Act No. 265
Public Acts of 2022
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STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2022

Introduced by Senators MacDonald and VanderWall

ENROLLED SENATE BILL No. 183

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 20145, 21501, 21513, 21551, 22201, 22207, 22208, 22209, and 22221 (MCL 333.20145, 333.21501, 333.21513, 333.21551, 333.22201, 333.22207, 333.22208, 333.22209, and 333.22221), section 20145 as amended by 2015 PA 104, section 21501 as amended by 2018 PA 384, section 21513 as amended by 2002 PA 125, section 21551 as amended by 1990 PA 331, 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:

Sec. 20145. (1) Before contracting for and initiating a construction project involving new construction, additions, modernizations, or conversions of a health facility or agency with a capital expenditure of $1,000,000.00 or more, a person shall obtain a construction permit from the department. The department shall not issue the permit under this subsection unless the applicant holds a valid certificate of need if a certificate of need is required for the project under part 222.

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

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

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

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

(b) A contact person for further information, including address and telephone number.

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

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

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

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

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

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

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

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

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

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

Sec. 21501. (1) As used in this part:

(a) "Aircraft transport vehicle" means that term as defined in section 20902.

(b) "Ambulance" means that term as defined in section 20902.

(c) "Emergency patient" means that term as defined in section 20904.

(d) "Group health plan" means an employer program of health benefits, including an employee welfare benefit plan as defined in section 3(1) of subtitle A of title I of the employee retirement income security act of 1974, Public Law 93-406, 29 USC 1002, to the extent that the plan provides medical care, including items and services paid for as medical care to employees or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

(e) "Health benefit plan" means a group health plan, an individual or group expense-incurred hospital, medical, or surgical policy or certificate, or an individual or group health maintenance organization contract. Health benefit plan does not include accident-only, credit, dental, or disability income insurance; long-term care insurance; coverage issued as a supplement to liability insurance; coverage only for a specified disease or illness; worker's compensation or similar insurance; or automobile medical-payment insurance.

(f) "Nonemergency patient" means that term as defined in section 20908.

(g) "Participating provider" means a provider that, under contract with an insurer that issues health benefit plans, or with such an insurer's contractor or subcontractor, has agreed to provide health care services to covered individuals and to accept payment by the insurer, contractor, or subcontractor for covered services as payment in full, other than coinsurance, copayments, or deductibles.

(h) "Patient's representative" means any of the following:

(*i*) A person to whom a patient has given express written consent to represent the patient.

(*ii*) A person authorized by law to provide consent for a patient.

(*iii*) A patient's treating health professional, but only if the patient is unable to provide consent.

(i) "Rural emergency hospital" means a hospital that is designated by the Centers for Medicare and Medicaid Services to offer rural emergency hospital services.

(j) "Rural emergency hospital services" means that term as defined in 42 USC 1395x.

(k) "Third party administrator" means that term as defined in section 2 of the third party administrator act, 1984 PA 218, MCL 550.902.

(2) In addition, article 1 contains general definitions and principles of construction applicable to all articles in this code and part 201 contains definitions applicable to this part.

Sec. 21513. The owner, operator, and governing body of a hospital licensed under this article:

(a) Are responsible for all phases of the operation of the hospital, selection of the medical staff, and quality of care rendered in the hospital.

(b) Shall cooperate with the department in the enforcement of this part, and require that the physicians, dentists, and other personnel working in the hospital who are required to be licensed or registered are in fact currently licensed or registered.

(c) Shall ensure that physicians and dentists admitted to practice in the hospital are granted hospital privileges consistent with their individual training, experience, and other qualifications.

(d) Shall ensure that physicians and dentists admitted to practice in the hospital are organized into a medical staff to enable an effective review of the professional practices in the hospital for the purpose of reducing morbidity and mortality and improving the care provided in the hospital for patients. The review must include the quality and necessity of the care provided and the preventability of complications and deaths occurring in the hospital.

