

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 64

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 1104, 20104, 20155, 20155a, 21703, 21734, and
21799a (MCL 333.1104, 333.20104, 333.20155, 333.20155a, 333.21703,
333.21734, and 333.21799a), section 1104 as amended by 2013 PA 268,
sections 20104 and 20155 as amended by 2015 PA 104, section 20155a
as added by 2012 PA 322, section 21734 as added by 2000 PA 437, and
section 21799a as amended by 2004 PA 189.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1104. (1) "Acknowledgment of parentage" means an
2 acknowledgment executed as provided in the acknowledgment of
3 parentage act, 1996 PA 305, MCL 722.1001 to 722.1013.
- 4 (2) "Administrative procedures act of 1969" means the
5 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
6 24.328, or a successor act.

1 (3) "Adult" means an individual 18 years of age or older.

2 (4) "Code" means this act.

3 (5) "Department", except as provided in articles 8, ~~and 15,~~
 4 **AND 17**, means the ~~state department of community health~~ **AND HUMAN**
 5 **SERVICES**.

6 (6) "Director", except as provided in articles 8, ~~and 15,~~ **AND**
 7 **17**, means the ~~state director of community health~~ **AND HUMAN**
 8 **SERVICES**.

9 (7) "Governmental entity" means a government, governmental
 10 subdivision or agency, or public corporation.

11 Sec. 20104. (1) "Certification" means the issuance of a
 12 document by the department to a health facility or agency attesting
 13 to the fact that the health facility or agency meets both of the
 14 following:

15 (a) It complies with applicable statutory and regulatory
 16 requirements and standards.

17 (b) It is eligible to participate as a provider of care and
 18 services in a specific federal or state health program.

19 (2) "Consumer" means a person who is not a ~~provider of health~~
 20 care **PROVIDER** as defined in section ~~1531(3)-300JJ~~ of title 15 of
 21 the public health service act, 42 USC ~~300n-300JJ~~.

22 (3) "County medical care facility" means a nursing care
 23 facility, other than a hospital long-term care unit, that provides
 24 organized nursing care and medical treatment to 7 or more unrelated
 25 individuals who are suffering or recovering from illness, injury,
 26 or infirmity and that is owned by a county or counties.

27 (4) **"DEPARTMENT" MEANS THE DEPARTMENT OF LICENSING AND**

1 **REGULATORY AFFAIRS.**

2 (5) ~~(4)~~—"Direct access" means access to a patient or resident
3 or to a patient's or resident's property, financial information,
4 medical records, treatment information, or any other identifying
5 information.

6 (6) **"DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT.**

7 (7) ~~(5)~~—"Freestanding surgical outpatient facility" means a
8 facility, other than the office of a physician, dentist,
9 podiatrist, or other private practice office, offering a surgical
10 procedure and related care that in the opinion of the attending
11 physician can be safely performed without requiring overnight
12 inpatient hospital care. Freestanding surgical outpatient facility
13 does not include a surgical outpatient facility owned by and
14 operated as part of a hospital.

15 (8) ~~(6)~~—"Good moral character" means that term as defined in
16 section 1 of 1974 PA 381, MCL 338.41.

17 Sec. 20155. (1) Except as otherwise provided in this section
18 and section 20155a, the department shall make at least 1 visit to
19 each licensed health facility or agency every 3 years for survey
20 and evaluation for the purpose of licensure. A visit made according
21 to a complaint shall be unannounced. Except for a county medical
22 care facility, a home for the aged, a nursing home, or a hospice
23 residence, the department shall determine whether the visits that
24 are not made according to a complaint are announced or unannounced.
25 The department shall ensure that each newly hired nursing home
26 surveyor, as part of his or her basic training, is assigned full-
27 time to a licensed nursing home for at least 10 days within a 14-

1 day period to observe actual operations outside of the survey
2 process before the trainee begins oversight responsibilities.

3 (2) The ~~state~~**DEPARTMENT** shall establish a process that
4 ensures both of the following:

5 (a) A newly hired nursing home surveyor ~~shall~~**DOES** not make
6 independent compliance decisions during his or her training period.

7 (b) A nursing home surveyor ~~shall~~**IS** not ~~be~~ assigned as a
8 member of a survey team for a nursing home in which he or she
9 received training for 1 standard survey following the training
10 received in that nursing home.

11 (3) The department shall perform a criminal history check on
12 all nursing home surveyors in the manner provided for in section
13 20173a.

14 (4) A member of a survey team ~~shall~~**MUST** not be employed by a
15 licensed nursing home or a nursing home management company doing
16 business in this state at the time of conducting a survey under
17 this section. The department shall not assign an individual to be a
18 member of a survey team for purposes of a survey, evaluation, or
19 consultation visit at a nursing home in which he or she was an
20 employee within the preceding 3 years.

21 (5) ~~Representatives~~**THE DEPARTMENT SHALL INVITE**
22 **REPRESENTATIVES** from all nursing home provider organizations and
23 the state long-term care ombudsman or his or her designee ~~shall be~~
24 ~~invited~~ to participate in the planning process for the joint
25 provider and surveyor training sessions. The department shall
26 include at least 1 representative from nursing home provider
27 organizations that do not own or operate a nursing home

1 representing 30 or more nursing homes statewide in internal
2 surveyor group quality assurance training provided for the purpose
3 of general clarification and interpretation of existing or new
4 regulatory requirements and expectations.

