

**SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 5609**

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 20102, 20104, 20155, 20161, 20164, 20171, 21734, 21763, 21764, 21771, 21794, and 21799b (MCL 333.20102, 333.20104, 333.20155, 333.20161, 333.20164, 333.20171, 333.21734, 333.21763, 333.21764, 333.21771, 333.21794, and 333.21799b), section 20102 as amended by 2010 PA 381, sections 20104, 20155, and 21734 as amended by 2015 PA 155, section 20161 as amended by 2020 PA 169, section 20164 as amended by 1990 PA 179, section 20171 as amended by 2014 PA 449, section 21763 as amended by 1996 PA 546, section 21771 as amended by 2012 PA 174, section 21794 as added by 2014 PA 529, and section 21799b as amended by 2000 PA 437, and by adding part 221; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 20102. ~~(1) "Advisory commission" means the health~~  
2 ~~facilities and agencies advisory commission created in section~~  
3 ~~20121.~~

4           (1) ~~(2)~~—"Aircraft transport operation" means that term as  
5 defined in section 20902.

6           (2) ~~(3)~~—"Ambulance operation" means that term as defined in  
7 section 20902.

8           (3) ~~(4)~~—"Attending physician" means the physician selected by,  
9 or assigned to, the patient and who has primary responsibility for  
10 the treatment and care of the patient.

11           (4) ~~(5)~~—"Authorized representative" means the individual  
12 designated in writing by the board of directors of the corporation  
13 or by the owner or person with legal authority to act on behalf of  
14 the company or organization on licensing matters. The authorized  
15 representative who is not an owner or licensee shall not sign the  
16 original license application or amendments to the application.

17           Sec. 20104. (1) ~~"Certification"~~ **Except as otherwise provided**  
18 **in part 221, "certification"** means the issuance of a document by  
19 the department to a health facility or agency attesting to the fact  
20 that the health facility or agency meets both of the following:

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

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

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

28           (3) "County medical care facility" means a nursing care

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

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

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

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

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

20 (8) "Good moral character" means that term as defined in,  
21 ~~section 1 of 1974 PA 381, MCL 338.41.~~ **and determined under, 1974 PA**  
22 **381, MCL 338.41 to 338.47.**

23 Sec. 20155. (1) Except as otherwise provided in this section,  
24 ~~and section 20155a,~~ the department shall make at least 1 visit to  
25 each licensed health facility or agency every 3 years for survey  
26 and evaluation for the purpose of licensure. A visit made according  
27 to a complaint ~~shall~~ **must** be unannounced. Except for a county  
28 medical care facility, a home for the aged, a nursing home, or a  
29 hospice residence, the department shall determine whether the

1 visits that are not made according to a complaint are announced or  
2 unannounced. The department shall ensure that each newly hired  
3 nursing home surveyor, as part of his or her basic training, is  
4 assigned full-time to a licensed nursing home for at least 10 days  
5 within a 14-day period to observe actual operations outside of the  
6 survey process before the trainee begins oversight  
7 responsibilities.

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

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

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

16 (3) The department shall perform a criminal history check on  
17 all nursing home surveyors in the manner provided for in section  
18 20173a.

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

26 (5) The department shall invite representatives from all  
27 nursing home provider organizations and the state long-term care  
28 ombudsman or his or her designee to participate in the planning  
29 process for the joint provider and surveyor training sessions. The

1 department shall include at least 1 representative from nursing  
2 home provider organizations that do not own or operate a nursing  
3 home representing 30 or more nursing homes statewide in internal  
4 surveyor group quality assurance training provided for the purpose  
5 of general clarification and interpretation of existing or new  
6 regulatory requirements and expectations.

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

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

18 (7) ~~(8)~~ The department shall semiannually provide for joint  
19 training with nursing home surveyors and providers on at least 1 of  
20 the 10 most frequently issued federal citations in this state  
21 during the past calendar year. The department shall develop a  
22 protocol for the review of citation patterns compared to regional  
23 outcomes and standards and complaints regarding the nursing home  
24 survey process. ~~The department shall include the review under this~~  
25 ~~subsection in the report required under subsection (20).~~ Except as  
26 otherwise provided in this subsection, each member of a department  
27 nursing home survey team who is a health professional licensee  
28 under article 15 shall earn not less than 50% of his or her  
29 required continuing education credits, if any, in geriatric care.

1 If a member of a nursing home survey team is a pharmacist licensed  
2 under article 15, he or she shall earn not less than 30% of his or  
3 her required continuing education credits in geriatric care.

4 ~~(8)~~ ~~(9)~~—Subject to subsection ~~(12)~~, ~~(11)~~, the department may  
5 waive the visit required by subsection (1) if a health facility or  
6 agency, requests a waiver and submits the following as applicable  
7 and if all of the requirements of subsection ~~(11)~~ ~~(10)~~ are met:

8 (a) Evidence that it is currently fully accredited by a body  
9 with expertise in the health facility or agency type and the  
10 accrediting organization is accepted by the United States  
11 Department of Health and Human Services for purposes of ~~section~~  
12 ~~1865 of the social security act~~, 42 USC 1395bb.

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

20 (c) For a nursing home, a **finding of substantial compliance or**  
21 **an accepted plan of correction, if applicable, on the most recent**  
22 standard federal certification survey ~~conducted within the~~  
23 ~~immediately preceding 9 to 15 months that shows substantial~~  
24 ~~compliance or has an accepted plan of correction, if~~  
25 ~~applicable.~~ **under part 221.**

26 ~~(9)~~ ~~(10)~~—Except as otherwise provided in subsection ~~(14)~~,  
27 ~~(13)~~, accreditation information provided to the department under  
28 subsection ~~(9)~~ ~~(8)~~ is confidential, is not a public record, and is  
29 not subject to court subpoena. The department shall use the

1 accreditation information only as provided in this section and  
2 properly destroy the documentation after a decision on the waiver  
3 request is made.

4 (10) ~~(11)~~—The department shall grant a waiver under subsection  
5 ~~(9)~~ **(8)** if the accreditation report submitted under subsection  
6 ~~(9)(b)~~ **(8)(b)** is less than 3 years old or the **most recent** standard  
7 federal **certification** survey **under part 221** submitted under  
8 subsection ~~(9)(c)~~ is less than 15 months old and there is no  
9 ~~indication of (8)(c) shows~~ substantial ~~noncompliance with licensure~~  
10 ~~standards or of deficiencies that represent a threat to public~~  
11 ~~safety or patient care.~~ **compliance or an accepted plan of**  
12 **correction, if applicable.** If the accreditation report ~~or standard~~  
13 ~~federal survey~~ is too old, the department may deny the waiver  
14 request and conduct the visits required under subsection ~~(9)~~ **(8)**.  
15 Denial of a waiver request by the department is not subject to  
16 appeal.

17 (11) ~~(12)~~—This section does not prohibit the department from  
18 citing a violation of this part during a survey, conducting  
19 investigations or inspections according to section 20156, or  
20 conducting surveys of health facilities or agencies for the purpose  
21 of complaint investigations. ~~or federal certification.~~ This section  
22 does not prohibit the bureau of fire services created in section 1b  
23 of the fire prevention code, 1941 PA 207, MCL 29.1b, from  
24 conducting annual surveys of hospitals, nursing homes, and county  
25 medical care facilities.

26 (12) ~~(13)~~—At the request of a health facility or agency **other**  
27 **than a health facility or agency defined in section 20106(1)(a),**  
28 **(d), (h), and (i),** the department may conduct a consultation  
29 engineering survey of ~~a~~ **that** health facility **or agency** and provide

1 professional advice and consultation regarding ~~health~~-facility  
2 construction and design. A health facility or agency may request a  
3 voluntary consultation survey under this subsection at any time  
4 between licensure surveys. The fees for a consultation engineering  
5 survey are the same as the fees established for waivers under  
6 section 20161(8).

7 **(13)** ~~(14)~~—If the department determines that substantial  
8 noncompliance with licensure standards exists or that deficiencies  
9 that represent a threat to public safety or patient care exist  
10 based on a review of an accreditation report submitted under  
11 subsection ~~(9) (b)~~, **(8) (b)**, the department shall prepare a written  
12 summary of the substantial noncompliance or deficiencies and the  
13 health facility's or agency's response to the department's  
14 determination. The department's written summary and the health  
15 facility's or agency's response are public documents.

16 **(14)** ~~(15)~~—The department or a local health department shall  
17 conduct investigations or inspections, other than inspections of  
18 financial records, of a county medical care facility, home for the  
19 aged, nursing home, or hospice residence without prior notice to  
20 the health facility or agency. An employee of a state agency  
21 charged with investigating or inspecting the health facility or  
22 agency or an employee of a local health department who directly or  
23 indirectly gives prior notice regarding an investigation or an  
24 inspection, other than an inspection of the financial records, to  
25 the health facility or agency or to an employee of the health  
26 facility or agency, is guilty of a misdemeanor. Consultation visits  
27 that are not for the purpose of annual or follow-up inspection or  
28 survey may be announced.

