

SENATE BILL No. 429

July 11, 1991, Introduced by Senators PRIDNIA, GAST, EMMONS, N. SMITH, DE GROW, DUNASKISS, MC MANUS, WARTNER, CARL, ARTHURHULTZ and CISKY and referred to the Committee on Health Policy.

A bill to amend sections 22203, 22205, 22207, 22208, 22209, 22210, 22213, 22215, 22221, 22225, 22229, 22231, 22232, 22247, and 22260 of Act No. 368 of the Public Acts of 1978, entitled as amended

"Public health code,"

section 22203 as added by Act No. 331 of the Public Acts of 1988, sections 22205, 22207, 22213, 22215, 22221, 22225, 22229, 22231, 22232, 22247, and 22260 as added by Act No. 332 of the Public Acts of 1988, and sections 22208, 22209, and 22210 as amended by Act No. 260 of the Public Acts of 1990, being sections 333.22203, 333.22205, 333.22207, 333.22208, 333.22209, 333.22210, 333.22213, 333.22215, 333.22221, 333.22225, 333.22229, 333.22231, 333.22232, 333.22247, and 333.22260 of the Michigan Compiled Laws; to add section 22256; and to repeal certain parts of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 22203, 22205, 22207, 22208, 22209,
2 22210, 22213, 22215, 22221, 22225, 22229, 22231, 22232, 22247,
3 and 22260 of Act No. 368 of the Public Acts of 1978, section
4 22203 as added by Act No. 331 of the Public Acts of 1988, sec-
5 tions 22205, 22207, 22213, 22215, 22221, 22225, 22229, 22231,
6 22232, 22247, and 22260 as added by Act No. 332 of the Public
7 Acts of 1988, and sections 22208, 22209, and 22210 as amended by
8 Act No. 260 of the Public Acts of 1990, being sections 333.22203,
9 333.22205, 333.22207, 333.22208, 333.22209, 333.22210, 333.22213,
10 333.22215, 333.22221, 333.22225, 333.22229, 333.22231, 333.22232,
11 333.22247, and 333.22260 of the Michigan Compiled Laws, are
12 amended and section 22256 is added to read as follows:

13 Sec. 22203. (1) "Addition" means adding patient rooms,
14 beds, and ancillary service areas, including, but not limited to,
15 procedure rooms or fixed equipment, surgical operating rooms,
16 therapy rooms or fixed equipment, or other accommodations to a
17 health facility.

18 (2) "Capital expenditure" means an expenditure for a single
19 project, including cost of construction, engineering, and equip-
20 ment which under generally accepted accounting principles is not
21 properly chargeable as an expense of operation. Capital expendi-
22 ture includes a lease or comparable arrangement by or on behalf
23 of a facility by which a person obtains a health facility or
24 licensed part of a health facility or equipment for a facility,
25 the expenditure for which would have been considered a capital
26 expenditure under this part if the person had acquired it by

1 purchase. Capital expenditure includes cost of studies, surveys,
2 designs, plans, working drawings, specifications, and other
3 activities essential to the acquisition, improvement, expansion,
4 addition, conversion, modernization, new construction, or
5 replacement of physical plant and equipment.

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

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

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

17 (a) An increase in licensed hospital beds.

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

20 (c) An increase in licensed psychiatric beds.

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

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

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

1 (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 (8) "Commission" means the certificate of need commission
 9 created under section 22211.

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

14 (9) ~~(10)~~ "Covered capital expenditure" means a capital
 15 expenditure OF \$2,000,000.00 OR MORE by a health facility for a
 16 single project, excluding the cost of nonfixed medical equipment,
 17 that ~~is equal to, or 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.~~

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

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

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

~~(c) For a single project that is limited solely to the acquisition of nonfixed, nonmedical equipment and that does not involve acquisition, improvement, expansion, addition, conversion, modernization, new construction, or replacement of physical plant:~~

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

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

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

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

~~(i) Cardiac services.~~

~~(ii) Extrarenal organ transplantation.~~

~~(b) Initiation of a specialized psychiatric program 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 (A) INITIATION OF LICENSED HOSPITAL BEDS DEDICATED TO NEONA-
13 TAL INTENSIVE CARE SERVICES OR SPECIAL NEWBORN NURSING SERVICES.

14 (B) INITIATION OR EXPANSION OF 1 OR MORE OF THE FOLLOWING
15 SERVICES:

16 (i) CARDIAC SERVICES.

17 (ii) EXTRARENAL ORGAN TRANSPLANTATION.

18 (iii) SURGICAL SERVICES.

19 (iv) CARDIAC CATHETERIZATION.

20 (C) INITIATION, REPLACEMENT, OR EXPANSION OF 1 OR MORE OF
21 THE FOLLOWING SERVICES:

22 (i) EXTRACORPOREAL SHOCK WAVE LITHOTRIPSY.

23 (ii) SPECIALIZED RADIATION THERAPY.

24 (iii) POSITRON EMISSION TOMOGRAPHY.

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

~~1 (e) Initiation or increase in the number of licensed
2 hospital beds dedicated to neonatal intensive care services or
3 special newborn nursing services.~~

~~4 (12) "Covered medical equipment", except as otherwise modi-
5 fied by the commission pursuant to section 22215, means 1 or more
6 of the following:~~

~~7 (a) An extracorporeal shock wave lithotripter.~~

~~8 (b) A magnetic resonance unit.~~

~~9 (c) A mobile computerized tomography scanner.~~

~~10 (d) A fixed computerized tomography scanner.~~

~~11 (e) Surgical facilities.~~

~~12 (f) An air ambulance.~~

~~13 (g) A positron emission tomography scanner.~~

~~14 (h) Other equipment not listed in this subsection, but des-
15 igned by the commission as covered medical equipment under
16 section 22215(1)(a).~~

~~17 (13) "Fixed equipment" means equipment that is affixed to
18 and constitutes a structural component of a health facility,
19 including, but not limited to, mechanical or electrical systems,
20 elevators, generators, pumps, boilers, and refrigeration
21 equipment.~~

~~22 Sec. 22205. (1) "Health facility", except as otherwise pro-
23 vided in subsection (2), means:~~

~~24 (a) A hospital licensed under part 215.~~

~~25 (b) A mental hospital, psychiatric hospital, or psychiatric
26 unit licensed under the mental health code, Act No. 258 of the~~

1 Public Acts of 1974, being sections 330.1001 to 330.2106 of the
2 Michigan Compiled Laws.

3 (c) A nursing home licensed under part 217 or a hospital
4 long-term care unit as defined in section 20106(6).

5 (d) A freestanding surgical outpatient facility licensed
6 under part 208.

