

SENATE BILL No. 884

December 15, 2011, Introduced by Senator HANSEN and referred to the Committee on Families, Seniors and Human Services.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 20155 (MCL 333.20155), as amended by 2006 PA
195, and by adding section 20155a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20155. (1) Except as otherwise provided in this section
2 **AND SECTION 20155A**, the department shall make annual and other
3 visits to each health facility or agency licensed under this
4 article for the purposes of survey, evaluation, and consultation. A
5 visit made ~~pursuant~~**ACCORDING** to a complaint shall be unannounced.
6 Except for a county medical care facility, a home for the aged, a
7 nursing home, or a hospice residence, the department shall
8 determine whether the visits that are not made ~~pursuant~~**ACCORDING**

1 to a complaint are announced or unannounced. Beginning June 20,
2 2001, the department shall ~~assure~~**ENSURE** that each newly hired
3 nursing home surveyor, as part of his or her basic training, is
4 assigned full-time to ~~a licensed nursing home for at least 10 days~~
5 ~~within a 14 day period~~**2 SEPARATE NURSING FACILITIES THAT HAVE**
6 **DIFFERENT DEMOGRAPHIC PROFILES FOR AT LEAST 2 TEN-DAY ROTATIONS** to
7 observe actual operations outside of the survey process before the
8 trainee begins oversight responsibilities.

9 (2) THE STATE SHALL ESTABLISH A PROCESS THAT ENSURES ALL OF
10 THE FOLLOWING:

11 (A) A NEWLY HIRED NURSING HOME SURVEYOR DOES NOT ASSUME
12 OVERSIGHT RESPONSIBILITY DURING HIS OR HER TRAINING PERIOD.

13 (B) AN OBSERVATION MADE BY THE NEWLY HIRED NURSING HOME
14 SURVEYOR DURING THE TRAINING PERIOD IS NOT THE SOLE BASIS OF A
15 DEFICIENCY CITATION AGAINST THE NURSING HOME.

16 (C) A NURSING HOME SURVEYOR SHALL NOT BE ASSIGNED AS A MEMBER
17 OF A SURVEY TEAM FOR A NURSING HOME IN WHICH HE OR SHE RECEIVED
18 TRAINING FOR 2 STANDARD SURVEYS FOLLOWING THE TRAINING RECEIVED IN
19 THAT NURSING HOME.

20 (3) BEGINNING JULY 1, 2012, THE DEPARTMENT SHALL PERFORM A
21 CRIMINAL HISTORY CHECK ON ALL NURSING HOME SURVEYORS IN THE MANNER
22 PROVIDED FOR IN SECTION 20173A.

23 (4) A member of a survey team shall not be employed by a
24 licensed nursing home or a nursing home management company doing
25 business in this state at the time of conducting a survey under
26 this section. The department shall not assign an individual to be a
27 member of a survey team for purposes of a survey, evaluation, or

1 consultation visit at a nursing home in which he or she was an
2 employee within the preceding 5 years.

3 (5) REPRESENTATIVES FROM ALL NURSING FACILITY PROVIDER
4 ORGANIZATIONS SHALL PARTICIPATE IN THE PLANNING PROCESS FOR THE
5 JOINT PROVIDER AND SURVEYOR TRAINING SESSIONS. THE DEPARTMENT SHALL
6 INCLUDE AT LEAST 1 REPRESENTATIVE FROM NURSING FACILITY PROVIDER
7 ORGANIZATIONS REPRESENTING AT LEAST 30 OR MORE FACILITIES STATEWIDE
8 IN ALL ROUTINE SURVEYOR TRAINING SESSIONS WITH THE INTENT TO
9 CLARIFY REGULATORY POLICY, PROCEDURES, GUIDELINES, AND APPLICATIONS
10 FOR SURVEY PERFORMANCE.

11 (6) THE DEPARTMENT SHALL MAKE AVAILABLE ONLINE THE GENERAL
12 CIVIL SERVICE POSITION DESCRIPTION RELATED TO THE REQUIRED
13 QUALIFICATIONS FOR INDIVIDUAL SURVEYORS. THE DEPARTMENT SHALL USE
14 THE REQUIRED QUALIFICATIONS TO HIRE, EDUCATE, DEVELOP, AND EVALUATE
15 SURVEYORS.

