

# HOUSE BILL No. 5298

October 24, 1991, Introduced by Reps. Gire, DeMars, Brown, Gubow, Leland, Varga, Pitoniak, Bennane, Hunter, Rocca, Stallworth, Muxlow, Yokich, Dolan, Dalman and Barns 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. 179 of the Public Acts of 1990, 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, 21753a, 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. 179 of the Public

1 Acts of 1990, 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, 21753a, 21754, and 21783 are  
7 added to read as follows:

8       Sec. 20108. (1) "Intermediate care facility" means a hospi-  
9 tal long-term care unit, nursing home, county medical care facil-  
10 ity, or other nursing care facility, or distinct part thereof,  
11 certified by the department to provide intermediate care or basic  
12 care that is less than skilled nursing care but more than room  
13 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 209, "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 209, "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) "Medical first response service" means that term as  
7 defined in section 20906.

8 (7) "MEDICARE CERTIFICATION" MEANS THE ISSUANCE OF A DOCU-  
9 MENT BY THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES  
10 TO A HEALTH FACILITY OR AGENCY THAT ATTESTS THAT THE HEALTH  
11 FACILITY OR AGENCY IS ELIGIBLE TO PARTICIPATE AS A PROVIDER IN  
12 THE FEDERAL MEDICARE PROGRAM UNDER TITLE XVIII OF THE SOCIAL  
13 SECURITY ACT, CHAPTER 531, 49 STAT. 620, 42 U.S.C. 1395 TO 1395b,  
14 1395b-2, 1395c TO 1395i, 1395i-2 TO 1395i-4, 1395j TO 1395t,  
15 1395u TO 1395w-2, 1395w-4 TO 1395dd, 1395ff TO 1395yy, AND  
16 1395bbb TO 1395ccc.

17 (8) ~~-(7)-~~ "Nontransport prehospital life support operation"  
18 means that term as defined in section 20908.

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

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

25 (3) An applicant or a licensee under part 213 or 217 shall  
26 disclose the names, addresses, principal occupations, and  
27 official positions of all persons who have an ownership interest

1 in the health facility or agency AND OF ALL PERSONS WHO HAVE AN  
2 OWNERSHIP INTEREST IN A PERSON THAT HAS AN OWNERSHIP INTEREST IN  
3 THE HEALTH FACILITY OR AGENCY. If the health facility or agency  
4 is located on or in leased real estate, the applicant or licensee  
5 shall disclose the name of the lessor and any direct or indirect  
6 interest the applicant or licensee has in the lease other than as  
7 lessee. A change in ownership shall be reported to the director  
8 not less than 15 days before the change occurs, except that a  
9 person purchasing stock of a company registered pursuant to the  
10 securities exchange act of 1934, ~~15 U.S.C. 78a to 78kk~~ CHAPTER  
11 404, 48 STAT. 881, is exempt from disclosing ownership in the  
12 facility. A person required to file a beneficial ownership  
13 report pursuant to section 16(a) of TITLE I OF the securities  
14 exchange act of 1934, CHAPTER 404, 48 STAT. 881, 15 U.S.C. 78p,  
15 shall file with the department information relating to securities  
16 ownership required by the department rule or order. An applicant  
17 or licensee proposing a sale of a nursing home to another person  
18 shall provide the department with written, advance notice of the  
19 proposed sale. The applicant or licensee and the other parties  
20 to the sale shall arrange to meet with specified department rep-  
21 resentatives and shall obtain before the sale a determination of  
22 the items of noncompliance with applicable law and rules which  
23 shall be corrected. The department shall notify the respective  
24 parties of the items of noncompliance ~~prior to~~ BEFORE the  
25 change of ownership and shall indicate that the items of noncom-  
26 pliance must be corrected as a condition of issuance of a license  
27 to the new owner. The department may accept reports filed with

1 the securities and exchange commission relating to the filings.  
2 A person who violates this subsection is guilty of a misdemeanor,  
3 punishable by a fine of not more than \$1,000.00 for each  
4 violation.

5 (4) An applicant or licensee under part 217 shall disclose  
6 the names and business addresses of suppliers who furnish goods  
7 or services to an individual nursing home or a group of nursing  
8 homes under common ownership, the aggregate charges for which  
9 exceed \$5,000.00 in a 12-month period ~~which~~ THAT includes a  
10 month in a nursing home's current fiscal year. An applicant or  
11 licensee shall disclose the names, addresses, principal occupa-  
12 tions, and official positions of all persons who have an owner-  
13 ship interest in a business ~~which~~ THAT furnishes goods or serv-  
14 ices to an individual nursing home or to a group of nursing homes  
15 under common ownership, if both of the following apply:

