

# SENATE BILL No. 1136

March 14, 2006, Introduced by Senators JACOBS, PRUSI, GEORGE, CLARKE, KUIPERS and SCHAUER and referred to the Committee on Economic Development, Small Business and Regulatory Reform.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 20155, 20156, and 22210 (MCL 333.20155, 333.20156, and 333.22210), section 20155 as amended by 2001 PA 218, section 20156 as amended by 1990 PA 179, and section 22210 as amended by 1993 PA 88; and to repeal acts and parts of acts.

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

1       Sec. 20155. (1) Except as otherwise provided in this section,  
2       the department ~~of consumer and industry services~~ shall make  
3       annual and other visits to each health facility or agency licensed  
4       under this article for the purposes of survey, evaluation, and  
5       consultation. A visit made pursuant to a complaint shall be  
6       unannounced. Except for a county medical care facility, a home for  
7       the aged, a nursing home, or a hospice residence, the department

1 shall determine whether the visits that are not made pursuant to a  
2 complaint are announced or unannounced. Beginning June 20, 2001,  
3 the department shall assure that each newly hired nursing home  
4 surveyor, as part of his or her basic training, is assigned full-  
5 time to a licensed nursing home for at least 10 days within a 14-  
6 day period to observe actual operations outside of the survey  
7 process before the trainee begins oversight responsibilities. A  
8 member of a survey team shall not be employed by a licensed nursing  
9 home or a nursing home management company doing business in this  
10 state at the time of conducting a survey under this section. The  
11 department shall not assign an individual to be a member of a  
12 survey team for purposes of a survey, evaluation, or consultation  
13 visit at a nursing home in which he or she was an employee within  
14 the preceding 5 years.

15 (2) The department ~~of consumer and industry services~~ shall  
16 make at least a biennial visit to each licensed clinical  
17 laboratory, each nursing home, and each hospice residence for the  
18 purposes of survey, evaluation, and consultation. The department  
19 ~~of consumer and industry services~~ shall semiannually provide for  
20 joint training with nursing home surveyors and providers on at  
21 least 1 of the 10 most frequently issued federal citations in this  
22 state during the past calendar year. The department ~~of consumer~~  
23 ~~and industry services~~ shall develop a protocol for the review of  
24 citation patterns compared to regional outcomes and standards and  
25 complaints regarding the nursing home survey process. The review  
26 will result in a report provided to the legislature. Except as  
27 otherwise provided in this subsection, beginning with his or her

1 first full relicensure period after June 20, 2000, each member of a  
2 department ~~of consumer and industry services~~ nursing home survey  
3 team who is a health professional licensee under article 15 shall  
4 earn not less than 50% of his or her required continuing education  
5 credits, if any, in geriatric care. If a member of a nursing home  
6 survey team is a pharmacist licensed under article 15, he or she  
7 shall earn not less than 30% of his or her required continuing  
8 education credits in geriatric care.

9 (3) The department ~~of consumer and industry services~~ shall  
10 make a biennial visit to each hospital for survey and evaluation  
11 for the purpose of licensure. Subject to subsection (6), the  
12 department may waive the biennial visit required by this subsection  
13 if a hospital, as part of a timely application for license renewal,  
14 requests a waiver and submits both of the following and if all of  
15 the requirements of subsection (5) are met:

16 (a) Evidence that it is currently fully accredited by a body  
17 with expertise in hospital accreditation whose hospital  
18 accreditations are accepted by the United States department of  
19 health and human services for purposes of section 1865 of part C of  
20 title XVIII of the social security act, 42 ~~U.S.C.~~ **USC** 1395bb.

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

24 (4) Except as provided in subsection (8), accreditation  
25 information provided to the department ~~of consumer and industry~~  
26 ~~services~~ under subsection (3) is confidential, is not a public  
27 record, and is not subject to court subpoena. The department shall

1 use the accreditation information only as provided in this section  
2 and shall return the accreditation information to the hospital  
3 within a reasonable time after a decision on the waiver request is  
4 made.

