

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 64**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 1104, 20104, 20155, 20155a, 21703, 21734, and
21799a (MCL 333.1104, 333.20104, 333.20155, 333.20155a, 333.21703,
333.21734, and 333.21799a), section 1104 as amended by 2013 PA 268,
section 20104 as amended by 2010 PA 381, section 20155 as amended
and section 20155a as added by 2012 PA 322, section 21734 as added
by 2000 PA 437, and section 21799a as amended by 2004 PA 189.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1104. (1) "Acknowledgment of parentage" means an
2 acknowledgment executed as provided in the acknowledgment of
3 parentage act, 1996 PA 305, MCL 722.1001 to 722.1013.
- 4 (2) "Administrative procedures act of 1969" means the
5 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to

1 24.328, or a successor act.

2 (3) "Adult" means an individual 18 years of age or older.

3 (4) "Code" means this act.

4 (5) "Department", except as provided in articles 8, ~~and 15,~~
5 **AND 17**, means the ~~state~~ department of ~~community~~ health **AND HUMAN**
6 **SERVICES**.

7 (6) "Director", except as provided in articles 8, ~~and 15,~~ **AND**
8 **17**, means the ~~state~~ director of ~~community~~ health **AND HUMAN**
9 **SERVICES**.

10 (7) "Governmental entity" means a government, governmental
11 subdivision or agency, or public corporation.

12 Sec. 20104. (1) "Certification" means the issuance of a
13 document by the department to a health facility or agency attesting
14 to the fact that the facility or agency meets both of the
15 following:

16 (a) It complies with applicable statutory and regulatory
17 requirements and standards.

18 (b) It is eligible to participate as a provider of care and
19 services in a specific federal or state health program.

20 (2) "Clinical laboratory" means a facility patronized by, or
21 at the direction of, a physician, health officer, or other person
22 authorized by law to obtain information for the diagnosis,
23 prevention, or treatment of disease or the assessment of a medical
24 condition by the microbiological, serological, histological,
25 hematological, immunohematological, biophysical, cytological,
26 pathological, or biochemical examination of materials derived from
27 the human body, except as provided in section 20507.

(3) "Consumer" means a person who is not a ~~provider of health~~ care **PROVIDER** as defined in section ~~1531(3)~~ **300JJ** of title 15 of the public health service act, 42 USC ~~300n~~ **300JJ**.

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

(5) **"DEPARTMENT" MEANS THE DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS.**

(6) ~~(5)~~—"Direct access" means access to a patient or resident or to a patient's or resident's property, financial information, medical records, treatment information, or any other identifying information.

(7) **"DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT.**

(8) ~~(6)~~—"Freestanding surgical outpatient facility" means a facility, other than the office of a physician, dentist, podiatrist, or other private practice office, offering a surgical procedure and related care that in the opinion of the attending physician can be safely performed without requiring overnight inpatient hospital care. ~~It~~ **FREESTANDING SURGICAL OUTPATIENT FACILITY** does not include a surgical outpatient facility owned by and operated as part of a hospital.

(9) ~~(7)~~—"Good moral character" means that term as defined in section 1 of 1974 PA 381, MCL 338.41.

Sec. 20155. (1) Except as otherwise provided in this section

1 and section 20155a, the department shall make annual and other
2 visits to each health facility or agency licensed under this
3 article for the purposes of survey, evaluation, and consultation. A
4 **THE DEPARTMENT SHALL MAKE A** visit ~~made~~ according to a complaint
5 ~~shall be~~ unannounced. Except for a county medical care facility, a
6 home for the aged, a nursing home, or a hospice residence, the
7 department shall determine whether the visits that are not made
8 according to a complaint are announced or unannounced. ~~Beginning~~
9 ~~June 20, 2001, the~~ **THE** department shall ensure that each newly
10 hired nursing home surveyor, as part of his or her basic training,
11 is assigned full-time to a licensed nursing home for at least 10
12 days within a 14-day period to observe actual operations outside of
13 the survey process before the trainee begins oversight
14 responsibilities.

15 (2) The ~~state~~ **DEPARTMENT** shall establish a process that
16 ensures both of the following:

17 (a) A newly hired nursing home surveyor ~~shall~~ **DOES** not make
18 independent compliance decisions during his or her training period.

19 (b) A nursing home surveyor ~~shall~~ **IS** not ~~be~~ assigned as a
20 member of a survey team for a nursing home in which he or she
21 received training for 1 standard survey following the training
22 received in that nursing home.

23 (3) ~~Beginning November 1, 2012, the~~ **THE** department shall
24 perform a criminal history check on all nursing home surveyors in
25 the manner provided for in section 20173a.

26 (4) A member of a survey team ~~shall~~ **MUST** not be employed by a
27 licensed nursing home or a nursing home management company doing

1 business in this state at the time of conducting a survey under
2 this section. The department shall not assign an individual to be a
3 member of a survey team for purposes of a survey, evaluation, or
4 consultation visit at a nursing home in which he or she was an
5 employee within the preceding 3 years.

6 (5) ~~Representatives~~ **THE DEPARTMENT SHALL INVITE**
7 **REPRESENTATIVES** from all nursing home provider organizations and
8 the state long-term care ombudsman or his or her designee ~~shall be~~
9 ~~invited~~ to participate in the planning process for the joint
10 provider and surveyor training sessions. The department shall
11 include at least 1 representative from nursing home provider
12 organizations that do not own or operate a nursing home
13 representing 30 or more nursing homes statewide in internal
14 surveyor group quality assurance training provided for the purpose
15 of general clarification and interpretation of existing or new
16 regulatory requirements and expectations.