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

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

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

1       Sec. 21751. (1) ~~When the department has concluded a~~  
2 ~~proceeding under sections 71 to 106 of the administrative~~  
3 ~~procedures act of 1969, as amended, being sections 24.271 to~~  
4 ~~24.306 of the Michigan Compiled Laws, or when the department has~~  
5 ~~suspended or revoked~~ UPON PROVIDING A NOTICE OF INTENT TO SUS-  
6 PEND OR REVOKE the license OR CERTIFICATION, OR BOTH, of a nurs-  
7 ing home UNDER SECTION 20165, UPON ISSUING AN EMERGENCY ORDER  
8 SUSPENDING OR REVOKING THE LICENSE OF A NURSING HOME UNDER  
9 SECTION 20168, UPON BEING INFORMED OF THE CLOSING OF A NURSING  
10 HOME UNDER SECTION 21785, OR UPON THE EMERGENCY CLOSING OF A  
11 NURSING HOME OR DETERMINATION THAT A NURSING HOME IS SUDDENLY NO  
12 LONGER ABLE TO PROVIDE ADEQUATE PATIENT CARE UNDER SECTION 21786,  
13 OR UPON BEING INFORMED THAT THE FEDERAL GOVERNMENT HAS INITIATED  
14 A PROCEEDING TO SUSPEND OR REVOKE THE MEDICARE CERTIFICATION OF A  
15 NURSING HOME, the department ~~, a patient in the facility, or a~~  
16 ~~patient's representative may file an emergency petition with the~~  
17 ~~circuit court to~~ SHALL place the nursing home under the control  
18 of ~~a receiver if necessary~~ AN ADMINISTRATIVE TEMPORARY MANAGER  
19 to protect the health or safety of patients in the nursing home  
20 AND SHALL FILE AN EMERGENCY PETITION WITH THE CIRCUIT COURT NOT  
21 LATER THAN 48 HOURS AFTER APPOINTING THE ADMINISTRATIVE TEMPORARY  
22 MANAGER TO OBTAIN THE COURT'S AUTHORIZATION FOR CONTINUATION OF  
23 THE ADMINISTRATIVE TEMPORARY MANAGER AND APPOINTMENT OF THE  
24 ADMINISTRATIVE TEMPORARY MANAGER AS A COURT-APPOINTED MANAGER.  
25 THE COURT SHALL CONDUCT A HEARING ON THE PETITION NOT LATER THAN  
26 5 DAYS AFTER THE PETITION IS FILED. The court may grant the  
27 petition upon a finding that the health or safety of the patients

1 in the nursing home would be seriously threatened if a condition  
2 existing at the time ~~the petition was filed~~ is permitted to  
3 continue. IF THE COURT GRANTS THE PETITION, THE ADMINISTRATIVE  
4 TEMPORARY MANAGER SHALL AT THAT TIME BECOME THE COURT-APPOINTED  
5 MANAGER OF THE NURSING HOME. IF THE COURT ISSUES AN ORDER DENY-  
6 ING THE PETITION, THE DEPARTMENT SHALL PROMPTLY REMOVE THE ADMIN-  
7 ISTRATIVE TEMPORARY MANAGER FROM THE NURSING HOME.

8 (2) IF A COURT-APPOINTED MANAGER IS NOT APPOINTED AND THE  
9 DEPARTMENT HAS PROVIDED A NOTICE OF INTENT TO SUSPEND OR REVOKE  
10 THE LICENSE OR CERTIFICATION, OR BOTH, OF A NURSING HOME UNDER  
11 SECTION 20165, HAS ISSUED AN EMERGENCY ORDER SUSPENDING OR REVOK-  
12 ING THE LICENSE OF A NURSING HOME UNDER SECTION 20168, HAS BEEN  
13 INFORMED OF THE CLOSING OF A NURSING HOME UNDER SECTION 21785, OR  
14 UPON THE EMERGENCY CLOSING OF A NURSING HOME OR DETERMINATION  
15 THAT A NURSING HOME IS SUDDENLY NO LONGER ABLE TO PROVIDE ADE-  
16 QUATE PATIENT CARE UNDER SECTION 21786, OR HAS BEEN INFORMED THAT  
17 THE FEDERAL GOVERNMENT HAS INITIATED A PROCEEDING TO SUSPEND OR  
18 REVOKE THE MEDICARE CERTIFICATION OF A NURSING HOME, A PATIENT IN  
19 THE NURSING HOME OR A PATIENT'S REPRESENTATIVE MAY FILE AN EMER-  
20 GENCY PETITION WITH THE CIRCUIT COURT TO PLACE THE NURSING HOME  
21 UNDER THE CONTROL OF A COURT-APPOINTED MANAGER. THE COURT MAY  
22 GRANT THE PETITION UPON A FINDING THAT THE HEALTH OR SAFETY OF  
23 THE PATIENTS IN THE NURSING HOME WOULD BE SERIOUSLY THREATENED IF  
24 A CONDITION EXISTING AT THE TIME IS PERMITTED TO CONTINUE.

25 (3) ~~(2) The court shall appoint as receiver the director~~  
26 ~~of the department of social services, the director of the~~  
27 ~~department of public health, or another state agency or~~

1 ADMINISTRATIVE TEMPORARY MANAGER APPOINTED BY THE DEPARTMENT AND  
 2 THE COURT-APPOINTED MANAGER SHALL BE A person designated by the  
 3 director of public health FROM THE LIST OF QUALIFIED ADMINISTRA-  
 4 TIVE TEMPORARY MANAGERS AND COURT-APPOINTED MANAGERS ESTABLISHED  
 5 UNDER SUBSECTION (7). The ~~receiver appointed by the court~~  
 6 ADMINISTRATIVE TEMPORARY MANAGER OR COURT-APPOINTED MANAGER shall  
 7 use the income and assets of the nursing home to maintain and  
 8 operate the home and to attempt to correct the conditions ~~which~~  
 9 THAT constitute a threat to the patients. A major structural  
 10 alteration shall not be made to the nursing home, unless the  
 11 alteration is necessary to bring the nursing home into compliance  
 12 with licensing requirements. UNLESS THE COURT DENIES A PETITION  
 13 UNDER SUBSECTION (1), THE NURSING HOME SHALL PAY ALL COSTS OF AN  
 14 ADMINISTRATIVE TEMPORARY MANAGER OR COURT-APPOINTED MANAGER.

