

**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
by 2015 PA 104, 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

1 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
2 24.328, or a successor act.

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

4 (4) "Code" means this act.

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

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

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

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

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

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

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

1 the human body, except as provided in section 20507.

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

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

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

13 (6) ~~(5)~~ "Direct access" means access to a patient or resident
14 or to a patient's or resident's property, financial information,
15 medical records, treatment information, or any other identifying
16 information.

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

18 (8) ~~(6)~~ "Freestanding surgical outpatient facility" means a
19 facility, other than the office of a physician, dentist,
20 podiatrist, or other private practice office, offering a surgical
21 procedure and related care that in the opinion of the attending
22 physician can be safely performed without requiring overnight
23 inpatient hospital care. ~~It~~ **FREESTANDING SURGICAL OUTPATIENT**
24 **FACILITY** does not include a surgical outpatient facility owned by
25 and operated as part of a hospital.

26 (9) ~~(7)~~ "Good moral character" means that term as defined in
27 section 1 of 1974 PA 381, MCL 338.41.

1 Sec. 20155. (1) Except as otherwise provided in this section
2 and section 20155a, the department shall make at least 1 visit to
3 each licensed health facility or agency every 3 years for survey
4 and evaluation for the purpose of licensure. A visit made according
5 to a complaint shall be unannounced. Except for a county medical
6 care facility, a home for the aged, a nursing home, or a hospice
7 residence, the department shall determine whether the visits that
8 are not made according to a complaint are announced or unannounced.
9 The department shall ensure that each newly hired nursing home
10 surveyor, as part of his or her basic training, is assigned full-
11 time to a licensed nursing home for at least 10 days within a 14-
12 day period to observe actual operations outside of the survey
13 process before the trainee begins oversight responsibilities.

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

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

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

22 (3) The department shall perform a criminal history check on
23 all nursing home surveyors in the manner provided for in section
24 20173a.

25 (4) A member of a survey team ~~shall~~**MUST** not be employed by a
26 licensed nursing home or a nursing home management company doing
27 business in this state at the time of conducting a survey under

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

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

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

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

27 (8) The department shall semiannually provide for joint

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

17 (9) Subject to subsection (12), the department may waive the
18 visit required by subsection (1) if a health facility or agency,
19 requests a waiver and submits the following as applicable and if
20 all of the requirements of subsection (11) are met:

21 (a) Evidence that it is currently fully accredited by a body
22 with expertise in the health facility or agency type and the
23 accrediting organization is accepted by the United States
24 Department of Health and Human Services for purposes of section
25 1865 of ~~part E of title XVIII of~~ the social security act, 42 USC
26 1395bb.

27 (b) A copy of the most recent accreditation report, or

1 executive summary, issued by a body described in subdivision (a),
2 and the health facility's or agency's responses to the
3 accreditation report is submitted to the department at least 30
4 days from license renewal. Submission of an executive summary does
5 not prevent or prohibit the department from requesting the entire
6 accreditation report if the department considers it necessary.

7 (c) For a nursing home, a standard federal certification
8 survey conducted within the immediately preceding 9 to 15 months
9 that shows substantial compliance or has an accepted plan of
10 correction, if applicable.

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 properly destroy the documentation after a decision on the waiver
17 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 3 years old or the standard federal survey submitted
21 under subsection (9)(c) is less than 15 months old and there is no
22 indication of substantial noncompliance with licensure standards or
23 of deficiencies that represent a threat to public safety or patient
24 care. If the accreditation report or standard federal survey is too
25 old, the department may deny the waiver request and conduct the
26 visits required under subsection (9). Denial of a waiver request by
27 the department is not subject to appeal.

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

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

18 (14) If the department determines that substantial
19 noncompliance with licensure standards exists or that deficiencies
20 that represent a threat to public safety or patient care exist
21 based on a review of an accreditation report submitted under
22 subsection (9)(b), the department shall prepare a written summary
23 of the substantial noncompliance or deficiencies and the health
24 facility's or agency's response to the department's determination.
25 The department's written summary and the health facility's or
26 agency's response are public documents.

