

# HOUSE BILL No. 5918

June 21, 1990, Introduced by Reps. Gire, Bennane, Barns, Pitoniak, Gubow, Stabenow, Kulchitsky, Harrison, Webb, Crandall, Dolan, DeMars, Dunaskiss, Stallworth, DeBeaussaert, Krause and Kosteva and referred to the Committee on Public Health.

A bill to amend sections 20108, 20142, 21751, 21755, 21776, 21785, 21799b, 22203, and 22225 of Act No. 368 of the Public Acts of 1978, entitled as amended

"Public health code,"

section 20108 as amended by Act No. 78 of the Public Acts of 1986, section 22203 as added by Act No. 331 of the Public Acts of 1988, and section 22225 as added by Act No. 332 of the Public Acts of 1988, being sections 333.20108, 333.20142, 333.21751, 333.21755, 333.21776, 333.21785, 333.21799b, 333.22203, and 333.22225 of the Michigan Compiled Laws; and to add sections 21752, 21753, 21754, and 21783.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 20108, 20142, 21751, 21755, 21776,  
2 21785, 21799b, 22203, and 22225 of Act No. 368 of the Public Acts  
3 of 1978, section 20108 as amended by Act No. 78 of the Public

1 Acts of 1986, section 22203 as added by Act No. 331 of the Public  
2 Acts of 1988, and section 22225 as added by Act No. 332 of the  
3 Public Acts of 1988, being sections 333.20108, 333.20142,  
4 333.21751, 333.21755, 333.21776, 333.21785, 333.21799b,  
5 333.22203, and 333.22225 of the Michigan Compiled Laws, are  
6 amended and sections 21752, 21753, 21754, and 21783 are added to  
7 read as follows:

8       Sec. 20108. (1) "Intermediate care facility" means a hos-  
9 pital long-term care unit, nursing home, county medical care  
10 facility, or other nursing care facility, or distinct part there-  
- 11 of, certified by the department to provide intermediate care or  
12 basic care that is less than skilled nursing care but more than  
13 room and board.

14       (2) "License" means an authorization, annual or as otherwise  
15 specified, granted by the department and evidenced by a certifi-  
16 cate of licensure or permit granting permission to a person to  
17 establish or maintain and operate, or both, a health facility or  
18 agency. For purposes of part 207, "license" includes a license  
19 issued to an individual under that part.

20       (3) "Licensee" means the holder of a license or permit to  
21 establish or maintain and operate, or both, a health facility or  
22 agency. For purposes of part 207, "licensee" includes an indi-  
23 vidual licensed under that part.

24       (4) "Limited license" means a provisional license or tempo-  
25 rary permit or a license otherwise limited as prescribed by the  
26 department.

1 (5) "Medically contraindicated" means, with reference to  
2 nursing homes only, having a substantial adverse effect on the  
3 patient's physical health, as determined by the attending physi-  
4 cian, which effect is explicitly stated in writing with the rea-  
5 sons therefor in the patient's medical record.

6 (6) "MEDICARE CERTIFICATION" MEANS THE ISSUANCE OF A DOCU-  
7 MENT BY THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES  
8 TO A HEALTH FACILITY OR AGENCY THAT ATTESTS THAT THE HEALTH  
9 FACILITY OR AGENCY IS ELIGIBLE TO PARTICIPATE AS A PROVIDER IN  
10 THE FEDERAL MEDICARE PROGRAM UNDER TITLE 18 OF THE SOCIAL SECUR-  
11 ITY ACT, 42 U.S.C. 1395 TO 1395b, 1395b-2, 1395c TO 1395i,  
12 1395i-2 TO 1395i-4, 1395j TO 1395w-2, 1395w-4 TO 1395dd, 1395ff  
13 TO 1395yy, AND 1395bbb TO 1395ccc.

14 Sec. 20142. (1) A health facility or agency shall apply for  
15 licensure or certification on a form authorized and provided by  
16 the department. The application shall include attachments, addi-  
17 tional data, and information required by the department.

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

20 (3) An applicant or a licensee under part 213 or 217 shall  
21 disclose the names, addresses, principal occupations, and offi-  
22 cial positions of all persons who have an ownership interest in  
23 the health facility or agency AND OF ALL PERSONS WHO HAVE AN  
24 OWNERSHIP INTEREST IN A PERSON THAT HAS AN OWNERSHIP INTEREST IN  
25 THE HEALTH FACILITY OR AGENCY. If the health facility or agency  
26 is located on or in leased real estate, the applicant or licensee  
27 shall disclose the name of the lessor and any direct or indirect

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

25 (4) An applicant or licensee under part 217 shall disclose  
26 the names and business addresses of suppliers who furnish goods  
27 or services to an individual nursing home or a group of nursing

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

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

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

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

20 Sec. 21751. (1) ~~When the department has concluded a pro-~~  
21 ~~ceeding under sections 71 to 106 of the administrative procedures~~  
22 ~~act of 1969, as amended, being sections 24.271 to 24.306 of the~~  
23 ~~Michigan Compiled Laws, or when the department has suspended or~~  
24 ~~revoked~~ UPON PROVIDING A NOTICE OF INTENT TO SUSPEND OR REVOKE  
25 the license OR CERTIFICATION, OR BOTH, of a nursing home UNDER  
26 SECTION 20165, UPON ISSUING AN EMERGENCY ORDER SUSPENDING OR  
27 REVOKING THE LICENSE OF A NURSING HOME UNDER SECTION 20168, UPON

