

HOUSE BILL No. 4728

June 17, 2015, Introduced by Reps. Gamrat and Courser and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 2612, 20101, 20115, 20145, 20155, 20161, 20164, 20165, 20166, 20511, 21551, and 21563 (MCL 333.2612, 333.20101, 333.20115, 333.20145, 333.20155, 333.20161, 333.20164, 333.20165, 333.20166, 333.20511, 333.21551, and 333.21563), section 2612 as added by 1990 PA 138, sections 20101 and 20166 as amended by 1988 PA 332, section 20115 as amended by 2012 PA 499, section 20145 as amended by 2004 PA 469, section 20155 as amended by 2012 PA 322, section 20161 as amended by 2013 PA 137, section 20164 as amended by 1990 PA 179, section 20165 as amended by 2008 PA 39, section 20511 as amended by 1982 PA 474, section 21551 as amended by 1990 PA 331, and section 21563 as added by 1990 PA 252; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2612. (1) The department may establish with Michigan
2 ~~state university~~ **STATE UNIVERSITY** and other parties determined
3 appropriate by the department a nonprofit corporation pursuant to
4 the nonprofit corporation act, ~~Act No. 162 of the Public Acts of~~
5 ~~1982, being sections~~ **1982 PA 162, MCL 450.2101 to 450.3192.** ~~of~~
6 ~~the Michigan Compiled Laws.~~ The purpose of the corporation shall
7 be to establish and operate a center for rural health. In
8 fulfilling its purpose, the corporation shall do all of the
9 following:

10 (a) Develop a coordinated rural health program that
11 addresses critical questions and problems related to rural health
12 and provides mechanisms for influencing health care policy.

13 (b) Perform and coordinate research regarding rural health
14 issues.

15 (c) Periodically review state and federal laws and judicial
16 decisions pertaining to health care policy and analyze the impact
17 on the delivery of rural health care.

18 (d) Provide technical assistance and act as a resource for
19 the rural health community in this state.

20 (e) Suggest changes in medical education curriculum that
21 would be beneficial to rural health.

22 (f) Assist rural communities with all of the following:

23 (i) Applications for grants.

24 (ii) The recruitment and retention of health professionals.

25 (iii) Needs assessments and planning activities for rural
26 health facilities.

27 (g) Serve as an advocate for rural health concerns.

1 (h) Conduct periodic seminars on rural health issues.

2 (i) Establish and implement a visiting professor program.

3 (j) Conduct consumer oriented rural health education
4 programs.

5 ~~_____ (k) Designate a certificate of need ombudsman to provide~~
6 ~~technical assistance and consultation to rural health care~~
7 ~~providers and rural communities regarding certificate of need~~
8 ~~proposals and applications under part 222. The ombudsman shall~~
9 ~~also act as an advocate for rural health concerns in the~~
10 ~~development of certificate of need review standards under part~~
11 ~~222.~~

12 (2) The incorporators of the corporation shall select a
13 board of directors consisting of a representative from each of
14 the following organizations:

15 (a) The Michigan ~~state medical society~~ **STATE MEDICAL SOCIETY**
16 or its successor. The representative ~~appointed~~ **SELECTED** under
17 this subdivision shall be a physician practicing in a county with
18 a population of not more than 100,000.

19 (b) The Michigan ~~osteopathic physicians' society~~ **OSTEOPATHIC**
20 **ASSOCIATION** or its successor. The representative ~~appointed~~
21 **SELECTED** under this subdivision shall be a physician practicing
22 in a county with a population of not more than 100,000.

23 (c) The Michigan ~~nurses association~~ **NURSES ASSOCIATION** or
24 its successor. The representative ~~appointed~~ **SELECTED** under this
25 subdivision shall be a nurse practicing in a county with a
26 population of not more than 100,000.

27 (d) The Michigan ~~hospital association~~ **HEALTH AND HOSPITAL**

1 **ASSOCIATION** or its successor. The representative selected under
2 this subdivision shall be from a hospital in a county with a
3 population of not more than 100,000.

4 (e) The Michigan ~~primary care association~~ **PRIMARY CARE**
5 **ASSOCIATION** or its successor. The representative ~~appointed~~
6 **SELECTED** under this subdivision shall be a health professional
7 practicing in a county with a population of not more than
8 100,000.

9 (f) The Michigan ~~association~~ **ASSOCIATION** for ~~local public~~
10 ~~health~~ **LOCAL PUBLIC HEALTH** or its successor. The representative
11 ~~appointed~~ **SELECTED UNDER THIS SUBDIVISION SHALL BE** from a county
12 health department for a county with a population of not more than
13 100,000 or from a district health department with at least 1
14 member county with a population of not more than 100,000.

15 (g) The office of the governor.

16 (h) The department of ~~public~~ **COMMUNITY** health.

17 (i) The department of ~~commerce~~ **LICENSING AND REGULATORY**
18 **AFFAIRS**.

19 (j) The Michigan senate. The individual selected under this
20 subdivision shall be from a district located at least in part in
21 a county with a population of not more than 100,000.

22 (k) The Michigan house of representatives. The individual
23 selected under this subdivision shall be from a district located
24 at least in part in a county with a population of not more than
25 100,000.

26 (3) The board of directors of the corporation shall appoint
27 an internal management committee for the center for rural health.

1 The management committee shall consist of representatives from
2 each of the following:

3 (a) The ~~college~~**COLLEGE** of ~~human medicine~~**HUMAN MEDICINE** of
4 Michigan ~~state university~~**STATE UNIVERSITY**.

5 (b) The ~~college~~**COLLEGE** of ~~osteopathic medicine~~**OSTEOPATHIC**
6 **MEDICINE** of Michigan ~~state university~~**STATE UNIVERSITY**.

7 (c) The ~~college~~**COLLEGE** of ~~nursing~~**NURSING** of Michigan ~~state~~
8 ~~university~~**STATE UNIVERSITY**.

9 (d) The ~~college~~**COLLEGE** of ~~veterinary medicine~~**VETERINARY**
10 **MEDICINE** of Michigan ~~state university~~**STATE UNIVERSITY**.

11 (e) The ~~cooperative extension service of~~ Michigan ~~state~~
12 ~~university~~**STATE UNIVERSITY EXTENSION**.

13 (f) The department of ~~public~~**COMMUNITY** health.

14 Sec. 20101. (1) The words and phrases defined in sections
15 20102 to 20109 apply to all parts in this article ~~except part 222~~
16 and have the meanings ascribed to them in those sections.

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

20 Sec. 20115. (1) The department may promulgate rules to
21 further define the term "health facility or agency" and the
22 definition of a health facility or agency listed in section 20106
23 as required to implement this article. The department may define
24 a specific organization as a health facility or agency for the
25 sole purpose of certification authorized under this article. For
26 purpose of certification only, an organization defined in section
27 20106(5), 20108(1), or 20109(4) is considered a health facility

1 or agency. The term "health facility or agency" does not mean a
2 visiting nurse service or home aide service conducted by and for
3 the adherents of a church or religious denomination for the
4 purpose of providing service for those who depend upon spiritual
5 means through prayer alone for healing.