27 (15) The department or a local health department shall conduct

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

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

18 (17) The department shall require periodic reports and a
19 health facility or agency shall give the department access to
20 books, records, and other documents maintained by a health facility
21 or agency to the extent necessary to carry out the purpose of this
22 article and the rules promulgated under this article. The
23 department shall not divulge or disclose the contents of the
24 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) 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. The department
 6 shall not delegate survey, evaluation, or consultation functions to
 7 a local health department that owns or operates a hospice or
 8 hospice residence licensed under this article. The ~~delegation~~

9 **DEPARTMENT** shall ~~be~~ **DELEGATE UNDER THIS SUBSECTION** by cost
 10 reimbursement contract between the department and the state agency
 11 or local health department. ~~Survey,~~ **THE DEPARTMENT SHALL NOT**
 12 **DELEGATE SURVEY**, evaluation, or consultation functions ~~shall not be~~
 13 ~~delegated~~ to nongovernmental agencies, except as provided in this
 14 section. The voluntary inspection described in this subsection
 15 ~~shall~~ **MUST** be agreed upon by both the licensee and the department.

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

22 (20) The department may consolidate all information provided
 23 for any report required under this section and section 20155a into
 24 a single report. The department shall report to the appropriations
 25 subcommittees, the senate and house of representatives standing
 26 committees having jurisdiction over issues involving senior
 27 citizens, and the fiscal agencies on March 1 of each year on the

1 initial and follow-up surveys conducted on all nursing homes in
2 this state. The ~~report~~**DEPARTMENT** shall include all of the
3 following information **IN THE REPORT**:

4 (a) The number of surveys conducted.

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

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

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

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

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

13 (g) The number and percentage of citations disputed through
14 informal dispute resolution and independent informal dispute
15 resolution.

16 (h) The number and percentage of citations overturned or
17 modified, or both.

18 (i) The review of citation patterns developed under subsection
19 (8).

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

22 **(J)** ~~(k)~~ Information regarding the progress made on
23 implementing the administrative and electronic support structure to
24 efficiently coordinate all nursing home licensing and certification
25 functions.

26 **(K)** ~~(l)~~ The number of annual standard surveys of nursing homes
27 that were conducted during a period of open survey or enforcement

1 cycle.

2 (I) ~~(m)~~—The number of abbreviated complaint surveys that were
3 not conducted on consecutive surveyor workdays.

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

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

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

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

14 (Q) ~~(r)~~—The percent of letters of compliance notification to
15 the nursing home that were released within 10 working days of the
16 date of the completion of the revisit.

17 (R) ~~(s)~~—A summary of the discussions from the meetings
18 required in subsection (24).

19 (S) ~~(t)~~—The number of nursing homes that participated in a
20 recognized quality improvement program as described under section
21 20155a(3).

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

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

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

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

8 (22) Subject to subsection (23), a clarification work group
9 comprised of the department in consultation with a nursing home
10 resident or a member of a nursing home resident's family, nursing
11 home provider groups, the American Medical Directors Association,
12 the state long-term care ombudsman, and the federal Centers for
13 Medicare and Medicaid Services shall clarify the following terms as
14 those terms are used in title XVIII and title XIX and applied by
15 the department to provide more consistent regulation of nursing
16 homes in this state:

17 (a) Immediate jeopardy.

18 (b) Harm.

19 (c) Potential harm.

20 (d) Avoidable.

21 (e) Unavoidable.

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

24 (a) Specifically, the term "immediate jeopardy" means a
25 situation in which immediate corrective action is necessary because
26 the nursing home's noncompliance with 1 or more requirements of
27 participation has caused or is likely to cause serious injury,

1 harm, impairment, or death to a resident receiving care in a
2 nursing home.

