

SUBSTITUTE FOR
SENATE BILL NO. 884

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 20155 (MCL 333.20155), as amended by 2006 PA
195, and by adding section 20155a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20155. (1) Except as otherwise provided in this section
2 **AND SECTION 20155A**, the department shall make annual and other
3 visits to each health facility or agency licensed under this
4 article for the purposes of survey, evaluation, and consultation. A
5 visit made ~~pursuant~~ **ACCORDING** to a complaint shall be unannounced.
6 Except for a county medical care facility, a home for the aged, a
7 nursing home, or a hospice residence, the department shall
8 determine whether the visits that are not made ~~pursuant~~ **ACCORDING**

1 to a complaint are announced or unannounced. Beginning June 20,
2 2001, the department shall ~~assure~~**ENSURE** that each newly hired
3 nursing home surveyor, as part of his or her basic training, is
4 assigned full-time to a licensed nursing home for at least 10 days
5 within a 14-day period to observe actual operations outside of the
6 survey process before the trainee begins oversight
7 responsibilities.

8 (2) THE STATE SHALL ESTABLISH A PROCESS THAT ENSURES BOTH OF
9 THE FOLLOWING:

10 (A) A NEWLY HIRED NURSING HOME SURVEYOR SHALL NOT MAKE
11 INDEPENDENT COMPLIANCE DECISIONS DURING HIS OR HER TRAINING PERIOD.

12 (B) A NURSING HOME SURVEYOR SHALL NOT BE ASSIGNED AS A MEMBER
13 OF A SURVEY TEAM FOR A NURSING HOME IN WHICH HE OR SHE RECEIVED
14 TRAINING FOR 1 STANDARD SURVEY FOLLOWING THE TRAINING RECEIVED IN
15 THAT NURSING HOME.

16 (3) BEGINNING OCTOBER 1, 2012, THE DEPARTMENT SHALL PERFORM A
17 CRIMINAL HISTORY CHECK ON ALL NURSING HOME SURVEYORS IN THE MANNER
18 PROVIDED FOR IN SECTION 20173A.

19 (4) A member of a survey team shall not be employed by a
20 licensed nursing home or a nursing home management company doing
21 business in this state at the time of conducting a survey under
22 this section. The department shall not assign an individual to be a
23 member of a survey team for purposes of a survey, evaluation, or
24 consultation visit at a nursing home in which he or she was an
25 employee within the preceding 5—3 years.

26 (5) REPRESENTATIVES FROM ALL NURSING FACILITY PROVIDER
27 ORGANIZATIONS AND THE STATE LONG-TERM CARE OMBUDSMAN OR HIS OR HER

DESIGNEE BE INVITED TO PARTICIPATE IN THE PLANNING PROCESS FOR THE
JOINT PROVIDER AND SURVEYOR TRAINING SESSIONS. THE DEPARTMENT SHALL
INCLUDE AT LEAST 1 REPRESENTATIVE FROM NURSING FACILITY PROVIDER
ORGANIZATIONS THAT DO NOT OWN OR OPERATE A NURSING FACILITY
REPRESENTING AT LEAST 30 OR MORE NURSING FACILITIES STATEWIDE IN
INTERNAL SURVEYOR GROUP QUALITY ASSURANCE TRAINING PROVIDED FOR THE
PURPOSE OF GENERAL CLARIFICATION AND INTERPRETATION OF EXISTING OR
NEW REGULATORY REQUIREMENTS AND EXPECTATIONS.

(6) THE DEPARTMENT SHALL MAKE AVAILABLE ONLINE THE GENERAL
CIVIL SERVICE POSITION DESCRIPTION RELATED TO THE REQUIRED
QUALIFICATIONS FOR INDIVIDUAL SURVEYORS. THE DEPARTMENT SHALL USE
THE REQUIRED QUALIFICATIONS TO HIRE, EDUCATE, DEVELOP, AND EVALUATE
SURVEYORS.

