

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1436**

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 22203, 22205, 22207, 22209, 22211, 22213, 22215, 22221, 22226, 22230, 22231, 22235, 22239, 22241, 22247, 22255, and 22260 (MCL 333.22203, 333.22205, 333.22207, 333.22209, 333.22211, 333.22213, 333.22215, 333.22221, 333.22226, 333.22230, 333.22231, 333.22235, 333.22239, 333.22241, 333.22247, 333.22255, and 333.22260), sections 22203, 22207, 22209, 22213, 22215, 22221, 22231, 22239, 22241, 22247, and 22260 as amended by 1993 PA 88, section 22205 as amended by 2000 PA 253, sections 22211, 22230, 22235, and 22255 as added by 1988 PA 332, and section 22226 as added by 1988 PA 331, and by adding sections 22219 and 22224a; and to repeal acts and parts of acts.

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

2

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 22203. (1) "Addition" means adding patient rooms,
2 beds, and ancillary service areas, including, but not limited to,
3 procedure rooms or fixed equipment, surgical operating rooms,
4 therapy rooms or fixed equipment, or other accommodations to a
5 health facility.

6 (2) "Capital expenditure" means an expenditure for a single
7 project, including cost of construction, engineering, and equip-
8 ment that under generally accepted accounting principles is not
9 properly chargeable as an expense of operation. Capital expendi-
10 ture includes a lease or comparable arrangement by or on behalf
11 of a health facility ~~by which a person obtains~~ TO OBTAIN a
12 health facility, ~~or~~ licensed part of a health facility, or
13 equipment for a health facility, IF the ~~expenditure for which~~
14 ACTUAL PURCHASE OF A HEALTH FACILITY, LICENSED PART OF A HEALTH
15 FACILITY, OR EQUIPMENT FOR A HEALTH FACILITY would have been con-
16 sidered a capital expenditure under this part. ~~if the person had~~
17 ~~acquired it by purchase.~~ Capital expenditure includes the cost
18 of studies, surveys, designs, plans, working drawings, specifica-
19 tions, and other activities essential to the acquisition,
20 improvement, expansion, addition, conversion, modernization, new
21 construction, or replacement of physical plant and equipment.

22 (3) "Certificate of need" means a certificate issued
23 ~~pursuant to~~ UNDER this part authorizing a new health facility,
24 a change in bed capacity, the initiation, replacement, or
25 expansion of a covered clinical service, or a covered capital
26 expenditure that is issued in accordance with this part.

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

3

1 (4) "Certificate of need review standard" or "review
2 standard" means a standard approved by the commission. ~~or the~~
3 ~~statewide health coordinating council under section 22215.~~

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

6 (a) An increase in licensed hospital beds.

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

9 (c) An increase in licensed psychiatric beds.

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

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

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

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

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

25 (9) "Covered capital expenditure" means a capital expendi-
26 ture of ~~-\$2,000,000.00~~ \$2,500,000.00 or more, as adjusted
27 ANNUALLY by the department under section 22221(g), by a person

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

4

1 for a health facility for a single project, excluding the cost of
2 nonfixed medical equipment, that includes or involves the acqui-
3 sition, improvement, expansion, addition, conversion, moderniza-
4 tion, new construction, or replacement of a clinical service
5 area. ~~or a capital expenditure of \$3,000,000.00 or more, as~~
6 ~~adjusted by the department under section 22221(g), by a person~~
7 ~~for a health facility for a single project that involves the~~
8 ~~acquisition, improvement, expansion, addition, conversion, mod-~~
9 ~~ernization, new construction, or replacement of nonclinical serv-~~
10 ~~ice areas only.~~

11 (10) "Covered clinical service", except as modified by the
12 commission ~~pursuant to~~ UNDER section 22215, ~~after the effec-~~
13 ~~tive date of the 1993 amendatory act that amended this~~
14 ~~subsection,~~ means 1 or more of the following:

15 (a) Initiation or expansion of 1 or more of the following
16 services:

17 (i) Neonatal intensive care services or special newborn
18 nursing services.

19 (ii) Open heart surgery.

20 (iii) Extrarenal organ transplantation.

21 (b) Initiation, replacement, or expansion of 1 or more of
22 the following services:

23 (i) Extracorporeal shock wave lithotripsy.

24 (ii) Megavoltage radiation therapy.

25 (iii) Positron emission tomography.

26 (iv) Surgical services provided in a freestanding surgical
27 outpatient facility, an ambulatory surgery center certified under

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

5

1 title XVIII, or a surgical department of a hospital licensed
2 under part 215 and offering inpatient or outpatient surgical
3 services.

4 (v) Cardiac catheterization.

5 (vi) Fixed and mobile magnetic resonance imager services.

6 (vii) Fixed and mobile computerized tomography scanner
7 services.

8 (viii) Air ambulance services.

9 ~~(c) Initiation, replacement, or expansion of a partial hos-~~
10 ~~pitalization psychiatric program service.~~

11 (C) ~~(d)~~ Initiation or expansion of a specialized psychiat-
12 ric program for children and adolescent patients utilizing
13 licensed psychiatric beds.

14 (D) ~~(e)~~ Initiation, replacement, or expansion of a service
15 not listed in this subsection, but designated as a covered clini-
16 cal service by the commission under section 22215(1)(a).

17 (11) "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 psychiatric hospital ~~—~~ OR psychiatric unit ~~—~~ or
26 ~~partial hospitalization psychiatric program~~ licensed under the
27 mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

6

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

3 (d) A freestanding surgical outpatient facility licensed
4 under part 208.

5 (e) A health maintenance organization issued a license or
6 certificate of authority in this state.

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

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

12 (b) A health facility or agency located in a correctional
13 institution.

14 (c) A veterans facility operated by the state or federal
15 government.

16 (d) A facility owned and operated by the department of
17 ~~mental~~ COMMUNITY health.

18 (3) "HEALTH PLANNER" MEANS AN INDIVIDUAL WHO HAS EXPERIENCE
19 IN QUANTITATIVE AND QUALITATIVE RESEARCH AND DATA ANALYSIS AND IS
20 RESPONSIBLE FOR LONG-RANGE PLANNING AND IMPLEMENTATION OF POLI-
21 CIES, RULES, AND REGULATIONS MANDATED BY STATE AND FEDERAL GOV-
22 ERNMENTAL AGENCIES INCLUDING, BUT NOT LIMITED TO, CERTIFICATE OF
23 NEED PROCEDURES.

24 (4) ~~(3)~~ "Initiate" means the ~~initiation~~ OFFERING of a
25 covered clinical service ~~by a person if the covered clinical~~
26 ~~service~~ THAT has not been offered in compliance with this part
27 or former part 221 on a regular basis ~~by that person~~ at ~~the~~

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

7

1 THAT location ~~where the covered clinical service is to be~~
2 ~~offered~~ within the 12-month period immediately preceding the
3 date the covered clinical service will be offered.

4 (5) ~~(4)~~ "Medical equipment" means a single equipment com-
5 ponent or a related system of components that is used for clini-
6 cal purposes.

7 Sec. 22207. (1) "Medicaid" means the program for medical
8 assistance administered by the department of ~~social services~~
9 COMMUNITY HEALTH under the social welfare act, ~~Act No. 280 of~~
10 ~~the Public Acts of 1939, being sections 400.1 to 400.119b of the~~
11 ~~Michigan Compiled Laws~~ 1939 PA 280, MCL 400.1 TO 400.119B.

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 facil-
21 ity 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) "Person" means a person as defined in section 1106 or a
25 governmental entity.

26 (5) "Planning area" means the area defined in a certificate
27 of need review standard for determining the need for, and the

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

8

1 resource allocation of, a specific health facility, service, or
2 equipment. Planning area includes, but is not limited to, the
3 state, a health facility service area, or a health service area
4 or subarea within the state.

5 (6) "Proposed project" means a proposal to acquire an exist-
6 ing health facility or begin operation of a new health facility,
7 make a change in bed capacity, initiate, replace, or expand a
8 covered clinical service, or make a covered capital expenditure.

9 (7) "Rural county" means a county not located in a metropol-
10 itan ~~area as that term is~~ STATISTICAL AREA OR MICROPOLITAN STA-
11 TISTICAL AREAS AS THOSE TERMS ARE defined ~~pursuant to~~ UNDER the
12 ~~"revised standards for defining metropolitan areas in the~~
13 ~~1990's"~~ "STANDARDS FOR DEFINING METROPOLITAN AND MICROPOLITAN
14 STATISTICAL AREAS" by the statistical policy office of the office
15 of information and regulatory affairs of the United States office
16 of management and budget, ~~55 F.R. p. 12154 (March 30, 1990)~~ 65
17 F.R. P. 82238 (DECEMBER 27, 2000).