16 (7) THE DEPARTMENT SHALL ENSURE THAT AT LEAST 1 REGISTERED
17 NURSE IS A MEMBER OF EACH SURVEY TEAM, AND THAT ADDITIONAL SURVEY
18 TEAM MEMBERS INCLUDE A VARIATION OF QUALIFIED HEALTH PROFESSIONALS,
19 INCLUDING, BUT NOT LIMITED TO, SOCIAL WORKERS, THERAPISTS,
20 DIETITIANS, PHARMACISTS, ADMINISTRATORS, PHYSICIANS, SANITARIANS,
21 AND OTHERS, WHO HAVE THE EXPERTISE NECESSARY TO EVALUATE SPECIFIC
22 ASPECTS OF NURSING HOME OPERATION.

23 (8) ~~(2) The~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION AND
24 SECTION 20155A, THE department shall make at least a biennial visit
25 to each licensed clinical laboratory, each nursing home, and each
26 hospice residence for the purposes of survey, evaluation, and
27 consultation. The department shall semiannually provide for joint

1 training with nursing home surveyors and providers on at least 1 of
2 the 10 most frequently issued federal citations in this state
3 during the past calendar year. The department shall develop a
4 protocol for the review of citation patterns compared to regional
5 outcomes and standards and complaints regarding the nursing home
6 survey process. The review will result in a report provided
7 **ANNUALLY** to the legislature. Except as otherwise provided in this
8 subsection, beginning with his or her first full relicensure period
9 after June 20, 2000, each member of a department nursing home
10 survey team who is a health professional licensee under article 15
11 shall earn not less than 50% of his or her required continuing
12 education credits, if any, in geriatric care. If a member of a
13 nursing home survey team is a pharmacist licensed under article 15,
14 he or she shall earn not less than 30% of his or her required
15 continuing education credits in geriatric care.

16 (9) ~~(3)~~—The department shall make a biennial visit to each
17 hospital for survey and evaluation for the purpose of licensure.
18 Subject to subsection ~~(6)~~—(12), the department may waive the
19 biennial visit required by this subsection if a hospital, as part
20 of a timely application for license renewal, requests a waiver and
21 submits both of the following and if ~~all~~—**BOTH** of the requirements
22 of subsection ~~(5)~~—(11) are met:

23 (a) Evidence that it is currently fully accredited by a body
24 with expertise in hospital accreditation whose hospital
25 accreditations are accepted by the United States department of
26 health and human services for purposes of section 1865 of part C of
27 title XVIII of the social security act, 42 USC 1395bb.

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

4 (10) ~~(4)~~ Except as provided in subsection ~~(8)~~ (14),
5 accreditation information provided to the department under
6 subsection ~~(3)~~ (9) is confidential, is not a public record, and is
7 not subject to court subpoena. The department shall use the
8 accreditation information only as provided in this section and
9 shall return the accreditation information to the hospital within a
10 reasonable time after a decision on the waiver request is made.

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

20 (a) Grant an extension of the hospital's current license until
21 the next accreditation survey is completed by the body described in
22 subsection ~~(3)(a)~~ (9) (A) .

23 (b) Grant a waiver under subsection ~~(3)~~ (9) based on the
24 accreditation report that is 2 or more years old, on condition that
25 the hospital promptly submit the next accreditation report to the
26 department.

27 (c) Deny the waiver request and conduct the visits required

1 under subsection ~~(3)-(9)~~.

2 (12) ~~(6)~~—This section does not prohibit the department from
3 citing a violation of this part during a survey, conducting
4 investigations or inspections ~~pursuant~~ **ACCORDING** to section 20156,
5 or conducting surveys of health facilities or agencies for the
6 purpose of complaint investigations or federal certification. This
7 section does not prohibit the bureau of fire services created in
8 section 1b of the fire prevention code, 1941 PA 207, MCL 29.1b,
9 from conducting annual surveys of hospitals, nursing homes, and
10 county medical care facilities.

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

19 (14) ~~(8)~~—If the department determines that substantial
20 noncompliance with licensure standards exists or that deficiencies
21 that represent a threat to public safety or patient care exist
22 based on a review of an accreditation report submitted ~~pursuant to~~
23 **UNDER** subsection ~~(3)-(b)-(9) (B)~~, the department shall prepare a
24 written summary of the substantial noncompliance or deficiencies
25 and the hospital's response to the department's determination. The
26 department's written summary and the hospital's response are public
27 documents.

