

HOUSE BILL No. 4013

January 22, 2007, Introduced by Rep. Caswell and referred to the Committee on Senior Health, Security, and Retirement.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 20155 (MCL 333.20155), as amended by 2006 PA
195.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20155. (1) Except as otherwise provided in this section,
2 the department shall make annual and other visits to each health
3 facility or agency licensed under this article for the purposes of
4 survey, evaluation, and consultation. A visit made pursuant to a
5 complaint shall be unannounced. Except for a county medical care
6 facility, a home for the aged, a nursing home, or a hospice
7 residence, the department shall determine whether the visits that

1 are not made pursuant to a complaint are announced or unannounced.
2 Beginning June 20, 2001, the department shall assure that each
3 newly hired nursing home surveyor, as part of his or her basic
4 training, is assigned full-time to a licensed nursing home for at
5 least 10 days within a 14-day period to observe actual operations
6 outside of the survey process before the trainee begins oversight
7 responsibilities. A member of a survey team shall not be employed
8 by a licensed nursing home or a nursing home management company
9 doing business in this state at the time of conducting a survey
10 under this section. The department shall not assign an individual
11 to be a member of a survey team for purposes of a survey,
12 evaluation, or consultation visit at a nursing home in which he or
13 she was an employee within the preceding 5 years.

14 (2) The department shall make at least a biennial visit to
15 each licensed clinical laboratory, each nursing home, and each
16 hospice residence for the purposes of survey, evaluation, and
17 consultation. The department shall semiannually provide for joint
18 training with nursing home surveyors and providers on at least 1 of
19 the 10 most frequently issued federal citations in this state
20 during the past calendar year. The department shall develop a
21 protocol for the review of citation patterns compared to regional
22 outcomes and standards and complaints regarding the nursing home
23 survey process. The review will result in a report provided to the
24 legislature. Except as otherwise provided in this subsection,
25 beginning with his or her first full relicensure period after June
26 20, 2000, each member of a department nursing home survey team who
27 is a health professional licensee under article 15 shall earn not

1 less than 50% of his or her required continuing education credits,
2 if any, in geriatric care. If a member of a nursing home survey
3 team is a pharmacist licensed under article 15, he or she shall
4 earn not less than 30% of his or her required continuing education
5 credits in geriatric care.

6 (3) The department shall make a biennial visit to each
7 hospital for survey and evaluation for the purpose of licensure.
8 Subject to subsection (6), the department may waive the biennial
9 visit required by this subsection if a hospital, as part of a
10 timely application for license renewal, requests a waiver and
11 submits both of the following and if all of the requirements of
12 subsection (5) are met:

13 (a) Evidence that it is currently fully accredited by a body
14 with expertise in hospital accreditation whose hospital
15 accreditations are accepted by the United States department of
16 health and human services for purposes of section 1865 of part C of
17 title XVIII of the social security act, 42 USC 1395bb.

18 (b) A copy of the most recent accreditation report for the
19 hospital issued by a body described in subdivision (a), and the
20 hospital's responses to the accreditation report.

21 (4) Except as provided in subsection (8), accreditation
22 information provided to the department under subsection (3) is
23 confidential, is not a public record, and is not subject to court
24 subpoena. The department shall use the accreditation information
25 only as provided in this section and shall return the accreditation
26 information to the hospital within a reasonable time after a
27 decision on the waiver request is made.

1 (5) The department shall grant a waiver under subsection (3)
2 if the accreditation report submitted under subsection (3)(b) is
3 less than 2 years old and there is no indication of substantial
4 noncompliance with licensure standards or of deficiencies that
5 represent a threat to public safety or patient care in the report,
6 in complaints involving the hospital, or in any other information
7 available to the department. If the accreditation report is 2 or
8 more years old, the department may do 1 of the following:

9 (a) Grant an extension of the hospital's current license until
10 the next accreditation survey is completed by the body described in
11 subsection (3)(a).

12 (b) Grant a waiver under subsection (3) based on the
13 accreditation report that is 2 or more years old, on condition that
14 the hospital promptly submit the next accreditation report to the
15 department.

16 (c) Deny the waiver request and conduct the visits required
17 under subsection (3).

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

27 (7) At the request of a health facility or agency, the

1 department may conduct a consultation engineering survey of a
2 health facility and provide professional advice and consultation
3 regarding health facility construction and design. A health
4 facility or agency may request a voluntary consultation survey
5 under this subsection at any time between licensure surveys. The
6 fees for a consultation engineering survey are the same as the fees
7 established for waivers under section 20161(10).

