



HOUSE BILL No. 5460

February 29, 2000, Introduced by Reps. Green, Scranton, Julian, Gilbert, Rocca, Ruth Johnson, Caul, Wojno, Spade, Bovin, Voorhees, Ehardt, Toy, Law, Geiger, Gosselin, Mortimer, Richner, Jellema, Van Woerkom, Schermesser, Vander Roest, Faunce, Kowall, DeWeese, Tabor, Neumann, Lockwood, Jansen and Cassis and referred to the Committee on Senior Health, Security and Retirement.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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. Except for a health facility or agency
6 described in section 20106(1)(c), (f), (h), or (j), the depart-
7 ment shall determine whether the visits shall be 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). 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 SHALL
5 ENSURE THAT EACH STANDARD OR ANNUAL SURVEY AND REVISIT SURVEY OF
6 A LICENSED NURSING HOME IS CONDUCTED BY A SURVEY, EVALUATION, AND
7 CONSULTATION TEAM THAT INCLUDES AT LEAST 1 SURVEYOR WHO IS A
8 LICENSED REGISTERED PROFESSIONAL NURSE AND WHO HAS AT LEAST 3
9 YEARS' EXPERIENCE AS A HEALTH PROFESSIONAL EMPLOYEE OF A LICENSED
10 NURSING HOME. THE LICENSED REGISTERED PROFESSIONAL NURSE SUR-
11 VEYOR MUST BE EMPLOYED BY OR UNDER CONTRACT TO THE DEPARTMENT. A
12 MEMBER OF A SURVEY TEAM SHALL NOT BE EMPLOYED BY A LICENSED NURS-
13 ING HOME OR A NURSING HOME MANAGEMENT COMPANY DOING BUSINESS IN
14 THIS STATE AT THE TIME OF CONDUCTING A SURVEY UNDER THIS
15 SECTION. THE DEPARTMENT SHALL NOT ALLOW A LICENSED REGISTERED
16 PROFESSIONAL NURSE TO BE A MEMBER OF A SURVEY TEAM FOR PURPOSES
17 OF THIS SUBSECTION IF HE OR SHE HAS BEEN INVOLUNTARILY DISCHARGED
18 FROM EMPLOYMENT WITH A NURSING HOME OR OTHER LONG-TERM CARE
19 FACILITY WITHIN THE 5 YEARS IMMEDIATELY PRECEDING THE DATE THE
20 SURVEY IS TO BE CONDUCTED.

21 (2) The department OF CONSUMER AND INDUSTRY SERVICES shall
22 make at least a biennial visit to each licensed clinical labora-
23 tory, each nursing home, and each hospice residence for the pur-
24 poses of survey, evaluation, and consultation. If a nursing home
25 is only partially certified under title XVIII or title XIX, the
26 department shall include all licensed parts of the nursing home
27 in a certification survey conducted by the department. THE

1 DEPARTMENT SHALL HAVE ITS NURSING HOME SURVEYORS PARTICIPATE
2 BIENNIALLY IN JOINT TRAINING WITH PROVIDERS ON THE 10 MOST FRE-
3 QUENTLY ISSUED FEDERAL CITATIONS IN THIS STATE. A NURSING HOME
4 SURVEYOR WHO HAS MORE THAN 15% OF THE CITATIONS ISSUED ON HIS OR
5 HER RECOMMENDATION AMENDED IN A QUARTER BY THE INFORMAL DEFICI-
6 CIENCY DISPUTE RESOLUTION PROCESS SHALL PARTICIPATE IN TARGETED
7 TRAINING DESIGNATED BY THE DEPARTMENT. A MEMBER OF A DEPARTMENT
8 NURSING HOME SURVEY TEAM WHO IS A HEALTH PROFESSIONAL LICENSEE
9 UNDER ARTICLE 15 SHALL EARN NOT LESS THAN 50% OF HIS OR HER
10 REQUIRED CONTINUING EDUCATION CREDITS, IF ANY, IN GERIATRIC CARE.

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

18 (a) Evidence that it is currently fully accredited by a body
19 with expertise in hospital accreditation whose hospital accredit-
20 ations are accepted by the United States department of health and
21 human services for purposes of section 1865 of PART C OF title
22 XVIII of the social security act, ~~chapter 531, 49 Stat. 620,~~
23 42 U.S.C. 1395bb.

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

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

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

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

21 (b) Grant a waiver under subsection (3) based on the accred-
22 itation report that is 2 or more years old, on condition that the
23 hospital promptly submit the next accreditation report to the
24 department.

25 (c) Deny the waiver request and conduct the visits required
26 under subsection (3).

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

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

19 (8) If the department OF CONSUMER AND INDUSTRY SERVICES
20 determines that substantial noncompliance with licensure stan-
21 dards exists or that deficiencies that represent a threat to
22 public safety or patient care exist based on a review of an
23 accreditation report submitted pursuant to subsection (3)(b), the
24 department shall prepare a written summary of the substantial
25 noncompliance or deficiencies and the hospital's response to the
26 department's determination. The department's written summary and
27 the hospital's response are public documents.