1 BEING INFORMED OF AN EMERGENCY CLOSING OF A NURSING HOME UNDER  
2 SECTION 21786, OR UPON BEING INFORMED THAT THE FEDERAL GOVERNMENT  
3 HAS INITIATED A PROCEEDING TO SUSPEND OR REVOKE THE MEDICARE CER-  
4 TIFICATION OF A NURSING HOME, the department ~~, a patient in the~~  
5 ~~facility, or a patient's representative may file an emergency~~  
6 ~~petition with the circuit court to~~ SHALL place the nursing home  
7 under the control of ~~a receiver if necessary~~ AN ADMINISTRATIVE  
8 TEMPORARY MANAGER to protect the health or safety of patients in  
9 the nursing home AND SHALL FILE AN EMERGENCY PETITION WITH THE  
10 CIRCUIT COURT NOT LATER THAN 48 HOURS AFTER APPOINTING THE ADMIN-  
11 ISTRATIVE TEMPORARY MANAGER TO OBTAIN THE COURT'S AUTHORIZATION  
12 FOR CONTINUATION OF THE ADMINISTRATIVE TEMPORARY MANAGER AND  
13 APPOINTMENT OF THE ADMINISTRATIVE TEMPORARY MANAGER AS A  
14 COURT-APPOINTED MANAGER. THE COURT SHALL CONDUCT A HEARING ON  
15 THE PETITION NOT LATER THAN 5 DAYS AFTER IT IS FILED. The court  
16 may grant the petition upon a finding that the health or safety  
17 of the patients in the nursing home would be seriously threatened  
18 if a condition existing at the time ~~the petition was filed~~ is  
19 permitted to continue. IF THE COURT GRANTS THE PETITION, THE  
20 ADMINISTRATIVE TEMPORARY MANAGER SHALL AT THAT TIME BECOME THE  
21 COURT-APPOINTED MANAGER OF THE NURSING HOME. IF THE COURT ISSUES  
22 AN ORDER DENYING THE PETITION, THE DEPARTMENT SHALL PROMPTLY  
23 REMOVE THE ADMINISTRATIVE TEMPORARY MANAGER FROM THE NURSING  
24 HOME.

25 (2) IF THE DEPARTMENT HAS PROVIDED A NOTICE OF INTENT TO  
26 SUSPEND OR REVOKE THE LICENSE OR CERTIFICATION, OR BOTH, OF A  
27 NURSING HOME UNDER SECTION 20165, HAS ISSUED AN EMERGENCY ORDER

1 SUSPENDING OR REVOKING THE LICENSE OF A NURSING HOME UNDER  
2 SECTION 20168, HAS BEEN INFORMED OF AN EMERGENCY CLOSING OF A  
3 NURSING HOME UNDER SECTION 21786, OR HAS BEEN INFORMED THAT THE  
4 FEDERAL GOVERNMENT HAS INITIATED A PROCEEDING TO SUSPEND OR  
5 REVOKE THE MEDICARE CERTIFICATION OF A NURSING HOME, A PATIENT IN  
6 THE NURSING HOME OR A PATIENT'S REPRESENTATIVE MAY FILE AN EMER-  
7 GENCY PETITION WITH THE CIRCUIT COURT TO PLACE THE NURSING HOME  
8 UNDER THE CONTROL OF A COURT-APPOINTED MANAGER. THE COURT MAY  
9 GRANT THE PETITION UPON A FINDING THAT THE HEALTH OR SAFETY OF  
10 THE PATIENTS IN THE NURSING HOME WOULD BE SERIOUSLY THREATENED IF  
11 A CONDITION EXISTING AT THE TIME IS PERMITTED TO CONTINUE.

12 (3) ~~(2) The court shall appoint as receiver the director~~  
13 ~~of the department of social services, the director of the depart-~~  
14 ~~ment of public health, or another state agency or~~ ADMINISTRATIVE  
15 TEMPORARY MANAGER APPOINTED BY THE DEPARTMENT AND THE  
16 COURT-APPOINTED MANAGER SHALL BE A person designated by the  
17 director of public health FROM THE LIST OF QUALIFIED ADMINISTRA-  
18 TIVE TEMPORARY MANAGERS AND COURT-APPOINTED MANAGERS ESTABLISHED  
19 UNDER SUBSECTION (7). ~~The receiver appointed by the court~~  
20 ADMINISTRATIVE TEMPORARY MANAGER OR COURT-APPOINTED MANAGER shall  
21 use the income and assets of the nursing home to maintain and  
22 operate the home and to attempt to correct the conditions ~~which~~  
23 THAT constitute a threat to the patients. A major structural  
24 alteration shall not be made to the nursing home, unless the  
25 alteration is necessary to bring the nursing home into compliance  
26 with licensing requirements. UNLESS THE COURT DENIES A PETITION

1 UNDER SUBSECTION (1), THE NURSING HOME SHALL PAY ALL COSTS OF AN  
2 ADMINISTRATIVE TEMPORARY MANAGER OR COURT-APPOINTED MANAGER.

3 (4) ~~(3) To assist in the implementation of the mandate of~~  
4 ~~the court,~~ UPON REQUEST BY the ~~receiver may request and~~  
5 ~~receive~~ ADMINISTRATIVE TEMPORARY MANAGER OR COURT-APPOINTED MAN-  
6 AGER, THE DEPARTMENT SHALL PROVIDE reasonable consultation from  
7 the available personnel of the department.

8 (5) ~~(4) The receivership~~ COURT-APPOINTED MANAGEMENT  
9 shall be terminated when the ~~receiver~~ COURT-APPOINTED MANAGER  
10 and the court, WITH THE CONCURRENCE OF THE DEPARTMENT, certify  
11 that the conditions ~~which~~ THAT prompted the appointment have  
12 been corrected, when the license OR CERTIFICATION, OR BOTH, is  
13 restored, when a new license OR CERTIFICATION is issued, or, in  
14 the case of AN EMERGENCY CLOSING OR a discontinuance of opera-  
15 tion, when the patients are safely placed in other facilities,  
16 whichever occurs first.

17 (6) ~~(5) Upon the termination of the receivership~~  
18 COURT-APPOINTED MANAGEMENT, the ~~receiver~~ COURT-APPOINTED  
19 MANAGER shall render a complete accounting to the court AND THE  
20 DEPARTMENT and shall dispose of surplus funds as the court  
21 directs.

22 (7) NOT LATER THAN 90 DAYS AFTER THE EFFECTIVE DATE OF THE  
23 AMENDATORY ACT THAT ADDED THIS SUBSECTION, THE DEPARTMENT SHALL  
24 PROMULGATE RULES TO ESTABLISH QUALIFICATIONS FOR AN ADMINISTRA-  
25 TIVE TEMPORARY MANAGER OR COURT-APPOINTED MANAGER APPOINTED UNDER  
26 THIS SECTION, GUIDELINES FOR THE CONDUCT OF THOSE ADMINISTRATIVE  
27 TEMPORARY MANAGERS OR COURT-APPOINTED MANAGERS, AND A LIST OF



1 PERSONS QUALIFIED TO BE APPOINTED AS AN ADMINISTRATIVE TEMPORARY  
2 MANAGER OR COURT-APPOINTED MANAGER. THE QUALIFICATIONS SHALL  
3 INCLUDE AT LEAST ALL OF THE FOLLOWING:

4 (A) EXPERIENCE IN OPERATING A NURSING HOME OR THE ABILITY TO  
5 HIRE A PERSON WITH THAT EXPERIENCE.

