

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 669

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 20145, 22201, 22207, 22208, 22209, and 22221
(MCL 333.20145, 333.22201, 333.22207, 333.22208, 333.22209, and
333.22221), section 20145 as amended by 2015 PA 104, section 22201
as added by 1988 PA 332, sections 22207, 22209, and 22221 as
amended by 2002 PA 619, section 22208 as amended by 2011 PA 51, and
by adding section 22216.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20145. (1) Before contracting for and initiating a
2 construction project involving new construction, additions,
3 modernizations, or conversions of a health facility or agency with
4 a capital expenditure of \$1,000,000.00 or more, a person shall

1 obtain a construction permit from the department. The department
2 shall not issue the permit under this subsection unless the
3 applicant holds a valid certificate of need if a certificate of
4 need is required for the project under part 222.

5 (2) To protect the public health, safety, and welfare, the
6 department may promulgate rules to require construction permits for
7 projects other than those described in subsection (1) and the
8 submission of plans for other construction projects to expand or
9 change service areas and services provided.

10 (3) If a construction project requires a construction permit
11 under subsection (1) or (2), but does not require a certificate of
12 need under part 222, the department shall require the applicant to
13 submit information considered necessary by the department to ~~assure~~
14 **ensure** that the capital expenditure for the project is not a
15 covered capital expenditure as **that term is** defined in section
16 ~~22203(9)~~.**22203**.

17 (4) If a construction project requires a construction permit
18 under subsection (1), but does not require a certificate of need
19 under part 222, the department shall require the applicant to
20 submit information on a 1-page sheet, along with the application
21 for a construction permit, consisting of all of the following:

22 (a) A short description of the reason for the project and the
23 funding source.

24 (b) A contact person for further information, including
25 address and ~~phone~~-**telephone** number.

26 (c) The estimated resulting increase or decrease in annual
27 operating costs.

28 (d) The current governing board membership of the applicant.

29 (e) The entity, if any, that owns the applicant.

1 (5) The **department shall make the** information filed under
2 subsection (4) ~~shall be made~~ publicly available ~~by the department~~
3 by the same methods used to make information about certificate of
4 need applications publicly available.

5 (6) The review and approval of architectural plans and
6 narrative ~~shall~~ **must** require that the proposed construction project
7 is designed and constructed in accord with applicable statutory and
8 other regulatory requirements. In performing a construction permit
9 review for a health facility or agency under this section, the
10 department shall, at a minimum, apply the standards contained in
11 the document entitled "Minimum Design Standards for Health Care
12 Facilities in Michigan" published by the department and dated July
13 2007. The standards are incorporated by reference for purposes of
14 this subsection. The department may promulgate rules that are more
15 stringent than the standards if necessary to protect the public
16 health, safety, and welfare.

17 (7) The department shall promulgate rules to further prescribe
18 the scope of construction projects and other alterations subject to
19 review under this section.

20 (8) The department may waive the applicability of this section
21 to a construction project or alteration if the waiver will not
22 affect the public health, safety, and welfare.

23 (9) ~~Upon~~ **On** request by the person initiating a construction
24 project, the department may review and issue a construction permit
25 to a construction project that is not subject to subsection (1) or
26 (2) if the department determines that the review will promote the
27 public health, safety, and welfare.

28 (10) The department shall assess a fee for each review
29 conducted under this section. The fee is .5% of the first

1 \$1,000,000.00 of capital expenditure and .85% of any amount over
 2 \$1,000,000.00 of capital expenditure, up to a maximum of
 3 \$60,000.00.

4 (11) As used in this section, "capital expenditure" means that
 5 term as defined in section ~~22203(2)~~, **22203**, except that capital
 6 expenditure does not include the cost of equipment that is not
 7 fixed equipment.

8 Sec. 22201. (1) For purposes of this part, the words and
 9 phrases defined in sections 22203 to ~~22207~~ **22208** have the meanings
 10 ascribed to them in those sections.