17 (6) The department shall make available online the general
18 civil service position description related to the required
19 qualifications for individual surveyors. The department shall use
20 the required qualifications to hire, educate, develop, and evaluate
21 surveyors.

22 (7) The department shall ensure that each annual survey team
23 is composed of an interdisciplinary group of professionals, 1 of
24 whom must be a registered nurse. Other members may include social
25 workers, therapists, dietitians, pharmacists, administrators,
26 physicians, sanitarians, and others who may have the expertise
27 necessary to evaluate specific aspects of nursing home operation.

1 (8) Except as otherwise provided in this section and section
2 20155a, the department shall make at least a biennial visit to each
3 licensed clinical laboratory, each nursing home, and each hospice
4 residence for the purposes of survey, evaluation, and consultation.
5 The department shall semiannually provide for joint training with
6 nursing home surveyors and providers on at least 1 of the 10 most
7 frequently issued federal citations in this state during the past
8 calendar year. The department shall develop a protocol for the
9 review of citation patterns compared to regional outcomes and
10 standards and complaints regarding the nursing home survey process.
11 The **DEPARTMENT SHALL INCLUDE THE** review ~~will be included UNDER THIS~~
12 **SUBSECTION** in the report required under subsection (20). Except as
13 otherwise provided in this subsection, ~~beginning with his or her~~
14 ~~first full relicensure period after June 20, 2000,~~ each member of a
15 department nursing home survey team who is a health professional
16 licensee under article 15 shall earn not less than 50% of his or
17 her required continuing education credits, if any, in geriatric
18 care. If a member of a nursing home survey team is a pharmacist
19 licensed under article 15, he or she shall earn not less than 30%
20 of his or her required continuing education credits in geriatric
21 care.

22 (9) The department shall make a biennial visit to each
23 hospital for survey and evaluation for the purpose of licensure.
24 Subject to subsection (12), the department may waive the biennial
25 visit required by this subsection if a hospital, as part of a
26 timely application for license renewal, requests a waiver and
27 submits both of the following and if all of the requirements of

1 subsection (11) are met:

2 (a) Evidence that it is currently fully accredited by a body
3 with expertise in hospital accreditation whose hospital
4 accreditations are accepted by the United States ~~department of~~
5 ~~health and human services~~ **DEPARTMENT OF HEALTH AND HUMAN SERVICES**
6 for purposes of section 1865 of ~~part C of title XVIII of the social~~
7 security act, 42 USC 1395bb.

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

11 (10) Except as **OTHERWISE** provided in subsection (14),
12 accreditation information provided to the department under
13 subsection (9) is confidential, is not a public record, and is not
14 subject to court subpoena. The department shall use the
15 accreditation information only as provided in this section and
16 shall return the accreditation information to the hospital within a
17 reasonable time after a decision on the waiver request is made.

18 (11) The department shall grant a waiver under subsection (9)
19 if the accreditation report submitted under subsection (9)(b) is
20 less than 2 years old and there is no indication of substantial
21 noncompliance with licensure standards or of deficiencies that
22 represent a threat to public safety or patient care in the report,
23 in complaints involving the hospital, or in any other information
24 available to the department. If the accreditation report is 2 or
25 more years old, the department may do 1 of the following:

26 (a) Grant an extension of the hospital's current license until
27 the next accreditation survey is completed by the body described in

1 subsection (9)(a).

2 (b) Grant a waiver under subsection (9) based on the
3 accreditation report that is 2 or more years old, on condition that
4 the hospital promptly submit the next accreditation report to the
5 department.

6 (c) Deny the waiver request and conduct the visits required
7 under subsection (9).

8 (12) This section does not prohibit the department from citing
9 a violation of this part during a survey, conducting investigations
10 or inspections according to section 20156, or conducting surveys of
11 health facilities or agencies for the purpose of complaint
12 investigations or federal certification. This section does not
13 prohibit the bureau of fire services created in section 1b of the
14 fire prevention code, 1941 PA 207, MCL 29.1b, from conducting
15 annual surveys of hospitals, nursing homes, and county medical care
16 facilities.

17 (13) At the request of a health facility or agency, the
18 department may conduct a consultation engineering survey of a
19 health facility and provide professional advice and consultation
20 regarding health facility construction and design. A health
21 facility or agency may request a voluntary consultation survey
22 under this subsection at any time between licensure surveys. The
23 fees for a consultation engineering survey are the same as the fees
24 established for waivers under section 20161(10).

25 (14) If the department determines that substantial
26 noncompliance with licensure standards exists or that deficiencies
27 that represent a threat to public safety or patient care exist

1 based on a review of an accreditation report submitted under
2 subsection (9)(b), the department shall prepare a written summary
3 of the substantial noncompliance or deficiencies and the hospital's
4 response to the department's determination. The department's
5 written summary and the hospital's response are public documents.

6 (15) The department or a local health department shall conduct
7 investigations or inspections, other than inspections of financial
8 records, of a county medical care facility, home for the aged,
9 nursing home, or hospice residence without prior notice to the
10 health facility or agency. An employee of a state agency charged
11 with investigating or inspecting the health facility or agency or
12 an employee of a local health department who directly or indirectly
13 gives prior notice regarding an investigation or an inspection,
14 other than an inspection of the financial records, to the health
15 facility or agency or to an employee of the health facility or
16 agency, is guilty of a misdemeanor. Consultation visits that are
17 not for the purpose of annual or follow-up inspection or survey may
18 be announced.

