
24 patient is considered terminally ill by the physician responsible
25 for the short-term nursing care patient's care.

26 (viii) Each short-term nursing care patient shall be provided
27 with meals that meet the recommended dietary allowances for that

1 patient's age and sex and that may be modified according to special
2 dietary needs or ability to chew.

3 (ix) Each short-term nursing care patient has the right to
4 receive a representative of an organization approved under section
5 21764, for all of the purposes described in section 21763.

6 (l) Achieve and maintain medicare certification under title
7 XVIII.

8 (4) A hospital or the owner, administrator, an employee, or a
9 representative of the hospital shall not discharge, harass, or
10 retaliate or discriminate against a short-term nursing care patient
11 because the short-term nursing care patient has exercised a right
12 described in subsection (3)(k).

13 (5) In the case of a short-term nursing care patient, the
14 rights described in subsection (3)(k)(iv) may be exercised by the
15 patient's representative, as defined in section 21703(2).

16 (6) A short-term nursing care patient shall be fully informed,
17 as evidenced by the short-term nursing care patient's written
18 acknowledgment, before or at the time of admission and during stay,
19 of the rights described in subsection (3)(k). The written
20 acknowledgment shall provide that if a short-term nursing care
21 patient is adjudicated incompetent and not restored to legal
22 capacity, the rights and responsibilities set forth in subsection
23 (3)(k) shall be exercised by a person designated by the short-term
24 nursing care patient. The hospital shall provide proper forms for
25 the short-term nursing care patient to provide for the designation
26 of this person at the time of admission.

27 (7) Subsection (3)(k) does not prohibit a hospital from

1 establishing and recognizing additional rights for short-term
2 nursing care patients.

3 (8) Upon application, the department may grant a variation
4 from the maximum number of patient days established under
5 subsection (3)(e), to an applicant hospital that demonstrates to
6 the satisfaction of the department that there is an immediate need
7 for skilled nursing beds within a 100-mile radius of the hospital.
8 A variation granted under this subsection shall be valid for not
9 more than 1 year after the date the variation is granted. The
10 department shall promulgate rules to implement this subsection
11 including, at a minimum, a definition of immediate need and the
12 procedure for applying for a variation.

13 (9) A hospital that violates subsection (3) is subject to the
14 penalty provisions of section 20165.

15 (10) A person shall not initiate a short-term nursing care
16 program without first obtaining a certificate of need under this
17 section.

18 Sec. 22239. (1) If the certificate of need approval was based
19 on a stipulation that the project would participate in title XIX
20 and the project has not participated in title XIX for at least 12
21 consecutive months within the first 2 years of operation or
22 continued to participate annually thereafter, the department shall
23 revoke the certificate of need. A stipulation described in this
24 section is germane to all health facility projects.

25 (2) The department shall monitor the participation in title
26 XIX of each certificate of need applicant approved under this part.
27 Except as otherwise provided in subsection (3), the department

1 shall require each applicant to provide verification of
2 participation in title XIX with its application and annually
3 thereafter.

4 (3) The department shall not revoke or deny a certificate of
5 need for a nursing home licensed under part ~~217~~ **32 OF THE LONG-**
6 **TERM CARE CONTINUUM ACT** if that nursing home does not participate
7 in title XIX on ~~the effective date of the amendatory act that~~
8 ~~added this subsection~~ **MARCH 31, 2003** but agrees to participate in
9 title XIX if beds become available. This section does not prohibit
10 a person from applying for and obtaining a certificate of need to
11 acquire or begin operation of a nursing home that does not
12 participate in title XIX.

13 Enacting section 1. Sections 20173, 20173a, 20173b, and 20178
14 and parts 213, 214, and 217 of the public health code, 1978 PA 368,
15 MCL 333.20173, 333.20173a, 333.20173b, 333.20178, 333.21301 to
16 333.21335, 333.21401 to 333.21420, and 333.21701 to 333.21799e, are
17 repealed.

18 Enacting section 2. This amendatory act does not take effect
19 unless House Bill No. 5762 of the 93rd Legislature is enacted into
20 law.