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

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

14 Sec. 22207. (1) "Medicaid" means the program for medical
 15 assistance administered by the department ~~of community health~~ under
 16 the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

17 (2) "Modernization" means an upgrading, alteration, or change
 18 in function of a part or all of the physical plant of a health
 19 facility. Modernization includes, but is not limited to, the
 20 alteration, repair, remodeling, and renovation of an existing
 21 building and initial fixed equipment and the replacement of
 22 obsolete fixed equipment in an existing building. Modernization of
 23 the physical plant does not include normal maintenance and
 24 operational expenses.

25 (3) "New construction" means construction of a health facility
 26 where a health facility does not exist or construction replacing or
 27 expanding an existing health facility or a part of an existing
 28 health facility.

29 (4) "Person" means ~~a person~~ **that term** as defined in section

1 1106 ~~or~~ **and includes** a governmental entity.

2 (5) "Planning area" means the area defined in a certificate of
 3 need review standard for determining the need for, and the resource
 4 allocation of, a specific health facility, service, or equipment.
 5 Planning area includes, but is not limited to, ~~the~~ **this** state, a
 6 health facility service area, or a health service area or subarea
 7 within ~~the~~ **this** state.

8 (6) "Proposed project" means a proposal to acquire an existing
 9 health facility or begin operation of a new health facility, make a
 10 change in bed capacity, initiate, replace, or expand a covered
 11 clinical service, or make a covered capital expenditure.

12 (7) "Rural county" means a county not located in a
 13 metropolitan statistical area or micropolitan statistical areas as
 14 those terms are defined under the "standards for defining
 15 metropolitan and micropolitan statistical areas" by the ~~statistical~~
 16 ~~policy office~~ **Statistical and Science Policy Office** of the ~~office~~
 17 ~~of information and regulatory affairs~~ **Office of Information and**
 18 **Regulatory Affairs** of the United States ~~office of management and~~
 19 ~~budget~~, **Office of Management and Budget**, 65 F.R. p. **FR 82227 p**
 20 82238 (December 27, 2000).

21 (8) "Stipulation" means a requirement that is germane to the
 22 proposed project and has been agreed to by an applicant as a
 23 condition of certificate of need approval.

24 Sec. 22208. (1) "Title XVIII" means title XVIII of the social
 25 security act, 42 USC 1395 to ~~1395kkk-1~~ **1395lll**.

26 (2) "Title XIX" means title XIX of the social security act,
 27 ~~chapter 531, 49 Stat. 620,~~ 42 USC 1396 to 1396w-5.

28 Sec. 22209. (1) Except as otherwise provided in this part, a
 29 person shall not do any of the following without first obtaining a

1 certificate of need:

2 (a) Acquire an existing health facility or begin operation of
3 a health facility at a site that is not currently licensed for that
4 type of health facility. **This subdivision does not apply if the**
5 **health facility being acquired or operated is located in a county**
6 **with a population of 40,000 or less according to the most recent**
7 **federal decennial census and meets any of the following:**

8 (i) **The health facility is a psychiatric hospital licensed**
9 **under the mental health code, 1974 PA 258, MCL 330.1001 to**
10 **330.2106.**

11 (ii) **The health facility operates a specialized psychiatric**
12 **program for children and adolescent patients within the health**
13 **facility.**

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

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

16 (d) Make a covered capital expenditure.

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

19 (3) Subject to subsection (9) and if the relocation does not
20 result in an increase of licensed beds within that health service
21 area, a certificate of need is not required for any of the
22 following:

23 (a) The physical relocation of licensed beds from a hospital
24 site licensed under part 215 to another hospital site licensed
25 under the same license as the hospital seeking to transfer the beds
26 if both hospitals are located within a 2-mile radius of each other.

27 (b) Subject to subsections (7) and (8), the physical
28 relocation of licensed beds from a hospital licensed under part 215
29 to a freestanding surgical outpatient facility licensed under part

1 208 if that freestanding surgical outpatient facility satisfies
2 each of the following criteria on December 2, 2002:

3 (i) Is owned by, is under common control of, or has as a common
4 parent the hospital seeking to relocate its licensed beds.

5 (ii) Was licensed ~~prior to~~ **before** January 1, 2002.

6 (iii) Provides 24-hour emergency care services at that site.

7 (iv) Provides at least 4 different covered clinical services at
8 that site.

9 (c) Subject to ~~subsections (7) and~~ **subsection** (8), the
10 physical relocation of licensed beds from a hospital licensed under
11 part 215 to another hospital licensed under part 215 within the
12 same health service area if the hospital receiving the licensed
13 beds is owned by, is under common control of, or has as a common
14 parent the hospital seeking to relocate its licensed beds.

15 (4) Subject to subsection (5), a hospital licensed under part
16 215 is not required to obtain a certificate of need to provide 1 or
17 more of the covered clinical services listed in section 22203(10)
18 in a federal ~~veterans~~ **veterans'** health care facility or to use
19 long-term care unit beds or acute care beds that are owned and
20 located in a federal ~~veterans~~ **veterans'** health care facility if the
21 hospital satisfies each of the following criteria:

22 (a) The hospital has an active affiliation or sharing
23 agreement with the federal ~~veterans~~ **veterans'** health care facility.

24 (b) The hospital has physicians who have faculty appointments
25 at the federal ~~veterans~~ **veterans'** health care facility or has an
26 affiliation with a medical school that is affiliated with a federal
27 ~~veterans~~ **veterans'** health care facility and has physicians who have
28 faculty appointments at the federal ~~veterans~~ **veterans'** health care
29 facility.

1 (c) The hospital has an active grant or agreement with the
2 state or federal government to provide 1 or more of the following
3 functions relating to bioterrorism:

4 (i) Education.

5 (ii) Patient care.

6 (iii) Research.

7 (iv) Training.

8 (5) A hospital that provides 1 or more covered clinical
9 services in a federal ~~veterans~~**veterans'** health care facility or
10 uses long-term care unit beds or acute care beds located in a
11 federal ~~veterans~~**veterans'** health care facility under subsection
12 (4) may not utilize procedures performed at the federal ~~veterans~~
13 **veterans'** health care facility to demonstrate need or to satisfy a
14 certificate of need review standard unless the covered clinical
15 service provided at the federal ~~veterans~~**veterans'** health care
16 facility was provided under a certificate of need.

17 (6) If a hospital licensed under part 215 had fewer than 70
18 licensed beds on December 1, 2002, that hospital is not required to
19 satisfy the minimum volume requirements under the certificate of
20 need review standards for its existing operating rooms as long as
21 those operating rooms continue to exist at that licensed hospital
22 site.

23 (7) Before relocating beds under subsection (3)(b), the
24 hospital seeking to relocate its beds shall provide the information
25 requested by the department of ~~consumer and industry services~~
26 **licensing and regulatory affairs** that will allow the department of
27 ~~consumer and industry services~~**licensing and regulatory affairs** to
28 verify the number of licensed beds that were staffed and available
29 for patient care at that hospital as of December 2, 2002. A

1 ~~hospital shall transfer no more than 35% of its licensed beds to~~
2 ~~another hospital or freestanding surgical outpatient facility under~~
3 ~~subsection (3) (b) or (c) not more than 1 time after the effective~~
4 ~~date of the amendatory act that added this subsection if the~~
5 ~~hospital seeking to relocate its licensed beds or another hospital~~
6 ~~owned by, under common control of, or having as a common parent the~~
7 ~~hospital seeking to relocate its licensed beds is located in a city~~
8 ~~that has a population of 750,000 or more.~~

9 (8) The licensed beds relocated under subsection (3) (b) or (c)
10 ~~shall~~ **must** not be included as new beds in a hospital or as a new
11 hospital under the certificate of need review standards for
12 hospital beds. One of every 2 beds transferred under subsection
13 (3) (b) up to a maximum of 100 ~~shall~~ **must** be beds that were staffed
14 and available for patient care as of December 2, 2002. A hospital
15 relocating beds under subsection (3) (b) shall not reactivate
16 licensed beds within that hospital that were unstaffed or
17 unavailable for patient care on December 2, 2002 for a period of 5
18 years after the date of the relocation of the licensed beds under
19 subsection (3) (b).