19 (16) The department shall maintain a record indicating whether
20 a visit and inspection is announced or unannounced. Survey findings
21 gathered at each health facility or agency during each visit and
22 inspection, whether announced or unannounced, shall be taken into
23 account in licensure decisions.

24 (17) The department shall require periodic reports and a
25 health facility or agency shall give the department access to
26 books, records, and other documents maintained by a health facility
27 or agency to the extent necessary to carry out the purpose of this

1 article and the rules promulgated under this article. The
2 department shall not divulge or disclose the contents of the
3 patient's clinical records in a manner that identifies an
4 individual except under court order. The department may copy health
5 facility or agency records as required to document findings.
6 Surveyors shall use electronic resident information, whenever
7 available, as a source of survey-related data and shall request
8 facility assistance to access the system to maximize data export.

9 (18) The department may delegate survey, evaluation, or
10 consultation functions to another state agency or to a local health
11 department qualified to perform those functions. However, the
12 department shall not delegate survey, evaluation, or consultation
13 functions to a local health department that owns or operates a
14 hospice or hospice residence licensed under this article. The
15 ~~delegation-DEPARTMENT~~ shall ~~be-DELEGATE UNDER THIS SUBSECTION~~ by
16 cost reimbursement contract between the department and the state
17 agency or local health department. ~~Survey, THE DEPARTMENT SHALL NOT~~
18 ~~DELEGATE SURVEY~~, evaluation, or consultation functions ~~shall not be~~
19 ~~delegated~~ to nongovernmental agencies, except as provided in this
20 section. The department may accept voluntary inspections performed
21 by an accrediting body with expertise in clinical laboratory
22 accreditation under part 205 if the accrediting body utilizes forms
23 acceptable to the department, applies the same licensing standards
24 as applied to other clinical laboratories, and provides the same
25 information and data usually filed by the department's own
26 employees when engaged in similar inspections or surveys. The
27 voluntary inspection described in this subsection ~~shall-MUST~~ be

1 agreed upon by both the licensee and the department.

2 (19) If, upon investigation, the department or a state agency
3 determines that an individual licensed to practice a profession in
4 this state has violated the applicable licensure statute or the
5 rules promulgated under that statute, the department, state agency,
6 or local health department shall forward the evidence it has to the
7 appropriate licensing agency.

8 (20) The department may consolidate all information provided
9 for any report required under this section and section 20155a into
10 a single report. The department shall report to the appropriations
11 subcommittees, the senate and house of representatives standing
12 committees having jurisdiction over issues involving senior
13 citizens, and the fiscal agencies on March 1 of each year on the
14 initial and follow-up surveys conducted on all nursing homes in
15 this state. The ~~report-DEPARTMENT~~ shall include all of the
16 following information **IN THE REPORT**:

17 (a) The number of surveys conducted.

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

19 (c) The average number of citations per nursing home for the
20 most recent calendar year.

21 (d) The number of night and weekend complaints filed.

22 (e) The number of night and weekend responses to complaints
23 conducted by the department.

24 (f) The average length of time for the department to respond
25 to a complaint filed against a nursing home.

26 (g) The number and percentage of citations disputed through
27 informal dispute resolution and independent informal dispute

1 resolution.

2 (h) The number and percentage of citations overturned or
3 modified, or both.

4 (i) The review of citation patterns developed under subsection
5 (8).

6 ~~— (j) Implementation of the clinical process guidelines and the~~
7 ~~impact of the guidelines on resident care.~~

8 (J) ~~(k)~~ Information regarding the progress made on
9 implementing the administrative and electronic support structure to
10 efficiently coordinate all nursing home licensing and certification
11 functions.

12 (K) ~~(l)~~ The number of annual standard surveys of nursing homes
13 that were conducted during a period of open survey or enforcement
14 cycle.

15 (L) ~~(m)~~ The number of abbreviated complaint surveys that were
16 not conducted on consecutive surveyor workdays.

17 (M) ~~(n)~~ The percent of all form CMS-2567 reports of findings
18 that were released to the nursing home within the 10-working-day
19 requirement.

20 (N) ~~(o)~~ The percent of provider notifications of acceptance or
21 rejection of a plan of correction that were released to the nursing
22 home within the 10-working-day requirement.

23 (O) ~~(p)~~ The percent of first revisits that were completed
24 within 60 days from the date of survey completion.

25 (P) ~~(q)~~ The percent of second revisits that were completed
26 within 85 days from the date of survey completion.

27 (Q) ~~(r)~~ The percent of letters of compliance notification to

1 the nursing home that were released within 10 working days of the
2 date of the completion of the revisit.

3 (R) ~~(S)~~—A summary of the discussions from the meetings
4 required in subsection (24).

5 (S) ~~(T)~~—The number of nursing homes that participated in a
6 recognized quality improvement program as described under section
7 20155a(3).

8 (21) The department shall report March 1 of each year to the
9 standing committees on appropriations and the standing committees
10 having jurisdiction over issues involving senior citizens in the
11 senate and the house of representatives on all of the following:

12 (a) The percentage of nursing home citations that are appealed
13 through the informal dispute resolution process.

14 (b) The number and percentage of nursing home citations that
15 are appealed and supported, amended, or deleted through the
16 informal dispute resolution process.

17 (c) A summary of the quality assurance review of the amended
18 citations and related survey retraining efforts to improve
19 consistency among surveyors and across the survey administrative
20 unit that occurred in the year being reported.

