

Health facilities; certificate of need; certificate of need process, scope, and duties; modify.

HEALTH FACILITIES: Certificate of need

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 22201, 22203, 22205, 22207, 22209, 22211, 22213, 22215, 22221, 22226, 22230, 22231, 22239, 22241, 22247, 22255, and 22260 (MCL 333.22201, 333.22203, 333.22205, 333.22207, 333.22209, 333.22211, 333.22213, 333.22215, 333.22221, 333.22226, 333.22230, 333.22231, 333.22239, 333.22241, 333.22247, 333.22255, and 333.22260), sections 22201, 22211, 22230, and 22255 as added by 1988 PA 332, 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, and section 22226 as added by 1988 PA 331, and by adding section 20930 and part 132; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1                   PART 132. LITHOTRIPSY

2           SEC. 13201. (1) AS USED IN THIS PART:

3           (A) "DEPARTMENT" MEANS THE DEPARTMENT OF CONSUMER AND INDUS-  
4 TRY SERVICES.

5           (B) "LITHOTRIPSY" MEANS URINARY EXTRACORPOREAL SHOCK WAVE  
6 LITHOTRIPSY, A PROCEDURE FOR THE REMOVAL OF KIDNEY STONES THAT  
7 INVOLVES FOCUSING SHOCK WAVES ON KIDNEY STONES SO THAT THE STONES  
8 ARE PULVERIZED INTO SAND-LIKE PARTICLES, WHICH THEN MAY BE PASSED  
9 THROUGH THE URINARY TRACT.

10          (C) "LITHOTRIPTER" MEANS A URINARY EXTRACORPOREAL SHOCK WAVE  
11 LITHOTRIPTER UNIT, THE MEDICAL EQUIPMENT THAT PRODUCES THE SHOCK  
12 WAVES FOR THE LITHOTRIPSY PROCEDURE. LITHOTRIPTER INCLUDES A  
13 MOBILE LITHOTRIPTER UNIT.

14          (D) "PERSON" MEANS A PERSON AS DEFINED IN SECTION 1106 OR A  
15 GOVERNMENTAL ENTITY.

16          (2) IN ADDITION TO THE DEFINITIONS IN THIS PART, ARTICLE 1  
17 CONTAINS GENERAL DEFINITIONS AND PRINCIPLES OF CONSTRUCTION  
18 APPLICABLE TO ALL ARTICLES OF THIS CODE AND PART 201 CONTAINS  
19 DEFINITIONS APPLICABLE TO THIS PART.

20          SEC. 13202. BEGINNING 1 YEAR AFTER THE EFFECTIVE DATE OF  
21 THE AMENDATORY ACT THAT ADDED THIS PART, A PERSON SHALL NOT  
22 TRANSFER, DISPOSE OF, ACQUIRE, OWN, POSSESS, OR OPERATE A LITHOT-  
23 RIPTER TO PERFORM LITHOTRIPSY UNTIL THE LITHOTRIPTER IS LICENSED  
24 WITH THE DEPARTMENT UNDER THIS PART.

25          SEC. 13203. (1) THE DEPARTMENT MAY RECEIVE LICENSE  
26 APPLICATIONS FOR THE OPERATION OF A LITHOTRIPTER. UPON

1 COMPLIANCE BY AN APPLICANT WITH THE REQUIREMENTS OF THIS PART,  
2 RULES PROMULGATED UNDER THIS PART, AND STANDARDS ADOPTED UNDER  
3 THIS PART, THE DEPARTMENT MAY ISSUE A LICENSE FOR THE OPERATION  
4 OF THE LITHOTRIPTER.

5 (2) THE DEPARTMENT SHALL NOT ISSUE A LICENSE UNDER THIS PART  
6 UNLESS THE APPLICANT SATISFIES EACH OF THE FOLLOWING CONDITIONS:

7 (A) CAPABILITY TO PROVIDE COMPLICATED STONE DISEASE TREAT-  
8 MENT ON SITE.

9 (B) THE OPERATION OF THE LITHOTRIPTER SHALL ONLY BE PER-  
10 FORMED WITHIN A HOSPITAL OR HEALTH FACILITY THAT PROVIDES EACH OF  
11 THE FOLLOWING:

12 (i) ON-CALL AVAILABILITY OF AN ANESTHESIOLOGIST AND A  
13 SURGEON.

14 (ii) ON-SITE ADVANCED CARDIAC LIFE SUPPORT CERTIFIED PERSON-  
15 NEL AND NURSING PERSONNEL.

16 (iii) ON-SITE SUPPLIES AND MATERIALS FOR INFUSIONS AND MEDI-  
17 CATIONS, BLOOD AND BLOOD PRODUCTS, AND PHARMACEUTICALS, INCLUD-  
18 ING, BUT NOT LIMITED TO, VASOPRESSOR MEDICATIONS, ANTIBIOTICS,  
19 AND FLUIDS AND SOLUTIONS.

20 (iv) ON-SITE GENERAL ANESTHESIA, ELECTROCARDIOGRAM, CARDIAC  
21 MONITORING, BLOOD PRESSURE, PULSE OXIMETER, VENTILATOR, GENERAL  
22 RADIOGRAPHY AND FLUOROSCOPY, CYSTOSCOPY, AND LABORATORY  
23 SERVICES.

24 (v) ON-SITE CRASH CART.

25 (vi) ON-SITE CARDIAC INTENSIVE CARE UNIT OR A WRITTEN TRANS-  
26 FER AGREEMENT WITH A HOSPITAL OR HEALTH FACILITY THAT HAS A  
27 CARDIAC INTENSIVE CARE UNIT.

1 (vii) ON-SITE 23-HOUR HOLDING UNIT.

