

SUBSTITUTE FOR
HOUSE BILL NO. 5460

(As amended May 18, 2000)

[A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 20151 and 20155 (MCL 333.20151 and 333.20155),
section 20155 as amended by 1996 PA 267.]

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

[Sec. 20151. A licensee or certificate holder shall cooperate with the department in carrying out its responsibility under this article. The department ~~may~~ SHALL provide professional advice and consultation as to the quality of facility or agency aspects of health care and services provided by the applicant or licensee.]

1 Sec. 20155. (1) Except as OTHERWISE provided in this sec-
2 tion, the department OF CONSUMER AND INDUSTRY SERVICES shall make
3 annual and other visits to each health facility or agency
4 licensed under this article for the purposes of survey, evalu-
5 ation, and consultation. [A VISIT MADE PURSUANT TO A COMPLAINT
INVESTIGATION SHALL BE UNANNOUNCED.] Except for a [~~health facility~~
~~or agency~~
6 ~~described in section 20106(1)(c), (f), (h), or (j)~~ COUNTY MEDICAL
CARE FACILITY, A HOME FOR THE AGED, A NURSING HOME, AND A HOSPICE
RESIDENCE], the depart-
7 ment shall determine whether the visits [~~shall be~~ THAT ARE NOT MADE
PURSUANT TO A COMPLAINT ARE] announced or
8 unannounced [~~. , except that a complaint investigation shall not be~~
9 ~~announced and there shall be at least 1 unannounced visit other~~
10 ~~than a complaint investigation annually to a health facility or~~

1 ~~agency described in section 20106(1)(c), (h), or (j) IN ADDITION TO~~
VISITS MADE PURSUANT TO A COMPLAINT INVESTIGATION, THE DEPARTMENT
SHALL ANNUALLY MAKE AT LEAST 1 UNANNOUNCED VISIT TO EACH COUNTY
MEDICAL CARE FACILITY AND HOSPICE RESIDENCE.] BEGINNING

2 UPON THE EXPIRATION OF 1 YEAR AFTER THE EFFECTIVE DATE OF THE
3 AMENDATORY ACT THAT ADDED THIS SENTENCE, FOR PURPOSES OF A
4 SURVEY, EVALUATION, AND CONSULTATION VISIT, THE DEPARTMENT OF
5 CONSUMER AND INDUSTRY SERVICES SHALL ENSURE THAT EACH STANDARD OR
6 ANNUAL SURVEY AND REVISIT SURVEY OF A LICENSED NURSING HOME IS
7 CONDUCTED BY A SURVEY, EVALUATION, AND CONSULTATION TEAM THAT
8 INCLUDES AT LEAST 1 SURVEYOR WHO IS A LICENSED REGISTERED PROFES-
9 SIONAL NURSE AND WHO HAS AT LEAST 3 YEARS' EXPERIENCE AS A HEALTH
10 PROFESSIONAL EMPLOYEE OF A LICENSED NURSING HOME. THE LICENSED
11 REGISTERED PROFESSIONAL NURSE SURVEYOR MUST BE EMPLOYED BY OR
12 UNDER CONTRACT TO THE DEPARTMENT. A MEMBER OF A SURVEY TEAM
13 SHALL NOT BE EMPLOYED BY A LICENSED NURSING HOME OR A NURSING
14 HOME MANAGEMENT COMPANY DOING BUSINESS IN THIS STATE AT THE TIME
15 OF CONDUCTING A SURVEY UNDER THIS SECTION. THE DEPARTMENT SHALL
16 NOT ALLOW A LICENSED REGISTERED PROFESSIONAL NURSE TO BE A MEMBER
17 OF A SURVEY TEAM FOR PURPOSES OF THIS SUBSECTION IF HE OR SHE HAS
18 BEEN INVOLUNTARILY DISCHARGED FROM EMPLOYMENT WITH A NURSING HOME
19 OR OTHER LONG-TERM CARE FACILITY WITHIN THE 5 YEARS IMMEDIATELY
20 PRECEDING THE DATE THE SURVEY IS TO BE CONDUCTED. THE DEPARTMENT
21 SHALL NOT ASSIGN AN INDIVIDUAL TO BE A MEMBER OF A SURVEY TEAM
22 FOR PURPOSES OF A SURVEY, EVALUATION, OR CONSULTATION VISIT AT A
23 NURSING HOME IN WHICH HE OR SHE WAS AN EMPLOYEE WITHIN THE PRE-
24 CEDING 5 YEARS. [THE DEPARTMENT SHALL NOT USE THE REQUIREMENTS FOR
LICENSED REGISTERED PROFESSIONAL NURSE SURVEYORS IMPOSED BY THE
AMENDATORY ACT THAT ADDED THIS SENTENCE TO ADVERSELY AFFECT THE
TERMS OR CONDITIONS OF EMPLOYMENT OF A LICENSED REGISTERED
PROFESSIONAL NURSE SURVEYOR EMPLOYED BY OR UNDER CONTRACT TO THE
DEPARTMENT ON OR BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT
THAT ADDED THIS SENTENCE.]