3 (b) The likelihood of immediate jeopardy is reasonably higher
4 if there is evidence of a flagrant failure by the nursing home to
5 comply with a **PEER-REVIEWED, EVIDENCE-BASED, NATIONALLY RECOGNIZED**
6 clinical process guideline ~~adopted under subsection (25)~~ than if
7 the nursing home has substantially and continuously complied with
8 ~~these~~ **PEER-REVIEWED, EVIDENCE-BASED, NATIONALLY RECOGNIZED**
9 guidelines. If federal regulations and guidelines are not clear,
10 and if the clinical process guidelines have been recognized, a
11 process failure giving rise to an immediate jeopardy may involve an
12 egregious widespread or repeated process failure and the absence of
13 reasonable efforts to 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~~ **A PEER-REVIEWED, EVIDENCE-**
3 **BASED, NATIONALLY RECOGNIZED** clinical process guideline, ~~adopted~~
4 ~~under subsection (25)~~, as compared to a substantial inconsistency
5 with or variance from the guideline.

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

16 (h) To improve consistency and to avoid disputes over
17 avoidable and unavoidable negative outcomes, nursing homes and
18 survey agencies must have a common understanding of accepted
19 process guidelines and of the circumstances under which it can
20 reasonably be said that certain actions or inactions will lead to
21 avoidable negative outcomes. If the "state operations manual" or
22 "the guidance to surveyors" published by the federal Centers for
23 Medicare and Medicaid Services is not specific, a nursing home's
24 overall documentation of adherence to a **PEER-REVIEWED, EVIDENCE-**
25 **BASED, NATIONALLY RECOGNIZED** clinical process guideline with a
26 process indicator ~~adopted under subsection (25)~~ is relevant
27 information in considering whether a negative outcome was avoidable

1 or unavoidable and may be considered in the application of that
2 term.

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

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

17 (b) Seeking quality improvement to the survey and enforcement
18 process, including clarifications to process-related policies and
19 protocols that include, but are not limited to, all of the
20 following:

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

22 (ii) Enhanced communication between regulators, surveyors,
23 providers, and consumers.

24 (iii) Ensuring fair enforcement and dispute resolution by
25 identifying methods or strategies that may resolve identified
26 problems or concerns.

27 (c) Promoting transparency across provider and surveyor

1 communities, including, but not limited to, all of the following:

2 (i) Applying regulations in a consistent manner and evaluating
3 changes that have been implemented to resolve identified problems
4 and concerns.

5 (ii) Providing consumers with information regarding changes in
6 policy and interpretation.

7 (iii) Identifying positive and negative trends and factors
8 contributing to those trends in the areas of resident care,
9 deficient practices, and enforcement.

10 (d) Clinical process guidelines.

11 (25) ~~Subject to subsection (27), the department~~ **A NURSING HOME**
12 ~~shall develop and adopt clinical process guidelines. The department~~
13 ~~shall establish and adopt~~ **USE PEER-REVIEWED, EVIDENCE-BASED,**
14 **NATIONALLY RECOGNIZED** clinical process guidelines **OR PEER-REVIEWED,**
15 **EVIDENCE-BASED, BEST-PRACTICE RESOURCES TO DEVELOP AND IMPLEMENT**
16 **RESIDENT CARE POLICIES** and compliance protocols with ~~outcome~~
17 ~~measures for all of the following areas and for other topics where~~
18 ~~the department determines that clarification will benefit providers~~
19 ~~and consumers of long term care.~~ **MEASURABLE OUTCOMES SPECIFICALLY IN**
20 **THE FOLLOWING CLINICAL PRACTICE AREAS:**

21 (a) ~~Bed~~ **USE OF BED** rails.

22 (b) Adverse drug effects.

23 (c) ~~Falls.~~ **PREVENTION OF FALLS.**

24 (d) ~~Pressure sores.~~ **PREVENTION OF PRESSURE ULCERS.**

25 (e) Nutrition and hydration. ~~including, but not limited to,~~
26 ~~heat-related stress.~~

27 (f) Pain management.

(g) Depression and depression pharmacotherapy.

(h) Heart failure.

(i) Urinary incontinence.

(j) Dementia **CARE**.

(k) Osteoporosis.

(l) Altered mental states.

(m) Physical and chemical restraints.