(7) THE DEPARTMENT SHALL ENSURE THAT AT LEAST 1 REGISTERED
NURSE IS A MEMBER OF EACH ANNUAL SURVEY TEAM, AND THAT ADDITIONAL
SURVEY TEAM MEMBERS INCLUDE A VARIATION OF QUALIFIED HEALTH
PROFESSIONALS NOT LIMITED TO SOCIAL WORKERS, THERAPISTS,
DIETITIANS, PHARMACISTS, ADMINISTRATORS, PHYSICIANS, SANITARIANS,
AND OTHERS, WHO HAVE THE EXPERTISE NECESSARY TO EVALUATE SPECIFIC
ASPECTS OF NURSING HOME OPERATION.

(8) ~~(2) The~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION AND
SECTION 20155A, THE department shall make at least a biennial visit
to each licensed clinical laboratory, each nursing home, and each
hospice residence for the purposes of survey, evaluation, and
consultation. The department shall semiannually provide for joint
training with nursing home surveyors and providers on at least 1 of
the 10 most frequently issued federal citations in this state

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

14 (9) ~~(3)~~—The department shall make a biennial visit to each
15 hospital for survey and evaluation for the purpose of licensure.
16 Subject to subsection ~~(6)~~—(12), the department may waive the
17 biennial visit required by this subsection if a hospital, as part
18 of a timely application for license renewal, requests a waiver and
19 submits both of the following and if all of the requirements of
20 subsection ~~(5)~~—(11) are met:

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

26 (b) A copy of the most recent accreditation report for the
27 hospital issued by a body described in subdivision (a), and the

1 hospital's responses to the accreditation report.

2 (10) ~~(4)~~ Except as provided in subsection ~~(8)~~ **(14)**,
3 accreditation information provided to the department under
4 subsection ~~(3)~~ **(9)** is confidential, is not a public record, and is
5 not subject to court subpoena. The department shall use the
6 accreditation information only as provided in this section and
7 shall return the accreditation information to the hospital within a
8 reasonable time after a decision on the waiver request is made.

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

18 (a) Grant an extension of the hospital's current license until
19 the next accreditation survey is completed by the body described in
20 subsection ~~(3)(a)~~ **(9) (A)**.

21 (b) Grant a waiver under subsection ~~(3)~~ **(9)** based on the
22 accreditation report that is 2 or more years old, on condition that
23 the hospital promptly submit the next accreditation report to the
24 department.

25 (c) Deny the waiver request and conduct the visits required
26 under subsection ~~(3)~~ **(9)**.

27 (12) ~~(6)~~ This section does not prohibit the department from

1 citing a violation of this part during a survey, conducting
2 investigations or inspections ~~pursuant~~ **ACCORDING** to section 20156,
3 or conducting surveys of health facilities or agencies for the
4 purpose of complaint investigations or federal certification. This
5 section does not prohibit the bureau of fire services created in
6 section 1b of the fire prevention code, 1941 PA 207, MCL 29.1b,
7 from conducting annual surveys of hospitals, nursing homes, and
8 county medical care facilities.

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

17 **(14)** ~~(8)~~—If the department determines that substantial
18 noncompliance with licensure standards exists or that deficiencies
19 that represent a threat to public safety or patient care exist
20 based on a review of an accreditation report submitted ~~pursuant to~~
21 **UNDER** subsection ~~(3)(b)~~ **(9) (B)**, the department shall prepare a
22 written summary of the substantial noncompliance or deficiencies
23 and the hospital's response to the department's determination. The
24 department's written summary and the hospital's response are public
25 documents.

26 **(15)** ~~(9)~~—The department or a local health department shall
27 conduct investigations or inspections, other than inspections of

1 financial records, of a county medical care facility, home for the
2 aged, nursing home, or hospice residence without prior notice to
3 the health facility or agency. An employee of a state agency
4 charged with investigating or inspecting the health facility or
5 agency or an employee of a local health department who directly or
6 indirectly gives prior notice regarding an investigation or an
7 inspection, other than an inspection of the financial records, to
8 the health facility or agency or to an employee of the health
9 facility or agency, is guilty of a misdemeanor. Consultation visits
10 that are not for the purpose of annual or follow-up inspection or
11 survey may be announced.

12 (16) ~~(10)~~—The department shall maintain a record indicating
13 whether a visit and inspection is announced or unannounced.