5 (6) The department shall make available online the general
6 civil service position description related to the required
7 qualifications for individual surveyors. The department shall use
8 the required qualifications to hire, educate, develop, and evaluate
9 surveyors.

10 (7) The department shall ensure that each annual survey team
11 is composed of an interdisciplinary group of professionals, 1 of
12 whom must be a registered nurse. Other members may include social
13 workers, therapists, dietitians, pharmacists, administrators,
14 physicians, sanitarians, and others who may have the expertise
15 necessary to evaluate specific aspects of nursing home operation.

16 (8) The department shall semiannually provide for joint
17 training with nursing home surveyors and providers on at least 1 of
18 the 10 most frequently issued federal citations in this state
19 during the past calendar year. The department shall develop a
20 protocol for the review of citation patterns compared to regional
21 outcomes and standards and complaints regarding the nursing home
22 survey process. The **DEPARTMENT SHALL INCLUDE THE** review ~~will be~~
23 ~~included~~ **UNDER THIS SUBSECTION** in the report required under
24 subsection (20). Except as otherwise provided in this subsection,
25 ~~beginning with his or her first full relicensure period after June~~
26 ~~20, 2000,~~ each member of a department nursing home survey team who
27 is a health professional licensee under article 15 shall earn not

1 less than 50% of his or her required continuing education credits,
2 if any, in geriatric care. If a member of a nursing home survey
3 team is a pharmacist licensed under article 15, he or she shall
4 earn not less than 30% of his or her required continuing education
5 credits in geriatric care.

6 (9) Subject to subsection (12), the department may waive the
7 visit required by subsection (1) if a health facility or agency,
8 requests a waiver and submits the following as applicable and if
9 all of the requirements of subsection (11) are met:

10 (a) Evidence that it is currently fully accredited by a body
11 with expertise in the health facility or agency type and the
12 accrediting organization is accepted by the United States
13 Department of Health and Human Services for purposes of section
14 1865 of ~~part E of title XVIII of~~ the social security act, 42 USC
15 1395bb.

16 (b) A copy of the most recent accreditation report, or
17 executive summary, issued by a body described in subdivision (a),
18 and the health facility's or agency's responses to the
19 accreditation report is submitted to the department at least 30
20 days from license renewal. Submission of an executive summary does
21 not prevent or prohibit the department from requesting the entire
22 accreditation report if the department considers it necessary.

23 (c) For a nursing home, a standard federal certification
24 survey conducted within the immediately preceding 9 to 15 months
25 that shows substantial compliance or has an accepted plan of
26 correction, if applicable.

27 (10) Except as **OTHERWISE** provided in subsection (14),

1 accreditation information provided to the department under
2 subsection (9) is confidential, is not a public record, and is not
3 subject to court subpoena. The department shall use the
4 accreditation information only as provided in this section and
5 properly destroy the documentation after a decision on the waiver
6 request is made.

7 (11) The department shall grant a waiver under subsection (9)
8 if the accreditation report submitted under subsection (9)(b) is
9 less than 3 years old or the standard federal survey submitted
10 under subsection (9)(c) is less than 15 months old and there is no
11 indication of substantial noncompliance with licensure standards or
12 of deficiencies that represent a threat to public safety or patient
13 care. If the accreditation report or standard federal survey is too
14 old, the department may deny the waiver request and conduct the
15 visits required under subsection (9). Denial of a waiver request by
16 the department is not subject to appeal.

17 (12) This section does not prohibit the department from citing
18 a violation of this part during a survey, conducting investigations
19 or inspections according to section 20156, or conducting surveys of
20 health facilities or agencies for the purpose of complaint
21 investigations or federal certification. This section does not
22 prohibit the bureau of fire services created in section 1b of the
23 fire prevention code, 1941 PA 207, MCL 29.1b, from conducting
24 annual surveys of hospitals, nursing homes, and county medical care
25 facilities.

26 (13) At the request of a health facility or agency, the
27 department may conduct a consultation engineering survey of a

1 health facility and provide professional advice and consultation
2 regarding health facility construction and design. A health
3 facility or agency may request a voluntary consultation survey
4 under this subsection at any time between licensure surveys. The
5 fees for a consultation engineering survey are the same as the fees
6 established for waivers under section 20161(8).

7 (14) If the department determines that substantial
8 noncompliance with licensure standards exists or that deficiencies
9 that represent a threat to public safety or patient care exist
10 based on a review of an accreditation report submitted under
11 subsection (9)(b), the department shall prepare a written summary
12 of the substantial noncompliance or deficiencies and the health
13 facility's or agency's response to the department's determination.
14 The department's written summary and the health facility's or
15 agency's response are public documents.

16 (15) The department or a local health department shall conduct
17 investigations or inspections, other than inspections of financial
18 records, of a county medical care facility, home for the aged,
19 nursing home, or hospice residence without prior notice to the
20 health facility or agency. An employee of a state agency charged
21 with investigating or inspecting the health facility or agency or
22 an employee of a local health department who directly or indirectly
23 gives prior notice regarding an investigation or an inspection,
24 other than an inspection of the financial records, to the health
25 facility or agency or to an employee of the health facility or
26 agency, is guilty of a misdemeanor. Consultation visits that are
27 not for the purpose of annual or follow-up inspection or survey may

1 be announced.

2 (16) The department shall maintain a record indicating whether
3 a visit and inspection is announced or unannounced. Survey findings
4 gathered at each health facility or agency during each visit and
5 inspection, whether announced or unannounced, shall be taken into
6 account in licensure decisions.