21 (22) Subject to subsection (23), a clarification work group
22 comprised of the department in consultation with a nursing home
23 resident or a member of a nursing home resident's family, nursing
24 home provider groups, the American medical directors association,
25 the state long-term care ombudsman, and the federal ~~centers for~~
26 ~~medicare and medicaid services~~ **CENTERS FOR MEDICARE AND MEDICAID**
27 **SERVICES** shall clarify the following terms as those terms are used

1 in title XVIII and title XIX and applied by the department to
2 provide more consistent regulation of nursing homes in this state:

3 (a) Immediate jeopardy.

4 (b) Harm.

5 (c) Potential harm.

6 (d) Avoidable.

7 (e) Unavoidable.

8 (23) All of the following clarifications developed under
9 subsection (22) apply for purposes of subsection (22):

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

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

27 (c) In determining whether or not there is immediate jeopardy,

1 the survey agency should consider at least all of the following:

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

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

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

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

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

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

26 (e) Specifically, "actual harm" means a negative outcome to a
27 resident that has compromised the resident's ability to maintain or

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

6 (f) For purposes of subdivision (e), in determining whether a
7 negative outcome is of limited consequence, if the "state
8 operations manual" or "the guidance to surveyors" published by the
9 federal ~~centers for medicare and medicaid services~~ **CENTERS FOR**
10 **MEDICARE AND MEDICAID SERVICES** does not provide specific guidance,
11 the department may consider whether most people in similar
12 circumstances would feel that the damage was of such short duration
13 or impact as to be inconsequential or trivial. In such a case, the
14 consequence of a negative outcome may be considered more limited if
15 it occurs in the context of overall procedural consistency with ~~an~~
16 ~~accepted~~ **A PEER-REVIEWED, EVIDENCE-BASED, NATIONALLY RECOGNIZED**
17 clinical process guideline, ~~adopted under subsection (25)~~, as
18 compared to a substantial inconsistency with or variance from the
19 guideline.

20 (g) For purposes of subdivision (e), if the publications
21 described in subdivision (f) do not provide specific guidance, the
22 department may consider the degree of a nursing home's adherence to
23 a **PEER-REVIEWED, EVIDENCE-BASED, NATIONALLY RECOGNIZED** clinical
24 process guideline ~~adopted under subsection (25)~~ in considering
25 whether the degree of compromise and future risk to the resident
26 constitutes actual harm. The risk of significant compromise to the
27 resident may be considered greater in the context of substantial

1 deviation from the guidelines than in the case of overall
2 adherence.

3 (h) To improve consistency and to avoid disputes over
4 avoidable and unavoidable negative outcomes, nursing homes and
5 survey agencies must have a common understanding of accepted
6 process guidelines and of the circumstances under which it can
7 reasonably be said that certain actions or inactions will lead to
8 avoidable negative outcomes. If the "state operations manual" or
9 "the guidance to surveyors" published by the federal ~~centers for~~
10 ~~medicare and medicaid services~~ **CENTERS FOR MEDICARE AND MEDICAID**
11 **SERVICES** is not specific, a nursing home's overall documentation of
12 adherence to a **PEER-REVIEWED, EVIDENCE-BASED, NATIONALLY RECOGNIZED**
13 clinical process guideline with a process indicator ~~adopted under~~
14 ~~subsection (25)~~ is relevant information in considering whether a
15 negative outcome was avoidable or unavoidable and may be considered
16 in the application of that term.

17 (24) The department shall conduct a quarterly meeting and
18 invite appropriate stakeholders. ~~Appropriate stakeholders~~ **THE**
19 **DEPARTMENT** shall ~~include~~ **INVITE AS APPROPRIATE STAKEHOLDERS UNDER**
20 **THIS SUBSECTION** at least 1 representative from each nursing home
21 provider organization that does not own or operate a nursing home
22 representing 30 or more nursing homes statewide, the state long-
23 term care ombudsman or his or her designee, and any other clinical
24 experts. Individuals who participate in these quarterly meetings,
25 ~~in conjunction~~ **JOINTLY** with the department, may designate advisory
26 workgroups to develop recommendations on the discussion topics that
27 should include, at a minimum, all of the following:

1 (a) Opportunities for enhanced promotion of nursing home
2 performance, including, but not limited to, programs that encourage
3 and reward providers that strive for excellence.

4 (b) Seeking quality improvement to the survey and enforcement
5 process, including clarifications to process-related policies and
6 protocols that include, but are not limited to, all of the
7 following:

8 (i) Improving the surveyors' quality and preparedness.

9 (ii) Enhanced communication between regulators, surveyors,
10 providers, and consumers.

11 (iii) Ensuring fair enforcement and dispute resolution by
12 identifying methods or strategies that may resolve identified
13 problems or concerns.

14 (c) Promoting transparency across provider and surveyor
15 communities, including, but not limited to, all of the following:

16 (i) Applying regulations in a consistent manner and evaluating
17 changes that have been implemented to resolve identified problems
18 and concerns.

19 (ii) Providing consumers with information regarding changes in
20 policy and interpretation.

21 (iii) Identifying positive and negative trends and factors
22 contributing to those trends in the areas of resident care,
23 deficient practices, and enforcement.

24 (d) Clinical process guidelines.