5 (5) The department ~~of consumer and industry services~~ shall  
6 grant a waiver under subsection (3) if the accreditation report  
7 submitted under subsection (3)(b) is less than 2 years old and  
8 there is no indication of substantial noncompliance with licensure  
9 standards or of deficiencies that represent a threat to public  
10 safety or patient care in the report, in complaints involving the  
11 hospital, or in any other information available to the department.  
12 If the accreditation report is 2 or more years old, the department  
13 may do 1 of the following:

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

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

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

23 (6) This section does not prohibit the department from citing  
24 a violation of this part during a survey, conducting investigations  
25 or inspections pursuant to section 20156, or conducting surveys of  
26 health facilities or agencies for the purpose of complaint  
27 investigations or federal certification. This section does not

1 prohibit the ~~state fire marshal~~ **BUREAU OF FIRE SERVICES CREATED**  
2 **IN SECTION 1B OF THE FIRE PREVENTION CODE, 1941 PA 207, MCL 29.1B,**  
3 from conducting annual surveys of hospitals, nursing homes, and  
4 county medical care facilities.

5 (7) At the request of a health facility or agency, the  
6 department ~~of consumer and industry services~~ may conduct a  
7 consultation engineering survey of a health facility and provide  
8 professional advice and consultation regarding health facility  
9 construction and design. A health facility or agency may request a  
10 voluntary consultation survey under this subsection at any time  
11 between licensure surveys. The fees for a consultation engineering  
12 survey are the same as the fees established for waivers under  
13 section 20161(10).

14 (8) If the department ~~of consumer and industry services~~  
15 determines that substantial noncompliance with licensure standards  
16 exists or that deficiencies that represent a threat to public  
17 safety or patient care exist based on a review of an accreditation  
18 report submitted pursuant to subsection (3)(b), the department  
19 shall prepare a written summary of the substantial noncompliance or  
20 deficiencies and the hospital's response to the department's  
21 determination. The department's written summary and the hospital's  
22 response are public documents.

23 (9) The department ~~of consumer and industry services~~ or a  
24 local health department shall conduct investigations or  
25 inspections, other than inspections of financial records, of a  
26 county medical care facility, home for the aged, nursing home, or  
27 hospice residence without prior notice to the health facility or

1 agency. An employee of a state agency charged with investigating or  
2 inspecting the health facility or agency or an employee of a local  
3 health department who directly or indirectly gives prior notice  
4 regarding an investigation or an inspection, other than an  
5 inspection of the financial records, to the health facility or  
6 agency or to an employee of the health facility or agency, is  
7 guilty of a misdemeanor. Consultation visits that are not for the  
8 purpose of annual or follow-up inspection or survey may be  
9 announced.

10 (10) The department ~~of consumer and industry services~~ shall  
11 maintain a record indicating whether a visit and inspection is  
12 announced or unannounced. Information gathered at each visit and  
13 inspection, whether announced or unannounced, shall be taken into  
14 account in licensure decisions.

15 (11) The department ~~of consumer and industry services~~ shall  
16 require periodic reports and a health facility or agency shall give  
17 the department access to books, records, and other documents  
18 maintained by a health facility or agency to the extent necessary  
19 to carry out the purpose of this article and the rules promulgated  
20 under this article. The department shall respect the  
21 confidentiality of a patient's clinical record and shall not  
22 divulge or disclose the contents of the records in a manner that  
23 identifies an individual except under court order. The department  
24 may copy health facility or agency records as required to document  
25 findings.

26 (12) The department ~~of consumer and industry services~~ may  
27 delegate survey, evaluation, or consultation functions to another

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

18 (13) If, upon investigation, the department ~~of consumer and~~  
19 ~~industry services~~ or a state agency determines that an individual  
20 licensed to practice a profession in this state has violated the  
21 applicable licensure statute or the rules promulgated under that  
22 statute, the department, state agency, or local health department  
23 shall forward the evidence it has to the appropriate licensing  
24 agency.

25 (14) The department ~~of consumer and industry services~~ shall  
26 report to the appropriations subcommittees, the senate and house of  
27 representatives standing committees having jurisdiction over issues

1 involving senior citizens, and the fiscal agencies on March 1 of  
2 each year on the initial and follow-up surveys conducted on all  
3 nursing homes in this state. The report shall include all of the  
4 following information:

5 (a) The number of surveys conducted.

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

7 (c) The number referred to the Michigan public health  
8 institute for remediation.

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

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

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

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

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

16 (i) The number and percentage of citations overturned or  
17 modified, or both.