7 (17) The department shall require periodic reports and a
8 health facility or agency shall give the department access to
9 books, records, and other documents maintained by a health facility
10 or agency to the extent necessary to carry out the purpose of this
11 article and the rules promulgated under this article. The
12 department shall not divulge or disclose the contents of the
13 patient's clinical records in a manner that identifies an
14 individual except under court order. The department may copy health
15 facility or agency records as required to document findings.
16 Surveyors shall use electronic resident information, whenever
17 available, as a source of survey-related data and shall request
18 facility assistance to access the system to maximize data export.

19 (18) The department may delegate survey, evaluation, or
20 consultation functions to another state agency or to a local health
21 department qualified to perform those functions. The department
22 shall not delegate survey, evaluation, or consultation functions to
23 a local health department that owns or operates a hospice or
24 hospice residence licensed under this article. The ~~delegation~~
25 **DEPARTMENT** shall ~~be~~ **DELEGATE UNDER THIS SUBSECTION** by cost
26 reimbursement contract between the department and the state agency
27 or local health department. ~~Survey,~~ **THE DEPARTMENT SHALL NOT**

1 **DELEGATE SURVEY**, evaluation, or consultation functions ~~shall not be~~
2 ~~delegated~~ to nongovernmental agencies, except as provided in this
3 section. The voluntary inspection described in this subsection
4 ~~shall~~ **MUST** be agreed upon by both the licensee and the department.

5 (19) If, upon investigation, the department or a state agency
6 determines that an individual licensed to practice a profession in
7 this state has violated the applicable licensure statute or the
8 rules promulgated under that statute, the department, state agency,
9 or local health department shall forward the evidence it has to the
10 appropriate licensing agency.

11 (20) The department may consolidate all information provided
12 for any report required under this section and section 20155a into
13 a single report. The department shall report to the appropriations
14 subcommittees, the senate and house of representatives standing
15 committees having jurisdiction over issues involving senior
16 citizens, and the fiscal agencies on March 1 of each year on the
17 initial and follow-up surveys conducted on all nursing homes in
18 this state. The ~~report~~ **DEPARTMENT** shall include all of the
19 following information **IN THE REPORT**:

20 (a) The number of surveys conducted.

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

22 (c) The average number of citations per nursing home for the
23 most recent calendar year.

24 (d) The number of night and weekend complaints filed.

25 (e) The number of night and weekend responses to complaints
26 conducted by the department.

27 (f) The average length of time for the department to respond

1 to a complaint filed against a nursing home.

2 (g) The number and percentage of citations disputed through
3 informal dispute resolution and independent informal dispute
4 resolution.

5 (h) The number and percentage of citations overturned or
6 modified, or both.

7 (i) The review of citation patterns developed under subsection
8 (8).

9 ~~—(j) Implementation of the clinical process guidelines and the~~
10 ~~impact of the guidelines on resident care.~~

11 (J) ~~(k)~~ Information regarding the progress made on
12 implementing the administrative and electronic support structure to
13 efficiently coordinate all nursing home licensing and certification
14 functions.

15 (K) ~~(l)~~ The number of annual standard surveys of nursing homes
16 that were conducted during a period of open survey or enforcement
17 cycle.

18 (L) ~~(m)~~ The number of abbreviated complaint surveys that were
19 not conducted on consecutive surveyor workdays.

20 (M) ~~(n)~~ The percent of all form CMS-2567 reports of findings
21 that were released to the nursing home within the 10-working-day
22 requirement.

23 (N) ~~(o)~~ The percent of provider notifications of acceptance or
24 rejection of a plan of correction that were released to the nursing
25 home within the 10-working-day requirement.

26 (O) ~~(p)~~ The percent of first revisits that were completed
27 within 60 days from the date of survey completion.

1 (P) ~~(q)~~—The percent of second revisits that were completed
2 within 85 days from the date of survey completion.

3 (Q) ~~(r)~~—The percent of letters of compliance notification to
4 the nursing home that were released within 10 working days of the
5 date of the completion of the revisit.

6 (R) ~~(s)~~—A summary of the discussions from the meetings
7 required in subsection (24).

8 (S) ~~(t)~~—The number of nursing homes that participated in a
9 recognized quality improvement program as described under section
10 20155a(3).

11 (21) The department shall report March 1 of each year to the
12 standing committees on appropriations and the standing committees
13 having jurisdiction over issues involving senior citizens in the
14 senate and the house of representatives on all of the following:

15 (a) The percentage of nursing home citations that are appealed
16 through the informal dispute resolution process.

17 (b) The number and percentage of nursing home citations that
18 are appealed and supported, amended, or deleted through the
19 informal dispute resolution process.

20 (c) A summary of the quality assurance review of the amended
21 citations and related survey retraining efforts to improve
22 consistency among surveyors and across the survey administrative
23 unit that occurred in the year being reported.

24 (22) Subject to subsection (23), a clarification work group
25 comprised of the department in consultation with a nursing home
26 resident or a member of a nursing home resident's family, nursing
27 home provider groups, the American Medical Directors Association,

1 the state long-term care ombudsman, and the federal Centers for
 2 Medicare and Medicaid Services shall clarify the following terms as
 3 those terms are used in title XVIII and title XIX and applied by
 4 the department to provide more consistent regulation of nursing
 5 homes in this state:

6 (a) Immediate jeopardy.

7 (b) Harm.

8 (c) Potential harm.

9 (d) Avoidable.

10 (e) Unavoidable.