25 ~~(25) Subject to subsection (27), the department~~ **A NURSING HOME**
26 ~~shall develop and adopt clinical process guidelines. The department~~
27 ~~shall establish and adopt~~ **USE PEER-REVIEWED, EVIDENCE-BASED,**

1 **NATIONALLY RECOGNIZED** clinical process guidelines **OR PEER-REVIEWED,**
 2 **EVIDENCE-BASED, BEST-PRACTICE RESOURCES TO DEVELOP AND IMPLEMENT**
 3 **RESIDENT CARE POLICIES** and compliance protocols with outcome
 4 ~~measures for all of the following areas and for other topics where~~
 5 ~~the department determines that clarification will benefit providers~~
 6 ~~and consumers of long term care.~~ **MEASURABLE OUTCOMES SPECIFICALLY IN**
 7 **THE FOLLOWING CLINICAL PRACTICE AREAS:**

- 8 (a) ~~Bed~~ **USE OF BED** rails.
- 9 (b) Adverse drug effects.
- 10 (c) ~~Falls~~ **PREVENTION OF FALLS.**
- 11 (d) ~~Pressure sores~~ **PREVENTION OF PRESSURE ULCERS.**
- 12 (e) Nutrition and hydration. ~~including, but not limited to,~~
 13 ~~heat related stress.~~
- 14 (f) Pain management.
- 15 (g) Depression and depression pharmacotherapy.
- 16 (h) Heart failure.
- 17 (i) Urinary incontinence.
- 18 (j) Dementia **CARE.**
- 19 (k) Osteoporosis.
- 20 (l) Altered mental states.
- 21 (m) Physical and chemical restraints.
- 22 (n) ~~Culture change~~ **PERSON-CENTERED CARE** principles. ~~, person-~~
 23 ~~centered caring, and self directed care.~~

24 **(26) IN AN AREA OF CLINICAL PRACTICE THAT IS NOT LISTED IN**
 25 **SUBSECTION (25), A NURSING HOME MAY USE PEER-REVIEWED, EVIDENCE-**
 26 **BASED, NATIONALLY RECOGNIZED CLINICAL PROCESS GUIDELINES OR PEER-**
 27 **REVIEWED, EVIDENCE-BASED, BEST-PRACTICE RESOURCES TO DEVELOP AND**

1 IMPLEMENT RESIDENT CARE POLICIES AND COMPLIANCE PROTOCOLS WITH
2 MEASURABLE OUTCOMES TO PROMOTE PERFORMANCE EXCELLENCE.

3 ~~(27) (26) The department shall biennially review and update~~
4 ~~all clinical process guidelines as needed and shall continue to~~
5 ~~develop and implement clinical process guidelines for topics that~~
6 ~~have not been developed from the list in subsection (25) and other~~
7 ~~topics identified as a result of the meetings required in~~
8 ~~subsection (24).~~ The department shall consider recommendations from
9 an advisory workgroup created under subsection (24). ~~on clinical~~
10 ~~process guidelines.~~ The department shall ~~shall~~ **MAY** include training on
11 new and revised **PEER-REVIEWED, EVIDENCE-BASED, NATIONALLY**
12 **RECOGNIZED** clinical process guidelines **OR PEER-REVIEWED, EVIDENCE-**
13 **BASED, BEST-PRACTICE RESOURCES, WHICH CONTAIN MEASURABLE OUTCOMES,**
14 in the joint provider and surveyor training sessions ~~as these~~
15 ~~clinical process guidelines are developed and revised.~~ **TO ASSIST**
16 **PROVIDER EFFORTS TOWARD IMPROVED REGULATORY COMPLIANCE AND**
17 **PERFORMANCE EXCELLENCE AND TO FOSTER A COMMON UNDERSTANDING OF**
18 **ACCEPTED PEER-REVIEWED, EVIDENCE-BASED, BEST-PRACTICE RESOURCES**
19 **BETWEEN PROVIDERS AND THE SURVEY AGENCY. THE DEPARTMENT SHALL POST**
20 **ON ITS WEBSITE ALL PEER-REVIEWED, EVIDENCE-BASED, NATIONALLY**
21 **RECOGNIZED CLINICAL PROCESS GUIDELINES AND PEER-REVIEWED, EVIDENCE-**
22 **BASED, BEST-PRACTICE RESOURCES USED IN A TRAINING SESSION UNDER**
23 **THIS SUBSECTION FOR PROVIDER, SURVEYOR, AND PUBLIC REFERENCE.**

24 ~~(28) (27) Beginning November 1, 2012, representatives~~
25 **REPRESENTATIVES** from each nursing home provider organization that
26 does not own or operate a nursing home representing 30 or more
27 nursing homes statewide and the state long-term care ombudsman or

1 his or her designee ~~shall be~~ **ARE** permanent members of ~~any~~ **A**
 2 clinical advisory workgroup created under subsection (24). The
 3 department shall issue survey certification memorandums to
 4 providers to announce or clarify changes in the interpretation of
 5 regulations.

6 **(29)** ~~(28)~~ The department shall maintain the process by which
 7 the director of the **LONG-TERM CARE** division ~~of nursing home~~
 8 ~~monitoring~~ or his or her designee ~~or the director of the division~~
 9 ~~of operations~~ or his or her designee reviews and authorizes the
 10 issuance of a citation for immediate jeopardy or substandard
 11 quality of care before the statement of deficiencies is made final.
 12 The review shall be to ~~to~~ **MUST** assure that the applicable concepts,
 13 ~~clinical process guidelines, and other tools contained in~~
 14 ~~subsections (25) to (27) are being used consistently, accurately,~~
 15 ~~and effectively.~~ **THE CONSISTENT AND ACCURATE APPLICATION OF FEDERAL**
 16 **AND STATE SURVEY PROTOCOLS AND DEFINED REGULATORY STANDARDS.** As
 17 used in this subsection, "immediate jeopardy" and "substandard
 18 quality of care" mean those terms as defined by the federal ~~centers~~
 19 ~~for medicare and medicaid services.~~ **CENTERS FOR MEDICARE AND**
 20 **MEDICAID SERVICES.**