18 (15) The department ~~of consumer and industry services~~ shall  
19 report annually to the standing committees on appropriations and  
20 the standing committees having jurisdiction over issues involving  
21 senior citizens in the senate and the house of representatives on  
22 the percentage of nursing home citations that are appealed and the  
23 percentage of nursing home citations that are appealed and amended  
24 through the informal deficiency dispute resolution process.

25 (16) Subject to subsection (17), a clarification work group  
26 comprised of the department ~~of consumer and industry services~~ in  
27 consultation with a nursing home resident or a member of a nursing



1 home resident's family, nursing home provider groups, the American  
2 medical directors association, ~~the department of community health,~~  
3 the state long-term care ombudsman, and the federal centers for  
4 medicare and medicaid services shall clarify the following terms as  
5 those terms are used in title XVIII and title XIX and applied by  
6 the department to provide more consistent regulation of nursing  
7 homes in Michigan:

8 (a) Immediate jeopardy.

9 (b) Harm.

10 (c) Potential harm.

11 (d) Avoidable.

12 (e) Unavoidable.

13 (17) All of the following clarifications developed under  
14 subsection (16) apply for purposes of subsection (16):

15 (a) Specifically, the term "immediate jeopardy" means ~~"~~ a  
16 situation in which immediate corrective action is necessary because  
17 the nursing home's noncompliance with 1 or more requirements of  
18 participation has caused or is likely to cause serious injury,  
19 harm, impairment, or death to a resident receiving care in a  
20 nursing home. ~~"~~.

21 (b) The likelihood of immediate jeopardy is reasonably higher  
22 if there is evidence of a flagrant failure by the nursing home to  
23 comply with a clinical process guideline adopted under subsection  
24 (18) than if the nursing home has substantially and continuously  
25 complied with those guidelines. If federal regulations and  
26 guidelines are not clear, and if the clinical process guidelines  
27 have been recognized, a process failure giving rise to an immediate

1 jeopardy may involve an egregious widespread or repeated process  
2 failure and the absence of reasonable efforts to detect and prevent  
3 the process failure.

4 (c) In determining whether or not there is immediate jeopardy,  
5 the survey agency should consider at least all of the following:

6 (i) Whether the nursing home could reasonably have been  
7 expected to know about the deficient practice and to stop it, but  
8 did not stop the deficient practice.

9 (ii) Whether the nursing home could reasonably have been  
10 expected to identify the deficient practice and to correct it, but  
11 did not correct the deficient practice.

12 (iii) Whether the nursing home could reasonably have been  
13 expected to anticipate that serious injury, serious harm,  
14 impairment, or death might result from continuing the deficient  
15 practice, but did not so anticipate.

16 (iv) Whether the nursing home could reasonably have been  
17 expected to know that a widely accepted high-risk practice is or  
18 could be problematic, but did not know.

19 (v) Whether the nursing home could reasonably have been  
20 expected to detect the process problem in a more timely fashion,  
21 but did not so detect.

22 (d) The existence of 1 or more of the factors described in  
23 subdivision (c), and especially the existence of 3 or more of those  
24 factors simultaneously, may lead to a conclusion that the situation  
25 is one in which the nursing home's practice makes adverse events  
26 likely to occur if immediate intervention is not undertaken, and  
27 therefore constitutes immediate jeopardy. If none of the factors

1 described in subdivision (c) is present, the situation may involve  
2 harm or potential harm that is not immediate jeopardy.

3 (e) Specifically, "actual harm" means — a negative outcome  
4 to a resident that has compromised the resident's ability to  
5 maintain or reach, or both, his or her highest practicable  
6 physical, mental, and psychosocial well-being as defined by an  
7 accurate and comprehensive resident assessment, plan of care, and  
8 provision of services. — Harm does not include a deficient  
9 practice that only may cause or has caused limited consequences to  
10 the resident.

11 (f) For purposes of subdivision (e), in determining whether a  
12 negative outcome is of limited consequence, if the "state  
13 operations manual" or "the guidance to surveyors" published by the  
14 federal centers for medicare and medicaid services does not provide  
15 specific guidance, the department may consider whether most people  
16 in similar circumstances would feel that the damage was of such  
17 short duration or impact as to be inconsequential or trivial. In  
18 such a case, the consequence of a negative outcome may be  
19 considered more limited if it occurs in the context of overall  
20 procedural consistency with an accepted clinical process guideline  
21 adopted pursuant to subsection (18), as compared to a substantial  
22 inconsistency with or variance from the guideline.