7 ~~(e) A health maintenance organization licensed under part~~
8 ~~210.~~

9 (2) "Health facility" does not include the following:

10 (a) An institution conducted by and for the adherents of a
11 church or religious denomination for the purpose of providing
12 facilities for the care and treatment of the sick who depend
13 solely upon spiritual means through prayer for healing.

14 (b) A health facility or agency located in a correctional
15 institution.

16 (c) A veterans facility operated by the state or federal
17 government.

18 (d) A facility owned and operated by the department of
19 mental health.

20 (3) "Initiate a new service" means the initiation of a cov-
21 ered clinical service by a person if the covered clinical service
22 has not been offered in compliance with this part or former part
23 221 on a regular basis by that person at the location where the
24 covered clinical service is to be offered within the 12-month
25 period immediately preceding the date the service will be
26 offered. Initiate a new service includes, but is not limited to,
27 the expansion or replacement of an existing covered clinical

1 service or beds dedicated to a covered clinical service if
2 authorized either under this part or by the commission pursuant
3 to section 22215.

4 (4) "Medical equipment" means a single equipment component
5 or a related system of components that is used for clinical
6 purposes.

7 Sec. 22207. (1) "Medicaid" means the program for medical
8 assistance administered by the department of social services
9 under the social welfare act, Act No. 280 of the Public Acts of
10 1939, being sections 400.1 to 400.121 of the Michigan Compiled
11 Laws.

12 ~~-(2) "Modernization" means an upgrading, alteration, or~~
13 ~~change in function of a part or all of the physical plant of a~~
14 ~~health facility. Modernization includes, but is not limited to,~~
15 ~~the alteration, repair, remodeling, and renovation of an existing~~
16 ~~building and initial fixed equipment and the replacement of obso-~~
17 ~~lete fixed equipment in an existing building. Modernization of~~
18 ~~the physical plant does not include normal maintenance and oper-~~
19 ~~ational expenses.~~

20 ~~-(3) "New construction" means construction of a health~~
21 ~~facility where a health facility does not exist or construction~~
22 ~~replacing or expanding an existing health facility or a part of~~
23 ~~an existing health facility.~~

24 ~~-(4) "Office" means the office of health and medical affairs~~
25 ~~created in the Michigan health planning and health policy devel-~~
26 ~~opment act, Act No. 323 of the Public Acts of 1978, being~~
27 ~~sections 325.2001 to 325.2031 of the Michigan Compiled Laws.~~

1 (2) ~~-(5)-~~ "Person" means a person as defined in section 1106
2 or a governmental entity.

3 (3) ~~-(6)-~~ "Planning area" means the area defined in a cer-
4 tificate of need review standard for determining the need for,
5 and the resource allocation of, a specific health facility, serv-
6 ice, or equipment. Planning area includes, but is not limited
7 to, the state, a health facility service area, or a health serv-
8 ice area or subarea within the state.

9 (4) ~~-(7)-~~ "Proposed project" means a proposal to ~~acquire~~
10 ~~or~~ begin operation of a new health facility, make a change in
11 bed capacity, initiate a new service, ~~acquire covered medical~~
12 ~~equipment,~~ or make a covered capital expenditure.

13 ~~-(8) "State health plan" means the plan developed by the~~
14 ~~council and approved pursuant to section 10 of Act No. 323 of the~~
15 ~~Public Acts of 1978, being section 325.2010 of the Michigan~~
16 ~~Compiled Laws.~~

17 ~~-(9) "Statewide health coordinating council" means the state~~
18 ~~agency created by section 7 of Act No. 323 of the Public Acts of~~
19 ~~1978, being section 325.2007 of the Michigan Compiled Laws,~~
20 ~~before section 7 was amended by the 1988 amendatory act that cre-~~
21 ~~ated the state health planning council.~~

22 (5) ~~-(10)-~~ "Stipulation" means a requirement that is germane
23 to the proposed project and has been agreed to by an applicant as
24 a condition of certificate of need approval.

25 Sec. 22208. "Short-term nursing care" means nursing care
26 provided ~~in a hospital to a patient who has been discharged or~~
27 ~~is ready for transfer from a licensed hospital bed other than a~~

~~1 hospital long term care unit bed and cannot be placed in a~~
~~2 nursing home bed, county medical care facility bed, or hospital~~
~~3 long term care unit bed located within a 50 mile radius of the~~
~~4 patient's residence~~ PURSUANT TO SECTION 1883 OF TITLE XVIII OF
5 THE SOCIAL SECURITY ACT, 42 U.S.C. 1395tt.

6 Sec. 22209. (1) Except as otherwise provided ~~under~~ IN
7 this part, a person shall not do any of the following without
8 first obtaining a certificate of need:

9 (a) ~~Acquire or begin~~ BEGIN operation of a new health
10 facility.

11 (b) Make a change in the bed capacity of a health facility.

12 (c) Initiate a new service.

13 ~~(d) Acquire covered medical equipment.~~

14 (D) ~~(e)~~ Make a covered capital expenditure.

15 ~~(2) For purposes of evaluating the effect of this part, the~~
16 ~~department shall require persons to report capital expenditures~~
17 ~~and single projects that were subject to former part 221. The~~
18 ~~reports shall be made in conjunction with the annual survey of~~
19 ~~hospitals conducted by the department and according to procedures~~
20 ~~approved by the commission. The department, with the concurrence~~
21 ~~of the commission, may require that reports for specific types of~~
22 ~~capital expenditures or projects be reported on other than an~~
23 ~~annual basis, as necessary to evaluate the effect of this part.~~

24 (2) ~~(3)~~ A certificate of need ~~shall~~ IS not ~~be~~ required
25 for a reduction in licensed bed capacity or services at a
26 licensed site.

1 (3) ~~—(4)—~~ The ~~office of~~ CENTER FOR rural health created in
2 section 2612 shall designate a certificate of need ombudsman to
3 provide technical assistance and consultation to rural hospitals
4 and rural communities regarding certificate of need proposals and
5 applications under THIS part. ~~—222.—~~ The ombudsman shall also
6 act as an advocate for rural health concerns in the development
7 of certificate of need review standards under THIS part. ~~—222.—~~

8 Sec. 22210. (1) A hospital that applies to the department
9 for a certificate of need and meets all of the following criteria
10 shall be granted a certificate of need for a short-term nursing
11 care program with up to 10 licensed hospital beds:

12 (a) Is eligible to apply for certification as a provider of
13 swing-bed services under section 1883 of title XVIII of the
14 social security act, 42 U.S.C. 1395tt.

15 (b) Subject to subsection (2), has fewer than 100 licensed
16 beds not counting beds excluded under section 1883 of title XVIII
17 of the social security act.