21 **(30)** ~~(29)~~ Upon availability of funds, the department shall
 22 give grants, awards, or other recognition to nursing homes to
 23 encourage the rapid **DEVELOPMENT AND** implementation ~~or maintenance~~
 24 ~~of the~~ **RESIDENT CARE POLICIES AND COMPLIANCE PROTOCOLS THAT ARE**
 25 **CREATED FROM PEER-REVIEWED, EVIDENCE-BASED, NATIONALLY RECOGNIZED**
 26 ~~clinical process guidelines adopted under subsection (25).~~ **OR PEER-**
 27 **REVIEWED, EVIDENCE-BASED, BEST-PRACTICE RESOURCES WITH MEASURABLE**

1 **OUTCOMES TO PROMOTE PERFORMANCE EXCELLENCE.**

2 ~~—— (30) The department shall instruct and train the surveyors in~~
 3 ~~the clinical process guidelines adopted under subsection (25) in~~
 4 ~~editing deficiencies.~~

5 (31) A nursing home shall post the nursing home's survey
 6 report in a conspicuous place within the nursing home for public
 7 review.

8 (32) ~~Nothing in this amendatory act shall be construed to 2001~~
 9 **PA 218 DOES NOT** limit the requirements of related state and federal
 10 law.

11 (33) As used in this section:

12 (a) "Consecutive days" means calendar days, but does not
 13 include Saturday, Sunday, or state- or federally-recognized
 14 holidays.

15 (b) "Form CMS-2567" means the federal ~~centers for medicare and~~
 16 ~~medicaid services'~~ **CENTERS FOR MEDICARE AND MEDICAID SERVICES'** form
 17 for the statement of deficiencies and plan of correction or a
 18 successor form serving the same purpose.

19 (c) "Title XVIII" means title XVIII of the social security
 20 act, 42 USC 1395 to ~~1395kkk.~~ **1395lll.**

21 (d) "Title XIX" means title XIX of the social security act, 42
 22 USC 1396 to 1396w-5.

23 Sec. 20155a. (1) Nursing home health survey tasks shall be
 24 facilitated by the licensing and regulatory affairs bureau of
 25 health systems to ensure consistent and efficient coordination of
 26 the nursing home licensing and certification functions for standard
 27 and abbreviated surveys. The department shall develop an electronic

1 system to support the coordination of these activities. ~~and shall~~
2 ~~submit a report on the development of an electronic system,~~
3 ~~including a proposed budget for implementation, to the senate and~~
4 ~~house appropriations subcommittees for the department, the senate~~
5 ~~and house of representatives standing committees having~~
6 ~~jurisdiction over issues involving senior citizens, and the senate~~
7 ~~and house fiscal agencies by November 1, 2012.~~ If funds are
8 appropriated for the system, the department shall implement the
9 system within 120 days of that appropriation.

10 (2) When preparing to conduct an annual standard survey, the
11 department shall determine if there is an open survey cycle and
12 make every reasonable effort to confirm that substantial compliance
13 has been achieved by implementation of the nursing home's accepted
14 plan of correction before initiating the annual standard survey
15 while maintaining the federal requirement for standard annual
16 survey interval and state survey average of 12 months.

17 (3) The department shall seek approval from the ~~centers for~~
18 ~~medicare and medicaid services~~ **CENTERS FOR MEDICARE AND MEDICAID**
19 **SERVICES** to develop a program to provide grants to nursing homes
20 that have achieved a 5-star quality rating from the ~~centers for~~
21 ~~medicare and medicaid services~~. **CENTERS FOR MEDICARE AND MEDICAID**
22 **SERVICES**. The department shall seek approval from the ~~centers for~~
23 ~~medicare and medicaid services~~ **CENTERS FOR MEDICARE AND MEDICAID**
24 **SERVICES** for nursing homes to be eligible to receive a grant, up to
25 \$5,000.00 per nursing home from the civil monetary fund for nursing
26 homes that meet the ~~centers for medicare and medicaid services~~
27 **CENTERS FOR MEDICARE AND MEDICAID SERVICES** standards for the 5-star

1 quality rating. Grants to nursing homes shall be used to implement
2 evidence-based quality improvement programs within the nursing
3 home. Each nursing home that receives a grant shall submit a report
4 to the department that describes the final outcome from
5 implementing the program.

6 (4) All abbreviated complaint surveys shall be conducted on
7 consecutive days until complete. All form CMS-2567 reports of
8 survey findings shall be released to the nursing home within 10
9 consecutive days after completion of the survey.

10 (5) Departmental notifications of acceptance or rejection of a
11 nursing home's plan of correction shall be reviewed and released to
12 the nursing home within 10 consecutive days of receipt of that plan
13 of correction.

14 (6) A nursing-home-submitted plan of correction in response to
15 any survey must have a completion date not to exceed 40 days from
16 the exit date of survey. If a nursing home has not received
17 additional citations before a revisit occurs, the department shall
18 conduct the first revisit not more than 60 days from the exit date
19 of the survey.

20 (7) Letters of compliance notification to nursing homes shall
21 be released to the nursing home within 10 consecutive days of all
22 survey revisit completion dates.