15 (4) ~~(3) To assist in the implementation of the mandate of~~  
 16 ~~the court,~~ UPON REQUEST BY the ~~receiver may request and~~  
 17 ~~receive~~ ADMINISTRATIVE TEMPORARY MANAGER OR COURT-APPOINTED MAN-  
 18 AGER, THE DEPARTMENT SHALL PROVIDE reasonable consultation from  
 19 the available personnel of the department.

20 (5) ~~(4) The receivership shall be~~ COURT-APPOINTED  
 21 MANAGEMENT IS terminated when the ~~receiver~~ COURT-APPOINTED  
 22 MANAGER and the court, WITH THE CONCURRENCE OF THE DEPARTMENT,  
 23 certify that the conditions ~~which~~ THAT prompted the appointment  
 24 have been corrected, when the license OR CERTIFICATION, OR BOTH,  
 25 is restored, when a new license OR CERTIFICATION is issued, or,  
 26 in the case of AN EMERGENCY CLOSING OR a discontinuance of



1 operation, when the patients are safely placed in other  
2 facilities, whichever occurs first.

3 (6) ~~(5)~~ Upon the termination of the ~~receivership~~  
4 COURT-APPOINTED MANAGEMENT, the ~~receiver~~ COURT-APPOINTED  
5 MANAGER shall render a complete accounting to the court AND THE  
6 DEPARTMENT and shall dispose of surplus funds as the court  
7 directs.

8 (7) NOT LATER THAN 90 DAYS AFTER THE EFFECTIVE DATE OF THE  
9 AMENDATORY ACT THAT ADDED THIS SUBSECTION, THE DEPARTMENT SHALL  
10 DO EACH OF THE FOLLOWING:

11 (A) PROMULGATE RULES TO ESTABLISH QUALIFICATIONS FOR AN  
12 ADMINISTRATIVE TEMPORARY MANAGER AND A COURT-APPOINTED MANAGER.

13 (B) ESTABLISH GUIDELINES FOR THE CONDUCT OF ADMINISTRATIVE  
14 TEMPORARY MANAGERS AND COURT-APPOINTED MANAGERS.

15 (C) ESTABLISH A LIST OF PERSONS QUALIFIED TO BE APPOINTED  
16 ADMINISTRATIVE TEMPORARY MANAGERS OR COURT-APPOINTED MANAGERS.

17 (8) A PERSON IDENTIFIED IN THE LIST ESTABLISHED BY THE  
18 DEPARTMENT UNDER SUBSECTION (7)(C) SHALL MEET ALL OF THE FOLLOW-  
19 ING REQUIREMENTS:

20 (A) THE PERSON HAS EXPERIENCE IN OPERATING A NURSING HOME OR  
21 HAS THE ABILITY TO HIRE A PERSON WITH THAT EXPERIENCE.

22 (B) IF THE PERSON HAS EXPERIENCE IN OPERATING A NURSING  
23 HOME, THE NURSING HOME HE OR SHE OPERATED HAS AN ABOVE-AVERAGE  
24 RECORD OF CARE BASED ON THE PENALTY POINT SYSTEMS MAINTAINED BY  
25 THE DEPARTMENT OF SOCIAL SERVICES AND THE DEPARTMENT.

26 (C) IF THE PERSON IS OPERATING 1 OR MORE OTHER NURSING HOMES  
27 AT THE TIME OF APPOINTMENT, HE OR SHE ESTABLISHES TO THE

1 DEPARTMENT'S SATISFACTION THAT HE OR SHE HAS EACH OF THE  
2 FOLLOWING:

3 (i) THE ABILITY TO PROVIDE THE MANAGEMENT NECESSARY TO OPER-  
4 ATE THE NURSING HOME WITHOUT JEOPARDIZING THE CARE PROVIDED IN  
5 ANY OTHER NURSING HOME THE PERSON OPERATES.

6 (ii) SUFFICIENT ADMINISTRATIVE STAFF AVAILABLE TO MEET ALL  
7 LICENSING REQUIREMENTS AT EACH NURSING HOME OPERATED BY THAT  
8 PERSON WHILE ASSUMING THE ADDITIONAL RESPONSIBILITIES OF THE  
9 APPOINTMENT.

10 (D) THE PERSON ESTABLISHES TO THE DEPARTMENT'S SATISFACTION  
11 THAT HE OR SHE HAS THE ABILITY TO WORK PROFESSIONALLY AND COOPER-  
12 ATIVELY WITH PATIENTS AND THEIR FAMILIES, MANAGEMENT AND STAFF OF  
13 THE NURSING HOME, PATIENT ADVOCATES, OMBUDSMEN, AND REGULATORY  
14 AGENCIES.

15 (E) THE PERSON DOES NOT POSSESS AN OWNERSHIP INTEREST IN THE  
16 NURSING HOME OR PROFESSIONAL SERVICE AFFILIATION THAT THE DEPART-  
17 MENT WOULD CONSIDER TO CONSTITUTE A CONFLICT OF INTEREST WITH THE  
18 APPOINTMENT.

19 (8) IN COMPILING A LIST OF PERSONS QUALIFIED TO BE APPOINTED  
20 AS AN ADMINISTRATIVE TEMPORARY MANAGER OR COURT-APPOINTED MANAGER  
21 PURSUANT TO SUBSECTION (7), THE DIRECTOR SHALL GIVE PREFERENCE TO  
22 A PERSON WHO HAS PREVIOUSLY SUCCESSFULLY SERVED AS A  
23 COURT-APPOINTED MANAGER OR RECEIVER OF A NURSING HOME IN THIS OR  
24 ANOTHER STATE AND SHALL SEEK ASSISTANCE IN OBTAINING NAMES FOR  
25 THE LIST FROM AT LEAST ALL OF THE FOLLOWING SOURCES:

26 (A) REPRESENTATIVES OF THE FOR-PROFIT NURSING HOME  
27 INDUSTRY.