18 (c) Does not have uncorrected licensing, certification, or
19 safety deficiencies for which the department or the state fire
20 marshal, or both, has not accepted a plan of correction.

21 (d) Provides evidence satisfactory to the department that
22 the hospital has had difficulty in placing patients in skilled
23 nursing home beds during the 12 months immediately preceding the
24 date of the application.

25 (2) After October 1, 1990, the criteria set forth in
26 subsection (1)(b) may be modified by the commission, using the
27 procedure set forth in section 22215(3). The department shall

1 not charge a fee for processing a certificate of need application
2 to initiate a short-term nursing care program.

3 (3) A hospital that is granted a certificate of need for a
4 short-term nursing care program under subsection (1) shall comply
5 with all of the following:

6 (a) Not charge for or otherwise attempt to recover the cost
7 of a length of stay for a patient in the short-term nursing care
8 program that exceeds the length of time allowed for post-hospital
9 extended care under title XVIII of the social security act,
10 chapter 531, 49 Stat. 620, 42 U.S.C. 1395 to 1395b, 1395b-2,
11 1395c to 1395i, 1395i-2 to 1395i-4, 1395j to ~~1395w-2, 1395w-4 to~~
12 ~~1395dd, 1395ff to 1395yy~~ 1395t, 1395u TO 1395w-2, 1395w-4 TO
13 1395zz, and 1395bbb to 1395ccc.

14 (b) Admit patients to the short-term nursing care program
15 only pursuant to an admissions contract approved by the
16 department.

17 (c) Not discharge or transfer a patient from a licensed hos-
18 pital bed other than a hospital long-term care unit bed and admit
19 that patient to the short-term nursing care program unless the
20 discharge or transfer and admission is determined medically
21 appropriate by the attending physician.

22 (d) Permit access to a representative of an organization
23 approved under section 21764 to patients admitted to the
24 short-term nursing care program, for all of the purposes
25 described in section 21763.

26 (e) Subject to subsection (8), not allow the number of
27 patient days for the short-term nursing care program to exceed

1 the equivalent of 1,825 patient days for a single state fiscal
2 year.

3 (f) Transfer a patient in the short-term nursing care pro-
4 gram to an appropriately certified nursing home bed, county medi-
5 cal care facility bed, or hospital long-term care unit bed
6 located within a 50-mile radius of the patient's residence within
7 5 business days after the hospital has been notified, either
8 orally or in writing, that a bed has become available.

9 (g) Not charge or collect from a patient admitted to the
10 short-term nursing care program, for services rendered as part of
11 the short-term nursing care program, an amount in excess of the
12 reasonable charge for the services as determined by the United
13 States secretary of health and human services under title XVIII
14 of the social security act.

15 (h) Assist a patient who has been denied coverage for serv-
16 ices received in a short-term nursing care program under title
17 XVIII of the social security act to file an appeal with the medi-
18 care recovery project operated by the office of services to the
19 aging.

20 (i) Operate the short-term nursing care program in accord-
21 ance with this section and the requirements of the swing bed pro-
22 visions of section 1883 of title XVIII of the social security
23 act, 42 U.S.C. 1395tt.

24 (j) Provide data to the department considered necessary by
25 the department to evaluate the short-term nursing care program.
26 The data shall include, but is not limited to, all of the
27 following:

1 (i) The total number of patients admitted to the hospital's
2 short-term nursing care program during the period specified by
3 the department.

4 (ii) The total number of short-term nursing care patient
5 days for the period specified by the department.

6 (iii) Information identifying the type of care to which
7 patients in the short-term care nursing program are released.

8 (k) As part of the hospital's policy describing the rights
9 and responsibilities of patients admitted to the hospital, as
10 required under section 20201, incorporate all of the following
11 additional rights and responsibilities for patients in the
12 short-term nursing care program:

13 (i) A copy of the hospital's policy shall be provided to
14 each short-term nursing care patient upon admission, and the
15 staff of the hospital shall be trained and involved in the imple-
16 mentation of the policy.

17 (ii) Each short-term nursing care patient may associate and
18 communicate privately with persons of his or her choice.
19 Reasonable, regular visiting hours, which shall take into consid-
20 eration the special circumstances of each visitor, shall be
21 established for short-term nursing care patients to receive
22 visitors. A short-term nursing care patient may be visited by
23 the patient's attorney or by representatives of the departments
24 named in section 20156 during other than established visiting
25 hours. Reasonable privacy shall be afforded for visitation of a
26 short-term nursing care patient who shares a room with another

1 short-term nursing care patient. Each short-term nursing care
2 patient shall have reasonable access to a telephone.

3 (iii) A short-term nursing care patient is entitled to
4 retain and use personal clothing and possessions as space per-
5 mits, unless medically contraindicated, as documented by the
6 attending physician in the medical record.

7 (iv) A short-term nursing care patient is entitled to the
8 opportunity to participate in the planning of his or her medical
9 treatment. A short-term nursing care patient shall be fully
10 informed by the attending physician of the short-term nursing
11 care patient's medical condition, unless medically contraindi-
12 cated, as documented by a physician in the medical record. Each
13 short-term nursing care patient shall be afforded the opportunity
14 to discharge himself or herself from the short-term nursing care
15 program.

16 (v) A short-term nursing care patient is entitled to be
17 fully informed either before or at the time of admission, and
18 during ~~their~~ HIS OR HER stay, of services available in the hos-
19 pital and of the related charges for those services. The state-
20 ment of services provided by the hospital shall be in writing and
21 shall include those services required to be offered on an as
22 needed basis.

23 (vi) A patient in a short-term nursing care program or a
24 person authorized in writing by the patient may, upon submission
25 to the hospital of a written request, inspect and copy the
26 patient's personal or medical records. The hospital shall make
27 the records available for inspection and copying within a

1 reasonable time, not exceeding 7 days, after the receipt of the
2 written request.

3 (vii) A short-term nursing care patient has the right to
4 have his or her parents, if the short-term nursing care patient
5 is a minor, or his or her spouse, next of kin, or patient's rep-
6 resentative, if the short-term nursing care patient is an adult,
7 stay at the facility 24 hours a day if the short-term nursing
8 care patient is considered terminally ill by the physician
9 responsible for the short-term nursing care patient's care.

10 (viii) Each short-term nursing care patient shall be pro-
11 vided with meals that meet the recommended dietary allowances for
12 that patient's age and sex and that may be modified according to
13 special dietary needs or ability to chew.

14 (ix) Each short-term nursing care patient has the right to
15 receive a representative of an organization approved under
16 section 21764, for all of the purposes described in section
17 21763.

18 (1) Achieve and maintain medicare certification under title
19 XVIII of the social security act.