14 ~~Information~~—**SURVEY FINDINGS** gathered at **EACH HEALTH FACILITY OR**
15 **AGENCY DURING** each visit and inspection, whether announced or
16 unannounced, shall be taken into account in licensure decisions.

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

27 **SURVEYORS SHALL USE ELECTRONIC RESIDENT INFORMATION, WHENEVER**

1 AVAILABLE, AS A SOURCE OF SURVEY-RELATED DATA AND SHALL REQUEST
2 FACILITY ASSISTANCE TO ACCESS THE SYSTEM TO MAXIMIZE DATA EXPORT.

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

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

1 (20) ~~(14)~~—The department shall report to the appropriations
 2 subcommittees, the senate and house of representatives standing
 3 committees having jurisdiction over issues involving senior
 4 citizens, and the fiscal agencies on March 1 of each year on the
 5 initial and follow-up surveys conducted on all nursing homes in
 6 this state. The report shall include all of the following
 7 information:

8 (a) The number of surveys conducted.

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

10 ~~(c) The number referred to the Michigan public health~~
 11 ~~institute for remediation.~~

12 (C) ~~(d)~~—The **AVERAGE** number of citations per nursing home **FOR**
 13 **THE MOST RECENT CALENDAR YEAR.**

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

15 (E) ~~(f)~~—The number of night and weekend responses to
 16 complaints conducted by the department.

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

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

20 (H) ~~(i)~~—The number and percentage of citations overturned or
 21 modified, or both.

22 (I) **INFORMATION REGARDING THE PROGRESS MADE ON IMPLEMENTING**
 23 **THE ADMINISTRATIVE AND ELECTRONIC SUPPORT STRUCTURE TO EFFICIENTLY**
 24 **COORDINATE ALL NURSING FACILITY LICENSING AND CERTIFICATION**
 25 **FUNCTIONS.**

26 (J) **THE NUMBER OF ANNUAL STANDARD SURVEYS OF NURSING**
 27 **FACILITIES THAT WERE CONDUCTED DURING A PERIOD OF OPEN SURVEY OR**

1 ENFORCEMENT CYCLE.

2 (K) THE NUMBER OF ABBREVIATED COMPLAINT SURVEYS THAT WERE NOT
3 CONDUCTED ON CONSECUTIVE DAYS.

4 (L) THE PERCENT OF ALL FORM CMS-2567 REPORTS OF FINDINGS THAT
5 WERE RELEASED TO THE NURSING FACILITY WITHIN THE 10-WORKING-DAY
6 REQUIREMENT.

7 (M) THE PERCENT OF PROVIDER NOTIFICATIONS OF ACCEPTANCE OR
8 REJECTION OF A PLAN OF CORRECTION THAT WERE RELEASED TO THE NURSING
9 FACILITY WITHIN THE 10-WORKING-DAY REQUIREMENT.

10 (N) THE PERCENT OF FIRST REVISITS THAT WERE COMPLETED WITHIN
11 60 DAYS FROM THE DATE OF SURVEY COMPLETION.

12 (O) THE PERCENT OF SECOND REVISITS THAT WERE COMPLETED WITHIN
13 85 DAYS FROM THE DATE OF SURVEY COMPLETION.

14 (P) THE PERCENT OF LETTERS OF COMPLIANCE NOTIFICATION TO THE
15 NURSING FACILITY THAT WERE RELEASED WITHIN 10 WORKING DAYS OF THE
16 DATE OF THE COMPLETION OF THE REVISIT.

17 (Q) A SUMMARY OF THE DISCUSSIONS FROM THE MEETINGS REQUIRED IN
18 SUBSECTION (24).

19 (R) THE NUMBER OF NURSING FACILITIES THAT PARTICIPATED IN A
20 RECOGNIZED QUALITY IMPROVEMENT PROGRAM AS DESCRIBED UNDER SECTION
21 20155A(3).