2 (C) A STANDING MEDICAL STAFF FOR THE MEDICAL AND ADMINISTRA-  
3 TIVE CONTROL OF THE ORDERING AND UTILIZATION OF THE LITHOTRIPTER  
4 AT THE HOSPITAL OR HEALTH FACILITY.

5 (D) EACH INDIVIDUAL WHO OPERATES THE LITHOTRIPTER SHALL HAVE  
6 COMPLETED A TRAINING PROGRAM APPROVED BY THE DEPARTMENT REGARDING  
7 THE USE OF A LITHOTRIPTER.

8 (3) THE LICENSE IS VALID FOR A PERIOD OF 2 YEARS AND MAY BE  
9 RENEWED UPON THE TIMELY SUBMISSION OF A COMPLETED APPLICATION AND  
10 PAYMENT OF THE LICENSE FEE.

11 SEC. 13204. AS DETERMINED REASONABLE AND APPROPRIATE BY THE  
12 DEPARTMENT, THE DEPARTMENT MAY PROMULGATE RULES TO ESTABLISH A  
13 SCHEDULE OF FEES TO BE PAID BY THE APPLICANTS FOR LICENSES OF  
14 LITHOTRIPTERS, INCLUDING A SCHEDULE OF FEES FOR THE RENEWAL OF  
15 LICENSES UNDER THIS PART.

16 SEC. 13205. (1) WITHIN 180 DAYS AFTER THE EFFECTIVE DATE OF  
17 THE AMENDATORY ACT THAT ADDED THIS PART, THE DEPARTMENT SHALL  
18 PROMULGATE RULES TO SET STANDARDS FOR THE LICENSURE OF LITHOTRIP-  
19 TERS UNDER THIS PART. THE RULES MAY PROVIDE FOR ADOPTION OF ALL  
20 OR PART OF STANDARDS OF ANY PROFESSIONAL ORGANIZATION THE DEPART-  
21 MENT CONSIDERS APPROPRIATELY QUALIFIED.

22 (2) THE DEPARTMENT MAY PROMULGATE RULES REGARDING STANDARDS  
23 FOR LITHOTRIPTERS OR MAY ADOPT STANDARDS ESTABLISHED UNDER PART  
24 222.

25 SEC. 20930. WITHIN 180 DAYS AFTER THE EFFECTIVE DATE OF THE  
26 AMENDATORY ACT THAT ADDED THIS SECTION, THE DEPARTMENT SHALL  
27 REVIEW THE REQUIREMENTS OF THIS PART AND RULES PROMULGATED UNDER

1 THIS PART FOR THE LICENSURE OF AN AIRCRAFT TRANSPORT VEHICLE.  
2 THE DEPARTMENT SHALL INCORPORATE THE QUALITY ASSURANCE STANDARDS  
3 ADOPTED FOR AIR AMBULANCE SERVICES UNDER PART 222 INTO THE  
4 REQUIREMENTS OR RULES PROMULGATED UNDER THIS PART FOR LICENSURE  
5 OF AN AIR TRANSPORT OPERATION.

6 Sec. 22201. (1) For purposes of this part, the words and  
7 phrases defined in sections 22203 to 22207 have the meanings  
8 ascribed to them in those sections.

9 (2) In addition, article 1 contains general definitions and  
10 principles of construction applicable to all articles in this  
11 code.

12 (3) The definitions in part 201 do not apply to this part.

13 (4) THE CERTIFICATE OF NEED PROGRAM CREATED UNDER THIS PART  
14 IS TO ASSURE THE AVAILABILITY AND ACCESSIBILITY OF QUALITY HEALTH  
15 SERVICES AT A REASONABLE COST AND WITHIN A REASONABLE GEOGRAPHIC  
16 PROXIMITY TO ALL RESIDENTS OF THIS STATE.

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

22 (2) "Capital expenditure" means an expenditure for a single  
23 project, including cost of construction, engineering, and equip-  
24 ment that under generally accepted accounting principles is not  
25 properly chargeable as an expense of operation. Capital expendi-  
26 ture includes a lease or comparable arrangement by or on behalf  
27 of a health facility ~~by which a person obtains~~ TO OBTAIN a

1 health facility, ~~or~~ licensed part of a health facility, or  
2 equipment for a health facility, IF the ~~expenditure for which~~  
3 ACTUAL PURCHASE OF A HEALTH FACILITY, LICENSED PART OF A HEALTH  
4 FACILITY, OR EQUIPMENT FOR A HEALTH FACILITY would have been con-  
5 sidered a capital expenditure under this part. ~~if the person had~~  
6 ~~acquired it by purchase.~~ Capital expenditure includes the cost  
7 of studies, surveys, designs, plans, working drawings, specifica-  
8 tions, and other activities essential to the acquisition,  
9 improvement, expansion, addition, conversion, modernization, new  
10 construction, or replacement of physical plant and equipment.

11 (3) "Certificate of need" means a certificate issued  
12 ~~pursuant to~~ UNDER this part authorizing a new health facility,  
13 a change in bed capacity, the initiation, replacement, or expan-  
14 sion of a covered clinical service, or a covered capital expendi-  
15 ture that is issued in accordance with this part.

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

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

21 (a) An increase in licensed hospital beds.

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

24 (c) An increase in licensed psychiatric beds.

25 (d) A change from 1 licensed use to a different licensed  
26 use.

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

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

5 (7) "Clinical service area" means an area of a health facil-  
6 ity, including related corridors, equipment rooms, ancillary  
7 service and support areas that house medical equipment, patient  
8 rooms, patient beds, diagnostic, operating, therapy, or treatment  
9 rooms or other accommodations related to the diagnosis, treat-  
10 ment, or rehabilitation of individuals receiving services from  
11 the health facility.