20 (4) A hospital or the owner, administrator, an employee, or
21 a representative of the hospital shall not discharge, harass, or
22 retaliate or discriminate against a short-term nursing care
23 patient because the short-term nursing care patient has exercised
24 a right described in subsection (3)(k).

25 (5) In the case of a short-term nursing care patient, the
26 rights described in subsection (3)(k)(iv) may be exercised by the
27 patient's representative, as defined in section 21703(2).

1 (6) A short-term nursing care patient shall be fully
2 informed, as evidenced by the short-term nursing care patient's
3 written acknowledgment, before or at the time of admission and
4 during stay, of the rights described in subsection (3)(k). The
5 written acknowledgment shall provide that if a short-term nursing
6 care patient is adjudicated incompetent and not restored to legal
7 capacity, the rights and responsibilities set forth in subsection
8 (3)(k) shall be exercised by a person designated by the
9 short-term nursing care patient. The hospital shall provide
10 proper forms for the short-term nursing care patient to provide
11 for the designation of this person at the time of admission.

12 (7) Subsection (3)(k) does not prohibit a hospital from
13 establishing and recognizing additional rights for short-term
14 nursing care patients.

15 (8) Upon application, the department may grant a variation
16 from the maximum number of patient days established under subsec-
17 tion (3)(e), to an applicant hospital that demonstrates to the
18 satisfaction of the department that there is an immediate need
19 for skilled nursing beds within a 100-mile radius of the
20 hospital. A variation granted under this subsection shall be
21 valid for not more than 1 year after the date variation is
22 granted. The department shall promulgate rules to implement this
23 subsection including, at a minimum, a definition of immediate
24 need and the procedure for applying for a variation.

25 (9) A hospital that violates subsection (3) is subject to
26 the penalty provisions of section 20165.

1 (10) A person shall not initiate a short-term nursing care
2 program without first obtaining a certificate of need under this
3 section.

4 ~~(11) By October 1, 1990, the department shall collect data~~
5 ~~from hospitals operating short term nursing care programs and~~
6 ~~report to the legislature on the status of short term nursing~~
7 ~~care programs in this state. The report shall include a recom-~~
8 ~~mendation as to whether or not short term nursing care programs~~
9 ~~should continue.~~

10 ~~(12) This section is repealed effective October 1, 1993.~~

11 Sec. 22213. (1) The commission shall, within 2 months after
12 appointment and confirmation of all members, adopt bylaws for the
13 operation of the commission. The bylaws shall include, at a min-
14 imum, voting procedures that protect against conflict of interest
15 and minimum requirements for attendance at meetings.

16 ~~(2) The commission shall make it a priority to review and~~
17 ~~to amend or rescind, or both, the documents, policies, and guide-~~
18 ~~lines set forth in section 22217.~~

19 (2) ~~(3)~~ The governor may remove a commission member from
20 office for failure to attend 3 consecutive meetings in a 1-year
21 period.

22 (3) ~~(4)~~ The commission annually shall elect a chairperson
23 and vice-chairperson. The commission annually shall appoint a
24 member to serve as liaison to the state health planning council.

25 (4) ~~(5)~~ The commission shall hold regular quarterly meet-
26 ings at places and on dates fixed by the commission. Special

1 meetings may be called by the chairperson, by not less than 2
2 commission members, or jointly by the department and the office.

3 (5) ~~-(6)-~~ A majority of the commission members appointed and
4 serving ~~shall constitute~~ CONSTITUTES a quorum. Final action by
5 the commission shall be only by affirmative vote of a majority of
6 the commission members appointed and serving. A commission
7 member shall not vote by proxy.

8 (6) ~~-(7)-~~ The legislature annually shall fix the per diem
9 compensation of members of the commission. Expenses of members
10 incurred in the performance of official duties shall be reim-
11 bursed as provided in section 1216.

12 (7) ~~-(8)-~~ The department shall furnish administrative serv-
13 ices to the commission, shall have charge of the commission's
14 offices, records, and accounts, and shall provide secretarial and
15 other staff necessary to allow the proper exercise of the powers
16 and duties of the commission. The department shall make avail-
17 able the times and places of commission meetings and keep minutes
18 of the meetings and a record of the actions of the commission.

19 (8) ~~-(9)-~~ The department ~~and office each~~ shall assign pro-
20 fessional employees to jointly staff the commission to assist the
21 commission in the performance of its substantive responsibilities
22 under this part.

23 Sec. 22215. (1) Pursuant to the requirements of this part,
24 the commission shall do all of the following:

25 (a) ~~Upon submission by the department and the office,~~
26 ~~approve, disapprove, or revise the designation of covered~~
27 ~~clinical services and covered medical equipment in addition to~~

~~1 the covered clinical services and covered medical equipment
2 listed in section 22203. Also, upon submission by the department
3 and the office, the commission shall approve, disapprove, or IF
4 DETERMINED NECESSARY BY THE COMMISSION, revise the BY ADDITION
5 OR deletion or revision of THE covered clinical services and
6 covered medical equipment listed in section 22203. Before
7 final action is taken by the commission under this subdivision,
8 the commission shall seek the advice and counsel of the depart-
9 ment and the office.~~

10 (b) ~~Upon submission by the department and the office,
11 approve, APPROVE, disapprove, or revise certificate of need
12 review standards that establish , for purposes of section 22225
13 , the need, if any, for the initiation of new services,
14 acquisition of covered medical equipment, acquisition or initi-
15 ation of new health facilities, OR making changes in bed
16 capacity. , or making covered capital expenditures, including
17 conditions, standards, assurances, or information that must be
18 met, demonstrated, or provided by a person who applies for a cer-
19 tificate of need. A certificate of need review standard may also
20 establish ongoing quality assurance requirements including any or
21 all of the requirements specified in section 22225(2)(c). The
22 statewide health coordinating council may perform the duties of
23 the commission under this subdivision, only until all members of
24 the commission are appointed and confirmed, or 5 months after the
25 effective date of this part, whichever is sooner. Before final
26 action is taken by the commission or the statewide health
27 coordinating council under this subdivision, the commission or~~

~~1 the statewide health coordinating council shall seek the advice~~
~~2 and counsel of the department and the office.~~ THE COMMISSION
3 SHALL ASSURE THAT THE CERTIFICATE OF NEED REVIEW STANDARDS THAT
4 ESTABLISH THE NEED FOR THE ACQUISITION OF COVERED CLINICAL SERV-
5 ICE PERMIT THE ACTIVE AVAILABILITY OF AT LEAST 1 OF EACH TYPE OF
6 COVERED CLINICAL SERVICE FOR EACH PLANNING AREA.

7 (c) Direct the department ~~and the office~~ to prepare and
8 submit recommendations regarding commission duties and functions
9 that are of interest to the commission including, but not limited
10 to, specific modifications of proposed actions considered under
11 this section.

