

HOUSE BILL NO. 5609

December 07, 2021, Introduced by Reps. Kahle, O'Malley, Yaroach, Bellino, Bezotte and Whitsett and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 20155, 20155a, 20161, 21734, 21771, 21794, and 21799b (MCL 333.20155, 333.20155a, 333.20161, 333.21734, 333.21771, 333.21794, and 333.21799b), sections 20155, 20155a, and 21734 as amended by 2015 PA 155, section 20161 as amended by 2020 PA 169, 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 section 21771a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20155. (1) Except as otherwise provided in this section
 2 and section 20155a, the department shall make at least 1 visit to
 3 each licensed health facility or agency every 3 years for survey
 4 and evaluation for the purpose of licensure. A visit made according
 5 to a complaint ~~shall~~**must** be unannounced. Except for a county
 6 medical care facility, a home for the aged, a nursing home, or a
 7 hospice residence, the department shall determine whether the
 8 visits that are not made according to a complaint are announced or
 9 unannounced. The department shall ensure that each newly hired
 10 nursing home surveyor, as part of his or her basic training, is
 11 assigned full-time to a licensed nursing home for at least 10 days
 12 within a 14-day period to observe actual operations outside of the
 13 survey process before the trainee begins oversight
 14 responsibilities.

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

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

19 (b) A nursing home surveyor is not assigned as a member of a
 20 survey team for a nursing home in which he or she received training
 21 for 1 standard survey following the training received in that
 22 nursing home.

23 (3) The department shall perform a criminal history check on
 24 all nursing home surveyors in the manner provided for in section
 25 20173a.

26 (4) A member of a survey team must not be employed by a
 27 licensed nursing home or a nursing home management company doing

1 business in this state at the time of conducting a survey under
2 this section. The department shall not assign an individual to be a
3 member of a survey team for purposes of a survey, evaluation, or
4 consultation visit at a nursing home in which he or she was an
5 employee within the preceding 3 years.

6 (5) The department shall invite representatives from all
7 nursing home provider organizations and the state long-term care
8 ombudsman or his or her designee to participate in the planning
9 process for the joint provider and surveyor training sessions. The
10 department shall include at least 1 representative from nursing
11 home provider organizations that do not own or operate a nursing
12 home representing 30 or more nursing homes statewide in internal
13 surveyor group quality assurance training provided for the purpose
14 of general clarification and interpretation of existing or new
15 regulatory requirements and expectations.

16 (6) The department shall make available online the general
17 civil service position description related to the required
18 qualifications for individual surveyors. The department shall use
19 the required qualifications to hire, educate, develop, and evaluate
20 surveyors.

21 (7) The department shall ensure that each annual survey team
22 is composed of an interdisciplinary group of professionals, 1 of
23 whom must be a registered **professional nurse and 1 of whom must be**
24 **a registered professional nurse who is contracted through the**
25 **federally designated regional quality improvement organization to**
26 **serve as a quality assurance monitor.** Other members may include
27 social workers, therapists, dietitians, pharmacists,
28 administrators, physicians, sanitarians, and others who may have
29 the expertise necessary to evaluate specific aspects of nursing

1 home operation.

2 (8) The department shall semiannually provide for joint
3 training with nursing home surveyors and providers on at least 1 of
4 the 10 most frequently issued federal citations in this state
5 during the past calendar year. The department shall develop a
6 protocol for the review of citation patterns compared to regional
7 outcomes and standards and complaints regarding the nursing home
8 survey process. The department shall include the review under this
9 subsection in the report required under subsection ~~(20)~~.—(19).

10 Except as otherwise provided in this subsection, each member of a
11 department nursing home survey team who is a health professional
12 licensee under article 15 shall earn not less than 50% of his or
13 her required continuing education credits, if any, in geriatric
14 care. If a member of a nursing home survey team is a pharmacist
15 licensed under article 15, he or she shall earn not less than 30%
16 of his or her required continuing education credits in geriatric
17 care.

18 (9) Subject to subsection (12), the department may waive the
19 visit required by subsection (1) if a health facility or agency,
20 requests a waiver and submits the following as applicable and if
21 all of the requirements of subsection (11) are met:

22 (a) Evidence that it is currently fully accredited by a body
23 with expertise in the health facility or agency type and the
24 accrediting organization is accepted by the United States
25 Department of Health and Human Services for purposes of ~~section~~
26 ~~1865 of the social security act,~~ 42 USC 1395bb.

27 (b) A copy of the most recent accreditation report, or
28 executive summary, issued by a body described in subdivision (a),
29 and the health facility's or agency's responses to the

1 accreditation report is submitted to the department at least 30
2 days from license renewal. Submission of an executive summary does
3 not prevent or prohibit the department from requesting the entire
4 accreditation report if the department considers it necessary.

5 (c) For a nursing home, a **finding of substantial compliance or**
6 **an accepted plan of correction, if applicable, on the most recent**
7 standard **annual** federal certification survey. ~~conducted within the~~
8 ~~immediately preceding 9 to 15 months that shows substantial~~
9 ~~compliance or has an accepted plan of correction, if applicable.~~

10 (10) Except as otherwise provided in subsection (14),
11 accreditation information provided to the department under
12 subsection (9) is confidential, is not a public record, and is not
13 subject to court subpoena. The department shall use the
14 accreditation information only as provided in this section and
15 properly destroy the documentation after a decision on the waiver
16 request is made.

17 (11) The department shall grant a waiver under subsection (9)
18 if the accreditation report submitted under subsection (9)(b) is
19 less than 3 years old or the **most recent** standard **annual** federal
20 **certification** survey submitted under subsection (9)(c) ~~is less than~~
21 ~~15 months old and there is no indication of~~ **shows** substantial
22 ~~noncompliance with licensure standards or of deficiencies that~~
23 ~~represent a threat to public safety or patient care.~~ **compliance or**
24 **an accepted plan of correction, if applicable.** If the accreditation
25 report ~~or standard federal survey~~ is too old, the department may
26 deny the waiver request and conduct the visits required under
27 subsection (9). Denial of a waiver request by the department is not
28 subject to appeal.