6 (2) The department shall promulgate rules to differentiate a
7 freestanding surgical outpatient facility from a private office
8 of a physician, dentist, podiatrist, or other health
9 professional. The department shall specify in the rules that a
10 facility including, but not limited to, a private practice office
11 described in this subsection must be licensed under this article
12 as a freestanding surgical outpatient facility if that facility
13 performs 120 or more surgical abortions per year and publicly
14 advertises outpatient abortion services.

15 (3) The department shall promulgate rules that in effect
16 republish R 325.3826, R 325.3832, R 325.3835, R 325.3857, R
17 325.3866, R 325.3867, and R 325.3868 of the Michigan
18 administrative code, but shall include in the rules standards for
19 a freestanding surgical outpatient facility or private practice
20 office that performs 120 or more surgical abortions per year and
21 that publicly advertises outpatient abortion services. The
22 department shall assure that the standards are consistent with
23 the most recent United States supreme court decisions regarding
24 state regulation of abortions.

25 (4) Subject to section 20145, ~~and part 222,~~ the department
26 may modify or waive 1 or more of the rules contained in R
27 325.3801 to R 325.3877 of the Michigan administrative code

1 regarding construction or equipment standards, or both, for a
2 freestanding surgical outpatient facility that performs 120 or
3 more surgical abortions per year and that publicly advertises
4 outpatient abortion services, if both of the following conditions
5 are met:

6 (a) The freestanding surgical outpatient facility was in
7 existence and operating on December 31, 2012.

8 (b) The department makes a determination that the existing
9 construction or equipment conditions, or both, within the
10 freestanding surgical outpatient facility are adequate to
11 preserve the health and safety of the patients and employees of
12 the freestanding surgical outpatient facility or that the
13 construction or equipment conditions, or both, can be modified to
14 adequately preserve the health and safety of the patients and
15 employees of the freestanding surgical outpatient facility
16 without meeting the specific requirements of the rules.

17 (5) By January 15 each year, the department of community
18 health shall provide the following information to the department
19 of licensing and regulatory affairs:

20 (a) From data received by the department of community health
21 through the abortion reporting requirements of section 2835, all
22 of the following:

23 (i) The name and location of each facility at which abortions
24 were performed during the immediately preceding calendar year.

25 (ii) The total number of abortions performed at that facility
26 location during the immediately preceding calendar year.

27 (iii) The total number of surgical abortions performed at that

1 facility location during the immediately preceding calendar year.

2 (b) Whether a facility at which surgical abortions were
3 performed in the immediately preceding calendar year publicly
4 advertises abortion services.

5 (6) As used in this section:

6 (a) "Abortion" means that term as defined in section 17015.

7 (b) "Publicly advertises" means to advertise using directory
8 or internet advertising including yellow pages, white pages,
9 banner advertising, or electronic publishing.

10 (c) "Surgical abortion" means an abortion that is not a
11 medical abortion as that term is defined in section 17017.

12 Sec. 20145. (1) Before contracting for and initiating a
13 construction project involving new construction, additions,
14 modernizations, or conversions of a health facility or agency
15 with a capital expenditure of \$1,000,000.00 or more, a person
16 shall obtain a construction permit from the department. ~~The~~
17 ~~department shall not issue the permit under this subsection~~
18 ~~unless the applicant holds a valid certificate of need if a~~
19 ~~certificate of need is required for the project pursuant to part~~
20 ~~222.~~

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

26 ~~—— (3) If a construction project requires a construction permit~~
27 ~~under subsection (1) or (2), but does not require a certificate~~

1 of need under part 222, the department shall require the
 2 applicant to submit information considered necessary by the
 3 department to assure that the capital expenditure for the project
 4 is not a covered capital expenditure as defined in section
 5 22203(9).

6 (3) ~~(4)~~ If **FOR** a construction project **THAT** requires a
 7 construction permit under subsection (1), ~~but does not require a~~
 8 ~~certificate of need under part 222,~~ the department shall require
 9 the applicant to submit information on a 1-page sheet, along with
 10 the application for a construction permit, consisting of all of
 11 the following:

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

14 (b) A contact person for further information, including
 15 address and phone number.

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

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

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

20 (4) ~~(5)~~ The information filed under subsection ~~(4)~~ **(3)** shall
 21 be made publicly available by the department by the same methods
 22 used to make information about certificate of need applications
 23 **UNDER FORMER PART 222** publicly available.

24 (5) ~~(6)~~ The review and approval of architectural plans and
 25 narrative shall require that the proposed construction project is
 26 designed and constructed in accord with applicable statutory and
 27 other regulatory requirements. In performing a construction

1 permit review for a health facility or agency under this section,
2 the department shall, at a minimum, apply the standards contained
3 in the document entitled "**THE 2007** Minimum Design Standards for
4 Health Care Facilities in Michigan" published by the department.
5 ~~and dated March 1998.~~ The standards are incorporated by reference
6 for purposes of this subsection. The department may promulgate
7 rules that are more stringent than the standards if necessary to
8 protect the public health, safety, and welfare.

9 (6) ~~(7)~~—The department shall promulgate rules to further
10 prescribe the scope of construction projects and other
11 alterations subject to review under this section.

12 (7) ~~(8)~~—The department may waive the applicability of this
13 section to a construction project or alteration if the waiver
14 will not affect the public health, safety, and welfare.

15 (8) ~~(9)~~—Upon request by the person initiating a construction
16 project, the department may review and issue a construction
17 permit to a construction project that is not subject to
18 subsection (1) or (2) if the department determines that the
19 review will promote the public health, safety, and welfare.

20 (9) ~~(10)~~—The department shall assess a fee for each review
21 conducted under this section. The fee is .5% of the first
22 \$1,000,000.00 of capital expenditure and .85% of any amount over
23 \$1,000,000.00 of capital expenditure, up to a maximum of
24 \$60,000.00.

25 (10) ~~(11)~~—As used in this section, "capital expenditure"
26 means ~~that term as defined in section 22203(2), except that it~~
27 ~~does not include the cost of equipment that is not fixed~~

1 ~~equipment~~—AN EXPENDITURE FOR A SINGLE PROJECT, INCLUDING COST OF
2 CONSTRUCTION, ENGINEERING, AND EQUIPMENT THAT UNDER GENERALLY
3 ACCEPTED ACCOUNTING PRINCIPLES IS NOT PROPERLY CHARGEABLE AS AN
4 EXPENSE OF OPERATION. CAPITAL EXPENDITURE INCLUDES A LEASE OR
5 COMPARABLE ARRANGEMENT BY OR ON BEHALF OF A HEALTH FACILITY TO
6 OBTAIN A HEALTH FACILITY, LICENSED PART OF A HEALTH FACILITY, OR
7 FIXED EQUIPMENT FOR A HEALTH FACILITY, IF THE ACTUAL PURCHASE OF
8 A HEALTH FACILITY, LICENSED PART OF A HEALTH FACILITY, OR
9 EQUIPMENT FOR A HEALTH FACILITY WOULD HAVE BEEN CONSIDERED A
10 CAPITAL EXPENDITURE UNDER FORMER PART 222. CAPITAL EXPENDITURE
11 INCLUDES THE COST OF STUDIES, SURVEYS, DESIGNS, PLANS, WORKING
12 DRAWINGS, SPECIFICATIONS, AND OTHER ACTIVITIES ESSENTIAL TO THE
13 ACQUISITION, IMPROVEMENT, EXPANSION, ADDITION, CONVERSION,
14 MODERNIZATION, NEW CONSTRUCTION, OR REPLACEMENT OF PHYSICAL PLANT
15 AND FIXED EQUIPMENT.