(n) ~~Culture change~~ **PERSON-CENTERED CARE** principles. ~~, person-centered caring, and self-directed care.~~

(26) IN AN AREA OF CLINICAL PRACTICE THAT IS NOT LISTED IN SUBSECTION (25), A NURSING HOME MAY USE PEER-REVIEWED, EVIDENCE-BASED, NATIONALLY RECOGNIZED CLINICAL PROCESS GUIDELINES OR PEER-REVIEWED, EVIDENCE-BASED, BEST-PRACTICE RESOURCES TO DEVELOP AND IMPLEMENT RESIDENT CARE POLICIES AND COMPLIANCE PROTOCOLS WITH MEASURABLE OUTCOMES TO PROMOTE PERFORMANCE EXCELLENCE.

(27) ~~(26) The department shall biennially review and update all clinical process guidelines as needed and shall continue to develop and implement clinical process guidelines for topics that have not been developed from the list in subsection (25) and other topics identified as a result of the meetings required in subsection (24).~~ The department shall consider recommendations from an advisory workgroup created under subsection (24). ~~on clinical process guidelines.~~ The department shall **MAY** include training on new and revised **PEER-REVIEWED, EVIDENCE-BASED, NATIONALLY RECOGNIZED** clinical process guidelines **OR PEER-REVIEWED, EVIDENCE-BASED, BEST-PRACTICE RESOURCES, WHICH CONTAIN MEASURABLE OUTCOMES,** in the joint provider and surveyor training sessions ~~as those~~

~~clinical process guidelines are developed and revised.~~ **TO ASSIST PROVIDER EFFORTS TOWARD IMPROVED REGULATORY COMPLIANCE AND PERFORMANCE EXCELLENCE AND TO FOSTER A COMMON UNDERSTANDING OF ACCEPTED PEER-REVIEWED, EVIDENCE-BASED, BEST-PRACTICE RESOURCES BETWEEN PROVIDERS AND THE SURVEY AGENCY. THE DEPARTMENT SHALL POST ON ITS WEBSITE ALL PEER-REVIEWED, EVIDENCE-BASED, NATIONALLY RECOGNIZED CLINICAL PROCESS GUIDELINES AND PEER-REVIEWED, EVIDENCE-BASED, BEST-PRACTICE RESOURCES USED IN A TRAINING SESSION UNDER THIS SUBSECTION FOR PROVIDER, SURVEYOR, AND PUBLIC REFERENCE.**

(28) ~~(27)~~ Representatives from each nursing home provider organization that does not own or operate a nursing home representing 30 or more nursing homes statewide and the state long-term care ombudsman or his or her designee ~~shall be~~ **ARE** permanent members of ~~any~~ **A** clinical advisory workgroup created under subsection (24). The department shall issue survey certification memorandums to providers to announce or clarify changes in the interpretation of regulations.

(29) ~~(28)~~ The department shall maintain the process by which the ~~department~~ **director OF THE LONG-TERM CARE DIVISION** or his or her designee reviews and authorizes the issuance of a citation for immediate jeopardy or substandard quality of care before the statement of deficiencies is made final. The review ~~shall be to~~ **MUST** assure ~~that the applicable concepts, clinical process guidelines, and other tools contained in subsections (25) to (27) are being used consistently, accurately, and effectively.~~ **THE CONSISTENT AND ACCURATE APPLICATION OF FEDERAL AND STATE SURVEY PROTOCOLS AND DEFINED REGULATORY STANDARDS.** As used in this

subsection, "immediate jeopardy" and "substandard quality of care" mean those terms as defined by the federal Centers for Medicare and Medicaid Services.

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

~~(30) The department shall instruct and train the surveyors in the clinical process guidelines adopted under subsection (25) in citing deficiencies.~~

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

(32) Nothing in this section limits the requirements of related state and federal law.

(33) As used in this section:

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

(b) "Form CMS-2567" means the federal Centers for Medicare and Medicaid Services' form for the statement of deficiencies and plan of correction or a successor form serving the same purpose.

(c) "Title XVIII" means title XVIII of the social security

1 act, 42 USC 1395 to ~~1395kkk~~-1395lll.