6 (B) IF THE PERSON HAS EXPERIENCE IN OPERATING A NURSING  
7 HOME, HAS AN ABOVE AVERAGE RECORD OF CARE BASED ON THE PENALTY  
8 POINT SYSTEMS MAINTAINED BY THE DEPARTMENT OF SOCIAL SERVICES AND  
9 THE DEPARTMENT.

10 (C) IF THE PERSON IS OPERATING 1 OR MORE OTHER NURSING HOMES  
11 AT THE TIME OF APPOINTMENT, THE ABILITY TO PROVIDE THE MANAGEMENT  
12 NECESSARY TO OPERATE THE NURSING HOME WITHOUT JEOPARDIZING THE  
13 CARE PROVIDED IN ANY OTHER NURSING HOME THE PERSON OPERATES,  
14 BASED ON ASSURANCES THAT THE PERSON HAS SUFFICIENT ADMINISTRATIVE  
15 STAFF AVAILABLE TO MEET ALL LICENSING REQUIREMENTS AT EACH OF ITS  
16 FACILITIES WHILE ASSUMING THE ADDITIONAL RESPONSIBILITIES OF THE  
17 APPOINTMENT.

18 (D) ABILITY TO WORK PROFESSIONALLY AND COOPERATIVELY WITH  
19 PATIENTS AND THEIR FAMILIES, MANAGEMENT AND STAFF OF THE NURSING  
20 HOME, PATIENT ADVOCATES, OMBUDSMEN, AND REGULATORY AGENCIES.

21 (E) NO OWNERSHIP INTEREST IN THE NURSING HOME OR PROFES-  
22 SIONAL SERVICE AFFILIATION THAT THE DEPARTMENT WOULD CONSIDER TO  
23 CONSTITUTE A CONFLICT OF INTEREST WITH THE APPOINTMENT.

24 (8) IN COMPILING A LIST UNDER SUBSECTION (7) OF PERSONS  
25 QUALIFIED TO BE APPOINTED AS AN ADMINISTRATIVE TEMPORARY MANAGER  
26 OR COURT-APPOINTED MANAGER, THE DIRECTOR SHALL GIVE PREFERENCE TO  
27 PERSONS WHO HAVE PREVIOUSLY SUCCESSFULLY SERVED AS A

1 COURT-APPOINTED MANAGER OR RECEIVER OF NURSING HOMES IN THIS OR  
2 ANOTHER STATE AND SHALL SEEK ASSISTANCE IN OBTAINING NAMES FOR  
3 THE LIST FROM AT LEAST ALL OF THE FOLLOWING SOURCES:

4 (A) REPRESENTATIVES OF THE FOR-PROFIT NURSING HOME  
5 INDUSTRY.

6 (B) REPRESENTATIVES OF NONPROFIT NURSING HOMES.

7 (C) REPRESENTATIVES OF COUNTY MEDICAL CARE FACILITIES.

8 (D) CITIZENS FOR BETTER CARE.

9 (9) AN ADMINISTRATIVE TEMPORARY MANAGER OR COURT-APPOINTED  
10 MANAGER MAY DO ALL OF THE FOLLOWING:

11 (A) ASSIST IN CLOSING A NURSING HOME.

12 (B) IF THERE IS AN EMERGENCY SITUATION AT THE NURSING HOME,  
13 CLOSE THE NURSING HOME OR TRANSFER PATIENTS, OR BOTH.

14 (C) PAY FROM THE NURSING HOME'S FUNDS THE COSTS OF PATIENT  
15 CARE; RELOCATION, TRANSFER, OR DISCHARGE OF PATIENTS; MAINTENANCE  
16 AND OPERATION OF THE NURSING HOME; CORRECTION OF DEFICIENCIES;  
17 AND REIMBURSEMENT TO PATIENTS FOR PERSONAL FUNDS LOST.

18 (D) TAKE ACTION NECESSARY TO RETURN A NURSING HOME TO MAN-  
19 AGEMENT BY THE LICENSEE.

20 (10) IN ADDITION TO THE POWERS ENUMERATED IN SUBSECTION (9),  
21 A COURT-APPOINTED MANAGER MAY DO ALL OF THE FOLLOWING:

22 (A) CONTRACT FOR CONSTRUCTION PROJECTS AS NECESSARY TO BRING  
23 A NURSING HOME INTO COMPLIANCE WITH APPLICABLE LAW.

24 (B) SELL THE NURSING HOME TO PAY THE NURSING HOME'S DEBT AND  
25 TURN OVER ANY SURPLUS TO THE LICENSEE.

26 SEC. 21752. (1) AT THE TIME A SANCTION IS ACTUALLY  
27 IMPLEMENTED AGAINST A NURSING HOME BY A STATE OR FEDERAL

1 REGULATORY AGENCY CONCERNED WITH QUALITY OF CARE, AN ANNOUNCEMENT  
2 IS MADE OF A SPECIFIC DATE FOR SUCH A SANCTION TO TAKE EFFECT, A  
3 COMPLIANCE CONFERENCE IS OFFERED BY SUCH AN AGENCY, AN EMERGENCY  
4 ORDER IS ISSUED SUSPENDING OR REVOKING THE LICENSE OF A NURSING  
5 HOME UNDER SECTION 20168, OR A NOTICE IS GIVEN OF THE EMERGENCY  
6 CLOSING OF A NURSING HOME UNDER SECTION 21786, THE DEPARTMENT  
7 SHALL DO ALL OF THE FOLLOWING:

8 (A) PROVIDE WRITTEN NOTICE OF THE ACTION THAT IS BEING TAKEN  
9 TO EACH PATIENT OF THE NURSING HOME AND AN INTERESTED FAMILY  
10 MEMBER OF EACH PATIENT.

11 (B) FORM A COORDINATION COMMITTEE TO ASSIST THE ADMINISTRA-  
12 TIVE TEMPORARY MANAGER OR COURT-APPOINTED MANAGER APPOINTED UNDER  
13 SECTION 21751 AND THE PATIENTS OF THE NURSING HOME AND THEIR  
14 FAMILIES. THE COORDINATION COMMITTEE SHALL CONSIST OF 1 REPRESENTATIVE  
15 EACH FROM THE DEPARTMENT, THE DEPARTMENT OF SOCIAL  
16 SERVICES, THE DEPARTMENT OF MENTAL HEALTH, AND THE DEPARTMENT OF  
17 ATTORNEY GENERAL.