22 (21) ~~(15)~~ The department shall report ~~annually~~ **MARCH 1 OF EACH**
23 **YEAR** to the standing committees on appropriations and the standing
24 committees having jurisdiction over issues involving senior
25 citizens in the senate and the house of representatives on ~~the~~ **ALL**
26 **OF THE FOLLOWING:**

27 (A) **THE** percentage of nursing home citations that are appealed

1 ~~and the~~ **THROUGH THE INFORMAL DISPUTE RESOLUTION PROCESS.**

2 **(B) THE NUMBER AND** percentage of nursing home citations that
3 are appealed and **SUPPORTED**, amended, **OR DELETED** through the
4 informal ~~deficiency~~-dispute resolution process.

5 **(C) A SUMMARY OF THE QUALITY ASSURANCE REVIEW OF THE AMENDED**
6 **CITATIONS AND RELATED SURVEY RETRAINING EFFORTS TO IMPROVE**
7 **CONSISTENCY AMONG SURVEYORS AND ACROSS THE SURVEY ADMINISTRATIVE**
8 **UNIT THAT OCCURRED IN THE YEAR BEING REPORTED.**

9 **(22)** ~~(16)~~-Subject to subsection ~~(17)~~, **(23)**, a clarification
10 work group comprised of the department in consultation with a
11 nursing home resident or a member of a nursing home resident's
12 family, nursing home provider groups, the American medical
13 directors association, the state long-term care ombudsman, and the
14 federal centers for medicare and medicaid services shall clarify
15 the following terms as those terms are used in title XVIII and
16 title XIX and applied by the department to provide more consistent
17 regulation of nursing homes in ~~Michigan~~. **THIS STATE:**

18 (a) Immediate jeopardy.

19 (b) Harm.

20 (c) Potential harm.

21 (d) Avoidable.

22 (e) Unavoidable.

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

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

1 participation has caused or is likely to cause serious injury,
2 harm, impairment, or death to a resident receiving care in a
3 nursing home.

4 (b) The likelihood of immediate jeopardy is reasonably higher
5 if there is evidence of a flagrant failure by the nursing home to
6 comply with a clinical process guideline adopted under subsection
7 ~~(18)~~ (25) than if the nursing home has substantially and
8 continuously complied with those guidelines. If federal regulations
9 and guidelines are not clear, and if the clinical process
10 guidelines have been recognized, a process failure giving rise to
11 an immediate jeopardy may involve an egregious widespread or
12 repeated process failure and the absence of reasonable efforts to
13 detect and prevent the process failure.

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

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

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

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

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

1 could be problematic, but did not know.

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

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

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

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

1 considered more limited if it occurs in the context of overall
2 procedural consistency with an accepted clinical process guideline
3 adopted pursuant to ~~UNDER~~ subsection ~~(18)~~, ~~(25)~~, as compared to a
4 substantial inconsistency with or variance from the guideline.

5 (g) For purposes of subdivision (e), if the publications
6 described in subdivision (f) do not provide specific guidance, the
7 department may consider the degree of a nursing home's adherence to
8 a clinical process guideline adopted pursuant to ~~UNDER~~ subsection
9 ~~(18)~~ ~~(25)~~ in considering whether the degree of compromise and
10 future risk to the resident constitutes actual harm. The risk of
11 significant compromise to the resident may be considered greater in
12 the context of substantial deviation from the guidelines than in
13 the case of overall adherence.

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

27 **(24) THE DEPARTMENT SHALL INVITE TO A QUARTERLY MEETING AT**

1 LEAST 1 REPRESENTATIVE FROM EACH NURSING FACILITY PROVIDER
2 ORGANIZATION THAT DOES NOT OWN OR OPERATE A NURSING FACILITY
3 REPRESENTING 30 OR MORE NURSING FACILITIES STATEWIDE AND THE STATE
4 LONG-TERM CARE OMBUDSMAN OR HIS OR HER DESIGNEE TO DISCUSS, AT A
5 MINIMUM, ALL OF THE FOLLOWING:

6 (A) OPPORTUNITIES FOR ENHANCED PROMOTION OF NURSING FACILITY
7 PERFORMANCE, INCLUDING, BUT NOT LIMITED TO, PROGRAMS THAT ENCOURAGE
8 AND REWARD PROVIDERS THAT STRIVE FOR EXCELLENCE.

