

# HOUSE BILL No. 4152

February 7, 2001, Introduced by Reps. Wojno, Hansen, Mans and Rich Brown 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 2000  
PA 171.

## 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. A visit made pursuant to a complaint  
6 shall be unannounced. Except for a county medical care facility,  
7 a home for the aged, a nursing home, or a hospice residence, the  
8 department shall determine whether the visits that are not made  
9 pursuant to a complaint are announced or unannounced. IN  
10 ADDITION TO VISITS MADE PURSUANT TO A COMPLAINT INVESTIGATION,

1 THE DEPARTMENT SHALL ANNUALLY MAKE AT LEAST 2 UNANNOUNCED VISITS  
2 TO EACH COUNTY MEDICAL CARE FACILITY AND HOSPICE RESIDENCE.

3 Beginning ~~upon the expiration of 12 months after the effective~~  
4 ~~date of the amendatory act that added this sentence~~ JUNE 20,  
5 2001, the department shall assure that each newly hired nursing  
6 home surveyor, as part of his or her basic training, is assigned  
7 full-time to a licensed nursing home for at least 10 days within  
8 a 14-day period to observe actual operations outside of the  
9 survey process before the trainee begins oversight

10 responsibilities. A member of a survey team shall not be  
11 employed by a licensed nursing home or a nursing home management  
12 company doing business in this state at the time of conducting a  
13 survey under this section. The department shall not assign an  
14 individual to be a member of a survey team for purposes of a  
15 survey, evaluation, or consultation visit at a nursing home in  
16 which he or she was an employee within the preceding 5 years.

17 (2) The department of consumer and industry services shall  
18 make at least a biennial visit to each licensed clinical labora-  
19 tory ~~, each nursing home,~~ and each hospice residence for the  
20 purposes of survey, evaluation, and consultation. IN ADDITION TO  
21 VISITS MADE PURSUANT TO COMPLAINT INVESTIGATIONS, AT LEAST TWICE  
22 ANNUALLY MAKE UNANNOUNCED VISITS TO AND INSPECT EACH NURSING HOME  
23 LICENSED UNDER THIS ARTICLE, REGARDLESS OF WHETHER THE NURSING  
24 HOME IS CERTIFIED UNDER TITLE XVIII OR TITLE XIX. The department  
25 of consumer and industry services shall semiannually provide for  
26 joint training with nursing home surveyors and providers on at  
27 least 1 of the 10 most frequently issued federal citations in

1 this state during the past calendar year. The department of  
2 consumer and industry services shall develop a protocol for the  
3 review of citation patterns compared to regional outcomes and  
4 standards and complaints regarding the nursing home survey  
5 process. The review will result in a report provided to the  
6 legislature. Except as otherwise provided in this subsection,  
7 beginning with his or her first full relicensure period after  
8 ~~the effective date of the amendatory act that added this~~  
9 ~~sentence~~ JUNE 20, 2001, each member of a department of consumer  
10 and industry services nursing home survey team who is a health  
11 professional licensee under article 15 shall earn not less than  
12 50% of his or her required continuing education credits, if any,  
13 in geriatric care. If a member of a nursing home survey team is  
14 a pharmacist licensed under article 15, he or she shall earn not  
15 less than 30% of his or her required continuing education credits  
16 in geriatric care.

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

24 (a) Evidence that it is currently fully accredited by a body  
25 with expertise in hospital accreditation whose hospital accredit-  
26 ations are accepted by the United States department of health and

1 human services for purposes of section 1865 of part C of  
2 title XVIII of the social security act, 42 U.S.C. 1395bb.

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

6 (4) Except as provided in subsection (8), accreditation  
7 information provided to the department of consumer and industry  
8 services under subsection (3) is confidential, is not a public  
9 record, and is not subject to court subpoena. The department  
10 shall use the accreditation information only as provided in this  
11 section and shall return the accreditation information to the  
12 hospital within a reasonable time after a decision on the waiver  
13 request is made.

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

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

26 (b) Grant a waiver under subsection (3) based on the  
27 accreditation report that is 2 or more years old, on condition

1 that the hospital promptly submit the next accreditation report  
2 to the department.

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

5 (6) This section does not prohibit the department from  
6 citing a violation of this part during a survey, conducting  
7 investigations or inspections pursuant to section 20156, or con-  
8 ducting surveys of health facilities or agencies for the purpose  
9 of complaint investigations or federal certification. This sec-  
10 tion does not prohibit the state fire marshal from conducting  
11 annual surveys of hospitals, nursing homes, and county medical  
12 care facilities.