18 (C) NOTIFY THE NURSING HOME THAT IT IS PROHIBITED FROM  
19 ADMITTING NEW PATIENTS FROM THE DATE OF RECEIPT OF THE NOTICE  
20 UNTIL THE RESOLUTION OR TERMINATION OF THE PROCEEDINGS.

21 (2) THE DEPARTMENT OF SOCIAL SERVICES, THE DEPARTMENT OF  
22 MENTAL HEALTH, AND THE DEPARTMENT OF ATTORNEY GENERAL SHALL COOP-  
23 ERATE WITH THE DEPARTMENT IN THE FORMATION OF A COORDINATION COM-  
24 MITTEE UNDER SUBSECTION (1)(B) AND SHALL EACH PROVIDE A REPRESENTATIVE  
25 TO SERVE ON THE COORDINATION COMMITTEE.

26 SEC. 21753. (1) A NURSING HOME SHALL NOT ADMIT A NEW  
27 PATIENT IN ANY OF THE FOLLOWING CIRCUMSTANCES:

1 (A) THE NURSING HOME HAS RECEIVED AN EMERGENCY ORDER  
2 SUSPENDING OR REVOKING THE NURSING HOME'S LICENSE UNDER  
3 SECTION 20168.

4 (B) THE DEPARTMENT HAS INITIATED PROCEEDINGS TO SUSPEND OR  
5 REVOKE THE NURSING HOME'S LICENSE UNDER SECTION 20165.

6 (C) THE NURSING HOME HAS FAILED TO BRING A CONDITION OF PAR-  
7 TICIPATION IN MEDICARE INTO COMPLIANCE WITHIN 3 MONTHS AFTER  
8 RECEIVING A CITATION FOR NONCOMPLIANCE FOR THE CONDITION.

9 (D) IT IS FOUND DURING A SURVEY THAT THE NURSING HOME HAS  
10 FAILED TO MEET A CONDITION OF PARTICIPATION IN MEDICARE THAT THE  
11 NURSING HOME WAS CITED FOR IN THE 2 IMMEDIATELY PRECEDING  
12 SURVEYS.

13 (E) THE NURSING HOME HAS FAILED 3 OR MORE TIMES IN ANY  
14 12-MONTH PERIOD TO MEET 4 OR MORE OF THE STAFFING RATIOS REQUIRED  
15 BY LAW IN A RANDOMLY CHOSEN 3-WEEK PERIOD.

16 (F) THE NURSING HOME HAS GIVEN NOTICE THAT IT IS VOLUNTARILY  
17 CLOSING OR FORFEITING ITS MEDICARE CERTIFICATION.

18 (G) THE NURSING HOME IS THE SUBJECT OF A LEGAL ACTION TO  
19 FORECLOSE ON ITS PROPERTY OR TO SEIZE ITS ASSETS.

20 (2) A BAN ON NEW ADMISSIONS UNDER SUBSECTION (1)(A), (B), OR  
21 (G) IS IN EFFECT DURING THE PENDENCY OF THE LEGAL PROCEEDINGS  
22 CAUSING THE BAN. A BAN ON NEW ADMISSIONS UNDER  
23 SUBSECTION (1)(C), (D), OR (E) IS IN EFFECT UNTIL THE DEPARTMENT  
24 DETERMINES THAT THE CONDITIONS THAT CAUSED THE BAN HAVE BEEN COR-  
25 RECTED AND THE NURSING HOME IS IN COMPLIANCE WITH ALL LICENSURE  
26 AND CERTIFICATION REQUIREMENTS. AT THE REQUEST OF A NURSING HOME

1 SUBJECT TO A BAN ON NEW ADMISSIONS, THE DEPARTMENT SHALL CONDUCT  
2 AN INSPECTION TO DETERMINE COMPLIANCE.

3 (3) IF A NURSING HOME SUBJECT TO A BAN ON NEW ADMISSIONS  
4 UNDER SUBSECTION (1) ADMITS A PATIENT IN VIOLATION OF THE BAN,  
5 THE NURSING HOME SHALL NOT CHARGE OR COLLECT FROM THE PATIENT ANY  
6 COSTS ASSOCIATED WITH RESIDENCE AT THE NURSING HOME OR SERVICES  
7 PROVIDED BY THE NURSING HOME.

8 SEC. 21754. NOT LATER THAN 120 DAYS AFTER THE EFFECTIVE  
9 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION, THE DEPART-  
10 MENT, IN COOPERATION WITH THE DEPARTMENT OF SOCIAL SERVICES AND  
11 THE DEPARTMENT OF MENTAL HEALTH, SHALL PUBLISH A CLOSING POLICY  
12 HANDBOOK THAT DESCRIBES THE PROCEDURES REQUIRED UNDER THIS PART  
13 FOR THE VOLUNTARY OR INVOLUNTARY CLOSING OF A NURSING HOME OR FOR  
14 APPOINTMENT OF A TEMPORARY ADMINISTRATIVE MANAGER OR  
15 COURT-APPOINTED MANAGER. THE DEPARTMENT SHALL DISTRIBUTE A COPY  
16 OF THE HANDBOOK TO EACH NURSING HOME AND AREA AGENCY ON AGING IN  
17 THIS STATE AND SHALL MAKE COPIES AVAILABLE UPON REQUEST TO  
18 CONSUMERS.

19 Sec. 21755. (1) The department may refuse to issue a  
20 license to establish or maintain and operate, or both, a nursing  
21 home to an applicant:

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

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

1 experience. As used in this subdivision, "good moral character"  
2 means that term as defined in Act No. 381 of the Public Acts of  
3 1974, as amended, being sections 338.41 to 338.47 of the Michigan  
4 Compiled Laws.

5 (2) THE DEPARTMENT SHALL NOT ISSUE A LICENSE TO ESTABLISH OR  
6 MAINTAIN AND OPERATE, OR BOTH, A NURSING HOME TO A PERSON IF ANY  
7 OF THE FOLLOWING HAS OCCURRED AT ANY TIME:

8 (A) A HEALTH FACILITY OR AGENCY LICENSE ISSUED TO THE PERSON  
9 IN MICHIGAN OR ANOTHER STATE HAS BEEN REVOKED OR A PROCEEDING TO  
10 REVOKE SUCH A LICENSE HAS BEEN INITIATED UNDER APPLICABLE LAW AND  
11 IS PENDING AT THE TIME OF APPLICATION.