9 (B) SEEKING QUALITY IMPROVEMENT TO THE SURVEY AND ENFORCEMENT
10 PROCESS, INCLUDING CLARIFICATIONS TO PROCESS-RELATED POLICIES AND
11 PROTOCOLS THAT INCLUDE, BUT ARE NOT LIMITED TO, ALL OF THE
12 FOLLOWING:

13 (i) IMPROVING THE SURVEYORS' QUALITY AND PREPAREDNESS.

14 (ii) ENHANCED COMMUNICATION BETWEEN REGULATORS, SURVEYORS,
15 PROVIDERS, AND CONSUMERS.

16 (iii) ENSURING FAIR ENFORCEMENT AND DISPUTE RESOLUTION BY
17 IDENTIFYING METHODS OR STRATEGIES THAT MAY RESOLVE IDENTIFIED
18 PROBLEMS OR CONCERNS.

19 (C) PROMOTING TRANSPARENCY ACROSS PROVIDER AND SURVEYOR
20 COMMUNITIES, INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

21 (i) APPLYING REGULATIONS IN A CONSISTENT MANNER AND EVALUATING
22 CHANGES THAT HAVE BEEN IMPLEMENTED TO RESOLVE IDENTIFIED PROBLEMS
23 AND CONCERNS.

24 (ii) PROVIDING CONSUMERS WITH INFORMATION REGARDING CHANGES IN
25 POLICY AND INTERPRETATION.

26 (iii) IDENTIFYING POSITIVE AND NEGATIVE TRENDS, AND FACTORS
27 CONTRIBUTING TO THOSE TRENDS, IN THE AREAS OF RESIDENT CARE,

1 DEFICIENT PRACTICES, AND ENFORCEMENT.

2 (25) ~~(18)~~ Subject to subsection ~~(19)~~ (27), the department ~~, in~~
3 ~~consultation with the clarification work group appointed under~~
4 ~~subsection (16),~~ shall develop and adopt clinical process
5 guidelines. ~~that shall be used in applying the terms set forth in~~
6 ~~subsection (16).~~ The department shall establish and adopt clinical
7 process guidelines and compliance protocols with outcome measures
8 for all of the following areas and for other topics where the
9 department determines that clarification will benefit providers and
10 consumers of long-term care:

11 (a) Bed rails.

12 (b) Adverse drug effects.

13 (c) Falls.

14 (d) Pressure sores.

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

17 (f) Pain management.

18 (g) Depression and depression pharmacotherapy.

19 (h) Heart failure.

20 (i) Urinary incontinence.

21 (j) Dementia.

22 (k) Osteoporosis.

23 (l) Altered mental states.

24 (m) Physical and chemical restraints.

25 **(N) CULTURE-CHANGE PRINCIPLES, PERSON-CENTERED CARING, AND**
26 **SELF-DIRECTED CARE.**

27 (26) THE DEPARTMENT SHALL BIENNIALY REVIEW AND UPDATE ALL

1 CLINICAL PROCESS GUIDELINES AS NEEDED AND SHALL CONTINUE TO DEVELOP
2 AND IMPLEMENT CLINICAL PROCESS GUIDELINES FOR TOPICS THAT HAVE NOT
3 BEEN DEVELOPED FROM THE LIST IN SUBSECTION (25) AND OTHER TOPICS
4 IDENTIFIED AS A RESULT OF THE MEETINGS REQUIRED IN SUBSECTION (24).
5 THE DEPARTMENT SHALL INCLUDE TRAINING ON NEW AND REVISED CLINICAL
6 PROCESS GUIDELINES IN THE JOINT PROVIDER AND SURVEYOR TRAINING
7 SESSIONS AS THOSE CLINICAL PROCESS GUIDELINES ARE DEVELOPED AND
8 REVISED.