29 ~~(16) The department shall maintain a record indicating whether~~



1 ~~a visit and inspection is announced or unannounced. Survey findings~~  
2 ~~gathered at each health facility or agency during each visit and~~  
3 ~~inspection, whether announced or unannounced, shall be taken into~~  
4 ~~account in licensure decisions.~~

5 (15) ~~(17)~~—The department shall require periodic reports and a  
6 health facility or agency shall give the department access to  
7 books, records, and other documents maintained by a health facility  
8 or agency to the extent necessary to carry out the purpose of this  
9 article and the rules promulgated under this article. The  
10 department shall not divulge or disclose the contents of the  
11 patient's clinical records in a manner that identifies an  
12 individual except under court order. The department may copy health  
13 facility or agency records as required to document findings.  
14 Surveyors shall use electronic resident information, whenever  
15 available, as a source of survey-related data and shall request  
16 ~~facility~~**the assistance of a health facility or agency** to access  
17 the system to maximize data export.

18 (16) ~~(18)~~—The department may delegate survey, evaluation, or  
19 consultation functions to another state agency or to a local health  
20 department qualified to perform those functions. The department  
21 shall not delegate survey, evaluation, or consultation functions to  
22 a local health department that owns or operates a hospice or  
23 hospice residence licensed under this article. The department shall  
24 delegate under this subsection by cost reimbursement contract  
25 between the department and the state agency or local health  
26 department. The department shall not delegate survey, evaluation,  
27 or consultation functions to nongovernmental agencies, except as  
28 provided in this section. The **licensee and the department must both**  
29 **agree to the** voluntary inspection described in this subsection.

1 ~~must be agreed upon by both the licensee and the department.~~

2       (17) ~~(19)~~ If, upon investigation, the department or a state  
3 agency determines that an individual licensed to practice a  
4 profession in this state has violated the applicable licensure  
5 statute or the rules promulgated under that statute, the  
6 department, state agency, or local health department shall forward  
7 the evidence it has to the appropriate licensing agency.

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

17       ~~(a) The number of surveys conducted.~~

18       ~~(b) The number requiring follow-up surveys.~~

19       ~~(c) The average number of citations per nursing home for the~~  
20 ~~most recent calendar year.~~

21       ~~(d) The number of night and weekend complaints filed.~~

22       ~~(e) The number of night and weekend responses to complaints~~  
23 ~~conducted by the department.~~

24       ~~(f) The average length of time for the department to respond~~  
25 ~~to a complaint filed against a nursing home.~~

26       ~~(g) The number and percentage of citations disputed through~~  
27 ~~informal dispute resolution and independent informal dispute~~  
28 ~~resolution.~~

29       ~~(h) The number and percentage of citations overturned or~~

1 ~~modified, or both.~~

2 ~~(i) The review of citation patterns developed under subsection~~  
3 ~~(8).~~

4 ~~(j) Information regarding the progress made on implementing~~  
5 ~~the administrative and electronic support structure to efficiently~~  
6 ~~coordinate all nursing home licensing and certification functions.~~

7 ~~(k) The number of annual standard surveys of nursing homes~~  
8 ~~that were conducted during a period of open survey or enforcement~~  
9 ~~cycle.~~

10 ~~(l) The number of abbreviated complaint surveys that were not~~  
11 ~~conducted on consecutive surveyor workdays.~~

12 ~~(m) The percent of all form CMS-2567 reports of findings that~~  
13 ~~were released to the nursing home within the 10-working-day~~  
14 ~~requirement.~~

15 ~~(n) The percent of provider notifications of acceptance or~~  
16 ~~rejection of a plan of correction that were released to the nursing~~  
17 ~~home within the 10-working-day requirement.~~

18 ~~(o) The percent of first revisits that were completed within~~  
19 ~~60 days from the date of survey completion.~~

20 ~~(p) The percent of second revisits that were completed within~~  
21 ~~85 days from the date of survey completion.~~

22 ~~(q) The percent of letters of compliance notification to the~~  
23 ~~nursing home that were released within 10 working days of the date~~  
24 ~~of the completion of the revisit.~~

25 ~~(r) A summary of the discussions from the meetings required in~~  
26 ~~subsection (24).~~

27 ~~(s) The number of nursing homes that participated in a~~  
28 ~~recognized quality improvement program as described under section~~  
29 ~~20155a(3).~~

1       ~~(21) The department shall report March 1 of each year to the~~  
 2       ~~standing committees on appropriations and the standing committees~~  
 3       ~~having jurisdiction over issues involving senior citizens in the~~  
 4       ~~senate and the house of representatives on all of the following:~~

5           ~~(a) The percentage of nursing home citations that are appealed~~  
 6       ~~through the informal dispute resolution process.~~

7           ~~(b) The number and percentage of nursing home citations that~~  
 8       ~~are appealed and supported, amended, or deleted through the~~  
 9       ~~informal dispute resolution process.~~

10          ~~(c) A summary of the quality assurance review of the amended~~  
 11       ~~citations and related survey retraining efforts to improve~~  
 12       ~~consistency among surveyors and across the survey administrative~~  
 13       ~~unit that occurred in the year being reported.~~

14          ~~(22) Subject to subsection (23), a clarification work group~~  
 15       ~~comprised of the department in consultation with a nursing home~~  
 16       ~~resident or a member of a nursing home resident's family, nursing~~  
 17       ~~home provider groups, the American Medical Directors Association,~~  
 18       ~~the state long-term care ombudsman, and the federal Centers for~~  
 19       ~~Medicare and Medicaid Services shall clarify the following terms as~~  
 20       ~~those terms are used in title XVIII and title XIX and applied by~~  
 21       ~~the department to provide more consistent regulation of nursing~~  
 22       ~~homes in this state:~~

23           ~~(a) Immediate jeopardy.~~

24           ~~(b) Harm.~~

25           ~~(c) Potential harm.~~

26           ~~(d) Avoidable.~~

27           ~~(e) Unavoidable.~~

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

1           ~~(a) Specifically, the term "immediate jeopardy" means a~~  
2           ~~situation in which immediate corrective action is necessary because~~  
3           ~~the nursing home's noncompliance with 1 or more requirements of~~  
4           ~~participation has caused or is likely to cause serious injury,~~  
5           ~~harm, impairment, or death to a resident receiving care in a~~  
6           ~~nursing home.~~

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

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

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

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

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

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

4           ~~(v) Whether the nursing home could reasonably have been~~  
5 ~~expected to detect the process problem in a more timely fashion,~~  
6 ~~but did not so detect.~~

7           ~~(d) The existence of 1 or more of the factors described in~~  
8 ~~subdivision (c), and especially the existence of 3 or more of those~~  
9 ~~factors simultaneously, may lead to a conclusion that the situation~~  
10 ~~is one in which the nursing home's practice makes adverse events~~  
11 ~~likely to occur if immediate intervention is not undertaken, and~~  
12 ~~therefore constitutes immediate jeopardy. If none of the factors~~  
13 ~~described in subdivision (c) is present, the situation may involve~~  
14 ~~harm or potential harm that is not immediate jeopardy.~~

15           ~~(e) Specifically, "actual harm" means a negative outcome to a~~  
16 ~~resident that has compromised the resident's ability to maintain or~~  
17 ~~reach, or both, his or her highest practicable physical, mental,~~  
18 ~~and psychosocial well being as defined by an accurate and~~  
19 ~~comprehensive resident assessment, plan of care, and provision of~~  
20 ~~services. Harm does not include a deficient practice that only may~~  
21 ~~cause or has caused limited consequences to the resident.~~

22           ~~(f) For purposes of subdivision (e), in determining whether a~~  
23 ~~negative outcome is of limited consequence, if the "state~~  
24 ~~operations manual" or "the guidance to surveyors" published by the~~  
25 ~~federal Centers for Medicare and Medicaid Services does not provide~~  
26 ~~specific guidance, the department may consider whether most people~~  
27 ~~in similar circumstances would feel that the damage was of such~~  
28 ~~short duration or impact as to be inconsequential or trivial. In~~  
29 ~~such a case, the consequence of a negative outcome may be~~

1 ~~considered more limited if it occurs in the context of overall~~  
2 ~~procedural consistency with a peer-reviewed, evidence-based,~~  
3 ~~nationally recognized clinical process guideline, as compared to a~~  
4 ~~substantial inconsistency with or variance from the guideline.~~

5 ~~(g) For purposes of subdivision (e), if the publications~~  
6 ~~described in subdivision (f) do not provide specific guidance, the~~  
7 ~~department may consider the degree of a nursing home's adherence to~~  
8 ~~a peer-reviewed, evidence-based, nationally recognized clinical~~  
9 ~~process guideline in considering whether the degree of compromise~~  
10 ~~and future risk to the resident constitutes actual harm. The risk~~  
11 ~~of significant compromise to the resident may be considered greater~~  
12 ~~in the context of substantial deviation from the guidelines than in~~  
13 ~~the case of overall adherence.~~

14 ~~(h) To improve consistency and to avoid disputes over~~  
15 ~~avoidable and unavoidable negative outcomes, nursing homes and~~  
16 ~~survey agencies must have a common understanding of accepted~~  
17 ~~process guidelines and of the circumstances under which it can~~  
18 ~~reasonably be said that certain actions or inactions will lead to~~  
19 ~~avoidable negative outcomes. If the "state operations manual" or~~  
20 ~~"the guidance to surveyors" published by the federal Centers for~~  
21 ~~Medicare and Medicaid Services is not specific, a nursing home's~~  
22 ~~overall documentation of adherence to a peer-reviewed, evidence-~~  
23 ~~based, nationally recognized clinical process guideline with a~~  
24 ~~process indicator is relevant information in considering whether a~~  
25 ~~negative outcome was avoidable or unavoidable and may be considered~~  
26 ~~in the application of that term.~~