(e) Shall not discriminate because of race, religion, color, national origin, age, or sex in the operation of the hospital including employment, patient admission and care, room assignment, and professional or nonprofessional selection and training programs, and shall not discriminate in the selection and appointment of individuals to the physician staff of the hospital or its training programs on the basis of licensure or registration or professional education as doctors of medicine, osteopathic medicine and surgery, or podiatry.

(f) Shall ensure that the hospital adheres to medical control authority protocols according to section 20918.

(g) Shall ensure that the hospital develops and maintains a plan for biohazard detection and handling.

(h) Shall notify the department of health and human services if the owner, operator, or governing body of the hospital applies for designation as a rural emergency hospital.

Sec. 21551. (1) A hospital licensed under this article and located in a nonurbanized area may apply to the department to temporarily delicense the following:

(a) Not more than 50% of its licensed beds for not more than 5 years.

(b) If the hospital is a rural emergency hospital, 100% of its licensed beds for not more than 5 years.

(2) A hospital that is granted a temporary delicensure of beds under subsection (1) may apply to the department for an extension of temporary delicensure for those beds for up to an additional 5 years to the extent that the hospital actually met the requirements of subsection (6) during the initial period of delicensure granted under subsection (1). The department shall grant an extension under this subsection unless the department determines under part 222 that there is a demonstrated need for the delicensed beds in the hospital group in which the hospital is located. If the department does not grant an extension under this subsection, the hospital shall request relicensure of the beds under subsection (7) or allow the beds to become permanently delicensed under subsection (8).

(3) Except as otherwise provided in this section, for a period of 90 days after January 1, 1991, if a hospital is located in a distressed area and has an annual indigent volume consisting of not less than 25% indigent patients, the hospital may apply to the department to temporarily delicense not more than 50% of its licensed beds for a period of not more than 2 years. On the receipt of a complete application under this subsection, the department shall temporarily delicense the beds indicated in the application. The department shall not grant an extension of temporary delicensure under this subsection.

(4) An application under subsection (1) or (3) must be on a form provided by the department. The form must contain all of the following information:

(a) The number and location of the specific beds to be delicensed.

(b) The period of time during which the beds will be delicensed.

(c) The alternative use proposed for the space occupied by the beds to be delicensed.

(5) A hospital that files an application under subsection (1) or (3) may file an amended application with the department on a form provided by the department. The hospital shall state on the form the purpose of the amendment. If the hospital meets the requirements of this section, the department shall so amend the hospital's original application.

(6) An alternative use of space made available by the delicensure of beds under this section does not result in a violation of this article or the rules promulgated under this article. Along with the application, an applicant for delicensure under subsection (1) or (3) shall submit to the department plans that indicate to the satisfaction of the department that the space occupied by the beds proposed for temporary delicensure will be used for 1 or more of the following:

(a) An alternative use that over the proposed period of temporary delicensure would defray the depreciation and interest costs that otherwise would be allocated to the space along with the operating expenses related to the alternative use.

(b) To correct a licensing deficiency previously identified by the department.

(c) Nonhospital purposes, including, but not limited to, community service projects, if the depreciation and interest costs for all capital expenditures that would otherwise be allocated to the space, as well as any operating costs related to the proposed alternative use, would not be considered as hospital costs for purposes of reimbursement.

(7) The department shall relicense beds that are temporarily delicensed under this section if all of the following requirements are met:

(a) The hospital files with the department a written request for relicensure not less than 90 days before the earlier of the following:

(*i*) The expiration of the period for which delicensure was granted.

(*ii*) The date upon which the hospital is requesting relicensure.

(*iii*) The last hospital license renewal date in the delicensure period.

(b) The space to be occupied by the relicensed beds is in compliance with this article and the rules promulgated under this article, including all licensure standards in effect at the time of relicensure, or the hospital has a plan of corrections that has been approved by the department.

(8) If a hospital does not meet all of the requirements of subsection (7) or if a hospital decides to allow beds to become permanently delicensed as described in subsection (2), then all of the temporarily delicensed beds must be automatically and permanently delicensed effective on the last day of the period for which the department granted temporary delicensure.

