

Act No. 155
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**STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2015**

Introduced by Senator Hansen

ENROLLED SENATE BILL No. 64

AN ACT to amend 1978 PA 368, entitled “An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates,” 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:

Sec. 1104. (1) “Acknowledgment of parentage” means an acknowledgment executed as provided in the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013.

(2) “Administrative procedures act of 1969” means the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, or a successor act.

(3) “Adult” means an individual 18 years of age or older.

(4) “Code” means this act.

(5) “Department”, except as provided in articles 8, 15, and 17, means the department of health and human services.

(6) “Director”, except as provided in articles 8, 15, and 17, means the director of health and human services.

(7) “Governmental entity” means a government, governmental subdivision or agency, or public corporation.

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

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

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

(2) "Consumer" means a person who is not a health care provider as defined in section 300jj of title 15 of the public health service act, 42 USC 300jj.

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

(4) "Department" means the department of licensing and regulatory affairs.

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

(6) "Director" means the director of the department.

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

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

Sec. 20155. (1) Except as otherwise provided in this section and section 20155a, the department shall make at least 1 visit to each licensed health facility or agency every 3 years for survey and evaluation for the purpose of licensure. A visit made according to a complaint shall be unannounced. Except for a county medical care facility, a home for the aged, a nursing home, or a hospice residence, the department shall determine whether the visits that are not made according to a complaint are announced or unannounced. The department shall ensure that each newly hired nursing home surveyor, as part of his or her basic training, is assigned full-time to a licensed nursing home for at least 10 days within a 14-day period to observe actual operations outside of the survey process before the trainee begins oversight responsibilities.

(2) The department shall establish a process that ensures both of the following:

(a) A newly hired nursing home surveyor does not make independent compliance decisions during his or her training period.

(b) A nursing home surveyor is not assigned as a member of a survey team for a nursing home in which he or she received training for 1 standard survey following the training received in that nursing home.

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

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

(5) The department shall invite representatives from all nursing home provider organizations and the state long-term care ombudsman or his or her designee to participate in the planning process for the joint provider and surveyor training sessions. The department shall include at least 1 representative from nursing home provider organizations that do not own or operate a nursing home representing 30 or more nursing homes statewide in internal surveyor group quality assurance training provided for the purpose of general clarification and interpretation of existing or new regulatory requirements and expectations.

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

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

(8) The department shall semiannually provide for joint training with nursing home surveyors and providers on at least 1 of the 10 most frequently issued federal citations in this state during the past calendar year. The department shall develop a protocol for the review of citation patterns compared to regional outcomes and standards and complaints regarding the nursing home survey process. The department shall include the review under this subsection in the report required under subsection (20). Except as otherwise provided in this subsection, each member of a department

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

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

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

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

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

(10) Except as otherwise provided in subsection (14), accreditation information provided to the department under subsection (9) is confidential, is not a public record, and is not subject to court subpoena. The department shall use the accreditation information only as provided in this section and properly destroy the documentation after a decision on the waiver request is made.

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

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

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

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

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

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

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

(18) The department may delegate survey, evaluation, or consultation functions to another state agency or to a local health department qualified to perform those functions. The department shall not delegate survey, evaluation, or consultation functions to a local health department that owns or operates a hospice or hospice residence licensed under this article. The department shall delegate under this subsection by cost reimbursement contract between the department and the state agency or local health department. The department shall not delegate survey, evaluation, or consultation functions to nongovernmental agencies, except as provided in this section. The voluntary inspection described in this subsection must be agreed upon by both the licensee and the department.

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

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

- (a) The number of surveys conducted.
- (b) The number requiring follow-up surveys.
- (c) The average number of citations per nursing home for the most recent calendar year.
- (d) The number of night and weekend complaints filed.
- (e) The number of night and weekend responses to complaints conducted by the department.
- (f) The average length of time for the department to respond to a complaint filed against a nursing home.
- (g) The number and percentage of citations disputed through informal dispute resolution and independent informal dispute resolution.
- (h) The number and percentage of citations overturned or modified, or both.
- (i) The review of citation patterns developed under subsection (8).
- (j) Information regarding the progress made on implementing the administrative and electronic support structure to efficiently coordinate all nursing home licensing and certification functions.
- (k) The number of annual standard surveys of nursing homes 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 surveyor workdays.
- (m) The percent of all form CMS-2567 reports of findings that were released to the nursing home 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 home 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 home 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 (24).
- (s) The number of nursing homes that participated in a recognized quality improvement program as described under section 20155a(3).