(B) REPRESENTATIVES OF NONPROFIT NURSING HOMES.

(C) REPRESENTATIVES OF COUNTY MEDICAL CARE FACILITIES.

(D) CITIZENS FOR BETTER CARE OR ITS SUCCESSOR ORGANIZATION.

(9) AN ADMINISTRATIVE TEMPORARY MANAGER OR COURT-APPOINTED

MANAGER MAY DO ALL OF THE FOLLOWING:

(A) ASSIST IN CLOSING A NURSING HOME.

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

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

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

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

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

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

SEC. 21752. (1) AT THE TIME A SANCTION IS IMPLEMENTED

AGAINST A NURSING HOME BY A STATE OR FEDERAL AGENCY THAT REGU-

LATES NURSING HOMES, AT THE TIME A SPECIFIC EFFECTIVE DATE FOR

THE SANCTION IS ANNOUNCED, AT THE TIME THE REGULATORY AGENCY

OFFERS A COMPLIANCE CONFERENCE, AT THE TIME AN EMERGENCY ORDER IS

ISSUED SUSPENDING OR REVOKING THE LICENSE OF A NURSING HOME UNDER

SECTION 20168, OR AT THE TIME A NOTICE IS GIVEN OF THE CLOSING OF

1 A NURSING HOME UNDER SECTION 21785, OR UPON THE EMERGENCY CLOSING  
2 OF A NURSING HOME OR DETERMINATION THAT A NURSING HOME IS SUD-  
3 DENLY NO LONGER ABLE TO PROVIDE ADEQUATE PATIENT CARE UNDER  
4 SECTION 21786, THE DEPARTMENT SHALL DO ALL OF THE FOLLOWING:

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

8 (B) FORM A COORDINATION COMMITTEE TO ASSIST THE ADMINISTRA-  
9 TIVE TEMPORARY MANAGER OR COURT-APPOINTED MANAGER APPOINTED UNDER  
10 SECTION 21751 AND THE PATIENTS OF THE NURSING HOME AND THEIR  
11 FAMILIES. THE COORDINATION COMMITTEE SHALL CONSIST OF THE DIREC-  
12 TOR OF PUBLIC HEALTH OR HIS OR HER DESIGNEE, THE DIRECTOR OF  
13 SOCIAL SERVICES OR HIS OR HER DESIGNEE, THE DIRECTOR OF THE  
14 DEPARTMENT OF MENTAL HEALTH OR HIS OR HER DESIGNEE, AND THE  
15 ATTORNEY GENERAL OR HIS OR HER DESIGNEE.

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

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

24 SEC. 21753. (1) A NURSING HOME SHALL NOT ADMIT A NEW  
25 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  
7 MEDICARE CERTIFICATION 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 MEDICARE CERTIFICATION THAT THE  
11 NURSING HOME WAS CITED FOR IN EACH OF THE 2 IMMEDIATELY PRECEDING  
12 SURVEYS.

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

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. 21753A. (1) UPON THE REQUEST OF A NURSING HOME AND  
9 SUBJECT TO SUBSECTION (2), THE DEPARTMENT MAY LIMIT THE NUMBER OR  
10 TYPE OF PATIENTS THAT A NURSING HOME MAY ADMIT, AND MAY ORDER THE  
11 TEMPORARY CLOSURE OF A SPECIFIC PORTION OF THAT NURSING HOME, IF  
12 ALL OF THE FOLLOWING CONDITIONS ARE MET:

13 (A) NO LATER THAN 30 DAYS BEFORE THE EXPIRATION OF THAT  
14 NURSING HOME'S LICENSE, THE NURSING HOME SERVES UPON THE DEPART-  
15 MENT A WRITTEN REQUEST FOR AN ORDER THAT LIMITS ADMISSIONS TO  
16 THAT NURSING HOME OR AUTHORIZES THE CLOSURE OF A SPECIFIC PORTION  
17 OF THAT NURSING HOME.

18 (B) THE WRITTEN REQUEST DESCRIBED IN SUBDIVISION (A) SPECI-  
19 FIES THE REASON OR REASONS FOR THE REQUEST, THE SPECIFIC NUMBER  
20 AND LOCATION OF BEDS THAT WILL BE SUBJECT TO THE ORDER, AND THE  
21 PERIOD OF TIME THAT THE ORDER IS PROPOSED TO BE IN EFFECT.

22 (C) THE DEPARTMENT DETERMINES THAT THE NURSING HOME REQUEST  
23 IS NOT BASED UPON THE SOURCE OF PAYMENT FOR BEDS SUBJECT TO THE  
24 PROPOSED ORDER.

25 (D) THE DEPARTMENT DETERMINES THAT THE NURSING HOME REQUEST  
26 IS NOT MADE FOR EITHER OF THE FOLLOWING REASONS:

1 (i) TO LIMIT THE NUMBER OF PATIENTS IN THE NURSING HOME WITH  
2 A SPECIFIC DISEASE.

3 (ii) TO LIMIT THE NUMBER OF PATIENTS IN THE NURSING HOME  
4 WITH CARE REQUIREMENTS GREATER THAN THE REQUIREMENTS OF NURSING  
5 HOME PATIENTS NOT AFFECTED BY THE PROPOSED ORDER.