16 Sec. 20155. (1) Except as otherwise provided in this section
17 and section 20155a, the department shall make annual and other
18 visits to each health facility or agency licensed under this
19 article for the purposes of survey, evaluation, and consultation.
20 A visit made according to a complaint shall be unannounced.
21 Except for a county medical care facility, a home for the aged, a
22 nursing home, or a hospice residence, the department shall
23 determine whether the visits that are not made according to a
24 complaint are announced or unannounced. ~~Beginning June 20, 2001,~~
25 ~~the~~ **THE** department shall ensure that each newly hired nursing
26 home surveyor, as part of his or her basic training, is assigned
27 full-time to a licensed nursing home for at least 10 days within

1 a 14-day period to observe actual operations outside of the
2 survey process before the trainee begins oversight
3 responsibilities.

4 (2) The state shall establish a process that ensures both of
5 the following:

6 (a) A newly hired nursing home surveyor shall not make
7 independent compliance decisions during his or her training
8 period.

9 (b) A nursing home surveyor shall not be assigned as a
10 member of a survey team for a nursing home in which he or she
11 received training for 1 standard survey following the training
12 received in that nursing home.

13 (3) ~~Beginning November 1, 2012, the~~ **THE** department shall
14 perform a criminal history check on all nursing home surveyors in
15 the manner provided for in section 20173a.

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

23 (5) Representatives from all nursing home provider
24 organizations and the state long-term care ombudsman or his or
25 her designee shall be invited to participate in the planning
26 process for the joint provider and surveyor training sessions.
27 The department shall include at least 1 representative from

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

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

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

17 (8) Except as otherwise provided in this section and section
18 20155a, the department shall make at least a biennial visit to
19 each licensed clinical laboratory, each nursing home, and each
20 hospice residence for the purposes of survey, evaluation, and
21 consultation. The department shall semiannually provide for joint
22 training with nursing home surveyors and providers on at least 1
23 of the 10 most frequently issued federal citations in this state
24 during the past calendar year. The department shall develop a
25 protocol for the review of citation patterns compared to regional
26 outcomes and standards and complaints regarding the nursing home
27 survey process. The review will be included in the report

1 required under subsection (20). Except as otherwise provided in
2 this subsection, beginning with his or her first full relicensure
3 period after June 20, 2000, each member of a department nursing
4 home survey team who is a health professional licensee under
5 article 15 shall earn not less than 50% of his or her required
6 continuing education credits, if any, in geriatric care. If a
7 member of a nursing home survey team is a pharmacist licensed
8 under article 15, he or she shall earn not less than 30% of his
9 or her required continuing education credits in geriatric care.

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

17 (a) Evidence that it is currently fully accredited by a body
18 with expertise in hospital accreditation whose hospital
19 accreditations are accepted by the United States ~~department~~
20 **DEPARTMENT** of ~~health~~**HEALTH** and ~~human services~~**HUMAN SERVICES** for
21 purposes of ~~section 1865 of part C of title XVIII of the social~~
22 ~~security act, 42 USC 1395bb.~~

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

26 (10) Except as provided in subsection (14), accreditation
27 information provided to the department under subsection (9) is

1 confidential, is not a public record, and is not subject to court
2 subpoena. The department shall use the accreditation information
3 only as provided in this section and shall return the
4 accreditation information to the hospital within a reasonable
5 time after a decision on the waiver request is made.

6 (11) The department shall grant a waiver under subsection
7 (9) if the accreditation report submitted under subsection (9) (b)
8 is less than 2 years old and there is no indication of
9 substantial noncompliance with licensure standards or of
10 deficiencies that represent a threat to public safety or patient
11 care in the report, in complaints involving the hospital, or in
12 any other information available to the department. If the
13 accreditation report is 2 or more years old, the department may
14 do 1 of the following:

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

18 (b) Grant a waiver under subsection (9) based on the
19 accreditation report that is 2 or more years old, on condition
20 that the hospital promptly submit the next accreditation report
21 to the department.

22 (c) Deny the waiver request and conduct the visits required
23 under subsection (9).

24 (12) This section does not prohibit the department from
25 citing a violation of this part during a survey, conducting
26 investigations or inspections according to section 20156, or
27 conducting surveys of health facilities or agencies for the

1 purpose of complaint investigations or federal certification.
2 This section does not prohibit the bureau of fire services
3 created in section 1b of the fire prevention code, 1941 PA 207,
4 MCL 29.1b, from conducting annual surveys of hospitals, nursing
5 homes, and county medical care facilities.

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

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

23 (15) The department or a local health department shall
24 conduct investigations or inspections, other than inspections of
25 financial records, of a county medical care facility, home for
26 the aged, nursing home, or hospice residence without prior notice
27 to the health facility or agency. An employee of a state agency

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

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

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

27 (18) The department may delegate survey, evaluation, or

1 consultation functions to another state agency or to a local
2 health department qualified to perform those functions. However,
3 the department shall not delegate survey, evaluation, or
4 consultation functions to a local health department that owns or
5 operates a hospice or hospice residence licensed under this
6 article. The delegation shall be by cost reimbursement contract
7 between the department and the state agency or local health
8 department. Survey, evaluation, or consultation functions shall
9 not be delegated to nongovernmental agencies, except as provided
10 in this section. The department may accept voluntary inspections
11 performed by an accrediting body with expertise in clinical
12 laboratory accreditation under part 205 if the accrediting body
13 utilizes forms acceptable to the department, applies the same
14 licensing standards as applied to other clinical laboratories,
15 and provides the same information and data usually filed by the
16 department's own employees when engaged in similar inspections or
17 surveys. The voluntary inspection described in this subsection
18 shall be agreed upon by both the licensee and the department.

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

25 (20) The department may consolidate all information provided
26 for any report required under this section and section 20155a
27 into a single report. The department shall report to the

1 appropriations subcommittees, the senate and house of
2 representatives standing committees having jurisdiction over
3 issues involving senior citizens, and the fiscal agencies on
4 March 1 of each year on the initial and follow-up surveys
5 conducted on all nursing homes in this state. The report shall
6 include all of the following information:

7 (a) The number of surveys conducted.

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

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

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

12 (e) The number of night and weekend responses to complaints
13 conducted by the department.

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

16 (g) The number and percentage of citations disputed through
17 informal dispute resolution and independent informal dispute
18 resolution.

19 (h) The number and percentage of citations overturned or
20 modified, or both.

21 (i) The review of citation patterns developed under
22 subsection (8).

23 (j) Implementation of the clinical process guidelines and
24 the impact of the guidelines on resident care.

25 (k) Information regarding the progress made on implementing
26 the administrative and electronic support structure to
27 efficiently coordinate all nursing home licensing and

1 certification functions.