27 **(18)** ~~(24)~~The department shall conduct a quarterly meeting and  
28 invite appropriate stakeholders. The department shall invite as  
29 appropriate stakeholders under this subsection at least 1

1 representative from each nursing home provider organization that  
 2 does not own or operate a nursing home representing 30 or more  
 3 nursing homes statewide, the state long-term care ombudsman or his  
 4 or her designee, and any other clinical experts. Individuals who  
 5 participate in these quarterly meetings, jointly with the  
 6 department, may designate advisory workgroups to develop  
 7 recommendations on ~~the discussion topics that should include, at a~~  
 8 ~~minimum, all of the following:~~ **opportunities for enhanced promotion**  
 9 **of nursing home performance, including, but not limited to,**  
 10 **programs that encourage and reward nursing homes that strive for**  
 11 **excellence.**

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

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

19 ~~(i) Improving the surveyors' quality and preparedness.~~

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

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

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

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



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

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

6           ~~(d) Clinical process guidelines.~~

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

12           ~~(a) Use of bed rails.~~

13           ~~(b) Adverse drug effects.~~

14           ~~(c) Prevention of falls.~~

15           ~~(d) Prevention of pressure ulcers.~~

16           ~~(e) Nutrition and hydration.~~

17           ~~(f) Pain management.~~

18           ~~(g) Depression and depression pharmacotherapy.~~

19           ~~(h) Heart failure.~~

20           ~~(i) Urinary incontinence.~~

21           ~~(j) Dementia care.~~

22           ~~(k) Osteoporosis.~~

23           ~~(l) Altered mental states.~~

24           ~~(m) Physical and chemical restraints.~~

25           ~~(n) Person-centered care principles.~~

26           **(19)** ~~(26) In an area of clinical practice that is not listed~~  
27 ~~in subsection (25), a **A** nursing home may use peer-reviewed,~~  
28 ~~evidence-based, nationally recognized clinical process guidelines~~  
29 ~~or peer-reviewed, evidence-based, best-practice resources to~~

1 develop and implement resident care policies and compliance  
2 protocols with measurable outcomes to promote performance  
3 excellence.

4       **(20)** ~~(27)~~—The department shall consider recommendations from  
5 an advisory workgroup created under subsection ~~(24)~~.—**(18)**. The  
6 department may include training on new and revised peer-reviewed,  
7 evidence-based, nationally recognized clinical process guidelines  
8 or peer-reviewed, evidence-based, best-practice resources, which  
9 contain measurable outcomes, in the joint provider and surveyor  
10 training sessions to assist provider efforts toward improved  
11 regulatory compliance and performance excellence and to foster a  
12 common understanding of accepted peer-reviewed, evidence-based,  
13 best-practice resources between providers and the survey agency.  
14 The department shall post on its website all peer-reviewed,  
15 evidence-based, nationally recognized clinical process guidelines  
16 and peer-reviewed, evidence-based, best-practice resources used in  
17 a training session under this subsection for provider, surveyor,  
18 and public reference.

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

27       ~~(29) The department shall maintain the process by which the~~  
28 ~~director of the long-term care division or his or her designee~~  
29 ~~reviews and authorizes the issuance of a citation for immediate~~

1 ~~jeopardy or substandard quality of care before the statement of~~  
 2 ~~deficiencies is made final. The review must assure the consistent~~  
 3 ~~and accurate application of federal and state survey protocols and~~  
 4 ~~defined regulatory standards. As used in this subsection,~~  
 5 ~~"immediate jeopardy" and "substandard quality of care" mean those~~  
 6 ~~terms as defined by the federal Centers for Medicare and Medicaid~~  
 7 ~~Services.~~

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

15 ~~(21) (31)~~ A nursing home shall post the nursing home's survey  
 16 report in a conspicuous place within the nursing home for public  
 17 review.

18 ~~(22) (32)~~ Nothing in this section limits the requirements of  
 19 related state and federal law.

20 ~~(33) As used in this section:~~

21 ~~(a) "Consecutive days" means calendar days, but does not~~  
 22 ~~include Saturday, Sunday, or state or federally recognized~~  
 23 ~~holidays.~~

24 ~~(b) "Form CMS 2567" means the federal Centers for Medicare and~~  
 25 ~~Medicaid Services' form for the statement of deficiencies and plan~~  
 26 ~~of correction or a successor form serving the same purpose.~~

27 ~~(c) "Title XVIII" means title XVIII of the social security~~  
 28 ~~act, 42 USC 1395 to 1395lll.~~

29 ~~(d) "Title XIX" means title XIX of the social security act, 42~~

1 ~~USC 1396 to 1396w-5.~~

2 Sec. 20161. (1) The department shall assess fees and other  
3 assessments for health facility and agency licenses and  
4 certificates of need on an annual basis as provided in this  
5 article. Until October 1, 2023, except as otherwise provided in  
6 this article, fees and assessments must be paid as provided in the  
7 following schedule:

8 (a) Freestanding surgical  
9 outpatient facilities.....\$500.00 per facility license.

10 (b) Hospitals ..... \$500.00 per facility license and  
11 \$10.00 per licensed bed.

12 (c) Nursing homes, county  
13 medical care facilities, and  
14 hospital long-term care units .....\$500.00 per facility license and  
15 \$3.00 per licensed bed over 100  
16 licensed beds.

17 (d) Homes for the aged ..... \$6.27 per licensed bed.

18 (e) Hospice agencies ..... \$500.00 per agency license.

19 (f) Hospice residences ..... \$500.00 per facility license and  
20 \$5.00 per licensed bed.

21 (g) Subject to subsection  
22 (11), quality assurance assessment  
23 for nursing homes and hospital  
24 long-term care units .....an amount resulting in not more  
25 than 6% of total industry  
26 revenues.

27 (h) Subject to subsection  
28 (12), quality assurance assessment  
29 for hospitals .....at a fixed or variable rate that

generates funds not more than the maximum allowable under the federal matching requirements, after consideration for the amounts in subsection (12) (a) and (i).

(i) Initial licensure application fee for subdivisions

(a), (b), (c), (e), and (f) .....\$2,000.00 per initial license.

(2) If a hospital requests the department to conduct a certification survey for purposes of title XVIII or title XIX, the hospital shall pay a license fee surcharge of \$23.00 per bed. As used in this subsection: ~~,"title~~

**(a) "Title XVIII" and ~~title~~ means title XVIII of the social security act, 42 USC 1395 to 1395lll.**

**(b) "Title XIX" ~~mean those terms as defined in section 20155.~~ means title XIX of the social security act, 42 USC 1396 to 1396w-6.**

(3) All of the following apply to the assessment under this section for certificates of need:

(a) The base fee for a certificate of need is \$3,000.00 for each application. For a project requiring a projected capital expenditure of more than \$500,000.00 but less than \$4,000,000.00, an additional fee of \$5,000.00 is added to the base fee. For a project requiring a projected capital expenditure of \$4,000,000.00 or more but less than \$10,000,000.00, an additional fee of \$8,000.00 is added to the base fee. For a project requiring a projected capital expenditure of \$10,000,000.00 or more, an additional fee of \$12,000.00 is added to the base fee.

1 (b) In addition to the fees under subdivision (a), the  
2 applicant shall pay \$3,000.00 for any designated complex project  
3 including a project scheduled for comparative review or for a  
4 consolidated licensed health facility application for acquisition  
5 or replacement.

6 (c) If required by the department, the applicant shall pay  
7 \$1,000.00 for a certificate of need application that receives  
8 expedited processing at the request of the applicant.

9 (d) The department shall charge a fee of \$500.00 to review any  
10 letter of intent requesting or resulting in a waiver from  
11 certificate of need review and any amendment request to an approved  
12 certificate of need.

13 (e) A health facility or agency that offers certificate of  
14 need covered clinical services shall pay \$100.00 for each  
15 certificate of need approved covered clinical service as part of  
16 the certificate of need annual survey at the time of submission of  
17 the survey data.

18 (f) Except as otherwise provided in this section, the  
19 department shall use the fees collected under this subsection only  
20 to fund the certificate of need program. Funds remaining in the  
21 certificate of need program at the end of the fiscal year do not  
22 lapse to the general fund but remain available to fund the  
23 certificate of need program in subsequent years.

24 (4) A license issued under this part is effective for no  
25 longer than 1 year after the date of issuance.

26 (5) Fees described in this section are payable to the  
27 department at the time an application for a license, permit, or  
28 certificate is submitted. If an application for a license, permit,  
29 or certificate is denied or if a license, permit, or certificate is

1    revoked before its expiration date, the department shall not refund  
2    fees paid to the department.

3           (6) The fee for a provisional license or temporary permit is  
4    the same as for a license. A license may be issued at the  
5    expiration date of a temporary permit without an additional fee for  
6    the balance of the period for which the fee was paid if the  
7    requirements for licensure are met.