6 (2) THE DEPARTMENT SHALL NOT CONSIDER OR APPROVE A REQUEST  
7 UNDER THIS SECTION WHILE THE DEPARTMENT IS DOING EITHER OF THE  
8 FOLLOWING:

9 (A) CONDUCTING A LICENSURE OR CERTIFICATION SURVEY OF THAT  
10 NURSING HOME.

11 (B) INVESTIGATING A COMPLAINT AGAINST THAT NURSING HOME.

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

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

25 (a) Whose occupational ~~OR~~ OR professional ~~OR~~ ~~or health~~  
26 ~~agency~~ license has been revoked during the 5 years IMMEDIATELY  
27 preceding the date of application.

1 (b) Whom the department finds is not suitable to operate a  
2 nursing home because of financial-incapacity or a lack of good  
3 moral character or appropriate business or professional  
4 experience. As used in this subdivision, "good moral character"  
5 means that term as defined in Act No. 381 of the Public Acts of  
6 1974, as amended, being sections 338.41 to 338.47 of the Michigan  
7 Compiled Laws.

8 (2) THE DEPARTMENT SHALL NOT ISSUE A LICENSE TO ESTABLISH OR  
9 MAINTAIN AND OPERATE, OR BOTH, A NURSING HOME TO A PERSON IF ANY  
10 OF THE FOLLOWING HAS OCCURRED:

11 (A) A HEALTH FACILITY OR AGENCY LICENSE ISSUED TO THE PERSON  
12 IN THIS STATE OR ANOTHER STATE HAS BEEN REVOKED WITHIN THE 5-YEAR  
13 PERIOD IMMEDIATELY PRECEDING THE DATE OF THE LICENSED APPLICA-  
14 TION, OR A PROCEEDING TO REVOKE A HEALTH FACILITY OR AGENCY  
15 LICENSE ISSUED TO THAT PERSON HAS BEEN INITIATED UNDER APPLICABLE  
16 LAW AND IS PENDING AT THE TIME OF APPLICATION.

17 (B) WITHIN THE 5-YEAR PERIOD IMMEDIATELY PRECEDING THE DATE  
18 OF THE LICENSE APPLICATION, THE CERTIFICATION OR MEDICARE CERTI-  
19 FICATION OF A HEALTH FACILITY OR AGENCY OWNED OR OPERATED BY THE  
20 PERSON IN THIS STATE OR ANOTHER STATE HAS BEEN REVOKED BY A STATE  
21 OR A FEDERAL AGENCY OR A PROCEEDING TO REVOKE THE CERTIFICATION  
22 HAS BEEN INITIATED UNDER APPLICABLE LAW AND IS PENDING AT THE  
23 TIME OF APPLICATION.

24 (C) WITHIN THE 5-YEAR PERIOD IMMEDIATELY PRECEDING THE DATE  
25 OF THE LICENSE APPLICATION, THE PERSON HAS VOLUNTARILY CLOSED OR  
26 DISCONTINUED OPERATIONS OF A NURSING HOME IN THIS STATE OR  
27 ANOTHER STATE WITHOUT FOLLOWING THE APPLICABLE LAW PRESCRIBING



1 THE PROCEDURE FOR VOLUNTARY CLOSURE OR DISCONTINUANCE OF A  
2 NURSING HOME.

3       Sec. 21776. (1) ~~The licensee, with~~ UPON the approval of  
4 the department, A LICENSEE shall develop a plan to effectuate the  
5 orderly and safe transfer or discharge of a patient. The patient  
6 and the patient's family or representative shall be consulted in  
7 choosing another facility. The patient shall receive counseling  
8 services before the move to minimize the adverse effects of  
9 transfer trauma. The department shall assure that counseling  
10 will be available if the patient requires counseling after trans-  
11 fer or discharge. THIS SUBSECTION APPLIES TO ANY TRANSFER OR  
12 DISCHARGE OF A PATIENT, INCLUDING, BUT NOT LIMITED TO, A TRANSFER  
13 OR DISCHARGE THAT RESULTS FROM THE VOLUNTARY OR INVOLUNTARY CLOS-  
14 ING OF A NURSING HOME.

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

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

21       (B) THE DEPARTMENT OF SOCIAL SERVICES SHALL MONITOR THE  
22 COUNSELING OF PATIENTS REQUIRED UNDER SUBDIVISION (A), USING  
23 APPROPRIATE MEMBERS OF ITS STAFF.

24       (C) THE DEPARTMENT OF SOCIAL SERVICES STAFF MEMBERS WHO MON-  
25 ITOR COUNSELING UNDER SUBDIVISION (B) SHALL PARTICIPATE WITH THE  
26 NURSING HOME IN DEVELOPING THE PLAN REQUIRED UNDER SUBSECTION (1)

1 TO EFFECTUATE THE ORDERLY AND SAFE TRANSFER OR DISCHARGE OF A  
2 PATIENT.

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

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

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

11 (iii) THAT THE PATIENT, THE PATIENT'S GUARDIAN, THE  
12 PATIENT'S NEXT OF KIN, THE PATIENT'S REPRESENTATIVE, OR THE ORGA-  
13 NIZATION THAT ORIGINALLY PLACED THE PATIENT IN THE NURSING HOME  
14 IS INVOLVED IN SELECTING THE NURSING HOME TO WHICH THE PATIENT IS  
15 TRANSFERRED.

16 (iv) THAT THE PATIENT RECEIVES AT LEAST 1 COUNSELING SESSION  
17 CONCERNING THE TRANSFER OR DISCHARGE BEFORE THE TRANSFER OR  
18 DISCHARGE.