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

14 (9) "Covered capital expenditure" means a capital expendi-  
15 ture of ~~-\$2,000,000.00-~~ \$2,500,000.00 or more, as adjusted  
16 ANNUALLY by the department under section 22221(g), by a person  
17 for a health facility for a single project, excluding the cost of  
18 nonfixed medical equipment, that includes or involves the acqui-  
19 sition, improvement, expansion, addition, conversion, moderniza-  
20 tion, new construction, or replacement of a clinical service area  
21 or a capital expenditure of ~~-\$3,000,000.00-~~ \$5,000,000.00 or  
22 more, as adjusted ANNUALLY by the department under  
23 section 22221(g), by a person for a health facility for a single  
24 project that involves the acquisition, improvement, expansion,  
25 addition, conversion, modernization, new construction, or  
26 replacement of nonclinical service areas only.

1 (10) "Covered clinical service", except as modified by the  
2 commission ~~pursuant to~~ UNDER section 22215, ~~after the~~  
3 ~~effective date of the 1993 amendatory act that amended this~~  
4 ~~subsection,~~ means 1 or more of the following:

5 (a) Initiation or expansion of 1 or more of the following  
6 services:

7 (i) Neonatal intensive care services or special newborn  
8 nursing services.

9 (ii) Open heart surgery.

10 (iii) Extrarenal organ transplantation.

11 (b) Initiation, replacement, or expansion of 1 or more of  
12 the following services:

13 (i) ~~Extracorporeal~~ UNTIL LICENSED UNDER PART 132,  
14 EXTRACORPOREAL shock wave lithotripsy.

15 (ii) Megavoltage radiation therapy.

16 (iii) Positron emission tomography.

17 (iv) Surgical services provided in a freestanding surgical  
18 outpatient facility, an ambulatory surgery center certified under  
19 title XVIII, or a surgical department of a hospital licensed  
20 under part 215 and offering inpatient or outpatient surgical  
21 services.

22 (v) Cardiac catheterization.

23 ~~(vi) Fixed and mobile magnetic resonance imager services.~~

24 (vi) ~~(vii)~~ Fixed and mobile computerized tomography scan-  
25 ner services.

1           (vii) ~~(viii) Air~~ UNTIL THE LICENSING REQUIREMENTS UNDER  
 2 PART 209 ARE REVIEWED AND UPDATED WITH THE QUALITY ASSURANCE  
 3 STANDARDS ADOPTED UNDER PART 222, AIR ambulance services.

4           ~~(c) Initiation, replacement, or expansion of a partial hos=  
 5 pitalization psychiatric program service.~~

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

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

12           (11) "DEPARTMENT" MEANS THE DEPARTMENT OF CONSUMER AND  
 13 INDUSTRY SERVICES OR ANY SUCCESSOR DEPARTMENT RESPONSIBLE FOR  
 14 HEALTH FACILITY LICENSING AND CERTIFICATION.

15           (12) ~~(11)~~ "Fixed equipment" means equipment that is  
 16 affixed to and constitutes a structural component of a health  
 17 facility, including, but not limited to, mechanical or electrical  
 18 systems, elevators, generators, pumps, boilers, and refrigeration  
 19 equipment.

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

22           (a) A hospital licensed under part 215.

23           (b) A psychiatric hospital ~~,~~ OR psychiatric unit ~~,~~ or  
 24 ~~partial hospitalization psychiatric program~~ licensed under the  
 25 mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

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

1 (d) A freestanding surgical outpatient facility licensed  
2 under part 208.

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

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

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

10 (b) A health facility or agency located in a correctional  
11 institution.

12 (c) A veterans facility operated by the state or federal  
13 government.

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

16 (3) "Initiate" means the ~~initiation~~ OFFERING of a covered  
17 clinical service ~~by a person if the covered clinical service~~  
18 THAT has not been offered in compliance with this part or former  
19 part 221 on a regular basis ~~by that person~~ at ~~the~~ THAT loca-  
20 tion ~~where the covered clinical service is to be offered~~ within  
21 the 12-month period immediately preceding the date the covered  
22 clinical service will be offered.

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

26 Sec. 22207. (1) "Medicaid" means the program for medical  
27 assistance administered by the department of ~~social services~~

1 COMMUNITY HEALTH under the social welfare act, ~~Act No. 280 of~~  
2 ~~the Public Acts of 1939, being sections 400.1 to 400.119b of the~~  
3 ~~Michigan Compiled Laws~~ 1939 PA 280, MCL 400.1 TO 400.119B.

4 (2) "Modernization" means an upgrading, alteration, or  
5 change in function of a part or all of the physical plant of a  
6 health facility. Modernization includes, but is not limited to,  
7 the alteration, repair, remodeling, and renovation of an existing  
8 building and initial fixed equipment and the replacement of obso-  
9 lete fixed equipment in an existing building. Modernization of  
10 the physical plant does not include normal maintenance and oper-  
11 ational expenses.

12 (3) "New construction" means construction of a health facil-  
13 ity where a health facility does not exist or construction  
14 replacing or expanding an existing health facility or a part of  
15 an existing health facility.

16 (4) "Person" means a person as defined in section 1106 or a  
17 governmental entity.

18 (5) "Planning area" means the area defined in a certificate  
19 of need review standard for determining the need for, and the  
20 resource allocation of, a specific health facility, service, or  
21 equipment. Planning area includes, but is not limited to, the  
22 state, a health facility service area, or a health service area  
23 or subarea within the state.

