

**SUBSTITUTE FOR
HOUSE BILL NO. 5609**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 20102, 20104, 20109, 20115, 20155, 20161,
20164, 20171, 21734, 21763, 21764, 21771, 21794, and 21799b (MCL
333.20102, 333.20104, 333.20109, 333.20115, 333.20155, 333.20161,
333.20164, 333.20171, 333.21734, 333.21763, 333.21764, 333.21771,
333.21794, and 333.21799b), section 20102 as amended by 2010 PA
381, sections 20104, 20155, and 21734 as amended by 2015 PA 155,
section 20109 as amended by 2015 PA 156, section 20115 as amended
by 2012 PA 499, section 20161 as amended by 2020 PA 169, section
20164 as amended by 1990 PA 179, section 20171 as amended by 2014
PA 449, section 21763 as amended by 1996 PA 546, section 21771 as
amended by 2012 PA 174, section 21794 as added by 2014 PA 529, and

section 21799b as amended by 2000 PA 437, and by adding part 221; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

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

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

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

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

25 (2) "Consumer" means a person who is not a health care
26 provider as **that term is** defined in ~~section 300jj of title 15 of~~

1 ~~the public health service act,~~ 42 USC 300jj.

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

7 (4) "Department" means the department of licensing and
8 regulatory affairs.

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

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

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

22 (8) "Good moral character" means that term as defined in,
23 ~~section 1 of 1974 PA 381, MCL 338.41.~~ **and determined under, 1974 PA**
24 **381, MCL 338.41 to 338.47.**

25 Sec. 20109. (1) "Nursing home" means a nursing care facility,
26 including a county medical care facility, that provides organized
27 nursing care and medical treatment to 7 or more unrelated
28 individuals suffering or recovering from illness, injury, or
29 infirmity. As used in this subsection, "medical treatment" includes

1 treatment by an employee or independent contractor of the nursing
 2 home who is an individual licensed or otherwise authorized to
 3 engage in a health profession under part 170 or 175. Nursing home
 4 does not include any of the following:

5 (a) A unit in a state correctional facility.

6 (b) A hospital.

7 (c) A veterans facility created under **former** 1885 PA 152. ~~7~~
 8 ~~MCL 36.1 to 36.12.~~

9 (d) A hospice residence that is licensed under this article.

10 (e) A hospice that is certified under 42 CFR 418.100.

11 (2) "Person" means that term as defined in section 1106 or a
 12 governmental entity.

13 ~~(3) "Public member" means a member of the general public who~~
 14 ~~is not a provider; who does not have an ownership interest in or~~
 15 ~~contractual relationship with a nursing home other than a resident~~
 16 ~~contract; who does not have a contractual relationship with a~~
 17 ~~person who does substantial business with a nursing home; and who~~
 18 ~~is not the spouse, parent, sibling, or child of an individual who~~
 19 ~~has an ownership interest in or contractual relationship with a~~
 20 ~~nursing home, other than a resident contract.~~

21 **(3)** ~~(4)~~ "Skilled nursing facility" means a hospital long-term
 22 care unit, nursing home, county medical care facility, or other
 23 nursing care facility, or a distinct part thereof, certified by the
 24 department to provide skilled nursing care.

25 Sec. 20115. (1) The department may promulgate rules to further
 26 define the term "health facility or agency" and the definition of a
 27 health facility or agency listed in section 20106 as required to
 28 implement this article. The department may define a specific
 29 organization as a health facility or agency for the sole purpose of

1 certification authorized under this article. For purpose of
2 certification only, an organization ~~defined in section 20106(5),~~
3 ~~20108(1), or 20109(4)~~ **that is a hospital, intermediate care**
4 **facility, or skilled nursing facility** is considered a health
5 facility or agency. The term "health facility or agency" does not
6 mean a visiting nurse service or home aide service conducted by and
7 for the adherents of a church or religious denomination for the
8 purpose of providing service for those who depend upon spiritual
9 means through prayer alone for healing.

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

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

29 (4) Subject to section 20145 and part 222, the department may

1 modify or waive 1 or more of the rules contained in former R
2 325.3801 to R 325.3877 of the Michigan ~~administrative code~~
3 **Administrative Code** regarding construction or equipment standards,
4 or both, for a freestanding surgical outpatient facility that
5 performs 120 or more surgical abortions per year and that publicly
6 advertises outpatient abortion services, if both of the following
7 conditions are met:

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

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

19 (5) By January 15 each year, the department of ~~community~~
20 health **and human services** shall provide the following information
21 to the department: ~~of licensing and regulatory affairs:~~

22 (a) From data received by the department of ~~community~~ health
23 **and human services** through the abortion reporting requirements of
24 section 2835, all of the following:

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

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

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

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

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

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

5 (3) The department shall perform a criminal history check on
6 all nursing home surveyors in the manner provided for in section
7 20173a.

8 (4) A member of a survey team must not be employed by a
9 licensed nursing home or a nursing home management company doing
10 business in this state at the time of conducting a survey under
11 this section. The department shall not assign an individual to be a
12 member of a survey team for purposes of a survey, evaluation, or
13 consultation visit at a nursing home in which he or she was an
14 employee within the preceding 3 years.

15 (5) The department shall invite representatives from all
16 nursing home provider organizations and the state long-term care
17 ombudsman or his or her designee to participate in the planning
18 process for the joint provider and surveyor training sessions. The
19 department shall include at least 1 representative from nursing
20 home provider organizations that do not own or operate a nursing
21 home representing 30 or more nursing homes statewide in internal
22 surveyor group quality assurance training provided for the purpose
23 of general clarification and interpretation of existing or new
24 regulatory requirements and expectations.

25 (6) The department shall make available online the general
26 civil service position description related to the required
27 qualifications for individual surveyors. The department shall use
28 the required qualifications to hire, educate, develop, and evaluate
29 surveyors.

