

PUBLIC HEALTH CODE (EXCERPT)
Act 368 of 1978

333.20155 Visit to health facility or agency; survey and evaluation for purpose of licensure; nursing home surveyor; criminal history check; survey team; composition and membership; waiver; confidentiality of accreditation information; limitation and effect; consultation engineering survey; summary of substantial noncompliance or deficiencies and response; investigations or inspections; prior notice as misdemeanor; periodic reports; access to documents; disclosure; delegation of functions; voluntary inspections; forwarding evidence of violation to licensing agency; quarterly meeting; nursing home's survey report; posting; other state and federal law.

Sec. 20155. (1) Except as otherwise provided in this section, 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 must 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 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. 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.

(8) Subject to subsection (11), 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 (10) 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 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 finding of substantial compliance or an accepted plan of correction, if applicable, on the most recent standard federal certification survey under part 221.

(9) Except as otherwise provided in subsection (13), accreditation information provided to the department under subsection (8) 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.

(10) The department shall grant a waiver under subsection (8) if the accreditation report submitted under subsection (8)(b) is less than 3 years old or the most recent standard federal certification survey under part 221 submitted under subsection (8)(c) shows substantial compliance or an accepted plan of correction, if applicable. If the accreditation report is too old, the department may deny the waiver request and conduct the visits required under subsection (8). Denial of a waiver request by the department is not subject to appeal.

(11) 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. 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.

(12) At the request of a health facility or agency other than a health facility or agency defined in section 20106(1)(a), (d), (h), and (i), the department may conduct a consultation engineering survey of that health facility or agency and provide professional advice and consultation regarding 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).

(13) 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 (8)(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.

(14) 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.

(15) 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 the assistance of a health facility or agency to access the system to maximize data export.

(16) 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 licensee and the department must both agree to the voluntary inspection described in this subsection.

(17) 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.

(18) 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 opportunities for enhanced promotion of nursing home performance, including, but not limited to, programs that encourage and reward nursing homes that strive for excellence.

(19) 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.

(20) The department shall consider recommendations from an advisory workgroup created under subsection (18). 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.

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

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

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1978, Act 493, Eff. Mar. 30, 1979;—Am. 1981, Act 111, Imd. Eff. July 17, 1981;—Am. 1982, Act 474, Eff. Mar. 30, 1983;—Am. 1992, Act 80, Imd. Eff. June 2, 1992;—Am. 1996, Act 267, Imd. Eff. June 12, 1996;—Am. 2000, Act 170, Imd. Eff. June 20, 2000;—Am. 2000, Act 171, Imd. Eff. June 20, 2000;—Am. 2001, Act 218, Imd. Eff. Dec. 28, 2001;—Am. 2006, Act 195, Imd. Eff. June 19, 2006;—Am. 2012, Act 322, Imd. Eff. Oct. 9, 2012;—Am. 2015, Act 104, Eff. Oct. 1, 2015;—Am. 2015, Act 155, Eff. Jan. 18, 2016;—Am. 2022, Act 187, Imd. Eff. July 25, 2022.

Compiler's note: For transfer of the clinical advisory committee to the department of community health, and abolishment of the committee, see E.R.O. No. 2009-6, compiled at MCL 333.26329.

Popular name: Act 368

Administrative rules: R 325.3801 et seq. of the Michigan Administrative Code.