8 (8) If the department determines that substantial
9 noncompliance with licensure standards exists or that deficiencies
10 that represent a threat to public safety or patient care exist
11 based on a review of an accreditation report submitted pursuant to
12 subsection (3)(b), the department shall prepare a written summary
13 of the substantial noncompliance or deficiencies and the hospital's
14 response to the department's determination. The department's
15 written summary and the hospital's response are public documents.

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

1 be announced.

2 (10) The department shall maintain a record indicating whether
3 a visit and inspection is announced or unannounced. Information
4 gathered at each visit and inspection, whether announced or
5 unannounced, shall be taken into account in licensure decisions.

6 (11) The department shall require periodic reports and a
7 health facility or agency shall give the department access to
8 books, records, and other documents maintained by a health facility
9 or agency to the extent necessary to carry out the purpose of this
10 article and the rules promulgated under this article. The
11 department shall respect the confidentiality of a patient's
12 clinical record and shall not divulge or disclose the contents of
13 the records in a manner that identifies an individual except under
14 court order. The department may copy health facility or agency
15 records as required to document findings.

16 (12) The department may delegate survey, evaluation, or
17 consultation functions to another state agency or to a local health
18 department qualified to perform those functions. However, the
19 department shall not delegate survey, evaluation, or consultation
20 functions to a local health department that owns or operates a
21 hospice or hospice residence licensed under this article. The
22 delegation shall be by cost reimbursement contract between the
23 department and the state agency or local health department. Survey,
24 evaluation, or consultation functions shall not be delegated to
25 nongovernmental agencies, except as provided in this section. The
26 department may accept voluntary inspections performed by an
27 accrediting body with expertise in clinical laboratory

1 accreditation under part 205 if the accrediting body utilizes forms
2 acceptable to the department, applies the same licensing standards
3 as applied to other clinical laboratories, and provides the same
4 information and data usually filed by the department's own
5 employees when engaged in similar inspections or surveys. The
6 voluntary inspection described in this subsection shall be agreed
7 upon by both the licensee and the department.

8 (13) If, upon investigation, the department or a state agency
9 determines that an individual licensed to practice a profession in
10 this state has violated the applicable licensure statute or the
11 rules promulgated under that statute, the department, state agency,
12 or local health department shall forward the evidence it has to the
13 appropriate licensing agency.

14 (14) The department shall report to the appropriations
15 subcommittees, the senate and house of representatives standing
16 committees having jurisdiction over issues involving senior
17 citizens, and the fiscal agencies on March 1 of each year on the
18 initial and follow-up surveys conducted on all nursing homes in
19 this state. The report shall include all of the following
20 information:

21 (a) The number of surveys conducted.

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

23 (c) The number referred to the Michigan public health
24 institute for remediation.

25 (d) The number of citations per nursing home.

26 (e) The number of night and weekend complaints filed.

27 (f) The number of night and weekend responses to complaints

1 conducted by the department.

2 (g) The average length of time for the department to respond
3 to a complaint filed against a nursing home.

4 (h) The number and percentage of citations appealed.

5 (i) The number and percentage of citations overturned or
6 modified, or both.

7 (15) The department shall report annually to the standing
8 committees on appropriations and the standing committees having
9 jurisdiction over issues involving senior citizens in the senate
10 and the house of representatives on the percentage of nursing home
11 citations that are appealed and the percentage of nursing home
12 citations that are appealed and amended through the informal
13 deficiency dispute resolution process.

14 (16) Subject to subsection (17), 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 Michigan:

23 (a) Immediate jeopardy.

24 (b) Harm.

25 (c) Potential harm.

26 (d) Avoidable.

27 (e) Unavoidable.

1 (17) All of the following clarifications developed under
2 subsection (16) apply for purposes of subsection (16):

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

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

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

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

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

27 (iii) Whether the nursing home could reasonably have been

1 expected to anticipate that serious injury, serious harm,
2 impairment, or death might result from continuing the deficient
3 practice, but did not so anticipate.

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

7 (v) Whether the nursing home could reasonably have been
8 expected to detect the process problem in a more timely fashion,
9 but did not so detect.

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

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

25 (f) For purposes of subdivision (e), in determining whether a
26 negative outcome is of limited consequence, if the "state
27 operations manual" or "the guidance to surveyors" published by the

1 federal centers for medicare and medicaid services does not provide
2 specific guidance, the department may consider whether most people
3 in similar circumstances would feel that the damage was of such
4 short duration or impact as to be inconsequential or trivial. In
5 such a case, the consequence of a negative outcome may be
6 considered more limited if it occurs in the context of overall
7 procedural consistency with an accepted clinical process guideline
8 adopted pursuant to subsection (18), as compared to a substantial
9 inconsistency with or variance from the guideline.