11 (23) All of the following clarifications developed under
 12 subsection (22) apply for purposes of subsection (22):

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

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

1 egregious widespread or repeated process failure and the absence of
2 reasonable efforts to detect and prevent the process failure.

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

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

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

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

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

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

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

1 harm or potential harm that is not immediate jeopardy.

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

9 (f) For purposes of subdivision (e), in determining whether a
10 negative outcome is of limited consequence, if the "state
11 operations manual" or "the guidance to surveyors" published by the
12 federal Centers for Medicare and Medicaid Services does not provide
13 specific guidance, the department may consider whether most people
14 in similar circumstances would feel that the damage was of such
15 short duration or impact as to be inconsequential or trivial. In
16 such a case, the consequence of a negative outcome may be
17 considered more limited if it occurs in the context of overall
18 procedural consistency with ~~an accepted~~ **A PEER-REVIEWED, EVIDENCE-**
19 **BASED, NATIONALLY RECOGNIZED** clinical process guideline, ~~adopted~~
20 ~~under subsection (25),~~ as compared to a substantial inconsistency
21 with or variance from the guideline.

22 (g) For purposes of subdivision (e), if the publications
23 described in subdivision (f) do not provide specific guidance, the
24 department may consider the degree of a nursing home's adherence to
25 a **PEER-REVIEWED, EVIDENCE-BASED, NATIONALLY RECOGNIZED** clinical
26 process guideline ~~adopted under subsection (25)~~ in considering
27 whether the degree of compromise and future risk to the resident

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

5 (h) To improve consistency and to avoid disputes over
6 avoidable and unavoidable negative outcomes, nursing homes and
7 survey agencies must have a common understanding of accepted
8 process guidelines and of the circumstances under which it can
9 reasonably be said that certain actions or inactions will lead to
10 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 **PEER-REVIEWED, EVIDENCE-**
14 **BASED, NATIONALLY RECOGNIZED** clinical process guideline with a
15 process indicator ~~adopted under subsection (25)~~ is relevant
16 information in considering whether a negative outcome was avoidable
17 or unavoidable and may be considered in the application of that
18 term.

19 (24) The department shall conduct a quarterly meeting and
20 invite appropriate stakeholders. ~~Appropriate stakeholders~~ **THE**
21 **DEPARTMENT** shall ~~include~~ **INVITE AS APPROPRIATE STAKEHOLDERS UNDER**
22 **THIS SUBSECTION** at least 1 representative from each nursing home
23 provider organization that does not own or operate a nursing home
24 representing 30 or more nursing homes statewide, the state long-
25 term care ombudsman or his or her designee, and any other clinical
26 experts. Individuals who participate in these quarterly meetings,
27 ~~in conjunction~~ **JOINTLY** with the department, may designate advisory

1 workgroups to develop recommendations on the discussion topics that
2 should include, at a minimum, all of the following:

3 (a) Opportunities for enhanced promotion of nursing home
4 performance, including, but not limited to, programs that encourage
5 and reward providers that strive for excellence.

6 (b) Seeking quality improvement to the survey and enforcement
7 process, including clarifications to process-related policies and
8 protocols that include, but are not limited to, all of the
9 following:

10 (i) Improving the surveyors' quality and preparedness.

11 (ii) Enhanced communication between regulators, surveyors,
12 providers, and consumers.

13 (iii) Ensuring fair enforcement and dispute resolution by
14 identifying methods or strategies that may resolve identified
15 problems or concerns.

16 (c) Promoting transparency across provider and surveyor
17 communities, including, but not limited to, all of the following:

18 (i) Applying regulations in a consistent manner and evaluating
19 changes that have been implemented to resolve identified problems
20 and concerns.

21 (ii) Providing consumers with information regarding changes in
22 policy and interpretation.

23 (iii) Identifying positive and negative trends and factors
24 contributing to those trends in the areas of resident care,
25 deficient practices, and enforcement.

26 (d) Clinical process guidelines.

27 ~~(25) Subject to subsection (27), the department~~ **A NURSING HOME**

1 ~~shall develop and adopt clinical process guidelines. The department~~
 2 ~~shall establish and adopt~~ **USE PEER-REVIEWED, EVIDENCE-BASED,**
 3 **NATIONALLY RECOGNIZED** clinical process guidelines **OR PEER-REVIEWED,**
 4 **EVIDENCE-BASED, BEST-PRACTICE RESOURCES TO DEVELOP AND IMPLEMENT**
 5 **RESIDENT CARE POLICIES** and compliance protocols with ~~outcome~~
 6 ~~measures for all of the following areas and for other topics where~~
 7 ~~the department determines that clarification will benefit providers~~
 8 ~~and consumers of long-term care.~~ **MEASURABLE OUTCOMES SPECIFICALLY IN**
 9 **THE FOLLOWING CLINICAL PRACTICE AREAS:**

- 10 (a) ~~Bed~~ **USE OF BED** rails.
- 11 (b) Adverse drug effects.
- 12 (c) ~~Falls.~~ **PREVENTION OF FALLS.**
- 13 (d) ~~Pressure sores.~~ **PREVENTION OF PRESSURE ULCERS.**
- 14 (e) Nutrition and hydration. ~~including, but not limited to,~~
 15 ~~heat-related stress.~~
- 16 (f) Pain management.
- 17 (g) Depression and depression pharmacotherapy.
- 18 (h) Heart failure.
- 19 (i) Urinary incontinence.
- 20 (j) Dementia **CARE.**
- 21 (k) Osteoporosis.
- 22 (l) Altered mental states.
- 23 (m) Physical and chemical restraints.
- 24 (n) ~~Culture change~~ **PERSON-CENTERED CARE** principles. ~~, person-~~
 25 ~~centered caring, and self-directed care.~~