19 (v) THAT THE PATIENT IS GIVEN THE OPPORTUNITY FOR AT LEAST 1  
20 VISIT TO THE PROPOSED NEW PLACEMENT BEFORE THE TRANSFER OR  
21 DISCHARGE. THE VISIT MAY BE WAIVED ONLY IF THE PATIENT'S ATTEND-  
22 ING PHYSICIAN DOCUMENTS IN THE PATIENT'S CLINICAL RECORD THAT THE  
23 VISIT IS MEDICALLY CONTRAINDICATED OR IF THE PATIENT, THE  
24 PATIENT'S GUARDIAN, OR THE PATIENT'S REPRESENTATIVE DETERMINES  
25 THAT THE VISIT IS NOT IN THE PATIENT'S BEST INTERESTS AND DOCU-  
26 MENTS THAT DETERMINATION IN WRITING. IF THE VISIT IS WAIVED, THE  
27 PATIENT SHALL RECEIVE APPROPRIATE INFORMATION ABOUT THE NEW

1 PROPOSED PLACEMENT TO FAMILIARIZE THE PATIENT WITH THAT FACILITY,  
2 SUCH AS FLOOR PLANS, BROCHURES, AND PHOTOGRAPHS.

3 (vi) THAT, UNLESS THE PATIENT OR THE PATIENT'S GUARDIAN OR  
4 PATIENT REPRESENTATIVE REQUESTS OTHERWISE IN WRITING, THE DEPART-  
5 MENT OF SOCIAL SERVICES ENSURES THAT A FAMILY MEMBER OR OTHER  
6 APPROPRIATE INDIVIDUAL ACCOMPANIES THE PATIENT DURING THE ACTUAL  
7 DISCHARGE OR TRANSFER TO THE NEW PLACEMENT.

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

11 SEC. 21783. IF A NURSING HOME IS INVOLUNTARILY CLOSED BY  
12 THE DEPARTMENT, THE LICENSEE SHALL MAKE ALL FINANCIAL RECORDS  
13 ASSOCIATED WITH THE NURSING HOME ACCESSIBLE TO THE DEPARTMENT AND  
14 TO THE DEPARTMENT OF ATTORNEY GENERAL.

15 Sec. 21785. (1) If a nursing home proposes to VOLUNTARILY  
16 CLOSE OR discontinue operation OR DETERMINES THAT IT MUST INVOL-  
17 UNTARILY CLOSE OR DISCONTINUE OPERATION, the licensee shall  
18 notify the department of public health and the department of  
19 social services of the impending discontinuance of operation.  
20 The licensee shall notify the patient and the patient's next of  
21 kin, patient's representative, and the party executing the con-  
22 tract under section 21766 of the proposed date of the  
23 discontinuance. The notice shall be sufficient to make suitable  
24 arrangements for the transfer and care of the patient.

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

1       (3) The licensee and the department of social services  
 2 ~~shall be~~ ARE responsible for securing a suitable relocation of  
 3 a patient who does not have a relative or legal representative to  
 4 assist in his or her relocation before the discontinuance of THE  
 5 NURSING HOME'S operation. The licensee and the department of  
 6 social services shall keep the department of public health  
 7 informed of their efforts and activities in carrying out this  
 8 responsibility. The department of social services shall make  
 9 available to the licensee and the department of public health  
 10 assistance necessary to assure the effectiveness of efforts to  
 11 secure a suitable relocation.

12       Sec. 21799b. (1) If, upon investigation, the department ~~of~~  
 13 ~~public health~~ finds that a licensee is not in compliance with  
 14 this part, a rule promulgated under this part, or a federal law  
 15 or regulation governing ~~nursing home~~ MEDICARE certification  
 16 ~~under title 18 or 19 of the social security act, 42 U.S.C. 1395~~  
 17 ~~to 1396k,~~ which NONCOMPLIANCE impairs the ability of the  
 18 licensee to deliver an acceptable level of care and services, the  
 19 department ~~of public health~~ shall notify the department of  
 20 social services of the finding and issue ~~1 or more of the~~  
 21 ~~following~~ A correction ~~notices~~ NOTICE to the licensee THAT  
 22 DOES 1 OR MORE OF THE FOLLOWING:

23       (a) ~~Suspend~~ SUSPENDS the admission or readmission of  
 24 patients to the nursing home.

25       (b) ~~Reduce~~ REDUCES the licensed capacity of the nursing  
 26 home.

1 (c) Selectively ~~transfer~~ TRANSFERS patients whose care  
2 needs are not being met by the licensee.

3 (d) ~~Initiate~~ INITIATES action to place the home ~~in~~  
4 ~~receivership~~ UNDER A TEMPORARY ADMINISTRATIVE MANAGER OR  
5 COURT-APPOINTED MANAGER as prescribed in section 21751.

6 (e) ~~Issue a correction notice to the licensee and the~~  
7 ~~department of social services describing~~ DESCRIBES the violation  
8 and the statute or rule violated and ~~specifying~~ SPECIFIES the  
9 corrective action to be taken and the period of time in which the  
10 corrective action is to be completed. Upon ~~issuance~~ THE EXPI-  
11 RATION OF 48 HOURS AFTER NOTIFICATION OF PATIENTS AND FAMILY MEM-  
12 BERS UNDER SECTION 21752, the director shall cause to be pub-  
13 lished in a daily newspaper of general circulation in an area in  
14 which the nursing home is located notice of the action taken and  
15 the listing of conditions upon which the director's action is  
16 predicated.