2 (l) The number of annual standard surveys of nursing homes
3 that were conducted during a period of open survey or enforcement
4 cycle.

5 (m) The number of abbreviated complaint surveys that were
6 not conducted on consecutive surveyor workdays.

7 (n) The percent of all form CMS-2567 reports of findings
8 that were released to the nursing home within the 10-working-day
9 requirement.

10 (o) The percent of provider notifications of acceptance or
11 rejection of a plan of correction that were released to the
12 nursing home within the 10-working-day requirement.

13 (p) The percent of first revisits that were completed within
14 60 days from the date of survey completion.

15 (q) The percent of second revisits that were completed
16 within 85 days from the date of survey completion.

17 (r) The percent of letters of compliance notification to the
18 nursing home that were released within 10 working days of the
19 date of the completion of the revisit.

20 (s) A summary of the discussions from the meetings required
21 in subsection (24).

22 (t) The number of nursing homes that participated in a
23 recognized quality improvement program as described under section
24 20155a(3).

25 (21) The department shall report March 1 of each year to the
26 standing committees on appropriations and the standing committees
27 having jurisdiction over issues involving senior citizens in the

1 senate and the house of representatives on all of the following:

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

4 (b) The number and percentage of nursing home citations that
5 are appealed and supported, amended, or deleted through the
6 informal dispute resolution process.

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

11 (22) Subject to subsection (23), a clarification work group
12 comprised of the department in consultation with a nursing home
13 resident or a member of a nursing home resident's family, nursing
14 home provider groups, the American ~~medical directors association,~~
15 **MEDICAL DIRECTORS ASSOCIATION**, the state long-term care
16 ombudsman, and the federal ~~centers~~ **CENTERS** for ~~medicare~~ **MEDICARE**
17 and ~~medicaid services~~ **MEDICAID SERVICES** shall clarify the
18 following terms as those terms are used in title XVIII and title
19 XIX and applied by the department to provide more consistent
20 regulation of nursing homes in this state:

21 (a) Immediate jeopardy.

22 (b) Harm.

23 (c) Potential harm.

24 (d) Avoidable.

25 (e) Unavoidable.

26 (23) All of the following clarifications developed under
27 subsection (22) apply for purposes of subsection (22):

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

7 (b) The likelihood of immediate jeopardy is reasonably
8 higher if there is evidence of a flagrant failure by the nursing
9 home to comply with a clinical process guideline adopted under
10 subsection (25) than if the nursing home has substantially and
11 continuously complied with those guidelines. If federal
12 regulations and guidelines are not clear, and if the clinical
13 process guidelines have been recognized, a process failure giving
14 rise to an immediate jeopardy may involve an egregious widespread
15 or repeated process failure and the absence of reasonable efforts
16 to detect and prevent the process failure.

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

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

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

26 (iii) Whether the nursing home could reasonably have been
27 expected to anticipate that serious injury, serious harm,

1 impairment, or death might result from continuing the deficient
2 practice, but did not so anticipate.

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

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

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

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

26 (f) For purposes of subdivision (e), in determining whether
27 a negative outcome is of limited consequence, if the "state

1 operations manual" or "the guidance to surveyors" published by
2 the federal ~~centers~~**CENTERS** for ~~medicare~~**MEDICARE** and ~~medicaid~~
3 ~~services~~**MEDICAID SERVICES** does not provide specific guidance,
4 the department may consider whether most people in similar
5 circumstances would feel that the damage was of such short
6 duration or impact as to be inconsequential or trivial. In such a
7 case, the consequence of a negative outcome may be considered
8 more limited if it occurs in the context of overall procedural
9 consistency with an accepted clinical process guideline adopted
10 under subsection (25), as compared to a substantial inconsistency
11 with or variance from the guideline.

12 (g) For purposes of subdivision (e), if the publications
13 described in subdivision (f) do not provide specific guidance,
14 the department may consider the degree of a nursing home's
15 adherence to a clinical process guideline adopted under
16 subsection (25) in considering whether the degree of compromise
17 and future risk to the resident constitutes actual harm. The risk
18 of significant compromise to the resident may be considered
19 greater in the context of substantial deviation from the
20 guidelines than in the case of overall adherence.

21 (h) To improve consistency and to avoid disputes over
22 avoidable and unavoidable negative outcomes, nursing homes and
23 survey agencies must have a common understanding of accepted
24 process guidelines and of the circumstances under which it can
25 reasonably be said that certain actions or inactions will lead to
26 avoidable negative outcomes. If the "state operations manual" or
27 "the guidance to surveyors" published by the federal ~~centers~~

1 **CENTERS** for ~~medicare~~**MEDICARE** and ~~medicaid services~~**MEDICAID**
2 **SERVICES** is not specific, a nursing home's overall documentation
3 of adherence to a clinical process guideline with a process
4 indicator adopted under subsection (25) is relevant information
5 in considering whether a negative outcome was avoidable or
6 unavoidable and may be considered in the application of that
7 term.

8 (24) The department shall conduct a quarterly meeting and
9 invite appropriate stakeholders. Appropriate stakeholders ~~shall~~
10 include at least 1 representative from each nursing home provider
11 organization that does not own or operate a nursing home
12 representing 30 or more nursing homes statewide, the state long-
13 term care ombudsman or his or her designee, and any other
14 clinical experts. Individuals who participate in these quarterly
15 meetings, in conjunction with the department, may designate
16 advisory workgroups to develop recommendations on the discussion
17 topics that should include, at a minimum, all of the following:

18 (a) Opportunities for enhanced promotion of nursing home
19 performance, including, but not limited to, programs that
20 encourage and reward providers that strive for excellence.

21 (b) Seeking quality improvement to the survey and
22 enforcement process, including clarifications to process-related
23 policies and protocols that include, but are not limited to, all
24 of the following:

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

26 (ii) ~~Enhanced~~**ENHANCING** communication between regulators,
27 surveyors, providers, and consumers.

1 (iii) Ensuring fair enforcement and dispute resolution by
2 identifying methods or strategies that may resolve identified
3 problems or concerns.

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

6 (i) Applying regulations in a consistent manner and
7 evaluating changes that have been implemented to resolve
8 identified problems and concerns.

9 (ii) Providing consumers with information regarding changes
10 in policy and interpretation.

11 (iii) Identifying positive and negative trends and factors
12 contributing to those trends in the areas of resident care,
13 deficient practices, and enforcement.

14 (d) Clinical process guidelines.

15 (25) Subject to subsection (27), the department shall
16 develop and adopt clinical process guidelines. The department
17 shall establish and adopt clinical process guidelines and
18 compliance protocols with outcome measures for all of the
19 following areas and for other topics where the department
20 determines that clarification will benefit providers and
21 consumers of long-term care:

22 (a) Bed rails.

23 (b) Adverse drug effects.

24 (c) Falls.

25 (d) Pressure sores.

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

- 1 (f) Pain management.
- 2 (g) Depression and depression pharmacotherapy.
- 3 (h) Heart failure.
- 4 (i) Urinary incontinence.
- 5 (j) Dementia.
- 6 (k) Osteoporosis.
- 7 (l) Altered mental states.
- 8 (m) Physical and chemical restraints.
- 9 (n) Culture-change principles, person-centered caring, and
- 10 self-directed care.