8           (7) The cost of licensure activities must be supported by  
9    license fees.

10          (8) The application fee for a waiver under section 21564 is  
11    \$200.00 plus \$40.00 per hour for the professional services and  
12    travel expenses directly related to processing the application. The  
13    travel expenses must be calculated in accordance with the state  
14    standardized travel regulations of the department of technology,  
15    management, and budget in effect at the time of the travel.

16          (9) An applicant for licensure or renewal of licensure under  
17    part 209 shall pay the applicable fees set forth in part 209.

18          (10) Except as otherwise provided in this section, the fees  
19    and assessments collected under this section must be deposited in  
20    the state treasury, to the credit of the general fund. The  
21    department may use the unreserved fund balance in fees and  
22    assessments for the criminal history check program required under  
23    this article.

24          (11) The quality assurance assessment collected under  
25    subsection (1)(g) and all federal matching funds attributed to that  
26    assessment must be used only for the following purposes and under  
27    the following specific circumstances:

28           (a) The quality assurance assessment and all federal matching  
29    funds attributed to that assessment must be used to finance

1 Medicaid nursing home reimbursement payments. Only licensed nursing  
2 homes and hospital long-term care units that are assessed the  
3 quality assurance assessment and participate in the Medicaid  
4 program are eligible for increased per diem Medicaid reimbursement  
5 rates under this subdivision. A nursing home or long-term care unit  
6 that is assessed the quality assurance assessment and that does not  
7 pay the assessment required under subsection (1)(g) in accordance  
8 with subdivision (c)(i) or in accordance with a written payment  
9 agreement with this state shall not receive the increased per diem  
10 Medicaid reimbursement rates under this subdivision until all of  
11 its outstanding quality assurance assessments and any penalties  
12 assessed under subdivision (f) have been paid in full. This  
13 subdivision does not authorize or require the department to  
14 overspend tax revenue in violation of the management and budget  
15 act, 1984 PA 431, MCL 18.1101 to 18.1594.

16 (b) Except as otherwise provided under subdivision (c),  
17 beginning October 1, 2005, the quality assurance assessment is  
18 based on the total number of patient days of care each nursing home  
19 and hospital long-term care unit provided to non-Medicare patients  
20 within the immediately preceding year, must be assessed at a  
21 uniform rate on October 1, 2005 and subsequently on October 1 of  
22 each following year, and is payable on a quarterly basis, with the  
23 first payment due 90 days after the date the assessment is  
24 assessed.

25 (c) Within 30 days after September 30, 2005, the department  
26 shall submit an application to the ~~federal~~ Centers for Medicare and  
27 Medicaid Services to request a waiver according to 42 CFR 433.68(e)  
28 to implement this subdivision as follows:

29 (i) If the waiver is approved, the quality assurance assessment



1 rate for a nursing home or hospital long-term care unit with less  
2 than 40 licensed beds or with the maximum number, or more than the  
3 maximum number, of licensed beds necessary to secure federal  
4 approval of the application is \$2.00 per non-Medicare patient day  
5 of care provided within the immediately preceding year or a rate as  
6 otherwise altered on the application for the waiver to obtain  
7 federal approval. If the waiver is approved, for all other nursing  
8 homes and long-term care units the quality assurance assessment  
9 rate is to be calculated by dividing the total statewide maximum  
10 allowable assessment permitted under subsection (1)(g) less the  
11 total amount to be paid by the nursing homes and long-term care  
12 units with less than 40 licensed beds or with the maximum number,  
13 or more than the maximum number, of licensed beds necessary to  
14 secure federal approval of the application by the total number of  
15 non-Medicare patient days of care provided within the immediately  
16 preceding year by those nursing homes and long-term care units with  
17 more than 39 licensed beds, but less than the maximum number of  
18 licensed beds necessary to secure federal approval. The quality  
19 assurance assessment, as provided under this subparagraph, must be  
20 assessed in the first quarter after federal approval of the waiver  
21 and must be subsequently assessed on October 1 of each following  
22 year, and is payable on a quarterly basis, with the first payment  
23 due 90 days after the date the assessment is assessed.

24 (ii) If the waiver is approved, continuing care retirement  
25 centers are exempt from the quality assurance assessment if the  
26 continuing care retirement center requires each center resident to  
27 provide an initial life interest payment of \$150,000.00, on  
28 average, per resident to ensure payment for that resident's  
29 residency and services and the continuing care retirement center

1 utilizes all of the initial life interest payment before the  
2 resident becomes eligible for medical assistance under the state's  
3 Medicaid plan. As used in this subparagraph, "continuing care  
4 retirement center" means a nursing care facility that provides  
5 independent living services, assisted living services, and nursing  
6 care and medical treatment services, in a campus-like setting that  
7 has shared facilities or common areas, or both.

8 (d) Beginning May 10, 2002, the department shall increase the  
9 per diem nursing home Medicaid reimbursement rates for the balance  
10 of that year. For each subsequent year in which the quality  
11 assurance assessment is assessed and collected, the department  
12 shall maintain the Medicaid nursing home reimbursement payment  
13 increase financed by the quality assurance assessment.

14 (e) The department shall implement this section in a manner  
15 that complies with federal requirements necessary to ensure that  
16 the quality assurance assessment qualifies for federal matching  
17 funds.

18 (f) If a nursing home or a hospital long-term care unit fails  
19 to pay the assessment required by subsection (1)(g), the department  
20 may assess the nursing home or hospital long-term care unit a  
21 penalty of 5% of the assessment for each month that the assessment  
22 and penalty are not paid up to a maximum of 50% of the assessment.  
23 The department may also refer for collection to the department of  
24 treasury past due amounts consistent with section 13 of 1941 PA  
25 122, MCL 205.13.

26 (g) The Medicaid nursing home quality assurance assessment  
27 fund is established in the state treasury. The department shall  
28 deposit the revenue raised through the quality assurance assessment  
29 with the state treasurer for deposit in the Medicaid nursing home

1 quality assurance assessment fund.

2 (h) The department shall not implement this subsection in a  
3 manner that conflicts with 42 USC 1396b(w).

4 (i) The quality assurance assessment collected under  
5 subsection (1)(g) must be prorated on a quarterly basis for any  
6 licensed beds added to or subtracted from a nursing home or  
7 hospital long-term care unit since the immediately preceding July  
8 1. Any adjustments in payments are due on the next quarterly  
9 installment due date.

10 (j) In each fiscal year governed by this subsection, Medicaid  
11 reimbursement rates must not be reduced below the Medicaid  
12 reimbursement rates in effect on April 1, 2002 as a direct result  
13 of the quality assurance assessment collected under subsection  
14 (1)(g).

15 (k) The state retention amount of the quality assurance  
16 assessment collected under subsection (1)(g) must be equal to 13.2%  
17 of the federal funds generated by the nursing homes and hospital  
18 long-term care units quality assurance assessment, including the  
19 state retention amount. The state retention amount must be  
20 appropriated each fiscal year to the department to support Medicaid  
21 expenditures for long-term care services. These funds must offset  
22 an identical amount of general fund/general purpose revenue  
23 originally appropriated for that purpose.

24 (l) Beginning October 1, 2023, the department shall not assess  
25 or collect the quality assurance assessment or apply for federal  
26 matching funds. The quality assurance assessment collected under  
27 subsection (1)(g) must not be assessed or collected after September  
28 30, 2011 if the quality assurance assessment is not eligible for  
29 federal matching funds. Any portion of the quality assurance

1 assessment collected from a nursing home or hospital long-term care  
2 unit that is not eligible for federal matching funds must be  
3 returned to the nursing home or hospital long-term care unit.

4 (12) The quality assurance dedication is an earmarked  
5 assessment collected under subsection (1)(h). That assessment and  
6 all federal matching funds attributed to that assessment must be  
7 used only for the following purpose and under the following  
8 specific circumstances:

9 (a) To maintain the increased Medicaid reimbursement rate  
10 increases as provided for in subdivision (c).

11 (b) The quality assurance assessment must be assessed on all  
12 net patient revenue, before deduction of expenses, less Medicare  
13 net revenue, as reported in the most recently available Medicare  
14 cost report and is payable on a quarterly basis, with the first  
15 payment due 90 days after the date the assessment is assessed. As  
16 used in this subdivision, "Medicare net revenue" includes Medicare  
17 payments and amounts collected for coinsurance and deductibles.

18 (c) Beginning October 1, 2002, the department shall increase  
19 the hospital Medicaid reimbursement rates for the balance of that  
20 year. For each subsequent year in which the quality assurance  
21 assessment is assessed and collected, the department shall maintain  
22 the hospital Medicaid reimbursement rate increase financed by the  
23 quality assurance assessments.

24 (d) The department shall implement this section in a manner  
25 that complies with federal requirements necessary to ensure that  
26 the quality assurance assessment qualifies for federal matching  
27 funds.

28 (e) If a hospital fails to pay the assessment required by  
29 subsection (1)(h), the department may assess the hospital a penalty

1 of 5% of the assessment for each month that the assessment and  
2 penalty are not paid up to a maximum of 50% of the assessment. The  
3 department may also refer for collection to the department of  
4 treasury past due amounts consistent with section 13 of 1941 PA  
5 122, MCL 205.13.