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

23 (3) A licensee who believes that a correction notice  
24 DESCRIBED IN SUBSECTION (1)(E) has been complied with may request  
25 a verification of compliance from the department. Not later than  
26 72 hours after the licensee makes the request, the department  
27 shall investigate to determine whether the licensee has taken the

1 corrective action prescribed in the CORRECTION notice. ~~under~~  
2 ~~subsection (1)(e).~~ If the department finds that the licensee has  
3 taken the corrective action and that the conditions giving rise  
4 to the notice have been alleviated, the department may cease  
5 taking further action against the licensee, or may take other  
6 action ~~which~~ THAT the director considers appropriate.

7       Sec. 22203. (1) "Addition" means adding patient rooms,  
8 beds, and ancillary service areas, including, but not limited to,  
9 procedure rooms or fixed equipment, surgical operating rooms,  
10 therapy rooms or fixed equipment, or other accommodations to a  
11 health facility.

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

26       (3) "Certificate of need" means a certificate issued  
27 pursuant to this part authorizing a new health facility, a change

1 in bed capacity, the initiation of a new service, the acquisition  
2 of covered medical equipment, or a covered capital expenditure  
3 that is issued in accordance with this part.

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

8 (5) "CERTIFICATION" MEANS THE ISSUANCE OF A DOCUMENT BY THE  
9 DEPARTMENT OR A FEDERAL AGENCY TO A HEALTH FACILITY ATTESTING TO  
10 THE FACT THAT THE HEALTH FACILITY MEETS BOTH OF THE FOLLOWING  
11 REQUIREMENTS:

12 (A) IT COMPLIES WITH APPLICABLE STATUTORY AND REGULATORY  
13 REQUIREMENTS AND STANDARDS.

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

16 (6) ~~(5)~~ "Change in bed capacity" means 1 or more of the  
17 following:

18 (a) An increase in licensed hospital beds.

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

21 (c) An increase in licensed psychiatric beds.

22 (d) A change from 1 licensed use to a different licensed  
23 use.

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

26 (7) ~~(6)~~ "Clinical" means directly pertaining to the  
27 diagnosis, treatment, or rehabilitation of an individual.

1       (8) ~~-(7)-~~ "Clinical service area" means an area of a health  
2 facility, including related corridors, equipment rooms, ancillary  
3 service and support areas which house medical equipment, patient  
4 rooms, patient beds, diagnostic, operating, therapy, or treatment  
5 rooms or other accommodations related to the diagnosis, treat-  
6 ment, or rehabilitation of individuals receiving services from  
7 the health facility.

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

10       (10) ~~-(9)-~~ "Council" means the state health planning council  
11 created under the Michigan health planning and health policy  
12 development act, Act No. 323 of the Public Acts of 1978, being  
13 sections 325.2001 to 325.2031 of the Michigan Compiled Laws.

14       (11) ~~-(10)-~~ "Covered capital expenditure" means a capital  
15 expenditure by a health facility for a single project, excluding  
16 the cost of nonfixed medical equipment, that is equal to, or  
17 greater than, 1 of the following amounts:

18       (a) For a single project that includes or involves the  
19 acquisition, improvement, expansion, addition, conversion, mod-  
20 ernization, new construction, or replacement of a clinical serv-  
21 ice area:

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

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



1 (b) For a single project that involves the acquisition,  
 2 improvement, expansion, addition, conversion, modernization, new  
 3 construction, or replacement of nonclinical service areas only;

4 (i) For certificate of need applications submitted on or  
 5 after October 1, 1988, but before October 1, 1991,  
 6 \$1,500,000.00.

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

9 (c) For a single project that is limited solely to the  
 10 acquisition of nonfixed, nonmedical equipment and that does not  
 11 involve acquisition, improvement, expansion, addition, conver-  
 12 sion, modernization, new construction, or replacement of physical  
 13 plant:

14 (i) For certificate of need applications submitted on or  
 15 after October 1, 1988, but before October 1, 1991,  
 16 \$1,500,000.00.

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

19 (12) ~~---(11)~~ "Covered clinical service", except as otherwise  
 20 modified by the commission pursuant to section 22215, means 1 or  
 21 more of the following:

22 (a) Initiation or replacement of either of the following  
 23 services:

24 (i) Cardiac services.

25 (ii) Extrarenal organ transplantation.

26 (b) Initiation of a specialized psychiatric program  
 27 utilizing existing licensed psychiatric beds. Specialized

1 psychiatric programs may include services for geriatric,  
2 pediatric, adolescent, or substance abuse patients.

3 (c) Initiation, replacement, or expansion of 1 or more of  
4 the following:

5 (i) Special radiological procedure rooms used for invasive  
6 procedures such as angiography, arteriography, venography, cathe-  
7 terizations, and electro-physiology, but excluding procedure  
8 rooms used only for general radiology and fluoroscopy  
9 procedures.

10 (ii) Specialized radiation therapy services.

11 (iii) A partial day hospitalization psychiatric program.

12 (d) Initiation, replacement, or expansion of a service not  
13 listed in this subsection, but ~~designated~~ APPROVED as a  
14 DESIGNATED covered clinical service by the commission under  
15 section 22215(1)(a).

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

19 (13) ~~(12)~~ "Covered medical equipment", except as otherwise  
20 modified by the commission pursuant to section 22215, means 1 or  
21 more of the following:

22 (a) An extracorporeal shock wave lithotripter.

23 (b) A magnetic resonance unit.

24 (c) A mobile computerized tomography scanner.

25 (d) A fixed computerized tomography scanner.

26 (e) Surgical facilities.

1 (f) An air ambulance.

2 (g) A positron emission tomography scanner.

3 (h) Other equipment not listed in this subsection, but  
4 ~~designated~~ APPROVED by the commission as DESIGNATED covered  
5 medical equipment under section 22215(1)(a).