23 (g) For purposes of subdivision (e), if the publications  
24 described in subdivision (f) do not provide specific guidance, the  
25 department may consider the degree of a nursing home's adherence to  
26 a clinical process guideline adopted pursuant to subsection (18) in  
27 considering whether the degree of compromise and future risk to the

1 resident constitutes actual harm. The risk of significant  
2 compromise to the resident may be considered greater in the context  
3 of substantial deviation from the guidelines than in the case of  
4 overall adherence.

5 (h) To improve consistency and to avoid disputes over —  
6 avoidable — and — unavoidable — negative outcomes, nursing  
7 homes and survey agencies must have a common understanding of  
8 accepted process guidelines and of the circumstances under which it  
9 can reasonably be said that certain actions or inactions will lead  
10 to avoidable negative outcomes. If the "state operations manual" or  
11 "the guidance to surveyors" published by the federal centers for  
12 medicare and medicaid services is not specific, a nursing home's  
13 overall documentation of adherence to a clinical process guideline  
14 with a process indicator adopted pursuant to subsection (18) is  
15 relevant information in considering whether a negative outcome was  
16 — avoidable — or — unavoidable — and may be considered in  
17 the application of that term.

18 (18) Subject to subsection (19), the department, in  
19 consultation with the clarification work group appointed under  
20 subsection (16), shall develop and adopt clinical process  
21 guidelines that shall be used in applying the terms set forth in  
22 subsection (16). The department shall establish and adopt clinical  
23 process guidelines and compliance protocols with outcome measures  
24 for all of the following areas and for other topics where the  
25 department determines that clarification will benefit providers and  
26 consumers of long-term care:

27 (a) Bed rails.

1 (b) Adverse drug effects.

2 (c) Falls.

3 (d) Pressure sores.

4 (e) Nutrition and hydration including, but not limited to,  
5 heat-related stress.

6 (f) Pain management.

7 (g) Depression and depression pharmacotherapy.

8 (h) Heart failure.

9 (i) Urinary incontinence.

10 (j) Dementia.

11 (k) Osteoporosis.

12 (l) Altered mental states.

13 (m) Physical and chemical restraints.

14 (19) The department shall create a clinical advisory committee  
15 to review and make recommendations regarding the clinical process  
16 guidelines with outcome measures adopted under subsection (18). The  
17 department shall appoint physicians, registered professional  
18 nurses, and licensed practical nurses to the clinical advisory  
19 committee, along with professionals who have expertise in long-term  
20 care services, some of whom may be employed by long-term care  
21 facilities. The clarification work group created under subsection  
22 (16) shall review the clinical process guidelines and outcome  
23 measures after the clinical advisory committee and shall make the  
24 final recommendations to the department before the clinical process  
25 guidelines are adopted.

26 (20) The department shall create a process by which the  
27 director of the division of nursing home monitoring or his or her

1 designee or the director of the division of operations or his or  
2 her designee reviews and authorizes the issuance of a citation for  
3 immediate jeopardy or substandard quality of care before the  
4 statement of deficiencies is made final. The review shall be to  
5 assure that the applicable concepts, clinical process guidelines,  
6 and other tools contained in subsections (17) to (19) are being  
7 used consistently, accurately, and effectively. As used in this  
8 subsection, "immediate jeopardy" and "substandard quality of care"  
9 mean those terms as defined by the federal centers for medicare and  
10 medicaid services.

11 (21) The department may give grants, awards, or other  
12 recognition to nursing homes to encourage the rapid implementation  
13 of the clinical process guidelines adopted under subsection (18).

14 (22) The department shall assess the effectiveness of ~~the~~  
15 ~~amendatory act that added this subsection~~ **2001 PA 218**. The  
16 department shall file an annual report on the implementation of the  
17 clinical process guidelines and the impact of the guidelines on  
18 resident care with the standing committee in the legislature with  
19 jurisdiction over matters pertaining to nursing homes. The first  
20 report shall be filed on July 1, ~~of the year following the year in~~  
21 ~~which the amendatory act that added this subsection takes effect~~  
22 **2002**.

23 (23) The department ~~of consumer and industry services~~ shall  
24 instruct and train the surveyors in the use of the clarifications  
25 described in subsection (17) and the clinical process guidelines  
26 adopted under subsection (18) in citing deficiencies.