9 (27) ~~(19)~~—The department shall create a clinical advisory
10 committee to review and make recommendations regarding the clinical
11 process guidelines with outcome measures adopted under subsection
12 ~~(18)~~—(25). BEGINNING OCTOBER 1, 2012, REPRESENTATIVES FROM EACH
13 NURSING FACILITY PROVIDER ORGANIZATION THAT DOES NOT OWN OR OPERATE
14 A NURSING FACILITY REPRESENTING 30 OR MORE NURSING FACILITIES
15 STATEWIDE AND THE STATE LONG-TERM CARE OMBUDSMAN OR HIS OR HER
16 DESIGNEE SHALL BE PERMANENT MEMBERS OF THE CLINICAL ADVISORY
17 COMMITTEE CREATED UNDER THIS SUBSECTION. The department shall
18 ~~appoint~~ INVITE physicians, registered professional nurses, and
19 licensed practical nurses to the clinical advisory committee, along
20 with professionals who have expertise in long-term care services,
21 some of whom may be employed by long-term care facilities **BASED ON**
22 **THE EXPERTISE REQUIRED FOR EACH CONTENT AREA.** ~~The clarification~~
23 ~~work group created~~ BEGINNING OCTOBER 1, 2012, THE DEPARTMENT SHALL
24 INVITE REPRESENTATIVES FROM EACH NURSING FACILITY PROVIDER
25 ORGANIZATIONS THAT DO NOT OWN OR OPERATE A NURSING FACILITY AND THE
26 STATE LONG-TERM CARE OMBUDSMAN OR HIS OR HER DESIGNEE AS PERMANENT
27 MEMBERS OF THE CLINICAL ADVISORY COMMITTEE. AT THE QUARTERLY

1 **MEETINGS REQUIRED** under subsection ~~(16)~~ **(24)**, **THE DEPARTMENT AND**
 2 **THE REPRESENTATIVES FROM THE NURSING FACILITY PROVIDER**
 3 **ORGANIZATIONS THAT DO NOT OWN OR OPERATE A NURSING FACILITY**
 4 **REPRESENTING 30 OR MORE NURSING FACILITIES STATEWIDE** shall review
 5 the **NEW AND REVISED** clinical process guidelines and outcome
 6 measures ~~after the clinical advisory committee and shall make~~ **TO**
 7 **MAKE** the final recommendations to the department before the
 8 clinical process guidelines are adopted. **THE DEPARTMENT SHALL ISSUE**
 9 **SURVEY CERTIFICATION MEMORANDUMS TO PROVIDERS TO ANNOUNCE OR**
 10 **CLARIFY CHANGES IN THE INTERPRETATION OF REGULATIONS.**

11 (28) ~~(20)~~ The department shall ~~create a~~ **MAINTAIN THE** process
 12 by which the director of the division of nursing home monitoring or
 13 his or her designee or the director of the division of operations
 14 or his or her designee reviews and authorizes the issuance of a
 15 citation for immediate jeopardy or substandard quality of care
 16 before the statement of deficiencies is made final. The review
 17 shall be to assure that the applicable concepts, clinical process
 18 guidelines, and other tools contained in subsections ~~(17) to (19)~~
 19 **(25) TO (27)** are being used consistently, accurately, and
 20 effectively. As used in this subsection, "immediate jeopardy" and
 21 "substandard quality of care" mean those terms as defined by the
 22 federal centers for medicare and medicaid services.

23 (29) ~~(21)~~ ~~The~~ **UPON AVAILABILITY OF FUNDS, THE** department ~~may~~
 24 **SHALL** give grants, awards, or other recognition to nursing homes to
 25 encourage the rapid implementation **OR MAINTENANCE** of the clinical
 26 process guidelines adopted under subsection ~~(18)~~ **(25)**.

27 (30) ~~(22)~~ ~~The department shall assess the effectiveness of~~

1 ~~2001 PA 218.~~ The department shall file an annual report **WITH**
 2 **ONGOING ANALYSIS** on the implementation of the clinical process
 3 guidelines and the impact of the guidelines on resident care with
 4 the standing committee in the legislature with jurisdiction over
 5 matters pertaining to nursing homes. ~~The first report shall be~~
 6 ~~filed on July 1, 2002.~~

7 (31) ~~(23)~~ The department shall instruct and train the
 8 surveyors in the ~~use of the clarifications described in subsection~~
 9 ~~(17) and the clinical process guidelines adopted under subsection~~
 10 ~~(18)~~ (25) in citing deficiencies.