12 (B) THE CERTIFICATION OR MEDICARE CERTIFICATION OF A HEALTH  
13 FACILITY OR AGENCY OWNED OR OPERATED BY THE PERSON IN MICHIGAN OR  
14 ANOTHER STATE HAS BEEN REVOKED BY THE STATE OR A FEDERAL AGENCY  
15 OR A PROCEEDING TO REVOKE THE CERTIFICATION HAS BEEN INITIATED  
16 UNDER APPLICABLE LAW AND IS PENDING AT THE TIME OF APPLICATION.

17 (C) THE PERSON HAS VOLUNTARILY CLOSED OR DISCONTINUED OPERA-  
18 TIONS OF A NURSING HOME IN MICHIGAN OR ANOTHER STATE WITHOUT FOL-  
19 LOWING THE APPLICABLE LAW PRESCRIBING THE PROCEDURE FOR VOLUNTARY  
20 CLOSURE OR DISCONTINUANCE OF A NURSING HOME.

21 Sec. 21776. (1) The licensee, with the approval of the  
22 department, shall develop a plan to effectuate the orderly and  
23 safe transfer or discharge of a patient. The patient and the  
24 patient's family or representative shall be consulted in choosing  
25 another facility. The patient shall receive counseling services  
26 before the move to minimize the adverse effects of transfer  
27 trauma. The department shall assure that counseling will be

1 available if the patient requires counseling after transfer or  
2 discharge. THIS SUBSECTION APPLIES TO ANY TRANSFER OR DISCHARGE  
3 OF A PATIENT, INCLUDING, BUT NOT LIMITED TO, A TRANSFER OR DIS-  
4 CHARGE THAT RESULTS FROM THE VOLUNTARY OR INVOLUNTARY CLOSING OF  
5 A NURSING HOME.

6 (2) IF A PATIENT IS INVOLUNTARILY TRANSFERRED OR DISCHARGED  
7 BY A NURSING HOME AS A RESULT OF THE VOLUNTARY OR INVOLUNTARY  
8 CLOSING OF THE NURSING HOME, ALL OF THE FOLLOWING SHALL OCCUR:

9 (A) THE NURSING HOME SHALL ENSURE THAT THE PATIENT RECEIVES  
10 COUNSELING SERVICES BEFORE AND AFTER THE TRANSFER OR DISCHARGE TO  
11 MINIMIZE THE ADVERSE EFFECTS OF THE TRANSFER OR DISCHARGE.

12 (B) THE DEPARTMENT OF SOCIAL SERVICES SHALL MONITOR THE  
13 COUNSELING OF PATIENTS REQUIRED UNDER SUBDIVISION (A), USING  
14 APPROPRIATE MEMBERS OF ITS STAFF.

15 (C) THE SAME DEPARTMENT OF SOCIAL SERVICES STAFF MEMBERS AS  
16 MONITOR COUNSELING UNDER SUBDIVISION (B) SHALL PARTICIPATE WITH  
17 THE NURSING HOME IN DEVELOPING THE PLAN REQUIRED UNDER  
18 SUBSECTION (1) TO EFFECTUATE THE ORDERLY AND SAFE TRANSFER OR  
19 DISCHARGE OF A PATIENT.

20 (D) THE TRANSFER OR DISCHARGE PLAN SHALL BE DEVELOPED AND  
21 IMPLEMENTED TO MEET ALL OF THE FOLLOWING OBJECTIVES:

22 (i) THAT THE PROPOSED NEW CARE SETTING PLACEMENT IS APPRO-  
23 PRIATE FOR THE PATIENT'S NEEDS AND CONSIDERS THE RECOMMENDATIONS  
24 OF THE PATIENT'S ATTENDING PHYSICIAN.

25 (ii) THAT, IN A TRANSFER, THE BEST POSSIBLE PLACEMENT FOR  
26 THE PATIENT IS MADE THE FIRST TIME TO MINIMIZE THE LIKELIHOOD OF  
27 AN ADDITIONAL TRANSFER AT A LATER DATE.

1       (iii) THAT THE PATIENT, THE PATIENT'S GUARDIAN, THE  
2 PATIENT'S NEXT OF KIN, THE PATIENT'S REPRESENTATIVE, OR THE ORGA-  
3 NIZATION THAT ORIGINALLY PLACED THE PATIENT IN THE NURSING HOME  
4 IS INVOLVED IN SELECTING THE NURSING HOME TO WHICH THE PATIENT IS  
5 TRANSFERRED.

6       (iv) THAT THE PATIENT RECEIVES AT LEAST 1 COUNSELING SESSION  
7 CONCERNING THE TRANSFER OR DISCHARGE BEFORE THE TRANSFER OR  
8 DISCHARGE.

9       (v) THAT THE PATIENT IS GIVEN THE OPPORTUNITY FOR AT LEAST 1  
10 VISIT TO THE PROPOSED NEW PLACEMENT BEFORE THE TRANSFER OR  
11 DISCHARGE. THE VISIT MAY BE WAIVED ONLY IF THE PATIENT'S ATTEND-  
12 ING PHYSICIAN DOCUMENTS IN THE PATIENT'S CLINICAL RECORD THAT THE  
13 VISIT IS MEDICALLY CONTRAINDICATED OR IF THE PATIENT, THE  
14 PATIENT'S GUARDIAN, OR THE PATIENT'S REPRESENTATIVE DETERMINES  
15 THAT THE VISIT IS NOT IN THE PATIENT'S BEST INTERESTS AND DOCU-  
16 MENTS THAT DETERMINATION IN WRITING. IF THE VISIT IS WAIVED, THE  
17 PATIENT SHALL RECEIVE APPROPRIATE INFORMATION ABOUT THE NEW PRO-  
18 POSED PLACEMENT TO FAMILIARIZE THE PATIENT WITH THAT FACILITY,  
19 SUCH AS FLOOR PLANS, BROCHURES, AND PHOTOGRAPHS.