(21) The department shall report March 1 of each year 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 all of the following:

- (a) The percentage of nursing home citations that are appealed through the informal dispute resolution process.
- (b) The number and percentage of nursing home citations that are appealed and supported, amended, or deleted through the informal dispute resolution process.
- (c) A summary of the quality assurance review of the amended citations and related survey retraining efforts to improve consistency among surveyors and across the survey administrative unit that occurred in the year being reported.

(22) Subject to subsection (23), a clarification work group comprised of the department in consultation with a nursing home resident or a member of a nursing home resident's family, nursing home provider groups, the American Medical Directors Association, the state long-term care ombudsman, and the federal Centers for Medicare and Medicaid Services

shall clarify the following terms as those terms are used in title XVIII and title XIX and applied by the department to provide more consistent regulation of nursing homes in this state:

- (a) Immediate jeopardy.
- (b) Harm.
- (c) Potential harm.
- (d) Avoidable.
- (e) Unavoidable.

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

(a) Specifically, the term “immediate jeopardy” means a situation in which immediate corrective action is necessary because the nursing home’s noncompliance with 1 or more requirements of participation has caused or is likely to cause serious injury, harm, impairment, or death to a resident receiving care in a nursing home.

(b) The likelihood of immediate jeopardy is reasonably higher if there is evidence of a flagrant failure by the nursing home to comply with a peer-reviewed, evidence-based, nationally recognized clinical process guideline than if the nursing home has substantially and continuously complied with peer-reviewed, evidence-based, nationally recognized guidelines. If federal regulations and guidelines are not clear, and if the clinical process guidelines have been recognized, a process failure giving rise to an immediate jeopardy may involve an egregious widespread or repeated process failure and the absence of reasonable efforts to detect and prevent the process failure.

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

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

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

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

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

(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 (e), 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 a peer-reviewed, evidence-based, nationally recognized clinical process guideline, as compared to a substantial inconsistency with or variance from the guideline.

(g) For purposes of subdivision (e), 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 peer-reviewed, evidence-based, nationally recognized clinical process guideline 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 peer-reviewed, evidence-based, nationally

recognized clinical process guideline with a process indicator is relevant information in considering whether a negative outcome was avoidable or unavoidable and may be considered in the application of that term.

(24) The department shall conduct a quarterly meeting and invite appropriate stakeholders. The department shall invite as appropriate stakeholders under this subsection at least 1 representative from each nursing home provider organization that does not own or operate a nursing home representing 30 or more nursing homes statewide, the state long-term care ombudsman or his or her designee, and any other clinical experts. Individuals who participate in these quarterly meetings, jointly with the department, may designate advisory workgroups to develop recommendations on the discussion topics that should include, at a minimum, all of the following:

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

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

(i) Improving the surveyors' quality and preparedness.

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

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

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

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

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

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

(d) Clinical process guidelines.

(25) A nursing home shall use peer-reviewed, evidence-based, nationally recognized clinical process guidelines or peer-reviewed, evidence-based, best-practice resources to develop and implement resident care policies and compliance protocols with measurable outcomes specifically in the following clinical practice areas:

(a) Use of bed rails.

(b) Adverse drug effects.

(c) Prevention of falls.

(d) Prevention of pressure ulcers.

(e) Nutrition and hydration.

(f) Pain management.

(g) Depression and depression pharmacotherapy.

(h) Heart failure.

(i) Urinary incontinence.

(j) Dementia care.

(k) Osteoporosis.

(l) Altered mental states.

(m) Physical and chemical restraints.

(n) Person-centered care principles.

(26) In an area of clinical practice that is not listed in subsection (25), a nursing home may use peer-reviewed, evidence-based, nationally recognized clinical process guidelines or peer-reviewed, evidence-based, best-practice resources to develop and implement resident care policies and compliance protocols with measurable outcomes to promote performance excellence.