12 ~~-(d) Upon submission by the department and the office,~~
13 ~~approve, disapprove, or revise proposed data reporting require-~~
14 ~~ments under section 22209(2) and criteria for determining health~~
15 ~~facility viability under section 22225. Before final action is~~
16 ~~taken by the commission under this subdivision, the commission~~
17 ~~shall seek the advice and counsel of the department and the~~
18 ~~office.~~

19 (D) ~~-(e)~~ Annually assess the operations and effectiveness
20 of the certificate of need program based on periodic reports from
21 the department and other information available to the
22 commission.

23 (E) ~~-(f) Four years following the effective date of this~~
24 ~~part~~ BY OCTOBER 1, 1992, and every 5 years after ~~that fourth~~
25 ~~year~~ OCTOBER 1, 1992, make recommendations to the standing com-
26 mittees in the senate and the house that have jurisdiction over
27 matters pertaining to public health regarding statutory changes

1 to improve OR ELIMINATE the certificate of need program. —
2 including, but not limited to, threshold levels for capital
3 expenditures, the role of the commission, certificate of need
4 review standards, and the need for the certificate of need
5 program.—

6 ~~—(g) Upon submission by the department and the office,~~
7 ~~approve, disapprove, or revise standards to be used by the~~
8 ~~department in designating a regional certificate of need review~~
9 ~~agency, pursuant to section 22226. Before final action is taken~~
10 ~~by the commission under this subdivision, the commission shall~~
11 ~~seek the advice and counsel of the department and the office.~~

12 ~~—(h) Upon submission by the department and the office,~~
13 ~~approve, disapprove, or revise certificate of need review stan-~~
14 ~~dards governing the acquisition of new technology. Before final~~
15 ~~action is taken by the commission under this subdivision, the~~
16 ~~commission shall seek the advice and counsel of the department~~
17 ~~and the office.—~~

18 (F) ~~—(i)~~ In accordance with section 22255, approve, disap-
19 prove, or revise proposed procedural rules for the certificate of
20 need program. Before final action is taken by the commission
21 under this subdivision, the commission shall seek the advice and
22 counsel of the department. ~~—and the office.—~~

23 ~~—(j) If determined by the commission to be consistent with~~
24 ~~the purposes of this part, modify the 100 licensed bed limitation~~
25 ~~set forth in section 22210. Before final action is taken by the~~
26 ~~commission under this subdivision, the commission shall seek the~~
27 ~~advice and counsel of the department and the office.—~~

1 (G) ~~—(k)—~~ Consider the recommendations of the department and
 2 the department of attorney general as to the administrative fea-
 3 sibility and legality of proposed actions under subdivisions (a),
 4 (b), and (c).

5 (H) ~~—(l)—~~ Consider the impact of a proposed restriction on
 6 the acquisition of ~~equipment~~ or availability of COVERED
 7 CLINICAL services on the quality, availability, and cost of
 8 health services in this state.

9 (2) The commission shall exercise its duties under this part
 10 to promote ~~both of the following:~~ EQUAL ACCESS TO HEALTH CARE
 11 FOR ALL CITIZENS OF THIS STATE.

12 ~~—(a) The availability of quality health services at reason-~~
 13 ~~able cost.~~

14 ~~—(b) The general health objectives in the state health plan.~~

15 (3) ~~Before~~ NOT LESS THAN 30 DAYS BEFORE final action is
 16 taken by the commission under subsection (1)(a) ~~—~~ OR (b), ~~—(d),~~
 17 ~~(g), (h), or (j),~~ the commission shall conduct a public hearing
 18 on the matter. ~~In addition, not less than 30 days before final~~
 19 ~~action is taken by the commission under subsection (1)(a), (b),~~
 20 ~~(d), (g), (h), or (j), the~~ THE commission shall submit the pro-
 21 posed final action for comment to the standing committees in the
 22 senate and house of representatives with jurisdiction over public
 23 health matters ~~— Before a final commission approval under sub-~~
 24 ~~section (1)(a), (b), (d), (g), (h), or (j) is effective, the com-~~
 25 ~~mission shall submit the proposed action~~ AND to the governor.
 26 ~~and the standing committee of each house of the legislature~~
 27 ~~having jurisdiction over public health matters.~~ The governor

1 ~~or~~ AND the ~~legislature~~ SENATE OR THE GOVERNOR AND THE HOUSE
 2 OF REPRESENTATIVES OR THE SENATE AND THE HOUSE OF REPRESENTATIVES
 3 may disapprove the proposed action within 45 days after the date
 4 of submission. If the legislature is not in session at the time
 5 of submission of the proposed action, or is in recess, the 45
 6 days shall commence on the first day the legislature reconvenes.
 7 The 45 days shall include not less than 9 legislative session
 8 days. ~~Legislative disapproval~~ DISAPPROVAL BY THE SENATE OR THE
 9 HOUSE OF REPRESENTATIVES shall be expressed by ~~concurrent~~
 10 resolution. ~~which shall be adopted by each house of the~~
 11 ~~legislature.~~ The ~~concurrent~~ resolution shall state specific
 12 objections to the proposed action. A proposed ~~commission~~ FINAL
 13 action BY THE COMMISSION under subsection (1)(a) ~~—~~ OR (b) ~~—~~
 14 ~~(d), (g), (h), or (j) shall~~ IS not ~~become~~ effective if it has
 15 been disapproved under this subsection. If the proposed action
 16 is not disapproved under this subsection, it ~~shall be~~ IS effec-
 17 tive and binding on all persons affected by this part upon the
 18 expiration of the 45-day period or on a later date specified in
 19 the proposed FINAL action. As used in this subsection,
 20 "legislative session day" means each day in which a quorum of
 21 either the house of representatives or the senate, following a
 22 call to order, officially convenes in Lansing to conduct legisla-
 23 tive business.

24 ~~(4) Every 5 years following the effective date of this~~
 25 ~~part, the standing committees of the senate and the house of rep-~~
 26 ~~resentatives having jurisdiction over public health matters shall~~
 27 ~~make findings and recommendations regarding any changes in, or~~

~~1 the continuation of, the certificate of need program established~~
~~2 under this part considered appropriate by those committees after~~
~~3 consideration of the recommendations submitted by the commission~~
~~4 pursuant to subsection (1)(f).~~

~~5 (5) If the reports received under section 22221(1)(e) indi-~~
~~6 cate that the certificate of need application fees collected~~
~~7 under section 20161(2) have not been within 10% of 1/2 the cost~~
~~8 to the department of implementing this part, the commission shall~~
~~9 make recommendations under subsection (1)(f) regarding the revi-~~
~~10 sion of those fees so that the certificate of need application~~
~~11 fees collected equal approximately 1/2 of the cost to the depart-~~
~~12 ment of implementing this part.~~

13 Sec. 22221. (1) The department shall do all of the
14 following:

15 (a) ~~Develop~~ PROMULGATE rules ~~authorized by~~ TO IMPLEMENT
16 this part in conjunction with the ~~office~~ COMMISSION.