20       (vi) THAT, UNLESS THE PATIENT OR THE PATIENT'S GUARDIAN OR  
21 PATIENT REPRESENTATIVE REQUESTS OTHERWISE IN WRITING, THE DEPART-  
22 MENT OF SOCIAL SERVICES ENSURES THAT A FAMILY MEMBER OR OTHER  
23 APPROPRIATE INDIVIDUAL ACCOMPANIES THE PATIENT DURING THE ACTUAL  
24 DISCHARGE OR TRANSFER TO THE NEW PLACEMENT.

25       (E) THE DEPARTMENT OF SOCIAL SERVICES SHALL ENSURE THAT A  
26 PATIENT RECEIVES COUNSELING IN THE NEW PLACEMENT WITHIN 72 HOURS  
27 AFTER THE TRANSFER OR DISCHARGE.



1        SEC. 21783. IF A NURSING HOME IS INVOLUNTARILY CLOSED BY  
2 THE DEPARTMENT, THE LICENSEE SHALL MAKE ALL FINANCIAL RECORDS  
3 ASSOCIATED WITH THE NURSING HOME ACCESSIBLE TO THE DEPARTMENT AND  
4 TO THE DEPARTMENT OF ATTORNEY GENERAL.

5        Sec. 21785. (1) If a nursing home proposes to VOLUNTARILY  
6 CLOSE OR discontinue operation OR DETERMINES THAT IT MUST INVOL-  
7 UNTARILY CLOSE OR DISCONTINUE OPERATION, the licensee shall  
8 notify the department of public health and the department of  
9 social services of the impending discontinuance of operation.  
10 The licensee shall notify the patient and the patient's next of  
11 kin, patient's representative, and the party executing the con-  
12 tract under section 21766 of the proposed date of the  
13 discontinuance. The notice shall be sufficient to make suitable  
14 arrangements for the transfer and care of the patient.

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

17        (3) The licensee and the department of social services shall  
18 be responsible for securing a suitable relocation of a patient  
19 who does not have a relative or legal representative to assist in  
20 his or her relocation before the discontinuance of operation.  
21 The licensee and the department of social services shall keep the  
22 department of public health informed of their efforts and activi-  
23 ties in carrying out this responsibility. The department of  
24 social services shall make available to the licensee and the  
25 department of public health assistance necessary to assure the  
26 effectiveness of efforts to secure a suitable relocation.

1       Sec. 21799b. (1) If, upon investigation, the department ~~of~~  
2 ~~public health~~ finds that a licensee is not in compliance with  
3 this part, a rule promulgated under this part, or a federal law  
4 or regulation governing nursing home certification under title 18  
5 or 19 of the social security act, 42 U.S.C. 1395 to ~~1396k~~,  
6 ~~which~~ 1395b, 1395b-2, 1395c TO 1395i, 1395i-2 TO 1395i-4, 1395j  
7 TO 1395w-2, 1395w-4 TO 1395dd, 1395ff TO 1395yy, 1395bbb TO  
8 1395ccc, 1396 TO 1396d, 1396f TO 1396g, AND 1396i TO 1396s, THAT  
9 impairs the ability of the licensee to deliver an acceptable  
10 level of care and services, the department ~~of public health~~  
11 shall notify the department of social services of the finding and  
12 issue 1 or more of the following correction notices to the  
13 licensee:

14       (a) Suspend the admission or readmission of patients to the  
15 nursing home.

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

17       (c) Selectively transfer patients whose care needs are not  
18 being met by the licensee.

19       (d) Initiate action to place the home ~~in receivership~~  
20 UNDER A TEMPORARY ADMINISTRATIVE MANAGER OR COURT-APPOINTED  
21 MANAGER as prescribed in section 21751.

22       (e) Issue a correction notice to the licensee and the  
23 department of social services describing the violation and the  
24 statute or rule violated and specifying the corrective action to  
25 be taken and the period of time in which the corrective action is  
26 to be completed. Upon ~~issuance~~ THE EXPIRATION OF 48 HOURS  
27 AFTER NOTIFICATION OF PATIENTS AND FAMILY MEMBERS UNDER

1 SECTION 21752, the director shall cause to be published in a  
2 daily newspaper of general circulation in an area in which the  
3 nursing home is located notice of the action taken and the list-  
4 ing of conditions upon which the director's action is  
5 predicated.

6 (2) Within 72 hours after receipt of a notice issued under  
7 subsection (1), the licensee shall be given an opportunity for a  
8 hearing on the matter. The director's notice shall continue in  
9 effect during the pendency of the hearing and any subsequent  
10 court proceedings. The hearing shall be conducted in compliance  
11 with the administrative procedures act of 1969.

12 (3) A licensee who believes that a correction notice has  
13 been complied with may request a verification of compliance from  
14 the department. Not later than 72 hours after the licensee makes  
15 the request, the department shall investigate to determine  
16 whether the licensee has taken the corrective action prescribed  
17 in the notice under subsection (1) (e). If the department finds  
18 that the licensee has taken the corrective action and that the  
19 conditions giving rise to the notice have been alleviated, the  
20 department may cease taking further action against the licensee,  
21 or may take other action ~~which~~ THAT the director considers  
22 appropriate.

23 Sec. 22203. (1) "Addition" means adding patient rooms,  
24 beds, and ancillary service areas, including, but not limited to,  
25 procedure rooms or fixed equipment, surgical operating rooms,  
26 therapy rooms or fixed equipment, or other accommodations to a  
27 health facility.

1       (2) "Capital expenditure" means an expenditure for a single  
2 project, including cost of construction, engineering, and equip-  
3 ment ~~which~~ THAT under generally accepted accounting principles  
4 is not properly chargeable as an expense of operation. Capital  
5 expenditure includes a lease or comparable arrangement by or on  
6 behalf of a facility by which a person obtains a health facility  
7 or licensed part of a health facility or equipment for a facili-  
8 ty, the expenditure for which would have been considered a capi-  
9 tal expenditure under this part if the person had acquired it by  
10 purchase. Capital expenditure includes cost of studies, surveys,  
11 designs, plans, working drawings, specifications, and other  
12 activities essential to the acquisition, improvement, expansion,  
13 addition, conversion, modernization, new construction, or  
14 replacement of physical plant and equipment.

15       (3) "Certificate of need" means a certificate issued pursu-  
16 ant to this part authorizing a new health facility, a change in  
17 bed capacity, the initiation of a new service, the acquisition of  
18 covered medical equipment, or a covered capital expenditure that  
19 is issued in accordance with this part.