(27) The department shall consider recommendations from an advisory workgroup created under subsection (24). The department may include training on new and revised peer-reviewed, evidence-based, nationally recognized clinical process guidelines or peer-reviewed, evidence-based, best-practice resources, which contain measurable outcomes, in the joint provider and surveyor training sessions to assist provider efforts toward improved regulatory compliance and performance excellence and to foster a common understanding of accepted peer-reviewed, evidence-based, best-practice resources between providers and the survey agency. The department shall post on its website all peer-reviewed, evidence-based, nationally recognized clinical process guidelines and peer-reviewed, evidence-based, best-practice resources used in a training session under this subsection for provider, surveyor, and public reference.

(28) Representatives from each nursing home provider organization that does not own or operate a nursing home representing 30 or more nursing homes statewide and the state long-term care ombudsman or his or her designee are permanent members of a clinical advisory workgroup created under subsection (24). The department shall issue survey certification memorandums to providers to announce or clarify changes in the interpretation of regulations.

(29) The department shall maintain the process by which the director of the long-term care division or his or her designee reviews and authorizes the issuance of a citation for immediate jeopardy or substandard quality of care before the statement of deficiencies is made final. The review must assure the consistent and accurate application of federal and state survey protocols and defined regulatory standards. As used in this subsection, “immediate jeopardy” and “substandard quality of care” mean those terms as defined by the federal Centers for Medicare and Medicaid Services.

(30) Upon availability of funds, the department shall give grants, awards, or other recognition to nursing homes to encourage the rapid development and implementation of resident care policies and compliance protocols that are created from peer-reviewed, evidence-based, nationally recognized clinical process guidelines or peer-reviewed, evidence-based, best-practice resources with measurable outcomes to promote performance excellence.

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

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

(33) As used in this section:

(a) “Consecutive days” means calendar days, but does not include Saturday, Sunday, or state- or federally-recognized holidays.

(b) “Form CMS-2567” means the federal Centers for Medicare and Medicaid Services’ form for the statement of deficiencies and plan of correction or a successor form serving the same purpose.

(c) “Title XVIII” means title XVIII of the social security act, 42 USC 1395 to 1395lll.

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

Sec. 20155a. (1) Nursing home health survey tasks shall be facilitated by the licensing and regulatory affairs bureau of health systems to ensure consistent and efficient coordination of the nursing home licensing and certification functions for standard and abbreviated surveys. The department shall develop an electronic system to support the coordination of these activities. 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 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. The department shall seek approval from the 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 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 to the department that describes the final outcome from implementing the program.

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

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

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

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

(8) The department may accept a nursing home’s evidence of substantial compliance instead of requiring a post survey on-site first or second revisit as the department considers appropriate in accordance with the Centers for Medicare and Medicaid Services survey protocols. A nursing home requesting consideration of evidence of substantial compliance in lieu of an on-site revisit must include an affidavit that asserts the nursing home is in substantial compliance as shown by the submitted evidence for that specific survey event. There may be no deficiencies with a scope and severity originating higher than level F. Citations with a scope and severity of level F or below may go through a desk

review by the department upon thorough review of the plan of correction. Citations with a scope and severity of level G or higher are not to be considered for a desk review. If there is no enforcement action, the nursing home's evidence of substantial compliance may be reviewed administratively and accepted as evidence of deficiency correction.

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

(10) Citation levels used in this section mean citation levels as defined by the Centers for Medicare and Medicaid Services' survey protocol grid defining scope and severity assessment of deficiency.

Sec. 21703. (1) "Patient" means a resident.

(2) "Patient's representative" or "resident's representative" means a person, other than the licensee or an employee or person having a direct or indirect ownership interest in the nursing home, designated in writing by a resident or a resident's guardian for a specific, limited purpose or for general purposes, or, if a written designation of a representative is not made, the guardian of the resident.

(3) "Relocation" means the movement of a resident from 1 bed to another or from 1 room to another within the same nursing home or within a certified distinct part of a nursing home.

(4) "Resident" means an individual who receives care or services at a nursing home.

(5) "Transfer" means the movement of a resident from 1 nursing home to another nursing home or from 1 certified distinct part of a nursing home to another certified distinct part of the same nursing home.

(6) "Welfare" means, with reference to a resident, the physical, emotional, or social well-being of a resident in a nursing home, including a resident awaiting transfer or discharge, as documented in the resident's clinical record by a licensed or certified health care professional.