23 (8) The department may accept a nursing home's evidence of
24 substantial compliance instead of requiring a post survey on-site
25 first or second revisit as the department considers appropriate in
26 accordance with the ~~centers for medicare and medicaid services~~
27 **CENTERS FOR MEDICARE AND MEDICAID SERVICES** survey protocols. A

nursing home requesting consideration of evidence of substantial compliance in lieu of an on-site revisit must include an affidavit that asserts the nursing home is in substantial compliance as shown by the submitted evidence for that specific survey event. There may be no deficiencies with a scope and severity originating higher than level D.—**F. CITATIONS WITH A SCOPE AND SEVERITY OF LEVEL F OR BELOW MAY GO THROUGH A DESK REVIEW BY THE DEPARTMENT UPON THOROUGH REVIEW OF THE PLAN OF CORRECTION. CITATIONS WITH A SCOPE AND SEVERITY OF LEVEL G OR HIGHER ARE NOT TO BE CONSIDERED FOR A DESK REVIEW.** If there is no enforcement action, the nursing home's evidence of substantial compliance may be reviewed administratively and accepted as evidence of deficiency correction.

(9) Informal dispute resolution conducted by the Michigan peer review organization shall be given strong consideration upon final review by the department. In the annual report to the legislature, the department shall include the number of Michigan peer review organization-referred reviews and, of those reviews, the number of citations that were overturned by the department.

(10) Citation levels used in this section mean citation levels as defined by the ~~centers for medicare and medicaid services~~ **CENTERS FOR MEDICARE AND MEDICAID SERVICES'** survey protocol grid defining scope and severity assessment of deficiency.

Sec. 21703. (1) "Patient" means a ~~person who receives care or services at a nursing home.~~ **RESIDENT.**

(2) "Patient's representative" **OR "RESIDENT'S REPRESENTATIVE"** means a person, other than the licensee or an employee or person having a direct or indirect ownership interest in the nursing home,

1 designated in writing by a ~~patient-RESIDENT~~ or a ~~patient's~~
 2 **RESIDENT'S** guardian for a specific, limited purpose or for general
 3 purposes, or, if a written designation of a representative is not
 4 made, the guardian of the ~~patient-RESIDENT~~.

5 (3) "Relocation" means the movement of a ~~patient-RESIDENT~~ from
 6 1 bed to another or from 1 room to another within the same nursing
 7 home or within a certified distinct part of a nursing home.

8 (4) **"RESIDENT" MEANS AN INDIVIDUAL WHO RECEIVES CARE OR**
 9 **SERVICES AT A NURSING HOME.**

10 (5) ~~(4)~~ "Transfer" means the movement of a ~~patient-RESIDENT~~
 11 from 1 nursing home to another nursing home or from 1 certified
 12 distinct part of a nursing home to another certified distinct part
 13 of the same nursing home.

14 (6) ~~(5)~~ "Welfare" means, with reference to a ~~patient,~~
 15 **RESIDENT**, the physical, emotional, or social well-being of a
 16 ~~patient-RESIDENT~~ in a nursing home, including a ~~patient-RESIDENT~~
 17 awaiting transfer or discharge, as documented in the ~~patient's~~
 18 **RESIDENT'S** clinical record by a licensed or certified health care
 19 professional.

20 Sec. 21734. (1) Notwithstanding section 20201(2)(l), a nursing
 21 home shall give each resident who uses a hospital-type bed or the
 22 resident's legal guardian, patient advocate, or other legal
 23 representative the option of having bed rails. A nursing home shall
 24 offer the option to new residents upon admission and to other
 25 residents upon request. Upon receipt of a request for bed rails,
 26 the nursing home shall inform the resident or the resident's legal
 27 guardian, patient advocate, or other legal representative of

1 alternatives to and the risks involved in using bed rails. A
2 resident or the resident's legal guardian, patient advocate, or
3 other legal representative has the right to request and consent to
4 bed rails for the resident. A nursing home shall provide bed rails
5 to a resident only upon receipt of a signed consent form
6 authorizing bed rail use and a written order from the resident's
7 attending physician that contains statements and determinations
8 regarding medical symptoms and that specifies the circumstances
9 under which bed rails are to be used. For purposes of this
10 subsection, "medical symptoms" includes the following:

11 (a) A concern for the physical safety of the resident.

12 (b) Physical or psychological need expressed by a resident. A
13 resident's fear of falling may be the basis of a medical symptom.

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

16 (a) Document that the requirements of subsection (1) have been
17 met.

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

19 (c) In consultation with the resident, resident's family,
20 resident's attending physician, and individual who consented to the
21 bed rails, periodically reevaluate the resident's need for the bed
22 rails.

23 (3) The department ~~of consumer and industry services~~ shall
24 ~~develop~~ **MAINTAIN** clear and uniform guidelines **PEER-REVIEWED,**
25 **EVIDENCE-BASED, BEST-PRACTICE RESOURCES** to be used in determining
26 what constitutes each of the following:

27 (a) Acceptable bed rails for use in a nursing home in this

1 state. The department shall consider the recommendations of the
2 hospital bed safety work group established by the United States
3 ~~food and drug administration,~~ **FOOD AND DRUG ADMINISTRATION**, if
4 those are available, in determining what constitutes an acceptable
5 bed rail.

6 (b) Proper maintenance of bed rails.

7 (c) Properly fitted mattresses.