11 (26) The department shall biennially review and update all
12 clinical process guidelines as needed and shall continue to
13 develop and implement clinical process guidelines for topics that
14 have not been developed from the list in subsection (25) and
15 other topics identified as a result of the meetings required in
16 subsection (24). The department shall consider recommendations
17 from an advisory workgroup created under subsection (24) on
18 clinical process guidelines. The department shall include
19 training on new and revised clinical process guidelines in the
20 joint provider and surveyor training sessions as those clinical
21 process guidelines are developed and revised.

22 (27) Beginning November 1, 2012, representatives from each
23 nursing home provider organization that does not own or operate a
24 nursing home representing 30 or more nursing homes statewide and
25 the state long-term care ombudsman or his or her designee shall
26 be permanent members of any clinical advisory workgroup created
27 under subsection (24). The department shall issue survey

1 certification memorandums to providers to announce or clarify
2 changes in the interpretation of regulations.

3 (28) The department shall maintain the process by which the
4 director of the division of nursing home monitoring or his or her
5 designee or the director of the division of operations or his or
6 her designee reviews and authorizes the issuance of a citation
7 for immediate jeopardy or substandard quality of care before the
8 statement of deficiencies is made final. The review shall be to
9 assure that the applicable concepts, clinical process guidelines,
10 and other tools ~~contained~~ **PROVIDED FOR** in subsections (25) to
11 (27) are being used consistently, accurately, and effectively. As
12 used in this subsection, "immediate jeopardy" and "substandard
13 quality of care" mean those terms as defined by the federal
14 ~~centers~~ **CENTERS** for ~~medicare~~ **MEDICARE** and ~~medicaid~~
15 ~~services~~ **MEDICAID SERVICES**.

16 (29) Upon availability of funds, the department shall give
17 grants, awards, or other recognition to nursing homes to
18 encourage the rapid implementation or maintenance of the clinical
19 process guidelines adopted under subsection (25).

20 (30) The department shall instruct and train the surveyors
21 in the clinical process guidelines adopted under subsection (25)
22 in citing deficiencies.

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

26 (32) Nothing in ~~this amendatory act shall be construed to~~
27 ~~limit~~ **2001 PA 218 LIMITS** the requirements of related state and

1 federal law.

2 (33) As used in this section:

3 (a) "Consecutive days" means calendar days, but does not
4 include Saturday, Sunday, or state- or federally-recognized
5 holidays.

6 (b) "Form CMS-2567" means the federal ~~centers~~**CENTERS** for
7 ~~medicare~~**MEDICARE** and ~~medicaid services~~**MEDICAID SERVICES'** form
8 for the statement of deficiencies and plan of correction or a
9 successor form serving the same purpose.

10 (c) "Title XVIII" means title XVIII of the social security
11 act, 42 USC 1395 to ~~1395kkk~~**1395KKK-1**.

12 (d) "Title XIX" means title XIX of the social security act,
13 42 USC 1396 to 1396w-5.

14 Sec. 20161. (1) The department shall assess fees and other
15 assessments for health facility and agency licenses ~~and~~
16 ~~certificates of need~~ on an annual basis as provided in this
17 article. Except as otherwise provided in this article, fees and
18 assessments shall be paid as provided in the following schedule:

- 19 (a) Freestanding surgical
20 outpatient facilities.....\$238.00 per facility.
- 21 (b) Hospitals.....\$8.28 per licensed bed.
- 22 (c) Nursing homes, county
23 medical care facilities, and
24 hospital long-term care units.....\$2.20 per licensed bed.
- 25 (d) Homes for the aged.....\$6.27 per licensed bed.
- 26 (e) Clinical laboratories.....\$475.00 per laboratory.
- 27 (f) Hospice residences.....\$200.00 per license

1 survey; and \$20.00 per
2 licensed bed.

3 (g) Subject to subsection
4 ~~(13)~~, **(12)**, quality assurance assessment
5 for nursing homes and hospital
6 long-term care units.....an amount resulting
7 in not more than 6%
8 of total industry
9 revenues.

10 (h) Subject to subsection
11 ~~(14)~~, **(13)**, quality assurance assessment
12 for hospitals.....at a fixed or variable
13 rate that generates
14 funds not more than the
15 maximum allowable under
16 the federal matching
17 requirements, after
18 consideration for the
19 amounts in subsection
20 ~~(14)(a)~~ **(13) (A)** and (i).

21 (2) If a hospital requests the department to conduct a
22 certification survey for purposes of title XVIII or title XIX, ~~of~~
23 ~~the social security act,~~ the hospital shall pay a license fee
24 surcharge of \$23.00 per bed. As used in this subsection, "title
25 XVIII" and "title XIX" mean those terms as defined in section
26 20155.

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

29 ~~----- (a) The base fee for a certificate of need is \$3,000.00 for~~

1 ~~each application. For a project requiring a projected capital~~
2 ~~expenditure of more than \$500,000.00 but less than \$4,000,000.00,~~
3 ~~an additional fee of \$5,000.00 is added to the base fee. For a~~
4 ~~project requiring a projected capital expenditure of~~
5 ~~\$4,000,000.00 or more but less than \$10,000,000.00, an additional~~
6 ~~fee of \$8,000.00 is added to the base fee. For a project~~
7 ~~requiring a projected capital expenditure of \$10,000,000.00 or~~
8 ~~more, an additional fee of \$12,000.00 is added to the base fee.~~

9 ~~—— (b) In addition to the fees under subdivision (a), the~~
10 ~~applicant shall pay \$3,000.00 for any designated complex project~~
11 ~~including a project scheduled for comparative review or for a~~
12 ~~consolidated licensed health facility application for acquisition~~
13 ~~or replacement.~~

14 ~~—— (c) If required by the department, the applicant shall pay~~
15 ~~\$1,000.00 for a certificate of need application that receives~~
16 ~~expedited processing at the request of the applicant.~~

17 ~~—— (d) The department shall charge a fee of \$500.00 to review~~
18 ~~any letter of intent requesting or resulting in a waiver from~~
19 ~~certificate of need review and any amendment request to an~~
20 ~~approved certificate of need.~~

21 ~~—— (e) A health facility or agency that offers certificate of~~
22 ~~need covered clinical services shall pay \$100.00 for each~~
23 ~~certificate of need approved covered clinical service as part of~~
24 ~~the certificate of need annual survey at the time of submission~~
25 ~~of the survey data.~~

26 ~~—— (f) The department of community health shall use the fees~~
27 ~~collected under this subsection only to fund the certificate of~~

1 ~~need program. Funds remaining in the certificate of need program~~
2 ~~at the end of the fiscal year shall not lapse to the general fund~~
3 ~~but shall remain available to fund the certificate of need~~
4 ~~program in subsequent years.~~

5 (3) ~~(4)~~—If licensure is for more than 1 year, the fees
6 described in subsection (1) are multiplied by the number of years
7 for which the license is issued, and the total amount of the fees
8 shall be collected in the year in which the license is issued.