29 (12) This section does not prohibit the department from citing

1 a violation of this part during a survey, conducting investigations
2 or inspections according to section 20156, or conducting surveys of
3 health facilities or agencies for the purpose of complaint
4 investigations or federal certification. This section does not
5 prohibit the bureau of fire services created in section 1b of the
6 fire prevention code, 1941 PA 207, MCL 29.1b, from conducting
7 annual surveys of hospitals, nursing homes, and county medical care
8 facilities.

9 (13) At the request of a health facility or agency, the
10 department may conduct a consultation engineering survey of a
11 health facility **or agency** and provide professional advice and
12 consultation regarding health facility construction and design. A
13 health facility or agency may request a voluntary consultation
14 survey under this subsection at any time between licensure surveys.
15 The fees for a consultation engineering survey are the same as the
16 fees established for waivers under section 20161(8).

17 (14) If the department determines that substantial
18 noncompliance with licensure standards exists or that deficiencies
19 that represent a threat to public safety or patient care exist
20 based on a review of an accreditation report submitted under
21 subsection (9)(b), the department shall prepare a written summary
22 of the substantial noncompliance or deficiencies and the health
23 facility's or agency's response to the department's determination.
24 The department's written summary and the health facility's or
25 agency's response are public documents.

26 (15) The department or a local health department shall conduct
27 investigations or inspections, other than inspections of financial
28 records, of a county medical care facility, home for the aged,
29 nursing home, or hospice residence without prior notice to the

1 health facility or agency. An employee of a state agency charged
2 with investigating or inspecting the health facility or agency or
3 an employee of a local health department who directly or indirectly
4 gives prior notice regarding an investigation or an inspection,
5 other than an inspection of the financial records, to the health
6 facility or agency or to an employee of the health facility or
7 agency, is guilty of a misdemeanor. Consultation visits that are
8 not for the purpose of annual or follow-up inspection or survey may
9 be announced.

10 ~~(16) The department shall maintain a record indicating whether~~
11 ~~a visit and inspection is announced or unannounced. Survey findings~~
12 ~~gathered at each health facility or agency during each visit and~~
13 ~~inspection, whether announced or unannounced, shall be taken into~~
14 ~~account in licensure decisions.~~

15 **(16)** ~~(17)~~The department shall require periodic reports and a
16 health facility or agency shall give the department access to
17 books, records, and other documents maintained by a health facility
18 or agency to the extent necessary to carry out the purpose of this
19 article and the rules promulgated under this article. The
20 department shall not divulge or disclose the contents of the
21 patient's clinical records in a manner that identifies an
22 individual except under court order. The department may copy health
23 facility or agency records as required to document findings.
24 Surveyors shall use electronic resident information, whenever
25 available, as a source of survey-related data and shall request
26 ~~facility~~**the assistance of a health facility or agency** to access
27 the system to maximize data export.

28 **(17)** ~~(18)~~The department may delegate survey, evaluation, or
29 consultation functions to another state agency or to a local health

1 department qualified to perform those functions **or may contract**
2 **with a person qualified to perform those functions.** The department
3 shall not delegate survey, evaluation, or consultation functions to
4 a local health department that owns or operates a hospice or
5 hospice residence licensed under this article. The department shall
6 delegate under this subsection by cost reimbursement contract
7 between the department and the state agency or local health
8 department. The department shall not delegate survey, evaluation,
9 or consultation functions to nongovernmental agencies, except as
10 provided in this section. The **licensee and the department must both**
11 **agree to the** voluntary inspection described in this subsection.
12 ~~must be agreed upon by both the licensee and the department.~~**The**
13 **department may contract with the federally designated quality**
14 **improvement organization to facilitate the survey process for a**
15 **priority 3 or priority 4 facility reported incident as determined**
16 **by the department.**

17 (18) ~~(19)~~—If, upon investigation, the department or a state
18 agency determines that an individual licensed to practice a
19 profession in this state has violated the applicable licensure
20 statute or the rules promulgated under that statute, the
21 department, state agency, or local health department shall forward
22 the evidence it has to the appropriate licensing agency.

23 (19) ~~(20)~~—The department may consolidate all information
24 provided for any report required under this section and section
25 20155a into a single report. The department shall report to the
26 appropriations subcommittees, the senate and house of
27 representatives standing committees having jurisdiction over issues
28 involving senior citizens, and the fiscal agencies on March 1 of
29 each year on the initial and follow-up surveys conducted on all

1 nursing homes in this state. The department shall include all of
2 the following information in the report:

3 (a) The number of surveys conducted.

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

5 (c) The average number of citations per nursing home for the
6 most recent calendar year.

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

8 **(d)** ~~(e)~~—The number of night and weekend responses to
9 complaints conducted by the department.

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

12 ~~(g) The number and percentage of citations disputed through~~
13 ~~informal dispute resolution and independent informal dispute~~
14 ~~resolution.~~

15 **(e)** ~~(h)~~—The number and percentage of citations overturned or
16 modified, or both.

17 **(f)** ~~(i)~~—The review of citation patterns developed under
18 subsection (8).

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

22 **(g)** ~~(k)~~—The number of annual standard surveys of nursing homes
23 that were conducted during a period of open survey or enforcement
24 cycle.

25 **(h)** ~~(l)~~—The number of abbreviated complaint surveys that were
26 not conducted on consecutive surveyor workdays.

27 **(i)** ~~(m)~~—The percent of all form CMS-2567 reports of findings
28 that were released to the nursing home within the 10-working-day
29 requirement.

1 (j) ~~(n)~~—The percent of provider notifications of acceptance or
2 rejection of a plan of correction that were released to the nursing
3 home within the 10-working-day requirement.

4 (k) ~~(o)~~—The percent of first revisits that were completed
5 within 60 days from the date of survey completion.

6 (l) ~~(p)~~—The percent of second revisits that were completed
7 within 85 days from the date of survey completion.

8 (m) ~~(q)~~—The percent of letters of compliance notification to
9 the nursing home that were released within 10 working days of the
10 date of the completion of the revisit.

11 (n) ~~(r)~~—A summary of the discussions from the meetings
12 required in subsection ~~(24)~~. **(21)**.

13 ~~(s) The number of nursing homes that participated in a~~
14 ~~recognized quality improvement program as described under section~~
15 ~~20155a(3).~~

16 **(o) The number of nursing home complaints and facility**
17 **reported incidents received by the department, grouped by county.**
18 **The information described in this subdivision must be shared as**
19 **part of the quality assurance process and reviewed by an advisory**
20 **workgroup described in subsection (21).**

21 (20) ~~(21)~~—The department shall report March 1 of each year to
22 the standing committees on appropriations and the standing
23 committees having jurisdiction over issues involving senior
24 citizens in the senate and the house of representatives on all of
25 the following:

26 (a) The percentage of nursing home citations that are appealed
27 through the informal dispute resolution process.