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

1           (7) "Rural county" means a county not located in a  
2 metropolitan area as that term is defined ~~pursuant to~~ UNDER the  
3 "revised standards for defining metropolitan areas in the 1990's"  
4 by the statistical policy office of the office of information and  
5 regulatory affairs of the United States office of management and  
6 budget, 55 F.R. p. 12154 (March 30, 1990).

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

12           (8) ~~(9)~~ "Stipulation" means a requirement that is germane  
13 to the proposed project and has been agreed to by an applicant as  
14 a condition of certificate of need approval.

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

18           (a) Acquire an existing health facility or begin operation  
19 of a health facility at a site that is not currently licensed for  
20 that type of health facility.

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

22           (c) Initiate, replace, or expand a covered clinical  
23 service.

24           (d) Make a covered capital expenditure.

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

1           (3) An applicant seeking a certificate of need for the  
2 acquisition of an existing health facility may file a single,  
3 consolidated application for the certificate of need if the  
4 project results in the acquisition of an existing health facility  
5 but does not result in an increase or relocation of licensed beds  
6 or the initiation, expansion, or replacement of a covered clinical  
7 service. Except as otherwise provided in this subsection, a  
8 person acquiring an existing health facility is subject to the  
9 applicable certificate of need review standards in effect on the  
10 date of the transfer for the covered clinical services provided  
11 by the acquired health facility. The department may except 1 or  
12 more of the covered clinical services listed in section  
13 22203(10)(b), except the covered clinical service listed in section  
14 22203(10)(b)(iv), from the minimum volume requirements in  
15 the applicable certificate of need review standards in effect on  
16 the date of the transfer, if the equipment used in the covered  
17 clinical service is unable to meet the minimum volume requirements  
18 due to the technological incapacity of the equipment. A  
19 covered clinical service excepted by the department under this  
20 subsection is subject to all the other provisions in the applicable  
21 certificate of need review standards in effect on the date of  
22 the transfer, except minimum volume requirements.

23           (4) ~~The center for rural health created in section 2612~~  
24 ~~shall designate a certificate of need ombudsman to provide technical~~  
25 ~~assistance and consultation to hospitals and communities~~  
26 ~~located in rural counties regarding certificate of need proposals~~  
27 ~~and applications under this part. The ombudsman shall also act~~

1 ~~as an advocate for health concerns of rural counties in the~~  
2 ~~development of certificate of need review standards under this~~  
3 ~~part.~~ AN APPLICANT SEEKING A CERTIFICATE OF NEED FOR THE RELOCA-  
4 TION OR REPLACEMENT OF AN EXISTING HEALTH FACILITY MAY FILE A  
5 SINGLE, CONSOLIDATED APPLICATION FOR THE CERTIFICATE OF NEED IF  
6 THE PROJECT DOES NOT RESULT IN AN INCREASE OF LICENSED BEDS OR  
7 THE INITIATION, EXPANSION, OR REPLACEMENT OF A COVERED CLINICAL  
8 SERVICE. A PERSON RELOCATING OR REPLACING AN EXISTING HEALTH  
9 FACILITY IS SUBJECT TO THE APPLICABLE CERTIFICATE OF NEED REVIEW  
10 STANDARDS IN EFFECT ON THE DATE OF THE RELOCATION OR REPLACEMENT  
11 OF THE HEALTH FACILITY.

12       Sec. 22211. (1) The certificate of need commission is cre-  
13 ated in the department. The commission shall be appointed within  
14 3 months after ~~the effective date of this part~~ OCTOBER 1,  
15 1988. The commission shall consist of 5 members appointed by the  
16 governor with the advice and consent of the senate. Three  
17 appointees shall be members of a major political party, and 2  
18 appointees shall be members of another major political party.

19       (2) In making appointments, the governor shall, to the  
20 extent feasible, assure that the membership of the commission is  
21 broadly representative of the interests of all of the people of  
22 this state AND OF THE VARIOUS GEOGRAPHIC REGIONS. THE MEMBERSHIP  
23 OF THE COMMISSION SHALL INCLUDE, BUT IS NOT LIMITED TO, REPRESENT-  
24 TIVES OF HEALTH CARE CONSUMERS, PAYERS, PROVIDERS, AND  
25 PURCHASERS.

26       (3) Except for initial members, a member of the commission  
27 shall serve for a term of 3 years or until a successor is

1 appointed. Of the members initially appointed, 1 of the members  
2 shall be appointed for a term of 1 year, 2 of the members shall  
3 be appointed for a term of 2 years, and 2 of the members shall be  
4 appointed for a term of 3 years. A vacancy on the commission  
5 shall be filled for the ~~balance~~ REMAINDER of the unexpired term  
6 in the same manner as the original appointment.

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

8 (a) ~~Act No. 317 of the Public Acts of 1968, being sections~~  
9 ~~15.321 to 15.330 of the Michigan Compiled Laws~~ 1968 PA 317, MCL  
10 15.321 TO 15.330.

11 (b) ~~Act No. 196 of the Public Acts of 1973, being sections~~  
12 ~~15.341 to 15.348 of the Michigan Compiled Laws~~ 1973 PA 196, MCL  
13 15.341 TO 15.348.

14 (c) ~~Act No. 472 of the Public Acts of 1978, being sections~~  
15 ~~4.411 to 4.431 of the Michigan Compiled Laws~~ 1978 PA 472, MCL  
16 4.411 TO 4.431.

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

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

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

26 (4) The commission shall hold regular quarterly meetings at  
27 places and on dates fixed by the commission. Special meetings

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

3 (5) A majority of the commission members appointed and serv-  
4 ing constitutes a quorum. Final action by the commission shall  
5 be only by affirmative vote of a majority of the commission mem-  
6 bers appointed and serving. A commission member shall not vote  
7 by proxy.