9 (4) ~~(5)~~—Fees described in this section are payable to the
10 department ~~at the time~~ **WHEN** an application for a license ~~,~~ **OR**
11 permit ~~,~~ **OR** certificate is submitted. If an application for a
12 license ~~,~~ **OR** permit ~~,~~ **OR** certificate is denied or if a license ~~,~~
13 **OR** permit ~~,~~ **OR** certificate is revoked before its expiration date,
14 the department shall not refund fees paid to the department.

15 (5) ~~(6)~~—The fee for a provisional license or temporary
16 permit is the same as for a license. A license may be issued at
17 the expiration date of a temporary permit without an additional
18 fee for the balance of the period for which the fee was paid if
19 the requirements for licensure are met.

20 (6) ~~(7)~~—The department may charge a fee to recover the cost
21 of purchase or production and distribution of proficiency
22 evaluation samples that are supplied to clinical laboratories
23 under section 20521(3).

24 (7) ~~(8)~~—In addition to the fees imposed under subsection
25 (1), a clinical laboratory shall submit a fee of \$25.00 to the
26 department for each reissuance during the licensure period of the
27 clinical laboratory's license.

1 (8) ~~(9)~~—The cost of licensure activities shall be supported
2 by license fees.

3 (9) ~~(10)~~ The application fee for a waiver under section
4 21564 is \$200.00 plus \$40.00 per hour for the professional
5 services and travel expenses directly related to processing the
6 application. The travel expenses shall be calculated in
7 accordance with the state standardized travel regulations of the
8 department of technology, management, and budget in effect at the
9 time of the travel.

10 (10) ~~(11)~~—An applicant for licensure or renewal of licensure
11 under part 209 shall pay the applicable fees set forth in part
12 209.

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

19 (12) ~~(13)~~—The quality assurance assessment collected under
20 subsection (1)(g) and all federal matching funds attributed to
21 that assessment shall be used only for the following purposes and
22 under the following specific circumstances:

23 (a) The quality assurance assessment and all federal
24 matching funds attributed to that assessment shall be used to
25 finance ~~medicaid~~ **MEDICAID** nursing home reimbursement payments.
26 Only licensed nursing homes and hospital long-term care units
27 that are assessed the quality assurance assessment and

1 participate in the ~~medicaid~~**MEDICAID** program are eligible for
2 increased per diem ~~medicaid~~**MEDICAID** reimbursement rates under
3 this subdivision. A nursing home or long-term care unit that is
4 assessed the quality assurance assessment and that does not pay
5 the assessment required under subsection (1)(g) in accordance
6 with subdivision (c)(i) or in accordance with a written payment
7 agreement with the state shall not receive the increased per diem
8 ~~medicaid~~**MEDICAID** reimbursement rates under this subdivision
9 until all of its outstanding quality assurance assessments and
10 any penalties assessed pursuant to subdivision (f) have been paid
11 in full. Nothing in this subdivision shall be construed to
12 authorize or require the department to overspend tax revenue in
13 violation of the management and budget act, 1984 PA 431, MCL
14 18.1101 to 18.1594.

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

24 (c) Within 30 days after September 30, 2005, the department
25 shall submit an application to the federal ~~centers~~**CENTERS** for
26 ~~medicare~~**MEDICARE** and ~~medicaid services~~**MEDICAID SERVICES** to
27 request a waiver pursuant to 42 CFR 433.68(e) to implement this

1 subdivision as follows:

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

27 (ii) If the waiver is approved, continuing care retirement

1 centers are exempt from the quality assurance assessment if the
2 continuing care retirement center requires each center resident
3 to provide an initial life interest payment of \$150,000.00, on
4 average, per resident to ensure payment for that resident's
5 residency and services and the continuing care retirement center
6 utilizes all of the initial life interest payment before the
7 resident becomes eligible for medical assistance under the
8 state's ~~medicaid~~**MEDICAID** plan. As used in this subparagraph,
9 "continuing care retirement center" means a nursing care facility
10 that provides independent living services, assisted living
11 services, and nursing care and medical treatment services, in a
12 campus-like setting that has shared facilities or common areas,
13 or both.

14 (d) Beginning May 10, 2002, the department of community
15 health shall increase the per diem nursing home ~~medicaid~~**MEDICAID**
16 reimbursement rates for the balance of that year. For each
17 subsequent year in which the quality assurance assessment is
18 assessed and collected, the department of community health shall
19 maintain the ~~medicaid~~**MEDICAID** nursing home reimbursement payment
20 increase financed by the quality assurance assessment.

21 (e) The department of community health shall implement this
22 section in a manner that complies with federal requirements
23 necessary to assure that the quality assurance assessment
24 qualifies for federal matching funds.

25 (f) If a nursing home or a hospital long-term care unit
26 fails to pay the assessment required by subsection (1)(g), the
27 department of community health may assess the nursing home or

1 hospital long-term care unit a penalty of 5% of the assessment
2 for each month that the assessment and penalty are not paid up to
3 a maximum of 50% of the assessment. The department of community
4 health may also refer for collection to the department of
5 treasury past due amounts consistent with section 13 of 1941 PA
6 122, MCL 205.13.

7 (g) The ~~medicaid~~**MEDICAID** nursing home quality assurance
8 assessment fund is established in the state treasury. The
9 department of community health shall deposit the revenue raised
10 through the quality assurance assessment with the state treasurer
11 for deposit in the ~~medicaid~~**MEDICAID** nursing home quality
12 assurance assessment fund.

13 (h) The department of community health shall not implement
14 this subsection in a manner that conflicts with 42 USC 1396b(w).

15 (i) The quality assurance assessment collected under
16 subsection (1)(g) shall be prorated on a quarterly basis for any
17 licensed beds added to or subtracted from a nursing home or
18 hospital long-term care unit since the immediately preceding July
19 1. Any adjustments in payments are due on the next quarterly
20 installment due date.

21 (j) In each fiscal year governed by this subsection,
22 ~~medicaid~~**MEDICAID** reimbursement rates shall not be reduced below
23 the ~~medicaid~~**MEDICAID** reimbursement rates in effect on April 1,
24 2002 as a direct result of the quality assurance assessment
25 collected under subsection (1)(g).

26 (k) The state retention amount of the quality assurance
27 assessment collected pursuant to subsection (1)(g) shall be equal

1 to 13.2% of the federal funds generated by the nursing homes and
2 hospital long-term care units quality assurance assessment,
3 including the state retention amount. The state retention amount
4 shall be appropriated each fiscal year to the department of
5 community health to support ~~medicaid~~**MEDICAID** expenditures for
6 long-term care services. These funds shall offset an identical
7 amount of general fund/general purpose revenue originally
8 appropriated for that purpose.

9 (l) Beginning October 1, 2015, the department shall no longer
10 assess or collect the quality assurance assessment or apply for
11 federal matching funds. The quality assurance assessment
12 collected under subsection (1)(g) shall no longer be assessed or
13 collected after September 30, 2011, in the event that the quality
14 assurance assessment is not eligible for federal matching funds.
15 Any portion of the quality assurance assessment collected from a
16 nursing home or hospital long-term care unit that is not eligible
17 for federal matching funds shall be returned to the nursing home
18 or hospital long-term care unit.