10 (g) For purposes of subdivision (e), if the publications
11 described in subdivision (f) do not provide specific guidance, the
12 department may consider the degree of a nursing home's adherence to
13 a clinical process guideline adopted pursuant to subsection (18) in
14 considering whether the degree of compromise and future risk to the
15 resident constitutes actual harm. The risk of significant
16 compromise to the resident may be considered greater in the context
17 of substantial deviation from the guidelines than in the case of
18 overall adherence.

19 (h) To improve consistency and to avoid disputes over
20 avoidable and unavoidable negative outcomes, nursing homes and
21 survey agencies must have a common understanding of accepted
22 process guidelines and of the circumstances under which it can
23 reasonably be said that certain actions or inactions will lead to
24 avoidable negative outcomes. If the "state operations manual" or
25 "the guidance to surveyors" published by the federal centers for
26 medicare and medicaid services is not specific, a nursing home's
27 overall documentation of adherence to a clinical process guideline

1 with a process indicator adopted pursuant to subsection (18) is
2 relevant information in considering whether a negative outcome was
3 avoidable or unavoidable and may be considered in the application
4 of that term.

5 (18) Subject to subsection (19), the department, in
6 consultation with the clarification work group appointed under
7 subsection (16), shall develop and adopt clinical process
8 guidelines that shall be used in applying the terms set forth in
9 subsection (16). The department shall establish and adopt clinical
10 process guidelines and compliance protocols with outcome measures
11 for all of the following areas and for other topics where the
12 department determines that clarification will benefit providers and
13 consumers of long-term care:

14 (a) Bed rails.

15 (b) Adverse drug effects.

16 (c) Falls.

17 (d) Pressure sores.

18 (e) Nutrition and hydration including, but not limited to,
19 heat-related stress.

20 (f) Pain management.

21 (g) Depression and depression pharmacotherapy.

22 (h) Heart failure.

23 (i) Urinary incontinence.

24 (j) Dementia.

25 (k) Osteoporosis.

26 (l) Altered mental states.

27 (m) Physical and chemical restraints.

1 **(N) LIFT EQUIPMENT.**

2 (19) The department shall create a clinical advisory committee
3 to review and make recommendations regarding the clinical process
4 guidelines with outcome measures adopted under subsection (18). The
5 department shall appoint physicians, registered professional
6 nurses, and licensed practical nurses to the clinical advisory
7 committee, along with professionals who have expertise in long-term
8 care services, some of whom may be employed by long-term care
9 facilities. The clarification work group created under subsection
10 (16) shall review the clinical process guidelines and outcome
11 measures after the clinical advisory committee and shall make the
12 final recommendations to the department before the clinical process
13 guidelines are adopted.

14 (20) The department shall create a process by which the
15 director of the division of nursing home monitoring or his or her
16 designee or the director of the division of operations or his or
17 her designee reviews and authorizes the issuance of a citation for
18 immediate jeopardy or substandard quality of care before the
19 statement of deficiencies is made final. The review shall be to
20 assure that the applicable concepts, clinical process guidelines,
21 and other tools contained in subsections (17) to (19) are being
22 used consistently, accurately, and effectively. As used in this
23 subsection, "immediate jeopardy" and "substandard quality of care"
24 mean those terms as defined by the federal centers for medicare and
25 medicaid services.

26 (21) The department may give grants, awards, or other
27 recognition to nursing homes to encourage the rapid implementation

1 of the clinical process guidelines adopted under subsection (18).

2 (22) The department shall assess the effectiveness of 2001 PA
3 218. The department shall file an annual report on the
4 implementation of the clinical process guidelines and the impact of
5 the guidelines on resident care with the standing committee in the
6 legislature with jurisdiction over matters pertaining to nursing
7 homes. The first report shall be filed on July 1, 2002.

8 (23) The department shall instruct and train the surveyors in
9 the use of the clarifications described in subsection (17) and the
10 clinical process guidelines adopted under subsection (18) in citing
11 deficiencies.

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

15 (25) Nothing in this amendatory act shall be construed to
16 limit the requirements of related state and federal law.

17 (26) As used in this section:

18 (a) "Title XVIII" means title XVIII of the social security
19 act, 42 USC 1395 to 1395hhh.

20 (b) "Title XIX" means title XIX of the social security act,
21 ~~chapter 531,~~ 42 USC 1396 to 1396v.