26 (26) **IN AN AREA OF CLINICAL PRACTICE THAT IS NOT LISTED IN**
 27 **SUBSECTION (25), A NURSING HOME MAY USE PEER-REVIEWED, EVIDENCE-**

1 BASED, NATIONALLY RECOGNIZED CLINICAL PROCESS GUIDELINES OR PEER-
2 REVIEWED, EVIDENCE-BASED, BEST-PRACTICE RESOURCES TO DEVELOP AND
3 IMPLEMENT RESIDENT CARE POLICIES AND COMPLIANCE PROTOCOLS WITH
4 MEASURABLE OUTCOMES TO PROMOTE PERFORMANCE EXCELLENCE.

5 (27) ~~(26) The department shall biennially review and update~~
6 ~~all clinical process guidelines as needed and shall continue to~~
7 ~~develop and implement clinical process guidelines for topics that~~
8 ~~have not been developed from the list in subsection (25) and other~~
9 ~~topics identified as a result of the meetings required in~~
10 ~~subsection (24).~~ The department shall consider recommendations from
11 an advisory workgroup created under subsection (24). ~~on clinical~~
12 ~~process guidelines.~~ The department shall **MAY** include training on
13 new and revised **PEER-REVIEWED, EVIDENCE-BASED, NATIONALLY**
14 **RECOGNIZED** clinical process guidelines **OR PEER-REVIEWED, EVIDENCE-**
15 **BASED, BEST-PRACTICE RESOURCES, WHICH CONTAIN MEASURABLE OUTCOMES,**
16 in the joint provider and surveyor training sessions ~~as these~~
17 ~~clinical process guidelines are developed and revised.~~ **TO ASSIST**
18 **PROVIDER EFFORTS TOWARD IMPROVED REGULATORY COMPLIANCE AND**
19 **PERFORMANCE EXCELLENCE AND TO FOSTER A COMMON UNDERSTANDING OF**
20 **ACCEPTED PEER-REVIEWED, EVIDENCE-BASED, BEST-PRACTICE RESOURCES**
21 **BETWEEN PROVIDERS AND THE SURVEY AGENCY. THE DEPARTMENT SHALL POST**
22 **ON ITS WEBSITE ALL PEER-REVIEWED, EVIDENCE-BASED, NATIONALLY**
23 **RECOGNIZED CLINICAL PROCESS GUIDELINES AND PEER-REVIEWED, EVIDENCE-**
24 **BASED, BEST-PRACTICE RESOURCES USED IN A TRAINING SESSION UNDER**
25 **THIS SUBSECTION FOR PROVIDER, SURVEYOR, AND PUBLIC REFERENCE.**

26 (28) ~~(27)~~ Representatives from each nursing home provider
27 organization that does not own or operate a nursing home

1 representing 30 or more nursing homes statewide and the state long-
 2 term care ombudsman or his or her designee ~~shall be~~ **ARE** permanent
 3 members of ~~any~~ **A** clinical advisory workgroup created under
 4 subsection (24). The department shall issue survey certification
 5 memorandums to providers to announce or clarify changes in the
 6 interpretation of regulations.

7 **(29)** ~~(28)~~ The department shall maintain the process by which
 8 the ~~department~~ director **OF THE LONG-TERM CARE DIVISION** or his or
 9 her designee reviews and authorizes the issuance of a citation for
 10 immediate jeopardy or substandard quality of care before the
 11 statement of deficiencies is made final. The review ~~shall be to~~
 12 **MUST** assure that the ~~applicable concepts, clinical process~~
 13 ~~guidelines, and other tools contained in subsections (25) to (27)~~
 14 ~~are being used consistently, accurately, and effectively.~~ **THE**
 15 **CONSISTENT AND ACCURATE APPLICATION OF FEDERAL AND STATE SURVEY**
 16 **PROTOCOLS AND DEFINED REGULATORY STANDARDS.** As used in this
 17 subsection, "immediate jeopardy" and "substandard quality of care"
 18 mean those terms as defined by the federal Centers for Medicare and
 19 Medicaid Services.

20 **(30)** ~~(29)~~ Upon availability of funds, the department shall
 21 give grants, awards, or other recognition to nursing homes to
 22 encourage the rapid **DEVELOPMENT AND** implementation ~~or maintenance~~
 23 of ~~the~~ **RESIDENT CARE POLICIES AND COMPLIANCE PROTOCOLS THAT ARE**
 24 **CREATED FROM PEER-REVIEWED, EVIDENCE-BASED, NATIONALLY RECOGNIZED**
 25 clinical process guidelines ~~adopted under subsection (25).~~ **OR PEER-**
 26 **REVIEWED, EVIDENCE-BASED, BEST-PRACTICE RESOURCES WITH MEASURABLE**
 27 **OUTCOMES TO PROMOTE PERFORMANCE EXCELLENCE.**

~~1 (30) The department shall instruct and train the surveyors in
2 the clinical process guidelines adopted under subsection (25) in
3 citing deficiencies.~~

4 (31) A nursing home shall post the nursing home's survey
5 report in a conspicuous place within the nursing home for public
6 review.

7 (32) Nothing in this section limits the requirements of
8 related state and federal law.