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

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

22 (8) The department shall assign AT LEAST 2 FULL-TIME profes-  
23 sional employees to staff the commission to assist the commission  
24 in the performance of its substantive responsibilities under this  
25 part.

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

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

8 (b) Approve, disapprove, or revise certificate of need  
9 review standards that establish for purposes of section 22225 the  
10 need, if any, for the initiation, replacement, or expansion of  
11 covered clinical services, the acquisition or beginning the oper-  
12 ation of a health facility, making changes in bed capacity, or  
13 making covered capital expenditures, including conditions, stan-  
14 dards, assurances, or information that must be met, demonstrated,  
15 or provided by a person who applies for a certificate of need. A  
16 certificate of need review standard may also establish ongoing  
17 quality assurance requirements including any or all of the  
18 requirements specified in section 22225(2)(c). ~~The statewide~~  
19 ~~health coordinating council may perform the duties of the commis-~~  
20 ~~sion under this subdivision, only until all members of the com-~~  
21 ~~mission are appointed and confirmed, or until March 1, 1989,~~  
22 ~~whichever is sooner.~~

23 (c) Direct the department to prepare and submit recommenda-  
24 tions regarding commission duties and functions that are of  
25 interest to the commission including, but not limited to, spe-  
26 cific modifications of proposed actions considered under this  
27 section.

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

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

6 (f) By ~~October 1, 1992~~ JANUARY 1, 2003, and every ~~5~~ 2  
7 years ~~after October 1, 1992~~ THEREAFTER, make recommendations to  
8 the standing committees in the senate and the house that have  
9 jurisdiction over matters pertaining to public health regarding  
10 statutory changes to improve or eliminate the certificate of need  
11 program.

12 (g) ~~Upon submission by the department approve, disapprove,~~  
13 ADOPT or revise standards to be used by the department in desig-  
14 nating a regional certificate of need review agency, pursuant to  
15 section 22226.

16 (h) Approve, disapprove, or revise certificate of need  
17 review standards governing the acquisition of new technology.

18 (i) In accordance with section 22255, approve, disapprove,  
19 or revise proposed procedural rules for the certificate of need  
20 program.

21 (j) Consider the recommendations of the department and the  
22 department of attorney general as to the administrative feasibil-  
23 ity and legality of proposed actions under subdivisions (a), (b),  
24 and (c).

25 (k) Consider the impact of a proposed restriction on the  
26 acquisition of or availability of covered clinical services on

1 the quality, availability, and cost of health services in this  
2 state.

3 (l) Appoint ad hoc advisory committees to assist in the  
4 development of proposed certificate of need review standards. An  
5 ad hoc advisory committee shall complete its duties under this  
6 subdivision and submit its recommendations to the commission AND  
7 DEPARTMENT within the time limit specified by the commission when  
8 an ad hoc advisory committee is appointed. The composition of  
9 the ad hoc advisory committee shall include all of the  
10 following:

11 (i) Experts with professional competence in the subject  
12 matter of the proposed standard, who shall constitute a majority  
13 of the ad hoc advisory committee.

14 (ii) Representatives of health care provider organizations  
15 concerned with licensed health facilities or licensed health pro-  
16 fessions INCLUDING, BUT NOT LIMITED TO, HEALTH PLANNERS AND  
17 HEALTH CARE PROVIDERS.

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

21 (2) The commission shall exercise its duties under this part  
22 to promote all of the following:

23 (a) The availability and accessibility of quality health  
24 services at reasonable cost and with reasonable geographic prox-  
25 imity for all people in ~~the~~ THIS state.

26 (b) Appropriate differential consideration of the health  
27 care needs of residents in rural counties in ways that do not

1 compromise the quality and affordability of health care services  
2 for those residents.

3 (3) Not less than 30 days before final action is taken by  
4 the commission under subsection (1)(a), (b), (d), or (h), the  
5 commission shall conduct a public hearing on its proposed  
6 action. In addition, not less than 30 days before final action  
7 is taken by the commission under subsection (1)(a), (b), (d), or  
8 (h), the commission CHAIRPERSON shall submit the proposed action  
9 AND A CONCISE SUMMARY OF THE EXPECTED IMPACT OF THE PROPOSED  
10 ACTION for comment to EACH MEMBER OF the standing committees in  
11 the senate and house of representatives with jurisdiction over  
12 public health matters. THE COMMISSION SHALL INFORM THE STANDING  
13 COMMITTEES IN THE SENATE AND HOUSE OF REPRESENTATIVES OF THE  
14 DATE, TIME, AND LOCATION OF THE NEXT MEETING REGARDING THE PRO-  
15 POSED ACTION.

16 (4) The CHAIRPERSON OF THE commission shall submit the pro-  
17 posed final action INCLUDING A CONCISE SUMMARY OF THE EXPECTED  
18 IMPACT OF THE PROPOSED FINAL ACTION to the governor and TO EACH  
19 MEMBER OF the standing committee of each house of the legislature  
20 with jurisdiction over public health matters. The governor or  
21 the legislature may disapprove the proposed final action within  
22 45 days after the date of submission. If the proposed final  
23 action is not submitted on a legislative session day, the 45 days  
24 commence on the first legislative session day after the proposed  
25 final action is submitted. The 45 days shall include not less  
26 than 9 legislative session days. Legislative disapproval shall  
27 be expressed by concurrent resolution which shall be adopted by

1 each house of the legislature. The concurrent resolution shall  
2 state specific objections to the proposed final action. A pro-  
3 posed final action by the commission under subsection (1)(a),  
4 (b), (d), or (h) is not effective if it has been disapproved  
5 under this subsection. If the proposed final action is not dis-  
6 approved under this subsection, it is effective and binding on  
7 all persons affected by this part upon the expiration of the  
8 45-day period or on a later date specified in the proposed final  
9 action. As used in this subsection, "legislative session day"  
10 means each day in which a quorum of either the house of represen-  
11 tatives or the senate, following a call to order, officially con-  
12 venes in Lansing to conduct legislative business.