1 (15) ~~(9)~~—The department or a local health department shall
2 conduct investigations or inspections, other than inspections of
3 financial records, of a county medical care facility, home for the
4 aged, nursing home, or hospice residence without prior notice to
5 the health facility or agency. An employee of a state agency
6 charged with investigating or inspecting the health facility or
7 agency or an employee of a local health department who directly or
8 indirectly gives prior notice regarding an investigation or an
9 inspection, other than an inspection of the financial records, to
10 the health facility or agency or to an employee of the health
11 facility or agency, is guilty of a misdemeanor. Consultation visits
12 that are not for the purpose of annual or follow-up inspection or
13 survey may be announced.

14 (16) ~~(10)~~—The department shall maintain a record indicating
15 whether a visit and inspection is announced or unannounced.
16 ~~Information~~ **SURVEY FINDINGS** gathered at **EACH HEALTH FACILITY OR**
17 **AGENCY DURING** each visit and inspection, whether announced or
18 unannounced, shall be taken into account in licensure decisions.

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

1 facility or agency records as required to document findings. **THE**
2 **DEPARTMENT SHALL WORK WITH THE NURSING FACILITY PROVIDER**
3 **ORGANIZATIONS TO IDENTIFY AND TRAIN SURVEYORS ON THE MOST**
4 **FREQUENTLY USED ELECTRONIC MEDICAL RECORDS SOFTWARE.**

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

24 (19) ~~(13)~~—If, upon investigation, the department or a state
25 agency determines that an individual licensed to practice a
26 profession in this state has violated the applicable licensure
27 statute or the rules promulgated under that statute, the

1 department, state agency, or local health department shall forward
2 the evidence it has to the appropriate licensing agency.

3 (20) ~~(14)~~—The department shall report to the appropriations
4 subcommittees, the senate and house of representatives standing
5 committees having jurisdiction over issues involving senior
6 citizens, and the fiscal agencies on March 1 of each year on the
7 initial and follow-up surveys conducted on all nursing homes in
8 this state. The report shall include all of the following
9 information:

10 (a) The number of surveys conducted.

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

12 (c) The number referred to the Michigan ~~public health~~
13 ~~institute~~ **PEER REVIEW ORGANIZATION** for remediation.

14 (d) The **AVERAGE** number of citations per nursing home **FOR THE**
15 **MOST RECENT CALENDAR YEAR.**

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

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

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

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

22 (i) The number and percentage of citations overturned or
23 modified, or both.

24 (J) **INFORMATION REGARDING THE PROGRESS MADE ON IMPLEMENTING**
25 **THE ADMINISTRATIVE AND ELECTRONIC SUPPORT STRUCTURE TO EFFICIENTLY**
26 **COORDINATE ALL NURSING FACILITY LICENSING AND CERTIFICATION**
27 **FUNCTIONS.**

(K) THE NUMBER OF ANNUAL STANDARD SURVEYS OF NURSING FACILITIES THAT WERE CONDUCTED DURING A PERIOD OF OPEN SURVEY OR ENFORCEMENT CYCLE.

(L) THE NUMBER OF ABBREVIATED COMPLAINT SURVEYS THAT WERE NOT CONDUCTED ON CONSECUTIVE DAYS.

(M) THE PERCENT OF ALL FORM CMS-2567 REPORTS OF FINDINGS THAT WERE RELEASED TO THE NURSING FACILITY WITHIN THE 10-WORKING-DAY REQUIREMENT.

(N) THE PERCENT OF PROVIDER NOTIFICATIONS OF ACCEPTANCE OR REJECTION OF A PLAN OF CORRECTION THAT WERE RELEASED TO THE NURSING FACILITY WITHIN THE 10-WORKING-DAY REQUIREMENT.

(O) THE PERCENT OF FIRST REVISITS THAT WERE COMPLETED WITHIN 60 DAYS FROM THE DATE OF SURVEY COMPLETION.

(P) THE PERCENT OF SECOND REVISITS THAT WERE COMPLETED WITHIN 85 DAYS FROM THE DATE OF SURVEY COMPLETION.