9 (33) As used in this section:

10 (a) "Consecutive days" means calendar days, but does not
11 include Saturday, Sunday, or state- or federally-recognized
12 holidays.

13 (b) "Form CMS-2567" means the federal Centers for Medicare and
14 Medicaid Services' form for the statement of deficiencies and plan
15 of correction or a successor form serving the same purpose.

16 (c) "Title XVIII" means title XVIII of the social security
17 act, 42 USC 1395 to ~~1395kkk-1395lll~~.

18 (d) "Title XIX" means title XIX of the social security act, 42
19 USC 1396 to 1396w-5.

20 Sec. 20155a. (1) Nursing home health survey tasks shall be
21 facilitated by the licensing and regulatory affairs bureau of
22 health systems to ensure consistent and efficient coordination of
23 the nursing home licensing and certification functions for standard
24 and abbreviated surveys. The department shall develop an electronic
25 system to support the coordination of these activities. ~~and shall
26 submit a report on the development of an electronic system,
27 including a proposed budget for implementation, to the senate and~~

~~house appropriations subcommittees for the department, the senate and house of representatives standing committees having jurisdiction over issues involving senior citizens, and the senate and house fiscal agencies by November 1, 2012.~~ If funds are appropriated for the system, the department shall implement the system within 120 days of that appropriation.

(2) When preparing to conduct an annual standard survey, the department shall determine if there is an open survey cycle and make every reasonable effort to confirm that substantial compliance has been achieved by implementation of the nursing home's accepted plan of correction before initiating the annual standard survey while maintaining the federal requirement for standard annual survey interval and state survey average of 12 months.

(3) The department shall seek approval from the ~~centers for medicare and medicaid services~~ **CENTERS FOR MEDICARE AND MEDICAID SERVICES** to develop a program to provide grants to nursing homes that have achieved a 5-star quality rating from the ~~centers for medicare and medicaid services~~. **CENTERS FOR MEDICARE AND MEDICAID SERVICES**. The department shall seek approval from the ~~centers for medicare and medicaid services~~ **CENTERS FOR MEDICARE AND MEDICAID SERVICES** for nursing homes to be eligible to receive a grant, up to \$5,000.00 per nursing home from the civil monetary fund for nursing homes that meet the ~~centers for medicare and medicaid services~~ **CENTERS FOR MEDICARE AND MEDICAID SERVICES** standards for the 5-star quality rating. Grants to nursing homes shall be used to implement evidence-based quality improvement programs within the nursing home. Each nursing home that receives a grant shall submit a report

1 to the department that describes the final outcome from
2 implementing the program.

3 (4) All abbreviated complaint surveys shall be conducted on
4 consecutive days until complete. All form CMS-2567 reports of
5 survey findings shall be released to the nursing home within 10
6 consecutive days after completion of the survey.

7 (5) Departmental notifications of acceptance or rejection of a
8 nursing home's plan of correction shall be reviewed and released to
9 the nursing home within 10 consecutive days of receipt of that plan
10 of correction.

11 (6) A nursing-home-submitted plan of correction in response to
12 any survey must have a completion date not to exceed 40 days from
13 the exit date of survey. If a nursing home has not received
14 additional citations before a revisit occurs, the department shall
15 conduct the first revisit not more than 60 days from the exit date
16 of the survey.

17 (7) Letters of compliance notification to nursing homes shall
18 be released to the nursing home within 10 consecutive days of all
19 survey revisit completion dates.

20 (8) The department may accept a nursing home's evidence of
21 substantial compliance instead of requiring a post survey on-site
22 first or second revisit as the department considers appropriate in
23 accordance with the ~~centers for medicare and medicaid services~~
24 **CENTERS FOR MEDICARE AND MEDICAID SERVICES** survey protocols. A
25 nursing home requesting consideration of evidence of substantial
26 compliance in lieu of an on-site revisit must include an affidavit
27 that asserts the nursing home is in substantial compliance as shown

1 by the submitted evidence for that specific survey event. There may
 2 be no deficiencies with a scope and severity originating higher
 3 than level D.—**F. CITATIONS WITH A SCOPE AND SEVERITY OF LEVEL F OR**
 4 **BELOW MAY GO THROUGH A DESK REVIEW BY THE DEPARTMENT UPON THOROUGH**
 5 **REVIEW OF THE PLAN OF CORRECTION. CITATIONS WITH A SCOPE AND**
 6 **SEVERITY OF LEVEL G OR HIGHER ARE NOT TO BE CONSIDERED FOR A DESK**
 7 **REVIEW.** If there is no enforcement action, the nursing home's
 8 evidence of substantial compliance may be reviewed administratively
 9 and accepted as evidence of deficiency correction.

10 (9) Informal dispute resolution conducted by the Michigan peer
 11 review organization shall be given strong consideration upon final
 12 review by the department. In the annual report to the legislature,
 13 the department shall include the number of Michigan peer review
 14 organization-referred reviews and, of those reviews, the number of
 15 citations that were overturned by the department.

16 (10) Citation levels used in this section mean citation levels
 17 as defined by the ~~centers for medicare and medicaid services'~~
 18 **CENTERS FOR MEDICARE AND MEDICAID SERVICES'** survey protocol grid
 19 defining scope and severity assessment of deficiency.