28 (b) The number and percentage of nursing home citations that
29 are appealed and supported, amended, or deleted through the

1 informal dispute resolution process.

2 (c) A summary of the quality assurance review of the amended
3 citations and related survey retraining efforts to improve
4 consistency among surveyors and across the survey administrative
5 unit that occurred in the year being reported.

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

15 ~~(a) Immediate jeopardy.~~

16 ~~(b) Harm.~~

17 ~~(c) Potential harm.~~

18 ~~(d) Avoidable.~~

19 ~~(e) Unavoidable.~~

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

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

28 ~~(b) The likelihood of immediate jeopardy is reasonably higher~~
29 ~~if there is evidence of a flagrant failure by the nursing home to~~

1 ~~comply with a peer-reviewed, evidence-based, nationally recognized~~
2 ~~clinical process guideline than if the nursing home has~~
3 ~~substantially and continuously complied with peer-reviewed,~~
4 ~~evidence-based, nationally recognized guidelines. If federal~~
5 ~~regulations and guidelines are not clear, and if the clinical~~
6 ~~process guidelines have been recognized, a process failure giving~~
7 ~~rise to an immediate jeopardy may involve an egregious widespread~~
8 ~~or repeated process failure and the absence of reasonable efforts~~
9 ~~to detect and prevent the process failure.~~

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

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

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

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

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

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

28 ~~(d) The existence of 1 or more of the factors described in~~
29 ~~subdivision (c), and especially the existence of 3 or more of those~~

1 ~~factors simultaneously, may lead to a conclusion that the situation~~
2 ~~is one in which the nursing home's practice makes adverse events~~
3 ~~likely to occur if immediate intervention is not undertaken, and~~
4 ~~therefore constitutes immediate jeopardy. If none of the factors~~
5 ~~described in subdivision (c) is present, the situation may involve~~
6 ~~harm or potential harm that is not immediate jeopardy.~~

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

14 ~~(f) For purposes of subdivision (e), in determining whether a~~
15 ~~negative outcome is of limited consequence, if the "state~~
16 ~~operations manual" or "the guidance to surveyors" published by the~~
17 ~~federal Centers for Medicare and Medicaid Services does not provide~~
18 ~~specific guidance, the department may consider whether most people~~
19 ~~in similar circumstances would feel that the damage was of such~~
20 ~~short duration or impact as to be inconsequential or trivial. In~~
21 ~~such a case, the consequence of a negative outcome may be~~
22 ~~considered more limited if it occurs in the context of overall~~
23 ~~procedural consistency with a peer-reviewed, evidence-based,~~
24 ~~nationally recognized clinical process guideline, as compared to a~~
25 ~~substantial inconsistency with or variance from the guideline.~~

26 ~~(g) For purposes of subdivision (e), if the publications~~
27 ~~described in subdivision (f) do not provide specific guidance, the~~
28 ~~department may consider the degree of a nursing home's adherence to~~
29 ~~a peer reviewed, evidence based, nationally recognized clinical~~

1 ~~process guideline in considering whether the degree of compromise~~
 2 ~~and future risk to the resident constitutes actual harm. The risk~~
 3 ~~of significant compromise to the resident may be considered greater~~
 4 ~~in the context of substantial deviation from the guidelines than in~~
 5 ~~the case of overall adherence.~~

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

19 ~~(21) (24)~~The department shall conduct a quarterly meeting and
 20 invite appropriate stakeholders. The department shall invite as
 21 appropriate stakeholders under this subsection at least 1
 22 representative from each nursing home provider organization that
 23 does not own or operate a nursing home representing 30 or more
 24 nursing homes statewide, the state long-term care ombudsman or his
 25 or her designee, and any other clinical experts. Individuals who
 26 participate in these quarterly meetings, jointly with the
 27 department, may designate advisory workgroups to develop
 28 recommendations on the discussion topics that should include, at a
 29 minimum, all of the following: **opportunities for enhanced promotion**

1 of nursing home performance, including, but not limited to,
 2 programs that encourage and reward nursing homes that strive for
 3 excellence.

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

7 (22) Beginning January 1, 2022, the department of health and
 8 human services shall provide a nursing home with a grant in an
 9 amount equal to the amount provided to this state from civil
 10 monetary penalties imposed against that nursing home by the Centers
 11 for Medicare and Medicaid Services through the Centers for Medicare
 12 and Medicaid Services civil monetary penalty reinvestment program.
 13 The grant must be used for enhanced quality improvement activities,
 14 as determined by the department of health and human services. As a
 15 condition to receiving the grant, the nursing home shall agree to
 16 the quality improvement activities determined by the department of
 17 health and human services and the process by which the quality
 18 improvement activities will be reported to the department of health
 19 and human services and results are assessed.

20 (23) The department shall employ an individual to serve as a
 21 quality improvement officer. The quality improvement officer shall
 22 do all of the following:

23 (a) Report criteria by which the department's certification
 24 process will be measured to ensure fairness, accuracy, and
 25 timeliness of the survey and enforcement process and share the
 26 criteria with an advisory workgroup described in subsection (21)
 27 for review, discussion, and concurrence.

28 (b) ~~Seeking~~ **Seek** quality improvement to the survey and
 29 enforcement process, including clarifications to process-related

1 policies and protocols that include, but are not limited to, all of
2 the following:

3 (i) Improving the surveyors' quality and preparedness.

4 (ii) Enhanced communication between regulators, surveyors,
5 providers, and consumers.

6 (iii) Ensuring fair enforcement and dispute resolution by
7 identifying methods or strategies that may resolve identified
8 problems or concerns.

9 (c) ~~Promoting~~ **Promote** transparency across provider and
10 surveyor communities, including, but not limited to, all of the
11 following:

12 (i) ~~Applying~~ **Confirming the accurate application of** regulations
13 in a consistent manner and evaluating changes that have been
14 implemented to resolve identified problems and concerns.

15 (ii) Providing consumers with information regarding changes in
16 policy and interpretation.