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

23 (8) ~~(9)~~ "Stipulation" means a requirement that is germane
24 to the proposed project and has been agreed to by an applicant as
25 a condition of certificate of need approval.

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

9

1 Sec. 22209. (1) Except as otherwise provided in this part,
2 a person shall not do any of the following without first
3 obtaining a certificate of need:

4 (a) Acquire an existing health facility or begin operation
5 of a health facility at a site that is not currently licensed for
6 that type of health facility.

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

8 (c) Initiate, replace, or expand a covered clinical
9 service.

10 (d) Make a covered capital expenditure.

11 (2) A certificate of need is not required for a reduction in
12 licensed bed capacity or services at a licensed site.

13 (3) IF THE RELOCATION DOES NOT RESULT IN AN INCREASE OF
14 LICENSED BEDS WITHIN THAT HEALTH SERVICE AREA, A CERTIFICATE OF
15 NEED IS NOT REQUIRED FOR ANY OF THE FOLLOWING:

16 (A) THE PHYSICAL RELOCATION OF LICENSED BEDS FROM A NURSING
17 HOME LICENSED UNDER PART 217 TO ANOTHER NURSING HOME LICENSED
18 UNDER PART 217 IF THAT NURSING HOME IS LOCATED WITHIN A 3-MILE
19 RADIUS OF THE NURSING HOME SEEKING TO TRANSFER THE BEDS.

20 (B) THE PHYSICAL RELOCATION OF LICENSED BEDS FROM A HOSPITAL
21 SITE LICENSED UNDER PART 215 TO ANOTHER HOSPITAL SITE LICENSED
22 UNDER THE SAME LICENSE AS THE HOSPITAL SEEKING TO TRANSFER THE
23 BEDS IF BOTH HOSPITALS ARE LOCATED WITHIN A 2-MILE RADIUS OF EACH
24 OTHER.

25 (C) SUBJECT TO SUBSECTIONS (7) AND (8), THE PHYSICAL RELOCA-
26 TION OF LICENSED BEDS FROM A HOSPITAL LICENSED UNDER PART 215 TO
27 A FREESTANDING SURGICAL OUTPATIENT FACILITY LICENSED UNDER PART

SB1436, As Passed House, December 12, 2002

Sub. SB 1436 (H-7) as amended December 12, 2002 10

1 208 IF THAT FREESTANDING SURGICAL OUTPATIENT FACILITY SATISFIES
2 EACH OF THE FOLLOWING CRITERIA ON [DECEMBER 2, 2002.
3]

4 (i) IS OWNED BY[, UNDER COMMON CONTROL OF, OR HAS AS A COMMON
PARENT] THE HOSPITAL SEEKING TO

5 RELOCATE ITS LICENSED BEDS.

6 (ii) WAS LICENSED PRIOR TO JANUARY 1, 2002.

7 (iii) PROVIDES 24-HOUR EMERGENCY CARE SERVICES AT THAT
8 SITE.

9 (iv) PROVIDES AT LEAST 4 DIFFERENT COVERED CLINICAL SERVICES
10 AT THAT SITE.

11 (D) SUBJECT TO SUBSECTIONS (7) AND (8), THE PHYSICAL RELOCA-
12 TION OF LICENSED BEDS FROM A HOSPITAL LICENSED UNDER PART 215 TO
13 ANOTHER [SITE] WITHIN THE SAME HEALTH SERVICE AREA IF THE SITE
14 RECEIVING THE LICENSED BEDS IS OWNED BY [UNDER COMMON CONTROL OF, OR HAS
AS A COMMON PARENT] THE
15 HOSPITAL SEEKING TO RELOCATE ITS LICENSED BEDS.

[(E) THE PHYSICAL RELOCATION OF LICENSED BEDS FROM A HOSPITAL
LICENSED UNDER PART 215 TO ANOTHER HOSPITAL LICENSED UNDER PART 215 AND
LOCATED WITHIN THE SAME HOSPITAL SUBAREA IF THE SITE RECEIVING THE
LICENSED BED IS OWNED BY, UNDER COMMON CONTROL OF, OR HAS AS A COMMON
PARENT THE HOSPITAL SEEKING TO RELOCATE ITS LICENSED BEDS. A HOSPITAL
SHALL TRANSFER BEDS UNDER THIS SUBDIVISION NO MORE THAT 1 TIME PER
FACILITY AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
SUBSECTION.]

16 (4) SUBJECT TO SUBSECTION (5), A HOSPITAL LICENSED UNDER
17 PART 215 IS NOT REQUIRED TO OBTAIN A CERTIFICATE OF NEED TO PRO-
18 VIDE 1 OR MORE OF THE COVERED CLINICAL SERVICES LISTED IN SECTION
19 22203(10) IN A FEDERAL VETERANS HEALTH CARE FACILITY OR TO USE
20 LONG-TERM CARE UNIT BEDS OR ACUTE CARE BEDS THAT ARE OWNED AND
21 LOCATED IN A FEDERAL VETERANS HEALTH CARE FACILITY IF THE HOSPI-
22 TAL SATISFIES EACH OF THE FOLLOWING CRITERIA:

23 (A) THE HOSPITAL HAS AN ACTIVE AFFILIATION OR SHARING AGREE-
24 MENT WITH THE FEDERAL VETERANS HEALTH CARE FACILITY.

25 (B) THE HOSPITAL HAS PHYSICIANS WHO HAVE FACULTY APPOINT-
26 MENTS AT THE FEDERAL VETERANS HEALTH CARE FACILITY OR HAS AN

SB1436, As Passed House, December 12, 2002

27 AFFILIATION WITH A MEDICAL SCHOOL THAT IS AFFILIATED WITH A
S01653'01 ** (H-7)

SB1436, As Passed House, December 12, 2002

Sub. SB 1436 (H-7) as amended December 12, 2002 11

1 FEDERAL VETERANS HEALTH CARE FACILITY AND HAS PHYSICIANS WHO HAVE
2 FACULTY APPOINTMENTS AT THE FEDERAL VETERANS HEALTH CARE
3 FACILITY.

4 (C) THE HOSPITAL HAS AN ACTIVE GRANT OR AGREEMENT WITH THE
5 STATE OR FEDERAL GOVERNMENT TO PROVIDE 1 OR MORE OF THE FOLLOWING
6 FUNCTIONS RELATING TO BIOTERRORISM:

7 (i) EDUCATION.

8 (ii) PATIENT CARE.

9 (iii) RESEARCH.

10 (iv) TRAINING.

11 (5) A HOSPITAL THAT PROVIDES 1 OR MORE COVERED CLINICAL
12 SERVICES IN A FEDERAL VETERANS HEALTH CARE FACILITY OR USES
13 LONG-TERM CARE UNIT BEDS OR ACUTE CARE BEDS LOCATED IN A FEDERAL
14 VETERANS HEALTH CARE FACILITY UNDER SUBSECTION (4) MAY NOT UTI-
15 LIZE PROCEDURES PERFORMED AT THE FEDERAL VETERANS HEALTH CARE
16 FACILITY TO DEMONSTRATE NEED OR TO SATISFY A CERTIFICATE OF NEED
17 REVIEW STANDARD [UNLESS THE FEDERAL VETERANS HEALTH CARE FACILITY HAS
OBTAINED A CERTIFICATE OF NEED FOR THE COVERED CLINICAL SERVICE PROVIDED
AT THE FEDERAL VETERANS HEALTH CARE FACILITY UNDER THIS SECTION].

18 (6) IF A HOSPITAL LICENSED UNDER PART 215 HAD FEWER THAN 70
19 LICENSED BEDS ON DECEMBER 1, 2002, THAT HOSPITAL IS NOT REQUIRED
20 TO SATISFY THE MINIMUM VOLUME REQUIREMENTS UNDER THE CERTIFICATE
21 OF NEED REVIEW STANDARDS FOR ITS EXISTING OPERATING ROOMS AS LONG
22 AS THOSE OPERATING ROOMS CONTINUE TO EXIST AT THAT LICENSED HOS-
23 PITAL SITE.