11 (32) ~~(24)~~ A nursing home shall post the nursing home's survey
 12 report in a conspicuous place within the nursing home for public
 13 review.

14 (33) ~~(25)~~ Nothing in this amendatory act shall be construed to
 15 limit the requirements of related state and federal law.

16 (34) ~~(26)~~ As used in this section:

17 (A) "CONSECUTIVE DAYS" MEANS CALENDAR DAYS, BUT DOES NOT
 18 INCLUDE SATURDAY, SUNDAY, OR STATE- OR FEDERALLY-RECOGNIZED
 19 HOLIDAYS.

20 (B) "FORM CMS-2567" MEANS THE FEDERAL CENTERS FOR MEDICARE AND
 21 MEDICAID SERVICES' FORM FOR THE STATEMENT OF DEFICIENCIES AND PLAN
 22 OF CORRECTION OR A SUCCESSOR FORM SERVING THE SAME PURPOSE.

23 (C) ~~(a)~~ "Title XVIII" means title XVIII of the social security
 24 act, 42 USC 1395 to 1395hhh.

25 (D) ~~(b)~~ "Title XIX" means title XIX of the social security
 26 act, ~~chapter 531,~~ 42 USC 1396 to ~~1396v.~~ 1396W-2.

27 **SEC. 20155A. (1) NURSING HOME HEALTH SURVEY TASKS SHALL BE**

1 FACILITATED BY THE LICENSING AND REGULATORY AFFAIRS BUREAU OF
2 HEALTH SYSTEMS TO ENSURE CONSISTENT AND EFFICIENT COORDINATION OF
3 THE NURSING HOME LICENSING AND CERTIFICATION FUNCTIONS FOR STANDARD
4 AND ABBREVIATED SURVEYS. THE DEPARTMENT SHALL DEVELOP AND IMPLEMENT
5 AN ELECTRONIC SYSTEM TO SUPPORT COORDINATION OF THESE ACTIVITIES BY
6 DECEMBER 31, 2013.

7 (2) WHEN PREPARING TO CONDUCT AN ANNUAL STANDARD SURVEY, THE
8 DEPARTMENT SHALL DETERMINE IF THERE IS AN OPEN SURVEY CYCLE AND
9 MAKE EVERY EFFORT TO CONFIRM THAT SUBSTANTIAL COMPLIANCE HAS BEEN
10 ACHIEVED BY IMPLEMENTATION OF THE NURSING FACILITY'S ACCEPTED PLAN
11 OF CORRECTION BEFORE INITIATING THE ANNUAL STANDARD SURVEY WHILE
12 MAINTAINING THE FEDERAL REQUIREMENT FOR STANDARD ANNUAL SURVEY
13 INTERVAL AND STATE SURVEY AVERAGE OF 12 MONTHS.

14 (3) A HIGH-PERFORMING NURSING FACILITY MEANS ANY NURSING
15 FACILITY THAT HAS A CURRENT STANDARD SURVEY WITH NO CITATIONS ABOVE
16 A LEVEL D AND THE PREVIOUS 1 YEAR'S ABBREVIATED SURVEY RESULTS
17 HAVING NO CITATIONS ABOVE A LEVEL D. THE NURSING FACILITY MAY APPLY
18 TO THE DEPARTMENT FOR A GRANT, UP TO \$5,000.00, FROM THE CIVIL
19 MONETARY FUND TO BE USED FOR PARTICIPATION IN A RECOGNIZED QUALITY
20 IMPROVEMENT PROGRAM. THE DEPARTMENT SHALL SEEK APPROVAL FROM THE
21 CENTERS FOR MEDICARE AND MEDICAID SERVICES FOR HIGH-PERFORMING
22 NURSING FACILITIES TO BE ELIGIBLE TO RECEIVE A GRANT, UP TO
23 \$5,000.00 PER NURSING FACILITY FOR EACH 2 STANDARD SURVEY CYCLE
24 PERIOD. EACH HIGH-PERFORMING NURSING FACILITY THAT RECEIVES A GRANT
25 UNDER THIS SUBSECTION SHALL SUBMIT A REPORT TO THE DEPARTMENT THAT
26 DESCRIBES THE FINAL OUTCOME FROM PARTICIPATION IN A RECOGNIZED
27 QUALITY IMPROVEMENT PROGRAM.