(Q) THE PERCENT OF LETTERS OF COMPLIANCE NOTIFICATION TO THE NURSING FACILITY THAT WERE RELEASED WITHIN 10 WORKING DAYS OF THE DATE OF THE COMPLETION OF THE REVISIT.

(R) A SUMMARY OF THE DISCUSSIONS FROM THE MEETINGS REQUIRED IN SUBSECTION (22).

(21) ~~(15)~~—The department shall report annually to the standing committees on appropriations and the standing committees having jurisdiction over issues involving senior citizens in the senate and the house of representatives on ~~the~~ **ALL OF THE FOLLOWING:**

(A) **THE** percentage of nursing home citations that are appealed. ~~and the~~

(B) **THE** percentage of nursing home citations that are appealed

1 and amended through the informal deficiency dispute resolution
2 process.

3 (C) A SUMMARY OF THE QUALITY ASSURANCE REVIEW OF THE AMENDED
4 CITATIONS AND RELATED SURVEY RETRAINING EFFORTS TO IMPROVE
5 CONSISTENCY AMONG SURVEYORS AND ACROSS THE SURVEY ADMINISTRATIVE
6 UNIT THAT OCCURRED IN THE YEAR BEING REPORTED.

7 ~~—— (16) Subject to subsection (17), a clarification work group~~
8 ~~comprised of the department in consultation with a nursing home~~
9 ~~resident or a member of a nursing home resident's family, nursing~~
10 ~~home provider groups, the American medical directors association,~~
11 ~~the state long term care ombudsman, and the federal centers for~~
12 ~~medicare and medicaid services shall clarify the following terms as~~
13 ~~those terms are used in title XVIII and title XIX and applied by~~
14 ~~the department to provide more consistent regulation of nursing~~
15 ~~homes in Michigan.~~

16 ~~—— (a) Immediate jeopardy.~~

17 ~~—— (b) Harm.~~

18 ~~—— (c) Potential harm.~~

19 ~~—— (d) Avoidable.~~

20 ~~—— (e) Unavoidable.~~

21 ~~—— (17) All of the following clarifications developed under~~
22 ~~subsection (16) apply for purposes of subsection (16):~~

23 ~~—— (a) Specifically, the term "immediate jeopardy" means a~~
24 ~~situation in which immediate corrective action is necessary because~~
25 ~~the nursing home's noncompliance with 1 or more requirements of~~
26 ~~participation has caused or is likely to cause serious injury,~~
27 ~~harm, impairment, or death to a resident receiving care in a~~

1 ~~nursing home.~~

2 ~~—— (b) The likelihood of immediate jeopardy is reasonably higher~~
3 ~~if there is evidence of a flagrant failure by the nursing home to~~
4 ~~comply with a clinical process guideline adopted under subsection~~
5 ~~(18) than if the nursing home has substantially and continuously~~
6 ~~complied with those guidelines. If federal regulations and~~
7 ~~guidelines are not clear, and if the clinical process guidelines~~
8 ~~have been recognized, a process failure giving rise to an immediate~~
9 ~~jeopardy may involve an egregious widespread or repeated process~~
10 ~~failure and the absence of reasonable efforts to detect and prevent~~
11 ~~the process failure.~~

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

14 ~~—— (i) Whether the nursing home could reasonably have been~~
15 ~~expected to know about the deficient practice and to stop it, but~~
16 ~~did not stop the deficient practice.~~

17 ~~—— (ii) Whether the nursing home could reasonably have been~~
18 ~~expected to identify the deficient practice and to correct it, but~~
19 ~~did not correct the deficient practice.~~

20 ~~—— (iii) Whether the nursing home could reasonably have been~~
21 ~~expected to anticipate that serious injury, serious harm,~~
22 ~~impairment, or death might result from continuing the deficient~~
23 ~~practice, but did not so anticipate.~~

24 ~~—— (iv) Whether the nursing home could reasonably have been~~
25 ~~expected to know that a widely accepted high risk practice is or~~
26 ~~could be problematic, but did not know.~~

27 ~~—— (v) Whether the nursing home could reasonably have been~~

~~expected to detect the process problem in a more timely fashion,
but did not so detect.~~