17 (iii) Identifying positive and negative trends and factors
18 contributing to those trends in the areas of resident care,
19 deficient practices, and enforcement.

20 (d) ~~Clinical process guidelines.~~ **Present findings and actions**
21 **taken toward improved quality of the survey and enforcement process**
22 **to an advisory workgroup described in subsection (21) at each**
23 **semiannual training session described in subsection (8).**

24 (e) **Review and confirm the accuracy of the annual report**
25 **submitted under subsection (20).**

26 ~~(25) A nursing home shall use peer-reviewed, evidence-based,~~
27 ~~nationally recognized clinical process guidelines or peer-reviewed,~~
28 ~~evidence-based, best practice resources to develop and implement~~
29 ~~resident care policies and compliance protocols with measurable~~

1 ~~outcomes specifically in the following clinical practice areas:~~

- 2 ~~(a) Use of bed rails.~~
- 3 ~~(b) Adverse drug effects.~~
- 4 ~~(c) Prevention of falls.~~
- 5 ~~(d) Prevention of pressure ulcers.~~
- 6 ~~(e) Nutrition and hydration.~~
- 7 ~~(f) Pain management.~~
- 8 ~~(g) Depression and depression pharmacotherapy.~~
- 9 ~~(h) Heart failure.~~
- 10 ~~(i) Urinary incontinence.~~
- 11 ~~(j) Dementia care.~~
- 12 ~~(k) Osteoporosis.~~
- 13 ~~(l) Altered mental states.~~
- 14 ~~(m) Physical and chemical restraints.~~
- 15 ~~(n) Person-centered care principles.~~

16 **(24)** ~~(26)~~ In an area of clinical practice that is not listed
 17 in subsection ~~(25)~~, a **A** nursing home may use peer-reviewed,
 18 evidence-based, nationally recognized clinical process guidelines
 19 or peer-reviewed, evidence-based, best-practice resources to
 20 develop and implement resident care policies and compliance
 21 protocols with measurable outcomes to promote performance
 22 excellence.

23 **(25)** ~~(27)~~—The department shall consider recommendations from
 24 an advisory workgroup created under subsection ~~(24)~~. **(21)**. The
 25 department may include training on new and revised peer-reviewed,
 26 evidence-based, nationally recognized clinical process guidelines
 27 or peer-reviewed, evidence-based, best-practice resources, which
 28 contain measurable outcomes, in the joint provider and surveyor
 29 training sessions to assist provider efforts toward improved

1 regulatory compliance and performance excellence and to foster a
2 common understanding of accepted peer-reviewed, evidence-based,
3 best-practice resources between providers and the survey agency.
4 The department shall post on its website all peer-reviewed,
5 evidence-based, nationally recognized clinical process guidelines
6 and peer-reviewed, evidence-based, best-practice resources used in
7 a training session under this subsection for provider, surveyor,
8 and public reference.

9 (26) ~~(28)~~—Representatives from each nursing home provider
10 organization that does not own or operate a nursing home
11 representing 30 or more nursing homes statewide and the state long-
12 term care ombudsman or his or her designee are permanent members of
13 a clinical advisory workgroup created under subsection ~~(24)~~. **(21)**.
14 The department shall issue survey certification memorandums to
15 providers to announce or clarify changes in the interpretation of
16 regulations.

17 (27) ~~(29)~~—The department shall maintain the process by which
18 the director of the long-term care division ~~or his or her designee~~
19 reviews and authorizes the issuance of a citation for immediate
20 jeopardy or substandard quality of care before the statement of
21 deficiencies is made final. The review must ~~assure~~ **ensure** the
22 consistent and accurate application of federal and state survey
23 protocols and defined regulatory standards. **On the discovery of a**
24 **potential immediate jeopardy, a member of the survey team shall**
25 **communicate with the nursing home administrator, the director of**
26 **nursing for the nursing home, or the medical director of the**
27 **nursing home, if available, to review the issues of concern and to**
28 **give the nursing home an opportunity to share any data or**
29 **documentation that may have an impact on the director's decision to**

1 authorize the issuance of a citation for immediate jeopardy under
 2 this subsection. If a citation for immediate jeopardy is issued to
 3 a nursing home, at least 1 nursing home surveyor must remain on-
 4 site at the nursing home until the immediate jeopardy is abated. As
 5 used in this subsection, "immediate jeopardy" and "substandard
 6 quality of care" mean those terms as defined by the ~~federal~~ Centers
 7 for Medicare and Medicaid 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 (28) ~~(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 (29) ~~(32)~~ Nothing in this section limits the requirements of
 19 related state and federal law.

20 (30) ~~(33)~~ As used in this section **and section 20155a:**

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. 20155a. (1) ~~Nursing home health survey tasks shall be~~
 3 ~~facilitated by the licensing and regulatory affairs bureau of~~
 4 ~~health systems~~ **The department shall facilitate nursing home health**
 5 **survey tasks** to ensure consistent and efficient coordination of the
 6 nursing home licensing and certification functions for standard and
 7 abbreviated surveys. The department shall develop an electronic
 8 system to support the coordination of these activities. If funds
 9 are appropriated for the system, the department shall implement the
 10 system within 120 days ~~of~~ **after** that appropriation.

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

19 (3) ~~The department shall seek approval from the Centers for~~
 20 ~~Medicare and Medicaid Services to develop a program to provide~~
 21 ~~grants to nursing homes that have achieved a 5-star quality rating~~
 22 ~~from the Centers for Medicare and Medicaid Services. The department~~
 23 ~~shall seek approval from the Centers for Medicare and Medicaid~~
 24 ~~Services for nursing homes to be eligible to receive a grant, up to~~
 25 ~~\$5,000.00 per nursing home from the civil monetary fund for nursing~~
 26 ~~homes that meet the Centers for Medicare and Medicaid Services~~
 27 ~~standards for the 5-star quality rating. Grants to nursing homes~~
 28 ~~shall be used to implement evidence-based quality improvement~~
 29 ~~programs within the nursing home. Each nursing home that receives a~~

1 ~~grant shall submit a report to the department that describes the~~
2 ~~final outcome from implementing the program.~~

3 (3) At the start of any survey, the surveyor shall conduct an
4 entrance conference with the nursing home administrator and the
5 nursing home administrator's designee. The entrance conference must
6 identify the purpose, intent, and focus of the survey, and the
7 documents and information that the nursing home must provide to the
8 surveyor to begin the survey. At the end of any survey, the
9 surveyor shall conduct an in-person exit conference with the
10 nursing home administrator and the nursing home administrator's
11 designee. At the time of the exit conference described in this
12 subsection, the department shall provide a nursing home with a
13 draft of the Centers for Medicaid and Medicare Services critical
14 element pathway form. If requested by the nursing home, the
15 department shall provide the nursing home with a copy of surveyor
16 notes taken during the survey at the time of the exit conference
17 described in this subsection or at the time the form CMS-2567 is
18 provided to the nursing home under subsection (4). The department
19 shall not include with the copy of surveyor notes any interview
20 forms and shall redact the copy of the surveyor notes to protect
21 the confidentiality of any individual who provided information to
22 the surveyor. A nursing home that requests surveyor notes under
23 this subsection shall pay for the cost of copying and redacting the
24 notes.