20 Sec. 21703. (1) "Patient" means a ~~person who receives care or~~
 21 ~~services at a nursing home.~~**RESIDENT.**

22 (2) "Patient's representative" **OR "RESIDENT'S REPRESENTATIVE"**
 23 means a person, other than the licensee or an employee or person
 24 having a direct or indirect ownership interest in the nursing home,
 25 designated in writing by a ~~patient~~**RESIDENT** or a ~~patient's~~
 26 **RESIDENT'S** guardian for a specific, limited purpose or for general
 27 purposes, or, if a written designation of a representative is not

1 made, the guardian of the ~~patient~~**RESIDENT**.

2 (3) "Relocation" means the movement of a ~~patient~~**RESIDENT** from
3 1 bed to another or from 1 room to another within the same nursing
4 home or within a certified distinct part of a nursing home.

5 (4) **"RESIDENT" MEANS AN INDIVIDUAL WHO RECEIVES CARE OR**
6 **SERVICES AT A NURSING HOME.**

7 (5) ~~(4)~~"Transfer" means the movement of a ~~patient~~**RESIDENT**
8 from 1 nursing home to another nursing home or from 1 certified
9 distinct part of a nursing home to another certified distinct part
10 of the same nursing home.

11 (6) ~~(5)~~"Welfare" means, with reference to a ~~patient~~,
12 **RESIDENT**, the physical, emotional, or social well-being of a
13 ~~patient~~**RESIDENT** in a nursing home, including a ~~patient~~**RESIDENT**
14 awaiting transfer or discharge, as documented in the ~~patient's~~
15 **RESIDENT'S** clinical record by a licensed or certified health care
16 professional.

17 Sec. 21734. (1) Notwithstanding section 20201(2) (l), a nursing
18 home shall give each resident who uses a hospital-type bed or the
19 resident's legal guardian, patient advocate, or other legal
20 representative the option of having bed rails. A nursing home shall
21 offer the option to new residents upon admission and to other
22 residents upon request. Upon receipt of a request for bed rails,
23 the nursing home shall inform the resident or the resident's legal
24 guardian, patient advocate, or other legal representative of
25 alternatives to and the risks involved in using bed rails. A
26 resident or the resident's legal guardian, patient advocate, or
27 other legal representative has the right to request and consent to

1 bed rails for the resident. A nursing home shall provide bed rails
2 to a resident only upon receipt of a signed consent form
3 authorizing bed rail use and a written order from the resident's
4 attending physician that contains statements and determinations
5 regarding medical symptoms and that specifies the circumstances
6 under which bed rails are to be used. For purposes of this
7 subsection, "medical symptoms" includes the following:

8 (a) A concern for the physical safety of the resident.

9 (b) Physical or psychological need expressed by a resident. A
10 resident's fear of falling may be the basis of a medical symptom.

11 (2) A nursing home that provides bed rails under subsection
12 (1) shall do all of the following:

13 (a) Document that the requirements of subsection (1) have been
14 met.

15 (b) Monitor the resident's use of the bed rails.

16 (c) In consultation with the resident, resident's family,
17 resident's attending physician, and individual who consented to the
18 bed rails, periodically reevaluate the resident's need for the bed
19 rails.

20 (3) The department ~~of consumer and industry services~~ shall
21 ~~develop~~ **MAINTAIN** clear and uniform ~~guidelines~~ **PEER-REVIEWED,**
22 **EVIDENCE-BASED, BEST-PRACTICE RESOURCES** to be used in determining
23 what constitutes each of the following:

24 (a) Acceptable bed rails for use in a nursing home in this
25 state. The department shall consider the recommendations of the
26 hospital bed safety work group established by the United States
27 ~~food and drug administration,~~ **FOOD AND DRUG ADMINISTRATION**, if

1 those are available, in determining what constitutes an acceptable
2 bed rail.

3 (b) Proper maintenance of bed rails.

4 (c) Properly fitted mattresses.

5 (d) Other hazards created by improperly positioned bed rails,
6 mattresses, or beds.

7 (4) The department ~~of consumer and industry services~~ shall
8 ~~develop the guidelines~~ **MAINTAIN THE PEER-REVIEWED, EVIDENCE-BASED,**
9 **BEST-PRACTICE RESOURCES** under subsection (3) in consultation with
10 the long-term care **STAKEHOLDERS** work group **ESTABLISHED UNDER**
11 **SECTION 20155(24)**. ~~An individual representing manufacturers of bed~~
12 ~~rails, 2 residents or family members, and an individual with~~
13 ~~expertise in bed rail installation and use shall be added to the~~
14 ~~long term care work group for purposes of this subsection. The~~
15 ~~department shall consider as part of its report to the legislature~~
16 ~~the recommendations of the hospital bed safety work group~~
17 ~~established by the United States food and drug administration, if~~
18 ~~those recommendations are available at the time of the submission~~
19 ~~of the report. Not later than 6 months after the effective date of~~
20 ~~the amendatory act that added this section, the department of~~
21 ~~consumer and industry services shall submit its report to the~~
22 ~~legislature. The department may delay submission of its report by~~
23 ~~up to 3 months so that its report may reflect the recommendations~~
24 ~~of the hospital bed safety work group established by the United~~
25 ~~States food and drug administration.~~

26 (5) A nursing home that complies with subsections (1) and (2)
27 and the ~~guidelines developed~~ **PEER-REVIEWED, EVIDENCE-BASED, BEST-**

1 **PRACTICES RESOURCES MAINTAINED** under this section in providing bed
 2 rails to a resident is not subject to administrative penalties
 3 imposed by the department based solely on providing the bed rails.
 4 ~~Nothing in this~~ **THIS** subsection ~~precludes~~ **DOES NOT PRECLUDE** the
 5 department from citing specific state or federal deficiencies for
 6 improperly maintained bed rails, improperly fitted mattresses, or
 7 other hazards created by improperly positioned bed rails,
 8 mattresses, or beds.