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

7 **(7)** ~~(8)~~—The department shall semiannually provide for joint
8 training with nursing home surveyors and providers on at least 1 of
9 the 10 most frequently issued federal citations in this state
10 during the past calendar year. The department shall develop a
11 protocol for the review of citation patterns compared to regional
12 outcomes and standards and complaints regarding the nursing home
13 survey process. ~~The department shall include the review under this~~
14 ~~subsection in the report required under subsection (20).~~ Except as
15 otherwise provided in this subsection, each member of a department
16 nursing home survey team who is a health professional licensee
17 under article 15 shall earn not less than 50% of his or her
18 required continuing education credits, if any, in geriatric care.
19 If a member of a nursing home survey team is a pharmacist licensed
20 under article 15, he or she shall earn not less than 30% of his or
21 her required continuing education credits in geriatric care.

22 **(8)** ~~(9)~~—Subject to subsection ~~(12)~~, **(11)**, the department may
23 waive the visit required by subsection (1) if a health facility or
24 agency, requests a waiver and submits the following as applicable
25 and if all of the requirements of subsection ~~(11)~~ **(10)** are met:

26 (a) Evidence that it is currently fully accredited by a body
27 with expertise in the health facility or agency type and the
28 accrediting organization is accepted by the United States
29 Department of Health and Human Services for purposes of ~~section~~

1 ~~1865 of the social security act,~~ 42 USC 1395bb.

2 (b) A copy of the most recent accreditation report, or
 3 executive summary, issued by a body described in subdivision (a),
 4 and the health facility's or agency's responses to the
 5 accreditation report is submitted to the department at least 30
 6 days from license renewal. Submission of an executive summary does
 7 not prevent or prohibit the department from requesting the entire
 8 accreditation report if the department considers it necessary.

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

15 (9) ~~(10)~~ Except as otherwise provided in subsection ~~(14),~~
 16 **(13)**, accreditation information provided to the department under
 17 subsection ~~(9)~~ **(8)** is confidential, is not a public record, and is
 18 not subject to court subpoena. The department shall use the
 19 accreditation information only as provided in this section and
 20 properly destroy the documentation after a decision on the waiver
 21 request is made.

22 **(10)** ~~(11)~~ The department shall grant a waiver under subsection
 23 ~~(9)~~ **(8)** if the accreditation report submitted under subsection
 24 ~~(9)(b)~~ **(8)(b)** is less than 3 years old or the **most recent** standard
 25 federal **certification** survey **under part 221** submitted under
 26 subsection ~~(9)(c)~~ is less than 15 months old and there is no
 27 indication of ~~(8)(c)~~ **shows** substantial noncompliance with licensure
 28 standards or of deficiencies that represent a threat to public
 29 safety or patient care. **compliance or an accepted plan of**

1 **correction, if applicable.** If the accreditation report ~~or standard~~
 2 ~~federal survey~~ is too old, the department may deny the waiver
 3 request and conduct the visits required under subsection ~~(9)~~. **(8)**.
 4 Denial of a waiver request by the department is not subject to
 5 appeal.

6 **(11)** ~~(12)~~ This section does not prohibit the department from
 7 citing a violation of this part during a survey, conducting
 8 investigations or inspections according to section 20156, or
 9 conducting surveys of health facilities or agencies for the purpose
 10 of complaint investigations. ~~or federal certification.~~ This section
 11 does not prohibit the bureau of fire services created in section 1b
 12 of the fire prevention code, 1941 PA 207, MCL 29.1b, from
 13 conducting annual surveys of hospitals, nursing homes, and county
 14 medical care facilities.

15 **(12)** ~~(13)~~ At the request of a health facility or agency **other**
 16 **than a health facility or agency defined in section 20106(1)(a),**
 17 **(d), (h), and (i),** the department may conduct a consultation
 18 engineering survey of ~~a~~ **that** health facility **or agency** and provide
 19 professional advice and consultation regarding ~~health facility~~
 20 construction and design. A health facility or agency may request a
 21 voluntary consultation survey under this subsection at any time
 22 between licensure surveys. The fees for a consultation engineering
 23 survey are the same as the fees established for waivers under
 24 section 20161(8).

25 **(13)** ~~(14)~~ If the department determines that substantial
 26 noncompliance with licensure standards exists or that deficiencies
 27 that represent a threat to public safety or patient care exist
 28 based on a review of an accreditation report submitted under
 29 subsection ~~(9)(b)~~, **(8)(b)**, the department shall prepare a written

1 summary of the substantial noncompliance or deficiencies and the
2 health facility's or agency's response to the department's
3 determination. The department's written summary and the health
4 facility's or agency's response are public documents.

5 (14) ~~(15)~~—The department or a local health department shall
6 conduct investigations or inspections, other than inspections of
7 financial records, of a county medical care facility, home for the
8 aged, nursing home, or hospice residence without prior notice to
9 the health facility or agency. An employee of a state agency
10 charged with investigating or inspecting the health facility or
11 agency or an employee of a local health department who directly or
12 indirectly gives prior notice regarding an investigation or an
13 inspection, other than an inspection of the financial records, to
14 the health facility or agency or to an employee of the health
15 facility or agency, is guilty of a misdemeanor. Consultation visits
16 that are not for the purpose of annual or follow-up inspection or
17 survey may be announced.

18 ~~(16) The department shall maintain a record indicating whether~~
19 ~~a visit and inspection is announced or unannounced. Survey findings~~
20 ~~gathered at each health facility or agency during each visit and~~
21 ~~inspection, whether announced or unannounced, shall be taken into~~
22 ~~account in licensure decisions.~~

23 (15) ~~(17)~~—The department shall require periodic reports and a
24 health facility or agency shall give the department access to
25 books, records, and other documents maintained by a health facility
26 or agency to the extent necessary to carry out the purpose of this
27 article and the rules promulgated under this article. The
28 department shall not divulge or disclose the contents of the
29 patient's clinical records in a manner that identifies an

1 individual except under court order. The department may copy health
 2 facility or agency records as required to document findings.
 3 Surveyors shall use electronic resident information, whenever
 4 available, as a source of survey-related data and shall request
 5 ~~facility~~**the assistance of a health facility or agency** to access
 6 the system to maximize data export.