25 (4) All abbreviated complaint surveys ~~shall~~**must** be conducted
26 on consecutive days until complete. All form CMS-2567 reports of
27 survey findings ~~shall~~**must** be released to the nursing home within
28 10 consecutive days after ~~completion of the~~ **exit date of the**
29 survey.

1 (5) Departmental notifications of acceptance or rejection of a
 2 nursing home's plan of correction ~~shall~~**must** be reviewed and
 3 released to the nursing home within 10 consecutive days ~~of~~**after**
 4 **the** receipt of ~~that~~**the** plan of correction.

5 (6) A nursing-home-submitted plan of correction in response to
 6 any survey must have a completion date not to exceed 40 days from
 7 the exit date of **the** survey. If a nursing home has not received
 8 additional citations before a revisit occurs, the department shall
 9 conduct the first revisit not more than 60 days from the exit date
 10 of the survey.

11 (7) ~~Letters~~**A letter** of compliance notification to **a** nursing
 12 ~~homes~~**home must** be released to the nursing home within 10
 13 consecutive days ~~of~~**after the exit date of** all survey ~~revisit~~
 14 ~~completion dates~~**.revisits.**

15 (8) The department may accept a nursing home's evidence of
 16 substantial compliance instead of requiring a post survey on-site
 17 first or second revisit as the department considers appropriate in
 18 accordance with the Centers for Medicare and Medicaid Services
 19 survey protocols. A nursing home requesting consideration of
 20 evidence of substantial compliance in lieu of an on-site revisit
 21 must include an affidavit that asserts the nursing home is in
 22 substantial compliance as shown by the submitted evidence for that
 23 specific survey event. There may be no deficiencies with a scope
 24 and severity originating higher than level F. Citations with a
 25 scope and severity of level F or below may go through a desk review
 26 by the department upon thorough review of the plan of correction.
 27 Citations with a scope and severity of level G or higher are not to
 28 be considered for a desk review. If there is no enforcement action,
 29 the nursing home's evidence of substantial compliance may be

1 reviewed administratively and accepted as evidence of deficiency
2 correction.

3 (9) Informal dispute resolution conducted by the Michigan peer
4 review organization shall ~~must~~ be given strong consideration upon
5 final review by the department. ~~In the annual report to the~~
6 ~~legislature, the~~ **The department shall include within its annual**
7 **report to the legislature** the number of Michigan peer review
8 organization-referred reviews and, of those reviews, the number of
9 citations that were overturned by the department. **The department's**
10 **process for informal dispute resolution must include an option for**
11 **a nursing home to select a review and recommendation from the**
12 **federally designated regional quality improvement organization of a**
13 **citation with a scope and severity of level G or higher. A nursing**
14 **home that selects a review and recommendation described in this**
15 **subsection and wants a copy of the recommendations of the quality**
16 **improvement organization shall pay for the costs of the copy.**

17 (10) ~~Citation~~ **The citation** levels ~~used~~ **described** in this
18 section mean citation levels as defined by the Centers for Medicare
19 and Medicaid Services' survey protocol grid defining scope and
20 severity assessment of deficiency.

21 Sec. 20161. (1) The department shall assess fees and other
22 assessments for health facility and agency licenses and
23 certificates of need on an annual basis as provided in this
24 article. Until October 1, 2023, except as otherwise provided in
25 this article, fees and assessments must be paid as provided in the
26 following schedule:

27 (a) Freestanding surgical
28 outpatient facilities.....\$500.00 per facility license.

1 (b) Hospitals \$500.00 per facility license and
2 \$10.00 per licensed bed.

3 (c) Nursing homes, county
4 medical care facilities, and
5 hospital long-term care units\$500.00 per facility license and
6 \$3.00 per licensed bed over 100
7 licensed beds.

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

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

10 (f) Hospice residences \$500.00 per facility license and
11 \$5.00 per licensed bed.

12 (g) Subject to subsection
13 (11), quality assurance assessment
14 for nursing homes and hospital
15 long-term care unitsan amount resulting in not more
16 than 6% of total industry
17 revenues.

18 (h) Subject to subsection
19 (12), quality assurance assessment
20 for hospitalsat a fixed or variable rate that
21 generates funds not more than
22 the maximum allowable under the
23 federal matching requirements,
24 after consideration for the
25 amounts in subsection (12)(a)
26 and (i).

27 (i) Initial licensure
28 application fee for subdivisions
29 (a), (b), (c), (e), and (f)\$2,000.00 per initial license.

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

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

7 (b) **"Title XIX" ~~mean those terms as defined in section~~**
 8 **~~20155.~~ means title XIX of the social security act, 42 USC 1396 to**
 9 **1396w-6.**

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

12 (a) The base fee for a certificate of need is \$3,000.00 for
 13 each application. For a project requiring a projected capital
 14 expenditure of more than \$500,000.00 but less than \$4,000,000.00,
 15 an additional fee of \$5,000.00 is added to the base fee. For a
 16 project requiring a projected capital expenditure of \$4,000,000.00
 17 or more but less than \$10,000,000.00, an additional fee of
 18 \$8,000.00 is added to the base fee. For a project requiring a
 19 projected capital expenditure of \$10,000,000.00 or more, an
 20 additional fee of \$12,000.00 is added to the base fee.

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

26 (c) If required by the department, the applicant shall pay
 27 \$1,000.00 for a certificate of need application that receives
 28 expedited processing at the request of the applicant.