27 (24) A nursing home shall post the nursing home's survey

1 report in a conspicuous place within the nursing home for public  
2 review.

3 (25) Nothing in this amendatory act shall be construed to  
4 limit the requirements of related state and federal law.

5 (26) As used in this section:

6 (a) "Title XVIII" means title XVIII of the social security  
7 act, ~~chapter 531, 49 Stat. 620, 42 U.S.C. 1395 to 1395b, 1395b-2,~~  
8 ~~1395b-6 to 1395b-7, 1395c to 1395i, 1395i-2 to 1395i-5, 1395j to~~  
9 ~~1395t, 1395u to 1395w, 1395w-2 to 1395w-4, 1395w-21 to 1395w-28,~~  
10 ~~1395x to 1395yy, and 1395bbb to 1395ggg~~ **42 USC 1395 TO 1395HHH.**

11 (b) "Title XIX" means title XIX of the social security act,  
12 chapter 531, ~~49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1 to~~  
13 ~~1396r-6, and 1396r-8~~ **42 USC 1396 to 1396v.**

14 Sec. 20156. (1) A representative of the department ~~of public~~  
15 ~~health~~ or the ~~state fire marshal division of the department of~~  
16 ~~state police,~~ **BUREAU OF FIRE SERVICES CREATED IN SECTION 1B OF THE**  
17 **FIRE PREVENTION CODE, 1941 PA 207, MCL 29.1B,** upon presentation of  
18 proper identification, may enter the premises of an applicant or  
19 licensee at any reasonable time to determine whether the applicant  
20 or licensee meets the requirements of this article and the rules  
21 promulgated under this article. The director; the director of  
22 ~~social~~ **THE DEPARTMENT OF HUMAN** services; the ~~state fire marshal~~  
23 **BUREAU OF FIRE SERVICES;** the director of the office of services to  
24 the aging; or the director of a local health department; or an  
25 authorized representative of the director, the director of ~~social~~  
26 **THE DEPARTMENT OF HUMAN** services, the ~~state fire marshal~~ **BUREAU**  
27 **OF FIRE SERVICES,** the director of the office of services to the

1 aging, or the director of a local health department may enter on  
 2 the premises of an applicant or licensee under part 217 at any time  
 3 in the course of carrying out program responsibilities.

4 (2) The ~~state fire marshal division of the department of~~  
 5 ~~state police~~ **BUREAU OF FIRE SERVICES CREATED IN SECTION 1B OF THE**  
 6 **FIRE PREVENTION CODE, 1941 PA 207, MCL 29.1B,** shall enforce rules  
 7 promulgated by the ~~state fire safety board~~ **BUREAU OF FIRE**  
 8 **SERVICES** for health facilities and agencies to assure that physical  
 9 facilities owned, maintained, or operated by a health facility or  
 10 agency are planned, constructed, and maintained in a manner to  
 11 protect the health, safety, and welfare of patients.

12 (3) The department ~~of public health~~ shall not issue a  
 13 license or certificate to a health facility or agency until it  
 14 receives an appropriate certificate of approval from the ~~state~~  
 15 ~~fire marshal division of the department of state police~~ **BUREAU OF**  
 16 **FIRE SERVICES**. For purposes of this section, a decision of the  
 17 ~~state fire marshal division of the department of state police~~  
 18 **BUREAU OF FIRE SERVICES** to issue a certificate controls over that  
 19 of a local fire department.

20 (4) Subsections (2) and (3) do not apply to a health facility  
 21 or an agency licensed under part 205 ~~—~~ **OR 209.** ~~—, or 210.~~

22 Sec. 22210. (1) A hospital that applies to the department for  
 23 a certificate of need and meets all of the following criteria shall  
 24 be granted a certificate of need for a short-term nursing care  
 25 program with up to 10 licensed hospital beds:

26 (a) Is eligible to apply for certification as a provider of  
 27 swing-bed services under section 1883 of title XVIII, 42 ~~U.S.C.~~



1 **USC 1395tt.**

2 (b) Subject to subsection (2), has fewer than 100 licensed  
3 beds not counting beds excluded under section 1883 of title XVIII,  
4 ~~of the social security act~~ **42 USC 1395TT.**

5 (c) Does not have uncorrected licensing, certification, or  
6 safety deficiencies for which the department or the ~~state fire~~  
7 ~~marshal~~ **BUREAU OF FIRE SERVICES CREATED IN SECTION 1B OF THE FIRE**  
8 **PREVENTION CODE, 1941 PA 207, MCL 29.1B,** or both, has not accepted  
9 a plan of correction.