7 **(16)** ~~(18)~~—The department may delegate survey, evaluation, or
 8 consultation functions to another state agency or to a local health
 9 department qualified to perform those functions. The department
 10 shall not delegate survey, evaluation, or consultation functions to
 11 a local health department that owns or operates a hospice or
 12 hospice residence licensed under this article. The department shall
 13 delegate under this subsection by cost reimbursement contract
 14 between the department and the state agency or local health
 15 department. The department shall not delegate survey, evaluation,
 16 or consultation functions to nongovernmental agencies, except as
 17 provided in this section. The **licensee and the department must both**
 18 **agree to the** voluntary inspection described in this subsection.
 19 ~~must be agreed upon by both the licensee and the department.~~

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

26 ~~(20) The department may consolidate all information provided~~
 27 ~~for any report required under this section and section 20155a into~~
 28 ~~a single report. The department shall report to the appropriations~~
 29 ~~subcommittees, the senate and house of representatives standing~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 ~~(o) The percent of first revisits that were completed within~~
8 ~~60 days from the date of survey completion.~~

9 ~~(p) The percent of second revisits that were completed within~~
10 ~~85 days from the date of survey completion.~~

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

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

16 ~~(s) The number of nursing homes that participated in a~~
17 ~~recognized quality improvement program as described under section~~
18 ~~20155a(3).~~

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

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

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

28 ~~(c) A summary of the quality assurance review of the amended~~
29 ~~citations and related survey retraining efforts to improve~~

1 ~~consistency among surveyors and across the survey administrative~~
 2 ~~unit that occurred in the year being reported.~~

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

12 ~~(a) Immediate jeopardy.~~

13 ~~(b) Harm.~~

14 ~~(c) Potential harm.~~

15 ~~(d) Avoidable.~~

16 ~~(e) Unavoidable.~~

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

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

25 ~~(b) The likelihood of immediate jeopardy is reasonably higher~~
 26 ~~if there is evidence of a flagrant failure by the nursing home to~~
 27 ~~comply with a peer-reviewed, evidence-based, nationally recognized~~
 28 ~~clinical process guideline than if the nursing home has~~
 29 ~~substantially and continuously complied with peer-reviewed,~~

1 ~~evidence-based, nationally recognized guidelines. If federal~~
2 ~~regulations and guidelines are not clear, and if the clinical~~
3 ~~process guidelines have been recognized, a process failure giving~~
4 ~~rise to an immediate jeopardy may involve an egregious widespread~~
5 ~~or repeated process failure and the absence of reasonable efforts~~
6 ~~to detect and prevent the process failure.~~

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

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

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

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

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

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

25 ~~(d) The existence of 1 or more of the factors described in~~
26 ~~subdivision (c), and especially the existence of 3 or more of those~~
27 ~~factors simultaneously, may lead to a conclusion that the situation~~
28 ~~is one in which the nursing home's practice makes adverse events~~
29 ~~likely to occur if immediate intervention is not undertaken, and~~

1 ~~therefore constitutes immediate jeopardy. If none of the factors~~
2 ~~described in subdivision (c) is present, the situation may involve~~
3 ~~harm or potential harm that is not immediate jeopardy.~~

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

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

23 ~~(g) For purposes of subdivision (c), if the publications~~
24 ~~described in subdivision (f) do not provide specific guidance, the~~
25 ~~department may consider the degree of a nursing home's adherence to~~
26 ~~a peer-reviewed, evidence-based, nationally recognized clinical~~
27 ~~process guideline in considering whether the degree of compromise~~
28 ~~and future risk to the resident constitutes actual harm. The risk~~
29 ~~of significant compromise to the resident may be considered greater~~

1 ~~in the context of substantial deviation from the guidelines than in~~
 2 ~~the case of overall adherence.~~

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

16 ~~(18) (24)~~The department shall conduct a quarterly meeting and
 17 invite appropriate stakeholders. The department shall invite as
 18 appropriate stakeholders under this subsection at least 1
 19 representative from each nursing home provider organization that
 20 does not own or operate a nursing home representing 30 or more
 21 nursing homes statewide, the state long-term care ombudsman or his
 22 or her designee, and any other clinical experts. Individuals who
 23 participate in these quarterly meetings, jointly with the
 24 department, may designate advisory workgroups to develop
 25 recommendations on the discussion topics that should include, at a
 26 minimum, all of the following: **opportunities for enhanced promotion**
 27 **of nursing home performance, including, but not limited to,**
 28 **programs that encourage and reward nursing homes that strive for**
 29 **excellence.**

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

4 ~~(b) Seeking quality improvement to the survey and enforcement~~
5 ~~process, including clarifications to process-related policies and~~
6 ~~protocols that include, but are not limited to, all of the~~
7 ~~following:~~

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

9 ~~(ii) Enhanced communication between regulators, surveyors,~~
10 ~~providers, and consumers.~~

11 ~~(iii) Ensuring fair enforcement and dispute resolution by~~
12 ~~identifying methods or strategies that may resolve identified~~
13 ~~problems or concerns.~~

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

16 ~~(i) Applying regulations in a consistent manner and evaluating~~
17 ~~changes that have been implemented to resolve identified problems~~
18 ~~and concerns.~~

19 ~~(ii) Providing consumers with information regarding changes in~~
20 ~~policy and interpretation.~~

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

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

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

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

15 **(19)** ~~(26)~~ In an area of clinical practice that is not listed
 16 ~~in subsection (25), a~~ **A** nursing home may use peer-reviewed,
 17 evidence-based, nationally recognized clinical process guidelines
 18 or peer-reviewed, evidence-based, best-practice resources to
 19 develop and implement resident care policies and compliance
 20 protocols with measurable outcomes to promote performance
 21 excellence.