Sec. 21734. (1) Notwithstanding section 20201(2)(l), a nursing home shall give each resident who uses a hospital-type bed or the resident's legal guardian, patient advocate, or other legal representative the option of having bed rails. A nursing home shall offer the option to new residents upon admission and to other residents upon request. Upon receipt of a request for bed rails, the nursing home shall inform the resident or the resident's legal guardian, patient advocate, or other legal representative of alternatives to and the risks involved in using bed rails. A resident or the resident's legal guardian, patient advocate, or other legal representative has the right to request and consent to bed rails for the resident. A nursing home shall provide bed rails to a resident only upon receipt of a signed consent form authorizing bed rail use and a written order from the resident's attending physician that contains statements and determinations regarding medical symptoms and that specifies the circumstances under which bed rails are to be used. For purposes of this subsection, "medical symptoms" includes the following:

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

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

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

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

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

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

(3) The department shall maintain clear and uniform peer-reviewed, evidence-based, best-practice resources to be used in determining what constitutes each of the following:

(a) Acceptable bed rails for use in a nursing home in this state. The department shall consider the recommendations of the hospital bed safety work group established by the United States Food and Drug Administration, if those are available, in determining what constitutes an acceptable bed rail.

(b) Proper maintenance of bed rails.

(c) Properly fitted mattresses.

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

(4) The department shall maintain the peer-reviewed, evidence-based, best-practice resources under subsection (3) in consultation with the long-term care stakeholders work group established under section 20155(24).

(5) A nursing home that complies with subsections (1) and (2) and the peer-reviewed, evidence-based, best-practices resources maintained under this section in providing bed rails to a resident is not subject to administrative penalties imposed by the department based solely on providing the bed rails. This subsection does not preclude the department

from citing specific state or federal deficiencies for improperly maintained bed rails, improperly fitted mattresses, or other hazards created by improperly positioned bed rails, mattresses, or beds.

Sec. 21799a. (1) A person who believes that this part, a rule promulgated under this part, or a federal certification regulation applying to a nursing home may have been violated may request an investigation of a nursing home. The person may submit the request for investigation to the department as a written complaint, or the department shall assist a person in reducing an oral request made under subsection (2) to a written complaint as provided in subsection (2). A person filing a complaint under this subsection may file the complaint on a model standardized complaint form developed and distributed by the department under section 20194(3) or file the complaint as provided by the department on the Internet.

(2) The department shall provide a toll-free telephone consumer complaint line. The complaint line shall be accessible 24 hours per day and monitored at a level to ensure that each priority complaint is identified and that a response is initiated to each priority complaint within 24 hours after its receipt. The department shall establish a system for the complaint line that includes at least all of the following:

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

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

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

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

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

(5) Upon receipt of a complaint under subsection (1) or (2), the department shall determine, based on the allegations presented, whether this part, a rule promulgated under this part, or a federal certification regulation for nursing homes has been, is, or is in danger of being violated. Subject to subsection (2), the department shall investigate the complaint according to the urgency determined by the department. The initiation of a complaint investigation shall commence within the time frame consistent with federal guidelines for investigations of complaints against nursing homes.

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

(7) In all cases, the department shall inform the complainant of its findings unless otherwise indicated by the complainant. Subject to subsection (2), within 30 days after receipt of the complaint, the department shall provide the complainant a copy, if any, of the written determination, the correction notice, the warning notice, and the state licensure or federal certification form, or both, on which the violation is listed, or a status report indicating when these documents may be expected. The department shall include in the final report a copy of the original complaint. The complainant may request additional copies of the documents described in this subsection and upon receipt shall reimburse the department for the copies in accordance with established policies and procedures.

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

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

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

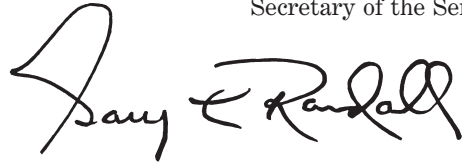
(11) As used in this section, "priority complaint" means a complaint alleging an existing situation that involves physical, mental, or emotional abuse, mistreatment, or harmful neglect of a resident that requires immediate corrective action to prevent serious injury, serious harm, serious impairment,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

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

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor