

SENATE BILL NO. 183

February 24, 2021, Introduced by Senators MACDONALD and VANDERWALL and referred to the Committee on Health Policy and Human Services.

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, and section 22208 as amended by 2011 PA 51.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20145. (1) Before contracting for and initiating a

1 construction project involving new construction, additions,
2 modernizations, or conversions of a health facility or agency with
3 a capital expenditure of \$1,000,000.00 or more, a person shall
4 obtain a construction permit from the department. The department
5 shall not issue the permit under this subsection unless the
6 applicant holds a valid certificate of need if a certificate of
7 need is required for the project under part 222.

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

13 (3) If a construction project requires a construction permit
14 under subsection (1) or (2), but does not require a certificate of
15 need under part 222, the department shall require the applicant to
16 submit information considered necessary by the department to ~~assure~~
17 **ensure** that the capital expenditure for the project is not a
18 covered capital expenditure as **that term is** defined in section
19 ~~22203(9)~~.**22203**.

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

25 (a) A short description of the reason for the project and the
26 funding source.

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

29 (c) The estimated resulting increase or decrease in annual

1 operating costs.

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

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

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

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

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

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

26 (9) ~~Upon~~**On** request by the person initiating a construction
27 project, the department may review and issue a construction permit
28 to a construction project that is not subject to subsection (1) or
29 (2) if the department determines that the review will promote the

1 public health, safety, and welfare.

2 (10) The department shall assess a fee for each review
3 conducted under this section. The fee is .5% of the first
4 \$1,000,000.00 of capital expenditure and .85% of any amount over
5 \$1,000,000.00 of capital expenditure, up to a maximum of
6 \$60,000.00.

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

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

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

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

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

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

28 (3) "New construction" means construction of a health facility
29 where a health facility does not exist or construction replacing or

1 expanding an existing health facility or a part of an existing
2 health facility.

3 (4) "Person" means ~~a person~~ **that term** as defined in section
4 1106 ~~or~~ **and includes** a governmental entity.

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

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

15 (7) "Rural county" means a county not located in a
16 metropolitan statistical area or micropolitan statistical areas as
17 those terms are defined under the "standards for defining
18 metropolitan and micropolitan statistical areas" by the ~~statistical~~
19 ~~policy office~~ **Statistical and Science Policy Office** of the ~~office~~
20 ~~of information and regulatory affairs~~ **Office of Information and**
21 **Regulatory Affairs** of the United States ~~office of management and~~
22 ~~budget~~, **Office of Management and Budget**, 65 F.R. p. **FR 82227 p**
23 82238 (December 27, 2000).

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

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

29 (2) "Title XIX" means title XIX of the social security act,

~~chapter 531, 49 Stat. 620, 42 USC 1396 to 1396w-5.~~

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

(a) Acquire an existing health facility or begin operation of a health facility at a site that is not currently licensed for that type of health facility.

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

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

(d) Make a covered capital expenditure.

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

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

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

(b) Subject to subsections (7) and (8), the physical relocation of licensed beds from a hospital licensed under part 215 to a freestanding surgical outpatient facility licensed under part 208 if that freestanding surgical outpatient facility satisfies each of the following criteria on December 2, 2002:

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

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

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

1 (iv) Provides at least 4 different covered clinical services at
2 that site.

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

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

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

18 (b) The hospital has physicians who have faculty appointments
19 at the federal ~~veterans~~ **veterans'** health care facility or has an
20 affiliation with a medical school that is affiliated with a federal
21 ~~veterans~~ **veterans'** health care facility and has physicians who have
22 faculty appointments at the federal ~~veterans~~ **veterans'** health care
23 facility.

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

27 (i) Education.

28 (ii) Patient care.

29 (iii) Research.

1 (iv) Training.

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

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

17 (7) Before relocating beds under subsection (3)(b), the
18 hospital seeking to relocate its beds shall provide the information
19 requested by the department of ~~consumer and industry services~~
20 **licensing and regulatory affairs** that will allow the department of
21 ~~consumer and industry services~~-**licensing and regulatory affairs** to
22 verify the number of licensed beds that were staffed and available
23 for patient care at that hospital as of December 2, 2002. A
24 ~~hospital shall transfer no more than 35% of its licensed beds to~~
25 ~~another hospital or freestanding surgical outpatient facility under~~
26 ~~subsection (3)(b) or (c) not more than 1 time after the effective~~
27 ~~date of the amendatory act that added this subsection if the~~
28 ~~hospital seeking to relocate its licensed beds or another hospital~~
29 ~~owned by, under common control of, or having as a common parent the~~

~~hospital seeking to relocate its licensed beds is located in a city that has a population of 750,000 or more.~~

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

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

(10) An applicant seeking a certificate of need for the acquisition of an existing health facility may file a single, consolidated application for the certificate of need if the project results in the acquisition of an existing health facility but does not result in an increase or relocation of licensed beds or the initiation, expansion, or replacement of a covered clinical service. Except as otherwise provided in this subsection, a person acquiring an existing health facility is subject to the applicable

1 certificate of need review standards in effect on the date of the
2 transfer for the covered clinical services provided by the acquired
3 health facility. The department may except 1 or more of the covered
4 clinical services listed in section 22203(10)(b), except the
5 covered clinical service listed in section 22203(10)(b)(iv), from
6 the minimum volume requirements in the applicable certificate of
7 need review standards in effect on the date of the transfer, if the
8 equipment used in the covered clinical service is unable to meet
9 the minimum volume requirements due to the technological incapacity
10 of the equipment. A covered clinical service excepted by the
11 department under this subsection is subject to all the other
12 provisions in the applicable certificate of need review standards
13 in effect on the date of the transfer, except minimum volume
14 requirements.

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

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

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

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

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

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

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

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

13 (f) By October 1 ~~, 2003, and annually thereafter,~~ **of each**
14 **year**, report to the commission regarding the costs to the
15 department of implementing this part and the certificate of need
16 application fees collected under section 20161 in the immediately
17 preceding state fiscal year.

18 (g) ~~Beginning January 1, 2003, annually~~ **Annually** adjust the
19 ~~\$2,500,000.00~~ threshold set forth in section 22203(9) by an amount
20 determined by the state treasurer to reflect the annual percentage
21 change in the ~~consumer price index,~~ **Consumer Price Index**, using
22 data from the immediately preceding period of July 1 to June 30. As
23 used in this subdivision, ~~"consumer price index"~~ **"Consumer Price**
24 **Index"** means the most comprehensive index of consumer prices
25 available for this state from the ~~bureau of labor statistics~~ **Bureau**
26 **of Labor Statistics** of the United States ~~department of~~
27 ~~labor.~~ **Department of Labor.**

28 (h) Annually review the application process, including all
29 forms, reports, and other materials that are required to be

1 submitted with the application. If needed to promote administrative
2 efficiency, revise the forms, reports, and any other materials
3 required with the application.

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

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

10 Enacting section 1. This amendatory act does not take effect
11 unless all of the following bills of the 101st Legislature are
12 enacted into law:

13 (a) Senate Bill No. 181.

14
15 (b) Senate Bill No. 182.