24 (7) BEFORE RELOCATING BEDS UNDER SUBSECTION (3)(C) [],
25 THE HOSPITAL SEEKING TO RELOCATE ITS BEDS SHALL REQUEST A CERTI-
26 FICATION FROM THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
27 VERIFYING THE NUMBER OF LICENSED BEDS THAT WERE STAFFED AND

SB1436, As Passed House, December 12, 2002

Sub. SB 1436 (H-7) as amended December 12, 2002 12

1 AVAILABLE FOR [PATIENT CARE AT] THAT HOSPITAL AS OF DECEMBER 2, 2002. A
HOSPITAL

2 SHALL TRANSFER NO MORE THAN 35% OF ITS LICENSED BEDS TO ANOTHER
3 HOSPITAL OR FREESTANDING SURGICAL OUTPATIENT FACILITY UNDER SUB-
4 SECTION (3)(C) OR (D) NOT MORE THAN 1 TIME AFTER THE EFFECTIVE
5 DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION [.

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7
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9]

10 (8) THE LICENSED BEDS RELOCATED UNDER SUBSECTION (3)(C) OR
11 (D) SHALL NOT BE INCLUDED AS NEW BEDS IN A HOSPITAL OR AS A NEW
12 HOSPITAL UNDER THE CERTIFICATE OF NEED REVIEW STANDARDS FOR HOS-
13 PITAL BEDS. ONE OF EVERY 2 BEDS TRANSFERRED UNDER SUBSECTION
14 (3)(C) [] UP TO A MAXIMUM OF 100 SHALL BE BEDS THAT [WERE]
15 STAFFED AND AVAILABLE FOR PATIENT CARE [AS OF DECEMBER 2, 2002]. A
HOSPITAL RELOCATING

16 BEDS UNDER SUBSECTION (3)(C) [] SHALL NOT REACTIVATE LICENSED
17 BEDS WITHIN THAT HOSPITAL THAT WERE [] STAFFED OR AVAILABLE FOR
18 PATIENT CARE AS OF DECEMBER 2, 2002 FOR A PERIOD OF 5 YEARS AFTER
19 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
20 SUBSECTION.

21 (9) ~~(3)~~ An applicant seeking a certificate of need for the
22 acquisition of an existing health facility may file a single,
23 consolidated application for the certificate of need if the
24 project results in the acquisition of an existing health facility
25 but does not result in an increase or relocation of licensed beds
26 or the initiation, expansion, or replacement of a covered
27 clinical service. Except as otherwise provided in this

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

13

1 subsection, a person acquiring an existing health facility is
2 subject to the applicable certificate of need review standards in
3 effect on the date of the transfer for the covered clinical serv-
4 ices provided by the acquired health facility. The department
5 may except 1 or more of the covered clinical services listed in
6 section 22203(10)(b), except the covered clinical service listed
7 in section 22203(10)(b)(iv), from the minimum volume requirements
8 in the applicable certificate of need review standards in effect
9 on the date of the transfer, if the equipment used in the covered
10 clinical service is unable to meet the minimum volume require-
11 ments due to the technological incapacity of the equipment. A
12 covered clinical service excepted by the department under this
13 subsection is subject to all the other provisions in the applica-
14 ble certificate of need review standards in effect on the date of
15 the transfer, except minimum volume requirements.

16 ~~(4) The center for rural health created in section 2612~~
17 ~~shall designate a certificate of need ombudsman to provide tech-~~
18 ~~nical assistance and consultation to hospitals and communities~~
19 ~~located in rural counties regarding certificate of need proposals~~
20 ~~and applications under this part. The ombudsman shall also act~~
21 ~~as an advocate for health concerns of rural counties in the~~
22 ~~development of certificate of need review standards under this~~
23 ~~part.~~

24 (10) AN APPLICANT SEEKING A CERTIFICATE OF NEED FOR THE
25 RELOCATION OR REPLACEMENT OF AN EXISTING HEALTH FACILITY MAY FILE
26 A SINGLE, CONSOLIDATED APPLICATION FOR THE CERTIFICATE OF NEED IF
27 THE PROJECT DOES NOT RESULT IN AN INCREASE OF LICENSED BEDS OR

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

14

1 THE INITIATION, EXPANSION, OR REPLACEMENT OF A COVERED CLINICAL
2 SERVICE. A PERSON RELOCATING OR REPLACING AN EXISTING HEALTH
3 FACILITY IS SUBJECT TO THE APPLICABLE CERTIFICATE OF NEED REVIEW
4 STANDARDS IN EFFECT ON THE DATE OF THE RELOCATION OR REPLACEMENT
5 OF THE HEALTH FACILITY.

6 (11) AS USED IN THIS SECTION, "SHARING AGREEMENT" MEANS A
7 WRITTEN AGREEMENT BETWEEN A FEDERAL VETERANS HEALTH CARE FACILITY
8 AND A HOSPITAL LICENSED UNDER PART 215 FOR THE USE OF THE FEDERAL
9 VETERANS HEALTH CARE FACILITY'S BEDS OR EQUIPMENT, OR BOTH, TO
10 PROVIDE COVERED CLINICAL SERVICES.

11 Sec. 22211. (1) The certificate of need commission is cre-
12 ated in the department. ~~The commission shall be appointed~~
13 ~~within 3 months after the effective date of this part.~~ The com-
14 mission shall consist of ~~5~~ 11 members appointed by the governor
15 with the advice and consent of the senate. ~~Three appointees~~
16 ~~shall be members of a major political party, and 2 appointees~~
17 ~~shall be members of another major political party.~~ THE GOVERNOR
18 SHALL NOT APPOINT MORE THAN 6 MEMBERS FROM THE SAME POLITICAL
19 PARTY. THE MEMBERS CONSTITUTING THE COMMISSION ON THE DAY BEFORE
20 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
21 SUBDIVISION (A) SHALL SERVE ON THE COMMISSION FOR THE REMAINDER
22 OF THEIR TERMS. ON THE EXPIRATION OF THE TERM OF EACH MEMBER
23 CONSTITUTING THE COMMISSION ON THE DAY BEFORE THE EFFECTIVE DATE
24 OF THE AMENDATORY ACT THAT ADDED SUBDIVISION (A), THE GOVERNOR
25 SHALL APPOINT A SUCCESSOR AS REQUIRED UNDER THIS SECTION IN
26 ACCORDANCE WITH SUBDIVISIONS (F), (G), (H), (I), AND (J) AND IN
27 THAT ORDER. OF THE ADDITIONAL MEMBERS, THE GOVERNOR, WITHIN 30

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

15

1 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
2 SUBDIVISION (A), SHALL APPOINT 6 ADDITIONAL MEMBERS TO THE COM-
3 MISSION AS REQUIRED UNDER SUBDIVISIONS (A), (B), (C), (D), AND
4 (E). THE COMMISSION SHALL CONSIST OF THE FOLLOWING 11 MEMBERS:

5 (A) TWO INDIVIDUALS REPRESENTING HOSPITALS.

6 (B) ONE INDIVIDUAL REPRESENTING PHYSICIANS LICENSED UNDER
7 PART 170 TO ENGAGE IN THE PRACTICE OF MEDICINE.

8 (C) ONE INDIVIDUAL REPRESENTING PHYSICIANS LICENSED UNDER
9 PART 175 TO ENGAGE IN THE PRACTICE OF OSTEOPATHIC MEDICINE AND
10 SURGERY.

11 (D) ONE INDIVIDUAL WHO IS A PHYSICIAN LICENSED UNDER
12 PART 170 OR 175 REPRESENTING A SCHOOL OF MEDICINE OR OSTEOPATHIC
13 MEDICINE.

14 (E) ONE INDIVIDUAL REPRESENTING NURSING HOMES.

15 (F) ONE INDIVIDUAL REPRESENTING NURSES.

16 (G) ONE INDIVIDUAL REPRESENTING A COMPANY THAT IS
17 SELF-INSURED FOR HEALTH COVERAGE.

18 (H) ONE INDIVIDUAL REPRESENTING A COMPANY THAT IS NOT
19 SELF-INSURED FOR HEALTH COVERAGE.

20 (I) ONE INDIVIDUAL REPRESENTING A NONPROFIT HEALTH CARE COR-
21 PORATION OPERATING PURSUANT TO THE NONPROFIT HEALTH CARE CORPORA-
22 TION REFORM ACT, 1980 PA 350, MCL 550.1101 TO 550.1703.

23 (J) ONE INDIVIDUAL REPRESENTING ORGANIZED LABOR UNIONS IN
24 THIS STATE.

25 (2) In making appointments, the governor shall, to the
26 extent feasible, assure that the membership of the commission is

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

16

1 broadly representative of the interests of all of the people of
2 this state AND OF THE VARIOUS GEOGRAPHIC REGIONS.