29 (d) The department shall charge a fee of \$500.00 to review any

1 letter of intent requesting or resulting in a waiver from
2 certificate of need review and any amendment request to an approved
3 certificate of need.

4 (e) A health facility or agency that offers certificate of
5 need covered clinical services shall pay \$100.00 for each
6 certificate of need approved covered clinical service as part of
7 the certificate of need annual survey at the time of submission of
8 the survey data.

9 (f) Except as otherwise provided in this section, the
10 department shall use the fees collected under this subsection only
11 to fund the certificate of need program. Funds remaining in the
12 certificate of need program at the end of the fiscal year do not
13 lapse to the general fund but remain available to fund the
14 certificate of need program in subsequent years.

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

17 (5) Fees described in this section are payable to the
18 department at the time an application for a license, permit, or
19 certificate is submitted. If an application for a license, permit,
20 or certificate is denied or if a license, permit, or certificate is
21 revoked before its expiration date, the department shall not refund
22 fees paid to the department.

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

28 (7) The cost of licensure activities must be supported by
29 license fees.

1 (8) The application fee for a waiver under section 21564 is
2 \$200.00 plus \$40.00 per hour for the professional services and
3 travel expenses directly related to processing the application. The
4 travel expenses must be calculated in accordance with the state
5 standardized travel regulations of the department of technology,
6 management, and budget in effect at the time of the travel.

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

9 (10) Except as otherwise provided in this section, the fees
10 and assessments collected under this section must be deposited in
11 the state treasury, to the credit of the general fund. The
12 department may use the unreserved fund balance in fees and
13 assessments for the criminal history check program required under
14 this article.

15 (11) The quality assurance assessment collected under
16 subsection (1)(g) and all federal matching funds attributed to that
17 assessment must be used only for the following purposes and under
18 the following specific circumstances:

19 (a) The quality assurance assessment and all federal matching
20 funds attributed to that assessment must be used to finance
21 Medicaid nursing home reimbursement payments. Only licensed nursing
22 homes and hospital long-term care units that are assessed the
23 quality assurance assessment and participate in the Medicaid
24 program are eligible for increased per diem Medicaid reimbursement
25 rates under this subdivision. A nursing home or long-term care unit
26 that is assessed the quality assurance assessment and that does not
27 pay the assessment required under subsection (1)(g) in accordance
28 with subdivision (c)(i) or in accordance with a written payment
29 agreement with this state shall not receive the increased per diem

1 Medicaid reimbursement rates under this subdivision until all of
2 its outstanding quality assurance assessments and any penalties
3 assessed under subdivision (f) have been paid in full. This
4 subdivision does not authorize or require the department to
5 overspend tax revenue in violation of the management and budget
6 act, 1984 PA 431, MCL 18.1101 to 18.1594.

7 (b) Except as otherwise provided under subdivision (c),
8 beginning October 1, 2005, the quality assurance assessment is
9 based on the total number of patient days of care each nursing home
10 and hospital long-term care unit provided to non-Medicare patients
11 within the immediately preceding year, must be assessed at a
12 uniform rate on October 1, 2005 and subsequently on October 1 of
13 each following year, and is payable on a quarterly basis, with the
14 first payment due 90 days after the date the assessment is
15 assessed.

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

20 (i) If the waiver is approved, the quality assurance assessment
21 rate for a nursing home or hospital long-term care unit with less
22 than 40 licensed beds or with the maximum number, or more than the
23 maximum number, of licensed beds necessary to secure federal
24 approval of the application is \$2.00 per non-Medicare patient day
25 of care provided within the immediately preceding year or a rate as
26 otherwise altered on the application for the waiver to obtain
27 federal approval. If the waiver is approved, for all other nursing
28 homes and long-term care units the quality assurance assessment
29 rate is to be calculated by dividing the total statewide maximum

1 allowable assessment permitted under subsection (1)(g) less the
2 total amount to be paid by the nursing homes and long-term care
3 units with less than 40 licensed beds or with the maximum number,
4 or more than the maximum number, of licensed beds necessary to
5 secure federal approval of the application by the total number of
6 non-Medicare patient days of care provided within the immediately
7 preceding year by those nursing homes and long-term care units with
8 more than 39 licensed beds, but less than the maximum number of
9 licensed beds necessary to secure federal approval. The quality
10 assurance assessment, as provided under this subparagraph, must be
11 assessed in the first quarter after federal approval of the waiver
12 and must be subsequently assessed on October 1 of each following
13 year, and is payable on a quarterly basis, with the first payment
14 due 90 days after the date the assessment is assessed.

15 (ii) If the waiver is approved, continuing care retirement
16 centers are exempt from the quality assurance assessment if the
17 continuing care retirement center requires each center resident to
18 provide an initial life interest payment of \$150,000.00, on
19 average, per resident to ensure payment for that resident's
20 residency and services and the continuing care retirement center
21 utilizes all of the initial life interest payment before the
22 resident becomes eligible for medical assistance under the state's
23 Medicaid plan. As used in this subparagraph, "continuing care
24 retirement center" means a nursing care facility that provides
25 independent living services, assisted living services, and nursing
26 care and medical treatment services, in a campus-like setting that
27 has shared facilities or common areas, or both.

28 (d) Beginning May 10, 2002, the department shall increase the
29 per diem nursing home Medicaid reimbursement rates for the balance

1 of that year. For each subsequent year in which the quality
2 assurance assessment is assessed and collected, the department
3 shall maintain the Medicaid nursing home reimbursement payment
4 increase financed by the quality assurance assessment.

5 (e) The department shall implement this section in a manner
6 that complies with federal requirements necessary to ensure that
7 the quality assurance assessment qualifies for federal matching
8 funds.

9 (f) If a nursing home or a hospital long-term care unit fails
10 to pay the assessment required by subsection (1)(g), the department
11 may assess the nursing home or hospital long-term care unit a
12 penalty of 5% of the assessment for each month that the assessment
13 and penalty are not paid up to a maximum of 50% of the assessment.
14 The department may also refer for collection to the department of
15 treasury past due amounts consistent with section 13 of 1941 PA
16 122, MCL 205.13.

17 (g) The Medicaid nursing home quality assurance assessment
18 fund is established in the state treasury. The department shall
19 deposit the revenue raised through the quality assurance assessment
20 with the state treasurer for deposit in the Medicaid nursing home
21 quality assurance assessment fund.