25 (2) The department OF CONSUMER AND INDUSTRY SERVICES shall
26 make at least a biennial visit to each licensed clinical
27 laboratory, each nursing home, and each hospice residence for the

1 purposes of survey, evaluation, and consultation. [~~if a nursing~~
2 ~~home is only partially certified under title XVIII or title XIX,~~
3 ~~the department shall include all licensed parts of the nursing~~
4 ~~home in a certification survey conducted by the department.~~ AND AT
LEAST ONCE MAKE AN UNANNOUNCED VISIT TO INSPECT EACH NURSING HOME
LICENSED UNDER THIS ARTICLE, REGARDLESS OF WHETHER THE NURSING HOME
IS CERTIFIED UNDER TITLE XVIII OR TITLE XIX.] THE

5 DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES SHALL SEMIANNUALLY
6 PROVIDE FOR JOINT TRAINING WITH NURSING HOME SURVEYORS AND PRO-
7 VIDERS ON AT LEAST 1 OF THE 10 MOST FREQUENTLY ISSUED FEDERAL
8 CITATIONS IN THIS STATE DURING THE PAST CALENDAR YEAR. THE
9 DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES SHALL DEVELOP A PRO-
10 TOCOL FOR THE REVIEW OF THE COMPLAINT AND CITATION PATTERNS OF
11 NURSING HOME SURVEYORS. THE REVIEW WILL RESULT IN A REPORT PRO-
12 VIDED TO THE LEGISLATURE THAT CONTAINS, AT A MINIMUM, THE NUMBER
13 AND PATTERN OF COMPLAINTS, THE NUMBER AND PATTERN OF CITATIONS,
14 AND ANY CORRECTIVE ACTION UNDERTAKEN BY THE DEPARTMENT. A MEMBER
15 OF A DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES NURSING HOME
16 SURVEY TEAM WHO IS A HEALTH PROFESSIONAL LICENSEE UNDER
17 ARTICLE 15 SHALL EARN NOT LESS THAN 50% OF HIS OR HER REQUIRED
18 CONTINUING EDUCATION CREDITS, IF ANY, IN GERIATRIC CARE.

19 (3) The department OF CONSUMER AND INDUSTRY SERVICES shall
20 make a biennial visit to each hospital for survey and evaluation
21 for the purpose of licensure. Subject to subsection (6), the
22 department may waive the biennial visit required by this subsec-
23 tion if a hospital, as part of a timely application for license
24 renewal, requests a waiver and submits both of the following and
25 if all of the requirements of subsection (5) are met:

26 (a) Evidence that it is currently fully accredited by a body
27 with expertise in hospital accreditation whose hospital

1 accreditations are accepted by the United States department of
2 health and human services for purposes of section 1865 of PART C
3 OF title XVIII of the social security act, ~~chapter 531,~~
4 ~~49 Stat. 620,~~ 42 U.S.C. 1395bb.

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

8 (4) Except as provided in subsection (8), accreditation
9 information provided to the department OF CONSUMER AND INDUSTRY
10 SERVICES under subsection (3) is confidential, is not a public
11 record, and is not subject to court subpoena. The department
12 shall use the accreditation information only as provided in this
13 section and shall return the accreditation information to the
14 hospital within a reasonable time after a decision on the waiver
15 request is made.