19 (13) ~~(14)~~The quality assurance dedication is an earmarked
20 assessment collected under subsection (1)(h). That assessment and
21 all federal matching funds attributed to that assessment shall be
22 used only for the following purpose and under the following
23 specific circumstances:

24 (a) To maintain the increased ~~medicaid~~**MEDICAID**
25 reimbursement rate increases as provided for in subdivision (c).

26 (b) The quality assurance assessment shall be assessed on
27 all net patient revenue, before deduction of expenses, less

1 ~~medicare~~**MEDICARE** net revenue, as reported in the most recently
2 available ~~medicare~~**MEDICARE** cost report and is payable on a
3 quarterly basis, the first payment due 90 days after the date the
4 assessment is assessed. As used in this subdivision, "~~medicare~~
5 **MEDICARE** net revenue" includes ~~medicare~~**MEDICARE** payments and
6 amounts collected for coinsurance and deductibles.

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

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

18 (e) If a hospital fails to pay the assessment required by
19 subsection (1)(h), the department of community health may assess
20 the hospital a penalty of 5% of the assessment for each month
21 that the assessment and penalty are not paid up to a maximum of
22 50% of the assessment. The department of community health may
23 also refer for collection to the department of treasury past due
24 amounts consistent with section 13 of 1941 PA 122, MCL 205.13.

25 (f) The hospital quality assurance assessment fund is
26 established in the state treasury. The department of community
27 health shall deposit the revenue raised through the quality

1 assurance assessment with the state treasurer for deposit in the
2 hospital quality assurance assessment fund.

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

11 (h) The quality assurance assessment collected under
12 subsection (1)(h) shall no longer be assessed or collected after
13 September 30, 2011 in the event that the quality assurance
14 assessment is not eligible for federal matching funds. Any
15 portion of the quality assurance assessment collected from a
16 hospital that is not eligible for federal matching funds shall be
17 returned to the hospital.

18 (i) The state retention amount of the quality assurance
19 assessment collected pursuant to subsection (1)(h) shall be equal
20 to 13.2% of the federal funds generated by the hospital quality
21 assurance assessment, including the state retention amount. The
22 state retention percentage shall be applied proportionately to
23 each hospital quality assurance assessment program to determine
24 the retention amount for each program. The state retention amount
25 shall be appropriated each fiscal year to the department of
26 community health to support ~~medicaid~~**MEDICAID** expenditures for
27 hospital services and therapy. These funds shall offset an

1 identical amount of general fund/general purpose revenue
2 originally appropriated for that purpose.

3 (14) ~~(15)~~The quality assurance assessment provided for
4 under this section is a tax that is levied on a health facility
5 or agency.

6 (15) ~~(16)~~As used in this section, "~~medicaid~~" "**MEDICAID**"
7 means ~~that term as defined in section 22207. A PROGRAM FOR~~
8 **MEDICAL ASSISTANCE ESTABLISHED UNDER TITLE XIX OF THE SOCIAL**
9 **SECURITY ACT, 42 USC 1396 TO 1396W-5, AND ADMINISTERED BY THE**
10 **DEPARTMENT UNDER THE SOCIAL WELFARE ACT, 1939 PA 280, MCL 400.1**
11 **TO 400.119B.**

12 Sec. 20164. (1) A license, certification, provisional
13 license, or limited license is valid for not more than 1 year
14 after the date of issuance, except as provided in section 20511
15 or part 209. ~~or 210.~~A license for a facility licensed under part
16 215 ~~shall be~~ **IS** valid for 2 years, except that provisional and
17 limited licenses may be valid for 1 year.

18 (2) A license ~~, OR certification, or certificate of need is~~
19 not transferable and shall state the persons, buildings, and
20 properties to which it applies. ~~Applications for licensure or~~
21 ~~certification because of transfer of ownership or essential~~
22 ~~ownership interest shall not be acted upon until satisfactory~~
23 ~~evidence is provided of compliance with part 222.~~

24 (3) If ownership is not voluntarily transferred, the
25 department shall be notified immediately and the new owner shall
26 apply for a license and certification not later than 30 days
27 after the transfer.

1 Sec. 20165. (1) Except as otherwise provided in this
2 section, after notice of intent to an applicant or licensee to
3 deny, limit, suspend, or revoke the applicant's or licensee's
4 license or certification and an opportunity for a hearing, the
5 department may deny, limit, suspend, or revoke the license or
6 certification or impose an administrative fine on a licensee if 1
7 or more of the following exist:

8 (a) Fraud or deceit in obtaining or attempting to obtain a
9 license or certification or in the operation of the licensed
10 health facility or agency.

11 (b) A violation of this article or a rule promulgated under
12 this article.

13 (c) False or misleading advertising.

14 (d) Negligence or failure to exercise due care, including
15 negligent supervision of employees and subordinates.

16 (e) Permitting a license or certificate to be used by an
17 unauthorized health facility or agency.

18 (f) Evidence of abuse regarding a patient's health, welfare,
19 or safety or the denial of a patient's rights.

20 (g) Failure to comply with section 10115.

21 (h) Failure to comply with **FORMER** part 222 or a term,
22 condition, or stipulation of a certificate of need issued under
23 **FORMER** part 222, or both. **THIS SUBDIVISION ONLY APPLIES TO A**
24 **FAILURE TO COMPLY THAT OCCURRED BEFORE THE EFFECTIVE DATE OF THE**
25 **AMENDATORY ACT THAT REPEALED PART 222.**

26 (i) A violation of section 20197(1).

27 (2) The department may deny an application for a license or

1 certification based on a finding of a condition or practice that
2 would constitute a violation of this article if the applicant
3 were a licensee.

4 (3) Denial, suspension, or revocation of an individual
5 emergency medical services personnel license under part 209 is
6 governed by section 20958.

7 (4) If the department determines under subsection (1) that a
8 health facility or agency has violated section 20197(1), the
9 department shall impose an administrative fine of \$5,000,000.00
10 on the health facility or agency.

11 Sec. 20166. (1) Notice of intent to deny, limit, suspend, or
12 revoke a license or certification shall be given by certified
13 mail or personal service, shall set forth the particular reasons
14 for the proposed action, and shall fix a date, not less ~~that~~**THAN**
15 30 days after the date of service, on which the applicant or
16 licensee shall be given the opportunity for a hearing before the
17 director or the director's authorized representative. The hearing
18 shall be conducted in accordance with the administrative
19 procedures act of 1969 and rules promulgated by the department. A
20 full and complete record shall be kept of the proceeding and
21 shall be transcribed when requested by an interested party, who
22 shall pay the cost of preparing the transcript.

23 (2) On the basis of a hearing or on the default of the
24 applicant or licensee, the department may issue, deny, limit,
25 suspend, or revoke a license or certification. A copy of the
26 determination shall be sent by certified mail or served
27 personally upon the applicant or licensee. The determination

1 becomes final 30 days after it is mailed or served, unless the
2 applicant or licensee within the 30 days appeals the decision to
3 the circuit court in the county of jurisdiction or to the Ingham
4 ~~county~~**COUNTY** circuit court.