22 **(20)** ~~(27)~~The department shall consider recommendations from
 23 an advisory workgroup created under subsection ~~(24)~~. **(18)**. The
 24 department may include training on new and revised peer-reviewed,
 25 evidence-based, nationally recognized clinical process guidelines
 26 or peer-reviewed, evidence-based, best-practice resources, which
 27 contain measurable outcomes, in the joint provider and surveyor
 28 training sessions to assist provider efforts toward improved
 29 regulatory compliance and performance excellence and to foster a

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

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

16 ~~(29) The department shall maintain the process by which the~~
17 ~~director of the long term care division or his or her designee~~
18 ~~reviews and authorizes the issuance of a citation for immediate~~
19 ~~jeopardy or substandard quality of care before the statement of~~
20 ~~deficiencies is made final. The review must assure the consistent~~
21 ~~and accurate application of federal and state survey protocols and~~
22 ~~defined regulatory standards. As used in this subsection,~~
23 ~~"immediate jeopardy" and "substandard quality of care" mean those~~
24 ~~terms as defined by the federal Centers for Medicare and Medicaid~~
25 ~~Services.~~

26 ~~(30) Upon availability of funds, the department shall give~~
27 ~~grants, awards, or other recognition to nursing homes to encourage~~
28 ~~the rapid development and implementation of resident care policies~~
29 ~~and compliance protocols that are created from peer reviewed,~~

1 ~~evidence based, nationally recognized clinical process guidelines~~
2 ~~or peer reviewed, evidence based, best practice resources with~~
3 ~~measurable outcomes to promote performance excellence.~~

4 (21) ~~(31)~~A nursing home shall post the nursing home's survey
5 report in a conspicuous place within the nursing home for public
6 review.

7 (22) ~~(32)~~Nothing in this section limits the requirements of
8 related state and federal law.

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

10 ~~(a) "Consecutive days" means calendar days, but does not~~
11 ~~include Saturday, Sunday, or state or federally recognized~~
12 ~~holidays.~~

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

16 ~~(c) "Title XVIII" means title XVIII of the social security~~
17 ~~act, 42 USC 1395 to 1395III.~~

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

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

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

28 (b) Hospitals \$500.00 per facility license and
29 \$10.00 per licensed bed.

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

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

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

8 (f) Hospice residences \$500.00 per facility license and
 9 \$5.00 per licensed bed.

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

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

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

28 (2) If a hospital requests the department to conduct a
 29 certification survey for purposes of title XVIII or title XIX, the

1 hospital shall pay a license fee surcharge of \$23.00 per bed. As
2 used in this subsection: ~~,"title~~

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

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

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

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

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

24 (c) If required by the department, the applicant shall pay
25 \$1,000.00 for a certificate of need application that receives
26 expedited processing at the request of the applicant.

27 (d) The department shall charge a fee of \$500.00 to review any
28 letter of intent requesting or resulting in a waiver from
29 certificate of need review and any amendment request to an approved

1 certificate of need.

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

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

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

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

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

26 (7) The cost of licensure activities must be supported by
27 license fees.

28 (8) The application fee for a waiver under section 21564 is
29 \$200.00 plus \$40.00 per hour for the professional services and

1 travel expenses directly related to processing the application. The
2 travel expenses must be calculated in accordance with the state
3 standardized travel regulations of the department of technology,
4 management, and budget in effect at the time of the travel.

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

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

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

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

1 assessed under subdivision (f) have been paid in full. This
2 subdivision does not authorize or require the department to
3 overspend tax revenue in violation of the management and budget
4 act, 1984 PA 431, MCL 18.1101 to 18.1594.

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

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

18 (i) If the waiver is approved, the quality assurance assessment
19 rate for a nursing home or hospital long-term care unit with less
20 than 40 licensed beds or with the maximum number, or more than the
21 maximum number, of licensed beds necessary to secure federal
22 approval of the application is \$2.00 per non-Medicare patient day
23 of care provided within the immediately preceding year or a rate as
24 otherwise altered on the application for the waiver to obtain
25 federal approval. If the waiver is approved, for all other nursing
26 homes and long-term care units the quality assurance assessment
27 rate is to be calculated by dividing the total statewide maximum
28 allowable assessment permitted under subsection (1)(g) less the
29 total amount to be paid by the nursing homes and long-term care

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

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

26 (d) Beginning May 10, 2002, the department shall increase the
27 per diem nursing home Medicaid reimbursement rates for the balance
28 of that year. For each subsequent year in which the quality
29 assurance assessment is assessed and collected, the department

1 shall maintain the Medicaid nursing home reimbursement payment
2 increase financed by the quality assurance assessment.

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

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

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

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

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

28 (j) In each fiscal year governed by this subsection, Medicaid
29 reimbursement rates must not be reduced below the Medicaid

1 reimbursement rates in effect on April 1, 2002 as a direct result
2 of the quality assurance assessment collected under subsection
3 (1)(g).

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

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

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

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

29 (b) The quality assurance assessment must be assessed on all

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

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

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

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

24 (f) The hospital quality assurance assessment fund is
25 established in the state treasury. The department shall deposit the
26 revenue raised through the quality assurance assessment with the
27 state treasurer for deposit in the hospital quality assurance
28 assessment fund.

29 (g) In each fiscal year governed by this subsection, the

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

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

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

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

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

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

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

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

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

27 (e) Beginning November 1, 2020, and by November 1 of each year
28 thereafter, the department shall send a notification to each
29 ambulance operation that will be assessed the quality assurance

1 assessment authorized under this subsection during the year in
2 which the notification is sent.

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

5 (15) For the fiscal year ending September 30, 2020 only,
6 \$3,000,000.00 of the money in the certificate of need program is
7 transferred to and must be deposited into the general fund.

8 (16) As used in this section:

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

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

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

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

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

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

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

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

10 (a) Ownership.