20 (9) ~~No licensed~~ **Licensed** beds ~~shall~~ **must not** be physically
21 relocated under subsection (3) if 7 or more members of the
22 commission, after the appointment and confirmation of the 6
23 additional commission members under section 22211 but before June
24 15, 2003, determine that relocation of licensed beds under
25 subsection (3) may cause great harm and detriment to the access and
26 delivery of health care to the public and the relocation of beds
27 should not occur without a certificate of need.

28 (10) An applicant seeking a certificate of need for the
29 acquisition of an existing health facility may file a single,

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

21 (11) An applicant seeking a certificate of need for the
22 relocation or replacement of an existing health facility may file a
23 single, consolidated application for the certificate of need if the
24 project does not result in an increase of licensed beds or the
25 initiation, expansion, or replacement of a covered clinical
26 service. A person relocating or replacing an existing health
27 facility is subject to the applicable certificate of need review
28 standards in effect on the date of the relocation or replacement of
29 the health facility.

1 (12) As used in this section, "sharing agreement" means a
 2 written agreement between a federal ~~veterans~~**veterans'** health care
 3 facility and a hospital licensed under part 215 for the use of the
 4 federal ~~veterans~~**veterans'** health care facility's beds or
 5 equipment, or both, to provide covered clinical services.

6 **Sec. 22216. A health facility seeking to increase licensed**
 7 **psychiatric beds or a person that operates a specialized**
 8 **psychiatric program for children and adolescent patients shall give**
 9 **notice to the department before it initiates, expands, relocates,**
 10 **or acquires any psychiatric beds, if the health facility or**
 11 **psychiatric program is located within a county with a population of**
 12 **40,000 or less according to the most recent federal decennial**
 13 **census. The notice required under this section must be provided in**
 14 **a form and manner required by the department.**

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

16 (a) Subject to approval by the commission, promulgate rules to
 17 implement its powers and duties under this part.

18 (b) Report to the commission at least annually on the
 19 performance of the department's duties under this part.

20 (c) Develop proposed certificate of need review standards for
 21 submission to the commission.

22 (d) Administer and apply certificate of need review standards.
 23 In the review of certificate of need applications, the department
 24 shall consider relevant written communications from any person.

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

28 (f) By October 1 ~~, 2003, and annually thereafter,~~ **of each**
 29 **year,** report to the commission regarding the costs to the

1 department of implementing this part and the certificate of need
 2 application fees collected under section 20161 in the immediately
 3 preceding state fiscal year.

4 (g) ~~Beginning January 1, 2003, annually~~ **Annually** adjust the
 5 ~~\$2,500,000.00~~ threshold set forth in section 22203(9) by an amount
 6 determined by the state treasurer to reflect the annual percentage
 7 change in the ~~consumer price index,~~ **Consumer Price Index**, using
 8 data from the immediately preceding period of July 1 to June 30. As
 9 used in this subdivision, ~~"consumer price index"~~ **"Consumer Price**
 10 **Index"** means the most comprehensive index of consumer prices
 11 available for this state from the ~~bureau of labor statistics~~ **Bureau**
 12 **of Labor Statistics** of the United States ~~department of~~
 13 ~~labor.~~ **Department of Labor.**

14 (h) Annually review the application process, including all
 15 forms, reports, and other materials that are required to be
 16 submitted with the application. If needed to promote administrative
 17 efficiency, revise the forms, reports, and any other materials
 18 required with the application.

19 (i) ~~Within 6 months after the effective date of the amendatory~~
 20 ~~act that added this subdivision,~~ **By September 31, 2003**, create a
 21 consolidated application for a certificate of need for the
 22 relocation or replacement of an existing health facility.

23 (j) In consultation with the commission, define single project
 24 as it applies to capital expenditures.

25 Enacting section 1. This amendatory act does not take effect
 26 unless all of the following bills of the 100th Legislature are
 27 enacted into law:

28 (a) Senate Bill No. 671.

29 (b) Senate Bill No. 672.