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

4 Sec. 20155a. (1) Nursing home health survey tasks shall be
5 facilitated by the licensing and regulatory affairs bureau of
6 health systems to ensure consistent and efficient coordination of
7 the nursing home licensing and certification functions for standard
8 and abbreviated surveys. The department shall develop an electronic
9 system to support the coordination of these activities. ~~and shall~~
10 ~~submit a report on the development of an electronic system,~~
11 ~~including a proposed budget for implementation, to the senate and~~
12 ~~house appropriations subcommittees for the department, the senate~~
13 ~~and house of representatives standing committees having~~
14 ~~jurisdiction over issues involving senior citizens, and the senate~~
15 ~~and house fiscal agencies by November 1, 2012.~~ If funds are
16 appropriated for the system, the department shall implement the
17 system within 120 days of that appropriation.

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

25 (3) The department shall seek approval from the ~~centers for~~
26 ~~medicare and medicaid services~~ **CENTERS FOR MEDICARE AND MEDICAID**
27 **SERVICES** to develop a program to provide grants to nursing homes

1 that have achieved a 5-star quality rating from the ~~centers for~~
2 ~~medicare and medicaid services.~~ **CENTERS FOR MEDICARE AND MEDICAID**
3 **SERVICES.** The department shall seek approval from the ~~centers for~~
4 ~~medicare and medicaid services~~ **CENTERS FOR MEDICARE AND MEDICAID**
5 **SERVICES** for nursing homes to be eligible to receive a grant, up to
6 \$5,000.00 per nursing home from the civil monetary fund for nursing
7 homes that meet the ~~centers for medicare and medicaid services~~
8 **CENTERS FOR MEDICARE AND MEDICAID SERVICES** standards for the 5-star
9 quality rating. Grants to nursing homes shall be used to implement
10 evidence-based quality improvement programs within the nursing
11 home. Each nursing home that receives a grant shall submit a report
12 to the department that describes the final outcome from
13 implementing the program.

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

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

22 (6) A nursing-home-submitted plan of correction in response to
23 any survey must have a completion date not to exceed 40 days from
24 the exit date of survey. If a nursing home has not received
25 additional citations before a revisit occurs, the department shall
26 conduct the first revisit not more than 60 days from the exit date
27 of the survey.

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

4 (8) The department may accept a nursing home's evidence of
5 substantial compliance instead of requiring a post survey on-site
6 first or second revisit as the department considers appropriate in
7 accordance with the ~~centers for medicare and medicaid services~~
8 **CENTERS FOR MEDICARE AND MEDICAID SERVICES** survey protocols. A
9 nursing home requesting consideration of evidence of substantial
10 compliance in lieu of an on-site revisit must include an affidavit
11 that asserts the nursing home is in substantial compliance as shown
12 by the submitted evidence for that specific survey event. There may
13 be no deficiencies with a scope and severity originating higher
14 than level D.—**F. CITATIONS WITH A SCOPE AND SEVERITY OF LEVEL F OR**
15 **BELOW MAY GO THROUGH A DESK REVIEW BY THE DEPARTMENT UPON THOROUGH**
16 **REVIEW OF THE PLAN OF CORRECTION. CITATIONS WITH A SCOPE AND**
17 **SEVERITY OF LEVEL G OR HIGHER ARE NOT TO BE CONSIDERED FOR A DESK**
18 **REVIEW.** If there is no enforcement action, the nursing home's
19 evidence of substantial compliance may be reviewed administratively
20 and accepted as evidence of deficiency correction.

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

27 (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,
 designated in writing by a ~~patient~~**RESIDENT** or a ~~patient's~~
RESIDENT'S guardian for a specific, limited purpose or for general
 purposes, or, if a written designation of a representative is not
 made, the guardian of the ~~patient.~~**RESIDENT.**

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

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

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

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

1 Sec. 21734. (1) Notwithstanding section 20201(2)(l), a nursing
2 home shall give each resident who uses a hospital-type bed or the
3 resident's legal guardian, patient advocate, or other legal
4 representative the option of having bed rails. A nursing home shall
5 offer the option to new residents upon admission and to other
6 residents upon request. Upon receipt of a request for bed rails,
7 the nursing home shall inform the resident or the resident's legal
8 guardian, patient advocate, or other legal representative of
9 alternatives to and the risks involved in using bed rails. A
10 resident or the resident's legal guardian, patient advocate, or
11 other legal representative has the right to request and consent to
12 bed rails for the resident. A nursing home shall provide bed rails
13 to a resident only upon receipt of a signed consent form
14 authorizing bed rail use and a written order from the resident's
15 attending physician that contains statements and determinations
16 regarding medical symptoms and that specifies the circumstances
17 under which bed rails are to be used. For purposes of this
18 subsection, "medical symptoms" includes the following:

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

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

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

24 (a) Document that the requirements of subsection (1) have been
25 met.