6 (f) The hospital quality assurance assessment fund is  
7 established in the state treasury. The department shall deposit the  
8 revenue raised through the quality assurance assessment with the  
9 state treasurer for deposit in the hospital quality assurance  
10 assessment fund.

11 (g) In each fiscal year governed by this subsection, the  
12 quality assurance assessment must only be collected and expended if  
13 Medicaid hospital inpatient DRG and outpatient reimbursement rates  
14 and disproportionate share hospital and graduate medical education  
15 payments are not below the level of rates and payments in effect on  
16 April 1, 2002 as a direct result of the quality assurance  
17 assessment collected under subsection (1) (h), except as provided in  
18 subdivision (h).

19 (h) The quality assurance assessment collected under  
20 subsection (1) (h) must not be assessed or collected after September  
21 30, 2011 if the quality assurance assessment is not eligible for  
22 federal matching funds. Any portion of the quality assurance  
23 assessment collected from a hospital that is not eligible for  
24 federal matching funds must be returned to the hospital.

25 (i) The state retention amount of the quality assurance  
26 assessment collected under subsection (1) (h) must be equal to 13.2%  
27 of the federal funds generated by the hospital quality assurance  
28 assessment, including the state retention amount. The 13.2% state  
29 retention amount described in this subdivision does not apply to

1 the Healthy Michigan plan. In the fiscal year ending September 30,  
2 2016, there is a 1-time additional retention amount of up to  
3 \$92,856,100.00. In the fiscal year ending September 30, 2017, there  
4 is a retention amount of \$105,000,000.00 for the Healthy Michigan  
5 plan. Beginning in the fiscal year ending September 30, 2018, and  
6 for each fiscal year thereafter, there is a retention amount of  
7 \$118,420,600.00 for each fiscal year for the Healthy Michigan plan.  
8 The state retention percentage must be applied proportionately to  
9 each hospital quality assurance assessment program to determine the  
10 retention amount for each program. The state retention amount must  
11 be appropriated each fiscal year to the department to support  
12 Medicaid expenditures for hospital services and therapy. These  
13 funds must offset an identical amount of general fund/general  
14 purpose revenue originally appropriated for that purpose. By May  
15 31, 2019, the department, the state budget office, and the Michigan  
16 Health and Hospital Association shall identify an appropriate  
17 retention amount for the fiscal year ending September 30, 2020 and  
18 each fiscal year thereafter.

19 (13) The department may establish a quality assurance  
20 assessment to increase ambulance reimbursement as follows:

21 (a) The quality assurance assessment authorized under this  
22 subsection must be used to provide reimbursement to Medicaid  
23 ambulance providers. The department may promulgate rules to provide  
24 the structure of the quality assurance assessment authorized under  
25 this subsection and the level of the assessment.

26 (b) The department shall implement this subsection in a manner  
27 that complies with federal requirements necessary to ensure that  
28 the quality assurance assessment qualifies for federal matching  
29 funds.

1 (c) The total annual collections by the department under this  
2 subsection must not exceed \$20,000,000.00.

3 (d) The quality assurance assessment authorized under this  
4 subsection must not be collected after October 1, 2023. The quality  
5 assurance assessment authorized under this subsection must no  
6 longer be collected or assessed if the quality assurance assessment  
7 authorized under this subsection is not eligible for federal  
8 matching funds.

9 (e) Beginning November 1, 2020, and by November 1 of each year  
10 thereafter, the department shall send a notification to each  
11 ambulance operation that will be assessed the quality assurance  
12 assessment authorized under this subsection during the year in  
13 which the notification is sent.

14 (14) The quality assurance assessment provided for under this  
15 section is a tax that is levied on a health facility or agency.

16 (15) For the fiscal year ending September 30, 2020 only,  
17 \$3,000,000.00 of the money in the certificate of need program is  
18 transferred to and must be deposited into the general fund.

19 (16) As used in this section:

20 (a) "Healthy Michigan plan" means the medical assistance  
21 program described in section 105d of the social welfare act, 1939  
22 PA 280, MCL 400.105d, that has a federal matching fund rate of not  
23 less than 90%.

24 (b) "Medicaid" means that term as defined in section 22207.

25 Sec. 20164. (1) ~~A-Except as provided in part 209, a license,~~  
26 certification, provisional license, or limited license is valid for  
27 not more than 1 year after the date of issuance. ~~, except as~~  
28 ~~provided in section 20511 or part 209 or 210. A license for a~~  
29 ~~facility licensed under part 215 shall be valid for 2 years, except~~

1 ~~that provisional and limited licenses may be valid for 1 year.~~

2 (2) A license, certification, or certificate of need is not  
 3 transferable and ~~shall~~**must** state the persons, buildings, and  
 4 properties to which it applies. Applications for licensure or  
 5 certification because of transfer of ownership or essential  
 6 ownership interest ~~shall~~**must** not be acted upon until satisfactory  
 7 evidence is provided of compliance with part 222.

8 (3) If ownership is not voluntarily transferred, the  
 9 department ~~shall~~**must** be notified immediately and the new owner  
 10 shall apply for a license and certification not later than 30 days  
 11 after the transfer.

12 Sec. 20171. (1) The department ~~, after obtaining approval of~~  
 13 ~~the advisory commission,~~ shall promulgate and enforce rules to  
 14 implement this article, including rules necessary to enable a  
 15 health facility or agency to qualify for and receive federal funds  
 16 available for patient care or for projects involving new  
 17 construction, additions, modernizations, or conversions.

18 (2) The rules applicable to health facilities or agencies  
 19 ~~shall~~**must** be uniform insofar as is reasonable.

20 (3) The rules ~~shall~~**must** establish standards relating to:

21 (a) Ownership.

22 (b) Reasonable disclosure of ownership interests in  
 23 proprietary corporations and of financial interests of trustees of  
 24 voluntary, nonprofit corporations and owners of proprietary  
 25 corporations and partnerships.

26 (c) Organization and function of the health facility or  
 27 agency, owner, operator, and governing body.

28 (d) Administration.

29 (e) Professional and nonprofessional staff, services, and



1 equipment appropriate to implement section 20141(3).

2 (f) Policies and procedures.

3 (g) Fiscal and medical audit.

4 (h) Utilization and quality control review.

5 (i) Physical plant including planning, construction,  
6 functional design, sanitation, maintenance, housekeeping, and fire  
7 safety.

8 (j) Arrangements for the continuing evaluation of the quality  
9 of health care provided.

10 (k) Other pertinent organizational, operational, and  
11 procedural requirements for each type of health facility or agency.

12 (4) The rules promulgated under section 21563 for the  
13 designation of rural community hospitals may also specify all of  
14 the following:

15 (a) Maximum bed size.

16 (b) The level of services to be provided in each category as  
17 described in section 21562(2).

18 (c) Requirements for transfer agreements with other hospitals  
19 to ensure efficient and appropriate patient care.

20 (5) Rules promulgated under this article are subject to  
21 section 17 of the continuing care community disclosure act, **2014 PA**  
22 **448**, MCL 554.917.

23 Sec. 21734. (1) Notwithstanding section 20201(2) (*l*), a nursing  
24 home shall give each resident who uses a hospital-type bed or the  
25 resident's legal guardian, patient advocate, or other legal  
26 representative the option of having bed rails. A nursing home shall  
27 offer the option to new residents ~~upon~~**on** admission and to other  
28 residents ~~upon~~**on** request. ~~Upon~~**On the** receipt of a request for bed  
29 rails, the nursing home shall inform the resident or the resident's

1 legal guardian, patient advocate, or other legal representative of  
2 alternatives to and the risks involved in using bed rails. A  
3 resident or the resident's legal guardian, patient advocate, or  
4 other legal representative has the right to request and consent to  
5 bed rails for the resident. A nursing home shall provide bed rails  
6 to a resident only ~~upon~~**on the** receipt of a signed consent form  
7 authorizing bed rail use and a written order from the resident's  
8 attending physician that contains statements and determinations  
9 regarding medical symptoms and that specifies the circumstances  
10 under which bed rails are to be used. For purposes of this  
11 subsection, "medical symptoms" includes the following:

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

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

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

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

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

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

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

27 (a) Acceptable bed rails for use in a nursing home in this  
28 state. The department shall consider the recommendations of the  
29 hospital bed safety work group established by the United States

1 Food and Drug Administration, if those are available, in  
2 determining what constitutes an acceptable bed rail.

3 (b) Proper maintenance of bed rails.

4 (c) Properly fitted mattresses.

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

7 (4) The department shall maintain the peer-reviewed, evidence-  
8 based, best-practice resources under subsection (3) in consultation  
9 with the long-term care stakeholders work group established under  
10 section ~~20155(24)~~. **20155(18)** .

11 (5) A nursing home that complies with subsections (1) and (2)  
12 and the peer-reviewed, evidence-based, best-practices resources  
13 maintained under this section in providing bed rails to a resident  
14 is not subject to administrative penalties imposed by the  
15 department based solely on providing the bed rails. This subsection  
16 does not preclude the department from citing specific state or  
17 federal deficiencies for improperly maintained bed rails,  
18 improperly fitted mattresses, or other hazards created by  
19 improperly positioned bed rails, mattresses, or beds.