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

22 (8) If the department of consumer and industry services  
23 determines that substantial noncompliance with licensure stan-  
24 dards exists or that deficiencies that represent a threat to  
25 public safety or patient care exist based on a review of an  
26 accreditation report submitted pursuant to subsection (3)(b), the  
27 department shall prepare a written summary of the substantial

1 noncompliance or deficiencies and the hospital's response to the  
2 department's determination. The department's written summary and  
3 the hospital's response are public documents.

4 (9) The department of consumer and industry services or a  
5 local health department shall conduct investigations or inspec-  
6 tions, other than ~~inspections~~ AN INSPECTION of financial  
7 records, of a county medical care facility, home for the aged,  
8 nursing home, or hospice residence without prior notice to the  
9 health facility or agency. An employee of a state agency charged  
10 with investigating or inspecting the health facility or agency or  
11 an employee of a local health department who directly or indi-  
12 rectly gives prior notice regarding an investigation or an  
13 inspection, other than an inspection of the financial records, to  
14 the health facility or agency or to an employee of the health  
15 facility or agency, is guilty of a misdemeanor. ~~Consultation~~  
16 ~~visits that are~~ A CONSULTATION VISIT THAT IS not for the purpose  
17 of annual or follow-up inspection or survey may be announced.

18 (10) The department of consumer and industry services shall  
19 maintain a record indicating whether a visit and inspection is  
20 announced or unannounced. Information gathered at each visit and  
21 inspection, whether announced or unannounced, shall be taken into  
22 account in licensure decisions.

23 (11) The department of consumer and industry services shall  
24 require periodic reports and a health facility or agency shall  
25 give the department access to books, records, and other documents  
26 maintained by a health facility or agency to the extent necessary  
27 to carry out the purpose of this article and the rules

1 promulgated under this article. The department shall respect the  
2 confidentiality of a patient's clinical record and shall not  
3 divulge or disclose the contents of the records in a manner that  
4 identifies an individual except under court order. The depart-  
5 ment may copy health facility or agency records as required to  
6 document findings.

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

1       (13) If, upon investigation, the department of consumer and  
2 industry services or a state agency determines that an individual  
3 licensed to practice a profession in this state has violated the  
4 applicable licensure statute or the rules promulgated under that  
5 statute, the department, state agency, or local health department  
6 shall forward the evidence it has to the appropriate licensing  
7 agency.

8       (14) The department of consumer and industry services shall  
9 report to the appropriations subcommittees, the senate and house  
10 of representatives standing committees having jurisdiction over  
11 issues involving senior citizens, and the fiscal agencies on  
12 March 1 of each year on the initial and follow-up surveys con-  
13 ducted on all nursing homes in this state. The report shall  
14 include all of the following information:

15       (a) The number of surveys conducted.

16       (b) The number requiring follow-up surveys.

17       (c) The number referred to the Michigan public health insti-  
18 tute for remediation.

19       (d) The number of citations per nursing home.

20       (e) The number of night and weekend complaints filed.

21       (f) The number of night and weekend responses to complaints  
22 conducted by the department.

23       (g) The average length of time for the department to respond  
24 to a complaint filed against a nursing home.

25       (h) The number and percentage of citations appealed.

26       (i) The number and percentage of citations overturned or  
27 modified, or both.



1 (15) The department of consumer and industry services shall  
2 report annually to the standing committees on appropriations and  
3 the standing committees having jurisdiction over issues involving  
4 senior citizens in the senate and the house of representatives on  
5 the percentage of nursing home citations that are appealed and  
6 the percentage of nursing home citations that are appealed and  
7 amended through the informal deficiency dispute resolution  
8 process.

9 (16) The department of consumer and industry services in  
10 consultation with nursing home provider groups, the American med-  
11 ical directors association, the department of community health,  
12 the state long-term care ombudsman, and the federal health care  
13 finance administration shall clarify the following terms as those  
14 terms are used in title XVIII and title XIX and applied by the  
15 department to provide more consistent regulation of nursing homes  
16 in Michigan:

17 (a) Immediate jeopardy.

18 (b) Harm.

19 (c) Potential harm.

20 (d) Avoidable.

21 (e) Unavoidable.

22 (17) The department of consumer and industry services shall  
23 instruct and train the surveyors in the use of the clarifications  
24 described in subsection (16) in citing deficiencies.

25 (18) A nursing home shall post the nursing home's survey  
26 report in a conspicuous place within the nursing home for public  
27 review.

1 (19) 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-5, 1395j to  
5 1395t, 1395u to 1395w, 1395w-2 to 1395w-4, 1395w-21 to 1395w-28,  
6 1395x to 1395yy, and 1395bbb to 1395ggg.

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