(9) The department of health and human services shall continue to count beds temporarily delicensed under this section in the department of health and human services' bed inventory for purposes of determining hospital bed need under part 222 in the hospital group in which the beds are located. The department of health and human services shall indicate in the bed inventory which beds are licensed and which beds are temporarily delicensed under this section. The department of health and human services shall not include a hospital's temporarily delicensed beds in the hospital's licensed bed count.

(10) A hospital that is granted temporary delicensure of beds under this section shall not transfer the beds to another site or hospital without first obtaining a certificate of need.

(11) As used in this section:

(a) "Distressed area" means a city that meets all of the following criteria:

(*i*) Had a negative population change from 2010 to the date of the 2020 federal decennial census.

(*ii*) From 1972 to 1989, had an increase in its state equalized valuation that is less than the statewide average.

(*iii*) Has a poverty level that is greater than the statewide average, according to the 1980 federal decennial census.

(*iv*) Was eligible for an urban development action grant from the United States Department of Housing and Urban Development in 1984 and was listed in 49 FR No. 28 (February 9, 1984) or 49 FR No. 30 (February 13, 1984).

(*v*) Had an unemployment rate that was higher than the statewide average for 3 of the 5 years from 1981 to 1985.

(b) "Indigent volume" means the ratio of a hospital's indigent charges to its total charges expressed as a percentage as determined by the department of health and human services after November 12, 1990, under chapter 8 of the department of health and human services guidelines titled "Medical Assistance Program Manual".

(c) "Nonurbanized area" means an area that is not an urbanized area.

(d) "Urbanized area" means that term as defined by the Office of Federal Statistical Policy and Standards of the United States Department of Commerce in the appendix entitled "General Procedures and Definitions", 45 FR p. 962 (January 3, 1980), which document is incorporated by reference.

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

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

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

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

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

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

(4) "Person" means that term as defined in section 1106 and includes a governmental entity.

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

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

(7) "Rural county" means a county not located in a metropolitan statistical area or micropolitan statistical areas as those terms are defined under the "standards for defining metropolitan and micropolitan statistical areas" by the Statistical and Science Policy Office of the Office of Information and Regulatory Affairs of the United States Office of Management and Budget, 65 FR p. 82227 to 82238 (December 27, 2000).

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

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

(2) "Title XIX" means title XIX of the social security act, 42 USC 1396 to 1396w-6.

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 before January 1, 2002.

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

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

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

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

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

(b) The hospital has physicians who have faculty appointments at the federal veterans' health care facility or has an affiliation with a medical school that is affiliated with a federal veterans' health care facility and has physicians who have faculty appointments at the federal veterans' health care facility.

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

(*i*) Education.

(*ii*) Patient care.

(*iii*) Research.

(*iv*) Training.

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

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

(7) Before relocating beds under subsection (3)(b), the hospital seeking to relocate its beds shall provide the information requested by the department of licensing and regulatory affairs that will allow the department of licensing and regulatory affairs to verify the number of licensed beds that were staffed and available for patient care at that hospital as of December 2, 2002.

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

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

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

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

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

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

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

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

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

(f) By October 1 of each year, report to the commission regarding the costs to the department of implementing this part and the certificate of need application fees collected under section 20161 in the immediately preceding state fiscal year.

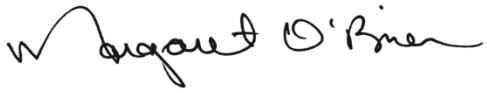
(g) Annually adjust the $2,500,000.00 threshold set forth in section 22203(9) by an amount determined by the state treasurer to reflect the annual percentage change in the Consumer Price Index, using data from the immediately preceding period of July 1 to June 30. As used in this subdivision, "Consumer Price Index" means the most comprehensive index of consumer prices available for this state from the Bureau of Labor Statistics of the United States Department of Labor.

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

(i) By October 1, 2003, create a consolidated application for a certificate of need for the relocation or replacement of an existing health facility.

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

This act is ordered to take immediate effect.



Secretary of the Senate

Clerk of the House of Representatives

Approved_____

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Governor