13 ~~(5) Within 2 years after the effective date of the amenda-~~  
14 ~~tory act that added this sentence, the ad hoc advisory committee~~  
15 ~~for psychiatric services appointed by the department under sec-~~  
16 ~~tion 22221 or by the commission under section 22215 shall develop~~  
17 ~~and submit certificate of need review standards under this sec-~~  
18 ~~tion for the covered clinical services described in~~  
19 ~~section 22203(10)(c) and (d). The ad hoc advisory committee for~~  
20 ~~psychiatric services shall include in the review standards a spe-~~  
21 ~~cific methodology for the determination of need. If the ad hoc~~  
22 ~~advisory committee for psychiatric services does not develop and~~  
23 ~~submit review standards for the covered clinical services~~  
24 ~~described in section 22203(10)(c) and (d) within the 2-year time~~  
25 ~~limit set forth in this subsection, the commission shall delete~~  
26 ~~the covered clinical services described in section 22203(10)(c)~~  
27 ~~and (d) pursuant to subsection (1)(a).~~

1           (5) ~~(6)~~ If the reports received under section 22221(f)  
 2 indicate that the certificate of need application fees collected  
 3 under section 20161(2) have not been within 10% of 1/2 the cost  
 4 to the department of implementing this part, the commission shall  
 5 make recommendations TO THE GOVERNOR AND TO EACH MEMBER OF THE  
 6 STANDING COMMITTEES IN THE SENATE AND HOUSE OF REPRESENTATIVES  
 7 WITH JURISDICTION OVER PUBLIC HEALTH MATTERS regarding the revi-  
 8 sion of those fees so that the certificate of need application  
 9 fees collected equal approximately 1/2 of the cost to the depart-  
 10 ment of implementing this part.

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

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

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

17           (c) ~~Develop~~ BASED UPON RECOMMENDATIONS SUBMITTED BY THE AD  
 18 HOC ADVISORY COMMITTEE UNDER SECTION 22215(1)(l), DEVELOP pro-  
 19 posed certificate of need review standards for submission to the  
 20 commission.

21           (d) Administer and apply certificate of need review  
 22 standards. ~~In applying a review standard that establishes the~~  
 23 ~~minimum number of magnetic resonance imaging procedures necessary~~  
 24 ~~for a certificate of need for a mobile magnetic resonance imaging~~  
 25 ~~service servicing only hospitals located in rural counties, the~~  
 26 ~~department shall use an adjustment factor of 2.0. In applying a~~  
 27 ~~review standard that establishes the minimum number of magnetic~~

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

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

11 (f) ~~Following the first state fiscal year after October 1,~~  
12 ~~1988~~ BY DECEMBER 1, 2003, and annually thereafter, report to the  
13 commission regarding the costs to the department of implementing  
14 this part and the certificate of need application fees collected  
15 under section ~~20161(2)~~ 20161 in the immediately preceding state  
16 fiscal year.

17 (g) Beginning January 1, ~~1995~~ 2003, annually adjust the  
18 ~~-\$2,000,000.00~~ \$2,500,000.00 and ~~-\$3,000,000.00~~ \$5,000,000.00  
19 thresholds set forth in section 22203(9) by an amount determined  
20 by the state treasurer to reflect the annual percentage change in  
21 the consumer price index, using data from the immediately preced-  
22 ing period of July 1 to June 30. As used in this subdivision,  
23 "consumer price index" means the most comprehensive index of con-  
24 sumer prices available for this state from the bureau of labor  
25 statistics of the United States department of labor.

26 (H) ANNUALLY REVIEW THE APPLICATION PROCESS, INCLUDING ALL  
27 FORMS, REPORTS, AND OTHER MATERIALS THAT ARE REQUIRED TO BE

1 SUBMITTED WITH THE APPLICATION. IF NEEDED TO PROMOTE  
2 ADMINISTRATIVE EFFICIENCY, REVISE THE FORMS, REPORTS, AND ANY  
3 OTHER MATERIALS REQUIRED WITH THE APPLICATION.

4 (I) WITHIN 6 MONTHS OF THE EFFECTIVE DATE OF THE AMENDATORY  
5 ACT THAT ADDED THIS SUBSECTION, CREATE A CONSOLIDATED APPLICATION  
6 FOR A CERTIFICATE OF NEED FOR THE RELOCATION OR REPLACEMENT OF AN  
7 EXISTING HEALTH FACILITY.

8 Sec. 22226. (1) The ~~department and the office~~ COMMISSION  
9 shall ~~jointly~~ develop standards for the designation by the  
10 department of a regional certificate of need review agency for  
11 each review area to develop advisory recommendations for proposed  
12 projects. The standards shall be based on the requirements for a  
13 regional certificate of review agency set forth in  
14 subsection (3). ~~The standards developed under this subsection~~  
15 ~~shall be approved by the commission before implementation by the~~  
16 ~~department.~~

17 (2) The department, with the concurrence of the commission,  
18 shall designate a person to be a regional certificate of need  
19 review agency for a specific review area, according to procedures  
20 approved by the commission, if the person meets the standards  
21 approved under subsection (1), and if a regional certificate of  
22 need review agency has not already been designated for that spe-  
23 cific review area.

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

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

1 (b) Be governed by a board that is broadly representative of  
2 consumers, providers, payers, and purchasers of health care in  
3 the review area, with a majority of the board being consumers,  
4 payers, and purchasers of health care.