5 (3) The department may establish procedures, hold hearings,
6 administer oaths, issue subpoenas, or order testimony to be taken
7 at a hearing or by deposition in a proceeding pending at any
8 stage of the proceeding. A person may be compelled to appear and
9 testify and to produce books, papers, or documents in a
10 proceeding.

11 (4) In case of disobedience of a subpoena, a party to a
12 hearing may invoke the aid of the circuit court of the
13 jurisdiction in which the hearing is held to require the
14 attendance and testimony of witnesses. The circuit court may
15 issue an order requiring an individual to appear and give
16 testimony. Failure to obey the order of the circuit court may be
17 punished by the court as a contempt.

18 (5) The department shall not deny, limit, suspend, or revoke
19 a license on the basis of an applicant's or licensee's failure to
20 show a need for a health facility or agency unless the health
21 facility or agency ~~has~~**DID** not ~~obtained~~**OBTAIN** a certificate of
22 need **AS** required by **FORMER** part 222.

23 Sec. 20511. (1) A clinical laboratory shall be licensed
24 under this article.

25 (2) A license shall authorize specific categories of
26 procedures ~~which~~**THAT** the clinical laboratory may perform.

27 (3) A license shall contain on its face the name of the

1 owner of the clinical laboratory, the name of the laboratory
 2 director, the categories of laboratory procedures authorized to
 3 be performed in the clinical laboratory, and the location at
 4 which the procedures may be performed.

5 (4) The license and laboratory director's certificate of
 6 qualification, if required, shall be displayed at all times in a
 7 prominent place in the clinical laboratory.

8 (5) A clinical laboratory license is valid for not more than
 9 2 years after the date of issuance. ~~Except where~~ **UNLESS** the
 10 department has entered into agreements **TO ACCEPT VOLUNTARY**
 11 **INSPECTIONS** as provided in ~~section 20155(5),~~ **20155(18)**, the
 12 department shall make at least biennial visits to clinical
 13 laboratories for the purposes of survey, evaluation, and
 14 consultation. The department shall conduct licensing and
 15 inspection activities in such a manner as to maximize discovery
 16 of changes in laboratory personnel and operations and to take
 17 advantage of **VOLUNTARY** inspections by ~~voluntary~~ accrediting
 18 ~~organizations.~~ **BODIES.**

19 Sec. 21551. (1) A hospital licensed under this article and
 20 located in a nonurbanized area may apply to the department to
 21 temporarily delicense not more than 50% of its licensed beds for
 22 not more than 5 years.

23 (2) A hospital that is granted a temporary delicensure of
 24 beds under subsection (1) may apply to the department for an
 25 extension of temporary delicensure for those beds for up to an
 26 additional 5 years to the extent that the hospital actually ~~met~~
 27 ~~the requirements of~~ **USED THE DELICENSED BEDS AS DESCRIBED IN**

1 subsection (6) during the initial period of delicensure granted
2 under subsection (1). ~~The department shall grant an extension~~
3 ~~under this subsection unless the department determines under part~~
4 ~~222 that there is a demonstrated need for the delicensed beds in~~
5 ~~the subarea in which the hospital is located.~~ If the department
6 does not grant an extension under this subsection, the hospital
7 shall request relicensure of the beds pursuant to subsection (7)
8 or allow the beds to become permanently delicensed pursuant to
9 subsection (8).

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

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

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

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

27 (c) The alternative use proposed for the space occupied by

1 the beds to be delicensed.

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

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

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

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

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

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

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

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

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

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

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

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

24 ~~(9) The department shall continue to count beds temporarily~~
25 ~~delicensed under this section in the department's bed inventory~~
26 ~~for purposes of determining hospital bed need under part 222 in~~
27 ~~the subarea in which the beds are located. The department shall~~

1 indicate in the bed inventory which beds are licensed and which
 2 beds are ~~temporary~~ **TEMPORARILY** delicensed under this section. The
 3 department shall not include a hospital's temporarily delicensed
 4 beds in the hospital's licensed bed count.

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

8 (10) ~~(11)~~ A hospital that has beds that are subject to a
 9 hospital bed reduction plan or to a department action to enforce
 10 this article shall not use beds temporarily delicensed under this
 11 section to comply with the bed reduction plan.

12 (11) ~~(12)~~ As used in this section:

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

15 (i) Had a negative population change from 1970 to the date of
 16 the 1980 federal decennial census.

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

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

21 (iv) Was eligible for an urban development action grant from
 22 the United States ~~department~~ **DEPARTMENT** of ~~housing~~ **HOUSING** and
 23 ~~urban development~~ **URBAN DEVELOPMENT** in 1984 and was listed in 49
 24 F.R. No. 28 (February 9, 1984) or 49 F.R. No. 30 (February 13,
 25 1984).

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

1 (b) "Indigent volume" means the ratio of a hospital's
2 indigent charges to its total charges expressed as a percentage
3 as determined by the department of social services after November
4 12, 1990, pursuant to chapter 8 of the department of social
5 services guidelines entitled "medical assistance program manual".

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

8 (d) "Urbanized area" means that term as defined by the
9 ~~office~~**OFFICE** of ~~federal statistical policy~~**FEDERAL STATISTICAL**
10 **POLICY** and ~~standards~~**STANDARDS** of the United States ~~department~~
11 **DEPARTMENT** of ~~commerce~~**COMMERCE** in the appendix entitled "general
12 procedures and definitions", 45 F.R. p. 962 (January 3, 1980),
13 which document is incorporated by reference.

14 Sec. 21563. (1) The department, in consultation with the ad
15 hoc advisory committee appointed under section 21562, shall
16 promulgate rules for designation of a rural community hospital,
17 maximum number of beds, and the services provided by a rural
18 community hospital. The director shall submit proposed rules,
19 based on the recommendations of the committee, for public hearing
20 not later than 6 months after receiving the report under section
21 21562(5).

22 (2) The designation as a rural community hospital shall be
23 shown on a hospital's license and shall be for the same term as
24 the hospital license. Except as otherwise expressly provided in
25 this part or in rules promulgated under this section, a rural
26 community hospital shall be licensed and regulated in the same
27 manner as a hospital otherwise licensed under this article. ~~The~~

1 ~~provisions of part 222 applicable to hospitals also apply to a~~
2 ~~rural community hospital and to a hospital designated by the~~
3 ~~department under federal law as an essential access community~~
4 ~~hospital or a rural primary care hospital.~~ This part and the
5 rules promulgated under this part do not preclude the
6 establishment of differential reimbursement for rural community
7 hospitals, essential access community hospitals, and rural
8 primary care hospitals.

9 Enacting section 1. The following acts and parts of acts are
10 repealed:

11 (a) Section 20143 of the public health code, 1978 PA 368,
12 MCL 333.20143.

13 (b) Section 21420 of the public health code, 1978 PA 368,
14 MCL 333.21420.

15 (c) Part 222 of the public health code, 1978 PA 368, MCL
16 333.22201 to 333.22260.

17 (d) Section 8t of 1945 PA 47, MCL 331.8t.

18 (e) Section 47 of the hospital finance authority act, 1969
19 PA 38, MCL 331.77.

20 Enacting section 2. This amendatory act takes effect 90 days
21 after the date it is enacted into law.