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

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

~~—— (f) For purposes of subdivision (c), in determining whether a
negative outcome is of limited consequence, if the "state
operations manual" or "the guidance to surveyors" published by the
federal centers for medicare and medicaid services does not provide
specific guidance, the department may consider whether most people
in similar circumstances would feel that the damage was of such
short duration or impact as to be inconsequential or trivial. In
such a case, the consequence of a negative outcome may be
considered more limited if it occurs in the context of overall
procedural consistency with an accepted clinical process guideline~~

~~adopted pursuant to subsection (18), as compared to a substantial inconsistency with or variance from the guideline.~~

~~—— (g) For purposes of subdivision (c), if the publications described in subdivision (f) do not provide specific guidance, the department may consider the degree of a nursing home's adherence to a clinical process guideline adopted pursuant to subsection (18) in considering whether the degree of compromise and future risk to the resident constitutes actual harm. The risk of significant compromise to the resident may be considered greater in the context of substantial deviation from the guidelines than in the case of overall adherence.~~

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

(22) THE DEPARTMENT SHALL MEET QUARTERLY WITH AT LEAST 1 REPRESENTATIVE FROM EACH NURSING FACILITY PROVIDER ORGANIZATION REPRESENTING 30 OR MORE NURSING HOMES STATEWIDE TO DISCUSS, AT A

1 MINIMUM, ALL OF THE FOLLOWING:

2 (A) OPPORTUNITIES FOR ENHANCED PROMOTION OF NURSING FACILITY
3 PERFORMANCE, INCLUDING, BUT NOT LIMITED TO, PROGRAMS THAT ENCOURAGE
4 AND REWARD PROVIDERS THAT STRIVE FOR EXCELLENCE.

5 (B) SEEKING QUALITY IMPROVEMENT TO THE SURVEY AND ENFORCEMENT
6 PROCESS, INCLUDING CLARIFICATIONS TO PROCESS-RELATED POLICIES AND
7 PROTOCOLS THAT INCLUDE, BUT ARE NOT LIMITED TO, ALL OF THE
8 FOLLOWING:

9 (i) IMPROVING THE SURVEYORS' QUALITY AND PREPAREDNESS.

10 (ii) ENHANCED COMMUNICATION BETWEEN REGULATORS, SURVEYORS, AND
11 PROVIDERS.

12 (iii) ENSURING FAIR ENFORCEMENT AND DISPUTE RESOLUTION BY
13 IDENTIFYING METHODS OR STRATEGIES THAT MAY RESOLVE IDENTIFIED
14 PROBLEMS OR CONCERNS.

15 (C) PROMOTING TRANSPARENCY ACROSS PROVIDER AND SURVEYOR
16 COMMUNITIES, INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

17 (i) APPLYING REGULATIONS IN A CONSISTENT MANNER AND EVALUATING
18 CHANGES THAT HAVE BEEN IMPLEMENTED TO RESOLVE IDENTIFIED PROBLEMS
19 AND CONCERNS.

20 (ii) PROVIDING CONSUMERS WITH MEANINGFUL INFORMATION.

21 (iii) IDENTIFYING POSITIVE AND NEGATIVE TRENDS, AND FACTORS
22 CONTRIBUTING TO THOSE TRENDS, IN THE AREAS OF RESIDENT CARE,
23 DEFICIENT PRACTICES, AND ENFORCEMENT.

24 (23) ~~(18)~~ Subject to subsection ~~(19)~~ (25), the department, in
25 consultation with the clarification work group appointed under
26 subsection ~~(16)~~, shall develop and adopt clinical process
27 guidelines. ~~that shall be used in applying the terms set forth in~~

~~subsection (16).~~ The department shall establish and adopt clinical process guidelines and compliance protocols with outcome measures for all of the following areas and for other topics where the department determines that clarification will benefit providers and consumers of long-term care:

(a) Bed rails.

(b) Adverse drug effects.

(c) Falls.

(d) Pressure sores.

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

(f) Pain management.

(g) Depression and depression pharmacotherapy.

(h) Heart failure.

(i) Urinary incontinence.

(j) Dementia.

(k) Osteoporosis.

(l) Altered mental states.

(m) Physical and chemical restraints.