11 (b) Reasonable disclosure of ownership interests in
12 proprietary corporations and of financial interests of trustees of
13 voluntary, nonprofit corporations and owners of proprietary
14 corporations and partnerships.

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

17 (d) Administration.

18 (e) Professional and nonprofessional staff, services, and
19 equipment appropriate to implement section 20141(3).

20 (f) Policies and procedures.

21 (g) Fiscal and medical audit.

22 (h) Utilization and quality control review.

23 (i) Physical plant including planning, construction,
24 functional design, sanitation, maintenance, housekeeping, and fire
25 safety.

26 (j) Arrangements for the continuing evaluation of the quality
27 of health care provided.

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

1 (4) The rules promulgated under section 21563 for the
2 designation of rural community hospitals may also specify all of
3 the following:

4 (a) Maximum bed size.

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

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

9 (5) Rules promulgated under this article are subject to
10 section 17 of the continuing care community disclosure act, **2014 PA**
11 **448**, MCL 554.917.

12 Sec. 21734. (1) Notwithstanding section 20201(2) *(l)*, a nursing
13 home shall give each resident who uses a hospital-type bed or the
14 resident's legal guardian, patient advocate, or other legal
15 representative the option of having bed rails. A nursing home shall
16 offer the option to new residents ~~upon~~**on** admission and to other
17 residents ~~upon~~**on** request. ~~Upon~~**On the** receipt of a request for bed
18 rails, the nursing home shall inform the resident or the resident's
19 legal guardian, patient advocate, or other legal representative of
20 alternatives to and the risks involved in using bed rails. A
21 resident or the resident's legal guardian, patient advocate, or
22 other legal representative has the right to request and consent to
23 bed rails for the resident. A nursing home shall provide bed rails
24 to a resident only ~~upon~~**on the** receipt of a signed consent form
25 authorizing bed rail use and a written order from the resident's
26 attending physician that contains statements and determinations
27 regarding medical symptoms and that specifies the circumstances
28 under which bed rails are to be used. For purposes of this
29 subsection, "medical symptoms" includes the following:

- 1 (a) A concern for the physical safety of the resident.
- 2 (b) Physical or psychological need expressed by a resident. A
- 3 resident's fear of falling may be the basis of a medical symptom.
- 4 (2) A nursing home that provides bed rails under subsection
- 5 (1) shall do all of the following:
 - 6 (a) Document that the requirements of subsection (1) have been
 - 7 met.
 - 8 (b) Monitor the resident's use of the bed rails.
 - 9 (c) In consultation with the resident, resident's family,
 - 10 resident's attending physician, and individual who consented to the
 - 11 bed rails, periodically reevaluate the resident's need for the bed
 - 12 rails.
- 13 (3) The department shall maintain clear and uniform peer-
- 14 reviewed, evidence-based, best-practice resources to be used in
- 15 determining what constitutes each of the following:
 - 16 (a) Acceptable bed rails for use in a nursing home in this
 - 17 state. The department shall consider the recommendations of the
 - 18 hospital bed safety work group established by the United States
 - 19 Food and Drug Administration, if those are available, in
 - 20 determining what constitutes an acceptable bed rail.
 - 21 (b) Proper maintenance of bed rails.
 - 22 (c) Properly fitted mattresses.
 - 23 (d) Other hazards created by improperly positioned bed rails,
 - 24 mattresses, or beds.
- 25 (4) The department shall maintain the peer-reviewed, evidence-
- 26 based, best-practice resources under subsection (3) in consultation
- 27 with the long-term care stakeholders work group established under
- 28 section ~~20155(24)~~. **20155(18)** .
- 29 (5) A nursing home that complies with subsections (1) and (2)

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

9 Sec. 21763. (1) A nursing home shall permit a representative
10 of an approved organization, who is known by the nursing home
11 administration to be authorized to represent the organization or
12 who carries identification showing that the representative is
13 authorized to represent the organization, a family member of a
14 patient, or a legal representative of a patient, to have access to
15 nursing home patients for 1 or more of the following purposes:

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

18 (b) Inform patients of their rights and entitlements, and
19 their corresponding obligations, under federal and state laws by
20 means of the distribution of educational materials and discussion
21 in groups and with individual patients.

22 (c) Assist patients in asserting their legal rights regarding
23 claims for public assistance, medical assistance, and social
24 services benefits, as well as in all matters in which patients are
25 aggrieved. Assistance may be provided individually or on a group
26 basis and may include organizational activity and counseling and
27 litigation.

28 (d) Engage in other methods of assisting, advising, and
29 representing patients so as to extend to them the full enjoyment of

1 their rights.

2 (2) Access as prescribed in subsection (1) ~~shall~~**must** be
3 permitted during regular visiting hours each day. A representative
4 of an approved organization entering a nursing home under this
5 section promptly shall advise the nursing home administrator or the
6 acting administrator or other available agent of the nursing home
7 of the representative's presence. A representative shall not enter
8 the living area of a patient without identifying himself or herself
9 to the patient and without receiving the patient's permission to
10 enter. A representative shall use only patient areas of the home to
11 carry out the activities described in subsection (1).

12 (3) A patient may terminate a visit by a representative
13 permitted access under subsection (1). Communications between a
14 patient and the representative are confidential, unless otherwise
15 authorized by the patient.

16 (4) If a nursing home administrator or employee believes that
17 an individual or organization permitted access under this section
18 is acting or has acted in a manner detrimental to the health or
19 safety of patients in the nursing home, the nursing home
20 administrator or employee may file ~~a~~**an anonymous** complaint with
21 ~~the task force established under section 20127. Upon~~**department. On**
22 **the** receipt of a complaint, department staff shall investigate the
23 allegations made in the complaint. ~~The task force~~**department** shall
24 make a determination regarding proper resolution of the complaint
25 based on the results of the investigation. Written notification of
26 ~~the task force~~**department's** determination and ~~of~~ recommendations
27 ~~adopted by the task force~~ shall be given to the complainant and the
28 individual or organization against whom the complaint was made.