6 (14) ~~(13)~~ "Fixed equipment" means equipment that is  
7 affixed to and constitutes a structural component of a health  
8 facility, including, but not limited to, mechanical or electrical  
9 systems, elevators, generators, pumps, boilers, and refrigeration  
10 equipment.

11 Sec. 22225. (1) ~~In order to~~ TO be approved under this  
12 part, an applicant for a certificate of need shall demonstrate to  
13 the satisfaction of the department that the proposed project will  
14 meet an unmet need in the area proposed to be served. The need  
15 for a proposed project shall be demonstrated by credible documen-  
16 tation of compliance with the applicable certificate of need  
17 review standards or, if none, by credible documentation that the  
18 proposed project will be geographically accessible and effi-  
19 ciently and appropriately utilized in light of the type of pro-  
20 posed project and the existing health care system, including  
21 approved projects that are not yet operational, proposed projects  
22 under appeal from a final decision of the department, or proposed  
23 projects that are pending final department decision.

24 (2) ~~If, and only if, the requirements of subsection (1) are~~  
25 ~~met, in order for an application to be approved under this part,~~  
26 ~~an applicant shall also demonstrate~~ THE DEPARTMENT MAY APPROVE  
27 AN APPLICATION UNDER THIS PART ONLY IF THE APPLICANT HAS COMPLIED

1 WITH SUBSECTION (1) AND DEMONSTRATES to the reasonable  
2 satisfaction of the department all of the following:

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

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

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

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

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

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

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

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

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

24 (v) In the case of a construction project, the applicant  
25 stipulates that the applicant will competitively bid covered cap-  
26 ital expenditures among qualified contractors, or alternatively,  
27 the applicant presents evidence satisfactory to the department

1 that the applicant is proposing an alternative to competitive  
2 bidding that will result in the least costly method for imple-  
3 menting the project.

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

8 (i) Mechanisms for assuring appropriate utilization of the  
9 project.

10 (ii) Methods for evaluating the effectiveness of the  
11 project.

12 (iii) Means of assuring delivery of the project by qualified  
13 personnel and in compliance with applicable safety and operating  
14 standards.

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

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

23 (d) The health services proposed in the project will be  
24 delivered in a health facility that meets the criteria, if any,  
25 established by the commission for determining health facility  
26 viability, pursuant to this subdivision. The criteria shall be  
27 proposed by the department and the office, and approved or

1 disapproved by the commission. At a minimum, the criteria shall  
2 specify, to the extent applicable to the applicant, that an  
3 applicant shall be considered viable by demonstrating at least 1  
4 of the following:

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

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

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

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

14 (v) An operating margin in an amount determined by the  
15 commission.

16 (vi) Other criteria approved by the commission as appropri-  
17 ate for statewide application to determine health facility  
18 viability.

19 (e) ~~In the case of~~ FOR a nonprofit health facility, the  
20 health facility is in fact governed by a body composed of a  
21 majority consumer membership broadly representative of the popu-  
22 lation served. In the case of a health facility sponsored by a  
23 religious organization, or if the nature of the nonprofit health  
24 facility is such that the legal rights of its owners or sponsors  
25 might be impaired by a requirement as to the composition of its  
26 governing body, an advisory board with majority consumer  
27 membership broadly representative of the population served may be

1 construed by the department to be equivalent to the governing  
2 board described in this subdivision, if the advisory board meets  
3 all of the following requirements:

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

6 (ii) The functions of the advisory board are clearly  
7 prescribed.

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

11 (3) THE DEPARTMENT SHALL NOT ISSUE A CERTIFICATE OF NEED FOR  
12 A PROPOSED NURSING HOME PROJECT TO A PERSON IF ANY OF THE FOLLOW-  
13 ING HAVE OCCURRED:

14 (A) A HEALTH FACILITY OR AGENCY LICENSE ISSUED TO THE PERSON  
15 IN THIS STATE OR ANOTHER STATE HAS BEEN REVOKED WITHIN THE 5-YEAR  
16 PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CERTIFICATE OF NEED  
17 APPLICATION, OR A PROCEEDING TO REVOKE SUCH A LICENSE HAS BEEN  
18 INITIATED UNDER APPLICABLE LAW AND IS PENDING AT THE TIME OF  
19 APPLICATION.

20 (B) THE CERTIFICATION OF A HEALTH FACILITY OWNED OR OPERATED  
21 BY THE PERSON IN THIS STATE OR ANOTHER STATE HAS BEEN REVOKED BY  
22 THE STATE OR A FEDERAL AGENCY WITHIN THE 5-YEAR PERIOD IMMEDI-  
23 ATELY PRECEDING THE DATE OF THE CERTIFICATE OF NEED APPLICATION,  
24 OR A PROCEEDING TO REVOKE THE CERTIFICATION HAS BEEN INITIATED  
25 UNDER APPLICABLE LAW AND IS PENDING AT THE TIME OF APPLICATION.

26 (C) WITHIN THE 5-YEAR PERIOD IMMEDIATELY PRECEDING THE DATE  
27 OF THE CERTIFICATE OF NEED APPLICATION, THE PERSON HAS

1 VOLUNTARILY CLOSED OR DISCONTINUED OPERATION OF A NURSING HOME IN  
2 " CAN OR ANOTHER STATE WITHOUT FOLLOWING THE APPLICABLE LAW  
3 PRESCRIBING THE PROCEDURE FOR VOLUNTARY CLOSURE OR DISCONTINUANCE  
4 OF A NURSING HOME.