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

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

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

6 (k) The state retention amount of the quality assurance
7 assessment collected under subsection (1) (g) must be equal to 13.2%
8 of the federal funds generated by the nursing homes and hospital
9 long-term care units quality assurance assessment, including the
10 state retention amount. The state retention amount must be
11 appropriated each fiscal year to the department to support Medicaid
12 expenditures for long-term care services. These funds must offset
13 an identical amount of general fund/general purpose revenue
14 originally appropriated for that purpose.

15 (l) Beginning October 1, 2023, the department shall not assess
16 or collect the quality assurance assessment or apply for federal
17 matching funds. The quality assurance assessment collected under
18 subsection (1) (g) must not be assessed or collected after September
19 30, 2011 if the quality assurance assessment is not eligible for
20 federal matching funds. Any portion of the quality assurance
21 assessment collected from a nursing home or hospital long-term care
22 unit that is not eligible for federal matching funds must be
23 returned to the nursing home or hospital long-term care unit.

24 (12) The quality assurance dedication is an earmarked
25 assessment collected under subsection (1) (h) . That assessment and
26 all federal matching funds attributed to that assessment must be
27 used only for the following purpose and under the following
28 specific circumstances:

29 (a) To maintain the increased Medicaid reimbursement rate

1 increases as provided for in subdivision (c).

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

9 (c) Beginning October 1, 2002, the department shall increase
10 the hospital Medicaid reimbursement rates for the balance of that
11 year. For each subsequent year in which the quality assurance
12 assessment is assessed and collected, the department shall maintain
13 the hospital Medicaid reimbursement rate increase financed by the
14 quality assurance assessments.

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

19 (e) If a hospital fails to pay the assessment required by
20 subsection (1)(h), the department may assess the hospital a penalty
21 of 5% of the assessment for each month that the assessment and
22 penalty are not paid up to a maximum of 50% of the assessment. The
23 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 (f) The hospital quality assurance assessment fund is
27 established in the state treasury. The department shall deposit the
28 revenue raised through the quality assurance assessment with the
29 state treasurer for deposit in the hospital quality assurance

1 assessment fund.

2 (g) In each fiscal year governed by this subsection, the
3 quality assurance assessment must only be collected and expended if
4 Medicaid hospital inpatient DRG and outpatient reimbursement rates
5 and disproportionate share hospital and graduate medical education
6 payments are not below the level of rates and payments in effect on
7 April 1, 2002 as a direct result of the quality assurance
8 assessment collected under subsection (1)(h), except as provided in
9 subdivision (h).

10 (h) The quality assurance assessment collected under
11 subsection (1)(h) must not be assessed or collected after September
12 30, 2011 if the quality assurance assessment is not eligible for
13 federal matching funds. Any portion of the quality assurance
14 assessment collected from a hospital that is not eligible for
15 federal matching funds must be returned to the hospital.

16 (i) The state retention amount of the quality assurance
17 assessment collected under subsection (1)(h) must be equal to 13.2%
18 of the federal funds generated by the hospital quality assurance
19 assessment, including the state retention amount. The 13.2% state
20 retention amount described in this subdivision does not apply to
21 the Healthy Michigan plan. In the fiscal year ending September 30,
22 2016, there is a 1-time additional retention amount of up to
23 \$92,856,100.00. In the fiscal year ending September 30, 2017, there
24 is a retention amount of \$105,000,000.00 for the Healthy Michigan
25 plan. Beginning in the fiscal year ending September 30, 2018, and
26 for each fiscal year thereafter, there is a retention amount of
27 \$118,420,600.00 for each fiscal year for the Healthy Michigan plan.
28 The state retention percentage must be applied proportionately to
29 each hospital quality assurance assessment program to determine the

1 retention amount for each program. The state retention amount must
2 be appropriated each fiscal year to the department to support
3 Medicaid expenditures for hospital services and therapy. These
4 funds must offset an identical amount of general fund/general
5 purpose revenue originally appropriated for that purpose. By May
6 31, 2019, the department, the state budget office, and the Michigan
7 Health and Hospital Association shall identify an appropriate
8 retention amount for the fiscal year ending September 30, 2020 and
9 each fiscal year thereafter.

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

12 (a) The quality assurance assessment authorized under this
13 subsection must be used to provide reimbursement to Medicaid
14 ambulance providers. The department may promulgate rules to provide
15 the structure of the quality assurance assessment authorized under
16 this subsection and the level of the assessment.

17 (b) The department shall implement this subsection in a manner
18 that complies with federal requirements necessary to ensure that
19 the quality assurance assessment qualifies for federal matching
20 funds.

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

23 (d) The quality assurance assessment authorized under this
24 subsection must not be collected after October 1, 2023. The quality
25 assurance assessment authorized under this subsection must no
26 longer be collected or assessed if the quality assurance assessment
27 authorized under this subsection is not eligible for federal
28 matching funds.

29 (e) Beginning November 1, 2020, and by November 1 of each year

1 thereafter, the department shall send a notification to each
 2 ambulance operation that will be assessed the quality assurance
 3 assessment authorized under this subsection during the year in
 4 which the notification is sent.

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

7 (15) For the fiscal year ending September 30, 2020 only,
 8 \$3,000,000.00 of the money in the certificate of need program is
 9 transferred to and must be deposited into the general fund.

10 (16) As used in this section:

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

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

16 Sec. 21734. (1) Notwithstanding section 20201(2) (l), a nursing
 17 home shall give each resident who uses a hospital-type bed or the
 18 resident's legal guardian, patient advocate, or other legal
 19 representative the option of having bed rails. A nursing home shall
 20 offer the option to new residents ~~upon~~**on** admission and to other
 21 residents ~~upon~~**on** request. ~~Upon~~**On the** receipt of a request for bed
 22 rails, the nursing home shall inform the resident or the resident's
 23 legal guardian, patient advocate, or other legal representative of
 24 alternatives to and the risks involved in using bed rails. A
 25 resident or the resident's legal guardian, patient advocate, or
 26 other legal representative has the right to request and consent to
 27 bed rails for the resident. A nursing home shall provide bed rails
 28 to a resident only ~~upon~~**on the** receipt of a signed consent form
 29 authorizing bed rail use and a written order from the resident's

1 attending physician that contains statements and determinations
2 regarding medical symptoms and that specifies the circumstances
3 under which bed rails are to be used. For purposes of this
4 subsection, "medical symptoms" includes the following:

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

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

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

10 (a) Document that the requirements of subsection (1) have been
11 met.