29 (5) An individual shall not enter upon the premises of a

1 nursing home for the purpose of engaging in an activity that would
2 cause a reasonable person to feel terrorized, frightened,
3 intimidated, threatened, harassed, or molested and that actually
4 causes a nursing home employee, patient, or visitor to feel
5 terrorized, frightened, intimidated, threatened, harassed, or
6 molested. This subsection does not prohibit constitutionally
7 protected activity or conduct that serves a legitimate purpose
8 including, but not limited to, activities or conduct allowed under
9 subsection (1).

10 Sec. 21764. (1) The director ~~, with the advice of the nursing~~
11 ~~home task force,~~ shall approve or disapprove a nonprofit
12 corporation which has as 1 of its primary purposes the rendering of
13 assistance, without charge to nursing home patients for the purpose
14 of obtaining access to nursing homes and their patients under
15 section 21763.

16 (2) ~~Upon~~ **On the** receipt of a written application for approval
17 under subsection (1), the director shall notify all persons ~~who~~
18 **that** have made a written request for notice of applications made
19 under this section.

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

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

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

4 (2) A nursing home employee who has reasonable suspicion of an
5 act prohibited by this section shall report the suspicion to the
6 nursing home administrator or nursing director and to the
7 department ~~in the manner required by subsection (8).~~ **as required by**
8 **federal regulations.** A nursing home administrator or nursing
9 director who has reasonable suspicion of an act prohibited by this
10 section shall report the suspicion by telephone to the department
11 and 1 or more law enforcement entities ~~in the manner required by~~
12 ~~subsection (8).~~ **as required by federal regulations.**

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

15 (4) A physician or other licensed health care personnel ~~of a~~
16 ~~hospital or other health care facility to which a patient is~~
17 ~~transferred~~ who has reasonable suspicion of an act prohibited by
18 this section shall report the suspicion to the department and 1 or
19 more law enforcement entities ~~in the manner required by subsection~~
20 ~~(8).~~ **as required by federal regulations.**

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

25 (6) A nursing home employee, licensee, or nursing home
26 administrator shall not evict, harass, dismiss, or retaliate
27 against a patient, a patient's representative, or an employee who
28 makes a report under this section.

29 (7) An individual required to report an act or a reasonable

1 suspicion under ~~subsections~~ **subsection** (2) ~~to~~ **or** (4) is not
 2 required to report the act or suspicion to the department or 1 or
 3 more local law enforcement entities if the individual knows that
 4 another individual has already reported the act or suspicion as
 5 required by this section.

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

9 ~~(a) If the act that causes the suspicion results in serious~~
 10 ~~bodily injury to the patient, the individual shall report the~~
 11 ~~suspicion immediately, but not more than 2 hours after forming the~~
 12 ~~suspicion.~~

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

16 Sec. 21794. (1) With the consent of the patient or the
 17 patient's representative a nursing home may use a dining assistant
 18 to provide feeding assistance to a patient who, based on the charge
 19 nurse's assessment of the patient and the patient's most recent
 20 plan of care, needs assistance or encouragement with eating and
 21 drinking, but does not have complicated feeding problems,
 22 including, but not limited to, difficulty swallowing, recurrent
 23 lung aspirations, tube or parenteral feedings, or behavioral issues
 24 that may compromise nutritional intake. The charge nurse's
 25 assessment and plan of care must be documented in the patient's
 26 medical record. For a patient who is assigned a dining assistant
 27 and experiences an emergent change in condition, the charge nurse
 28 shall perform a special assessment to monitor the appropriateness
 29 of continued utilization of the dining assistant.

1 (2) A nursing home that chooses to utilize dining assistants
2 shall provide individuals with training through a department-
3 approved training curriculum. The department and the long-term care
4 stakeholder advisory workgroup designated under section ~~20155(24)~~
5 **20155(18)** shall develop a dining assistants training curriculum.
6 The department shall approve a dining assistants training
7 curriculum that meets the requirements of this subsection. In order
8 to be approved by the department, the dining assistants training
9 curriculum must include, at a minimum, 8 hours of course material
10 that covers all of the following:

- 11 (a) Dining assistants program overview.
- 12 (b) Patient rights.
- 13 (c) Communication and interpersonal skills.
- 14 (d) Appropriate responses to patient behavior.
- 15 (e) Recognizing changes in patients.
- 16 (f) Infection control.
- 17 (g) Assistance with feeding and hydration.
- 18 (h) Feeding techniques.
- 19 (i) Safety and emergency procedures.
- 20 (j) End of life.

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

27 (4) A dining assistant shall work under the supervision of a
28 nurse. A dining assistant's sole purpose is to provide feeding
29 assistance to patients, and he or she shall not perform any other

1 nursing or nursing-related services, such as toileting or
2 transporting patients. A dining assistant is not nursing personnel
3 and a nursing home shall not include a dining assistant in
4 computing the ratio of patients to nursing personnel or use a
5 dining assistant to supplement or replace nursing personnel. If
6 approved by the charge nurse and subject to subsection (1), a
7 dining assistant may provide feeding assistance in a patient's room
8 if the patient is unable to go to or chooses not to dine in a
9 designated dining area. A nurse is not required to be physically
10 present within the patient's room during the feeding, but a nurse
11 must be immediately available. A dining assistant who is providing
12 feeding assistance to a patient in his or her room as provided
13 under this subsection must not be assigned to assist another
14 patient at the same time.

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

17 (6) A nursing home that utilizes dining assistants shall
18 maintain a written record of each individual used as a dining
19 assistant. The nursing home shall include in the written record, at
20 a minimum, the complete name and address of the individual, the
21 date the individual successfully completed the dining assistants
22 training curriculum, a copy of the written record of the
23 satisfactory completion of the training curriculum, and
24 documentation of the criminal history check.