1 (9) ~~Investigations~~ THE DEPARTMENT AND A LOCAL HEALTH
2 DEPARTMENT SHALL CONDUCT INVESTIGATIONS or inspections, other
3 than inspections of financial records, of a health facility or
4 agency described in section 20106(1)(c), (f), (h), or (j) ~~shall~~
5 ~~be conducted~~ without prior notice to the health facility or
6 agency. An employee of a state agency charged with inspecting
7 the health facility or agency or an employee of a local health
8 department who directly or indirectly gives prior notice regard-
9 ing an inspection, other than an inspection of the financial
10 records, to the health facility or agency or to an employee of
11 the health facility or agency, is guilty of a misdemeanor.
12 Consultation visits that are not for the purpose of annual or
13 follow-up inspection or survey may be announced.

14 (10) The department OF CONSUMER AND INDUSTRY SERVICES shall
15 maintain a record indicating whether visits are announced or
16 unannounced. Information gathered at all visits, announced or
17 unannounced, shall be taken into account in licensure decisions.

18 (11) The department OF CONSUMER AND INDUSTRY SERVICES shall
19 require periodic reports and a health facility or agency shall
20 give the department access to books, records, and other documents
21 maintained by a health facility or agency to the extent necessary
22 to carry out the purpose of this article and the rules promul-
23 gated under this article. The department shall respect the con-
24 fidentiality of a patient's clinical record and shall not divulge
25 or disclose the contents of the records in a manner that identi-
26 fies an individual except under court order. The department may

1 copy health facility or agency records as required to document
2 findings.

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

23 (13) If, upon investigation, the department OF CONSUMER AND
24 INDUSTRY SERVICES or a state agency determines that an individual
25 licensed to practice a profession in this state has violated the
26 applicable licensure statute or the rules promulgated under that
27 statute, the department, state agency, or local health department

1 shall forward the evidence it has to the appropriate licensing
2 agency.

3 (14) THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES SHALL
4 REPORT QUARTERLY TO THE STANDING COMMITTEES ON APPROPRIATIONS IN
5 THE SENATE AND THE HOUSE OF REPRESENTATIVES ON ALL OF THE
6 FOLLOWING:

7 (A) THE PERCENTAGE OF STATEMENT OF DEFICIENCY FORMS RETURNED
8 TO NURSING HOMES WITHIN 10 DAYS AFTER A SURVEY, EVALUATION, AND
9 CONSULTATION VISIT CONDUCTED UNDER SUBSECTION (2).

10 (B) THE PERCENTAGE OF INFORMAL DEFICIENCY DISPUTE RESOLUTION
11 FORMS COMPLETED BY NURSING HOMES WITHIN 20 DAYS AFTER RECEIVING A
12 STATEMENT OF DEFICIENCY AS DESCRIBED IN SUBDIVISION (A).

13 (C) THE PERCENTAGE OF RETURN VISITATIONS TO NURSING HOMES BY
14 A SURVEY TEAM WITHIN 60 DAYS AFTER COMPLETING AN INFORMAL DEFICI-
15 CIENCY DISPUTE RESOLUTION FORM AS DESCRIBED IN SUBDIVISION (B).

16 (D) THE PERCENTAGE OF TIMES NURSE AIDE TRAINING IS REIN-
17 STATED WITHIN 14 DAYS AFTER THE DEPARTMENT RECEIVES FEDERAL
18 APPROVAL TO REINSTATE.

19 (15) THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES SHALL
20 REPORT ANNUALLY TO THE STANDING COMMITTEES ON APPROPRIATIONS IN
21 THE SENATE AND THE HOUSE OF REPRESENTATIVES ON THE PERCENTAGE OF
22 NURSING HOME CITATIONS THAT ARE APPEALED AND THE PERCENTAGE OF
23 NURSING HOME CITATIONS THAT ARE APPEALED AND AMENDED THROUGH THE
24 INFORMAL DEFICIENCY DISPUTE RESOLUTION PROCESS.

25 (16) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDA-
26 TORY ACT THAT ADDED THIS SUBSECTION, THE DEPARTMENT OF CONSUMER
27 AND INDUSTRY SERVICES, IN CONSULTATION WITH NURSING HOME PROVIDER

1 GROUPS, SHALL CLARIFY AND DEFINE THE FOLLOWING TERMS AS THOSE
 2 TERMS ARE USED IN TITLE XVIII AND TITLE XIX AND APPLIED BY THE
 3 DEPARTMENT:

4 (A) IMMEDIATE JEOPARDY.

5 (B) HARM.

6 (C) POTENTIAL HARM.

7 (D) AVOIDABLE.

8 (E) UNAVOIDABLE.

9 (17) ~~(14)~~ As used in this section:

10 (a) "Title XVIII" means title XVIII of the social security
 11 act, chapter 531, 49 Stat. 620, 42 U.S.C. 1395 to 1395b, 1395b-2,
 12 1395b-6 TO 1395b-7, 1395c to 1395i, 1395i-2 to ~~1395i-4~~ 1395i-5,
 13 1395j to 1395t, 1395u to ~~1395w-2~~ 1395w, 1395w-2 TO 1395w-4, ~~to~~
 14 ~~1395yy, and 1395bbb to 1395ccc~~ 1395w-21 TO 1395w-28, 1395x TO
 15 1395yy, AND 1395bbb TO 1395ggg.

16 (b) "Title XIX" means title XIX of the social security act,
 17 chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1 TO
 18 1396r-6, AND 1396r-8 TO 1396v.