(24) THE DEPARTMENT SHALL BIENNIALY REVIEW AND UPDATE ALL CLINICAL PROCESS GUIDELINES AS NEEDED AND SHALL CONTINUE TO DEVELOP AND IMPLEMENT CLINICAL PROCESS GUIDELINES FOR TOPICS THAT HAVE NOT BEEN DEVELOPED FROM THE LIST IN SUBSECTION (23) AND OTHER TOPICS IDENTIFIED AS A RESULT OF THE MEETINGS REQUIRED IN SUBSECTION (22). THE DEPARTMENT SHALL INCLUDE TRAINING ON NEW AND REVISED CLINICAL PROCESS GUIDELINES IN THE JOINT PROVIDER AND SURVEYOR TRAINING SESSIONS AS THOSE CLINICAL PROCESS GUIDELINES ARE DEVELOPED AND

1 **REVISED.**

2 (25) ~~(19)~~—The department shall create a clinical advisory
 3 committee to review and make recommendations regarding the clinical
 4 process guidelines with outcome measures adopted under subsection
 5 ~~(18)~~—(23). **BEGINNING JULY 1, 2012, REPRESENTATIVES FROM EACH**
 6 **NURSING FACILITY PROVIDER ORGANIZATION REPRESENTING 30 OR MORE**
 7 **FACILITIES STATEWIDE SHALL BE PERMANENT MEMBERS OF THE CLINICAL**
 8 **ADVISORY COMMITTEE CREATED UNDER THIS SUBSECTION.** The department
 9 shall appoint physicians, registered professional nurses, and
 10 licensed practical nurses to the clinical advisory committee, along
 11 with professionals who have expertise in long-term care services,
 12 some of whom may be employed by long-term care facilities **BASED ON**
 13 **THE EXPERTISE REQUIRED FOR EACH CONTENT AREA.** ~~The clarification~~
 14 ~~work group created~~ **BEGINNING JULY 1, 2012, THE DEPARTMENT SHALL**
 15 **APPOINT REPRESENTATIVES FROM EACH NURSING FACILITY PROVIDER**
 16 **ORGANIZATIONS AS PERMANENT MEMBERS OF THE CLINICAL ADVISORY**
 17 **COMMITTEE. AT THE QUARTERLY MEETINGS REQUIRED** under subsection ~~(16)~~
 18 ~~(22)~~, **THE DEPARTMENT AND THE REPRESENTATIVES FROM THE NURSING**
 19 **FACILITY PROVIDER ORGANIZATIONS REPRESENTING 30 OR MORE FACILITIES**
 20 **STATEWIDE** shall review the **NEW AND REVISED** clinical process
 21 guidelines and outcome measures ~~after the clinical advisory~~
 22 ~~committee and shall make~~ **TO MAKE** the final recommendations to the
 23 department before the clinical process guidelines are adopted.

24 (26) ~~(20)~~—The department shall ~~create a~~ **MAINTAIN THE** process
 25 by which the director of the division of nursing home monitoring or
 26 his or her designee or the director of the division of operations
 27 or his or her designee reviews and authorizes the issuance of a

1 citation for immediate jeopardy or substandard quality of care
 2 before the statement of deficiencies is made final. The review
 3 shall be to assure that the applicable concepts, clinical process
 4 guidelines, and other tools contained in subsections ~~(17) to (19)~~
 5 **(23) TO (25)** are being used consistently, accurately, and
 6 effectively. As used in this subsection, "immediate jeopardy" and
 7 "substandard quality of care" mean those terms as defined by the
 8 federal centers for medicare and medicaid services.

9 **(27) ~~(21)~~ The ~~UPON AVAILABILITY OF FUNDS, THE~~ department may**
 10 **SHALL** give grants, awards, or other recognition to nursing homes to
 11 encourage the rapid implementation **OR MAINTENANCE** of the clinical
 12 process guidelines adopted under subsection ~~(18)~~ **(23)**.

13 **(28) ~~(22)~~ The department shall assess the effectiveness of**
 14 ~~2001 PA 218.~~ The department shall file an annual report **WITH**
 15 **ONGOING ANALYSIS** on the implementation of the clinical process
 16 guidelines and the impact of the guidelines on resident care with
 17 the standing committee in the legislature with jurisdiction over
 18 matters pertaining to nursing homes. ~~The first report shall be~~
 19 ~~filed on July 1, 2002.~~

20 **(29) ~~(23)~~ The department shall instruct and train the**
 21 surveyors in the ~~use of the clarifications described in subsection~~
 22 ~~(17) and the clinical process guidelines adopted under subsection~~
 23 ~~(18)~~ **(23)** in citing deficiencies.