25 (7) This section does not prohibit a family member or friend
26 from providing feeding assistance to a patient within the nursing
27 home or require a friend or family member to complete the training
28 program prescribed under subsection (2). However, a nursing home
29 may offer to provide the dining assistants training curriculum to

1 family members and friends.

2 (8) As used in this section:

3 (a) "Dining assistant" means an individual who meets the
4 requirements of this section and who is only paid to provide
5 feeding assistance to nursing home patients by the nursing home or
6 who is used under an arrangement with another agency or
7 organization.

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

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

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

19 Sec. 21799b. (1) If, upon investigation, the department ~~of~~
20 ~~consumer and industry services~~ finds that a licensee is not in
21 compliance with this part, a rule promulgated under this part, or a
22 federal law or regulation governing nursing home certification
23 under title XVIII or XIX, which noncompliance impairs the ability
24 of the licensee to deliver an acceptable level of care and
25 services, or in the case of a nursing home closure, the department
26 ~~of consumer and industry services~~ shall notify the department of
27 ~~community health of~~ **and human services of** the finding and may issue
28 1 or more of the following correction notices to the licensee:

29 (a) Suspend the admission or readmission of patients to the

1 nursing home.

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

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

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

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

12 (f) Require appointment at the nursing home's expense of a
13 department approved temporary manager with authority and duties
14 specified by the department to oversee the nursing home's
15 achievement of sustained compliance with required operating
16 standards or to oversee the orderly closure of the nursing home.

17 (g) Issue a correction notice to the licensee and the
18 department of ~~community health~~ **and human services** describing the
19 violation and the statute or rule violated and specifying the
20 corrective action to be taken and the period of time in which the
21 corrective action is to be completed. Upon issuance, the director
22 shall cause to be published in a daily newspaper of general
23 circulation in an area in which the nursing home is located notice
24 of the action taken and the listing of conditions upon which the
25 director's action is predicated.

26 (2) Within 72 hours after receipt of a notice issued under
27 subsection (1), the licensee ~~shall~~**must** be given an opportunity for
28 a hearing on the matter. The director's notice shall continue in
29 effect during the pendency of the hearing and any subsequent court

1 proceedings. The hearing ~~shall~~**must** be conducted in compliance with
2 the administrative procedures act of 1969.

3 (3) A licensee who believes that a correction notice has been
4 complied with may request a verification of compliance from the
5 department. Not later than 72 hours after the licensee makes the
6 request, the department shall investigate to determine whether the
7 licensee has taken the corrective action prescribed in the notice
8 under subsection (1)(g). If the department finds that the licensee
9 has taken the corrective action and that the conditions giving rise
10 to the notice have been alleviated, the department may cease taking
11 further action against the licensee, or may take other action that
12 the director considers appropriate.

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

15 (4) ~~(5)~~The department shall report annually to the house **of**
16 **representatives** and senate standing committees on senior issues on
17 the number of times the department appointed a temporary
18 administrative advisor, temporary clinical advisor, and temporary
19 manager as described in subsection (1)(e) or (f). The report ~~shall~~
20 **must** include whether the nursing home closed or remained open. The
21 department may include this report with other reports made to
22 fulfill legislative reporting requirements.

23 (5) ~~(6)~~If the department determines that a nursing home's
24 patients can be safeguarded and provided with a safe environment,
25 the department shall make its decisions concerning the nursing
26 home's future operation based on a presumption in favor of keeping
27 the nursing home open.

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

29 (a) **"Title XVIII" means title XVIII of the social security**

1 act, 42 USC 1395 to 1395lll.

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

4 PART 221. FEDERAL CERTIFICATION OF NURSING HOMES

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

6 (a) "Certification" means certification issued by the Centers
7 for Medicare and Medicaid Services to a nursing home as evidence
8 that the nursing home complies with requirements under federal law
9 for participation in Medicare.

10 (b) "Consecutive days" means calendar days, but does not
11 include Saturday, Sunday, or state- or federally recognized
12 holidays.

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

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

19 (e) "Informal dispute resolution process" means the process
20 described in section 22115.

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

24 Sec. 22102. (1) The department shall administer the
25 certification process in this state in conformance with 42 USC
26 1395aa and the "mission and priority document" and "state
27 operations manual" published by the Centers for Medicare and
28 Medicaid Services.

29 (2) To the extent that there is a conflict between this part

1 and federal law, federal law controls.

2 Sec. 22103. (1) The department shall implement a quality
3 assurance monitoring process for the purposes of conducting the
4 surveys described in this part for the purpose of certification.
5 The quality assurance monitoring process must include the quality
6 assurance review of citations as described in this part. The
7 department shall establish an advisory workgroup to provide
8 recommendations to the department on the quality assurance
9 monitoring process. Subject to subsection (2), the advisory
10 workgroup established under this section must include a
11 representative from the department, representatives from nursing
12 home provider organizations, the state long-term care ombudsman,
13 and any other representative that the department considers
14 necessary or appropriate. The advisory workgroup shall identify and
15 make recommendations on improvements to the quality assurance
16 monitoring process to ensure ongoing validity, reliability, and
17 consistency of nursing home survey findings.

18 (2) Representatives from each nursing home provider
19 organization that does not own or operate a nursing home
20 representing 30 or more nursing homes statewide and the state long-
21 term care ombudsman or his or her designee are permanent members of
22 the advisory workgroup established under subsection (1). The
23 department shall issue survey certification memorandums to
24 providers to announce or clarify changes in the interpretation of
25 regulations.

26 (3) The department shall ensure that each nursing home survey
27 team conducting a standard survey is composed of an
28 interdisciplinary group of professionals, at least 1 of whom must
29 be a registered professional nurse. Other members of the survey

1 team may include social workers, therapists, dietitians,
2 pharmacists, administrators, physicians, sanitarians, and others
3 who may have the expertise necessary to evaluate specific aspects
4 of nursing home operation.