16 (5) The department OF CONSUMER AND INDUSTRY SERVICES shall
17 grant a waiver under subsection (3) if the accreditation report
18 submitted under subsection (3)(b) is less than 2 years old and
19 there is no indication of substantial noncompliance with licen-
20 sure standards or of deficiencies that represent a threat to
21 public safety or patient care in the report, in complaints
22 involving the hospital, or in any other information available to
23 the department. If the accreditation report is 2 or more years
24 old, the department may do 1 of the following:

25 (a) Grant an extension of the hospital's current license
26 until the next accreditation survey is completed by the body
27 described in subsection (3)(a).

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

5 (c) Deny the waiver request and conduct the visits required
6 under subsection (3).

7 (6) The department OF CONSUMER AND INDUSTRY SERVICES shall
8 not grant more than 2 consecutive waivers under subsection (3).
9 This section does not prohibit the department from citing a vio-
10 lation of this part during a survey, conducting investigations or
11 inspections pursuant to section 20156, or conducting surveys of
12 health facilities or agencies for the purpose of complaint inves-
13 tigation or federal certification. This section does not pro-
14 hibit the state fire marshal from conducting annual surveys of
15 hospitals, nursing homes, and county medical care facilities.

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

25 (8) If the department OF CONSUMER AND INDUSTRY SERVICES
26 determines that substantial noncompliance with licensure
27 standards exists or that deficiencies that represent a threat to

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

7 (9) ~~Investigations~~ [IN ADDITION TO THE INSPECTION CONDUCTED
8 UNDER SUBSECTION (2),] THE DEPARTMENT OF CONSUMER AND INDUSTRY
9 SERVICES [OR] A LOCAL HEALTH DEPARTMENT SHALL CONDUCT
10 INVESTIGATIONS or inspections, other than inspections of finan-
11 cial records, of a ~~[health facility or agency described in section~~
12 ~~20106(1)(c), (f), (h), or (j)]~~ COUNTY MEDICAL CARE FACILITY, A HOME
13 FOR THE AGED, A NURSING HOME, OR A HOSPICE RESIDENCE] ~~shall be~~
14 ~~conducted~~ without prior
15 notice to the health facility or agency. An employee of a state
16 agency charged with [INVESTIGATING OR] inspecting the health
17 facility or agency or
18 an employee of a local health department who directly or indi-
19 rectly gives prior notice regarding an [INVESTIGATION OR AN]
20 inspection, other than an
21 inspection of the financial records, to the health facility or
22 agency or to an employee of the health facility or agency, is
23 guilty of a misdemeanor. Consultation visits that are not for
24 the purpose of annual or follow-up inspection or survey may be
25 announced.

26 (10) The department OF CONSUMER AND INDUSTRY SERVICES shall
27 maintain a record indicating whether ~~[visits are~~ A VISIT AND
INSPECTION IS] announced or
unannounced. Information gathered at ~~[all visits,~~ EACH VISIT AND
INSPECTION, WHETHER] announced or
unannounced, shall be taken into account in licensure decisions.

28 (11) The department OF CONSUMER AND INDUSTRY SERVICES shall
29 require periodic reports and a health facility or agency shall
30 give the department access to books, records, and other documents

1 maintained by a health facility or agency to the extent necessary
2 to carry out the purpose of this article and the rules promul-
3 gated under this article. The department shall respect the con-
4 fidentiality of a patient's clinical record and shall not divulge
5 or disclose the contents of the records in a manner that identi-
6 fies an individual except under court order. The department may
7 copy health facility or agency records as required to document
8 findings.

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

1 described in this subsection shall be agreed upon by both the
2 licensee and the department.

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

10 (14) THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES SHALL
11 REPORT TO THE APPROPRIATIONS SUBCOMMITTEES, THE SENATE AND HOUSE
12 OF REPRESENTATIVES STANDING COMMITTEES HAVING JURISDICTION OVER
13 ISSUES INVOLVING SENIOR CITIZENS, AND THE FISCAL AGENCIES ON
14 MARCH 1 OF EACH YEAR ON THE INITIAL AND FOLLOW-UP SURVEYS CON-
15 DUCTED ON ALL NURSING HOMES IN THIS STATE. THE REPORT SHALL
16 INCLUDE ALL OF THE FOLLOWING INFORMATION:

17 (A) THE NUMBER OF SURVEYS CONDUCTED.