3 (3) ~~Except for initial members, a~~ A member of the commis-
4 sion shall serve for a term of 3 years or until a successor is
5 appointed. Of the 6 members ~~initially~~ appointed WITHIN 30 DAYS
6 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
7 SUBSECTION (1)(A), ~~1~~ 2 of the members shall be appointed for a
8 term of 1 year, 2 of the members shall be appointed for a term of
9 2 years, and 2 of the members shall be appointed for a term of 3
10 years. A vacancy on the commission shall be filled for the
11 ~~balance~~ REMAINDER of the unexpired term in the same manner as
12 the original appointment.

13 (4) Commission members are subject to the following:

14 (a) ~~Act No. 317 of the Public Acts of 1968, being sections~~
15 ~~15.321 to 15.330 of the Michigan Compiled Laws~~ 1968 PA 317,
16 MCL 15.321 TO 15.330.

17 (b) ~~Act No. 196 of the Public Acts of 1973, being sections~~
18 ~~15.341 to 15.348 of the Michigan Compiled Laws~~ 1973 PA 196,
19 MCL 15.341 TO 15.348.

20 (c) ~~Act No. 472 of the Public Acts of 1978, being sections~~
21 ~~4.411 to 4.431 of the Michigan Compiled Laws~~ 1978 PA 472,
22 MCL 4.411 TO 4.431.

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

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

17

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

3 (3) The commission annually shall elect a chairperson and
4 vice-chairperson.

5 (4) The commission shall hold regular quarterly meetings at
6 places and on dates fixed by the commission. Special meetings
7 may be called by the chairperson, by not less than ~~2~~ 3 commis-
8 sion members, or by the department.

9 (5) A majority of the commission members appointed and serv-
10 ing constitutes a quorum. Final action by the commission shall
11 be only by affirmative vote of a majority of the commission mem-
12 bers appointed and serving. A commission member shall not vote
13 by proxy.

14 (6) The legislature annually shall fix the per diem compen-
15 sation of members of the commission. Expenses of members
16 incurred in the performance of official duties shall be reim-
17 bursed as provided in section 1216.

18 (7) The department shall furnish administrative services to
19 the commission, shall have charge of the commission's offices,
20 records, and accounts, and shall provide AT LEAST 2 FULL-TIME
21 ADMINISTRATIVE EMPLOYEES, secretarial STAFF, and other staff nec-
22 essary to allow the proper exercise of the powers and duties of
23 the commission. The department shall make available the times
24 and places of commission meetings and keep minutes of the meet-
25 ings and a record of the actions of the commission. THE DEPART-
26 MENT SHALL MAKE AVAILABLE A BRIEF SUMMARY OF THE ACTIONS TAKEN BY
27 THE COMMISSION.

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

18

1 (8) The department shall assign AT LEAST 2 FULL-TIME
2 professional employees to staff the commission to assist the com-
3 mission in the performance of its substantive responsibilities
4 under this part.

5 Sec. 22215. (1) ~~Pursuant to the requirements of this part,~~
6 ~~the~~ THE commission shall do all of the following:

7 (a) If determined necessary by the commission, revise, add
8 to, or delete 1 or more of the covered clinical services listed
9 in section 22203. If the commission proposes to add to the cov-
10 ered clinical services listed in section 22203, the commission
11 shall develop proposed review standards and make the review stan-
12 dards available to the public not less than 30 days before con-
13 ducting a hearing under subsection (3).

14 (b) ~~Approve~~ DEVELOP, APPROVE, disapprove, or revise cer-
15 tificate of need review standards that establish for purposes of
16 section 22225 the need, if any, for the initiation, replacement,
17 or expansion of covered clinical services, the acquisition or
18 beginning the operation of a health facility, making changes in
19 bed capacity, or making covered capital expenditures, including
20 conditions, standards, assurances, or information that must be
21 met, demonstrated, or provided by a person who applies for a cer-
22 tificate of need. A certificate of need review standard may also
23 establish ongoing quality assurance requirements including any or
24 all of the requirements specified in section 22225(2)(c). ~~The~~
25 ~~statewide health coordinating council may perform the duties of~~
26 ~~the commission under this subdivision, only until all members of~~
27 ~~the commission are appointed and confirmed, or until March 1,~~

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

19

1 ~~1989, whichever is sooner.~~ EXCEPT FOR NURSING HOME AND HOSPITAL
2 LONG-TERM CARE UNIT BED REVIEW STANDARDS, BY JANUARY 1, 2004, THE
3 COMMISSION SHALL REVISE ALL CERTIFICATE OF NEED REVIEW STANDARDS
4 TO INCLUDE A REQUIREMENT THAT EACH APPLICANT PARTICIPATE IN TITLE
5 XIX OF THE SOCIAL SECURITY ACT, CHAPTER 531, 49 STAT. 620,
6 1396r-6 AND 1396r-8 TO 1396v.

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

12 (d) Approve, disapprove, or revise proposed criteria for
13 determining health facility viability under section 22225.

14 (e) Annually assess the operations and effectiveness of the
15 certificate of need program based on periodic reports from the
16 department and other information available to the commission.

17 (f) By ~~October 1, 1992~~ JANUARY 1, 2005, and every ~~5~~ 2
18 years ~~after October 1, 1992~~ THEREAFTER, make recommendations to
19 the ~~standing committees in the senate and the house that have~~
20 ~~jurisdiction over matters pertaining to public health~~ JOINT
21 COMMITTEE regarding statutory changes to improve or eliminate the
22 certificate of need program.

23 (g) Upon submission by the department approve, disapprove,
24 or revise standards to be used by the department in designating a
25 regional certificate of need review agency, pursuant to
26 section 22226.

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

20

1 (h) ~~Approve~~ DEVELOP, APPROVE, disapprove, or revise
2 certificate of need review standards governing the acquisition of
3 new technology.

4 (i) In accordance with section 22255, approve, disapprove,
5 or revise proposed procedural rules for the certificate of need
6 program.

7 (j) Consider the recommendations of the department and the
8 department of attorney general as to the administrative feasibil-
9 ity and legality of proposed actions under subdivisions (a), (b),
10 and (c).

11 (k) Consider the impact of a proposed restriction on the
12 acquisition of or availability of covered clinical services on
13 the quality, availability, and cost of health services in this
14 state.

15 (l) ~~Appoint ad hoc~~ IF THE COMMISSION DETERMINES IT NECES-
16 SARY, APPOINT STANDARD advisory committees to assist in the
17 development of proposed certificate of need review standards.
18 ~~An ad hoc~~ A STANDARD advisory committee shall complete its
19 duties under this subdivision and submit its recommendations to
20 the commission within ~~the time limit~~ 6 MONTHS UNLESS OTHERWISE
21 specified by the commission when ~~an ad hoc~~ THE STANDARD
22 advisory committee is appointed. AN INDIVIDUAL SHALL SERVE ON NO
23 MORE THAN 2 STANDARD ADVISORY COMMITTEES IN ANY 2-YEAR PERIOD.
24 The composition of ~~the ad hoc~~ A STANDARD advisory committee
25 shall NOT INCLUDE A LOBBYIST REGISTERED UNDER 1978 PA 472,
26 MCL 4.411 TO 4.431, BUT SHALL include AND BE EQUALLY BALANCED
27 AMONG all of the following:

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

21

1 (i) Experts with professional competence in the subject
2 matter of the proposed standard. ~~, who shall constitute a major-~~
3 ~~ity of the ad hoc advisory committee.~~

4 (ii) Representatives of health care provider organizations
5 concerned with licensed health facilities or licensed health
6 professions.

7 (iii) Representatives of organizations concerned with health
8 care consumers and the purchasers and payers of health care
9 services.

10 (M) IN ADDITION TO SUBDIVISION (B), REVIEW AND, IF NECES-
11 SARY, REVISE EACH SET OF CERTIFICATE OF NEED REVIEW STANDARDS AT
12 LEAST EVERY 3 YEARS.

13 (N) EVALUATE AND REVISE THE PLANNING AREAS DEFINED IN THE
14 CERTIFICATE OF NEED REVIEW STANDARDS IN ACCORDANCE WITH THE
15 LATEST OFFICIAL FEDERAL DECENNIAL CENSUS FIGURES WITHIN 60 DAYS
16 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
17 SUBDIVISION AND WITHIN 60 DAYS AFTER EACH SUCCEEDING FEDERAL
18 DECENNIAL CENSUS IS AVAILABLE.