24 **(30) ~~(24)~~ A nursing home shall post the nursing home's survey**
 25 report in a conspicuous place within the nursing home for public
 26 review.

27 **(31) ~~(25)~~ Nothing in this amendatory act shall be construed to**

1 limit the requirements of related state and federal law.

2 (32) ~~(26)~~—As used in this section:

3 (A) "CONSECUTIVE DAYS" MEANS CALENDAR DAYS AND INCLUDES
4 SATURDAY, SUNDAY, AND STATE- AND FEDERALLY-RECOGNIZED HOLIDAYS.

5 (B) "FORM CMS-2567" MEANS THE FEDERAL CENTERS FOR MEDICARE AND
6 MEDICAID SERVICES' FORM FOR THE STATEMENT OF DEFICIENCIES AND PLAN
7 OF CORRECTION OR A SUCCESSOR FORM SERVING THE SAME PURPOSE.

8 (C) ~~(a)~~—"Title XVIII" means title XVIII of the social security
9 act, 42 USC 1395 to 1395hhh.

10 (D) ~~(b)~~—"Title XIX" means title XIX of the social security
11 act, ~~chapter 531,~~ 42 USC 1396 to ~~1396v.~~ 1396W-2.

12 SEC. 20155A. (1) NURSING HOME HEALTH SURVEY TASKS SHALL BE
13 FACILITATED BY 1 ADMINISTRATIVE UNIT OF THE LICENSING AND
14 REGULATORY AFFAIRS BUREAU OF HEALTH SYSTEMS TO ENSURE CONSISTENT
15 AND EFFICIENT COORDINATION OF THE NURSING HOME LICENSING AND
16 CERTIFICATION FUNCTIONS FOR STANDARD AND ABBREVIATED SURVEYS. THE
17 DEPARTMENT SHALL DEVELOP AND IMPLEMENT AN ELECTRONIC SYSTEM TO
18 SUPPORT COORDINATION OF THESE ACTIVITIES BY DECEMBER 31, 2013.

19 (2) WHEN SCHEDULING ANNUAL STANDARD SURVEYS, THE DEPARTMENT
20 SHALL AVOID OVERLAP WITH ANY OTHER OPEN SURVEY AND ENFORCEMENT
21 CYCLE BY CLOSING OUT ANY OPEN ENFORCEMENT CYCLE BEFORE STARTING AN
22 ANNUAL STANDARD SURVEY WHILE MAINTAINING THE FEDERAL REQUIREMENT
23 FOR STANDARD SURVEY INTERVAL.

24 (3) A HIGH-PERFORMING NURSING FACILITY MEANS ANY NURSING
25 FACILITY FOR WHICH ALL SURVEYS CONDUCTED IN THE PREVIOUS 2
26 CONSECUTIVE STANDARD SURVEY CYCLES HAS NOT HAD A SURVEY DEFICIENCY
27 CITATION ABOVE LEVEL 2. HIGH-PERFORMING NURSING FACILITIES ARE

1 ELIGIBLE TO RECEIVE A GRANT, UP TO \$5,000.00 PER NURSING FACILITY
2 EACH 2 CONSECUTIVE STANDARD SURVEY CYCLE PERIODS, FROM THE CIVIL
3 MONETARY FUND TO BE USED FOR PARTICIPATION IN A RECOGNIZED QUALITY
4 IMPROVEMENT PROGRAM.

5 (4) SPECIAL FOCUS FACILITIES SHALL BE SURVEYED EVERY 6 MONTHS.
6 THE DEPARTMENT SHALL EXPAND USE OF THE SPECIAL FOCUS FACILITY
7 DESIGNATION AS DESCRIBED IN THE CENTERS FOR MEDICARE AND MEDICAID
8 SERVICES' SURVEY AND CERTIFICATION MEMORANDUM #10-32-NH TO ASSIST
9 SPECIAL FOCUS FACILITIES WITH ACHIEVING AND MAINTAINING SUBSTANTIAL
10 COMPLIANCE WITH FEDERAL PERFORMANCE REQUIREMENTS.