9 ~~—— (6) The department of consumer and industry services shall~~
 10 ~~consult with representatives of the nursing home industry to~~
 11 ~~expeditiously develop interim guidelines on bed rail usage that are~~
 12 ~~to be used until the department develops the guidelines required~~
 13 ~~under subsection (4).~~

14 Sec. 21799a. (1) A person who believes that this part, a rule
 15 promulgated under this part, or a federal certification regulation
 16 applying to a nursing home may have been violated may request an
 17 investigation of a nursing home. The person may submit the request
 18 for investigation to the department as a written complaint, or the
 19 department shall assist a person in reducing an oral request made
 20 under subsection (2) to a written complaint as provided in
 21 subsection (2). A person filing a complaint under this subsection
 22 may file the complaint on a model standardized complaint form
 23 developed and distributed by the department under section 20194(3)
 24 or file the complaint as provided by the department on the
 25 ~~internet.~~ **INTERNET.**

26 (2) The department shall provide a toll-free telephone
 27 consumer complaint line. The complaint line shall be accessible 24

1 hours per day and monitored at a level to ensure that each priority
2 complaint is identified and that a response is initiated to each
3 priority complaint within 24 hours after its receipt. The
4 department shall establish a system for the complaint line that
5 includes at least all of the following:

6 (a) An intake form that serves as a written complaint for
7 purposes of subsections (1) and (5).

8 (b) The forwarding of an intake form to an investigator not
9 later than the next business day after the complaint is identified
10 as a priority complaint.

11 (c) Except for an anonymous complaint, the forwarding of a
12 copy of the completed intake form to the complainant not later than
13 5 business days after it is completed.

14 (3) The substance of a complaint filed under subsection (1) or
15 (2) shall be provided to the licensee no earlier than at the
16 commencement of the on-site inspection of the nursing home that
17 takes place in response to the complaint.

18 (4) A complaint filed under subsection (1) or (2), a copy of
19 the complaint, or a record published, released, or otherwise
20 disclosed to the nursing home shall not disclose the name of the
21 complainant or a patient named in the complaint unless the
22 complainant or patient consents in writing to the disclosure or the
23 investigation results in an administrative hearing or a judicial
24 proceeding, or unless disclosure is considered essential to the
25 investigation by the department. If the department considers
26 disclosure essential to the investigation, the department shall
27 give the complainant the opportunity to withdraw the complaint

1 before disclosure.

2 (5) Upon receipt of a complaint under subsection (1) or (2),
3 the department shall determine, based on the allegations presented,
4 whether this part, a rule promulgated under this part, or a federal
5 certification regulation for nursing homes has been, is, or is in
6 danger of being violated. Subject to subsection (2), the department
7 shall investigate the complaint according to the urgency determined
8 by the department. The initiation of a complaint investigation
9 shall commence within ~~15 days after receipt of the written~~

10 ~~complaint by the department.~~ **THE TIME FRAME CONSISTENT WITH FEDERAL**
11 **GUIDELINES FOR INVESTIGATIONS OF COMPLAINTS AGAINST NURSING HOMES.**

12 (6) If, at any time, the department determines that this part,
13 a rule promulgated under this part, or a federal certification
14 regulation for nursing homes has been violated, the department
15 shall list the violation and the provisions violated on the state
16 and federal licensure and certification forms for nursing homes.
17 The department shall consider the violations, as evidenced by a
18 written explanation, when it makes a licensure and certification
19 decision or recommendation.

20 (7) In all cases, the department shall inform the complainant
21 of its findings unless otherwise indicated by the complainant.
22 Subject to subsection (2), within 30 days after receipt of the
23 complaint, the department shall provide the complainant a copy, if
24 any, of the written determination, the correction notice, the
25 warning notice, and the state licensure or federal certification
26 form, or both, on which the violation is listed, or a status report
27 indicating when these documents may be expected. The department

1 shall include in the final report a copy of the original complaint.
2 The complainant may request additional copies of the documents
3 described in this subsection and upon receipt shall reimburse the
4 department for the copies in accordance with established policies
5 and procedures.

6 (8) The department shall make a written determination,
7 correction notice, or warning notice concerning a complaint
8 available for public inspection, but the department shall not
9 disclose the name of the complainant or patient without the
10 complainant's or patient's consent.

11 (9) The department shall report a violation discovered as a
12 result of the complaint investigation procedure to persons
13 administering sections 21799c to 21799e. The department shall
14 assess a penalty for a violation, as prescribed by this article.

15 (10) A complainant who is dissatisfied with the determination
16 or investigation by the department may request a hearing. A
17 complainant shall submit a request for a hearing in writing to the
18 director within 30 days after the mailing of the department's
19 findings as described in subsection (7). The department shall send
20 notice of the time and place of the hearing to the complainant and
21 the nursing home.

22 (11) As used in this section, "priority complaint" means a
23 complaint alleging an existing situation that involves physical,
24 mental, or emotional abuse, mistreatment, or harmful neglect of a
25 resident that requires immediate corrective action to prevent
26 serious injury, serious harm, serious impairment, or death of a
27 resident while receiving care in a facility.

1 Enacting section 1. This amendatory act takes effect 90 days
2 after the date it is enacted into law.