1 (4) ALL ABBREVIATED COMPLAINT SURVEYS SHALL BE CONDUCTED ON
2 CONSECUTIVE DAYS UNTIL COMPLETE. ALL FORM CMS-2567 REPORTS OF
3 SURVEY FINDINGS SHALL BE RELEASED TO THE NURSING FACILITY WITHIN 10
4 CONSECUTIVE DAYS AFTER COMPLETION OF THE SURVEY.

5 (5) DEPARTMENTAL NOTIFICATIONS OF ACCEPTANCE OR REJECTION OF A
6 NURSING FACILITY'S PLAN OF CORRECTION SHALL BE REVIEWED AND
7 RELEASED TO THE NURSING FACILITY WITHIN 10 CONSECUTIVE DAYS OF
8 RECEIPT OF THAT PLAN OF CORRECTION.

9 (6) A NURSING-FACILITY-SUBMITTED PLAN OF CORRECTION IN
10 RESPONSE TO ANY SURVEY MUST HAVE A COMPLETION DATE NOT TO EXCEED 40
11 DAYS FROM THE EXIT DATE OF SURVEY. ALL SURVEY FIRST REVISITS SHALL
12 BE CONDUCTED NOT MORE THAN 60 DAYS FROM THE EXIT DATE OF SURVEY.

13 (7) LETTERS OF COMPLIANCE NOTIFICATION TO NURSING FACILITIES
14 SHALL BE RELEASED TO THE NURSING FACILITY WITHIN 10 CONSECUTIVE
15 DAYS OF ALL SURVEY REVISIT COMPLETION DATES.

16 (8) THE DEPARTMENT MAY ACCEPT A NURSING FACILITY'S EVIDENCE OF
17 SUBSTANTIAL COMPLIANCE INSTEAD OF REQUIRING A POST SURVEY ON-SITE
18 FIRST OR SECOND REVISIT AS THE DEPARTMENT CONSIDERS APPROPRIATE IN
19 ACCORDANCE WITH THE CENTERS FOR MEDICARE AND MEDICAID SERVICES
20 SURVEY PROTOCOLS. A NURSING FACILITY REQUESTING CONSIDERATION OF
21 EVIDENCE OF SUBSTANTIAL COMPLIANCE IN LIEU OF AN ON-SITE REVISIT
22 MUST INCLUDE AN AFFIDAVIT THAT ASSERTS THE NURSING FACILITY IS IN
23 SUBSTANTIAL COMPLIANCE AS SHOWN BY THE SUBMITTED EVIDENCE FOR THAT
24 SPECIFIC SURVEY EVENT. THERE MAY BE NO DEFICIENCIES WITH A SCOPE
25 AND SEVERITY ORIGINATING HIGHER THAN LEVEL D. IF THERE IS NO
26 ENFORCEMENT ACTION, THE NURSING FACILITY'S EVIDENCE OF SUBSTANTIAL
27 COMPLIANCE MAY BE REVIEWED ADMINISTRATIVELY AND ACCEPTED AS

1 EVIDENCE OF DEFICIENCY CORRECTION.

2 (9) INFORMAL DISPUTE RESOLUTION CONDUCTED BY THE MICHIGAN PEER
3 REVIEW ORGANIZATION SHALL BE GIVEN STRONG CONSIDERATION UPON FINAL
4 REVIEW BY THE DEPARTMENT. IN THE ANNUAL REPORT TO THE LEGISLATURE,
5 THE DEPARTMENT SHALL INCLUDE THE NUMBER OF MICHIGAN PEER REVIEW
6 ORGANIZATION-REFERRED REVIEWS AND, OF THOSE REVIEWS, THE NUMBER OF
7 CITATIONS THAT WERE OVERTURNED BY THE DEPARTMENT.

8 (10) CITATION LEVELS USED IN THIS SECTION MEAN CITATION LEVELS
9 AS DEFINED BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES'
10 SURVEY PROTOCOL GRID DEFINING SCOPE AND SEVERITY ASSESSMENT OF
11 DEFICIENCY.