19 (O) IF A STANDARD ADVISORY COMMITTEE IS NOT APPOINTED BY THE
20 COMMISSION AND THE COMMISSION DETERMINES IT NECESSARY, SUBMIT A
21 REQUEST TO THE DEPARTMENT TO ENGAGE THE SERVICES OF PRIVATE CON-
22 SULTANTS OR TO CONTRACT WITH ANY PRIVATE ORGANIZATION FOR PROFES-
23 SIONAL AND TECHNICAL ASSISTANCE AND ADVICE OR OTHER SERVICES TO
24 ASSIST THE COMMISSION IN CARRYING OUT ITS DUTIES AND FUNCTIONS
25 UNDER THIS PART.

26 (P) WITHIN 6 MONTHS AFTER THE EFFECTIVE DATE OF THE
27 AMENDATORY ACT THAT ADDED THIS SUBDIVISION, DEVELOP, APPROVE, OR

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

22

1 REVISE CERTIFICATE OF NEED REVIEW STANDARDS GOVERNING THE
2 INCREASE OF LICENSED BEDS IN A HOSPITAL LICENSED UNDER PART 215,
3 THE PHYSICAL RELOCATION OF HOSPITAL BEDS FROM 1 LICENSED SITE TO
4 ANOTHER GEOGRAPHIC LOCATION, AND THE REPLACEMENT OF BEDS IN A
5 HOSPITAL LICENSED UNDER PART 215.

6 (2) The commission shall exercise its duties under this part
7 to promote AND ASSURE all of the following:

8 (a) The availability and accessibility of quality health
9 services at A reasonable cost and ~~with~~ WITHIN A reasonable geo-
10 graphic proximity for all people in ~~the~~ THIS state.

11 (b) Appropriate differential consideration of the health
12 care needs of residents in rural counties in ways that do not
13 compromise the quality and affordability of health care services
14 for those residents.

15 (3) Not less than 30 days before final action is taken by
16 the commission under subsection (1)(a), (b), (d), ~~or~~ (h), OR
17 (P), the commission shall conduct a public hearing on its pro-
18 posed action. In addition, not less than 30 days before final
19 action is taken by the commission under subsection (1)(a), (b),
20 (d), ~~or~~ (h), OR (P), the commission CHAIRPERSON shall submit
21 the proposed action AND A CONCISE SUMMARY OF THE EXPECTED IMPACT
22 OF THE PROPOSED ACTION for comment to EACH MEMBER OF the
23 ~~standing committees in the senate and house of representatives~~
24 ~~with jurisdiction over public health matters~~ JOINT COMMITTEE.
25 THE COMMISSION SHALL INFORM THE JOINT COMMITTEE OF THE DATE,
26 TIME, AND LOCATION OF THE NEXT MEETING REGARDING THE PROPOSED
27 ACTION. THE JOINT COMMITTEE SHALL PROMPTLY REVIEW THE PROPOSED

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

23

1 ACTION AND SUBMIT ITS RECOMMENDATIONS AND CONCERNS TO THE
2 COMMISSION.

3 (4) The commission CHAIRPERSON shall submit the proposed
4 final action INCLUDING A CONCISE SUMMARY OF THE EXPECTED IMPACT
5 OF THE PROPOSED FINAL ACTION to the governor and EACH MEMBER OF
6 the ~~standing committee of each house of the legislature with~~
7 ~~jurisdiction over public health matters~~ JOINT COMMITTEE. The
8 governor or the legislature may disapprove the proposed final
9 action within 45 days after the date of submission. If the pro-
10 posed final action is not submitted on a legislative session day,
11 the 45 days commence on the first legislative session day after
12 the proposed final action is submitted. The 45 days shall
13 include not less than 9 legislative session days. Legislative
14 disapproval shall be expressed by concurrent resolution which
15 shall be adopted by each house of the legislature. The concur-
16 rent resolution shall state specific objections to the proposed
17 final action. A proposed final action by the commission under
18 subsection (1)(a), (b), (d), ~~or~~ (h), OR (O) is not effective if
19 it has been disapproved under this subsection. If the proposed
20 final action is not disapproved under this subsection, it is
21 effective and binding on all persons affected by this part upon
22 the expiration of the 45-day period or on a later date specified
23 in the proposed final action. As used in this subsection,
24 "legislative session day" means each day in which a quorum of
25 either the house of representatives or the senate, following a
26 call to order, officially convenes in Lansing to conduct
27 legislative business.

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

24

1 (5) ~~Within 2 years after the effective date of the~~
2 ~~amendatory act that added this sentence, the ad hoc advisory com-~~
3 ~~mittee for psychiatric services appointed by the department under~~
4 ~~section 22221 or by the commission under section 22215 shall~~
5 ~~develop and submit certificate of need review standards under~~
6 ~~this section for the covered clinical services described in~~
7 ~~section 22203(10)(c) and (d). The ad hoc advisory committee for~~
8 ~~psychiatric services shall include in the review standards a spe-~~
9 ~~cific methodology for the determination of need. If the ad hoc~~
10 ~~advisory committee for psychiatric services does not develop and~~
11 ~~submit review standards for the covered clinical services~~
12 ~~described in section 22203(10)(c) and (d) within the 2-year time~~
13 ~~limit set forth in this subsection, the commission shall delete~~
14 ~~the covered clinical services described in section 22203(10)(c)~~
15 ~~and (d) pursuant to subsection (1)(a). THE COMMISSION SHALL NOT~~
16 ~~DEVELOP, APPROVE, OR REVISE A CERTIFICATE OF NEED REVIEW STANDARD~~
17 ~~THAT REQUIRES THE PAYMENT OF MONEY, GOODS, OR SERVICES AS A CON-~~
18 ~~DITION, STANDARD, OR ASSURANCE THAT MUST BE PROVIDED BY A PERSON~~
19 ~~SEEKING A CERTIFICATE OF NEED FOR THE INITIATION, REPLACEMENT, OR~~
20 ~~EXPANSION OF COVERED CLINICAL SERVICES, THE ACQUISITION OR BEGIN-~~
21 ~~NING THE OPERATION OF A HEALTH FACILITY, MAKING CHANGES IN BED~~
22 ~~CAPACITY, OR MAKING COVERED CAPITAL EXPENDITURES.~~

23 (6) If the reports received under section 22221(f) indicate
24 that the certificate of need application fees collected under
25 section 20161(2) have not been within 10% of ~~1/2~~ 4/5 OF the
26 cost to the department of implementing this part, the commission
27 shall make recommendations TO EACH MEMBER OF THE JOINT COMMITTEE

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

25

1 regarding the revision of those fees so that the certificate of
2 need application fees collected equal approximately ~~1/2~~ 80% of
3 the cost to the department of implementing this part.

4 (7) AS USED IN THIS SECTION, "JOINT COMMITTEE" MEANS THE
5 JOINT COMMITTEE CREATED UNDER SECTION 22219.

6 SEC. 22219. (1) A JOINT LEGISLATIVE COMMITTEE TO FOCUS ON
7 PROPOSED ACTIONS OF THE COMMISSION REGARDING THE CERTIFICATE OF
8 NEED PROGRAM AND CERTIFICATE OF NEED STANDARDS AND TO REVIEW
9 OTHER CERTIFICATE OF NEED ISSUES IS CREATED. THE JOINT COMMITTEE
10 SHALL CONSIST OF 6 MEMBERS AS FOLLOWS:

11 (A) THE CHAIRPERSON OF THE SENATE COMMITTEE ON HEALTH
12 POLICY.

13 (B) THE VICE-CHAIRPERSON OF THE SENATE COMMITTEE ON HEALTH
14 POLICY.

15 (C) THE MINORITY VICE-CHAIRPERSON OF THE SENATE COMMITTEE ON
16 HEALTH POLICY.

17 (D) THE CHAIRPERSON OF THE HOUSE OF REPRESENTATIVES COMMIT-
18 TEE ON HEALTH POLICY.

19 (E) THE VICE-CHAIRPERSON OF THE HOUSE OF REPRESENTATIVES
20 COMMITTEE ON HEALTH POLICY.

21 (F) THE MINORITY VICE-CHAIRPERSON OF THE HOUSE OF REPRESEN-
22 TATIVES COMMITTEE ON HEALTH POLICY.

23 (2) THE JOINT COMMITTEE SHALL BE CO-CHAIRLED BY THE CHAIR-
24 PERSON OF THE SENATE COMMITTEE ON HEALTH POLICY AND THE CHAIR-
25 PERSON OF THE HOUSE COMMITTEE ON HEALTH POLICY.