17 (b) Report to the commission not less than 3 times each year
18 on the performance of the department's duties under this part.

19 (c) Develop ~~, in conjunction with the office,~~ proposed
20 certificate of need review standards for submission to the
21 commission.

22 (d) Administer and apply certificate of need review
23 standards.

24 (e) Following the first state fiscal year after ~~the enact-~~
25 ~~ment of this part~~ OCTOBER 1, 1988, and annually thereafter,
26 report to the commission regarding the costs to the department of
27 implementing this part and the certificate of need application

1 fees collected under section 20161(2) in the immediately
2 preceding state fiscal year.

3 (2) ~~In the development of a proposed certificate of need~~
4 ~~review standard under subsection (1)(c), the department~~ THE
5 COMMISSION shall appoint an ad hoc advisory committee ~~which~~
6 ~~shall~~ TO assist in the development of ~~the~~ A proposed
7 CERTIFICATE OF NEED REVIEW standard UNDER SUBSECTION (1)(C) and
8 ~~shall have the opportunity~~ to review and comment on the propos-
9 als submitted to the commission. The composition of the ad hoc
10 advisory committee shall include all of the following:

11 (a) Experts WITH PROFESSIONAL COMPETENCE in the subject
12 matter of the proposed standard, who shall constitute a majority
13 of the ad hoc advisory committee.

14 (b) Representatives of health care provider organizations
15 concerned with licensed health facilities or licensed health
16 professions.

17 (c) Representatives of organizations concerned with health
18 care consumers and the purchasers and payers of health care
19 services.

20 Sec. 22225. (1) In order to be approved under this part, an
21 applicant for a certificate of need shall demonstrate to the sat-
22 isfaction of the department that the proposed project will ~~meet~~
23 ~~an unmet~~ BE CONSISTENT WITH THE need in the area proposed to be
24 served. ~~The~~ AN APPLICANT SHALL DEMONSTRATE THE need for a pro-
25 posed project ~~shall be demonstrated~~ by credible documentation
26 of compliance with the applicable certificate of need review
27 standards or, if ~~none~~ THERE ARE NO APPLICABLE CERTIFICATE OF

1 NEED REVIEW STANDARDS, by credible documentation that the
2 proposed project will be geographically accessible and effi-
3 ciently and appropriately utilized in light of the type of pro-
4 posed project and the existing health care system, including
5 approved projects that are not yet operational, proposed projects
6 under appeal from a final decision of the department, or proposed
7 projects that are pending final department decision.

8 (2) ~~If, and only if, the requirements of subsection (1) are~~
9 ~~met, in~~ IN order for an application to be approved under this
10 part, an applicant shall also demonstrate to the reasonable sat-
11 isfaction of the department all of the following:

12 (a) With respect to the method proposed to meet the ~~unmet~~
13 need identified under subsection (1), that each of the following
14 is met:

15 (i) The project ~~utilizes the most~~ DESIGN IS efficient and
16 ~~effective~~ feasible. ~~methods that are available to the health~~
17 ~~care industry.~~

18 (ii) In the case of a project proposing physical plant
19 expansion, that the project is ~~the most~~ AN efficient and effec-
20 tive ~~expansion~~ alternative after consideration of at least new
21 construction, modernization, lease, or purchase.

22 ~~(iii) In the case of proposed new construction, the project~~
23 ~~is the most appropriate construction option.~~

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

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

- 1 (i) ~~-(ii)-~~ The CAPITAL COSTS OF THE proposed project
2 ~~represents the least costly alternative of providing the health~~
3 ~~facility, service, or equipment~~ ARE REASONABLE.
- 4 (ii) ~~-(iii)-~~ Funds are available to meet the capital and
5 operating needs of the proposed project.
- 6 (iii) ~~-(iv)-~~ The proposed project utilizes the least costly
7 method of financing, in light of available alternatives.
- 8 (iv) ~~-(v)-~~ In the case of a construction project, the appli-
9 cant stipulates that the applicant will competitively bid
10 ~~covered~~ capital expenditures among qualified contractors ~~—~~, or
11 alternatively, the applicant ~~presents evidence satisfactory to~~
12 ~~the department that the applicant~~ is proposing an alternative to
13 competitive bidding. ~~that will result in the least costly~~
14 ~~method for implementing the project.~~
- 15 ~~-(c) The proposed project will be delivered in compliance~~
16 ~~with applicable operating standards and quality assurance stan-~~
17 ~~dards approved under section 22215(1)(b), including 1 or more of~~
18 ~~the following:~~
- 19 ~~-(i) Mechanisms for assuring appropriate utilization of the~~
20 ~~project.~~
- 21 ~~-(ii) Methods for evaluating the effectiveness of the~~
22 ~~project.~~
- 23 ~~-(iii) Means of assuring delivery of the project by qualified~~
24 ~~personnel and in compliance with applicable safety and operating~~
25 ~~standards.~~
- 26 ~~-(iv) Evidence of the current and historical compliance with~~
27 ~~federal and state licensing and certification requirements in~~

~~1 this state by the applicant or the applicant's owner, or both, to~~
~~2 the degree determined appropriate by the commission in light of~~
~~3 the subject of the review standard.~~

~~4 (v) Other criteria approved by the commission as appropriate~~
~~5 to evaluate the quality of the project.~~

~~6 (d) The health services proposed in the project will be~~
~~7 delivered in a health facility that meets the criteria, if any,~~
~~8 established by the commission for determining health facility~~
~~9 viability, pursuant to this subdivision. The criteria shall be~~
~~10 proposed by the department and the office, and approved or disap-~~
~~11 proved by the commission. At a minimum, the criteria shall spec-~~
~~12 ify, to the extent applicable to the applicant, that an applicant~~
~~13 shall be considered viable by demonstrating at least 1 of the~~
~~14 following:~~

~~15 (i) A minimum percentage occupancy of licensed beds.~~

~~16 (ii) A minimum percentage of combined uncompensated dis-~~
~~17 charges and discharges under title XIX of the social security act~~
~~18 in the health facility's planning area.~~

~~19 (iii) A minimum percentage of the total discharges in the~~
~~20 health facility's planning area.~~

~~21 (iv) Evidence that the health facility is the only provider~~
~~22 in the health facility's planning area of a service that is con-~~
~~23 sidered essential by the commission.~~

~~24 (v) An operating margin in an amount determined by the~~
~~25 commission.~~

1 ~~(vi) Other criteria approved by the commission as~~
2 ~~appropriate for statewide application to determine health~~
3 ~~facility viability.~~

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

16 ~~(i) The role assigned to the advisory board is meaningful,~~
17 ~~as determined by the department.~~

18 ~~(ii) The functions of the advisory board are clearly~~
19 ~~prescribed.~~

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

23 Sec. 22229. (1) The following proposed projects ~~shall be~~
24 ARE subject to comparative review:

25 (a) Proposed projects specified as subject to comparative
26 review in a certificate of need review standard.