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

13 (c) In consultation with the resident, resident's family,
14 resident's attending physician, and individual who consented to the
15 bed rails, periodically reevaluate the resident's need for the bed
16 rails.

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

20 (a) Acceptable bed rails for use in a nursing home in this
21 state. The department shall consider the recommendations of the
22 hospital bed safety work group established by the United States
23 Food and Drug Administration, if those are available, in
24 determining what constitutes an acceptable bed rail.

25 (b) Proper maintenance of bed rails.

26 (c) Properly fitted mattresses.

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

29 (4) The department shall maintain the peer-reviewed, evidence-

1 based, best-practice resources under subsection (3) in consultation
2 with the long-term care stakeholders work group established under
3 section ~~20155(24)~~.**20155(21)** .

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

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

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

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

27 (4) A physician or other licensed health care personnel of a
28 hospital or other health care facility to which a patient is
29 transferred who has reasonable suspicion of an act prohibited by

1 this section shall report the suspicion to the department and 1 or
 2 more law enforcement entities ~~in the manner required by subsection~~
 3 ~~(8)~~. **as required by federal regulations.**

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

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

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

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

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

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

28 **Sec. 21771a. (1) Subject to subsection (2), the department**
 29 **shall develop and implement statewide reporting requirements for**

1 facility reported incidents for any category required by federal
2 regulations and at least all of the following additional
3 categories:

4 (a) Elopements.

5 (b) Bruising.

6 (c) Repeated statements from residents with mental health
7 behaviors.

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

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

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

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

19 (c) An allegation made by a resident who has been diagnosed
20 with a mental illness, including, but not limited to, psychosis or
21 severe dementia, if the resident has a history of making false
22 statements that are not based in reality and are documented in the
23 resident's care plan, with interventions to protect the resident.

24 (d) An allegation if a thorough assessment does not
25 substantiate the allegation.

26 (e) An allegation if the resident or the resident's legal
27 guardian or other legal representative has been informed of the
28 allegation, does not wish for the nursing home to report the
29 allegation, and has received information on how to file a complaint

1 **with the department.**

2 Sec. 21794. (1) With the consent of the patient or the
3 patient's representative a nursing home may use a dining assistant
4 to provide feeding assistance to a patient who, based on the charge
5 nurse's assessment of the patient and the patient's most recent
6 plan of care, needs assistance or encouragement with eating and
7 drinking, but does not have complicated feeding problems,
8 including, but not limited to, difficulty swallowing, recurrent
9 lung aspirations, tube or parenteral feedings, or behavioral issues
10 that may compromise nutritional intake. The charge nurse's
11 assessment and plan of care must be documented in the patient's
12 medical record. For a patient who is assigned a dining assistant
13 and experiences an emergent change in condition, the charge nurse
14 shall perform a special assessment to monitor the appropriateness
15 of continued utilization of the dining assistant.

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

- 26 (a) Dining assistants program overview.
27 (b) Patient rights.
28 (c) Communication and interpersonal skills.
29 (d) Appropriate responses to patient behavior.

- 1 (e) Recognizing changes in patients.
- 2 (f) Infection control.
- 3 (g) Assistance with feeding and hydration.
- 4 (h) Feeding techniques.
- 5 (i) Safety and emergency procedures.
- 6 (j) End of life.

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

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

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

3 (6) A nursing home that utilizes dining assistants shall
4 maintain a written record of each individual used as a dining
5 assistant. The nursing home shall include in the written record, at
6 a minimum, the complete name and address of the individual, the
7 date the individual successfully completed the dining assistants
8 training curriculum, a copy of the written record of the
9 satisfactory completion of the training curriculum, and
10 documentation of the criminal history check.

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

17 (8) As used in this section:

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

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

28 (c) "Nurse" means an individual licensed as a registered
29 professional nurse or a licensed practical nurse under article 15

1 to engage in the practice of nursing.

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

5 Sec. 21799b. (1) If, upon investigation, the department ~~of~~
6 ~~consumer and industry services~~ finds that a licensee is not in
7 compliance with this part, a rule promulgated under this part, or a
8 federal law or regulation governing nursing home certification
9 under title XVIII or XIX, which noncompliance impairs the ability
10 of the licensee to deliver an acceptable level of care and
11 services, or in the case of a nursing home closure, the department
12 ~~of consumer and industry services~~ shall notify the department of
13 ~~community health of~~ **and human services of** the finding and may issue
14 1 or more of the following correction notices to the licensee:

15 (a) Suspend the admission or readmission of patients to the
16 nursing home.

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

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

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

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

27 (f) Require appointment at the nursing home's expense of a
28 department approved temporary manager with authority and duties
29 specified by the department to oversee the nursing home's

1 achievement of sustained compliance with required operating
2 standards or to oversee the orderly closure of the nursing home.

3 (g) Issue a correction notice to the licensee and the
4 department of ~~community health~~ **and human services** describing the
5 violation and the statute or rule violated and specifying the
6 corrective action to be taken and the period of time in which the
7 corrective action is to be completed. Upon issuance, the director
8 shall cause to be published in a daily newspaper of general
9 circulation in an area in which the nursing home is located notice
10 of the action taken and the listing of conditions upon which the
11 director's action is predicated.

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

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

28 ~~(4) As used in this part, "title~~
29 ~~XVIII" and "title XIX" mean those terms as defined in section~~

1 20155-

2 (4) ~~(5)~~—The department shall report annually to the house of
3 **representatives** and senate standing committees on senior issues on
4 the number of times the department appointed a temporary
5 administrative advisor, temporary clinical advisor, and temporary
6 manager as described in subsection (1)(e) or (f). The report ~~shall~~
7 **must** include whether the nursing home closed or remained open. The
8 department may include this report with other reports made to
9 fulfill legislative reporting requirements.

10 (5) ~~(6)~~—If the department determines that a nursing home's
11 patients can be safeguarded and provided with a safe environment,
12 the department shall make its decisions concerning the nursing
13 home's future operation based on a presumption in favor of keeping
14 the nursing home open.

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

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

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