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

10 (4) The department ~~of consumer and industry services~~ shall
11 ~~develop the guidelines~~ **MAINTAIN THE PEER-REVIEWED, EVIDENCE-BASED,**
12 **BEST-PRACTICE RESOURCES** under subsection (3) in consultation with
13 the long-term care **STAKEHOLDERS** work group **ESTABLISHED UNDER**
14 **SECTION 20155(24)**. ~~An individual representing manufacturers of bed~~
15 ~~rails, 2 residents or family members, and an individual with~~
16 ~~expertise in bed rail installation and use shall be added to the~~
17 ~~long term care work group for purposes of this subsection. The~~
18 ~~department shall consider as part of its report to the legislature~~
19 ~~the recommendations of the hospital bed safety work group~~
20 ~~established by the United States food and drug administration, if~~
21 ~~those recommendations are available at the time of the submission~~
22 ~~of the report. Not later than 6 months after the effective date of~~
23 ~~the amendatory act that added this section, the department of~~
24 ~~consumer and industry services shall submit its report to the~~
25 ~~legislature. The department may delay submission of its report by~~
26 ~~up to 3 months so that its report may reflect the recommendations~~
27 ~~of the hospital bed safety work group established by the United~~

1 ~~States food and drug administration.~~

2 (5) A nursing home that complies with subsections (1) and (2)
 3 and the ~~guidelines developed~~ **PEER-REVIEWED, EVIDENCE-BASED, BEST-**
 4 **PRACTICES RESOURCES MAINTAINED** under this section in providing bed
 5 rails to a resident is not subject to administrative penalties
 6 imposed by the department based solely on providing the bed rails.
 7 ~~Nothing in this~~ **THIS** subsection ~~precludes~~ **DOES NOT PRECLUDE** the
 8 department from citing specific state or federal deficiencies for
 9 improperly maintained bed rails, improperly fitted mattresses, or
 10 other hazards created by improperly positioned bed rails,
 11 mattresses, or beds.

12 ~~—— (6) The department of consumer and industry services shall~~
 13 ~~consult with representatives of the nursing home industry to~~
 14 ~~expeditiously develop interim guidelines on bed rail usage that are~~
 15 ~~to be used until the department develops the guidelines required~~
 16 ~~under subsection (4).~~

17 Sec. 21799a. (1) A person who believes that this part, a rule
 18 promulgated under this part, or a federal certification regulation
 19 applying to a nursing home may have been violated may request an
 20 investigation of a nursing home. The person may submit the request
 21 for investigation to the department as a written complaint, or the
 22 department shall assist a person in reducing an oral request made
 23 under subsection (2) to a written complaint as provided in
 24 subsection (2). A person filing a complaint under this subsection
 25 may file the complaint on a model standardized complaint form
 26 developed and distributed by the department under section 20194(3)
 27 or file the complaint as provided by the department on the

1 ~~internet.~~**INTERNET.**

2 (2) The department shall provide a toll-free telephone
3 consumer complaint line. The complaint line shall be accessible 24
4 hours per day and monitored at a level to ensure that each priority
5 complaint is identified and that a response is initiated to each
6 priority complaint within 24 hours after its receipt. The
7 department shall establish a system for the complaint line that
8 includes at least all of the following:

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

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

14 (c) Except for an anonymous complaint, the forwarding of a
15 copy of the completed intake form to the complainant not later than
16 5 business days after it is completed.

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

21 (4) A complaint filed under subsection (1) or (2), a copy of
22 the complaint, or a record published, released, or otherwise
23 disclosed to the nursing home shall not disclose the name of the
24 complainant or a patient named in the complaint unless the
25 complainant or patient consents in writing to the disclosure or the
26 investigation results in an administrative hearing or a judicial
27 proceeding, or unless disclosure is considered essential to the

1 investigation by the department. If the department considers
2 disclosure essential to the investigation, the department shall
3 give the complainant the opportunity to withdraw the complaint
4 before disclosure.

5 (5) Upon receipt of a complaint under subsection (1) or (2),
6 the department shall determine, based on the allegations presented,
7 whether this part, a rule promulgated under this part, or a federal
8 certification regulation for nursing homes has been, is, or is in
9 danger of being violated. Subject to subsection (2), the department
10 shall investigate the complaint according to the urgency determined
11 by the department. The initiation of a complaint investigation
12 shall commence within ~~15 days after receipt of the written~~
13 ~~complaint by the department.~~ **THE TIME FRAME CONSISTENT WITH FEDERAL**
14 **GUIDELINES FOR INVESTIGATIONS OF COMPLAINTS AGAINST NURSING HOMES.**

15 (6) If, at any time, the department determines that this part,
16 a rule promulgated under this part, or a federal certification
17 regulation for nursing homes has been violated, the department
18 shall list the violation and the provisions violated on the state
19 and federal licensure and certification forms for nursing homes.
20 The department shall consider the violations, as evidenced by a
21 written explanation, when it makes a licensure and certification
22 decision or recommendation.

23 (7) In all cases, the department shall inform the complainant
24 of its findings unless otherwise indicated by the complainant.
25 Subject to subsection (2), within 30 days after receipt of the
26 complaint, the department shall provide the complainant a copy, if
27 any, of the written determination, the correction notice, the

1 warning notice, and the state licensure or federal certification
2 form, or both, on which the violation is listed, or a status report
3 indicating when these documents may be expected. The department
4 shall include in the final report a copy of the original complaint.
5 The complainant may request additional copies of the documents
6 described in this subsection and upon receipt shall reimburse the
7 department for the copies in accordance with established policies
8 and procedures.

9 (8) The department shall make a written determination,
10 correction notice, or warning notice concerning a complaint
11 available for public inspection, but the department shall not
12 disclose the name of the complainant or patient without the
13 complainant's or patient's consent.

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

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

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

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

4 Enacting section 1. This amendatory act takes effect 90 days
5 after the date it is enacted into law.