1 ~~(b) Proposed projects that, when combined, exceed the need~~
 2 ~~of the planning area, as determined by the department.~~

3 (B) ~~(e)~~ New beds in a health facility that is a hospital
 4 LONG-TERM CARE UNIT or nursing home ~~—~~ if there are multiple
 5 applications to meet the same need for projects that, when com-
 6 bined, exceed the need of the planning area as determined by the
 7 applicable CERTIFICATE OF NEED review standards. Replacement
 8 beds in a hospital or nursing home that are proposed for con-
 9 struction on the original site, on a contiguous site, within a
 10 5-mile radius of the original site if the hospital or nursing
 11 home is located in a county with a population of less than
 12 200,000, or within a 2-mile radius of the original site if the
 13 hospital or nursing home is located in a county with a population
 14 of 200,000 or more, ~~shall not be~~ ARE NOT subject to comparative
 15 review.

16 ~~(2) Until otherwise established in a certificate of need~~
 17 ~~review standard approved by the commission, the establishment or~~
 18 ~~expansion of 1 or more of the following services shall be subject~~
 19 ~~to comparative review if applications exist that exceed the need~~
 20 ~~for the service as stated in the applicable review standard:~~

21 ~~(a) Open heart surgery services.~~

22 ~~(b) Specialized radiation therapy services.~~

23 ~~(c) Neonatal intensive care unit or special newborn nursery~~
 24 ~~unit services.~~

25 ~~(d) Extracorporeal shock wave lithotripsy services.~~

26 ~~(e) Extrarenal organ transplantation services.~~

1 ~~(f) Air ambulance services.~~

2 (2) ~~-(3) Certificate~~ THE COMMISSION MAY APPROVE CERTIFICATE
3 of need review standards ~~approved by the commission may~~ THAT
4 establish comparative review or an alternative procedure ~~based~~
5 ~~on the specific considerations of a particular applicant, verifi-~~
6 ~~able applicant performance data, or other information considered~~
7 ~~relevant by the department. In the case of an applicant~~
8 ~~involving~~ FOR DETERMINING WHETHER 1 OF SEVERAL QUALIFIED APPLI-
9 CANTS MAY BE APPROVED IF THE LEVEL OF NEED IS NOT SUFFICIENT TO
10 JUSTIFY APPROVAL OF ALL QUALIFIED APPLICANTS. IF AN APPLICATION
11 INVOLVES more than 1 health facility, the APPLICANT SHALL INDI-
12 CATE ON THE application ~~shall indicate~~ the proposed site or
13 sites for the project and arrangements for the utilization and
14 financing of the ~~covered medical equipment or~~ covered clinical
15 services.

16 ~~-(4) If an application under comparative review or appeal is~~
17 ~~not subject to comparative review under this part or a standard~~
18 ~~implementing this part, the application may be withdrawn and~~
19 ~~resubmitted as a new application under this part. The applica-~~
20 ~~tion shall be considered filed on the date it is resubmitted. If~~
21 ~~the application is for substantially the same project and is~~
22 ~~resubmitted within 60 days after the date the application is~~
23 ~~withdrawn, the department shall waive the certificate of need~~
24 ~~application fee for the resubmitted application.~~

25 Sec. 22231. (1) The decision to grant or deny an applica-
26 tion for a certificate of need shall be made by the director. A
27 decision shall be proposed to the director by a bureau within the

1 department designated by the director as responsible for the
2 certificate of need program. A decision shall be in writing and
3 shall indicate 1 of the following:

4 (a) Approval of the application.

5 (b) Disapproval of the application.

6 (c) Subject to subsection (2), approval of the application
7 with conditions.

8 (d) If agreed to by the department and the applicant,
9 approval of the application with stipulations.

10 (2) If an application is approved with conditions pursuant
11 to subsection (1)(c), the conditions shall be explicit, shall be
12 related to the proposed project or to the applicable provisions
13 of this part, and shall specify a time, not to exceed 1 year
14 after the date the decision is rendered, within which the condi-
15 tions shall be met.

16 (3) If the department is conducting a comparative review,
17 the director shall issue only 1 decision for all of the applica-
18 tions included in the comparative review.

19 (4) Before a final decision on an application is made, the
20 bureau of the department designated by the director as responsi-
21 ble for the certificate of need program shall issue a proposed
22 decision ~~that individually addresses~~ WITH SPECIFIC FINDINGS OF
23 FACT IN SUPPORT OF THE PROPOSED DECISION WITH REGARD TO each of
24 the criteria listed in section 22225. ~~and states with specific~~
25 ~~ity the reasons and authority of the department for the proposed~~
26 ~~decision. If a proposed decision is issued within the~~
27 ~~application review period specified in the rules promulgated~~

1 ~~under former part 221, the department shall be in compliance with~~
2 ~~the review period requirement of those rules.~~ The department
3 shall transmit a copy of the proposed decision to the applicant.

4 (5) The proposed decision shall be submitted to the director
5 on the day the proposed decision is issued. ~~, if the proposed~~
6 ~~decision is an approval without conditions or stipulations.~~

7 (6) If the proposed decision is other than an approval with-
8 out conditions or stipulations, ~~the proposed decision shall be~~
9 ~~submitted to the director not more than 16~~ SHALL ISSUE A FINAL
10 DECISION 60 days after receipt by the applicant of the proposed
11 decision, UNLESS THE APPLICANT HAS FILED AN APPEAL OF THE PRO-
12 POSED DECISION.

13 (7) The director shall review the proposed decision before a
14 final decision is rendered.

15 (8) If a proposed decision is an approval, ~~and if, upon~~
16 ~~review, the director reverses the proposed decision, the direc-~~
17 ~~tor immediately shall notify the applicant of the reversal.~~
18 ~~Within 15 days after receipt of the notice of reversal, the~~
19 ~~applicant may request a hearing under section 22232. After the~~
20 ~~hearing, the applicant may request the director to reconsider the~~
21 ~~reversal of the proposed decision, based on the results of the~~
22 ~~hearing~~ SHALL ISSUE A FINAL DECISION OF APPROVAL WITHIN 3 DAYS
23 AFTER RECEIPT OF THE PROPOSED DECISION.