5 (4) The nursing home surveyors conducting a standard survey
6 shall designate a quality assurance monitor. The individual
7 designated as the quality assurance monitor shall ensure all of the
8 following:

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

11 (b) That interpretive regulatory guidance issued by the
12 Centers for Medicare and Medicaid Services is applied consistently
13 and noncompliance with the interpretive regulatory guidance is
14 documented in a clear and concise manner.

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

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

19 Sec. 22105. (1) Except as otherwise provided in this
20 subsection, the department shall limit the number of nursing home
21 surveyors that conduct a standard survey to the recommended number
22 of surveyors identified in survey procedural guidelines established
23 by the Centers for Medicare and Medicaid Services. The department
24 may exceed the recommended number of nursing home surveyors only
25 for the reasons identified in the guidelines described in this
26 subsection.

27 (2) The department shall limit the length of a nursing home
28 standard survey to a reasonable duration. In determining what is a
29 reasonable duration, the department shall consider the average

1 length of surveys nationally.

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

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

13 (3) Departmental notifications of acceptance or rejection of a
14 nursing home's plan of correction must be reviewed and released to
15 the nursing home within 10 consecutive days after the receipt of
16 the plan of correction.

17 (4) A nursing-home-submitted plan of correction in response to
18 any survey must have a completion date not to exceed 40 days from
19 the exit date of the survey. If a nursing home has not received
20 additional citations before a revisit occurs, the department shall
21 conduct the first revisit not more than 60 days from the exit date
22 of the survey.

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

26 Sec. 22109. If a deficient practice occurred at a nursing home
27 after the most recent survey of the nursing home under this part
28 and the deficient practice is no longer occurring in the nursing
29 home, the department shall, on the request of the nursing home,

1 evaluate the deficient practice. If the nursing home is not
2 eligible for an evaluation based on requirements from the Centers
3 for Medicare and Medicaid Services, the department shall provide
4 written notice to the nursing home explaining the reason the
5 evaluation cannot be not granted.

6 Sec. 22111. (1) The department shall maintain the process by
7 which the director of the long-term care division of the department
8 reviews and authorizes the issuance of a citation for immediate
9 jeopardy or substandard quality of care before a statement of
10 deficiencies is made final. The review must ensure the consistent
11 and accurate application of federal and state survey protocols and
12 defined regulatory standards.

13 (2) On the discovery of a potential immediate jeopardy, a
14 nursing home surveyor shall communicate with the nursing home
15 administrator, the director of nursing for the nursing home, or the
16 medical director of the nursing home, if available, to review the
17 issues of concern and to give the nursing home an opportunity to
18 share any data or documentation that may have an impact on a
19 decision by the department to authorize the issuance of a citation
20 for immediate jeopardy. If a citation for immediate jeopardy is
21 issued to a nursing home, the department shall do both of the
22 following:

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

25 (b) Ensure that at least 1 nursing home surveyor remains on-
26 site at the nursing home until the immediate jeopardy is abated
27 unless the department determines that having a nursing home
28 surveyor on-site at the nursing home is not practical.

29 Sec. 22113. On the receipt of a request from a nursing home,

1 the department shall conduct a desk review of a citation if the
2 circumstances meet the requirements established by the Centers for
3 Medicare and Medicaid Services for a desk review instead of an on-
4 site revisit for a standard or abbreviated survey. If the
5 department determines that the nursing home is not eligible for a
6 desk review, the department shall notify the nursing home, in
7 writing, with an explanation of why a desk review could not be
8 conducted.

9 Sec. 22115. (1) A nursing home that is issued a citation may
10 request an appeal of the citation through an informal dispute
11 resolution process from a peer review organization approved by the
12 department. The department shall adopt the recommendations of the
13 peer review organization on whether to support, amend, or delete
14 the citation.

15 (2) Each quarter, the department shall do both of the
16 following:

17 (a) Conduct a quality assurance review of amended or deleted
18 citations with the peer review organization described in this
19 section for the purposes of identifying whether there is a need for
20 additional training of nursing home surveyors or peer review
21 organization staff.

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

25 Sec. 22117. (1) Subject to subsection (2), the department
26 shall develop and implement statewide reporting requirements for
27 facility-reported incidents for any category required by federal
28 regulations and at least all of the following additional
29 categories:

1 (a) Elopements.

2 (b) Bruising.

3 (c) Repeated statements from residents with mental health
4 behaviors.

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

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

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

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

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

21 (d) An allegation if a thorough assessment does not
22 substantiate the allegation.

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

28 Sec. 22119. The department shall report by March 1 of each
29 year to the standing committees on appropriations and the standing

1 committees having jurisdiction over issues involving senior
2 citizens in the senate and the house of representatives on all of
3 the following:

4 (a) The number and percentage of nursing home citations that
5 are appealed through the informal dispute resolution process and an
6 independent informal dispute resolution process.

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

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

16 (d) The number of nursing home complaints and facility
17 reported incidents received by the department, grouped by county.
18 The information described in this subdivision must be shared as
19 part of the quality assurance monitoring process and reviewed by
20 the advisory workgroup established under section 22103.

21 (e) The number of surveys conducted.

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

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

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

26 (i) The review of citation patterns developed under section
27 20155(7).

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

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

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

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

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

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

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

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

18 Sec. 22121. To the extent permitted by federal law, the
19 department shall establish and implement progressive discretionary
20 enforcement actions for the purposes of this part that consider the
21 least restrictive enforcement action if a nursing home does not
22 have a history of receiving citations in past nursing home surveys
23 under this part and increase in severity if a nursing home has a
24 history of receiving similar citations in past nursing home surveys
25 under this part.

26 Enacting section 1. Sections 20121, 20122, 20123, 20124,
27 20126, 20127, 20155a, and 20211 of the public health code, 1978 PA
28 368, MCL 333.20121, 333.20122, 333.20123, 333.20124, 333.20126,
29 333.20127, 333.20155a, and 333.20211, are repealed.