20 Sec. 21763. (1) A nursing home shall permit a representative  
21 of an approved organization, who is known by the nursing home  
22 administration to be authorized to represent the organization or  
23 who carries identification showing that the representative is  
24 authorized to represent the organization, a family member of a  
25 patient, or a legal representative of a patient, to have access to  
26 nursing home patients for 1 or more of the following purposes:

27 (a) Visit, talk with, and make personal, social, and legal  
28 services available to the patients.

29 (b) Inform patients of their rights and entitlements, and

1 their corresponding obligations, under federal and state laws by  
2 means of the distribution of educational materials and discussion  
3 in groups and with individual patients.

4 (c) Assist patients in asserting their legal rights regarding  
5 claims for public assistance, medical assistance, and social  
6 services benefits, as well as in all matters in which patients are  
7 aggrieved. Assistance may be provided individually or on a group  
8 basis and may include organizational activity and counseling and  
9 litigation.

10 (d) Engage in other methods of assisting, advising, and  
11 representing patients so as to extend to them the full enjoyment of  
12 their rights.

13 (2) Access as prescribed in subsection (1) ~~shall~~**must** be  
14 permitted during regular visiting hours each day. A representative  
15 of an approved organization entering a nursing home under this  
16 section promptly shall advise the nursing home administrator or the  
17 acting administrator or other available agent of the nursing home  
18 of the representative's presence. A representative shall not enter  
19 the living area of a patient without identifying himself or herself  
20 to the patient and without receiving the patient's permission to  
21 enter. A representative shall use only patient areas of the home to  
22 carry out the activities described in subsection (1).

23 (3) A patient may terminate a visit by a representative  
24 permitted access under subsection (1). Communications between a  
25 patient and the representative are confidential, unless otherwise  
26 authorized by the patient.

27 (4) If a nursing home administrator or employee believes that  
28 an individual or organization permitted access under this section  
29 is acting or has acted in a manner detrimental to the health or

1 safety of patients in the nursing home, the nursing home  
 2 administrator or employee may file ~~a~~**an anonymous** complaint with  
 3 the ~~task force established under section 20127. Upon~~ **department. On**  
 4 **the** receipt of a complaint, department staff shall investigate the  
 5 allegations made in the complaint. The ~~task force~~**department** shall  
 6 make a determination regarding proper resolution of the complaint  
 7 based on the results of the investigation. Written notification of  
 8 the ~~task force~~**department's** determination and ~~of~~ recommendations  
 9 ~~adopted by the task force~~ shall be given to the complainant and the  
 10 individual or organization against whom the complaint was made.

11 (5) An individual shall not enter upon the premises of a  
 12 nursing home for the purpose of engaging in an activity that would  
 13 cause a reasonable person to feel terrorized, frightened,  
 14 intimidated, threatened, harassed, or molested and that actually  
 15 causes a nursing home employee, patient, or visitor to feel  
 16 terrorized, frightened, intimidated, threatened, harassed, or  
 17 molested. This subsection does not prohibit constitutionally  
 18 protected activity or conduct that serves a legitimate purpose  
 19 including, but not limited to, activities or conduct allowed under  
 20 subsection (1).

21 Sec. 21764. (1) The director ~~, with the advice of the nursing~~  
 22 ~~home task force,~~ shall approve or disapprove a nonprofit  
 23 corporation which has as 1 of its primary purposes the rendering of  
 24 assistance, without charge to nursing home patients for the purpose  
 25 of obtaining access to nursing homes and their patients under  
 26 section 21763.

27 (2) ~~Upon~~**On the** receipt of a written application for approval  
 28 under subsection (1), the director shall notify all persons ~~who~~  
 29 **that** have made a written request for notice of applications made

1 under this section.

2 (3) The director shall approve the organization making the  
3 request if the organization is a bona fide community organization  
4 or legal aid program, is capable of providing 1 or more of the  
5 services listed in section 21763, and is likely to utilize the  
6 access provided under section 21763 to enhance the welfare of  
7 nursing home patients. The director shall approve or disapprove the  
8 organization within 30 days after receiving the application.

9 ~~(4) A person aggrieved by the decision of the director may  
10 appeal the decision to the nursing home task force. A decision of  
11 the task force shall be binding on the director.~~

12 Sec. 21771. (1) A licensee, nursing home administrator, or  
13 employee of a nursing home shall not physically, mentally, or  
14 emotionally abuse, mistreat, or harmfully neglect a patient.

15 (2) A nursing home employee who has reasonable suspicion of an  
16 act prohibited by this section shall report the suspicion to the  
17 nursing home administrator or nursing director and to the  
18 department ~~in the manner required by subsection (8).~~ **as required by**  
19 **federal regulations.** A nursing home administrator or nursing  
20 director who has reasonable suspicion of an act prohibited by this  
21 section shall report the suspicion by telephone to the department  
22 and 1 or more law enforcement entities ~~in the manner required by~~  
23 ~~subsection (8).~~ **as required by federal regulations.**

24 (3) Any individual may report a violation of this section to  
25 the department.

26 (4) A physician or other licensed health care personnel ~~of a~~  
27 ~~hospital or other health care facility to which a patient is~~  
28 ~~transferred~~ who has reasonable suspicion of an act prohibited by  
29 this section shall report the suspicion to the department and 1 or

1 more law enforcement entities ~~in the manner required by subsection~~  
 2 ~~(8)~~ **as required by federal regulations.**

3 (5) ~~Upon~~ **On the** receipt of a report made under this section,  
 4 the department shall make an investigation. The department may  
 5 require the individual making the report to submit a written report  
 6 or to supply additional information, or both.

7 (6) A nursing home employee, licensee, or nursing home  
 8 administrator shall not evict, harass, dismiss, or retaliate  
 9 against a patient, a patient's representative, or an employee who  
 10 makes a report under this section.

11 (7) An individual required to report an act or a reasonable  
 12 suspicion under ~~subsections~~ **subsection** (2) ~~to~~ **or** (4) is not  
 13 required to report the act or suspicion to the department or 1 or  
 14 more local law enforcement entities if the individual knows that  
 15 another individual has already reported the act or suspicion as  
 16 required by this section.

17 ~~(8) An individual required to report a reasonable suspicion of~~  
 18 ~~an act prohibited by this section shall report the suspicion as~~  
 19 ~~follows:~~

20 ~~(a) If the act that causes the suspicion results in serious~~  
 21 ~~bodily injury to the patient, the individual shall report the~~  
 22 ~~suspicion immediately, but not more than 2 hours after forming the~~  
 23 ~~suspicion.~~

24 ~~(b) If the act that causes the suspicion does not result in~~  
 25 ~~serious bodily injury to the patient, the individual shall report~~  
 26 ~~the suspicion not more than 24 hours after forming the suspicion.~~

27 Sec. 21794. (1) With the consent of the patient or the  
 28 patient's representative a nursing home may use a dining assistant  
 29 to provide feeding assistance to a patient who, based on the charge

1 nurse's assessment of the patient and the patient's most recent  
2 plan of care, needs assistance or encouragement with eating and  
3 drinking, but does not have complicated feeding problems,  
4 including, but not limited to, difficulty swallowing, recurrent  
5 lung aspirations, tube or parenteral feedings, or behavioral issues  
6 that may compromise nutritional intake. The charge nurse's  
7 assessment and plan of care must be documented in the patient's  
8 medical record. For a patient who is assigned a dining assistant  
9 and experiences an emergent change in condition, the charge nurse  
10 shall perform a special assessment to monitor the appropriateness  
11 of continued utilization of the dining assistant.

12 (2) A nursing home that chooses to utilize dining assistants  
13 shall provide individuals with training through a department-  
14 approved training curriculum. The department and the long-term care  
15 stakeholder advisory workgroup designated under section ~~20155(24)~~  
16 **20155(18)** shall develop a dining assistants training curriculum.  
17 The department shall approve a dining assistants training  
18 curriculum that meets the requirements of this subsection. In order  
19 to be approved by the department, the dining assistants training  
20 curriculum must include, at a minimum, 8 hours of course material  
21 that covers all of the following:

- 22 (a) Dining assistants program overview.
- 23 (b) Patient rights.
- 24 (c) Communication and interpersonal skills.
- 25 (d) Appropriate responses to patient behavior.
- 26 (e) Recognizing changes in patients.
- 27 (f) Infection control.
- 28 (g) Assistance with feeding and hydration.
- 29 (h) Feeding techniques.



1 (i) Safety and emergency procedures.

2 (j) End of life.

3 (3) An individual shall not provide feeding assistance as a  
4 dining assistant in a nursing home unless he or she has  
5 successfully completed a dining assistants training curriculum  
6 described in subsection (2). A nursing home shall not employ or  
7 allow an individual who is less than 17 years of age to provide  
8 feeding assistance as a dining assistant.