24 ~~(9) The director shall issue a final decision not later~~
25 ~~than 60 days after the date a proposed decision is submitted to~~
26 ~~the director under subsection (6) or, if the proposed decision is~~

1 ~~an approval, not later than 20 days after the proposed decision~~
2 ~~is submitted to the director.~~

3 (9) ~~—(10)—~~ The final decision of the director may be
4 appealed only by the applicant and only on the record directly to
5 the circuit court for the county where the applicant has its
6 principal place of business in this state or the circuit court
7 for Ingham county. Judicial review ~~shall be~~ IS governed by
8 sections 103 to 106 of the administrative procedures act of 1969,
9 Act No. 306 of the Public Acts of 1969, being sections 24.303 to
10 24.306 of the Michigan Compiled Laws.

11 ~~—(11)—~~ The review and appeal of a certificate of need appli-
12 cation submitted with the required filing fee before the effec-
13 tive date of this part shall be conducted under former part 221
14 and the rules promulgated under that part. The certificate of
15 need board created by former section 22121(2) shall continue for
16 the purpose of performing the functions vested in it by former
17 part 221, until all appeals lawfully brought under former
18 part 221 are concluded.

19 (10) ~~—(12)—~~ If the department exceeds the time frames set
20 forth in this section for other than good cause, as determined by
21 the commission, upon the written request of an applicant, the
22 department shall return to the applicant all of the certificate
23 of need application fee paid by the applicant under section
24 20161(2) AND THE APPLICANT MAY IMPLEMENT THE PROPOSED PROJECT
25 WITHOUT A CERTIFICATE OF NEED.

26 • Sec. 22232. (1) The applicant may, within 15 days after
27 receipt by the applicant of the bureau's proposed decision ~~or~~

~~1 receipt of notice of reversal by the director of a proposed~~
~~2 decision that is an approval,~~ TO DENY THE APPLICATION submit a
3 written request for a hearing to demonstrate ~~to the department~~
4 that the application filed by the applicant meets the require-
5 ments for approval under this part.

6 (2) The department shall appoint a hearing officer for a
7 hearing held under this section. The hearing officer shall
8 establish a schedule for the hearing, control the presentation of
9 proofs, and take such other action determined by the hearing
10 officer to be necessary to ensure that the hearing is conducted
11 in an expeditious manner and completed within a reasonable period
12 of time. The hearing officer shall convene the hearing within 90
13 days after receipt of a request for a hearing under this
14 section. Upon written request by a party, a hearing officer may
15 issue subpoenas requiring the attendance and testimony of wit-
16 nesses and the production of evidence. The department shall
17 establish appropriate qualifications for hearing officers
18 appointed under this section. UNLESS AGREED BY THE APPLICANT,
19 THE HOLDING BY THE DEPARTMENT OF A PREHEARING CONFERENCE OR OTHER
20 SIMILAR PROCEDURE DOES NOT CONSTITUTE CONVENING A HEARING FOR
21 PURPOSES OF THIS SUBSECTION.

22 (3) If a hearing is requested under this section, chapter 4
23 of the administrative procedures act of 1969, Act No. 306 of the
24 Public Acts of 1969, being sections 24.271 to 24.287 of the
25 Michigan Compiled Laws, ~~shall govern~~ GOVERNS.

26 Sec. 22247. (1) The ~~department shall monitor compliance~~
27 ~~with certificates of need issued under this part, including, but~~

1 ~~not limited to, project costs and conditions and stipulations~~
2 ~~contained in a decision to approve an application. In addition,~~
3 ~~the~~ department may investigate allegations of noncompliance with
4 a certificate of need or this part.

5 (2) If the department determines that the recipient of a
6 certificate of need under this part is not in compliance with the
7 terms of the certificate of need or that a person is in violation
8 of this part or the rules promulgated under this part, the
9 department may do 1 or more of the following:

10 (a) Revoke or suspend the certificate of need.

11 (b) Impose a civil fine of not more than the amount of the
12 billings for the services provided in violation of this part.

13 (c) Take any action authorized under this article for a vio-
14 lation of this article or a rule promulgated under this article,
15 including, but not limited to, issuance of a compliance order
16 under section 20162(5), whether or not the person is licensed
17 under this article.

18 (d) Request enforcement action under section 22253.

19 (e) Take any other enforcement action authorized by this
20 code.

21 (f) Publicize or report the violation or enforcement action,
22 or both, to any person.

23 (3) A person shall not charge to, or collect from, another
24 person or otherwise recover costs for services provided or for
25 equipment or facilities that are acquired in violation of this
26 part. If a person has violated this subsection, in addition to
27 the sanctions provided under subsection (2), the person shall,

1 upon request of the person from whom the charges were collected,
2 refund those charges, either directly or through a credit on a
3 subsequent bill.

4 SEC. 22256. (1) THE DEPARTMENT SHALL SCHEDULE A HEARING FOR
5 AN APPEAL OF AN APPLICATION SUBMITTED UNDER FORMER PART 221
6 WITHIN 120 DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION. IF AN
7 APPLICANT UNDER FORMER PART 221 DOES NOT PROCEED WITH AN APPEAL
8 AT A HEARING SCHEDULED UNDER THIS SECTION, THE APPLICATION WILL
9 BE CONSIDERED WITHDRAWN.

10 (2) IF THE DEPARTMENT DOES NOT SCHEDULE A HEARING WITHIN THE
11 TIME PERIOD REQUIRED UNDER SUBSECTION (1), THE APPLICANT MAY COM-
12 PLETE THE PROJECT WITHOUT A CERTIFICATE OF NEED.

13 Sec. 22260. (1) The department shall prepare and publish at
14 least annually reports of reviews conducted under this part. The
15 reports shall include a statement on the status of each pending
16 review and a statement as to each review completed, including
17 statements of the findings and decisions made in the course of
18 the reviews since the last report. ~~—, and the recommendations of~~
19 ~~regional certificate of need review agencies.~~

20 (2) The department ~~and, if applicable, the appropriate~~
21 ~~regional certificate of need review agency~~ shall make available
22 to the public for examination during ~~reasonable~~ ALL BUSINESS
23 hours ~~on business days~~ the applications received by ~~them~~ THE
24 DEPARTMENT and pertinent written materials on file.

25 Section 2. Sections 22217, 22227, 22230, 22237, 22239,
26 22241, 22243, 22249, and 22251 of Act No. 368 of the Public Acts
27 of 1978, being sections 333.22217, 333.22227, 333.22230,

1 333.22237, 333.22239, 333.22241, 333.22243, 333.22249, and
2 333.22251 of the Michigan Compiled Laws, are repealed.