20       (4) "Certificate of need review standard" means a standard  
21 approved by the commission or the statewide health coordinating  
22 council under section 22215 or 22217 or a document, policy, or  
23 guideline listed in section 22217(1).

24       (5) "CERTIFICATION" MEANS THE ISSUANCE OF A DOCUMENT BY THE  
25 DEPARTMENT OR A FEDERAL AGENCY TO A HEALTH FACILITY ATTESTING TO  
26 THE FACT THAT THE HEALTH FACILITY MEETS BOTH OF THE FOLLOWING:

1 (A) IT COMPLIES WITH APPLICABLE STATUTORY AND REGULATORY  
2 REQUIREMENTS AND STANDARDS.

3 (B) IT IS ELIGIBLE TO PARTICIPATE AS A PROVIDER OF CARE AND  
4 SERVICES IN A SPECIFIC FEDERAL OR STATE HEALTH PROGRAM.

5 (6) ~~(5)~~ "Change in bed capacity" means 1 or more of the  
6 following:

7 (a) An increase in licensed hospital beds.

8 (b) An increase in licensed nursing home beds or hospital  
9 beds certified for long-term care.

10 (c) An increase in licensed psychiatric beds.

11 (d) A change from 1 licensed use to a different licensed  
12 use.

13 (e) The physical relocation of beds from a licensed site to  
14 another geographic location.

15 (7) ~~(6)~~ "Clinical" means directly pertaining to the diag-  
16 nosis, treatment, or rehabilitation of an individual.

17 (8) ~~(7)~~ "Clinical service area" means an area of a health  
18 facility, including related corridors, equipment rooms, ancillary  
19 service and support areas which house medical equipment, patient  
20 rooms, patient beds, diagnostic, operating, therapy, or treatment  
21 rooms or other accommodations related to the diagnosis, treat-  
22 ment, or rehabilitation of individuals receiving services from  
23 the health facility.

24 (9) ~~(8)~~ "Commission" means the certificate of need commis-  
25 sion created under section 22211.

26 (10) ~~(9)~~ "Council" means the state health planning council  
27 created under the Michigan health planning and health policy

1 development act, Act No. 323 of the Public Acts of 1978, being  
2 sections 325.2001 to 325.2031 of the Michigan Compiled Laws.

3 (11) ~~(10)~~ "Covered capital expenditure" means a capital  
4 expenditure by a health facility for a single project, excluding  
5 the cost of nonfixed medical equipment, that is equal to, or  
6 greater than, 1 of the following amounts:

7 (a) For a single project that includes or involves the  
8 acquisition, improvement, expansion, addition, conversion, mod-  
9 ernization, new construction, or replacement of a clinical serv-  
10 ice area:

11 (i) For certificate of need applications submitted on or  
12 after October 1, 1988, but before October 1, 1991, \$750,000.00.

13 (ii) For certificate of need applications submitted on or  
14 after October 1, 1991, \$850,000.00.

15 (b) For a single project that involves the acquisition,  
16 improvement, expansion, addition, conversion, modernization, new  
17 construction, or replacement of nonclinical service areas only:

18 (i) For certificate of need applications submitted on or  
19 after October 1, 1988, but before October 1, 1991,  
20 \$1,500,000.00.

21 (ii) For certificate of need applications submitted on or  
22 after October 1, 1991, \$1,700,000.00.

23 (c) For a single project that is limited solely to the  
24 acquisition of nonfixed, nonmedical equipment and that does not  
25 involve acquisition, improvement, expansion, addition, conver-  
26 sion, modernization, new construction, or replacement of physical  
27 plant:

1       (i) For certificate of need applications submitted on or  
2 after October 1, 1988, but before October 1, 1991,  
3 \$1,500,000.00.

4       (ii) For certificate of need applications submitted on or  
5 after October 1, 1991, \$1,700,000.00.

6       (12) ~~(11)~~ "Covered clinical service", except as otherwise  
7 modified by the commission pursuant to section 22215, means 1 or  
8 more of the following:

9       (a) Initiation or replacement of either of the following  
10 services:

11       (i) Cardiac services.

12       (ii) Extrarenal organ transplantation.

13       (b) Initiation of a specialized psychiatric program utiliz-  
14 ing existing licensed psychiatric beds. Specialized psychiatric  
15 programs may include services for geriatric, pediatric, adoles-  
16 cent, or substance abuse patients.

17       (c) Initiation, replacement, or expansion of 1 or more of  
18 the following:

19       (i) Special radiological procedure rooms used for invasive  
20 procedures such as angiography, arteriography, venography, cathe-  
21 terizations, and electro-physiology, but excluding procedure  
22 rooms used only for general radiology and fluoroscopy  
23 procedures.

24       (ii) Specialized radiation therapy services.

25       (iii) A partial day hospitalization psychiatric program.

1 (d) Initiation, replacement, or expansion of a service not  
 2 listed in this subsection, but designated as a covered clinical  
 3 service by the commission under section 22215(1)(a).

4 (e) Initiation or increase in the number of licensed hospi-  
 5 tal beds dedicated to neonatal intensive care services or special  
 6 newborn nursing services.

7 (13) ~~-(12)-~~ "Covered medical equipment", except as otherwise  
 8 modified by the commission pursuant to section 22215, means 1 or  
 9 more of the following:

10 (a) An extracorporeal shock wave lithotripter.

11 (b) A magnetic resonance unit.

12 (c) A mobile computerized tomography scanner.

13 (d) A fixed computerized tomography scanner.

14 (e) Surgical facilities.

15 (f) An air ambulance.

16 (g) A positron emission tomography scanner.

17 (h) Other equipment not listed in this subsection, but des-  
 18 ignated by the commission as covered medical equipment under  
 19 section 22215(1)(a).

20 (14) ~~-(13)-~~ "Fixed equipment" means equipment that is  
 21 affixed to and constitutes a structural component of a health  
 22 facility, including, but not limited to, mechanical or electrical  
 23 systems, elevators, generators, pumps, boilers, and refrigeration  
 24 equipment.

25 Sec. 22225. (1) In order to be approved under this part, an  
 26 applicant for a certificate of need shall demonstrate to the  
 27 satisfaction of the department that the proposed project will



1 meet an unmet need in the area proposed to be served. The need  
2 for a proposed project shall be demonstrated by credible documen-  
3 tation of compliance with the applicable certificate of need  
4 review standards or, if none, by credible documentation that the  
5 proposed project will be geographically accessible and effi-  
6 ciently and appropriately utilized in light of the type of pro-  
7 posed project and the existing health care system, including  
8 approved projects that are not yet operational, proposed projects  
9 under appeal from a final decision of the department, or proposed  
10 projects that are pending final department decision.