18 (B) THE NUMBER REQUIRING FOLLOW-UP SURVEYS.

19 (C) THE NUMBER REFERRED TO THE MICHIGAN PUBLIC HEALTH INSTI-
20 TUTE FOR REMEDIATION.

21 (D) THE NUMBER OF CITATIONS PER HOME.

22 (E) THE NUMBER OF NIGHT AND WEEKEND COMPLAINTS FILED.

23 (F) THE NUMBER OF NIGHT AND WEEKEND RESPONSES TO COMPLAINTS
24 CONDUCTED BY THE DEPARTMENT.

25 (G) THE AVERAGE LENGTH OF TIME FOR THE DEPARTMENT TO RESPOND
26 TO A COMPLAINT FILED AGAINST A NURSING HOME.

1 (H) THE NUMBER AND PERCENTAGE OF CITATIONS APPEALED.

2 (I) THE NUMBER AND PERCENTAGE OF CITATIONS OVERTURNED AND/OR
3 MODIFIED.

4 (15) THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES SHALL
5 REPORT ANNUALLY TO THE STANDING COMMITTEES ON APPROPRIATIONS AND
6 THE STANDING COMMITTEES HAVING JURISDICTION OVER ISSUES INVOLVING
7 SENIOR CITIZENS IN THE SENATE AND THE HOUSE OF REPRESENTATIVES ON
8 THE PERCENTAGE OF NURSING HOME CITATIONS THAT ARE APPEALED AND
9 THE PERCENTAGE OF NURSING HOME CITATIONS THAT ARE APPEALED AND
10 AMENDED THROUGH THE INFORMAL DEFICIENCY DISPUTE RESOLUTION
11 PROCESS.

12 (16) THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES IN
13 CONSULTATION WITH NURSING HOME PROVIDER GROUPS, THE DEPARTMENT OF
14 COMMUNITY HEALTH, THE STATE LONG-TERM CARE OMBUDSMAN, AND THE
15 FEDERAL HEALTH CARE FINANCE ADMINISTRATION SHALL CLARIFY THE FOL-
16 LOWING TERMS AS THOSE TERMS ARE USED IN TITLE XVIII AND TITLE XIX
17 AND APPLIED BY THE DEPARTMENT TO PROVIDE MORE CONSISTENT REGULA-
18 TION OF NURSING HOMES IN MICHIGAN:

19 (A) IMMEDIATE JEOPARDY.

20 (B) HARM.

21 (C) POTENTIAL HARM.

22 (D) AVOIDABLE.

23 (E) UNAVOIDABLE.

24 (17) THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES SHALL
25 INSTRUCT AND TRAIN THE SURVEYORS IN THE USE OF THE CLARIFICATIONS
26 DESCRIBED IN SUBSECTION (16) IN CITING DEFICIENCIES.

1 (18) ~~(14)~~ As used in this section:

2 (a) "Title XVIII" means title XVIII of the social security
3 act, chapter 531, 49 Stat. 620, 42 U.S.C. 1395 to 1395b, 1395b-2,
4 1395b-6 TO 1395b-7, 1395c to 1395i, 1395i-2 to ~~1395i-4~~ 1395i-5,
5 1395j to 1395t, 1395u to ~~1395w-2~~ 1395w, 1395w-2 TO 1395w-4, ~~to~~
6 ~~1395yy, and 1395bbb to 1395ccc~~ 1395w-21 TO 1395w-28, 1395x TO
7 1395yy, AND 1395bbb TO 1395ggg.

8 (b) "Title XIX" means title XIX of the social security act,
9 chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1 TO
10 1396r-6, AND 1396r-8 TO 1396v.

[(19) A NURSING HOME SHALL POST THE EXECUTIVE SUMMARY OF THE
NURSING HOME'S SURVEY IN A CONSPICUOUS PLACE WITHIN THE NURSING HOME
FOR PUBLIC REVIEW.]