11 (5) ALL ABBREVIATED COMPLAINT SURVEYS SHALL BE CONDUCTED ON
12 CONSECUTIVE DAYS UNTIL COMPLETE. ALL FORM CMS-2567 REPORTS OF
13 SURVEY FINDINGS SHALL BE RELEASED TO THE NURSING FACILITY WITHIN 10
14 WORKING DAYS AFTER COMPLETION OF THE SURVEY.

15 (6) DEPARTMENTAL NOTIFICATIONS OF ACCEPTANCE OR REJECTION OF A
16 NURSING FACILITY'S PLAN OF CORRECTION SHALL BE REVIEWED AND
17 RELEASED TO THE NURSING FACILITY WITHIN 10 WORKING DAYS OF RECEIPT
18 OF THAT PLAN OF CORRECTION.

19 (7) ALL SURVEY FIRST REVISITS SHALL BE CONDUCTED NOT MORE THAN
20 60 DAYS AFTER THE DATE OF COMPLETION OF THE SURVEY, AND ALL SECOND
21 REVISITS SHALL BE CONDUCTED NOT MORE THAN 85 DAYS AFTER THE DATE OF
22 COMPLETION OF THE SURVEY.

23 (8) LETTERS OF COMPLIANCE NOTIFICATION TO NURSING FACILITIES
24 SHALL BE RELEASED TO THE NURSING FACILITY WITHIN 10 WORKING DAYS OF
25 ALL SURVEY REVISIT COMPLETION DATES.

26 (9) THE DEPARTMENT SHALL ACCEPT A NURSING FACILITY'S EVIDENCE
27 OF SUBSTANTIAL COMPLIANCE INSTEAD OF REQUIRING A POSTSURVEY REVISIT

1 AS THE DEPARTMENT CONSIDERS IS APPROPRIATE. A DESK REVIEW MAY BE
2 MADE AVAILABLE DEPENDING ON THE SCOPE AND SEVERITY ASSESSMENT OF
3 THE DEFICIENCY. IF THERE ARE NO DEFICIENCIES CONTESTED WITH A SCOPE
4 AND SEVERITY ASSESSMENT HIGHER THAN LEVEL 2 AND IF THERE IS NO
5 ENFORCEMENT ACTION, THE NURSING FACILITY'S EVIDENCE OF SUBSTANTIAL
6 COMPLIANCE SHALL BE CONDUCTED AS AN OFFICE REVIEW OF DEFICIENCIES
7 AND OF WRITTEN INFORMATION SUBMITTED BY THE NURSING FACILITY.

8 (10) ENFORCEMENT PENALTIES SELECTED FOR IMPOSITION OR APPLIED
9 IN ANY NURSING FACILITY, AS A RESULT OF FINDINGS DIRECTLY RELATED
10 TO A NURSING FACILITY-REPORTED INCIDENT, SHALL BE AT THE LOWEST
11 LEVEL ALLOWED UNDER FEDERAL CERTIFICATION ENFORCEMENT PROTOCOLS.

12 (11) INFORMAL DISPUTE RESOLUTION CONDUCTED BY THE MICHIGAN
13 PEER REVIEW ORGANIZATION SHALL BE GIVEN STRONG CONSIDERATION UPON
14 FINAL REVIEW BY THE DEPARTMENT. IN THE ANNUAL REPORT TO THE
15 LEGISLATURE, THE DEPARTMENT SHALL INCLUDE THE NUMBER OF MICHIGAN
16 PEER REVIEW ORGANIZATION-REFERRED REVIEWS AND, OF THOSE REVIEWS,
17 THE NUMBER OF CITATIONS THAT WERE OVERTURNED BY THE DEPARTMENT.

18 (12) AS USED IN THIS SECTION:

19 (A) "DESK REVIEW" MEANS ADMINISTRATIVE REVIEW BY THE
20 DEPARTMENT IN LIEU OF AN ON-SITE REVISIT.

21 (B) "LEVEL 1 CITATION" AND "LEVEL 2 CITATION" MEAN THOSE TERMS
22 AS DEFINED BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES'
23 SURVEY PROTOCOL GRID DEFINING SCOPE AND SEVERITY ASSESSMENT OF
24 DEFICIENCY.