11 (2) If, and only if, the requirements of subsection (1) are  
12 met, in order for an application to be approved under this part,  
13 an applicant shall also demonstrate to the reasonable satisfac-  
14 tion of the department all of the following:

15 (a) With respect to the method proposed to meet the unmet  
16 need identified under subsection (1), that each of the following  
17 is met:

18 (i) The project utilizes the most efficient and effective  
19 feasible methods that are available to the health care industry.

20 (ii) In the case of a project proposing physical plant  
21 expansion, that the project is the most efficient and effective  
22 expansion alternative after consideration of at least new con-  
23 struction, modernization, lease, or purchase.

24 (iii) In the case of proposed new construction, the project  
25 is the most appropriate construction option.

26 (b) With respect to the financial aspects of the proposed  
27 project, that each of the following is met:

1       (i) The proposed project, in terms of capital costs, is the  
2 least costly project, in light of available alternatives.

3       (ii) The proposed project represents the least costly alter-  
4 native of providing the health facility, service, or equipment.

5       (iii) Funds are available to meet the capital and operating  
6 needs of the proposed project.

7       (iv) The proposed project utilizes the least costly method  
8 of financing, in light of available alternatives.

9       (v) In the case of a construction project, the applicant  
10 stipulates that the applicant will competitively bid covered cap-  
11 ital expenditures among qualified contractors, or alternatively,  
12 the applicant presents evidence satisfactory to the department  
13 that the applicant is proposing an alternative to competitive  
14 bidding that will result in the least costly method for imple-  
15 menting the project.

16       (c) The proposed project will be delivered in compliance  
17 with applicable operating standards and quality assurance stan-  
18 dards approved under section 22215(1)(b), including 1 or more of  
19 the following:

20       (i) Mechanisms for assuring appropriate utilization of the  
21 project.

22       (ii) Methods for evaluating the effectiveness of the  
23 project.

24       (iii) Means of assuring delivery of the project by qualified  
25 personnel and in compliance with applicable safety and operating  
26 standards.

1        (iv) Evidence of the current and historical compliance with  
2 federal and state licensing and certification requirements in  
3 this state by the applicant or the applicant's owner, or both, to  
4 the degree determined appropriate by the commission in light of  
5 the subject of the review standard. AN APPLICATION FOR A CERTIF-  
6 ICATE OF NEED FOR A NURSING HOME IS SUBJECT TO SUBSECTION (3).

7        (v) Other criteria approved by the commission as appropriate  
8 to evaluate the quality of the project.

9        (d) The health services proposed in the project will be  
10 delivered in a health facility that meets the criteria, if any,  
11 established by the commission for determining health facility  
12 viability, pursuant to this subdivision. The criteria shall be  
13 proposed by the department and the office, and approved or disap-  
14 proved by the commission. At a minimum, the criteria shall spec-  
15 ify, to the extent applicable to the applicant, that an applicant  
16 shall be considered viable by demonstrating at least 1 of the  
17 following:

18        (i) A minimum percentage occupancy of licensed beds.

19        (ii) A minimum percentage of combined uncompensated dis-  
20 charges and discharges under title XIX of the social security act  
21 in the health facility's planning area.

22        (iii) A minimum percentage of the total discharges in the  
23 health facility's planning area.

24        (iv) Evidence that the health facility is the only provider  
25 in the health facility's planning area of a service that is con-  
26 sidered essential by the commission.

1 (v) An operating margin in an amount determined by the  
2 commission.

3 (vi) Other criteria approved by the commission as appropri-  
4 ate for statewide application to determine health facility  
5 viability.

6 (e) In the case of a nonprofit health facility, the health  
7 facility is in fact governed by a body composed of a majority  
8 consumer membership broadly representative of the population  
9 served. In the case of a health facility sponsored by a reli-  
10 gious organization, or if the nature of the nonprofit health  
11 facility is such that the legal rights of its owners or sponsors  
12 might be impaired by a requirement as to the composition of its  
13 governing body, an advisory board with majority consumer member-  
14 ship broadly representative of the population served may be con-  
15 strued by the department to be equivalent to the governing board  
16 described in this subdivision, if the advisory board meets all of  
17 the following requirements:

18 (i) The role assigned to the advisory board is meaningful,  
19 as determined by the department.

20 (ii) The functions of the advisory board are clearly  
21 prescribed.

22 (iii) The advisory board is given an opportunity to influ-  
23 ence policy formulation by the legally recognized governing body,  
24 as determined by the department.

25 (3) THE DEPARTMENT SHALL NOT ISSUE A CERTIFICATE OF NEED FOR  
26 A PROPOSED NURSING HOME PROJECT TO A PERSON IF ANY OF THE  
27 FOLLOWING HAS OCCURRED AT ANY TIME:

1 (A) A HEALTH FACILITY OR AGENCY LICENSE ISSUED TO THE PERSON  
2 IN MICHIGAN OR ANOTHER STATE HAS BEEN REVOKED OR A PROCEEDING TO  
3 REVOKE SUCH A LICENSE HAS BEEN INITIATED UNDER APPLICABLE LAW AND  
4 IS PENDING AT THE TIME OF APPLICATION.

5 (B) THE CERTIFICATION OF A HEALTH FACILITY OWNED OR OPERATED  
6 BY THE PERSON IN MICHIGAN OR ANOTHER STATE HAS BEEN REVOKED BY  
7 THE STATE OR A FEDERAL AGENCY OR A PROCEEDING TO REVOKE THE CER-  
8 TIFICATION HAS BEEN INITIATED UNDER APPLICABLE LAW AND IS PENDING  
9 AT THE TIME OF APPLICATION.

10 (C) THE PERSON HAS VOLUNTARILY CLOSED OR DISCONTINUED OPERA-  
11 TION OF A NURSING HOME IN MICHIGAN OR ANOTHER STATE WITHOUT FOL-  
12 LOWING THE APPLICABLE LAW PRESCRIBING THE PROCEDURE FOR VOLUNTARY  
13 CLOSURE OR DISCONTINUANCE OF A NURSING HOME.