5 (c) Demonstrate a willingness and ability to conduct reviews  
6 of all proposed projects requiring a certificate of need that  
7 would be located within the review area served by the regional  
8 certificate of need review agency.

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

11 (e) Provide data to the department to enable the department  
12 to evaluate the regional certificate of need review agency's  
13 performance. The data provided under this subdivision shall be  
14 reviewed at periodic meetings between the department and the  
15 regional certificate of need review agency.

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

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

22 (4) The designation of a regional certificate of need review  
23 agency shall be operative for a period of time approved by the  
24 commission, but not for more than 24 months. The designation of  
25 a regional certificate of need review agency may be terminated by  
26 the department WITH THE CONCURRENCE OF THE COMMISSION at any time  
27 for noncompliance with the standards approved under subsection

1 (1). In addition, the designation may be terminated by the  
2 regional certificate of need review agency upon the expiration of  
3 60 days after the department receives written notice of the  
4 termination.

5 (5) A local certificate of need review agency that was des-  
6 ignated pursuant to a designation agreement authorized under  
7 former section 22124 and effective on ~~the effective date of this~~  
8 ~~part~~ OCTOBER 1, 1988 is designated as the regional certificate  
9 of need review agency for its review area until the expiration of  
10 1 year after the date of final approval of the standards devel-  
11 oped under subsection (1), unless the designation is terminated  
12 by either the department UNDER SUBSECTION (4) or the regional  
13 certificate of need review agency before that time.

14 (6) A person applying for a certificate of need under this  
15 part shall simultaneously provide a copy of any letter of intent,  
16 application, or additional information required by the department  
17 to the regional certificate of need review agency designated by  
18 the department for the review area in which the proposed project  
19 would be located, unless the regional certificate of need review  
20 agency determines that it will not review the application or  
21 other information, and notifies both the applicant and the  
22 department in writing of its determination. The regional certif-  
23 icate of need review agency may review the application and submit  
24 its recommendations to the department. If the regional certifi-  
25 cate of need review agency determines that it will not review the  
26 application, then the regional certificate of need review agency  
27 shall notify both the applicant and the department in writing of

1 its determination. In developing its recommendations, the  
2 regional certificate of need review agency shall utilize the  
3 review procedures and time frames specified for ~~health systems~~  
4 ~~agencies or~~ regional certificate of need review agencies in the  
5 rules continued or promulgated under this part, and shall also  
6 utilize certificate of need review standards, statutory criteria,  
7 and forms identical to those used by the department.

8 (7) Before developing a proposed decision on an application,  
9 the department shall review the recommendations of the regional  
10 certificate of need review agency for the review area in which  
11 the proposed project would be located, if the recommendations are  
12 submitted to the department within the time ~~frames~~ required  
13 under subsection (6). If the director makes a final decision  
14 that is inconsistent with the recommendations of the regional  
15 certificate of need review agency, the department shall promptly  
16 provide the regional certificate of need review agency with a  
17 detailed statement of the reasons for the director's decision.  
18 The statement shall address each instance in which the director's  
19 decision is inconsistent with the recommendation of the regional  
20 certificate of need review agency regarding a specific certifi-  
21 cate of need review standard or criterion.

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

1       ~~(9) In the review of certificate of need applications, the~~  
 2 ~~department shall consider relevant written communications from~~  
 3 ~~any person.~~

4       (9) ~~(10)~~ Before developing a recommendation on a certifi-  
 5 cate of need application, a regional certificate of need review  
 6 agency shall hold a public hearing on the proposed project. If  
 7 THE DEPARTMENT DETERMINES THAT LOCAL INTEREST MERITS A PUBLIC  
 8 HEARING AND a regional certificate of need review agency has not  
 9 been designated for the review area in which the proposed project  
 10 will be located, THEN the department ~~may~~ SHALL hold a public  
 11 hearing on the proposed project. ~~, if the department determines~~  
 12 ~~that local interest merits a public hearing.~~

13       (10) ~~(11)~~ A regional certificate of need review agency  
 14 shall conduct all meetings regarding its activities for the pur-  
 15 pose of achieving the objectives of this part in compliance with  
 16 the open meetings act, ~~Act No. 267 of the Public Acts of 1976,~~  
 17 ~~being sections 15.261 to 15.275 of the Michigan Compiled Laws~~  
 18 1976 PA 267, MCL 15.261 TO 15.275.

19       (11) ~~(12)~~ As used in this section, "review area" means a  
 20 geographic area established for a health systems agency pursuant  
 21 to former section 1511 of the public health service act, or a  
 22 geographic area otherwise established by the commission for a  
 23 regional certificate of need review agency. ~~, after considera-~~  
 24 ~~tion of the recommendations of the department and the office.~~

25       Sec. 22230. (1) In evaluating applications for a health  
 26 facility as defined under section 22205(1)(c) in a comparative  
 27 review, the department shall include participation in title XIX

1 of the social security act, CHAPTER 531, 49 STAT. 620, 42  
2 U.S.C. 1396 to ~~1396d, 1396f to 1396s~~ 1396r-6 AND 1396r-8 TO  
3 1396v, as a distinct criterion, weighted as very important, and  
4 determine the degree to which an application meets this criterion  
5 based on the extent of participation in the medicaid program.

6 (2) BEFORE APPROVING A CERTIFICATE OF NEED APPLICATION, THE  
7 DEPARTMENT SHALL CONSIDER THE APPLICANT'S PARTICIPATION IN TITLE  
8 XIX OF THE SOCIAL SECURITY ACT, CHAPTER 531, 49 STAT. 620, 42  
9 U.S.C. 1396 TO 1396r-6 AND 1396r-8 TO 1396v, AS A SIGNIFICANT  
10 FACTOR IN GRANTING THE APPLICATION.