26 (3) THE JOINT COMMITTEE MAY ADMINISTER OATHS, SUBPOENA
27 WITNESSES, AND EXAMINE THE APPLICATION, DOCUMENTATION, OR OTHER

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

26

1 REPORTS AND PAPERS OF AN APPLICANT OR ANY OTHER PERSON INVOLVED
2 IN A MATTER PROPERLY BEFORE THE COMMITTEE.

3 (4) THE JOINT COMMITTEE SHALL REVIEW THE RECOMMENDATIONS
4 MADE BY THE COMMISSION UNDER SECTION 22215(6) REGARDING THE REVI-
5 SION OF THE CERTIFICATE OF NEED APPLICATION FEES AND SUBMIT A
6 WRITTEN REPORT TO THE LEGISLATURE OUTLINING THE COSTS TO THE
7 DEPARTMENT TO IMPLEMENT THE PROGRAM, THE AMOUNT OF FEES COL-
8 LECTED, AND ITS RECOMMENDATION REGARDING THE REVISION OF THOSE
9 FEES.

10 (5) THE JOINT COMMITTEE MAY DEVELOP A PLAN FOR THE REVISION
11 OF THE CERTIFICATE OF NEED PROGRAM. IF A PLAN IS DEVELOPED BY
12 THE JOINT COMMITTEE, THE JOINT COMMITTEE SHALL RECOMMEND TO THE
13 LEGISLATURE THE APPROPRIATE STATUTORY CHANGES TO IMPLEMENT THE
14 PLAN.

15 Sec. 22221. The department shall do all of the following:

16 (a) ~~Promulgate~~ SUBJECT TO APPROVAL BY THE COMMISSION,
17 PROMULGATE rules to implement its powers and duties under this
18 part.

19 (b) Report to the commission at least annually on the per-
20 formance of the department's duties under this part.

21 (c) Develop proposed certificate of need review standards
22 for submission to the commission.

23 (d) Administer and apply certificate of need review
24 standards. ~~In applying a review standard that establishes the~~
25 ~~minimum number of magnetic resonance imaging procedures necessary~~
26 ~~for a certificate of need for a mobile magnetic resonance imaging~~
27 ~~service servicing only hospitals located in rural counties, the~~

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

27

1 ~~department shall use an adjustment factor of 2.0. In applying a~~
2 ~~review standard that establishes the minimum number of magnetic~~
3 ~~resonance imaging procedures necessary for a certificate of need~~
4 ~~for a mobile magnetic resonance imaging service servicing hospi-~~
5 ~~tals located in both rural and nonrural counties, for a hospital~~
6 ~~located in a rural county the department shall use an adjustment~~
7 ~~factor of 1.4. IN THE REVIEW OF CERTIFICATE OF NEED APPLICA-~~
8 ~~TIONS, THE DEPARTMENT SHALL CONSIDER RELEVANT WRITTEN COMMUNICA-~~
9 ~~TIONS FROM ANY PERSON.~~

10 (e) Designate adequate staff or other resources to directly
11 assist hospitals and nursing homes with less than 100 beds in the
12 preparation of applications for certificates of need.

13 (f) ~~Following the first state fiscal year after October 1,~~
14 ~~1988~~ BY OCTOBER 1, 2003, and annually thereafter, report to the
15 commission regarding the costs to the department of implementing
16 this part and the certificate of need application fees collected
17 under section ~~20161(2)~~ 20161 in the immediately preceding state
18 fiscal year.

19 (g) Beginning January 1, ~~1995~~ 2003, annually adjust the
20 ~~-\$2,000,000.00 and \$3,000,000.00 thresholds~~ \$2,500,000.00
21 THRESHOLD set forth in section 22203(9) by an amount determined
22 by the state treasurer to reflect the annual percentage change in
23 the consumer price index, using data from the immediately preced-
24 ing period of July 1 to June 30. As used in this subdivision,
25 "consumer price index" means the most comprehensive index of con-
26 sumer prices available for this state from the bureau of labor
27 statistics of the United States department of labor.

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

28

1 (H) ANNUALLY REVIEW THE APPLICATION PROCESS, INCLUDING ALL
2 FORMS, REPORTS, AND OTHER MATERIALS THAT ARE REQUIRED TO BE SUB-
3 MITTED WITH THE APPLICATION. IF NEEDED TO PROMOTE ADMINISTRATIVE
4 EFFICIENCY, REVISE THE FORMS, REPORTS, AND ANY OTHER MATERIALS
5 REQUIRED WITH THE APPLICATION.

6 (I) WITHIN 6 MONTHS AFTER THE EFFECTIVE DATE OF THE AMENDA-
7 TORY ACT THAT ADDED THIS SUBDIVISION, CREATE A CONSOLIDATED
8 APPLICATION FOR A CERTIFICATE OF NEED FOR THE RELOCATION OR
9 REPLACEMENT OF AN EXISTING HEALTH FACILITY.

10 (J) IN CONSULTATION WITH THE COMMISSION, DEFINE SINGLE
11 PROJECT AS IT APPLIES TO CAPITAL EXPENDITURES.

12 SEC. 22224A. (1) A PERSON SEEKING TO INITIATE, EXPAND,
13 REPLACE, RELOCATE, OR ACQUIRE A FIXED MAGNETIC RESONANCE IMAGER
14 SERVICE WITHIN A COUNTY THAT HAS A POPULATION OF MORE THAN
15 160,000 BUT DOES NOT HAVE AT LEAST 1 FIXED MAGNETIC RESONANCE
16 IMAGER UNIT OR AT LEAST 1 PENDING CERTIFICATE OF NEED APPLICATION
17 TO OBTAIN A FIXED MAGNETIC RESONANCE IMAGER UNIT MAY FILE A
18 LETTER OF INTENT WITH THE DEPARTMENT PRIOR TO THE INITIATION,
19 EXPANSION, REPLACEMENT, RELOCATION, OR ACQUISITION OF A FIXED
20 MAGNETIC RESONANCE IMAGER UNIT WITHIN THAT COUNTY INSTEAD OF
21 OBTAINING A CERTIFICATE OF NEED.

22 (2) WITHIN 30 DAYS AFTER RECEIVING THE LETTER OF INTENT, IF
23 THE DEPARTMENT VERIFIES THAT THE COUNTY HAS A POPULATION OF MORE
24 THAN 160,000 AND THAT THE COUNTY DOES NOT ALREADY HAVE 1 FIXED
25 MAGNETIC RESONANCE IMAGER UNIT OR AT LEAST 1 PENDING CERTIFICATE
26 OF NEED APPLICATION TO OBTAIN A FIXED MAGNETIC RESONANCE IMAGER
27 UNIT, THE DEPARTMENT SHALL SEND A WRITTEN ACKNOWLEDGMENT TO THE

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

29

1 PERSON APPROVING THE INITIATION, EXPANSION, REPLACEMENT,
2 RELOCATION, OR ACQUISITION OF A FIXED MAGNETIC RESONANCE IMAGER
3 UNIT.

4 (3) A PERSON SHALL NOT INITIATE, EXPAND, REPLACE, RELOCATE,
5 OR ACQUIRE A FIXED MAGNETIC RESONANCE IMAGER UNIT UNDER THIS SEC-
6 TION WITHOUT A CERTIFICATE OF NEED UNLESS THAT PERSON RECEIVES A
7 WRITTEN ACKNOWLEDGMENT OF APPROVAL FROM THE DEPARTMENT UNDER SUB-
8 SECTION (2).

9 (4) A PERSON SEEKING TO INITIATE, EXPAND, REPLACE, RELOCATE,
10 OR ACQUIRE A FIXED MAGNETIC RESONANCE IMAGER SERVICE UNDER THIS
11 SECTION SHALL BE A NONPROFIT ORGANIZATION AND SHALL DEMONSTRATE
12 THAT THE SERVICE SHALL BE ACCESSIBLE TO ALL PATIENTS REGARDLESS
13 OF HIS OR HER ABILITY TO PAY AND SHALL PARTICIPATE IN TITLE XIX
14 OF THE SOCIAL SECURITY ACT, CHAPTER 531, 49 STAT. 620, 42
15 U.S.C. 1396 TO 1396r-8 TO 1396v.

16 Sec. 22226. (1) The ~~department and the office~~ COMMISSION
17 shall ~~jointly~~ develop standards for the designation by the
18 department of a regional certificate of need review agency for
19 each review area to develop advisory recommendations for proposed
20 projects. The standards shall be based on the requirements for a
21 regional certificate of review agency set forth in
22 subsection (3). ~~The standards developed under this subsection~~
23 ~~shall be approved by the commission before implementation by the~~
24 ~~department.~~

25 (2) The department, with the concurrence of the commission,
26 shall designate a person to be a regional certificate of need
27 review agency for a specific review area, according to procedures

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

30

1 approved by the commission, if the person meets the standards
2 approved under subsection (1), and if a regional certificate of
3 need review agency has not already been designated for that spe-
4 cific review area.