9 (4) A dining assistant shall work under the supervision of a  
10 nurse. A dining assistant's sole purpose is to provide feeding  
11 assistance to patients, and he or she shall not perform any other  
12 nursing or nursing-related services, such as toileting or  
13 transporting patients. A dining assistant is not nursing personnel  
14 and a nursing home shall not include a dining assistant in  
15 computing the ratio of patients to nursing personnel or use a  
16 dining assistant to supplement or replace nursing personnel. If  
17 approved by the charge nurse and subject to subsection (1), a  
18 dining assistant may provide feeding assistance in a patient's room  
19 if the patient is unable to go to or chooses not to dine in a  
20 designated dining area. A nurse is not required to be physically  
21 present within the patient's room during the feeding, but a nurse  
22 must be immediately available. A dining assistant who is providing  
23 feeding assistance to a patient in his or her room as provided  
24 under this subsection must not be assigned to assist another  
25 patient at the same time.

26 (5) Dining assistants are subject to the criminal history  
27 checks required under section 20173a.

28 (6) A nursing home that utilizes dining assistants shall  
29 maintain a written record of each individual used as a dining

1 assistant. The nursing home shall include in the written record, at  
2 a minimum, the complete name and address of the individual, the  
3 date the individual successfully completed the dining assistants  
4 training curriculum, a copy of the written record of the  
5 satisfactory completion of the training curriculum, and  
6 documentation of the criminal history check.

7 (7) This section does not prohibit a family member or friend  
8 from providing feeding assistance to a patient within the nursing  
9 home or require a friend or family member to complete the training  
10 program prescribed under subsection (2). However, a nursing home  
11 may offer to provide the dining assistants training curriculum to  
12 family members and friends.

13 (8) As used in this section:

14 (a) "Dining assistant" means an individual who meets the  
15 requirements of this section and who is only paid to provide  
16 feeding assistance to nursing home patients by the nursing home or  
17 who is used under an arrangement with another agency or  
18 organization.

19 (b) "Immediately available" means being capable of responding  
20 to provide help if needed to the dining assistant at any time  
21 either in person or by voice or call light system, radio,  
22 telephone, pager, or other method of communication during a  
23 feeding.

24 (c) "Nurse" means an individual licensed as a registered  
25 professional nurse or a licensed practical nurse under article 15  
26 to engage in the practice of nursing.

27 (d) "Under the supervision of a nurse" means that a nurse who  
28 is overseeing the work of a dining assistant is physically present  
29 in the nursing home and immediately available.

1           Sec. 21799b. (1) If, upon investigation, the department ~~of~~  
 2 ~~consumer and industry services~~ finds that a licensee is not in  
 3 compliance with this part, a rule promulgated under this part, or a  
 4 federal law or regulation governing nursing home certification  
 5 under title XVIII or XIX, which noncompliance impairs the ability  
 6 of the licensee to deliver an acceptable level of care and  
 7 services, or in the case of a nursing home closure, the department  
 8 ~~of consumer and industry services~~ shall notify the department of  
 9 ~~community health~~ ~~of~~ **and human services of** the finding and may issue  
 10 1 or more of the following correction notices to the licensee:

11           (a) Suspend the admission or readmission of patients to the  
 12 nursing home.

13           (b) Reduce the licensed capacity of the nursing home.

14           (c) Selectively transfer patients whose care needs are not  
 15 being met by the licensee.

16           (d) Initiate action to place the home in receivership as  
 17 prescribed in section 21751.

18           (e) Require appointment at the nursing home's expense of a  
 19 department approved temporary administrative advisor or a temporary  
 20 clinical advisor, or both, with authority and duties specified by  
 21 the department to assist the nursing home management and staff to  
 22 achieve sustained compliance with required operating standards.

23           (f) Require appointment at the nursing home's expense of a  
 24 department approved temporary manager with authority and duties  
 25 specified by the department to oversee the nursing home's  
 26 achievement of sustained compliance with required operating  
 27 standards or to oversee the orderly closure of the nursing home.

28           (g) Issue a correction notice to the licensee and the  
 29 department of ~~community health~~ **and human services** describing the

1 violation and the statute or rule violated and specifying the  
2 corrective action to be taken and the period of time in which the  
3 corrective action is to be completed. Upon issuance, the director  
4 shall cause to be published in a daily newspaper of general  
5 circulation in an area in which the nursing home is located notice  
6 of the action taken and the listing of conditions upon which the  
7 director's action is predicated.

8 (2) Within 72 hours after receipt of a notice issued under  
9 subsection (1), the licensee ~~shall~~**must** be given an opportunity for  
10 a hearing on the matter. The director's notice shall continue in  
11 effect during the pendency of the hearing and any subsequent court  
12 proceedings. The hearing ~~shall~~**must** be conducted in compliance with  
13 the administrative procedures act of 1969.

14 (3) A licensee who believes that a correction notice has been  
15 complied with may request a verification of compliance from the  
16 department. Not later than 72 hours after the licensee makes the  
17 request, the department shall investigate to determine whether the  
18 licensee has taken the corrective action prescribed in the notice  
19 under subsection (1)(g). If the department finds that the licensee  
20 has taken the corrective action and that the conditions giving rise  
21 to the notice have been alleviated, the department may cease taking  
22 further action against the licensee, or may take other action that  
23 the director considers appropriate.

24 ~~(4) As used in this part, "title XVIII" and "title XIX" mean~~  
25 ~~those terms as defined in section 20155.~~

26 **(4)** ~~(5)~~The department shall report annually to the house **of**  
27 **representatives** and senate standing committees on senior issues on  
28 the number of times the department appointed a temporary  
29 administrative advisor, temporary clinical advisor, and temporary

1 manager as described in subsection (1)(e) or (f). The report ~~shall~~  
 2 **must** include whether the nursing home closed or remained open. The  
 3 department may include this report with other reports made to  
 4 fulfill legislative reporting requirements.

5 (5) ~~(6)~~—If the department determines that a nursing home's  
 6 patients can be safeguarded and provided with a safe environment,  
 7 the department shall make its decisions concerning the nursing  
 8 home's future operation based on a presumption in favor of keeping  
 9 the nursing home open.

10 (6) **As used in this section:**

11 (a) "Title XVIII" means title XVIII of the social security  
 12 act, 42 USC 1395 to 1395lll.

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

15 **PART 221. FEDERAL CERTIFICATION OF NURSING HOMES**

16 **Sec. 22101. (1) As used in this part:**

17 (a) "Certification" means certification issued by the Centers  
 18 for Medicare and Medicaid Services to a nursing home as evidence  
 19 that the nursing home complies with requirements under federal law  
 20 for participation in Medicare.

21 (b) "Consecutive days" means calendar days, but does not  
 22 include Saturday, Sunday, or state- or federally recognized  
 23 holidays.

24 (c) "Form CMS-2567" means the Centers for Medicare and  
 25 Medicaid Services form for the statement of deficiencies and plan  
 26 of correction or a successor form serving the same purpose.

27 (d) "Immediate jeopardy" means that term as defined in the  
 28 "state operations manual" published by the Centers for Medicare and  
 29 Medicaid Services.

1           (e) "Informal dispute resolution process" means the process  
2 described in section 22115.

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

6           Sec. 22102. (1) The department shall administer the  
7 certification process in this state in conformance with 42 USC  
8 1395aa and the "mission and priority document" and "state  
9 operations manual" published by the Centers for Medicare and  
10 Medicaid Services.

11           (2) To the extent that there is a conflict between this part  
12 and federal law, federal law controls.

13           Sec. 22103. (1) The department shall implement a quality  
14 assurance monitoring process for the purposes of conducting the  
15 surveys described in this part for the purpose of certification.  
16 The quality assurance monitoring process must include the quality  
17 assurance review of citations as described in this part. The  
18 department shall establish an advisory workgroup to provide  
19 recommendations to the department on the quality assurance  
20 monitoring process. Subject to subsection (2), the advisory  
21 workgroup established under this section must include a  
22 representative from the department, representatives from nursing  
23 home provider organizations, the state long-term care ombudsman,  
24 and any other representative that the department considers  
25 necessary or appropriate. The advisory workgroup shall identify and  
26 make recommendations on improvements to the quality assurance  
27 monitoring process to ensure ongoing validity, reliability, and  
28 consistency of nursing home survey findings.

29           (2) Representatives from each nursing home provider

1 organization that does not own or operate a nursing home  
2 representing 30 or more nursing homes statewide and the state long-  
3 term care ombudsman or his or her designee are permanent members of  
4 the advisory workgroup established under subsection (1). The  
5 department shall issue survey certification memorandums to  
6 providers to announce or clarify changes in the interpretation of  
7 regulations.

8 (3) The department shall ensure that each nursing home survey  
9 team conducting a standard survey is composed of an  
10 interdisciplinary group of professionals, at least 1 of whom must  
11 be a registered professional nurse. Other members of the survey  
12 team may include social workers, therapists, dietitians,  
13 pharmacists, administrators, physicians, sanitarians, and others  
14 who may have the expertise necessary to evaluate specific aspects  
15 of nursing home operation.

16 (4) The nursing home surveyors conducting a standard survey  
17 shall designate a quality assurance monitor. The individual  
18 designated as the quality assurance monitor shall ensure all of the  
19 following:

20 (a) That survey protocols from the Centers for Medicare and  
21 Medicaid Services are followed.

22 (b) That interpretive regulatory guidance issued by the  
23 Centers for Medicare and Medicaid Services is applied consistently  
24 and noncompliance with the interpretive regulatory guidance is  
25 documented in a clear and concise manner.