10 (d) Provides evidence satisfactory to the department that the  
11 hospital has had difficulty in placing patients in skilled nursing  
12 home beds during the 12 months immediately preceding the date of  
13 the application.

14 (2) After October 1, 1990, the criteria set forth in  
15 subsection (1)(b) may be modified by the commission, using the  
16 procedure set forth in section 22215(3). The department shall not  
17 charge a fee for processing a certificate of need application to  
18 initiate a short-term nursing care program.

19 (3) A hospital that is granted a certificate of need for a  
20 short-term nursing care program under subsection (1) shall comply  
21 with all of the following:

22 (a) Not charge for or otherwise attempt to recover the cost of  
23 a length of stay for a patient in the short-term nursing care  
24 program that exceeds the length of time allowed for post-hospital  
25 extended care under title XVIII.

26 (b) Admit patients to the short-term nursing care program only  
27 pursuant to an admissions contract approved by the department.

1 (c) Not discharge or transfer a patient from a licensed  
2 hospital bed other than a hospital long-term care unit bed and  
3 admit that patient to the short-term nursing care program unless  
4 the discharge or transfer and admission is determined medically  
5 appropriate by the attending physician.

6 (d) Permit access to a representative of an organization  
7 approved under section 21764 to patients admitted to the short-term  
8 nursing care program, for all of the purposes described in section  
9 21763.

10 (e) Subject to subsection (8), not allow the number of patient  
11 days for the short-term nursing care program to exceed the  
12 equivalent of 1,825 patient days for a single state fiscal year.

13 (f) Transfer a patient in the short-term nursing care program  
14 to an appropriately certified nursing home bed, county medical care  
15 facility bed, or hospital long-term care unit bed located within a  
16 50-mile radius of the patient's residence within 5 business days  
17 after the hospital has been notified, either orally or in writing,  
18 that a bed has become available.

19 (g) Not charge or collect from a patient admitted to the  
20 short-term nursing care program, for services rendered as part of  
21 the short-term nursing care program, an amount in excess of the  
22 reasonable charge for the services as determined by the United  
23 States secretary of health and human services under title XVIII.

24 (h) Assist a patient who has been denied coverage for services  
25 received in a short-term nursing care program under title XVIII to  
26 file an appeal with the medicare recovery project operated by the  
27 office of services to the aging.

1           (i) Operate the short-term nursing care program in accordance  
2 with this section and the requirements of the swing bed provisions  
3 of section 1883 of title XVIII, 42 ~~U.S.C.~~ USC 1395tt.

4           (j) Provide data to the department considered necessary by the  
5 department to evaluate the short-term nursing care program. The  
6 data shall include, but is not limited to, all of the following:

7           (i) The total number of patients admitted to the hospital's  
8 short-term nursing care program during the period specified by the  
9 department.

10          (ii) The total number of short-term nursing care patient days  
11 for the period specified by the department.

12          (iii) Information identifying the type of care to which patients  
13 in the short-term care nursing program are released.

14          (k) As part of the hospital's policy describing the rights and  
15 responsibilities of patients admitted to the hospital, as required  
16 under section 20201, incorporate all of the following additional  
17 rights and responsibilities for patients in the short-term nursing  
18 care program:

19          (i) A copy of the hospital's policy shall be provided to each  
20 short-term nursing care patient upon admission, and the staff of  
21 the hospital shall be trained and involved in the implementation of  
22 the policy.

23          (ii) Each short-term nursing care patient may associate and  
24 communicate privately with persons of his or her choice.  
25 Reasonable, regular visiting hours, which shall take into  
26 consideration the special circumstances of each visitor, shall be  
27 established for short-term nursing care patients to receive

1 visitors. A short-term nursing care patient may be visited by the  
2 patient's attorney or by representatives of the departments named  
3 in section 20156 during other than established visiting hours.  
4 Reasonable privacy shall be afforded for visitation of a short-term  
5 nursing care patient who shares a room with another short-term  
6 nursing care patient. Each short-term nursing care patient shall  
7 have reasonable access to a telephone.

8 (iii) A short-term nursing care patient is entitled to retain  
9 and use personal clothing and possessions as space permits, unless  
10 medically contraindicated, as documented by the attending physician  
11 in the medical record.