5 (3) A regional certificate of need review agency shall meet
6 all of the following requirements:

7 (a) Be an independent nonprofit organization that is not a
8 subsidiary of, or otherwise controlled by, any other person.

9 (b) Be governed by a board that is broadly representative of
10 consumers, providers, payers, and purchasers of health care in
11 the review area, with a majority of the board being consumers,
12 payers, and purchasers of health care.

13 (c) Demonstrate a willingness and ability to conduct reviews
14 of all proposed projects requiring a certificate of need that
15 would be located within the review area served by the regional
16 certificate of need review agency.

17 (d) Avoid conflict of interest in its review of all applica-
18 tions for a certificate of need.

19 (e) Provide data to the department to enable the department
20 to evaluate the regional certificate of need review agency's
21 performance. The data provided under this subdivision shall be
22 reviewed at periodic meetings between the department and the
23 regional certificate of need review agency.

24 (f) Not receive more than a designated proportion of its
25 financial support from health facilities and health profession-
26 als, as determined by the commission.

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

31

1 (g) Meet other requirements established by the commission
2 that are relevant to the functions of a regional certificate of
3 need review agency, ~~pursuant to~~ UNDER this part.

4 (4) The designation of a regional certificate of need review
5 agency shall be operative for a period of time approved by the
6 commission, but not for more than 24 months. The designation of
7 a regional certificate of need review agency may be terminated by
8 the department WITH THE CONCURRENCE OF THE COMMISSION at any time
9 for noncompliance with the standards approved under subsection
10 (1). In addition, the designation may be terminated by the
11 regional certificate of need review agency upon the expiration of
12 60 days after the department receives written notice of the
13 termination.

14 (5) A local certificate of need review agency that was des-
15 igned pursuant to a designation agreement authorized under
16 former section 22124 and effective on ~~the effective date of this~~
17 ~~part~~ OCTOBER 1, 1988 is designated as the regional certificate
18 of need review agency for its review area until the expiration of
19 1 year after the date of final approval of the standards devel-
20 oped under subsection (1), unless the designation is terminated
21 by either the department UNDER SUBSECTION (4) or the regional
22 certificate of need review agency before that time.

23 (6) A person applying for a certificate of need under this
24 part shall simultaneously provide a copy of any letter of intent,
25 application, or additional information required by the department
26 to the regional certificate of need review agency designated by
27 the department for the review area in which the proposed project

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

32

1 would be located, unless the regional certificate of need review
2 agency determines that it will not review the application or
3 other information, and notifies both the applicant and the
4 department in writing of its determination. The regional certifi-
5 cate of need review agency may review the application and submit
6 its recommendations to the department. If the regional certifi-
7 cate of need review agency determines that it will not review the
8 application, then the regional certificate of need review agency
9 shall notify both the applicant and the department in writing of
10 its determination. In developing its recommendations, the
11 regional certificate of need review agency shall utilize the
12 review procedures and time frames specified for ~~health systems~~
13 ~~agencies or~~ regional certificate of need review agencies in the
14 rules continued or promulgated under this part, and shall also
15 utilize certificate of need review standards, statutory criteria,
16 and forms identical to those used by the department.

17 (7) Before developing a proposed decision on an application,
18 the department shall review the recommendations of the regional
19 certificate of need review agency for the review area in which
20 the proposed project would be located, if the recommendations are
21 submitted to the department within the time frames required under
22 subsection (6). If the director makes a final decision that is
23 inconsistent with the recommendations of the regional certificate
24 of need review agency, the department shall promptly provide the
25 regional certificate of need review agency with a detailed state-
26 ment of the reasons for the director's decision. The statement
27 shall address each instance in which the director's decision is

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

33

1 inconsistent with the recommendation of the regional certificate
2 of need review agency regarding a specific certificate of need
3 review standard or criterion. THE REGIONAL CERTIFICATE OF NEED
4 REVIEW AGENCY MAY APPEAL THE FINAL DECISION OF THE DIRECTOR AS
5 PROVIDED UNDER SECTION 22231(9).

6 (8) A regional certificate of need review agency may convene
7 consumers, providers, purchasers, or payers of health care, or
8 representatives of all of those groups, related to activities in
9 its review area for the purpose of achieving the objectives of
10 this part.

11 ~~-(9) In the review of certificate of need applications, the~~
12 ~~department shall consider relevant written communications from~~
13 ~~any person.~~

14 (9) ~~-(10)~~ Before developing a recommendation on a certifi-
15 cate of need application, a regional certificate of need review
16 agency shall hold a public hearing on the proposed project. If
17 THE DEPARTMENT DETERMINES THAT LOCAL INTEREST MERITS A PUBLIC
18 HEARING AND a regional certificate of need review agency has not
19 been designated for the review area in which the proposed project
20 will be located, THEN the department ~~may~~ SHALL hold a public
21 hearing on the proposed project. ~~, if the department determines~~
22 ~~that local interest merits a public hearing.~~

23 (10) ~~-(11)~~ A regional certificate of need review agency
24 shall conduct all meetings regarding its activities for the pur-
25 pose of achieving the objectives of this part in compliance with
26 the open meetings act, ~~Act No. 267 of the Public Acts of 1976,~~

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

34

1 ~~being sections 15.261 to 15.275 of the Michigan Compiled Laws~~
2 1976 PA 267, MCL 15.261 TO 15.275.

3 (11) ~~(12)~~ As used in this section, "review area" means a
4 geographic area established for a health systems agency pursuant
5 to former section 1511 of the public health service act, or a
6 geographic area otherwise established by the commission for a
7 regional certificate of need review agency. ~~, after considera-~~
8 ~~tion of the recommendations of the department and the office.~~

9 Sec. 22230. In evaluating applications for a health facil-
10 ity as defined under section 22205(1)(c) in a comparative review,
11 the department shall include participation in title XIX of the
12 social security act, CHAPTER 531, 49 STAT. 620, 42 U.S.C. 1396 to
13 ~~1396d, 1396f to 1396s~~ 1396r-6 AND 1396r-8 TO 1396v, as a dis-
14 tinct criterion, weighted as very important, and determine the
15 degree to which an application meets this criterion based on the
16 extent of participation in the medicaid program.

17 Sec. 22231. (1) The decision to grant or deny an applica-
18 tion for a certificate of need shall be made by the director. A
19 decision shall be proposed to the director by a bureau within the
20 department designated by the director as responsible for the cer-
21 tificate of need program. A decision shall be in writing and
22 shall indicate 1 of the following:

23 (a) Approval of the application.

24 (b) Disapproval of the application.

25 (c) Subject to subsection (2), approval of the application
26 with conditions.

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

35

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

3 (2) If an application is approved with conditions ~~pursuant~~
4 ~~to~~ UNDER subsection (1)(c), the conditions shall be explicit,
5 shall be related to the proposed project or to the applicable
6 provisions of this part, and shall specify a time, not to exceed
7 1 year after the date the decision is rendered, within which the
8 conditions shall be met.

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

12 (4) Before a final decision on an application is made, the
13 bureau of the department designated by the director as responsi-
14 ble for the certificate of need program shall issue a proposed
15 decision with specific findings of fact in support of the pro-
16 posed decision with regard to each of the criteria listed in sec-
17 tion 22225. The proposed decision also shall state with speci-
18 ficity the reasons and authority of the department for the pro-
19 posed decision. ~~If a proposed decision is issued within the~~
20 ~~application review period specified in the rules promulgated~~
21 ~~under former part 221, the department is in compliance with the~~
22 ~~review period requirement of those rules.~~ The department shall
23 transmit a copy of the proposed decision to the applicant.

24 (5) The proposed decision shall be submitted to the director
25 on the same day the proposed decision is issued.

26 (6) If the proposed decision is other than an approval
27 without conditions or stipulations, the director shall issue a

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

36

1 final decision not later than 60 days after the date a proposed
2 decision is submitted to the director unless the applicant has
3 filed a request for a hearing on the proposed decision. If the
4 proposed decision is an approval, the director shall issue a
5 final decision not later than 5 days after the proposed decision
6 is submitted to the director.