26 (c) An entrance and exit conference is conducted in accordance  
27 with survey procedural guidelines established by the Centers for  
28 Medicare and Medicaid Services.

29 (d) That the survey complies with this part.

1           Sec. 22105. (1) Except as otherwise provided in this  
2 subsection, the department shall limit the number of nursing home  
3 surveyors that conduct a standard survey to the recommended number  
4 of surveyors identified in survey procedural guidelines established  
5 by the Centers for Medicare and Medicaid Services. The department  
6 may exceed the recommended number of nursing home surveyors only  
7 for the reasons identified in the guidelines described in this  
8 subsection.

9           (2) The department shall limit the length of a nursing home  
10 standard survey to a reasonable duration. In determining what is a  
11 reasonable duration, the department shall consider the average  
12 length of surveys nationally.

13           Sec. 22107. (1) When preparing to conduct any standard survey,  
14 the department shall determine if there is an open survey cycle and  
15 make every reasonable effort to confirm that substantial compliance  
16 has been achieved by implementing the nursing home's accepted plan  
17 of correction before initiating the standard survey while  
18 maintaining the federal requirement for a standard survey interval  
19 and the state survey average of 12 months.

20           (2) All abbreviated complaint surveys must be conducted on  
21 consecutive days until complete. All form CMS-2567 reports of  
22 survey findings must be released to the nursing home within 10  
23 consecutive days after completion of the exit date of the survey.

24           (3) Departmental notifications of acceptance or rejection of a  
25 nursing home's plan of correction must be reviewed and released to  
26 the nursing home within 10 consecutive days after the receipt of  
27 the plan of correction.

28           (4) A nursing-home-submitted plan of correction in response to  
29 any survey must have a completion date not to exceed 40 days from



1 the exit date of the survey. If a nursing home has not received  
2 additional citations before a revisit occurs, the department shall  
3 conduct the first revisit not more than 60 days from the exit date  
4 of the survey.

5 (5) A letter of compliance notification to a nursing home must  
6 be released to the nursing home within 10 consecutive days after  
7 the exit date of all revisits.

8 Sec. 22109. If a deficient practice occurred at a nursing home  
9 after the most recent survey of the nursing home under this part  
10 and the deficient practice is no longer occurring in the nursing  
11 home, the department shall, on the request of the nursing home,  
12 evaluate the deficient practice. If the nursing home is not  
13 eligible for an evaluation based on requirements from the Centers  
14 for Medicare and Medicaid Services, the department shall provide  
15 written notice to the nursing home explaining the reason the  
16 evaluation cannot be not granted.

17 Sec. 22111. (1) The department shall maintain the process by  
18 which the director of the long-term care division of the department  
19 reviews and authorizes the issuance of a citation for immediate  
20 jeopardy or substandard quality of care before a statement of  
21 deficiencies is made final. The review must ensure the consistent  
22 and accurate application of federal and state survey protocols and  
23 defined regulatory standards.

24 (2) On the discovery of a potential immediate jeopardy, a  
25 nursing home surveyor shall communicate with the nursing home  
26 administrator, the director of nursing for the nursing home, or the  
27 medical director of the nursing home, if available, to review the  
28 issues of concern and to give the nursing home an opportunity to  
29 share any data or documentation that may have an impact on a

1 decision by the department to authorize the issuance of a citation  
2 for immediate jeopardy. If a citation for immediate jeopardy is  
3 issued to a nursing home, the department shall do both of the  
4 following:

5 (a) Contact the nursing home, at least once per day, until the  
6 immediate jeopardy is abated.

7 (b) Ensure that at least 1 nursing home surveyor remains on-  
8 site at the nursing home until the immediate jeopardy is abated  
9 unless the department determines that having a nursing home  
10 surveyor on-site at the nursing home is not practical.

11 Sec. 22113. On the receipt of a request from a nursing home,  
12 the department shall conduct a desk review of a citation if the  
13 circumstances meet the requirements established by the Centers for  
14 Medicare and Medicaid Services for a desk review instead of an on-  
15 site revisit for a standard or abbreviated survey. If the  
16 department determines that the nursing home is not eligible for a  
17 desk review, the department shall notify the nursing home, in  
18 writing, with an explanation of why a desk review could not be  
19 conducted.

20 Sec. 22115. (1) A nursing home that is issued a citation may  
21 request an appeal of the citation through an informal dispute  
22 resolution process from a peer review organization approved by the  
23 department. The department shall adopt the recommendations of the  
24 peer review organization on whether to support, amend, or delete  
25 the citation.

26 (2) Each quarter, the department shall do both of the  
27 following:

28 (a) Conduct a quality assurance review of amended or deleted  
29 citations with the peer review organization described in this

1 section for the purposes of identifying whether there is a need for  
2 additional training of nursing home surveyors or peer review  
3 organization staff.

4 (b) Use the findings from the informal dispute resolution  
5 process for identifying training topics for the joint provider and  
6 surveyor training sessions described in section 20155.

7 Sec. 22117. (1) Subject to subsection (2), the department  
8 shall develop and implement statewide reporting requirements for  
9 facility-reported incidents for any category required by federal  
10 regulations and at least all of the following additional  
11 categories:

12 (a) Elopements.

13 (b) Bruising.

14 (c) Repeated statements from residents with mental health  
15 behaviors.

16 (d) Resident-to-resident incidents with no harm.

17 (2) The reporting requirements developed by the department  
18 under this section must exclude the following:

19 (a) A resident-to-resident altercation if there is no change  
20 in emotional status or physical functioning of each resident  
21 involved in the altercation, including, but not limited to, no  
22 change in range of motion, toileting, eating, or ambulating.

23 (b) An injury of unknown origin if there is no change in  
24 emotional status or physical functioning of the resident with the  
25 injury, including, but not limited to, no change in range of  
26 motion, toileting, eating, or ambulating.

27 (c) An allegation made by a resident who has been diagnosed  
28 with a mental illness, including, but not limited to, psychosis or  
29 severe dementia, if the resident has a history of making false

1 statements that are not based in reality and are documented in the  
2 resident's care plan, with interventions to protect the resident.

3 (d) An allegation if a thorough assessment does not  
4 substantiate the allegation.

5 (e) An allegation if the resident or the resident's legal  
6 guardian or other legal representative has been informed of the  
7 allegation, does not wish for the nursing home to report the  
8 allegation, and has received information on how to file a complaint  
9 with the department.

10 Sec. 22119. The department shall report by March 1 of each  
11 year to the standing committees on appropriations and the standing  
12 committees having jurisdiction over issues involving senior  
13 citizens in the senate and the house of representatives on all of  
14 the following:

15 (a) The number and percentage of nursing home citations that  
16 are appealed through the informal dispute resolution process and an  
17 independent informal dispute resolution process.

18 (b) The number and percentage of nursing home citations that  
19 are appealed and supported, amended, or deleted through the  
20 informal dispute resolution process and an independent informal  
21 dispute resolution process.

22 (c) A summary of the quality assurance review of the amended  
23 citations and related nursing home survey retraining efforts to  
24 improve consistency among nursing home surveyors and across the  
25 survey administrative unit that occurred in the year being  
26 reported.

27 (d) The number of nursing home complaints and facility  
28 reported incidents received by the department, grouped by county.  
29 The information described in this subdivision must be shared as

1 part of the quality assurance monitoring process and reviewed by  
2 the advisory workgroup established under section 22103.

3 (e) The number of surveys conducted.

4 (f) The number requiring follow-up surveys.

5 (g) The average number of citations per nursing home.

6 (h) The number of night and weekend responses to complaints  
7 conducted by the department.

8 (i) The review of citation patterns developed under section  
9 20155(7).

10 (j) The number of standard surveys of nursing homes that were  
11 conducted during a period of open survey or enforcement cycle.

12 (k) The number of abbreviated complaint surveys that were not  
13 conducted on consecutive surveyor workdays.

14 (l) The percentage of all form CMS-2567 reports of findings  
15 that were released to the nursing home within the 10-working-day  
16 requirement.

17 (m) The percentage of provider notifications of acceptance or  
18 rejection of a plan of correction that were released to the nursing  
19 home within the 10-working-day requirement.

20 (n) The percentage of first revisits that were completed  
21 within 60 days from the date of survey completion.

22 (o) The percentage of second revisits that were completed  
23 within 85 days from the date of survey completion.

24 (p) The percentage of letters of compliance notification to  
25 the nursing home that were released within 10 working days of the  
26 date of the completion of the revisit.

27 (q) A summary of the discussions from the meetings required in  
28 section 20155(18).

29 Sec. 22121. To the extent permitted by federal law, the

1 department shall establish and implement progressive discretionary  
2 enforcement actions for the purposes of this part that consider the  
3 least restrictive enforcement action if a nursing home does not  
4 have a history of receiving citations in past nursing home surveys  
5 under this part and increase in severity if a nursing home has a  
6 history of receiving similar citations in past nursing home surveys  
7 under this part.

8 Enacting section 1. Sections 20121, 20122, 20123, 20124,  
9 20126, 20127, 20155a, and 20211 of the public health code, 1978 PA  
10 368, MCL 333.20121, 333.20122, 333.20123, 333.20124, 333.20126,  
11 333.20127, 333.20155a, and 333.20211, are repealed.