12 (iv) A short-term nursing care patient is entitled to the  
13 opportunity to participate in the planning of his or her medical  
14 treatment. A short-term nursing care patient shall be fully  
15 informed by the attending physician of the short-term nursing care  
16 patient's medical condition, unless medically contraindicated, as  
17 documented by a physician in the medical record. Each short-term  
18 nursing care patient shall be afforded the opportunity to discharge  
19 himself or herself from the short-term nursing care program.

20 (v) A short-term nursing care patient is entitled to be fully  
21 informed either before or at the time of admission, and during his  
22 or her stay, of services available in the hospital and of the  
23 related charges for those services. The statement of services  
24 provided by the hospital shall be in writing and shall include  
25 those services required to be offered on an as needed basis.

26 (vi) A patient in a short-term nursing care program or a person  
27 authorized in writing by the patient may, upon submission to the

1 hospital of a written request, inspect and copy the patient's  
2 personal or medical records. The hospital shall make the records  
3 available for inspection and copying within a reasonable time, not  
4 exceeding 7 days, after the receipt of the written request.

5 (vii) A short-term nursing care patient has the right to have  
6 his or her parents, if the short-term nursing care patient is a  
7 minor, or his or her spouse, next of kin, or patient's  
8 representative, if the short-term nursing care patient is an adult,  
9 stay at the facility 24 hours a day if the short-term nursing care  
10 patient is considered terminally ill by the physician responsible  
11 for the short-term nursing care patient's care.

12 (viii) Each short-term nursing care patient shall be provided  
13 with meals that meet the recommended dietary allowances for that  
14 patient's age and sex and that may be modified according to special  
15 dietary needs or ability to chew.

16 (ix) Each short-term nursing care patient has the right to  
17 receive a representative of an organization approved under section  
18 21764, for all of the purposes described in section 21763.

19 (l) Achieve and maintain medicare certification under title  
20 XVIII.

21 (4) A hospital or the owner, administrator, an employee, or a  
22 representative of the hospital shall not discharge, harass, or  
23 retaliate or discriminate against a short-term nursing care patient  
24 because the short-term nursing care patient has exercised a right  
25 described in subsection (3)(k).

26 (5) In the case of a short-term nursing care patient, the  
27 rights described in subsection (3)(k)(iv) may be exercised by the

1 patient's representative, as defined in section 21703(2).

2 (6) A short-term nursing care patient shall be fully informed,  
3 as evidenced by the short-term nursing care patient's written  
4 acknowledgment, before or at the time of admission and during stay,  
5 of the rights described in subsection (3)(k). The written  
6 acknowledgment shall provide that if a short-term nursing care  
7 patient is adjudicated incompetent and not restored to legal  
8 capacity, the rights and responsibilities set forth in subsection  
9 (3)(k) shall be exercised by a person designated by the short-term  
10 nursing care patient. The hospital shall provide proper forms for  
11 the short-term nursing care patient to provide for the designation  
12 of this person at the time of admission.

13 (7) Subsection (3)(k) does not prohibit a hospital from  
14 establishing and recognizing additional rights for short-term  
15 nursing care patients.

16 (8) Upon application, the department may grant a variation  
17 from the maximum number of patient days established under  
18 subsection (3)(e), to an applicant hospital that demonstrates to  
19 the satisfaction of the department that there is an immediate need  
20 for skilled nursing beds within a 100-mile radius of the hospital.  
21 A variation granted under this subsection shall be valid for not  
22 more than 1 year after the date the variation is granted. The  
23 department shall promulgate rules to implement this subsection  
24 including, at a minimum, a definition of immediate need and the  
25 procedure for applying for a variation.

26 (9) A hospital that violates subsection (3) is subject to the  
27 penalty provisions of section 20165.

## Senate Bill No. 1136 as amended May 9, 2006

1           (10) A person shall not initiate a short-term nursing care  
2 program without first obtaining a certificate of need under this  
3 section.

4           Enacting section 1. Section 13310 of the public health code,  
5 1978 PA 368, MCL 333.13310, is repealed.

6           <<Enacting section 2. This amendatory act does not take effect  
7 unless all of the following bills of the 93rd Legislature are enacted  
8 into law:  
    (a) Senate Bill No. 1133.  
    (b) House Bill No. 5860.>>