11 Sec. 22231. (1) The decision to grant or deny an applica-  
12 tion for a certificate of need shall be made by the director. A  
13 decision shall be proposed to the director by a bureau within the  
14 department designated by the director as responsible for the cer-  
15 tificate of need program. A decision shall be in writing and  
16 shall indicate 1 of the following:

17 (a) Approval of the application.

18 (b) Disapproval of the application.

19 (c) Subject to subsection (2), approval of the application  
20 with conditions.

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

23 (2) If an application is approved with conditions ~~pursuant~~  
24 ~~to~~ UNDER subsection (1)(c), the conditions shall be explicit,  
25 shall be related to the proposed project or to the applicable  
26 provisions of this part, and shall specify a time, not to exceed

1 1 year after the date the decision is rendered, within which the  
2 conditions shall be met.

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

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

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

20 (6) If the proposed decision is other than an approval with-  
21 out conditions or stipulations, the director shall issue a final  
22 decision not later than 60 days after the date a proposed deci-  
23 sion is submitted to the director unless the applicant has filed  
24 a request for a hearing on the proposed decision. If the pro-  
25 posed decision is an approval, the director shall issue a final  
26 decision not later than 5 days after the proposed decision is  
27 submitted to the director.

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

3 (8) If a proposed decision is an approval, and if, upon  
4 review, the director reverses the proposed decision, the director  
5 immediately shall notify the applicant of the reversal. Within  
6 15 days after receipt of the notice of reversal, the applicant  
7 may request a hearing under section 22232. After the hearing,  
8 the applicant may request the director to reconsider the reversal  
9 of the proposed decision, based on the results of the hearing.

10 (9) The final decision of the director may be appealed  
11 ~~only~~ by the applicant ~~and only~~ OR ANY OTHER PERSON WITH A  
12 DIRECT INTEREST IN THE APPLICATION. THE APPEAL SHALL ONLY BE on  
13 the record directly to the circuit court for the county where the  
14 applicant has its principal place of business in this state or  
15 the circuit court for Ingham county. Judicial review is governed  
16 by ~~sections 103 to 106 of~~ the administrative procedures act of  
17 1969, ~~Act No. 306 of the Public Acts of 1969, being sections~~  
18 ~~24.303 to 24.306 of the Michigan Compiled Laws~~ 1969 PA 306,  
19 MCL 24.201 TO 24.328.

20 ~~(10) The review and appeal of a certificate of need appli-~~  
21 ~~cation submitted with the required filing fee before October 1,~~  
22 ~~1988 shall be conducted under former part 221 and the rules~~  
23 ~~promulgated under that part. The certificate of need board cre-~~  
24 ~~ated by former section 221(2) shall continue for the purpose of~~  
25 ~~performing the functions vested in it by former part 221, until~~  
26 ~~all appeals lawfully brought under former part 221 are~~  
27 ~~concluded.~~

1           (10) ~~(11)~~ If the department exceeds the time ~~frames~~ set  
2 forth in this section for other than good cause, as determined by  
3 the commission, upon the written request of an applicant, the  
4 department shall return to the applicant all of the certificate  
5 of need application fee paid by the applicant under section  
6 ~~20161(2)~~ 20161.

7           Sec. 22239. (1) ~~A certificate of need ceases to be effec-~~  
8 ~~tive if~~ IF the certificate of need approval was based on a stip-  
9 ulation that the project would participate in title XIX and the  
10 project has not participated in title XIX for ~~not less than~~ AT  
11 LEAST 12 consecutive months within the first 2 years of  
12 operation, THE DEPARTMENT SHALL REVOKE THE CERTIFICATE OF NEED.  
13 A stipulation described in this section is germane to all health  
14 facility projects.

15           (2) THE DEPARTMENT SHALL MONITOR THE PARTICIPATION IN TITLE  
16 XIX OF EACH CERTIFICATE OF NEED APPLICANT APPROVED UNDER THIS  
17 PART. THE DEPARTMENT MAY REQUIRE EACH APPLICANT TO PROVIDE VERI-  
18 FICATION OF PARTICIPATION IN TITLE XIX WITH ITS APPLICATION AND  
19 ANNUALLY THEREAFTER.

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

24           (2) The period ending 12 months after the date of federal  
25 food and drug administration approval of new technology for com-  
26 mercial use shall be considered the new technology review  
27 period. A person shall not acquire new technology before the end

1 of a new technology review period, unless 1 of the following  
2 occurs:

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

8 (b) The person complies with the requirements of section  
9 22243.

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

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

1           Sec. 22247. (1) The department ~~may~~ SHALL monitor  
2 compliance with ALL certificates of need issued under this part  
3 and shall investigate allegations of noncompliance with a certif-  
4 icate of need or this part.

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

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

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

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

18           (d) Request enforcement action under section 22253.

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

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

23           (G) TAKE ANY OTHER ACTION AS DETERMINED APPROPRIATE BY THE  
24 DEPARTMENT.

25           (3) A person shall not charge to, or collect from, another  
26 person or otherwise recover costs for services provided or for  
27 equipment or facilities that are acquired in violation of this

1 part. If a person has violated this subsection, in addition to  
2 the sanctions provided under subsection (2), the person shall,  
3 upon request of the person from whom the charges were collected,  
4 refund those charges, either directly or through a credit on a  
5 subsequent bill.

6 Sec. 22255. ~~(1)~~ The department, with the approval of the  
7 commission, may promulgate procedural rules to implement this  
8 part.

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

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

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

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.