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

27 (c) In consultation with the resident, resident's family,

1 resident's attending physician, and individual who consented to the
2 bed rails, periodically reevaluate the resident's need for the bed
3 rails.

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

8 (a) Acceptable bed rails for use in a nursing home in this
9 state. The department shall consider the recommendations of the
10 hospital bed safety work group established by the United States
11 ~~food and drug administration,~~ **FOOD AND DRUG ADMINISTRATION,** if
12 those are available, in determining what constitutes an acceptable
13 bed rail.

14 (b) Proper maintenance of bed rails.

15 (c) Properly fitted mattresses.

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

18 (4) The department ~~of consumer and industry services~~ shall
19 ~~develop the guidelines~~ **MAINTAIN THE PEER-REVIEWED, EVIDENCE-BASED,**
20 **BEST-PRACTICE RESOURCES** under subsection (3) in consultation with
21 the long-term care **STAKEHOLDERS** work group **ESTABLISHED UNDER**
22 **SECTION 20155(24).** ~~An individual representing manufacturers of bed~~
23 ~~rails, 2 residents or family members, and an individual with~~
24 ~~expertise in bed rail installation and use shall be added to the~~
25 ~~long term care work group for purposes of this subsection. The~~
26 ~~department shall consider as part of its report to the legislature~~
27 ~~the recommendations of the hospital bed safety work group~~

~~established by the United States food and drug administration, if those recommendations are available at the time of the submission of the report. Not later than 6 months after the effective date of the amendatory act that added this section, the department of consumer and industry services shall submit its report to the legislature. The department may delay submission of its report by up to 3 months so that its report may reflect the recommendations of the hospital bed safety work group established by the United States food and drug administration.~~

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

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

Sec. 21799a. (1) A person who believes that this part, a rule promulgated under this part, or a federal certification regulation applying to a nursing home may have been violated may request an

1 investigation of a nursing home. The person may submit the request
2 for investigation to the department as a written complaint, or the
3 department shall assist a person in reducing an oral request made
4 under subsection (2) to a written complaint as provided in
5 subsection (2). A person filing a complaint under this subsection
6 may file the complaint on a model standardized complaint form
7 developed and distributed by the department under section 20194(3)
8 or file the complaint as provided by the department on the
9 ~~internet~~. **INTERNET.**

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

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

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

22 (c) Except for an anonymous complaint, the forwarding of a
23 copy of the completed intake form to the complainant not later than
24 5 business days after it is completed.

25 (3) The substance of a complaint filed under subsection (1) or
26 (2) shall be provided to the licensee no earlier than at the
27 commencement of the on-site inspection of the nursing home that

1 takes place in response to the complaint.

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

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

21 ~~complaint by the department.~~ **THE TIME FRAME CONSISTENT WITH FEDERAL**
22 **GUIDELINES FOR INVESTIGATIONS OF COMPLAINTS AGAINST NURSING HOMES.**

23 (6) If, at any time, the department determines that this part,
24 a rule promulgated under this part, or a federal certification
25 regulation for nursing homes has been violated, the department
26 shall list the violation and the provisions violated on the state
27 and federal licensure and certification forms for nursing homes.

1 The department shall consider the violations, as evidenced by a
2 written explanation, when it makes a licensure and certification
3 decision or recommendation.

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

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

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

26 (10) A complainant who is dissatisfied with the determination
27 or investigation by the department may request a hearing. A

1 complainant shall submit a request for a hearing in writing to the
2 director within 30 days after the mailing of the department's
3 findings as described in subsection (7). The department shall send
4 notice of the time and place of the hearing to the complainant and
5 the nursing home.

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

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