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

9 (8) If a proposed decision is an approval, and if, upon
10 review, the director reverses the proposed decision, the director
11 immediately shall notify the applicant of the reversal. Within
12 15 days after receipt of the notice of reversal, the applicant
13 may request a hearing under section 22232. After the hearing,
14 the applicant may request the director to reconsider the reversal
15 of the proposed decision, based on the results of the hearing.

16 (9) ~~The~~ WITHIN 30 DAYS AFTER THE FINAL DECISION OF THE
17 DIRECTOR, THE final decision of the director may be appealed only
18 by the applicant ~~and only~~ OR A REGIONAL CERTIFICATE OF NEED
19 REVIEW AGENCY. THE APPEAL SHALL ONLY BE on the record directly
20 to the circuit court for the county where the applicant has its
21 principal place of business in this state or the circuit court
22 for Ingham county. Judicial review is governed by ~~sections 103~~
23 ~~to 106 of~~ the administrative procedures act of 1969, ~~Act~~
24 ~~No. 306 of the Public Acts of 1969, being sections 24.303 to~~
25 ~~24.306 of the Michigan Compiled Laws~~ 1969 PA 306, MCL 24.201 TO
26 24.328.

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

37

1 ~~-(10) The review and appeal of a certificate of need~~
2 ~~application submitted with the required filing fee before~~
3 ~~October 1, 1988 shall be conducted under former part 221 and the~~
4 ~~rules promulgated under that part. The certificate of need board~~
5 ~~created by former section 22121(2) shall continue for the purpose~~
6 ~~of performing the functions vested in it by former part 221,~~
7 ~~until all appeals lawfully brought under former part 221 are~~
8 ~~concluded.~~

9 (10) ~~-(11)~~ If the department exceeds the time ~~frames~~ set
10 forth in this section for other than good cause, as determined by
11 the commission, upon the written request of an applicant, the
12 department shall return to the applicant all of the certificate
13 of need application fee paid by the applicant under section
14 ~~-20161(2)-~~ 20161.

15 Sec. 22235. (1) The department may waive otherwise applica-
16 ble provisions of this part and procedural requirements and cri-
17 teria for review upon a showing by the applicant, by affidavit,
18 of all of the following:

19 (a) The necessity for immediate or temporary relief due to
20 natural disaster, fire, unforeseen safety consideration, or other
21 emergency circumstances.

22 (b) The serious adverse effect of delay on the applicant and
23 the community that would be occasioned by compliance with the
24 otherwise applicable requirements of this part and rules promul-
25 gated under this part.

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

38

1 (c) The lack of substantial change in facilities or services
2 that existed before the emergency circumstances established under
3 subdivision (a).

4 (d) The temporary nature of the construction of facilities
5 or the services that will not preclude different disposition of
6 longer term determinations in a subsequent application for a cer-
7 tificate of need not made under this section.

8 (2) The department may issue an emergency certificate of
9 need after necessary and appropriate review. A record of the
10 review shall be made, including copies of affidavits and other
11 documentation. Findings and conclusions shall be made as to an
12 application for an emergency certificate of need, whether the
13 emergency certificate of need is issued or denied.

14 (3) An emergency certificate of need issued under this sec-
15 tion is A FINAL DECISION AND THE APPLICANT IS NOT REQUIRED TO
16 SUBMIT A FORMAL APPLICATION FOR A SECOND REVIEW. A CERTIFICATE
17 OF NEED ISSUED UNDER THIS SECTION MAY BE subject to special limi-
18 tations and restrictions, in regard to duration and right of
19 extension or renewal and other factors, imposed by the
20 department.

21 Sec. 22239. (1) ~~A certificate of need ceases to be effec-~~
22 ~~tive if~~ IF the certificate of need approval was based on a stip-
23 ulation that the project would participate in title XIX and the
24 project has not participated in title XIX for ~~not less than~~ AT
25 LEAST 12 consecutive months within the first 2 years of operation
26 OR CONTINUED TO PARTICIPATE ANNUALLY THEREAFTER, THE DEPARTMENT

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

39

1 SHALL REVOKE THE CERTIFICATE OF NEED. A stipulation described in
2 this section is germane to all health facility projects.

3 (2) THE DEPARTMENT SHALL MONITOR THE PARTICIPATION IN TITLE
4 XIX OF EACH CERTIFICATE OF NEED APPLICANT APPROVED UNDER THIS
5 PART. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), THE
6 DEPARTMENT SHALL REQUIRE EACH APPLICANT TO PROVIDE VERIFICATION
7 OF PARTICIPATION IN TITLE XIX WITH ITS APPLICATION AND ANNUALLY
8 THEREAFTER.

9 (3) THE DEPARTMENT SHALL NOT REVOKE OR DENY A CERTIFICATE OF
10 NEED FOR A NURSING HOME LICENSED UNDER PART 217 IF THAT NURSING
11 HOME DOES NOT PARTICIPATE IN TITLE XIX ON THE EFFECTIVE DATE OF
12 THE AMENDATORY ACT THAT ADDED THIS SUBSECTION BUT AGREES TO PAR-
13 TICIPATE IN TITLE XIX IF BEDS BECOME AVAILABLE. THIS SECTION
14 DOES NOT PROHIBIT A PERSON FROM APPLYING FOR AND OBTAINING A CER-
15 TIFICATE OF NEED TO ACQUIRE OR BEGIN OPERATION OF A NURSING HOME
16 THAT DOES NOT PARTICIPATE IN TITLE XIX.

17 Sec. 22241. (1) For purposes of this section and ~~sections~~
18 SECTION 22243, ~~and 22245,~~ "new technology" means medical equip-
19 ment that requires, but has not yet been granted, the approval of
20 the federal food and drug administration for commercial use.

21 (2) The period ending 12 months after the date of federal
22 food and drug administration approval of new technology for com-
23 mercial use shall be considered the new technology review
24 period. A person shall not acquire new technology before the end
25 of a new technology review period, unless 1 of the following
26 occurs:

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

40

1 (a) The department, with the concurrence of the commission,
2 issues a public notice that the new technology will not be added
3 to the list of covered medical equipment during the new technol-
4 ogy review period. The notice may apply to specific new technol-
5 ogy or classes of new technology.

6 (b) The person complies with the requirements of section
7 22243.

8 (c) The commission approves the addition of the new technol-
9 ogy to the list of covered medical equipment, and the person
10 obtains a certificate of need for that covered medical
11 equipment.

12 (3) To assist in the identification of new medical technol-
13 ogy or new medical services that may be appropriate for inclusion
14 as a covered clinical service in the earliest possible stage of
15 its development, the commission shall appoint a standing new med-
16 ical technology advisory committee. A majority of the new medi-
17 cal technology advisory committee shall be representatives of
18 health care provider organizations concerned with licensed health
19 facilities or licensed health professions and other persons
20 knowledgeable in medical technology. The commission also shall
21 appoint representatives of health care consumer, purchaser, and
22 third party payer organizations to the committee. THE COMMISSION
23 SHALL ALSO APPOINT FACULTY MEMBERS FROM SCHOOLS OF MEDICINE,
24 OSTEOPATHY, AND NURSING IN THIS STATE.

25 Sec. 22247. (1) The department ~~may~~ SHALL monitor compli-
26 ance with ALL certificates of need issued under this part and

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

41

1 shall investigate allegations of noncompliance with a certificate
2 of need or this part.

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

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

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

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

16 (d) Request enforcement action under section 22253.

17 (e) Take any other enforcement action authorized by this
18 code.

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

21 (G) TAKE ANY OTHER ACTION AS DETERMINED APPROPRIATE BY THE
22 DEPARTMENT.

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,

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

42

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. 22255. ~~(i)~~ The department, with the approval of the
5 commission, may promulgate procedural rules to implement this
6 part.

7 ~~(2) Pursuant to section 31 of the administrative procedures~~
8 ~~act of 1969, Act No. 306 of the Public Acts of 1969, being sec-~~
9 ~~tion 24.231 of the Michigan Compiled Laws, rules promulgated by~~
10 ~~the department under former part 221 shall remain in effect for~~
11 ~~review and appeal of applications submitted under former part 221~~
12 ~~and for this part until amended or rescinded by the department or~~
13 ~~as a result of this part.~~

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

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

SB1436, As Passed House, December 12, 2002

Senate Bill No. 1436

43

1 (3) THE DEPARTMENT, UPON REQUEST, SHALL PROVIDE COPIES OF AN
2 APPLICATION OR PART OF AN APPLICATION. THE DEPARTMENT MAY CHARGE
3 A REASONABLE FEE FOR THE COPIES.

4 Enacting section 1. Section 22217 of the public health
5 code, 1978 PA 368, MCL 333.22217, is repealed.